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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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CASE NO. 353931

COURT OF APPEALS, STATE OF WASHINGTON,
DIVISION III

KIMBERLY KITTLE and LEAH WESTBY

Plaintiffs/Respondents,

vs.

RIVERVIEW LUTHERAN CARE CENTER, ET AL.

Defendants/Appellants

APPELLANTS RIVERVIEW'S REPLY BRIEF

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I. INTRODUCTION

Defendants-Appellants Riverview Lutheran Care Center, d/b/a Riverview Care Center and Riverview Lutheran Home of Spokane, Washington, d/b/a Riverview Terrace (“Riverview”) submits this Reply to Plaintiffs-Respondents’ Response Brief (hereinafter, “Response”). Riverview respectfully requests that this Court (1) reverse the trial court’s denial of Riverview’s Motion for Partial Summary Judgment, (2) enter judgment in favor of Riverview declaring its 8/80 overtime policy valid as a matter of law, and (3) dismiss Plaintiffs’ claim for failure to pay overtime compensation based on the alleged unlawful 8/80 overtime policy.

II. ARGUMENT

A. The Court Should Consider Riverview’s “Statutory Comparison Arguments” Because Such Arguments are related to the Arguments Made by Riverview before the Trial Court.

Plaintiffs argue that Riverview “should be barred from presenting new arguments and theories that were never raised before the trial court.” Response at 7. Specifically, Plaintiffs ask this Court not to consider Riverview’s “statutory comparison arguments.” *Id.* at 8.

Although the Court of Appeals typically does not review claims of error or arguments not raised at the trial court, the Court will consider arguments that are “arguably related to issues raised in the trial court.”

Lunsford v. Saberhagen Holdings, Inc., 139 Wn. App. 334, 338, 160 P.3d 1089 (2007), *aff'd*, 166 Wn.2d 264, 208 P.3d 1092 (2009); *see also State Farm Mut. Auto. Ins. Co. v. Amirpanahi*, 50 Wn. App. 869, 872 n.1, 751 P.2d 329 (1988) (reviewing arguments on appeal when the parties below “argue[d] the basic reasoning” of the issue, even though the record did not contain citation to “crucial case law and treatises”); *Bailey v. Int’l Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local 374*, 175 F.3d 526, 529–30 (7th Cir. 1999) (reviewing arguments on appeal when the appealing party had made “a skeletal argument below, which the district court recognized and addressed, and which the party . . . fleshed out and emphasized on appeal”).

The fact that Riverview’s arguments on appeal are more detailed than at summary judgment should come as no surprise given the several stages of briefing on these issues.¹ But the issues now before the Court of Appeals are the same as the issues before the trial court, i.e., (1) Riverview and Plaintiffs reached an “agreement or understanding” concerning Riverview’s 8/80 policy, and (2) discretionary language contained in Riverview’s Personnel Manual does not negate the existence of an “agreement or understanding.” Riverview has consistently argued the

¹ Prior to this round of appellate briefing, the parties briefed the issues subject to this appeal in (1) Riverview’s Motion for Summary Judgment, (2) Riverview’s Motion for Reconsideration, (3) Plaintiffs’ Motion to Determine Appealability, and (4) the parties’ Supplemental Briefing re: Appealability.

“basic reasoning” of these issues, *State Farm Mut. Auto. Ins. Co.*, 50 Wn. App. at 872 n.1, even if Riverview’s arguments before the trial court might have been “skeletal” (in the sense that Riverview did not make “statutory comparison arguments”), *Bailey*, 175 F.3d at 529-30.

There are additional reasons why Riverview’s “statutory comparison” arguments, which are related to the arguments made to the trial court, should be considered on this appeal. Riverview’s statutory comparison arguments are made in the alternative; the Court need only reach this line of argument if it finds that the meaning of “agreement or understanding,” is ambiguous. Also, the question presented in Riverview’s appeal is a matter of first impression and a legal question of statutory interpretation, which the Court reviews *de novo*. Plaintiffs had the opportunity to, and did, respond to Riverview’s argument that this Court should interpret 29 U.S.C. § 207(j)’s “agreement or understanding” requirement consistent with other FLSA sections that use the same language. *See* Response at 10-14.

In sum, the “statutory comparison” arguments made by Riverview on appeal are related to the arguments made to the trial court. It would serve neither the parties nor the judicial system to disregard such arguments in analyzing 29 U.S.C. § 207(j)’s “agreement or understanding” requirement.

