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SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
CLERK

No. 102047-3

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

COURT OF APPEALS NO. 38152-8-III

DANIEL CAMPEAU, individually and on behalf of all persons
similarly situated,

Petitioner/Plaintiff,

v.

YAKIMA HMA, LLC, a Washington corporation,

Respondent/Defendant.

**BRIEF OF AMICUS CURIAE WASHINGTON STATE
LABOR COUNCIL**

IN SUPPORT OF PETITION FOR REVIEW

Jennifer L. Robbins, WSBA No. 40861
BARNARD IGLITZIN & LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119

*Attorneys for Proposed Amicus Curiae Washington State Labor
Council*

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. IDENTITY AND INTERESTS OF AMICUS CURIAE.....3

III. STATEMENT OF THE CASE3

IV. ARGUMENT.....5

 A. ASSOCIATIONAL STANDING CASES REMAIN AN IMPORTANT VEHICLE THROUGH WHICH WORKER REPRESENTATIVES CAN REMEDY WAGE VIOLATIONS. 5

 B. APPLYING *AMERICAN PIPE* TOLLING TO ASSOCIATIONAL CASES PROMOTES ACCESS TO JUSTICE, ADMINISTRATIVE CONVENIENCE, AND JUDICIAL EFFICIENCY. 7

 1. *American Pipe* tolling protects viable claims in the event an original action is procedurally infirm. 7

 2. *Like class actions, associational standing cases serve interests of judicial efficiency, administrative convenience, and access to justice.*..... 8

 3. *Division Three’s Opinion invites participation by represented members that could itself defeat associational standing.* 13

 4. *Mr. Campeau’s case should be permitted to proceed in light of the Court’s discussion in WSNA.*..... 14

V. CONCLUSION.....15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>American Pipe Construction Co. v. Utah</i> , 414 U.S. 538, 94 S.Ct. 756, 38 L.Ed.2d 713 (1974)	<i>passim</i>
<i>Campeau v. Yakima HMA, LLC</i> , 528 P.3d 855 (Wn. App. 2023)	2, 7, 11, 12
<i>Int’l Ass’n of Fire Fighters v. Spokane Airports</i> , 146 Wn.2d 207, 45 P.3d 186 (2002)	<i>passim</i>
<i>Int’l Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Brock</i> , 477 U.S. 274, 106 S. Ct. 2523, 91 L. Ed. 2d 228 (1986)	9
<i>Lacey Nursing Ctr., Inc. v. Dep’t of Revenue</i> , 128 Wn.2d 40, 905 P.2d 338 (1995)	12
<i>Miller v. Farmer Bros. Co.</i> , 115 Wn. App. 815, 64 P.3d 49 (2003)	12
<i>Pugh v. Evergreen Hospital Medical Ctr.</i> , 177 Wn. App. 363, 312 P.3d 665 (2013), <i>rev. denied</i> , 180 Wn.2d 1007 (2014)	4
<i>Riverview Cmty. Group v. Spencer & Livingston</i> , 181 Wn.2d 888, 337 P.3d 1076 (2014)	4, 10
<i>Save a Valuable Environment v. City of Bothell</i> , 89 Wn.2d 862, 576 P.2d 401 (1978)	5, 6, 10

<i>Schnall v. AT&T Wireless Servs., Inc.</i> , 171 Wn.2d 260, 259 P.3d 129 (2011) (en banc).....	12
<i>In re Stericycle, Inc.</i> , 357 N.L.R.B. 582 (2011)	6
<i>Taylor v. United Parcel Service, Inc.</i> , 554 F.3d 510 (5th Cir. 2008).....	8
<i>UFCW Local 751 v. Brown Grp.</i> , 517 U.S. 544, 116 S.Ct. 1529, 134 L.Ed.2d 758 (1996)	5
<i>Weston v. Emerald City Pizza LLC</i> , 137 Wn. App. 164, 151 P.3d 1090 (2007).....	13
<i>WSNA v. Yakima HMA, LLC</i> , 196 Wn.2d 409, 469 P.3d 300 (2020).....	<i>passim</i>
Statutes	
29 U.S.C. § 216(c).....	5

I. INTRODUCTION

The Court of Appeals erroneously concluded that *American Pipe* tolling¹ does not apply in Washington generally or, in particular, to a class action brought on behalf of home health and hospice nurses whose union, Washington State Nurses Association (WSNA), won a substantial trial victory on their behalf to remedy willful wage violations, where that victory was later reversed for WSNA's lack of associational standing. The Washington State Labor Council (WSLC) urges this Court to grant review pursuant to RAP 13.4(b)(4) and reverse both holdings.

