

68651-8

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No. 68651-8-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON, DIVISION I

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DEBRA PUGH, AARON BOWMAN, and FLOANN BAUTISTA on  
their own behalf and on behalf of others similarly situated,

Plaintiffs/Respondents,

v.

EVERGREEN HOSPITAL MEDICAL CENTER a/k/a KING COUNTY  
PUBLIC HOSPITAL DISTRICT #2,

Defendant/Appellant,

WASHINGTON STATE NURSES ASSOCIATION,

Intervenor/Appellant.

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King County Superior Court No. 10-2-33125-5 SEA,  
The Honorable Harry J. McCarthy presiding

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BRIEF OF INTERVENOR/APPELLANT WSNA

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## I. INTRODUCTION

Intervenor/Appellant Washington State Nurses Association (“WSNA”) is the statewide professional association for Registered Nurses (“RNs”). WSNA is the collective bargaining agent for nurses employed by 40-plus hospitals in Washington State, including the nurses employed by the Defendant and Appellant in this matter, King County Public District No. 2 d/b/a Evergreen Hospital Medical Center (“Evergreen” or “Hospital”).<sup>1</sup> For the past 36 years, WSNA has been the elected collective bargaining representative for the more than 1,000 RNs employed by Evergreen and they are currently parties to a collective bargaining agreement which sets forth working conditions for all RNs.<sup>2</sup>

In September 2010, WSNA sued Evergreen for its failure to provide rest periods as required by Washington state law. *WSNA v. King County Public Health District No. 2*, Case No. 10-2-32896-3 SEA (Judge Middaugh). CP 443, 446-451. After conducting discovery, WSNA settled its rest period lawsuit through mediation on February 11, 2012, securing a

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<sup>1</sup> Evergreen Hospital has also appealed the superior court orders at issue here in Case No. 68550-3-I.

<sup>2</sup> As a labor union and professional association for more than 16,000 RNs in Washington State, WSNA’s mission is to foster high standards of nursing, promote the professional development of nurses, and advance nurses’ economic and general welfare. *See*, Appendix ¶2. “Due to the growing body of evidence demonstrating that rest breaks are critical for nurses to maintain the alertness and focus required to provide safe and quality patient care, ensuring that nurses receive full, uninterrupted rest and meal breaks has been a long-time top organizational priority for WSNA.” *Id.*

commitment from Evergreen to adopt new work practices that would “assure” RNs received their rest periods. CP 426, 444, 452-460. In its settlement, WSNA expressly did not release any wage claims of any individual Evergreen RNs.

Subsequently, WSNA intervened in the instant lawsuit, which was brought by former Evergreen RNs Debra Pugh and Aaron Bowman, who alleged Evergreen had denied them and other RNs rest periods and meal breaks. *Debra Pugh et al. v. Evergreen*, Case No. 10-2-33125-5 (Judge McCarthy) (herein “*Pugh*”). WSNA intervened after Pugh filed class certification and summary judgment motions on August 8, 2011, which sought to invalidate the February 2011 settlement agreement WSNA had obtained in *WSNA v. King County Public Health District No. 2*, Case No. 10-2-32896-3 SEA. CP 11-33. Pugh also sought to invalidate the settlement agreements in which 1,157 individual RNs accepted back pay from Evergreen in exchange for a release of claims for paid unpaid rest breaks. *Id.* at 20. <sup>3</sup> CP 427-428. The trial court granted Pugh’s motions. CP 548-551; 552-563. Both Evergreen and WSNA sought discretionary review of the superior court order in *Pugh*, Case No. 10-2-3312505 SEA, and the

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<sup>3</sup> The process through with the RNs released their rest break claims in exchange for a cash payment is described in Declaration of Lorraine Hodgins in Support of Defendant’s Response in Opposition To Motion for Class Certification, CP 43-50 at 44, ¶ 4. . In his Order dated March 14, 2012, Judge McCarthy recognized that WSNA’s lawsuit was germane to its purpose. CP 558.

Commissioner granted review on August 1, 2012.<sup>4</sup> The Commissioner, after reviewing briefing by all three parties, hearing oral arguments, and reviewing significant parts of the superior court record, concluded that at least four issues were appropriate for review by this Court. The Commissioner concluded that review was appropriate because:

1. There is a question of whether the trial court, at the request of the individual plaintiffs, had authority to invalidate the privately negotiated settlement agreement between WSNA and Evergreen that released only WSNA's claims and no individual claims.
2. The trial court's ruling that WSNA has no standing to seek injunctive relief appears to be in conflict with *International Assoc. of Firefighters v. Spokane Airports*, 146 Wn.2d 207, 45 P.3d 186 (2002).
3. In light of undisputed evidence of significant differences in the number/frequency of missed breaks between hospital departments and individual nurses within the departments, the trial court's ruling that plaintiffs' claims raise common issues of law and fact suitable for class certification may not meet the requirements of *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011) and *Oda v. State*, 111 Wn. App. 79, 44 P.3d 8 (2002).
4. Inconsistency between the trial court's determination that there is sufficient commonality to warrant class certification and the court's determination that WSNA does not have associational standing because damages are not easily ascertainable due to the variation in missed breaks.

See Ct. App. Commissioner's Decision dated 8/1/12.

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<sup>4</sup> Pugh brought a motion for reconsideration on August 23, 2012, of the Commissioner's Order accepting review which, to the Appellant's knowledge, has not been acted upon.

## II. ASSIGNMENTS OF ERROR

WSNA appeals from the following orders: (1) Order Granting Plaintiffs' Motion for Class Certification, entered March 14, 2012, CP 548-551; and (2) Order granting Plaintiffs' motion for partial summary judgment, entered March 14, 2012, CP 552-563.

### A. Assignments of error:

1. The trial court erred when it invalidated the settlement between WSNA and Evergreen on the basis that WSNA did not have standing to bring a wage and hour lawsuit against Evergreen for denied rest periods;
2. The trial court erred when it invalidated the settlement entered between WSNA and Evergreen on the basis that the settlement was not judicially approved pursuant to Superior Court Civil Rule ("CR") 23(e); and
3. The trial court erred when it invalidated 1,157 individual settlement agreements between RNs employed by Evergreen because there is no basis in Washington law for such invalidation.

### B. Issues Related to Assignments of Error:

1. Whether a trial court has authority to invalidate a privately negotiated settlement agreement reached in a separate settled and dismissed civil case, where the settlement agreement was not binding on any union members who were actual or potential plaintiffs before the court;
2. Whether a trial court may invalidate an employer-union settlement agreement which could have been reached in the absence of litigation based on

an alleged lack of union standing in the earlier litigation;

3. Whether labor unions have associational standing to bring a wage and hour lawsuit against employers for denied rest periods where, as here, the union sought both injunctive relief and/or damages;
4. Whether the trial court correctly concluded labor unions lack standing to seek injunctive relief on behalf of their members;
5. Whether the trial court properly applied the associational standards of *Firefighters* based on speculation regarding the proof which might have been offered in an earlier dismissed case;
6. Whether the trial court properly retroactively applied the class action judicial approval provision of Superior Court Civil Rule (“CR”) 23(e) to invalidate a union-employer settlement agreement which bound only the union, not its members; and
7. Whether a trial court may properly invalidate 1,157 individual settlement agreements between RNs employed by Evergreen.

### III. STATEMENT OF THE CASE

For the past decade, as nursing shifts have become longer and nursing work more technical, the Washington State Nurses Association (“WSNA” or “Union”) has made the preservation of basic labor conditions for nurses an organizational priority. Appendix, ¶ 2, Ex. 1. Nursing

requires the execution of practical and scientific skills with accuracy – even in times of great stress – in addition to the emotional intelligence needed to care for patients and their families during difficult times. Simple errors tolerable in other professions can and do lead to death and injury in hospitals. Nurses are expected to be vigilant while on duty to avoid any medical errors or harm that could be caused from carelessness. See RCW 18.130.160 and WAC 246-840-710 (“Violations of standards of nursing conduct”).

Moreover, many Washington hospitals, including the Defendant-Appellant in this matter, Evergreen Hospital, now employ RNs on a 13-hour shift basis (with 12 hours of paid work time and an hour of unpaid time) in order to more affordably operate 24-hour facilities. See declarations of RNs at CP 467, 482, 500, 504, 507. The longer shifts increase the importance of periodic rest breaks. This is especially so when considering that the average age of a Washington RN is now 48.8 years and the nursing profession continues to be one with the highest “burnout” rate. See factsheet from University of Washington at [http://depts.washington.edu/uwrhrc/uploads/RN\\_Snapshot\\_2011.pdf](http://depts.washington.edu/uwrhrc/uploads/RN_Snapshot_2011.pdf).

In 2007, WSNA brought its first state lawsuit against a hospital for the failure to relieve RNs from patient care duties for state-mandated rest

periods.<sup>5</sup> The primary goal of that lawsuit, and WSNA's four subsequent lawsuits filed in 2010 (including the one at issue here),<sup>6</sup> was to force hospitals to employ adequate nursing staff to ensure that nurses are fully relieved from their duties during state-mandated rest periods.

The suits are all based on Washington's Industrial Welfare Act ("IWA"), which requires Washington employers to provide at least ten minutes of paid resting time for every four hours of work. *Wingert v. Yellow Freight*, 146 Wn.2d 841 (2002) 50 P.3d 256 (2002); WAC 296-126-092(4). Despite the state mandate, many of the hospitals represented by WSNA continue to use a "catch as catch can" break system, if any system exists at all. CP 468, 472-474, 479, 483, 486, 490, 493. Under this ad hoc method, it is the RN's responsibility to find the coverage for patient care during the rest period, not the hospital's responsibility to provide the relief from duty. *Id.* This means that for an RN to take a break, another RN with sufficient capacity to care for the breaking RN's patients must be found. This practice results in RNs being forced to ask other nurses to double their patient loads in order to get a break or to skip the rest break to avoid burdening a fellow RN with an unmanageable patient load. *Id.*

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<sup>5</sup>*Wash. State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 163 Wn. App. 272 (2011), review accepted, 173 Wn.2d. 1010 (2012).

<sup>6</sup>*WSNA v. Providence Holy Family Hospital*, Spokane County Superior Court Case No. 10-2-04257-6; and *WSNA v. MultiCare Health System d/b/a Good Samaritan Hospital* and *WSNA v. MultiCare Health System d/b/a Tacoma General Hospital*, Pierce County Superior Court Consolidated Case No. 10-2-10146-8.

In 2010 and earlier, Evergreen did not maintain a hospital-wide system for providing rest periods or even recording denied rest periods. CP 262-264. It did not compensate RNs for denied rest periods. CP 266-268. This failure resulted in frequent missed rest breaks. WSNA sued Evergreen on September 15, 2010, to enforce the state requirement that it provide rest periods to its RNs, and sought injunctive relief to require Evergreen to provide rest periods. CP 426, 443, 447-451. At the same time that WSNA brought its lawsuit against Evergreen, Debra Pugh and Aaron Bowman, two former RNs of Evergreen, brought a putative class action against Evergreen for denied meal and rest periods (WSNA's lawsuit sought relief for denied rest periods, not meal periods, because Evergreen maintains a system to provide meal periods and pays for denied meal breaks). CP 1-10.

Evergreen and WSNA participated in a settlement mediated by Professor Cheryl Beckett of Gonzaga University School of Law on January 31, 2011. CP 426, 444. The daylong shuttle mediation resulted in a written settlement agreement (herein "WSNA-Evergreen settlement agreement"), in which WSNA released its right to sue Evergreen in its associational capacity for injunctive relief or damages related to denied rest periods on behalf of its nurse members at Evergreen. CP 426, 444, 452-460 WSNA expressly did not release any of the wage claims of the

approximately 1,253 RNs it sought to represent in its lawsuit. CP 453-460. Instead, in exchange for releasing its own ability to sue Evergreen and as part of its Settlement Agreement with Evergreen, WSNA obtained promises from Evergreen to significantly improve working conditions for its nurses, to offer back pay to RNs for past denied rest periods, and to reimburse its attorneys' fees.<sup>7</sup> *Id.* at 453-455.