B. Plaintiffs Seek to Create an Issue of Fact by Ignoring Facts Established by Riverview, Citing Facts that Have No Bearing on the Application of 29 U.S.C. § 207(j), and by Muddling Together Issues of Statutory Interpretation and Riverview’s Personnel Manual.

Plaintiffs attempt to create factual issues in this case where the facts are clear and reasonable minds could not disagree that Plaintiffs and Riverview reached an “agreement or understanding” concerning Riverview’s 8/80 policy. Plaintiffs do this in at least three ways.

First, Plaintiffs downplay the significance of, but cannot dispute, the following material facts: (1) the 8/80 policy was forth in Riverview’s Personnel Manual, (2) Plaintiffs acknowledged reading and understanding the Manual, (3) Plaintiffs admit they were aware they were paid in accordance with the policy, and (4) Plaintiffs continued to work at Riverview without objection to the 8/80 policy.

Second, Plaintiffs claim there are questions of fact concerning whether Riverview and its employees mutually agreed to, or meaningfully discussed, the 8/80 policy. These alleged questions of fact are immaterial to the issue before the Court because 29 U.S.C. § 207(j) does not require mutual consent or meaningful discussions to constitute an “agreement or understanding.”

Finally, Plaintiffs conflate the issue of statutory interpretation with issues concerning the rights of employees subject to employment

handbooks. These are distinct analyses and neither analysis supports the decision reached by the trial court in this case.

The undisputed material facts are not in dispute and the trial court erred in finding to the contrary.

1. Plaintiffs downplay, but cannot dispute, that Riverview's 8/80 policy is clearly set forth in its Personnel Manual, which Plaintiffs acknowledged receiving and reading, and that Plaintiffs accepted wages pursuant to the policy.

Plaintiffs claim that Riverview's act of setting forth its 8/80 policy in its Personnel Manual is insufficient to create an "agreement or understanding" concerning the policy. Response at 10. That the 8/80 policy was set forth in Riverview's Personnel Manual is not the only fact established by Riverview evidencing an "agreement or understanding" between Plaintiffs and Riverview.

Not only is Riverview's 8/80 policy is clearly set forth in Riverview's Personnel Manual, CP at 19, but Plaintiffs signed an acknowledgment that they "[had] read [the Manual] in its entirety and **fully understand** and acknowledge its content," CP at 21, 23 (emphasis added). These signed acknowledgements are significant evidence that Plaintiffs understood, i.e., grasped or comprehended, that they would be paid in accordance with an 8/80 policy. *See, e.g., White v. Cty.*, 2015 WL 5047955, at *4-5 (E.D. Tex. Aug. 26, 2015). Reasonable minds could not

disagree that Plaintiffs and Riverview reached an understanding based on this evidence alone.²

Further, at their depositions, Plaintiffs testified that they were paid overtime in accordance with the 8/80 policy. CP at 153, 156-57. These admissions are significant because employees receive a regular lesson in how they are paid by receiving their paychecks. *See Griffin v. Wake Cty.*, 142 F.3d 712, 716-17 (4th Cir. 1998). The Department of Labor likewise advises that “[a]n agreement or understanding may be presumed to exist for the purposes of [29 U.S.C. § 207(j)] with respect to any employee who **accepts payment of wages** pursuant to notice by the hospital that compensation will be made according to [29 U.S.C. § 207(j)].” DOL Field Operations Handbook, Chp. 25h Other Exemptions, *available at* https://www.dol.gov/whd/FOH/FOH_Ch25.pdf (last visited Dec. 28, 2017). In their Response Brief, Plaintiffs admit that their deposition

² Plaintiffs sometimes frame the issue as whether Riverview and “class members” reached an “agreement or understanding.” *E.g.*, Response at 3. This is yet another attempt by Plaintiffs to create a factual issue by implying that Riverview could not possibly reach an “agreement or understanding” with over 400 employees. But in a class action, the named Plaintiffs must be able to put forth evidence that is representative of the class as a whole. *E.g.*, *Blades v. Monsanto Co.*, 400 F.3d 562, 571-72 (8th Cir. 2005) (in a class action, the plaintiff must be able to prove injury to each class member with proof common to the class). In this case, Plaintiffs Kittle and Westby must establish a lack of “agreement or understanding” on behalf of the class. They are unable to make this showing, and the Court should reject Plaintiffs’ position that there is a question of fact regarding whether Riverview reached an “agreement or understanding” with “class members.”

testimony suggests that they were “aware” that they were paid pursuant to Riverview’s 8/80 policy. Response at 6, n.2.