In ruling that WSNA lacked associational standing in *WSNA v. Yakima HMA, LLC*, 196 Wn.2d 409, 469 P.3d 300 (2020) (*WSNA*), this Court did not disturb the trial court's factual findings that the nurses' employer, Yakima Regional, deprived the nurses of most of their meal breaks, falsified payroll records,

¹ *American Pipe Construction Co. v. Utah*, 414 U.S. 538, 94 S.Ct. 756, 38 L.Ed.2d 713 (1974).

and intentionally failed and refused to pay nurses for large swaths of time they worked to care for the sick and dying. So too, it left associational standing intact as an important vehicle to collectively redress wage violations on behalf of groups of workers. Associational standing cases offer multiple benefits to litigants and the court system, namely, judicial and administrative efficiencies and access to justice for workers who face barriers to bringing a lawsuit on their own behalf, all of which would be undermined if Division Three's Opinion in *Campeau v. Yakima HMA, LLC* becomes the final word on *American Pipe* tolling.

The rationale employed in *American Pipe* is equally pertinent to union associational standing cases because, like Rule 23 class actions, they a) involve a representative asserting claims on behalf of a group of similarly-situated individuals and b) require the representative to meet an established test to show the case form is appropriate. *American Pipe* tolling protects those on whose behalf the original case was filed from having their claims

become stale in the event that the court decides the originally-filed case is procedurally infirm.

Absent review and reversal, each injured, represented person would have to join an associational case, as with a class action, to protect against a future finding that the case cannot proceed, or risk being shut out of the justice system because their claims are time-barred. That result directly contravenes the prudential reasons for allowing damages actions by associational representatives.

This Court should grant review and reverse.

II. IDENTITY AND INTERESTS OF AMICUS CURIAE.

The identity and interests of WSLC are set forth in full in the Motion filed herewith.

III. STATEMENT OF THE CASE

WSNA brought a state wage and hour suit on behalf of home health and hospice nurses working for Yakima Regional, who Yakima Regional forced to work off the clock and through their meal breaks. CP 56-61. WSNA secured a judgment for

\$1,447,758.09 and that amount again because WSNA proved the employer's violations were knowing, willful, and with intent to deprive the nurses of pay lawfully owing. CP 56, 60-61, 69.

The trial court held WSNA had associational standing under the *Firefighters* test each time the court addressed the question, including on summary judgment by the original judge, App. 001-003, at the close of WSNA's case by the trial judge, App. 004-008, and at the close of trial, based on existing precedent squarely on point. CP 64.²

In a 5-4 decision, this Court held WSNA did not meet the third prong of the associational standing test established in *Int'l Ass'n of Fire Fighters v. Spokane Airports*, 146 Wn.2d 207, 45

² The Court of Appeals held WSNA had associational standing under *Firefighters* when relying on representative testimony to establish the amount of damages. *Pugh v. Evergreen Hospital Medical Ctr.*, 177 Wn. App. 363, 368, 312 P.3d 665 (2013), *rev. denied*, 180 Wn.2d 1007 (2014). This Court had favorably cited *Pugh* for the point that testimony is not the equivalent of participation in the third prong of the *Firefighters* test. *Riverview Cmty. Group v. Spencer & Livingston*, 181 Wn.2d 888, 894, n.1, 337 P.3d 1076 (2014).

P.3d 186 (2002) (“*Firefighters*”) because it relied on the nurses’ representative testimony to prove damages. *WSNA*, 196 Wn.2d at 425. The Court noted that “the nurses could pursue a class action claim against Yakima Regional.” Mr. Campeau accepted this invitation and filed the identical claims as a class action. CP 1-6.

IV. ARGUMENT

A. Associational standing cases remain an important vehicle through which worker representatives can remedy wage violations.