Evergreen agreed to implement new procedures for all departments that would "assure" nurses received a 15-minute rest period for each four hours of work and begin to keep records of any denied rest periods. *Id.* The parties agreed that the goal of the settlement was to enable every nurse to take rest periods, except in very limited emergent or unusual circumstances. *Id.* Evergreen agreed to pay the RN denied a rest period 15 minutes of pay at that nurse's contract overtime rate of pay, regardless if the RN had worked 40 hours in that week. *Id.* It also agreed to provide WSNA with data on an ongoing basis so that the Union could ensure that denied rest breaks occurred in only rare circumstances and that each department was adequately providing relief for the nurses. *Id.*

The working conditions Evergreen agreed to provide were in excess of those required by state law.<sup>8</sup> In its agreement with WSNA,

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<sup>7</sup> These were \$58,000 in costs and attorney time.

<sup>8</sup> Washington state law prohibits an employer and union from agreeing to labor conditions less than those provided for by statute, but they are free to agree to enhanced

Evergreen agreed to compensate all denied rest breaks at the contract overtime rate for 15 minutes, regardless of whether those denied rest breaks resulted in statutory overtime. CP 454. Evergreen also agreed to re-train any managers who attempted to discourage a nurse from taking a rest break or from recording a denied rest break.<sup>9</sup> CP 455. Evergreen's response to WSNA's lawsuit was to acknowledge a problem, and then work to correct it. The parties continued to work together to address the challenges of providing required rest periods in a hospital setting where emergent patient needs are common.

In addition, WSNA agreed Evergreen could make an offer of payment to each of the RNs WSNA had sought to represent in its association capacity (the 1,253 RNs employed by the Hospital from October 2007 to date of the settlement). CP 455-456. The parties agreed that Evergreen would offer at least \$317,000, which was to be split on a

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standards, as Evergreen and WSNA did here. See *Wingert*, 146 Wn 2d 841, 852 ("So long as the provisions of chapter 49.12 RCW [the Industrial Welfare Act] operate as a base, the parties may contract through collective bargaining for any terms that enhance or exceed those minimum standards."). In *Wash. State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 163 Wn. App. 272 (2011), review accepted, 173 Wn.2d. 1010 (2012), the Washington Supreme Court accepted review of the question of "Whether an employee denied a 10-minute break period required by WAC 296-126-092(4) during the first 40 hours of the employee's work week is entitled to overtime pay for the missed break under the Washington Minimum Wage Act" because of a conflicting Court of Appeals decision in *Pellino v. Brinks, Inc.*, Wn App. 668 (2011).

<sup>9</sup> The issue of overtime is significant for all hospitals: overtime is discouraged, and nurses can be disciplined for working unauthorized overtime. Thus, it was essential that nurses not face discipline for missing a rest period (when in fact it is the Hospital that has failed when a RN is unable to take a rest period) for Evergreen's new break system to succeed. CP 454-455.

prorata hours worked basis for each RN. *Id.* Then, the RNs were informed that if they accepted their share of the settlement (which averaged about \$270, with a high of \$730 and a low of \$10 based on the number of hours worked) that they would release their claims. Or, they could refuse the money and press their claims for more money in the *Pugh* lawsuit. CP 54-55, 77.

In March 2011, Evergreen offered the 1,253 RNs back pay for denied rest periods in exchange for a release of their individual claims for rest breaks. CP 175-178, 520-523 44 WSNA sent its members letters, held meetings, and answered questions one-on-one with RNs about WSNA's settlement and Evergreen's offers. CP 54-56, 75, 77, 81-82, 84. Both WSNA and Evergreen told the RNs they would give up their right to sue Evergreen if they accepted the offer. *Id.*, CP 175-176. At the same time, attorneys for the putative class disparaged WSNA and urged the RNs to reject the check claiming it was part of a "sweetheart" deal between Evergreen and WSNA. The class attorneys suggested that the RNs could get more money by participating in their class action. CP 79; 44-45, 49-50. However, more than 92 percent of the RNs accepted Evergreen's offer to pay for their release of claims. CP 520-523. Approximately a dozen RNs offered declarations in support of the WSNA-Evergreen settlement; in their view, the settlement was fair, and, most importantly, would

immediately begin to address the denied rest break problem at Evergreen.<sup>10</sup> CP 461-509.

In the absence of an accurate recordkeeping system at Evergreen, ascertaining damages with perfect accuracy is not possible.<sup>11</sup> CP 525-526.

By offering a prorated share of the settlement to RNs, each RN could –

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<sup>10</sup> Susan Hanser, an RN in the Med/Surg unit, said “I think that the settlement agreement between WSNA and Evergreen in this case is fair and that WSNA has fairly represented me and my coworkers. I am surprised at how quickly WSNA was able to settle this issue.” CP 479, ¶ 10. Darla Mihovilich, an RN in the PACU, said “I think that this settlement is as fair as it can be given the situation.” CP 464, ¶ 13. John Sincock, an RN in the OSNO department, said “I think that the settlement agreement between WSNA and Evergreen in this case is fair, and I am pleased with it overall.” CP 475, ¶ 17. Karen Aziz Ketner, an RN in the CPC, said “I think that the settlement agreement between WSNA and Evergreen in this case is reasonable and fair. WSNA was very objective in their representation of our bargaining unit.” CP 497, ¶ 11. Linda Alford, an RN in the PCU, said “I think that the settlement agreement between WSNA and Evergreen in this case is good, and that the changes this settlement will make at Evergreen will help staff morale.” CP 501, ¶ 9. Gerrienne Nicholls, an RN in the Oncology unit, said “I think that the settlement agreement between WSNA and Evergreen in this case is absolutely fair. Recently, everything WSNA has done for the RNs is positive. They do a good job of representing the bargaining unit. I was surprised how fast WSNA was able to settle this issue.” CP 486, ¶ 10. Christen Bingaman, an RN in the PCU, said “I was surprised and glad when I heard about the settlement agreement between WSNA and Evergreen. The settlement sounds fair to me. WSNA does a good job representing me and my coworkers. I am impressed with how quickly WSNA was able to reach a settlement.” CP 468, ¶ 10. Erica Hall, an RN in the Oncology Unit, said “I think that the settlement agreement between WSNA and Evergreen in this case sounds fair. WSNA has done a good job representing me and the bargaining unit.” CP 493, ¶ 10. Sue Dunlap, a Home Health Services RN, said “I think that the settlement agreement between WSNA and Evergreen in this case sounds wonderful. I am happy with the way WSNA represents me and my coworkers. I am ecstatic with the time frame in which WSNA was able to settle this issue. This is a real win for RNs.” CP 490, ¶ 8. Audrey Clark, an RN in the Family Maternity Center, said, “I think that the settlement agreement between WSNA and Evergreen in this case is great, and that it is fair for all parties.” CP 505, ¶ 9. Linda Morrill Sterritt, an RN in the Emergency Room, said “I support this settlement... I think that the settlement between WSNA and Evergreen in this case is fair.” CP 508, ¶¶ 12-13. Cynthia Collette, an RN in Maternal-Fetal Medicine, said “I think the settlement is fair.” CP 483, ¶ 10.

<sup>11</sup> Perfectly accurate payroll records are not required for workers to recover unpaid wages in off-the-clock cases. An employer’s failure to keep records obviously cannot excuse wage violations and, in such cases, the courts require the employer to rebut any credible evidence put forward by the workers seeking payment for wrongly denied wages. See *Anderson et al. v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 66 S.Ct. 1187 (1946).

considering his or her own working history – determine if the amount offered adequately compensated them for their past denied rest periods, particularly given the risks and length of continuing litigation. There was no requirement for the RNs to accept the back pay Evergreen offered. CP 5252-523. All currently employed nurses would benefit from the new rest break procedures Evergreen adopted as part of the settlement, regardless of who accepted the check. The settlement agreement expressly stated that no adverse action would be taken against RNs who declined the settlement, and Evergreen offered an additional assurance in its letters. CP 176.

Because the trial court committed obvious error by wrongfully invalidating a lawful private settlement between WSNA and Evergreen and the settlements between Evergreen and 1,157 of its RN employees, this Court should reverse the trial court's decision to invalidate these private agreements.

#### IV. ARGUMENT

##### **A. THE TRIAL COURT LACKED AUTHORITY TO INVALIDATE THE PRIVATELY NEGOTIATED SETTLEMENT AGREEMENT BETWEEN WSNA AND EVERGREEN AS THAT AGREEMENT RELEASED ONLY WSNA'S CLAIMS AND NO INDIVIDUAL CLAIMS.**

##### **1. The Trial Court's Invalidation Of A Settlement Agreement Reached In A Separate Case Is Unprecedented, Will Inhibit Settlements, And Is Contrary To Well Established**

**Washington Law and Policy Encouraging Private Settlements.**

It is undisputed that a) the trial court explicitly invalidated a settlement reached in an entirely separate civil case; and b) the invalidated settlement was binding on WSNA and Evergreen, not the individual RNs who were potential class members in *Pugh*. The Commissioner correctly framed the first issue for review by this Court as follows: “Whether the trial court, at the request of the intervenor individual plaintiffs [Pugh], had authority to invalidate the privately negotiated settlement agreement between WSNA and Evergreen that released only WSNA’s claims and no individual claims.” Ct App. Commissioner’s decision dated 8/1/12, p. 2. The trial court invalidated the WSNA-Evergreen settlement based on a sweeping and erroneous legal conclusion about unions’ standing to sue employers in Washington state and the application Superior Court Civil Rule (“CR”) 23. CP 557-563.<sup>12</sup>

As far as undersigned counsel can determine, it is unprecedented for a trial court to invalidate a settlement reached in a case not before it. Should such collateral attacks against settlement of dismissed cases be countenanced, it will (among other things) deter parties from reaching

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<sup>12</sup> Prior to inviting the trial court to collaterally nullify WSNA’s standing in the settled other lawsuit, Pugh had made the precise arguments to Judge Middaugh, the judge assigned to *WSNA v. Evergreen*, Case No. 10-2-32896-SEA, and been rejected. When its collateral attack bore more fruit in front of Judge McCarthy, Pugh dropped its appeal in this court of Judge Middaugh’s superior court rulings.

settlements in civil cases. The express public policy of this state is to *encourage* settlement of lawsuits, not thwart them. *City of Seattle v. Blume*, 134 Wn.2d 243, 258 (1997); *State v. Noah*, 103 Wn. App. 29, 50 (2000); KARL B. TEGLAND, 15 WASH. PRACTICE § 53.1 (2d ed. 2009). Where, as here, the settlement was not even binding on any potential plaintiffs in the second case, this problem is magnified and threatens Washington's public policy of encouraging private settlement.

As a threshold matter, and apart from the substantial legal errors outlined below, this Court ought to conclude that as a matter of law, the trial court exceeded its authority by invalidating a private settlement agreement in dismissed litigation which was not binding on the same parties appearing before the trial court. Pugh's claim that the trial court did not invalidate the agreement, but merely ruled on a defense, ignores the trial court's explicit ruling invalidating the settlement agreement, which the judge found to be a necessary prerequisite to his decision. CP 562 (Judge McCarthy held that "the invalidity of the settlement due to WSNA's lack of standing fundamentally undermines [Evergreen's] argument...The settlement could not have been possible without WSNA's claiming associational standing, which the court has found to be invalid").

**2. The Settlement Agreement Between WSNA And Evergreen Is Valid, Regardless of WSNA's Standing To Sue Evergreen.**

When the trial court in the *Pugh et al. v. Evergreen* lawsuit invalidated the WSNA-Evergreen agreement, it turned upside down core principles of contract law, depriving Evergreen and WSNA of the benefit of their bargain reached on February 10, 2011. Under Washington law, a release of claims “is a contract whereby one party pays consideration to another in exchange for the latter's agreement never to bring a civil action against the former on the claims at issue.” *In re Disciplinary Proceeding Against Kronenberg*, 155 Wn.2d 184, 192 (2005); *see also Reynolds v. Day*, 93 Wash. 395, 398 (1916) (“[r]eleases of this kind are like any other writing, and are not to be lightly overcome”), and *Bunting v. State*, 87 Wn. App. 647, 653 (1997) (“a release is a contract”).

The WSNA-Evergreen settlement extinguished only WSNA's ability to sue Evergreen. It expressly did not release the right of individual RNs to press their own claims. The private settlement between WSNA and Evergreen did not prejudice the rights of any nurses because each was free to reject the tendered back pay sue for back pay in which each would have been absent the WSNA settlement.