Based on these undisputed material facts and Plaintiffs’ admissions, reasonable minds could not disagree that Plaintiffs understood that they were paid pursuant to Riverview’s 8/80 policy, thus, satisfying 29 U.S.C. § 207(j)’s “agreement or understanding” requirement.

2. Plaintiffs attempt to create an issue of fact by placing a higher burden on Riverview to show an “agreement or understanding” than the plain language of 29 U.S.C. § 207(j) requires.

Plaintiffs contend that there is a question of fact whether Riverview “pointed out or discussed the 8/80 overtime rule with its prospective employees.” Response at 10; *see also Id.* at 3 (claiming that Riverview did not engage in “meaningful discussion with class members about which overtime policy would apply”). Plaintiffs repeatedly state that Riverview “unilaterally imposed” its 8/80, insinuating that this practice is unacceptable. *E.g.*, Response at 6, n.2.

Neither 29 U.S.C. § 207(j) nor FLSA case law requires an employer to “meaningfully discuss” an 8/80 overtime policy with its employees in order to reach an “agreement or understanding.” In this case, Riverview’s 8/80 policy is clearly set forth in the Personnel Manual, which new employees are provided and acknowledge reading and

understanding. If an employee wished to be paid overtime based on a different payment scheme, the employee's remedy would be to look for employment elsewhere. Plaintiffs' interpretation of 29 U.S.C. § 207(j) to require a health care employer to "meaningfully discuss" an 8/80 overtime policy with each new employee would lead to the absurd result of requiring hospital employers to negotiate overtime compensation schemes every time it hires a new employee. Neither the statute nor other legal authority suggests that this is what 29 U.S.C. § 207(j) requires of hospital employers. This is not a question of fact that precludes summary judgment in this case.

3. The fact that Riverview's Personnel Manual contains discretionary language does not defeat summary judgment as Riverview did not alter or inconsistently apply its 8/80 overtime policy during Plaintiffs' employment.

Plaintiffs argue that, pursuant to the discretionary language of the Personnel Manual, Riverview could unilaterally alter its overtime payment scheme, which could hypothetically result in "a policy that may or may not be consistently applied." Response at 11.

It is undisputed that Riverview's 8/80 policy had been in place since 2003. CP at 15. Plaintiffs began working for Riverview in 2011. CP at 21, 23. There is no evidence that during the Plaintiffs' tenure at Riverview, Riverview ever changed its overtime policy on a "whim,"

“toss[ed] [it] out,” or applied it “inconsistently.” Response at 9, 15. Plaintiffs did not dispute the fact that Riverview has maintained its 8/80 policy since at least 2003. This alleged factual “dispute” created by Plaintiffs is based on nothing more than the hypothetical scenario that Riverview’s 8/80 policy “**could have** changed multiple times.” Response at 15 (emphasis added). This is insufficient to create a factual dispute. *E.g., Ranger Ins. Co. v. Pierce Cty.*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008) (stating the nonmoving party “may not rely on speculation, or argumentative assertions that unresolved factual issues remain” to defeat summary judgment) (citation and alterations omitted).

The discretionary language contained in Riverview’s Personnel Manual is included so that employees understand that they are not subject to an employment contract, that is, they remain at-will employees. To the extent that Riverview’s policy states that it can modify its Personnel Manual “without prior notice and at its sole discretion,” CP at 21, 23, this language does not change the “agreement or understanding” regarding payment of overtime. For policies that, by law, require giving advance notice to employees, Riverview would of course have to provide notice for such change in policy to be enforceable. But again, there is no evidence that Riverview changed its overtime policy during Plaintiffs’ tenure at Riverview or applied its 8/80 policy inconsistently.

Plaintiffs cannot create an issue of fact concerning the existence of an “agreement or understanding” based on speculation and hypothetical musings concerning the application of Riverview’s Personnel Manual. The material facts on this issue cannot be disputed and the trial court erred in finding that genuine issues of material fact precluded summary judgment on this issue.