Several vehicles exist for worker representatives to seek redress on behalf of a group of employees harmed by a common course of employer misconduct. These include, among others, Rule 23 class actions, Fair Labor Standards Act (FLSA) collective or U.S. Department of Labor actions, and associational standing cases brought by a labor or other worker-advocacy organization. *See* CR 23; 29 U.S.C. § 216(c); *UFCW Local 751 v. Brown Grp.*, 517 U.S. 544, 557-58, 116 S.Ct. 1529, 134 L.Ed.2d 758 (1996) (noting the prudential nature of the third

standing prong in these circumstances); *Save a Valuable Environment v. City of Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978) (*SAVE*). Of course, associational standing cases are not unique to workers and wage claims. *Id.*; *WSNA*, 196 Wn.2d at 427 (J. Yu, dissenting) (“Associational standing has its roots in the civil rights movement”...and is “a method of allowing the injured to seek justice while mitigating the risk of retaliation, and a recognition by the courts of associations as vehicles for shared interests”).

This Court in *WSNA* left intact the rule that organizations may pursue damages claims on behalf of their members if they can meet the three-part test set forth in *Firefighters*. *WSNA*, 196 Wn.2d at 415, 420, 425. In reaffirming *Firefighters*, *id.*, this Court preserved an important mechanism through which workers and their unions can hold employers accountable and obtain back pay for wrongfully withheld wages and missed breaks. In an era of persistent, rampant wage theft, unions remain a critical resource for workers who, “[i]ndividually, and even as a

group...often lack the information, resources, money, and security needed to pursue” litigation to enforce wage laws. *In re Stericycle, Inc.*, 357 N.L.R.B. 582, 583 (2011). In *Firefighters*, this Court took a “pragmatic view,” recognizing that allowing unions to pursue damages on behalf of their members “affords a practical and sensible remedy to individual members who belong to an employee association and, perhaps, lack the means to bring a lawsuit on his or her own behalf.” *Firefighters*, 146 Wn.2d at 216.

The Division Three Opinion in *Campeau* risks both the utility and the viability of associational cases as a means to pursue claims collectively for injured individuals who face barriers to justice.

B. Applying *American Pipe* tolling to associational cases promotes access to justice, administrative convenience, and judicial efficiency.

1. *American Pipe* tolling protects viable claims in the event an original action is procedurally infirm.

American Pipe tolling protects individuals with viable

claims identical to those filed in a putative class action by tolling the statute of limitations throughout the litigation until the court ultimately denies class certification. *American Pipe*, 414 U.S. at 552-53; *Taylor v. United Parcel Service, Inc.*, 554 F.3d 510, 517, 519-21 (5th Cir. 2008). The Supreme Court acknowledged that a class action is “a truly representative suit designed to avoid, rather than encourage, unnecessary filing of repetitious papers and motions.” *American Pipe* at 550. A rule denying tolling would incentivize class members to individually file “protective motions to intervene or to join in the event that a class was later found unsuitable,” and these preemptive and duplicative motions would contravene the purpose of a class suit, i.e., to provide an efficient procedure to resolve numerous parties’ identical claims. *Id.* at 553.

2. Like class actions, associational standing cases serve interests of judicial efficiency, administrative convenience, and access to justice.

An association has standing to pursue damages claims on behalf of its members when (1) the members of the organization

otherwise would have standing to sue in their own right, (2) the interests that the organization seeks to protect are germane to its purpose, and (3) neither the claim nor the relief requires the participation of the organization's individual members. *Firefighters*, 146 Wn.2d at 213-14. The third *Firefighters* prong is judicially created for administrative convenience and efficiency. *Firefighters*, 146 Wn.2d at 215.

In taking its pragmatic view to allow associations to sue for damages where they can meet the third prong, this Court in *Firefighters* recognized the increase in access to justice and the efficiencies created for the judicial system in allowing wage claims to be brought collectively by a union, where each individual worker's participation is unnecessary to prove liability or damages:

If we reached the result advanced by Airport we would likely burden individual members of the employee association economically and would almost certainly burden our courts with an increased number of lawsuits arising out of identical facts.

Firefighters, 146 Wn.2d at 216.

Other cases have recognized the efficiencies for litigants and the judicial system at stake in associational standing cases. *See, e.g., Int'l Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Brock*, 477 U.S. 274, 289-90, 106 S. Ct. 2523, 91 L. Ed. 2d 228 (1986) (suits by an organization often present a particularly efficient vehicle for litigation from both the viewpoint of the litigants and the perspective of the judicial system); *WSNA*, 196 Wn.2d at 416; *Riverview*, 181 Wn.2d at 894, n.1 (denying organizational standing where member testimony is required “would not further the purpose of the third prong”); *SAVE, supra*, 89 Wn.2d at 867 (“An association...of persons with a common interest can then be the simplest vehicle for undertaking the task”).