While it is true that WSNA and Evergreen reached this agreement five months after WSNA had brought a lawsuit in its associational capacity seeking back pay and injunctive relief for denied rest periods, it is equally true that WSNA and Evergreen were (and are) free at any time to

enter into a contract in which WSNA releases any potential legal claims it has against Evergreen in exchange for improved working conditions for its members. In other words, the lawsuit was not a legal prerequisite to the settlement that the parties reached.<sup>13</sup> Thus standing cannot be a prerequisite that WSNA must prove before it may enter into a settlement and voluntarily dismiss its own lawsuit in which it released only its own right to sue.<sup>14</sup>

**3. Assuming, *Arguendo*, That WSNA’s Standing To Sue In An Earlier Voluntarily Dismissed Lawsuit Was A Basis To Invalidate the WSNA-Evergreen Settlement, The Trial Court Erred When It Found WSNA Did Not Have Standing.**

The trial court rejection of WSNA’s standing to seek damages misinterprets the state supreme court’s *Firefighters v. Spokane Airports* decision. Pugh argues that the trial court correctly determined that the seminal Washington state case regarding a union’s standing to sue for damages on behalf of its members, *International Association of Firefighters v. Spokane Airports*, 146 Wn.2d 207, 45 P.3d 186 (2002) (herein “*Firefighters*”), “stands for the position that a union may only represent its members on a claim for injunctive relief, not damages.” CP

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<sup>14</sup> This Court need not reach the question of whether a union must have standing before it can release the rights of its members to sue their employer, because no such agreement was made in this case. WSNA released its rights. The 1,157 nurses then released their individual rights to sue.

558. This is a clear misstatement of law. While *Firefighters* recognized that “federal courts have not accorded standing to an association to seek monetary damages on behalf of its members if it has not alleged an injury to itself or received an assignment of its members’ damage claim,” it expressly rejected the federal courts’ limitation on association standing. 146 Wn. 2d at 214-216. The *Firefighters* Court found that adopting the federal rule of association standing in Washington courts “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.” *Id.* at 216. Therefore, the Court held, “we see little sense in an ironclad rule that has the effect of denying relief to members of an association based upon an overly technical application of the standing rules.” *Id.* The Court also recognized that the federal court’s circumscription of an association’s standing to sue for damages was prudential in nature, rather than a constitutional limitation, and determined that Washington courts would recognize the standing of associations to obtain money damages for their members. *Id.* at 215. There has never been any dispute that a union can sue for injunctive relief on behalf of its members (in either federal or state court). Rather, the issue is whether an association or union can seek damages on behalf of their members without an assignment of wages, and in Washington the

answer is yes if “the amount of monetary damages sought on behalf of those members is certain, easily ascertainable, and within the knowledge of the defendant.” *Id.* at 215-16.

Noting that Evergreen failed to keep adequate records related to rest periods, the trial court concluded that WSNA’s previously settled and voluntarily dismissed lawsuit would have “require[d] the participation of at least some of the registered nurses who worked at Evergreen hospital” to prove damages. CP 557-559. This was pure hypothesis on the part of the trial court. It had no idea how WSNA would have presented its case or proved damages at trial in a different, now dismissed, lawsuit before a different judge. The trial court ignored the myriad types of evidence that Washington courts have accepted to prove damages in off-the-clock cases. *See, e.g., Pellino v. Brink's Inc.*, 164 Wn. App. 668 (2011) (in class action, trial court relied on extrapolations from partial records by an expert, written documents and communications created or maintained by the employer’s agents, testimony from current and former managers of the employer, reasonable inferences from the absence of records as well as a representative sampling of employee testimony to determine damages). In this case, on these facts, the trial court erred when it invalidated WSNA’s standing to pursue a different lawsuit it voluntarily dismissed. It did so because it had a fundamental misunderstanding of *Firefighters* which

recognized much broader standing rights for associations in Washington state. This broad view of standing rights for unions in wage and hour actions is consistent with Washington's status as "pioneer in assuring payment of wages due an employee." *Champagne v. Thurston County*, 173 Wn.2d 69, 178 P. 3d 936 (2008) (citing *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 35, 42 P.3d 1265 (2002)); see also *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000).<sup>15</sup>

In any case, even if the trial court's speculation regarding how the *WSNA v. Evergreen* lawsuit would have proceeded were true – and an RN would have "participated" in WSNA's lawsuit had it continued to trial – the trial court's holding that such participation would void WSNA's standing is incorrect. As the *Firefighters* Court explained, labor unions in Washington may sue for damages on behalf of their members:

An association has standing to bring suit on behalf of its members when the following criteria are satisfied: (1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose;

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<sup>15</sup> Contrary to Plaintiff's argument, WSNA vigorously argued the issue of standing to the trial court. At oral argument, WSNA cited *Firefighters v. Spokane Airports*, 146 Wn.2d 207, 45 P.3d 186 (2002), *Teamsters 117 v. Dept. of Corrections*, 145 Wn. App. 507, 514 (2008), and *Anderson v. Mt. Clemons Pottery Co.*, 328 U.S. 680, 66 S.Ct. 1187 (1946), in support of its position that, while irrelevant to the validity of its settlement agreement, WSNA did have associational standing to bring suit against Evergreen for rest break violations. Verbatim Report of Proceedings at 23:10-24:25, 25:10-25:25.

and (3) neither claim asserted nor relief requested requires the participation of the organization's individual members.

*Id.* at 213-214.

Standing is not precluded because individual association members may be called as witnesses. *Teamsters Local Union No. 117 v. State, Dept. of Corrections*, 145 Wn. App. 507, 514 (2008). The association seeking standing in the *Teamsters* case was a labor union seeking to recover unpaid wages for its members. The defendant/employer argued that the union lacked standing because it could not make out its case without relying on evidence from individual members. The *Teamsters* court rejected the employer's argument:

[The employer]...argues that standing is precluded because the individual union members will need to be called as witnesses on the issue of liability. The [employer] confuses participation as a witness with participation as necessary parties to ascertain damages. The employees are not necessary parties, neither are they indispensable parties. Here, the calculation of damages does not require individual determination and the liability issues, though of a factual nature, are common to all. We refuse to adopt [the employer's] position that participation of an individual member as a witness abrogates the Union's standing to prosecute the employees' wage claims.

*Id.* at 507.

Here, the trial court also confused union members' participation in a lawsuit as possible witnesses as cause for loss of standing. Under *Firefighters, supra*, 146 Wn.2d at 215-216, in order to qualify for

associational standing, a claim for damages on behalf of an association's membership must be for an amount "certain, easily ascertainable, and within the knowledge of the defendant." This rule "permit[s] a single plaintiff [e.g., an association] to adequately represent the interest of its many members in a single lawsuit thus avoiding repetitive and costly independent actions." *Teamsters, supra*, 145 Wn. App. at 512.

Had WSNA pursued its lawsuit, damages would no doubt need to be proven. As *Pellino, supra*, 164 Wn. App. at 668, recognized, there are a number of ways to do so. There is no evidence in this record that reliance on each injured member was necessary for damages. Thus it was wrong for the trial court to assume that the standing requirements had not been satisfied, even if they were required to be satisfied.

**B. IN ANY EVENT, WSNA SOUGHT INJUNCTIVE RELIEF FOR WHICH STANDING IS ESTABLISHED WITHOUT REGARD TO THE *FIREFIGHTER* DECISION.**

The trial court's holding that "Washington law is clear that a union may only represent its membership on a claim for damages and not for injunctive relief" is incorrect. CP 558. The *Firefighters* limitations apply only when a union is seeking money damages for its members. *Firefighters, supra*, 146 Wn.2d 207, (A union may sue for an injunction in Washington state); *see, e.g., Washington Fed'n of State Employees v. Joint Ctr. for Higher Educ.*, 86 Wn. App. 1, 4, 933 P.2d 1080, 1081 (1997) (holding the union had representational standing to seek injunction and noting that Washington "Supreme Court has criticized 'unrealistically strict' considerations of standing" and "Washington is increasingly taking a broader, less restrictive view [of standing]").

Here, WSNA sought injunctive relief in its action against Evergreen Hospital. In its complaint, WSNA alleged that Evergreen had failed to provide or pay for denied rest periods, including a failure to keep adequate records of missed rest periods. CP 449-450. The only remedy

for such a record-keeping failure under Washington law is to keep the records, *i.e.*, an injunction, and WSNA sought all appropriate relief.<sup>16</sup>

Indeed, going-forward relief was a primary component of the settlement between WSNA and Evergreen. In the settlement agreement, Evergreen agreed to implement new procedures in each unit to “assure” that nurses receive their rest breaks. CP 453. In the event that a nurse is unable to take a rest break or the rest break is interrupted, Evergreen implemented a simple and easy process for the nurse to record the rest break on its electronic timekeeping system (as Evergreen already did for missed meal breaks). CP 453-454.

Hence, assuming *arguendo* that WSNA lacked standing in its action against Evergreen for damages, it had standing to pursue an injunction.

There Was No Legal Basis For The Trial Court To Invalidate The WSNA-Evergreen Settlement By Applying Superior Court Civil Rule (“CR”) 23(e). Because the settlement agreement between WSNA and Evergreen did not release any claims but WSNA’s own claims, the concerns under-girding the CR 23(e) settlement notice do not apply

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<sup>16</sup> WSNA and Evergreen explained WSNA’s suit to the trial court this way: “It is a suit for monetary damages for failure to pay for hours worked resulting from missed rest breaks and an order directing the defendant, King County Public Hospital District No. 2 d/b/a Evergreen Hospital Medical Center (“Evergreen”) to comply with the record keeping requirements of RCW 49.46.070.” *Jt. Mtn. to Approve Settlement*, 2/18/11, KCSC Case No. 10-2-32896-SEA.

here.<sup>17</sup> WSNA dismissed its lawsuit pursuant to CR 41(a)(1), which permits voluntary dismissal, “[s]ubject to the provisions of rules 23(e) and 23.1...” CR 23(e) provides: “A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” CR 41(a)(1) recognizes a duty to protect absent class members in voluntary dismissals.

The reasons for this concern are obvious. It would not be fair for named representatives of a putative class to compromise or release the claims of the absent class members, possibly to the sole benefit of themselves and their attorneys, without any assurance as to the fairness of the settlement. CR 23(e) acts to protect absent class members from this abuse. *See e.g. Jones v. Home Care of Washington, Inc.*, 152 Wn. App. 674, 682-84 (2009) (holding that suits filed as class actions are subject to class treatment for purposes of settlement).

None of those concerns are present here. First, as Evergreen points out, WSNA did not bring a class action; therefore, CR 23(e) does not apply based on its own terms.<sup>18</sup> Second, there is no reason in this case to

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<sup>17</sup> As WSNA argued before the trial court, the settlement did not release any individual rights of the nurses like in a class action settlement. Verbatim Report at 21:25-23:9.

<sup>18</sup> As recognized by the United States Supreme Court, there is a great difference between suits by associations on behalf of their members and class actions. “While a class action

transplant the important protections of CR 23(e) here. This is because the WSNA-Evergreen settlement did not release any claims of putative class members. Instead, the WSNA-Evergreen settlement involved only a release of WSNA's claim in exchange for improved working conditions, and permitted Evergreen to make individual offers of settlement to its RNs. The Settlement Agreement left it to individual nurses themselves to decide if they wanted to release their claims in exchange for the sums offered by Evergreen. The vast majority of them decided that what was offered was fair compensation for the past denied rest breaks, and released their own claims. CP 428. No court approval was needed for WSNA to enter into a contract with Evergreen, and no court approval was necessary for the RNs to enter into individual contracts with Evergreen.

Finally, even if court approval was necessary, that does not justify Judge McCarthy's invalidation of the agreement. The parties to the Agreement agreed that an arbitrator, not a state court, would adjust any dispute as to the meaning of the Agreement. CP 458-459.