C. Plaintiffs Cannot Show that the Plain Meaning of “Understanding” Means Anything More Than One’s Ability to Grasp or Comprehend a Situation and Plaintiffs’ Attempt to Equate “Understanding” with “Agreement” is Not Supported by Case Law or Statutory Canons of Construction.

The material facts cannot be disputed; therefore, the question becomes whether Riverview is entitled to judgment as a matter of law. The answer to this question depends on how the “agreement or understanding” requirement of 29 U.S.C. § 207(j) is applied. Plaintiffs argue that “understanding” means the same thing as “agreement” and agreement requires mutual consent. Plaintiffs’ interpretation of “agreement or understanding” is contrary to the plain language of the statute, does not comport with agency guidance provided by the Department of Labor, and is not supported by case law or statutory canons of construction.

1. The plain language of 29 U.S.C. § 207(j) requires only that an employee grasp or comprehend the existence of an 8/80 policy; it does not require an employer and employee to mutually consent to the policy.

Plaintiffs do not respond to Riverview's position that the plain meaning of 29 U.S.C. § 207(j) requires only that employees grasp or comprehend that they will be paid in accordance with an 8/80 policy prior to beginning work for an "agreement or understanding" to exist. Instead, Plaintiffs seem to argue that the words "agreement" and "understanding" mean the same thing. *See* Response at 15 (arguing that an "understanding" requires "an agreement, especially of an implied or tacit nature") (citing Black's Law Dictionary). This interpretation of "understanding" ignores the principle that a legal dictionary is not appropriate to ascertain the plain meaning of a statutory term. *E.g., Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 123 Wn.2d 678, 701–02, 871 P.2d 146 (1994) (Guy, J., dissenting). Also, equating "understanding" with "agreement" runs afoul of the canon of construction that "all the [statutory] language used is given effect, with no portion rendered meaningless or superfluous." *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999). By including both "agreement" and "understanding," it must be assumed that Congress meant the words to have different meanings; otherwise, Congress would have drafted the statute to include only "agreement" or

only “understanding.” Plaintiffs fail to show why “understanding” should be interpreted to require anything more than that employees grasp or comprehend the 8/80 policy.

Plaintiffs seek to distinguish *Duff-Brown v. City & Cty. Of San Francisco, California*, 2014 WL 2514555 (N.D. Cal. June 4, 2014) from the case at bar. Response at 11-12. Interestingly, the *Duff-Brown* court likewise relied on Black’s Law Dictionary to ascertain the plain meaning on “agreement or understanding.” 2014 WL 2514555 at *3. But even under Black’s definitions of “agreement” and “understanding,” the federal district court found, as a matter of law, that an “agreement or understanding” existed between the employer and employees. *Id.* The *Duff-Brown* case, as argued by Plaintiffs, is different from this case because, in *Duff-Brown*, there were mandatory negotiations with the union about the terms and conditions of employment. Response at 12. But in this case, Riverview’s employees are neither unionized nor were Riverview’s terms of employment ever up for negotiation or subject to a collective bargaining requirement.

In *Duff-Brown*, there were initially factual issues about what the parties agreed concerning overtime compensation. *Duff-Brown v. City & Cty. of San Francisco*, 2013 WL 163530, at *8 (N.D. Cal. Jan. 15, 2013). These issues, however, were eventually flushed out in depositions. 2014

WL 2514555 at *3. Significantly, the hospital in *Duff-Brown* did not have a written policy. If there had been a written policy, it would have been unnecessary to develop testimony about what the parties agreed upon. The fact that Riverview's 8/80 policy was clearly set forth in its Personnel Manual, which Plaintiffs acknowledged receiving, reading, and understanding, is evidence of an "agreement or understanding" that was simply not present in *Duff-Brown*.

Duff-Brown stands for the proposition that a hospital employer and its employees reach an "agreement or understanding" based on employees' admissions that they knew they would be paid pursuant to an 8/80 policy prior to starting work. 2014 WL 2514555 at *3, *5. Plaintiffs Kittle and Westby admit that they were aware that they were paid pursuant to an 8/80 overtime policy. CP at 153, 156-57. The trial court in this case erred in not granting summary judgment in favor of Riverview as the district court did in favor of the hospital in *Duff-Brown*. Plaintiffs cannot show that "understanding" means something other than the ability to grasp or comprehend a situation. The plain language of 29 U.S.C. § 207(j) compels the interpretation argued by Riverview.