The efficiencies gained for courts and litigants in associational standing cases are similar to those gained in class action cases. *American Pipe*, 414 U.S. at 552 (Rule 23 designed to avoid “repetitious” filings and “multiplicity of activity” for

similar claims); *Firefighters*, 146 Wn.2d at 216 (multiple lawsuits arising out of identical facts burden the courts).

This Court should grant review and hold that *American Pipe* tolling applies in Washington and in associational cases like this one in particular. Absent *American Pipe* tolling, each injured worker will need to intervene in an organization's suit at the outset of the case or as soon as the defense is raised, as Division Three asserts Mr. Campeau should have done here, as insurance against possible future dismissal. *American Pipe*, 414 U.S. at 551 (joinder/intervention would be "sole means by which members of the class could assure their participation in the judgment"); *Campeau*, 528 P.3d at 861. Alternatively, the workers would need to file their own action, resulting in duplicative litigation over the same claims and identical facts. Like *American Pipe* observed with respect to Rule 23, a rule requiring the statute of limitations to run during the pendency of an associational standing case would encourage members to file preemptive

motions to intervene to preserve their rights. *American Pipe*, 414 U.S. at 552.

Defendants in associational cases will surely still contend plaintiffs lack standing because damages are not “certain, easily ascertainable, and within the knowledge of the defendant.” *WSNA*, 196 Wn.2d at 425 (quoting *Firefighters*, 146 Wn.2d at 214-16). There is certain to be discovery and motion practice over what employer records exist, what they show, and how damages can or cannot be calculated from them. *Id.* A rule requiring members to intervene or sue while the parties duke out whether the organization meets the *Firefighters* standard clearly derogates the objectives of the associational standing doctrine.

Division III improperly distinguished associational standing from class certification, noting that standing in *WSNA* was not “finally decided” until the Supreme Court ruled. *Campeau*, 528 P.3d at 860. Yet, like a standing determination, a grant of class certification is vulnerable to reconsideration and reversal through final appeal. *See, e.g., Schnall v. AT&T Wireless*

Servs., Inc., 171 Wn.2d 260, 265, 259 P.3d 129 (2011) (en banc) (class certification held inappropriate four years after Court of Appeals ruled in favor of class certification, 139 Wn. App. 280 (2007)); *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 42, 52, 905 P.2d 338 (1995); *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 829, 64 P.3d 49 (2003); *Weston v. Emerald City Pizza LLC*, 137 Wn. App. 164, 166, 151 P.3d 1090 (2007) (all reversing a grant of class certification on appeal).

Division Three's ruling results in administrative inconvenience, judicial inefficiency, and *non-access* to civil justice; it thus runs directly counter to this Court's pragmatic approach and prudential considerations in *Firefighters*. Requiring employees to separately sue or intervene in the pending action destroys the utility of the collective device, whether a class action or associational standing action.

3. Division Three's Opinion invites participation by represented members that could itself defeat associational standing.

Division Three's Opinion risks making associational

standing a dead letter in damages cases because it ensures that an organization's members, who could otherwise be absent from active litigation, would be required to intervene.

Under the third prong – that neither the claim nor the relief requires the participation of the organization's individual members – an organizational plaintiff will lack standing if each represented member must participate in the litigation. *WSNA*, 196 Wn.2d at 415, 425. Yet that is what Division Three's Opinion suggests must occur: any time a defendant raises a procedural defense like lack of standing, each affected individual must protect their claims by joining the suit or else risk their otherwise viable claims becoming time-barred. In this way, Division Three's Opinion establishes a procedural path that itself could defeat associational standing in each case. This Court should grant review and reverse.

4. Mr. Campeau's case should be permitted to proceed in light of the Court's discussion in *WSNA*.

In *WSNA*, this Court did not disturb any of the factual

findings the trial court made, and indeed acknowledged that Yakima Regional's wage violations were egregious. *WSNA*, 196 Wn.2d at 425. The Court noted that "the nurses could pursue a class action claim against Yakima Regional" and that the class action vehicle was the proper route to seek redress. *Id.* at 425. Mr. Campeau accepted this invitation and filed the identical claims as a class action. CP 1-6.