**C. THERE WAS NO LEGAL BASIS FOR THE TRIAL COURT TO INVALIDATE THE 1,157 SETTLEMENT**

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creates an ad hoc union of injured plaintiffs who may be linked only by their common claims," the doctrine of associational standing "recognizes that the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others." *International Union, United Auto., Aerospace & Agr. Implement Workers v. Brock*, 477 U.S. 274, 289-90 (1986). "The very forces that cause individuals to band together in an association will thus provide some guarantee that the association will work to promote their interests." *Id.* at 290.

**AGREEMENTS BETWEEN THE RNS AND  
EVERGREEN THAT RESOLVED THOSE RNS'  
REST BREAK WAGE CLAIMS AGAINST  
EVERGREEN.**

In any case, even if WSNA and Evergreen's private Settlement Agreement to improve working conditions in exchange for WSNA's release of associational wage claims was somehow unlawful, which it is not, its invalidation is not a basis to undo the 1,157 separate contracts between individual RNs and Evergreen. "...[U]nder the principle of freedom to contract, parties are free to enter into, and courts are generally willing to enforce, contracts that do not contravene public policy." *Snohomish County Pub. Transp. Benefit Area Corp. v. FirstGroup Am., Inc.*, --- Wn.2d ---, 271 P.3d 850, 853 (2012) (internal citation omitted). No public policy has been offended by these agreements. There is no suggestion of coercion. The few RNs challenging the contracts have articulated only buyer's remorse, but that is insufficient to void their contracts under Washington law. *In re Marriage of Ferre*, 71 Wn. App. 35 (1993). If personal regret is not a basis to void their own contracts, it certainly cannot void the thousand-plus other contracts of the RNs who are satisfied with their bargain and currently enjoy the new working conditions negotiated by WSNA, all of which are at peril due to the trial court's decision extinguishing their agreements. For these reasons, the

trial court erred when it invalidated these RNs' contracts with Evergreen to accept back pay and release their rest period claims.<sup>19</sup>

**D. INVALIDATION OF THE PRIVATELY REACHED SETTLEMENT AGREEMENT REACHED BETWEEN WSNA AND EVERGREEN THREATENS THE INTEGRITY OF PRIVATE SETTLEMENTS TO FULLY AND FINALLY RESOLVE DISPUTES AND RISKS THE IMPORTANT GOING-FORWARD CHANGES IN THE WORKING CONDITIONS FOR THE RNS AT EVERGREEN.**

The WSNA-Evergreen Settlement Agreement obligates Evergreen to adequately staff its facility so RNs are not denied rest breaks, provides for penalty pay at the overtime rate for denied rest periods, and imposes other obligations on Evergreen above and beyond state law. CP 453-455. If the trial court's decision to void the WSNA-Evergreen Settlement stands, Evergreen nurses, and their patients, will suffer the loss of these new working conditions.

Pugh's response to this undisputed fact of these going forward workplace changes has been to mislead the trial court, and now this Court, about the nature of the Settlement Agreement between WSNA and Evergreen. Pugh claims, with no evidence, a nefarious intent on the part of WSNA to get a "sweetheart" deal, suggesting that the deal benefits the Union and the Employer at the expense of the RNs. But the deal between

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<sup>19</sup> For these same reasons, the trial court erred when it certified a subclass of RNs who had already released their claims for rest periods.

WSNA and Evergreen only provided enhanced working conditions for the RNs at Evergreen, and no monetary settlement to the Union.<sup>20</sup> There is no evidence of coercion of the RNs to accept the back pay, and ample evidence that RNs who released their claims acted based on information provided to them by their Union, their Employer, and by class action counsel.<sup>21</sup> Moreover, given the difficulties of proof, defenses and inherent risks in litigation, there is no assurance that the proposed class of those who accepted settlement will not be required to return those settlement monies to Evergreen.

#### V. CONCLUSION

For the foregoing reasons, WSNA requests that the Court grant its appeal.

Respectfully submitted this 8<sup>th</sup> day of October 2012.

  
David Campbell, WSBA # 13896

Carson Glickman-Flora, WSBA # 37608

SCHWERIN CAMPBELL BARNARD

IGLITZIN & LAVITT LLP

18 W. Mercer Street, Suite 400

Seattle, WA 98119

206-285-2828

*Attorneys for Intervenor/Appellant WSNA*

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<sup>20</sup> With the exception of reimbursement of its attorneys' fees for bringing the lawsuit.

<sup>21</sup> See FN 8, *infra*.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of October, 2012, I caused the foregoing Brief of Intervenor/Appellant Washington State Nurses Association to be filed with the Court of Appeals, Division I, and true and correct copies of the same to be sent via email and US First Class Mail, per agreement of counsel, to:

James S. Fitzgerald  
John J. White, Jr.  
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OCT 9 11 4:56  
COURT OF APPEALS  
DIVISION I  
SEATTLE, WA

*Carson Glickman-Flora*   
Carson Glickman-Flora, WSBA # 37608

# **Appendix**

**Declaration of Christine Himmelsbach  
In Support of Joint Motion  
to Approve Settlement**

**Case No. 10-2-32896-3**

HONORABLE LAURA GENE MIDDAUGH

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

v.

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

NO. 10-2-32896-3

**DECLARATION OF  
CHRISTINE HIMMELSBACH  
IN SUPPORT OF JOINT  
MOTION TO APPROVE  
SETTLEMENT**

Christine Himmelsbach declares and states as follows:

1. I am the Assistant Executive Director of Labor Relations for Washington State Nurses Association (WSNA) and make the following statements based on my personal knowledge.

2. WSNA is a membership organization of 16,000 registered nurses which exclusively represents, for the purposes of collective bargaining, registered nurses employed by Evergreen. WSNA's mission includes fostering high standards of nursing, promoting the professional development of nurses, and advancing their economic and general welfare.

WSNA's mission statement can be seen on WSNA's webpage at

**Declaration of Christine Himmelsbach - 1**  
Case No. 10-2-32896-3 SEA

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

1 <http://www.wsna.org/About/documents/vision.pdf>, a copy of which is attached as Exhibit 1.

2 Due to the growing body of evidence demonstrating that rest breaks are critical for nurses to  
3 maintain the alertness and focus required to provide safe and quality patient care, ensuring  
4 that nurses receive full, uninterrupted rest and meal breaks has been a long-time top  
5 organizational priority for WSNA.

6 3. WSNA's efforts to ensure that nurses receive the rest breaks that they are  
7 entitled to, or receive payment in the rare cases that rest breaks must be missed (as a  
8 disincentive to the employer), has included nurse education programs (including education  
9 sessions in multiple cities across the state in 2010 and aggressive outreach to our members  
10 through the WSNA website, electronic newsletters, WSNA's quarterly magazine, and a  
11 recorded phone message to every member), legislative advocacy (including proposing  
12 legislation in 2009 and 2010 and a public education campaign with statewide television ads),  
13 work with the Department of Labor & Industries on rulemaking and enforcement, and  
14 lawsuits like the instant one. Since 2005, WSNA has filed grievances at multiple facilities  
15 leading to arbitrations including a landmark arbitration decision in 2010 at the University of  
16 Washington Medical Center that included new policies for tracking missed breaks and  
17 interrupted breaks. WSNA also recently won a lawsuit filed in 2007 against Sacred Heart  
18 Medical Center granting nurses back pay for missed break and limiting the use of intermittent  
19 breaks. Currently, the Washington State Nurses Association is a plaintiff in four other  
20 lawsuits, in Spokane and Pierce counties, against hospitals for failing to provide rest breaks.  
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**Declaration of Christine Himmelsbach - 2**  
Case No. 10-2-32896-3 SEA

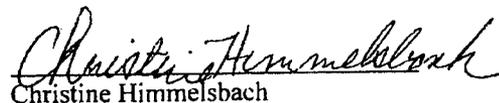
LAW OFFICES OF  
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BARNARD IGLITZIN & LAVITT LLP  
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SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828

1           4. I, as well as other WSNA representatives, an Evergreen RN, and counsel  
2 attended the Jan. 31, 2010 mediation for WSNA. Evergreen's lead human resources, chief  
3 nursing officer, and counsel attended for Evergreen.

4           5. WSNA has endeavored to keep the RNs at Evergreen informed at every step  
5 of the way about its lawsuit against Evergreen. WSNA hosted a dinner meeting on January  
6 13, 2011, where it discussed the lawsuit and its purposes with its membership. More than 50  
7 RNs attended. The WSNA nurse rep. Sara Frey, has updated RNs about the lawsuit as part  
8 of her routine visits to the worksites and officer meetings. On February 17, 2011, WSNA  
9 representatives were present at Evergreen from 6 a.m. to 10 a.m. and 2:00 p.m. to 6:00 p.m.  
10 to answer questions about the settlement. A Settlement Information document was  
11 distributed to nurses who attended the Q&A sessions. A copy of the Settlement Information  
12 document is attached as Exhibit 2. WSNA sent postcards in advance about the Q&A  
13 sessions. WSNA has also used its electronic membership messaging system and website to  
14 keep members informed. WSNA will send another set of postcards announcing the March  
15 18<sup>th</sup> hearing date for the proposed settlement.

16           I declare under penalty of perjury under the laws of the State of Washington that the  
17 foregoing statements are true and correct.

18           SIGNED at Seattle Washington, this 18<sup>th</sup> day of February, 2011.

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Christine Himmelsbach

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**Declaration of Christine Himmelsbach - 3**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
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**EXHIBIT 1**

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# WSNA's **Vision, Mission & Goals**

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## **PURPOSES**

The Purposes of the Washington State Nurses Association shall be:

- To work for the improvement of health standards and the availability of health care service for all people.
- To foster high standards of nursing.
- To stimulate and promote the professional development of nurses and advance their economic and general welfare.
- These purposes shall be unrestricted by considerations of age, color, creed, disability, gender, health status, life style, nationality, race, religion or sexual orientation.

## **VISION**

The Washington State Nurses Association is the collective and leading voice, authority, and advocate for the nursing profession in the State of Washington.

## **MISSION**

The Washington State Nurses Association provides leadership for the nursing profession and promotes quality health care for consumers through education, advocacy, and influencing health care policy in the State of Washington.

## **GOALS**

- Nurses in Washington State will be informed on issues and trends that affect their professional practice.
  - The Washington State Nurses Association will lead the profession wherever decisions are made affecting nursing and health care.
  - The Washington State Nurses Association will anticipate and respond to the changing needs of the profession and nurses.
  - The Washington State Nurses Association will maintain and strengthen nursing's role in client advocacy for consumer safety and quality health care.
  - The Washington State Nurses Association will be responsive to cultural diversity needs of its members and to the consumers of health care.
  - The Washington State Nurses Association will promote the professional development and advance the economic and general welfare of all nurses.
-

**EXHIBIT 2**

**WSNA v. Public District Hospital 2 d/b/a Evergreen Hospital Center (Evergreen)–  
SETTLEMENT INFORMATION**

On February 10, 2011, representatives from WSNA and Evergreen Hospital agreed to settle WSNA's rest break lawsuit. Evergreen agreed to a new rest break policy that will revolutionize the way nurses at Evergreen take rest breaks. WSNA hopes that Evergreen's new system will set the standard for other hospitals in Washington to follow! We'll need to work together to hold Evergreen accountable to the new rest break procedures.

**Overview**

- Evergreen will begin recording and paying for missed rest breaks, and will pay some back wages for its failure to pay for rest breaks in the past.
- Evergreen managers will adopt procedures to assure nurses receive rest breaks and conduct training on the new rest break procedures.
- Evergreen will promptly investigate any accusation of retaliation against nurses for exercising their rights under this settlement.

**New System to Track Missed Breaks**

- Evergreen will keep records of missed breaks and will modify its Time and Attendance System to provide a method for nurses to record missed breaks.
- Evergreen will indicate how many rest breaks a nurse is entitled to for each shift.
- Nurses will be able to mark missed rest breaks in the Time and Attendance System.
- Evergreen will provide WSNA department-level data regarding missed rest breaks upon request.

**New Policies for Missed Breaks**

- Evergreen will compensate nurses for missed breaks. Missed rest breaks will be treated as hours worked and will be compensated at 15 minutes straight time. If the missed rest break extends beyond the normal work day as defined in the collective bargaining agreement, the missed break will be compensated at 15 minutes at the overtime rate.
- If compensation for a missed break is denied, the supervisor will state a reason in the Time and Attendance System, and both the nurse and WSNA will be notified.
- Paychecks will reflect payments for missed breaks in a separate category if feasible and practicable for Evergreen's payroll system.
- If a rest break is interrupted during the first 10 minutes, nurses will have the option of taking a new 15-minute rest break, or the option of being paid for a missed break. If a rest break is interrupted after the first 10 minutes, nurses may resume and complete the remainder of the 15-minute break, or record a missed rest break.