2. Plaintiffs do not dispute that the Department of Labor's guidance is consistent with the plain meaning of 29 U.S.C. § 207(j) as argued by Riverview, and do not dispute that this guidance is entitled to deference.

Plaintiffs present no argument concerning DOL's interpretation of 29 U.S.C. § 207(j), which presumes the existence of an agreement or understanding when an employee accepts wages after being notified of the 8/80 policy. DOL Field Operations Handbook, Chp. 25h Other Exemptions, *available at* https://www.dol.gov/whd/FOH/FOH_Ch25.pdf (last visited Dec. 28, 2017). Plaintiffs do not contest that, if "agreement or understanding" is deemed ambiguous, courts should defer to how an implementing agency interprets the statute. These points should be deemed conceded in Riverview's favor.

3. The cases cited by Plaintiffs involving claims made under 29 U.S.C. § 207(g) do not address the issue presented by Riverview on this appeal.

Plaintiffs cite two cases for the proposition that issues of fact preclude summary judgment about the existence of an "agreement or understanding" under 29 U.S.C. § 207(g) ("employment at piece rates"): *Albanese v. Bergen County, N.J.*, 991 F. Supp. 410 (N.J. 1997), and *Treece v. City of Little Rock, Ark.*, 923 F. Supp. 1122 (E.D. Ark. 1996). Response at 12-13. These two cases are distinguishable and neither supports that denial of summary judgment was appropriate in Riverview's case.

Albanese does not stand for the proposition that “a factual issue will preclude summary judgment under similar FLSA provisions [(including 29 U.S.C. § 207(g))].” Response at 12. In fact, in *Albanese*, the district court granted summary judgment in the plaintiffs’ favor. 991 F. Supp. at 420. The district court granted plaintiffs’ motion for summary judgment despite disputed facts concerning whether plaintiffs (K-9 police officers) and defendant (police department employer) agreed on how the officers would be compensated for taking care of their dogs outside of work. *Id.* at 414-15. The issue in *Albanese* was not so much whether the parties agreed to a particular form of compensation (yearly stipend versus overtime rate of pay); instead, the issue was whether the *type* of work the officers performed (feeding, walking, bathing, grooming their dogs) was “suffered” for the department’s benefit and, thus, considered overtime work compensable at one and a half times the officers’ regular rate of pay. The district court found, as a matter of law, the FLSA required that the police department compensate the K-9 officers at one and a half times plaintiffs’ regular hourly pay for preliminary and postliminary work caring for their dogs. *Id.* at 420-22. The district court did not rule that issues of fact precluded summary judgment.

Treece, another K-9 police officer case, is similar to *Albanese*. Again, the district court in *Treece* granted plaintiffs’ motion for summary

judgment to find that the K-9 officers' off-the-clock work caring for their dogs qualified as overtime under the FLSA as a matter of law. 923 F. Supp. at 1125. The defendant police department filed a cross-motion for summary judgment seeking a ruling that the plaintiff K-9 officers were only entitled to minimum wage for their off-the-clock care of their dogs. *Id.* at 1127-28. In support of this payment scheme, the only evidence submitted by the police department was paying minimum wage for outside-of-work dog care was that such compensation was "the prevailing practice . . . for canine officers." *Id.* at 1128. Without going into detail, the district court concluded that there were issues of fact whether the K-9 officers and the department reached an agreement or understanding about being paid minimum wage (instead of wages one and a half times the officers' regular rate of pay). *Id.*

The issue presented on the plaintiffs' motions for summary judgment in *Albanese* and *Treece*, i.e., whether off-the-clock work caring for police dogs is considered work, is completely different than the issue presented by *Riverview*, i.e., whether an "agreement or understanding" exists between a hospital employer and its employees based on undisputed facts. The defendant's cross-motion in *Treece* is arguably similar to *Riverview*'s motion for summary judgment and the issue on appeal. But in *Treece*, seemingly the only evidence presented by the defendant police

department of an “agreement or understanding” was the “prevailing practice” of compensation for the plaintiffs’ profession. 923 F. Supp. at 1128. Riverview did not rely on such general and vague industry practices to establish the existence of an “agreement of understanding” between itself and Plaintiffs. Rather, Riverview put forth undisputed evidence that (1) its 8/80 policy was set forth in its Personnel Manual, which had been in place since 2003, (2) in 2011, Plaintiffs Kittle and Westby signed an acknowledgment certifying that they understood the policies contained in the Personnel Manual, and (3) Plaintiffs accepted wages knowing that they were paid pursuant to the 8/80 policy.