The policies behind *American Pipe* tolling are to protect individuals against precisely this circumstance, in which a court's determination that a case, as originally advanced, does not meet the applicable test for collective adjudication. Division Three's ruling, if it is allowed to stand, will deny Yakima Regional nurses, who were subjected to rampant wage theft, any relief.

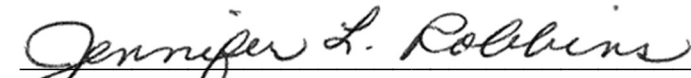
V. CONCLUSION

Division Three's ruling involves issues of substantial public interest: whether victims of wage theft will retain access to the civil justice system where a procedural defect results in

dismissal of an earlier suit raising identical claims. This Court should grant review and hold that WSNA's wage case suspended the statute of limitations on the nurses' claims until this Court held that WSNA lacked standing to bring them on their behalf.

This document contains 2,500 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 31st day of July, 2023.


Jennifer L. Robbins, WSBA No. 40861

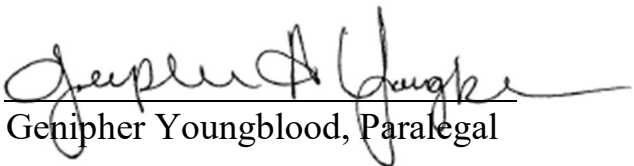
BARNARD IGLITZIN & LAVITT LLP
18 W Mercer St, Suite 400
Seattle, WA 98119
Tel: (206) 257-6011
Robbins@workerlaw.com

*Attorney for Amicus Curiae Washington
State Labor Council*

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below I caused the foregoing Brief of Amicus Curiae Washington State Labor Council to be filed with the Washington State Supreme Court via the eFiling Application, which will automatically provide notice of such filing to all required parties.

DATED this this 31st day of July, 2023 at Federal Way, WA.

By: 
Genipher Youngblood, Paralegal

CERTIFICATE OF SERVICE

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STATE OF WASHINGTON
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CLERK

No. 102047-3

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

COURT OF APPEALS NO. 38152-8-III

DANIEL CAMPEAU, individually and on behalf of all persons
similarly situated,

Petitioner/Plaintiff,

v.

YAKIMA HMA, LLC, a Washington corporation,

Respondent/Defendant.

**AMICUS CURIAE WASHINGTON STATE LABOR
COUNCIL'S APPENDIX OF DOCUMENTS**

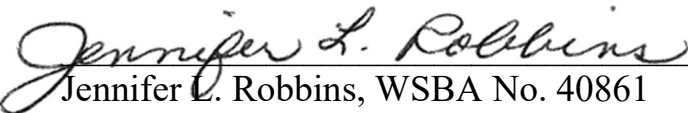
Jennifer L. Robbins, WSBA No. 40861
BARNARD IGLITZIN & LAVITT LLP
18 W. Mercer St., Suite 400
Seattle, WA 98119
Tel: (206) 257-6008
Robbins@workerlaw.com

Attorney for Amicus Curiae Washington State Labor Council

Amicus Curiae Washington State Labor Council submits copies of the following documents in an appendix for the Court's consideration.

Document Description	Appendix Page Range
May 1, 2017 Order Denying Defendant's Motion for Summary Judgment – WSNA v. Yakima HMA LLC, Yakima Superior Court Case No. 15-2-01109-9	App. 001-003
February 5, 2018 Verbatim Report of Proceedings – WSNA v. Yakima HMA LLC, Yakima Superior Court Case No. 15-2-01109-9	App. 004-008

Dated this 31st day of July, 2023.



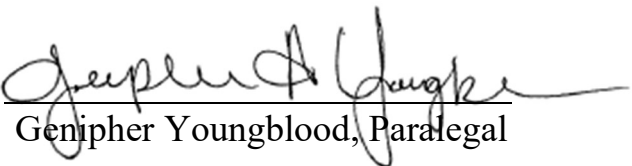
Jennifer L. Robbins, WSBA No. 40861
BARNARD IGLITZIN & LAVITT LLP
18 W Mercer St, Suite 400
Seattle, WA 98119
Tel: (206) 257-6008
Robbins@workerlaw.com

*Attorney for Amicus Curiae Washington
State Labor Council*

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below I caused the foregoing Amicus Curiae Washington State Labor Council's Appendix of Documents to be filed with the Washington State Supreme Court via the eFiling Application, which will automatically provide notice of such filing to all required parties.