**Back Wages for Missed Rest Breaks**

WSNA settled the lawsuit for \$375,000, which includes the costs of bringing the lawsuit. Approximately \$325,000 will be distributed to nurses impacted by this settlement, including to former nurses who worked anytime between September 15, 2007 and the effective date of the Settlement Agreement, which will be the date the King County Superior Court approves it. The funds will be prorated by the total number hours a nurse worked during the lawsuit time period. The back wages offered for a nurse who worked 4000 hours during the lawsuit time period will be twice of as large as for a nurse who worked 2000 hours. **However, you may refuse the settlement money that Evergreen will offer you and press your own claim for back wages.**

No. 68651-8-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON, DIVISION I

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DEBRA PUGH, AARON BOWMAN, and FLOANN BAUTISTA on  
their own behalf and on behalf of others similarly situated,

Plaintiffs/Respondents,

v.

EVERGREEN HOSPITAL MEDICAL CENTER a/k/a KING COUNTY  
PUBLIC HOSPITAL DISTRICT #2,

Defendant/Petitioner,

WASHINGTON STATE NURSES ASSOCIATION,

Intervenor/Petitioner.

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King County Superior Court No. 1-2-33125-5 SEA,  
The Honorable Harry J. McCarthy presiding

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APPENDIX

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David Campbell, WSBA # 13896  
Dmitri Iglitzin, WSBA # 17673  
Carson Glickman-Flora, WSBA # 37608  
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## APPENDIX INDEX

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Settlement Agreement Between WSNA and Evergreen Hospital Medical Center re: <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-024 - 031
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Declaration of Susan Hanser in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-074 - 076
Declaration of Darla Mihovilich in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-077 - 080
Declaration of John Sincock in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-081 - 086
Declaration of Karen Aziz Ketner in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-087 - 089
Declaration of Linda Alford in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-090 - 092
Declaration of Gerrienne Nicholls in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-093 - 095
Declaration of Christen Bingaman in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-096 - 098
Declaration of Erica Hall in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-099 - 101
Declaration of Sue Dunlap in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-102 - 103
Declaration of Audrey Clark in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-104 - 105
Declaration of Linda Morrill Sterritt in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-106 - 108
Declaration of Cynthia Collette in <i>WSNA v. Evergreen</i> , King County Superior Court No. 10-2-32896-3	A-109 - 110

Honorable Harry McCarthy  
For Hearing *with* Oral Argument  
On 2/3/2012

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SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

DEBRA PUGH and AARON BOWMAN, and  
FLOANN BAUTISTA on their own behalf  
and on behalf of all persons similarly situated,

Plaintiffs,

v.

EVERGREEN HOSPITAL MEDICAL  
CENTER a/k/a KING COUNTY PUBLIC  
HOSPITAL DISTRICT #2,

Defendant.

NO. 10-2-33125-5 SEA

~~[PROPOSED]~~ ORDER GRANTING  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION

ORDER

This matter came before the Court on Plaintiff's Motion for Class Certification pursuant to CR 23(a) and (b)(3). Having considered the Plaintiff's Motion for Class Certification and the declarations and exhibits attached thereto, Defendant's Opposition to Plaintiff's Motion for Class Certification and the declarations and exhibits attached thereto, the Opposition of Intervenor, WSNA, and Plaintiffs' Reply and materials attached thereto, the Court hereby orders as follows:

Plaintiff's Motion for Class Certification is GRANTED. The Court hereby ORDERS that the following Class is certified:

~~[PROPOSED]~~ ORDER GRANTING  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION-1  
NO. 10-2-33125-5 SEA

BRESKIN JOHNSON TOWNSEND <sup>PLLC</sup>  
1111 Third Avenue, Suite 2230  
Seattle, Washington 98101 Tel: 206-652-8660

1 All registered nurses engaged in patient care who have been  
2 employed by Evergreen Hospital Medical Center in King County,  
3 Washington and who, at any time between September 17, 2007  
and the present, were denied rest and/or meal breaks.

4 The following Subclass is also certified:

5 All members of the Class who received and cashed a check  
6 purporting to waive and resolve their rest break claims with  
Evergreen.

7 The Court further ORDERS that Plaintiffs Debra Pugh, Aaron Bowman, and FloAnn  
8 Bautista shall be designated class representatives.

9 The Court further ORDERS that David E. Breskin & Annette M. Messitt of Breskin,  
10 Johnson, & Townsend PPLC shall be designated as counsel to the class.

11 The Court FINDS that Plaintiffs' claims raise common issues of law and fact suitable  
12 for class certification, and that the Plaintiffs' claims are typical and representative of the claims  
13 of the class because Plaintiffs allege a common course of conduct as the basis for their claims.  
14 Plaintiffs allege that the Defendant failed to provide 10-minute rest breaks and 30-minute meal  
15 breaks required by Washington law to registered nurses. Plaintiffs allege that inadequate  
16 staffing by Evergreen has resulted in the inability of nurses to take their breaks. Accordingly,  
17 the Court CONCLUDES that the requirements of CR 23(a)(2) and (3) are met.

18 The Court further FINDS that the Class likely numbers over 1,300 and the Subclass  
19 likely numbers over 1,100, and is therefore so numerous that joinder of all members is  
20 impracticable. However, even if the subclass numbered only 40, there is a presumption that the  
21 numerosity requirement of CR 23(a)(1) is met. Accordingly, the Court CONCLUDES that the  
22 requirement of CR 23(a)(1) is met. The Court FINDS that Plaintiffs and their counsel are  
23 capable of adequately representing the interests of absent class members and that there are no  
24 direct or substantial conflicts between the Plaintiffs and class members they seek to represent.  
25 Accordingly, the Court CONCLUDES that the requirement of CR 23(a)(4) is met.  
26

1 The Court also FINDS that common questions of law and fact will predominate over  
2 any individual questions. The common and overriding issue presented by the class is whether  
3 Evergreen violates the Washington Wage Statute by not paying nurses for all missed 10-minute  
4 rest breaks as required by Washington law and whether Evergreen violates the Washington  
5 Wage Statute by failing to compensate nurses for all missed, on-duty, on-call, and late 30-  
6 minute meal breaks as required by Washington law. The common and overriding issues  
7 presented by the Subclass include whether Evergreen overreached when it tendered checks to  
8 current employees for missed rest breaks pursuant to its settlement with WSNA when the  
9 evidence presented by Plaintiffs includes deposition testimony of Evergreen that it had  
10 calculated that the amount owed to class members was twice the amount tendered and evidence  
11 showing asserting that WSNA's counsel and told Pugh's counsel that WSNA calculated what  
12 was owed was over \$1 million in back wages for missed rest breaks.

13 Other common issues that predominate over any issues affecting only individual  
14 subclass members is whether the settlement agreement should be declared void and/or of no  
15 legal effect because WSNA may have lacked standing to sue on behalf of subclass members,  
16 the settlement is alleged to have been the product of collusion, unfair and unreasonable, and is  
17 alleged to have required court approval under CR 23(e). Other common issues that predominate  
18 on the subclass claims include whether the payment by Evergreen should be treated as a  
19 complete bar to recovery, assuming the validity of the settlement agreement, or a set off of the  
20 amounts owed the nurses for missed rest breaks. Each of these issues may affect Evergreen's  
21 waiver defense which it asserts as a common affirmative defense to the claims of all subclass  
22 members. The claims of many individual class members are likely to be of such small value  
23 compared to the time commitment required by each member of the class and subclass that  
24 adjudicating the claims on a class wide basis is superior in time and judicial resources to  
25 individual adjudicating the claims. Adjudicating the claims presented on a class basis will be

26 *⊕ The Court's order granting plaintiffs' motion  
for partial summary judgment and denying  
Defendant's*

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION-3

BRESKIN JOHNSON TOWNSEND PLLC

1111 Third Avenue, Suite 2230  
Seattle, Washington 98101 Tel: 206-652-8660

NO. 10-2-33125-5 SEA

*Motion for Partial Summary Judgment  
is incorporated by reference herein.*

*ABJ  
A-003*

1 manageable. Class adjudication of the common issues presented is therefore superior.

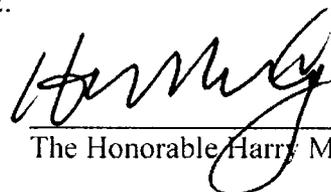
2 Accordingly, the Court CONCLUDES that the requirements of CR 23(b)(3) are met.

3 Based on the above FINDINGS and CONCLUSIONS, the Court grants Plaintiffs'  
4 motion and certifies this action on Plaintiffs' claims under Washington Law for the above  
5 described classes.

6 The Court further ORDERS that Defendant shall provide Plaintiffs with a complete and  
7 current list of the names and last known address and phone numbers of all current and former  
8 employees who fit within the definition of the class above within ten (10) business days of this  
9 Order. Defendant shall also provide social security numbers of former employees within ten  
10 (10) business days of this Order. The social security numbers shall only be used to identify  
11 correct addresses, if necessary, and shall be kept confidential in conformity with the Protective  
12 Order entered in this matter.

13 The Court further ORDERS that the Parties shall jointly submit a proposed Notice of  
14 Class Action to be approved by the Court within ten (10) business days of this Order. Pursuant  
15 to CR 23(c)(2), the approved notice shall be sent to all class members in the most effective  
16 manner possible.

17 Dated this 14 of March, 2012.



The Honorable Harry McCarthy

18  
19  
20 Presented by:  
21 BRESKIN JOHNSON & TOWNSEND PLLC

22  
23 By /s/David E. Breskin  
24 David E. Breskin, WSBA No. 10607  
25 Annette M. Messitt, WSBA No. 33023  
26 Attorneys for Plaintiffs

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SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

DEBRA PUGH, AARON BOWMAN and )  
FLOANN BAUTISTA )  
on their own behalf and on behalf of all )  
persons similarly situated, )  
Plaintiffs, )  
v. )  
EVERGREEN HOSPITAL MEDICAL )  
CENTER a/k/a KING COUNTY PUBLIC )  
HOSPITAL DISTRICT #2, )  
Defendant, and )  
WASHINGTON STATE NURSES )  
ASSOCIATION ("WSNA"), )  
Intervenor-Defendant.)

No. 10-2-33125-5 SEA  
ORDER

THIS MATTER is before the Court on Cross Motions for Partial Summary Judgment by Plaintiffs and Defendant Evergreen Hospital Medical Center, a/k/a King County Public Hospital District #2 (Evergreen) and on Plaintiffs' Motion for Class Certification. Plaintiffs Debra Pugh, Aaron Bowman and Floann Bautista, on their own behalf and on behalf of putative class members similarly situated, are represented by attorneys David E. Breskin and Annette Messitt; Defendant Evergreen Hospital Medical Center, a/k/a King County Public Hospital District #2 is represented by attorneys James S. Fitzgerald and John J. White Jr. Intervenor Washington State Nurses Association (WSNA) is represented by attorney Dmitri Iglitzen.