Finally, Plaintiffs attempt to distinguish *Amador v. Guardian Installed Services*, 575 F. Supp.2d 924 (N.D. Ill. 2008), which Riverview cited in its Opening Brief at pages 18 and 19. Response at 13-14. Plaintiffs seem to read *Amador* as supporting their argument that hospital employers must “explain,” “discuss,” and, possibly, “read aloud,” an overtime scheme for there to be an “agreement or understanding” between the employer and employee. Response at 14. As discussed in Section A(2) *supra*, 29 U.S.C. § 207(j) simply does not place such a high burden on employers. *Amador* is slightly different from this case because the employer in *Amador* had one overtime policy in place, but then switched to another policy (requiring employees and employer to come to an

“agreement or understanding”). 575 F. Supp.2d at 927. Riverview’s 8/80 policy has been in place since 2003 and has not changed. The overtime policy was clearly set out in Riverview’s Personnel Manual. Thus, Riverview had no need to “explain” or “discuss” the policy with its employees, all employees had the chance to review the policy prior to starting work. *Amador* supports Riverview’s position that an “agreement or understanding” exists, as a matter of law, when employees are notified of the overtime compensation plan and paid according to the plan. *Id.* at 929-30.

D. Plaintiffs’ Policy Arguments are One-Sided and Unpersuasive.

Plaintiffs characterize Riverview’s 8/80 policy as disrespectful to employee rights and antithetical to Washington’s status as a pioneer of workers’ rights. Response at 14-15. Plaintiffs contend that Riverview’s imposition of the 8/80 policy required employees to legally bargain away their rights to a 40 hour workweek. *Id.*

Riverview takes strong exception to Plaintiffs’ argument that Riverview’s lawful overtime policy disrespects or mistreats its employees. Workers possess a number of rights in Washington, which Washington courts take care to protect. But employers also have rights in this state, including the right to set terms of employment. *See Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 229, 685 P.2d 1081 (1984) (stating that “the

employer can define the work relationship”). 8/80 policies are unique to the health care industry and an exception to Washington’s default rule providing for a 40 hour workweek. But there is nothing insidious about a facility like Riverview using an 8/80 policy. Congress explicitly created this overtime scheme for facilities like Riverview “to reflect the manner in which a hospital operates.” MICHAEL B. SNYDER, 2 COMPENSATION AND BENEFITS (HR SERIES) § 15:58 (2017). 8/80 policies are authorized by the FLSA which in turn are authorized in Washington state by operation of RCW 49.46.130(h). This overtime scheme is lawful in Riverview’s industry and Riverview did not adopt the policy to unlawfully deprive its employees of any legal right.

In sum, reversing the trial court’s denial of partial summary judgment in this case would not be antithetical to “Washington’s status as a pioneer for protection of employee rights.” Response at 14. Plaintiffs’ policy argument does nothing to contradict the plain language of 29 U.S.C. § 207(j), agency interpretation, and judicial interpretation of related FLSA provisions, all of which compel the conclusion that an “agreement or understanding” existed between Riverview and Plaintiffs in this case.

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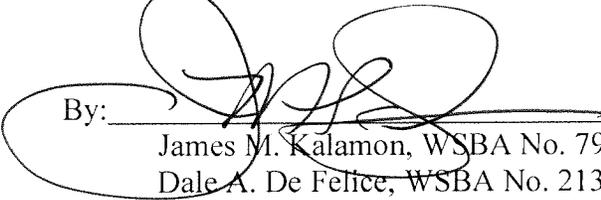
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III. CONCLUSION

Riverview respectfully requests that this Court reverse the trial court's denial of Riverview's Motion for Partial Summary Judgment, enter judgment in favor of Riverview declaring that its 8/80 overtime policy is valid as a matter of law, and dismiss Plaintiffs' claim for failure to pay overtime compensation based on the alleged unlawful 8/80 overtime policy.

DATED this 13th day of March, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2018, I caused to be served a true and correct copy of the foregoing, APPELLANTS RIVERVIEW'S REPLY BRIEF, by Hand Delivery and addressed to the following:

Kammi Mencke Smith
Benjamin H. Rascoff
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Spokane, WA 99201

Dated this 13th day of March, 2018 at Spokane, Washington.


James M. Kafamon