DATED this this 31st day of July, 2023 at Federal Way, WA.

By: 
Genipher Youngblood, Paralegal

CERTIFICATE OF SERVICE

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SUPERIOR COURT
YAKIMA COUNTY

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

WASHINGTON STATE NURSES
ASSOCIATION, a Washington labor
organization, on behalf of its members,

Plaintiff,

v.

COMMUNITY HEALTH SYSTEMS,
INC., d/b/a YAKIMA HMA LLC, d/b/a
YAKIMA REGIONAL MEDICAL AND
CARDIAC CENTER,

Defendant.

No. 15-2-01109-9

D.C.F.
**[PROPOSED] ORDER
DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court on Defendant's Motion for Summary Judgment. Oral argument was heard by the Court on April 21, 2017.

The Court has considered the oral argument from both parties and the following materials:

1. Defendant's Motion for Summary Judgment;
2. Declaration of Boris Gaviria In Support of Defendant's Motion for Summary Judgment, and exhibits attached thereto;
3. Declaration of Arik K. Van Zandt In Support of Defendant's Motion for Summary Judgment;
4. Declaration of LaDonna Chambard In Support of Defendant's Motion for Summary Judgment.

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT - 1
CASE NO. 15-2-01109-9

LAW OFFICES OF
SCHWERIN CAMPBELL
BARNARD IGLITZIN & LAVITT, LLP
18 WEST MERCER STREET SUITE 400
SEATTLE, WASHINGTON 98119-3971
(206) 285-2328

36017-2 001252

- 1 Judgment and exhibits attached thereto;
- 2 5. Plaintiff's Response to Defendant's Motion for Summary Judgment;
- 3 6. Declaration of Joann Stillwaugh;
- 4 7. Declaration of Jeffrey Munson and exhibits attached thereto;
- 5 8. Declaration of Christine Himmelsbach-Watts;
- 6 9. Declaration of Counsel Laura Ewan in Support of WSNA's Response to YRMCC's
- 7 Motion for Summary Judgment and exhibits attached thereto;
- 8 10. Defendant's Reply to Its Motion for Summary Judgment;
- 9 11. Second Declaration of Boris Gaviria In Support of Defendant's Reply to its Motion for
- 10 Summary Judgment and exhibits attached thereto; and
- 11 12. Second Declaration of LaDonna Chambard in Support of Defendant's Motion for
- 12 Summary Judgment.

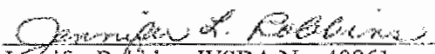
13 Based on the above, the Court DENIES Defendant's Motion for Summary Judgment

14 without prejudice.

15 It is so ORDERED this 1 day of May, 2017.

16 
17 JUDGE DOUGLAS L. FEDERSPIEL

18 Presented by:

19 
20 Jennifer Robbins, WSBA No. 40861
21 Laura Ewan, WSBA No. 45201
22 Angelo Cruz, WSBA No. 49859
23 Schwerin Campbell Barnard Iglitzin & Lavitt LLP
24 18 West Mercer Street, Suite 400
25 Seattle, WA 98119-3971
26 Tel: (206) 285-2828
robbins@workerlaw.com
ewan@workerlaw.com
cruz@workerlaw.com
Attorneys for Plaintiff Washington State Nurses Association

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT - 2
CASE NO. 15-2-01109-9

LAW OFFICES OF
SCHWERIN CAMPBELL
BARNARD IGLITZIN & LAVITT, LLP
18 WEST MERCER STREET SUITE 400
SEATTLE, WASHINGTON 98119-3971
(206) 285-2828

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Approved as to form:



Paula Lehmann, WSBA No. 20678
Boris Gaviria, WSBA No. 31251
Mary Sanden, WSBA No. 45608
Davis Wright Tremaine LLP
777 108th Ave NE, Suite 2300
Bellevue, WA 98004

Attorneys for Defendant

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT - 3
CASE NO. 15-2-01109-9

LAW OFFICES OF
SCHVERIN CAMPBELL
BARNARD IGLITZIN & LAVITT, LLP
18 WEST MERCER STREET SUITE 400
SEATTLE, WASHINGTON 98119-3971
(206) 285-2828

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

WASHINGTON STATE NURSES)
ASSOCIATION, a Washington)
labor organization, on) COA No. 36017-2-III
behalf of its members,) No. 15-2-01109-9
))
Plaintiff,)
))
Vs.)
))
YAKIMA HMA LLC, d/b/a YAKIMA)
REGIONAL MEDICAL AND CARDIAC)
CENTER,)
))
Defendants.)