The Court has considered all pleadings filed by counsel, including the following:

ORDER

Judge Harry J. McCarthy  
King County Superior Court  
516 Third Avenue  
Seattle, WA 98104  
206-296-9205

- 1 (1) Plaintiff Motion for Partial Summary Judgment Dismissing Intervenor WSNA's  
2 Claim/Defense, with the Declaration of David E. Breskin and attached Exhibits 1-10;
- 3 (2) Evergreen's Response to Plaintiffs' Motion for Partial Summary Judgment  
4 Dismissing Intervenor's Claim/Defense, with Declaration of Kevin B. Hansen and  
5 Exhibits (A) through (E);
- 6 (3) Response by WSNA in Opposition to Plaintiffs' Motion for Partial Summary  
7 Judgment Dismissing Intervenor's Claim/Defense, with attached Declaration of Sara  
8 Frey and Exhibits (A) through (C);
- 9 (4) Plaintiffs' Reply to WSNA's Opposition to Plaintiffs' Motion for Partial Summary  
10 Judgment;
- 11 (5) Evergreen's Motion for Partial Summary Judgment Dismissing Plaintiff Bautista's  
12 Claims and those of the Putative Subclass Alleging Missed Rest Breaks, including  
13 declarations and associated exhibits;
- 14 (6) Plaintiffs' Reply to Evergreen's Opposition Re: Plaintiffs' Motion for Partial  
15 Summary Judgment;
- 16 (7) Plaintiffs' Motion for Class Certification, including the Declarations of counsel with  
17 associated exhibits, the Declarations of named plaintiffs and 22 putative class  
18 members;
- 19 (8) Evergreen's Response to Plaintiffs' Motion for Class Certification, including the  
20 Declarations of counsel, 14 Declarations of Evergreen employees and associated  
21 exhibits;
- 22 (9) WSNA Memorandum in Opposition to Plaintiffs' Motion for Class Certifications  
23 with attached exhibits and Declaration of counsel with exhibits A through N;
- 24 (10) Plaintiffs' Reply to Defendant Evergreen's Response to Plaintiffs' Motion for Class  
25 Certification and  
26 (11) Oral Argument.

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ORDER

I.

INTRODUCTION

Plaintiffs Pugh, Bowman and Bautista and numerous other registered nurses worked for Evergreen Hospital Medical Center (Evergreen). Plaintiffs allege that Evergreen failed to pay them and other registered nurses for missed rest breaks and meal breaks. Evergreen is a 275 bed hospital that provides medical services for King County Public Hospital District No. 2 under RCW 70.44. et.seq. Evergreen employs nurses in 26 departments in a number of locations with the greatest number of nurses working at the main campus in Kirkland, Washington. The nurses number approximately 1300 and all are members of the Washington State Nurses Association (WSNA). A collective bargaining agreement has existed between the nurses and Evergreen for several years.

The parties agree that a substantial number of nurses often missed their rest breaks and meal breaks during the approximate period September 2007- February 2011. The required rest and meal breaks were frequently missed due to various staffing issues and the daily emergencies that are a normal part of the functioning of any hospital. It is also undisputed that while the policy of Evergreen was to provide rest breaks and meal breaks as required by WAC 296-126-092, the actual practice was often in conflict with the legal requirement of providing necessary rest and meal breaks. Under Washington Wage Law, employers must provide a 10 minute rest break for every 4 hours worked and a 30 minute meal break between the second and fifth hour of every five hours worked.

II.

PROCEDURAL AND  
FACTUAL BACKGROUND

Plaintiffs have filed suit on their own behalf and on behalf of a potential class of 1,346 current and former nurses against Evergreen Hospital seeking unpaid wages for alleged missed rest and meal breaks. Intervenor WSNA filed a separate suit two days earlier than plaintiffs on September 15, 2010, also seeking unpaid wages for missed rest breaks and to ensure that all

ORDER

1 member nurses received their legally required rest breaks in the future. WSNA's suit, and the  
2 settlement that followed, did not seek damages for missed meal breaks. WSNA filed suit under  
3 the theory of associational standing, and did not claim assignment from its individual members,  
4 nor did it claim that Evergreen breached the collective bargaining agreement. Evergreen's  
5 answer set forth several affirmative defenses, among which was that WSNA had no standing to  
6 pursue damages on behalf of the nurses.  
7

8  
9 On February 4, 2011, plaintiffs moved to intervene in the WSNA suit, challenging  
10 WSNA's standing to sue for damages on behalf of nurses at Evergreen. On February 10, 2011,  
11 Evergreen and WSNA signed an agreement under which Evergreen would pay the nurses  
12 \$375,000 for unpaid rest break wages. WSNA paid their attorneys \$58,000 out of the  
13 \$375,000.00 and they were authorized to determine how much each nurse would receive from  
14 the remaining \$317,000. Evergreen did not have adequate records to show exactly how much  
15 was due to each nurse or even which nurses were owed back pay. It was therefore decided that  
16 each nurse should be paid an amount proportional to the number of shifts worked during the  
17 time period covered by the settlement, which all parties acknowledge resulted in some nurses  
18 being overpaid and some being underpaid. WSNA did not submit its chosen distribution  
19 formula to its constituent members prior to disbursing the money. Evergreen also agreed to  
20 institute better procedures for recording meal and rest breaks and that the rest breaks would be  
21 15 minutes instead of the statutory 10 minutes and they would be repaid at the overtime rate.  
22

23  
24 On February 18, 2011, WSNA and Evergreen filed a joint motion to dismiss their case  
25 and sought court approval of the settlement. The case was dismissed on March 4, 2011, before  
26 the court was scheduled to approve the settlement agreement. Plaintiffs have appealed that  
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29 ORDER

1 dismissal and it is now pending before the Court of Appeals. WSNA has intervened in this case  
2 for purposes of defending its settlement with Evergreen.

3  
4 On March 2, 2011, Plaintiffs deposed Evergreen's 30(b)(6) representative, Kathleen  
5 Groen, the Director of Human Resources. Ms. Groen testified that Evergreen did not have any  
6 records, except for some incomplete Emergency Room department records documenting when  
7 registered nurses took rest breaks, Ms. Groen also testified that it had little or no evidence to  
8 contest the nurses' claims that they had frequently missed rest breaks. The 30(b)(6) witness also  
9 testified that Evergreen had estimated that it owed nurses \$600,000 in back pay for the missed  
10 rest breaks during 2007-2010. Ms. Groen stated that the estimate was based upon a series of  
11 assumptions.  
12

13  
14 On or about March 17, 2011, Evergreen sent checks to 1,257 nurses in accordance with  
15 the distribution plan developed by WSNA. Each check was accompanied by a letter from  
16 Evergreen explaining that the check was part of the WSNA--Evergreen settlement and that it  
17 was based on the number of hours worked from September 15, 2007 to February 19, 2011. It  
18 also included language indicating that individual nurses could opt out of the settlement by  
19 returning the check within 60 days. The check itself contained a statement above the  
20 endorsement line indicating that endorsement of the check released all outstanding claims  
21 against Evergreen. WSNA also sent a letter dated March 9, 2011, containing basically the same  
22 information. Of the 1,257 nurses who received checks, 1,144 nurses cashed the check and  
23 signed the release. Of the 113 nurses who did not deposit the check and sign the release, only 19  
24 sent the check back to Evergreen. Of the 19 who returned the check, one nurse later released  
25 her claim through a separate employment termination agreement.  
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29 ORDER

1 Plaintiffs move for Partial Summary Judgment requesting that Intervenor WSNA be  
2 dismissed from this case due to lack of standing. Both Evergreen and WSNA oppose the  
3 motion. Evergreen also moves for Partial Summary Judgment, requesting dismissal of the  
4 subclass represented by plaintiff Bautista. The subclass is comprised of the nurses who  
5 accepted settlement checks from Evergreen. Plaintiffs have also requested the court to certify a  
6 class action of current and former nurses pursuant to CR 23. Evergreen and WSNA oppose  
7 class certification and argue that the subclass of nurses who accepted the Evergreen/WSNA  
8 settlement agreement and cashed checks pursuant to that agreement should be barred from  
9 participating as putative class members.  
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12 III.  
13 ANALYSIS

14 PLAINTIFFS' MOTION FOR  
15 PARTIAL SUMMARY JUDGMENT

16 Plaintiffs argue that WSNA lacked standing to represent the nurses. Plaintiffs contend  
17 that if WSNA did not have standing to represent the nurses in its suit against Evergreen and  
18 subsequent settlement, it follows that the settlement is invalid. Plaintiffs also contend that the  
19 settlement required court approval under CR23(e) and that the financial consequences of the  
20 settlement amounted to an illegal kickback of wages, in violation of RCW 49.52.050.  
21

22 A.  
23 WSNA's  
24 STANDING TO SUE ON BEHALF OF  
25 ITS INDIVIDUAL MEMBERS

26 Two days before plaintiff filed this law suit concerning widespread missed rest breaks  
27 and meal breaks, WSNA filed its own suit also alleging that Evergreen nurses were denied 10  
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ORDER

1 minute rest breaks as required by the Washington Wage Statute. WSNA did not seek damages  
2 for missed meal breaks. WSNA brought the action in its own name and did not join any  
3 individual nurses. Washington law is clear that a union may only represent its membership on a  
4 claim for damages and not for injunctive relief. An association has standing to bring suit on  
5 behalf of its members when the following criteria are satisfied: (1) the members of the  
6 organization would otherwise have standing to sue in their own right; (2) the interests that the  
7 organization seeks to protect are germane to its purpose; and (3) neither claim asserted nor relief  
8 requested requires the participation of the organization's individual members. *Int'l Ass'n of*  
9 *Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 45 P.3d 186, amended on denial  
10 of reconsideration, 50 P.3d 618 (2002).

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14 The first two prongs of *Spokane Airports* requirements are satisfied by WSNA. The  
15 individual nurses could have pursued damages on their own for back wages under Washington  
16 law. RCW 49.48. The second prong is easily satisfied as well since wages of employees are  
17 clearly “paramount to [the] purpose” of a union. *Teamsters Local Union No. 117 v. State, Dept.*  
18 *of Corr.*, 145 Wn.App. 507, 512 (2008). *Spokane Airports* holds that the union’s standing to sue  
19 on an associational basis violates the third requirement unless “the amount of monetary damages  
20 sought on behalf of those members is certain, easily ascertainable, and within the knowledge of  
21 the defendant.” 146 Wn.2d 215-16. In *Spokane Airports*, the amounts due were withholdings  
22 for Social Security and employer matched funds, which were calculated exactly and were clearly  
23 known to the Spokane airport. Id. at 217. In a similar case involving Special Emergency  
24 Response Team (SERT) employees at a prison seeking compensation for their on-call time, the  
25 Court of Appeals found standing for the union where calculating possible damages, “will then  
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29 ORDER

1 be nothing more than a mathematical exercise.” Teamsters Local Union No. 117, 145 Wn.App at  
2 513.

3  
4 No such easily ascertainable amount of damages can be found here. The parties disagree  
5 vehemently as to even the possible amount of damages in this case. Plaintiffs assert that WSNA  
6 previously calculated the amount owed to the nurse was over \$1 million dollars, and that  
7 Evergreen estimated the amount due as approximately \$600,000, although Evergreen contests  
8 the basis and the accuracy of this amount. Further, all parties agree that nurses in different  
9 sections of the hospital missed breaks at various rates. Unlike Spokane Airports and Teamsters  
10 Local Union No. 117, all parties agree there are no records from which Evergreen can precisely  
11 determine the amount owed. Under these circumstances, it is clear that WSNA would require  
12 the participation of at least some of the registered nurses who worked at Evergreen Hospital.  
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15 Therefore, it is apparent that WSNA did lack standing to bring suit for damages on  
16 behalf of its member employed at Evergreen. WSNA asserted during oral argument that  
17 standing was a non-issue, because the suit was part of the overall communication between the  
18 WSNA and Evergreen to facilitate their settlement agreement. WSNA also argued that the court  
19 should look at the settlement as if no suit had ever been filed. The controlling case law does  
20 not support the positions of Evergreen or WSNA. Standing of a union association to sue cannot  
21 be lightly dismissed, particularly under the factual and procedural history here. It was essential  
22 that before WSNA could participate in the suit and subsequent settlement with Evergreen that  
23 they possessed legally cognizable standing.  
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ORDER

1 B.

2 DID THE SETTLEMENT  
3 BETWEEN EVERGREEN  
4 AND WSNA REQUIRE  
5 COURT APPROVAL?

6 Because WSNA brought a suit on behalf of the member nurses under a legal theory of  
7 associational standing, any settlement that followed would be maintained under class action  
8 rules. As Evergreen and WSNA noted in their Joint Motion to Approve Settlement, court  
9 approval of a class action is mandated under CR 23(c) to assure that the interests of absent class  
10 members are considered and adequately protected. *Officers for Justice v. Civil Serv. Comm.*,  
11 688 F.2d 615, 624 (9<sup>th</sup> Cir 1982), cert. denied, sub. nom., *Byrd v Civil Serv. Comm.*, 459 U.S.  
12 1217 (1983). Both WSNA and Evergreen also informed the nurses that the settlement was  
13 contingent upon court approval. A hearing was scheduled before Judge Middaugh for March  
14 18, 2011.

15  
16 Before that hearing took place, on March 2, 2011, plaintiffs had deposed Kathleen  
17 Groen, the Evergreen 30(b)(6) witness, who stated that Evergreen had calculated that an  
18 estimated \$600,000 was owed the nurses for missed rest breaks. On March 4, 2011 WSNA and  
19 Evergreen filed a voluntary dismissal of their case pursuant to CR 41(a). The court dismissed  
20 the case and never had the opportunity to evaluate whether the settlement was appropriate under  
21 CR 23(e). It appears from the sequence of these events, that although Evergreen and WSNA  
22 both believed court approval of the settlement was necessary, and that they had so informed the  
23 nurses, they chose not to seek CR 23(e) approval and then agreed to non-suit their case so that  
24 their agreed settlement of paying the nurses \$317,000 could move forward. Notwithstanding  
25 Evergreen's and WSBA's explanations and arguments to the contrary, court approval of their  
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ORDER

1 settlement was not optional and it should have been obtained as mandated by CR 23(c). Pickett  
2 v. Holland America Line-Westours Inc., 145 Wn. 2d 178, 187-188 (2001).

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4 C

5 DID THE SETTLEMENT  
6 BETWEEN EVERGREEN  
7 AND WSNA RESULT IN  
8 AN ILLEGAL KICKBACK  
9 OF WAGES?

10 RCW 49.52.050 (2) assigns criminal liability for any employer who, “willfully and with  
11 intent to deprive the employee of any part of his or her wages, shall pay any employee a lower  
12 wage than the wage such employer is obligated to pay such employee by any statute, ordinance,  
13 or contract.” Plaintiffs allege that since WSNA and Evergreen settled for pennies on the dollar  
14 of what either Evergreen or WSNA calculated what was owed, the discount amounted to an  
15 illegal kickback of wages to Evergreen. Whether an employer acts willfully for purposes of  
16 RCW 49.52.050, and RCW 49.52.070, is normally a question for the jury. Pope v. University of  
17 Wash., 121 Wn.2d 479, 490 (1993). There are generally two instances where an employer’s  
18 failure to pay wages is not willful: where the employer was careless or erred in failing to pay; or  
19 where a “bona fide” dispute exists between the employer and the employee. Schilling v. Radio  
20 Holdings, Inc., 136 Wn.2d 152, 160 (1998). Depending on the evidence at trial, it may well be  
21 that willfulness cannot be shown by plaintiffs due to a “bona fide” dispute about the amount of  
22 wages owed. This issue must await the full development of the trial evidence and is reserved  
23 until then.  
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ORDER

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4 D.

5 DEFENDANT'S MOTION FOR  
6 PARTIAL SUMMARY JUDGMENT

7 Defendants, in their response to plaintiff's motion and in their own motion, argue that  
8 plaintiff Bautista and the putative subclass represented by her should not be allowed to join any  
9 potential class for this case and should instead be barred from pursuing claims since they  
10 benefited under the WSNA-Evergreen settlement. Defendants note that WSNA did not force  
11 any nurse to accept their portion of the settlement. Instead, Evergreen argues that each nurse was  
12 informed multiple times (by Evergreen, the WSNA, plaintiff's counsel and on the check itself)  
13 that they individually had the option of rejecting the check, and that acceptance would release all  
14 outstanding claims for unpaid rest break claims. Evergreen argues that those nurses who  
15 accepted the check released their claims. Further, they argue that acceptance of the check  
16 resulted in an accord and satisfaction of the dispute between the nurse and Evergreen.

17 While Evergreen correctly states the law concerning the defense of accord and  
18 satisfaction, the invalidity of the settlement due to WSNA's lack of standing fundamentally  
19 undermines their argument. While it is true that each nurse had the option of returning the  
20 check, the checks themselves were only made available as a part of Evergreen's agreement with  
21 WSNA. Further, WSNA developed the distribution plan concerning the payments to be made to  
22 individual nurses. The settlement could not have been possible without WSNA's claiming  
23 associational standing, which the court has been found to be invalid.  
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ORDER

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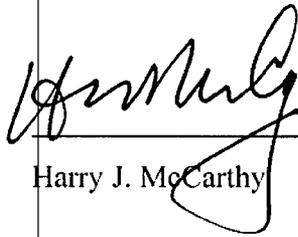
Conclusion

IT IS THEREFORE ORDERED that

Plaintiffs' Motion for Partial Summary Judgment is granted and

Defendant's Motion for Partial Summary Judgment is denied.

DATED this 14 day of March, 2012.



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Harry J. McCarthy

ORDER

Judge Harry J. McCarthy  
King County Superior Court  
516 Third Avenue  
Seattle, WA 98104  
206-296-9205

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HONORABLE LAURA GENE MIDDAUGH

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

DECLARATION OF  
CHRISTINE HIMMELSBACH  
IN SUPPORT OF JOINT  
MOTION TO APPROVE  
SETTLEMENT

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Christine Himmelsbach declares and states as follows:

1. I am the Assistant Executive Director of Labor Relations for Washington State Nurses Association (WSNA) and make the following statements based on my personal knowledge.

2. WSNA is a membership organization of 16,000 registered nurses which exclusively represents, for the purposes of collective bargaining, registered nurses employed by Evergreen. WSNA's mission includes fostering high standards of nursing, promoting the professional development of nurses, and advancing their economic and general welfare.

WSNA's mission statement can be seen on WSNA's webpage at

**Declaration of Christine Himmelsbach - 1**  
Case No. 10-2-32896-3 SEA

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

1 <http://www.wsna.org/About/documents/vision.pdf>, a copy of which is attached as Exhibit 1.

2 Due to the growing body of evidence demonstrating that rest breaks are critical for nurses to  
3 maintain the alertness and focus required to provide safe and quality patient care, ensuring  
4 that nurses receive full, uninterrupted rest and meal breaks has been a long-time top  
5 organizational priority for WSNA.

6 3. WSNA's efforts to ensure that nurses receive the rest breaks that they are  
7 entitled to, or receive payment in the rare cases that rest breaks must be missed (as a  
8 disincentive to the employer), has included nurse education programs (including education  
9 sessions in multiple cities across the state in 2010 and aggressive outreach to our members  
10 through the WSNA website, electronic newsletters, WSNA's quarterly magazine, and a  
11 recorded phone message to every member), legislative advocacy (including proposing  
12 legislation in 2009 and 2010 and a public education campaign with statewide television ads),  
13 work with the Department of Labor & Industries on rulemaking and enforcement, and  
14 lawsuits like the instant one. Since 2005, WSNA has filed grievances at multiple facilities  
15 leading to arbitrations including a landmark arbitration decision in 2010 at the University of  
16 Washington Medical Center that included new policies for tracking missed breaks and  
17 interrupted breaks. WSNA also recently won a lawsuit filed in 2007 against Sacred Heart  
18 Medical Center granting nurses back pay for missed break and limiting the use of intermittent  
19 breaks. Currently, the Washington State Nurses Association is a plaintiff in four other  
20 lawsuits, in Spokane and Pierce counties, against hospitals for failing to provide rest breaks.  
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26 **Declaration of Christine Himmelsbach - 2**  
Case No. 10-2-32896-3 SEA

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

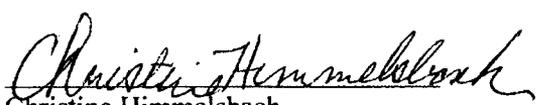
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4. I, as well as other WSNA representatives, an Evergreen RN, and counsel attended the Jan. 31, 2010 mediation for WSNA. Evergreen's lead human resources, chief nursing officer, and counsel attended for Evergreen.

5. WSNA has endeavored to keep the RNs at Evergreen informed at every step of the way about its lawsuit against Evergreen. WSNA hosted a dinner meeting on January 13, 2011, where it discussed the lawsuit and its purposes with its membership. More than 50 RNs attended. The WSNA nurse rep. Sara Frey, has updated RNs about the lawsuit as part of her routine visits to the worksites and officer meetings. On February 17, 2011, WSNA representatives were present at Evergreen from 6 a.m. to 10 a.m. and 2:00 p.m. to 6:00 p.m. to answer questions about the settlement. A Settlement Information document was distributed to nurses who attended the Q&A sessions. A copy of the Settlement Information document is attached as Exhibit 2. WSNA sent postcards in advance about the Q&A sessions. WSNA has also used its electronic membership messaging system and website to keep members informed. WSNA will send another set of postcards announcing the March 18<sup>th</sup> hearing date for the proposed settlement.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Seattle Washington, this 18<sup>th</sup> day of February, 2011.

  
Christine Himmelsbach

# **EXHIBIT 1**

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# WSNA's **Vision, Mission & Goals**

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## **PURPOSES**

The Purposes of the Washington State Nurses Association shall be:

- To work for the improvement of health standards and the availability of health care service for all people.
- To foster high standards of nursing.
- To stimulate and promote the professional development of nurses and advance their economic and general welfare.
- These purposes shall be unrestricted by considerations of age, color, creed, disability, gender, health status, life style, nationality, race, religion or sexual orientation.

## **VISION**

The Washington State Nurses Association is the collective and leading voice, authority, and advocate for the nursing profession in the State of Washington.

## **MISSION**

The Washington State Nurses Association provides leadership for the nursing profession and promotes quality health care for consumers through education, advocacy, and influencing health care policy in the State of Washington.

## **GOALS**

- Nurses in Washington State will be informed on issues and trends that affect their professional practice.
- The Washington State Nurses Association will lead the profession wherever decisions are made affecting nursing and health care.
- The Washington State Nurses Association will anticipate and respond to the changing needs of the profession and nurses.
- The Washington State Nurses Association will maintain and strengthen nursing's role in client advocacy for consumer safety and quality health care.
- The Washington State Nurses Association will be responsive to cultural diversity needs of its members and to the consumers of health care.
- The Washington State Nurses Association will promote the professional development and advance the economic and general welfare of all nurses.

# **EXHIBIT 2**

**WSNA v. Public District Hospital 2 d/b/a Evergreen Hospital Center (Evergreen)–  
SETTLEMENT INFORMATION**

On February 10, 2011, representatives from WSNA and Evergreen Hospital agreed to settle WSNA's rest break lawsuit. Evergreen agreed to a new rest break policy that will revolutionize the way nurses at Evergreen take rest breaks. WSNA hopes that Evergreen's new system will set the standard for other hospitals in Washington to follow! We'll need to work together to hold Evergreen accountable to the new rest break procedures.

**Overview**

- Evergreen will begin recording and paying for missed rest breaks, and will pay some back wages for its failure to pay for rest breaks in the past.
- Evergreen managers will adopt procedures to assure nurses receive rest breaks and conduct training on the new rest break procedures.
- Evergreen will promptly investigate any accusation of retaliation against nurses for exercising their rights under this settlement.

**New System to Track Missed Breaks**

- Evergreen will keep records of missed breaks and will modify its Time and Attendance System to provide a method for nurses to record missed breaks.
- Evergreen will indicate how many rest breaks a nurse is entitled to for each shift.
- Nurses will be able to mark missed rest breaks in the Time and Attendance System.
- Evergreen will provide WSNA department-level data regarding missed rest breaks upon request.

**New Policies for Missed Breaks**

- Evergreen will compensate nurses for missed breaks. Missed rest breaks will be treated as hours worked and will be compensated at 15 minutes straight time. If the missed rest break extends beyond the normal work day as defined in the collective bargaining agreement, the missed break will be compensated at 15 minutes at the overtime rate.
- If compensation for a missed break is denied, the supervisor will state a reason in the Time and Attendance System, and both the nurse and WSNA will be notified.
- Paychecks will reflect payments for missed breaks in a separate category if feasible and practicable for Evergreen's payroll system.
- If a rest break is interrupted during the first 10 minutes, nurses will have the option of taking a new 15-minute rest break, or the option of being paid for a missed break. If a rest break is interrupted after the first 10 minutes, nurses may resume and complete the remainder of the 15-minute break, or record a missed rest break.