BEFORE THE HONORABLE BLAINE G. GIBSON
FEBRUARY 5, 2018

REPORTED BY: JORI L. MOORE, CCR NO. 1993, RPR

1 THE COURT: But you're conceding that if
2 damages prior to January 1, 2014, are proven then this
3 named Defendant is liable for those?

4 MS. LEHMANN: Yes, Your Honor. That's
5 correct.

6 THE COURT: Okay.

7 MS. ROBBINS: Then Plaintiff rests with the
8 caveat of being able to call back someone on the
9 representational issue.

10 THE COURT: Okay. Let's go to lunch.

11 (A recess was taken.)

12 THE COURT: Anything before we start
13 Defendant's case?

14 THE CLERK: I do have one thing, Your Honor.
15 We have substituted Plaintiff's Exhibit 91 with a
16 revised version. We did that during the break. So I
17 just want to make a notice that they have a
18 substitution. I already recorded it on the exhibit
19 list.

20 THE COURT: Okay. Ms. Lehmann.

21 MS. LEHMANN: Yes. Thank you, Your Honor.
22 Just making a note there. We're going to start by
23 making a very brief oral motion for a directed verdict
24 on the simple and only ground on prong three on
25 associational status that this is not a case that can



1 be determined without the individual testimony of the
2 nurses at issue, the 28 nurses that WSNA has included
3 in its unit. Their individual testimony is needed.
4 And the testimony of the seven nurses we have on
5 record, each have unique and different experiences,
6 not just different time frames, different days and
7 different reasons why they might choose to work hours,
8 different reasons why they would miss meal periods and
9 different numbers. It's not a case that lends itself
10 to the one-size-fits-all solution that we just heard
11 Dr. Munson testify to. And that is the basis upon
12 which we think directed verdict should be granted and
13 the case should proceed no further.

14 It has taken twice as long as initially
15 estimated by counsel, and that was Ms. Robbins
16 predecessor Terry Costello. And I talked about the
17 length of trial when we were talking about tablet
18 devices. The reason it is taking longer than
19 estimated is because it requires individual testimony
20 from individual nurses. And that's just not
21 appropriate for an associational case. The nurses may
22 have individual claims. They may be able to proceed
23 in a grievance process, but this is not the right
24 forum for the particular issues that they're raising
25 here.



1 THE COURT: Motion denied. The case law is
2 clear that in a case like this you can have
3 representational testimony. There's been
4 representational testimony that to make a prima facia
5 case I find it sufficient so the motion is denied.

6 MS. LEHMANN: Thank you, Your Honor. So the
7 defense will begin with a brief opening statement. We
8 know you've had briefs so we're not going to repeat
9 that. But Ms. Sanden will deliver that.

10 THE COURT: Okay.
11 (Defendant's Opening Statement.)

12 MS. SANDEN: Good afternoon, Your Honor.
13 Despite what may seem to be sharp differences in
14 position, the evidence in this case shows that the
15 parties actually have more things in common than
16 apart.

17 The evidence will show that both Yakima
18 Regional and the Union agree that the provision of the
19 highest quality of patient care is paramount. Both
20 would agree nurses we have heard from and those we
21 have not are the key to providing skilled and
22 compassionate patient care. And both Yakima Regional
23 and the Union also believe that in order for the
24 nurses to continue providing high quality care, nurses
25 must be paid for the hours they work as defined by law



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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

THIS IS TO CERTIFY that I, Jori L. Moore, Notary Public in and for the State of Washington, residing at Yakima, reported the within and foregoing testimony; said testimony being taken before me as a Notary Public on the date herein set forth; that the witness was first by me duly sworn; that said examination was taken by me in shorthand and thereafter under my supervision transcribed, and that same is a full, true and correct record of the testimony of said witness, including all questions, answers and objections, if any, of counsel, to the best of my ability.

I further certify that I am not a relative, employee, attorney, counsel of any of the parties; nor am I financially interested in the outcome of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 19th day of February, 2018.

Jori L. Moore, RPR, CCR
CCR NO. 1993



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Comments:

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Address:
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