**Back Wages for Missed Rest Breaks**

WSNA settled the lawsuit for \$375,000, which includes the costs of bringing the lawsuit. Approximately \$325,000 will be distributed to nurses impacted by this settlement, including to former nurses who worked anytime between September 15, 2007 and the effective date of the Settlement Agreement, which will be the date the King County Superior Court approves it. The funds will be prorated by the total number hours a nurse worked during the lawsuit time period. The back wages offered for a nurse who worked 4000 hours during the lawsuit time period will be twice of as large as for a nurse who worked 2000 hours. **However, you may refuse the settlement money that Evergreen will offer you and press your own claim for back wages.**

COPY RECEIVED

FEB 14 2011

Schwerin Campbell Barnard  
Iglitzin & Lavitt LLP

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into this 10<sup>th</sup> day of February, 2011 by and between Washington State Nurses Association ("WSNA") and King County Public Hospital District No. 2 d/b/a Evergreen Hospital Medical Center ("Evergreen").

### Recitals

A. WSNA is and was the exclusive bargaining representative for all regularly scheduled full-time, regularly scheduled part-time and per diem registered nurses engaged in patient care at Evergreen Hospital, excluding supervisors, nursing care coordinators, temporary nurses, students, and all other employees at Evergreen, for the time period from September 15, 2007 through the date of this Agreement ("the Represented Employees").

B. In a lawsuit filed in King County Superior Court under Cause Number 10-2-32896-3 SEA ("the Lawsuit"), WSNA asserted, *inter alia*, that Evergreen violated RCW 49.46.130 and RCW 49.52.050 by failing to pay the Represented Employees for missed rest breaks and violated RCW 49.46.070 by failing to maintain wage records relating to rest breaks. Evergreen answered WSNA's complaint, denying the allegations and liability, and asserting affirmative defenses.

C. The parties desire to resolve their differences and to fully and finally settle any and all claims between them and for and on behalf of all affected employees relating to the Lawsuit.

### Agreement

WHEREFORE, in furtherance of the foregoing recitals and for valuable consideration, including but not limited to the mutual promises contained in this Agreement, and the receipt and sufficiency of which consideration is hereby acknowledged, the parties agree as follows, to wit:

1. Evergreen's Obligations. Evergreen agrees to both retroactive and prospective relief for the benefit of its current and past nurse employees (*i.e.*, the Represented Employees).

a. Missed Breaks Process (to be put into effect by June 1, 2011):

- (1) Evergreen's Managers will adopt procedures to assure that the Represented Employees receive their rest breaks. Staffing for the Represented Employees on break will include consideration of current Evergreen staffing patterns in accordance with its Plan for Provision of Care.
- (2) Evergreen will keep records of missed rest breaks. Evergreen will modify its Time and Attendance System ("TAS") to provide a

method for the Represented Employees to record missed rest breaks.

- (a) For each shift, Evergreen will indicate the number of rest breaks to which each Represented Employee is entitled.
  - (b) If a Represented Employee is unable to take a rest break, the Represented Employee will enter a notation into the TAS.
- (3) Evergreen will compensate each Represented Employee for all missed rest breaks. If Evergreen denies payment for a missed rest break, the Represented Employee's supervisor shall insert a notation in the TAS stating the reason for the denial. Both the Represented Employee and WSNA will be notified in writing on a bi-weekly basis of denials and the reason for the denial.
  - (4) If feasible and practicable based on Evergreen's payroll system, all paychecks given to the Represented Employees will reflect payments for missed rest breaks on a separate category on the paycheck.
  - (5) Missed rest breaks shall be treated as hours worked and will be compensated at the rate of 15 minutes of straight time. If, however, the missed rest break extends beyond the normal work day (as defined in Section 7.1 of the Collective Bargaining Agreement), then compensation will be at the overtime rate for that 15 minutes. For example, if a Represented Employee is scheduled for an 8-hour shift and misses one 15-minute rest break, he or she will be paid for 8 hours and 15 minutes, and 15 minutes of that time will be paid at the overtime rate. However, if a Represented Employee is scheduled for an 8-hour shift and misses one 15-minute rest break but works only 6 hours, he or she will be paid for 6 hours and 15 minutes at straight time. Provided, however, that in the event of legislative or judicial (Division I of the Court of Appeals or Washington Supreme Court) action which states that a missed rest break may be compensated at straight time rates, a missed rest break shall then be at straight time rates.
  - (6) In the event a rest break is interrupted within the first 10 minutes thereof, the Represented Employee will have the option of a new rest break or electing to be paid for a missed rest break. In the event a rest break is interrupted after the first 10 minutes thereof, the Represented Employee may resume and complete the remaining time of the 15 minute break when feasible or elect to be paid for a missed rest break.
  - (7) Evergreen will promptly investigate any accusation of retaliation

against a Represented Employee for exercising the rights stated hereinabove and if substantiated will provide retraining to ensure that retaliation does not reoccur. Recognizing the possibility of abuse of rest breaks, Evergreen reserves the right to employ corrective action as it deems necessary and appropriate.

- (8) Evergreen will provide WSNA on request department-level data on missed rest breaks.
  - (9) Evergreen and WSNA agree to bring to the Conference Committee for discussion and potential solutions any concern about departments with excessive missed rest breaks and any concern about compliance with this Agreement.
- b. Education Process (to be put into effect prior to June 1, 2011): Evergreen will conduct mandatory staff meetings in all departments to train all employees on the procedures for missed breaks. Topics to be covered will include:
- (1) Use of the TAS for documenting missed breaks.
  - (2) Each unit's/department's determination as to how it will comply with the process and create unit specific procedures for assuring that the Represented Employees receive rest breaks.
  - (3) Education on the importance of Represented Employees taking all their rest breaks and the right of the Represented Employees to record and be paid for missed rest breaks without fear of retaliation.
  - (4) Education on the importance of assuring that the Represented Employees take all rest breaks free from interruption unless patient needs demand otherwise.
  - (5) Training of managers of their responsibility to create conditions which allow the Represented Employees to take their rest breaks.
  - (6) Training of managers that emphasizes that Evergreen will not tolerate retaliation against any Represented Employee who records a missed rest break; as well as when and how to employ corrective action for abuse of rest breaks if determined necessary and appropriate.
- c. Back Wages, Attorneys' Fees and Costs:
- (1) Evergreen will pay the sum of \$375,000 to WSNA as and for

reimbursement for all past rest breaks that may have been missed by the Represented Employees and for all of WSNA's attorneys' fees and costs in this matter. WSNA will inform Evergreen of the amount of its attorney's fees, costs and participation incentive awards and Evergreen will provide WSNA with a check for this amount. Evergreen will retain the remaining amount and distribute it to the Represented Employees as described below. A judgment will be presented to the Court for entry.

- (2) WSNA shall be solely responsible for determining the amount of back wages to be paid to each of the Represented Employees but shall do so on a fair and equitable basis and shall only distribute back wages to those Represented Employees who have executed a release of any further entitlement to back wages for missed rest breaks. Within five (5) days of receiving the statement of the amount due per Represented Employee from WSNA, Evergreen will issue checks with release language to the Represented Employees. Any taxes and authorized deductions from wages shall be withheld and paid appropriately by Evergreen. The release language on the check will include a release of Evergreen for further entitlement to back wages for missed rest breaks. Any Represented Employee who affirmatively refuses and returns the check within sixty (60) days of issuance is not bound by this settlement. Evergreen will retain the funds attributable to checks that have been affirmatively refused and returned.
- (3) WSNA will save, indemnify and hold Evergreen harmless from any claims of Represented Employees who have received back wages in accordance with and pursuant to this Agreement.

2. Release and Discharge.

- a. WSNA hereby releases and discharges Evergreen from any and all actions, claims and demands, known or unknown, anticipated or unanticipated, of whatsoever kind or nature, including, but not limited to, those which any way relate to, bear upon or are on account of the Lawsuit, that have accrued or may accrue through the implementation of the provisions of this Agreement.
- b. This Release and Discharge by WSNA shall also and does hereby apply to and is for the benefit of all of Evergreen's past, present and future officers, directors, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

- c. This Release and Discharge is and shall be a fully binding and complete settlement between WSNA and Evergreen and their respective assigns and successors and the parties acknowledge and agree that the Release and Discharge set forth above is a general release, not contingent on any future event, action or inaction. The parties expressly waive and assume the risk of any and all claims for damages which exist as of this date with respect to each other, but of which the parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement. The parties further agree that this Agreement constitutes a complete compromise of matters involving disputed issues of law and fact and all parties hereto assume the risk that the facts or law may be other than they believe. It is understood and agreed to by the parties that this settlement is a compromise of disputed claims, and this Agreement is not to be construed as an admission of liability by any party, by whom liability is expressly denied.

3. Future Conduct. WSNA agrees that it will not in any manner or by any means, directly or indirectly, instigate, initiate, promote, or encourage any investigations, actions, suits, causes of action or claims relating to obtaining back pay for missed rest breaks for the Represented Employees.

4. Additional Provisions.

- a. Each of the individuals signing this Agreement on behalf of a party warrants that he or she has the authority to sign the Agreement and thereby to bind the party on whose behalf he or she signs, and each party hereto warrants that it has the authority to enter into this Agreement and thereby to bind it. This Agreement shall be binding upon the successors and assigns of the parties.
- b. This Agreement is designed strictly for the purpose of compromising and settling disputed claims and matters and avoiding the expense, delay and risks of continued and protracted litigation. It is expressly understood and agreed, as a condition hereof, that this Agreement is not, and shall not, constitute or be construed or characterized as an admission of liability or wrongdoing on the part of any party, nor shall this Agreement be construed to be or characterized as a victory for one party over another, or an admission of any sort by any party hereto or as evidencing or indicating in any degree an admission of the truth or correctness of any claims asserted or facts alleged.
- c. This Agreement contains the entire understanding between the parties in connection with the subject matter and it supersedes or replaces all prior negotiations, agreements, or representations, whether oral or written. The Agreement may not be modified in any way unless such modification is in a writing which has been executed by all parties affected by said modification

- d. Each party acknowledges that no other party, agent, or attorney for any party has made any promise, representation, or warranty whatsoever, express or implied, not contained herein, concerning the subject matter hereof, to induce it to execute this Agreement, and each party acknowledges that it has not executed this Agreement in reliance on any such promise, representation, or warranty not contained herein.
- e. To be effective, any notice of breach or default under this Agreement shall be in writing and delivered to the appropriate party at the addresses set forth below, or to such other address as the parties may hereinafter designate. All such notices and other written communications shall be effective upon three (3) business days after having been correctly addressed, postmarked and delivered to the Post Office (or postmarking by the Post Office):

If to WSNA:

Christine Himmelsbach  
Assistant Executive Director of Labor Relations  
575 Andover Park West, Suite 101  
Seattle, WA 98188

And to:

Carson Glickman-Flora  
Schwerin Campbell Barnard Iglitzin & Lavitt LLP  
18 West Mercer Street, Suite 400  
Seattle, Washington 98119-3971

If to Evergreen, to:

Neil A. Johnson, Chief Operating Officer  
12040 N.E. 128th St.  
Kirkland, WA 98034-3098

Kathleen C. Groen, Director of Human Resources  
12040 N.E. 128th St.  
Kirkland, WA 98034-3098

And to:

James S. Fitzgerald, District General Counsel  
Kevin B. Hansen  
Livengood, Fitzgerald & Alskog, PLLC

121 Third Avenue  
P.O. Box 908  
Kirkland, WA 98083-0908

- f. Time is of the essence of this Agreement and the performance of each term hereof.
- g. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington. Any disputes arising out of this Agreement that have not been resolved in the Conference Committee shall first be submitted to mediation, and such mediation shall occur within thirty (30) days of submission unless the parties mutually agree to extend this deadline. In the event the dispute is not resolved in mediation, it shall be resolved through the expedited dispute resolution procedure under Sections 6.6 and 16.2 of the Collective Bargaining Agreement.
- h. This Agreement has been jointly drafted by the parties and their counsel following negotiations between them. It shall be construed according to the fair intent of the language as a whole and not for or against any party.
- i. The parties hereto declare that the terms and conditions of this Agreement have been completely read, reviewed and are fully understood and voluntarily accepted.
- j. This Agreement may be signed in counterpart copies and shall be effective when each party hereto has signed at least one copy. This Agreement is executed by the parties in duplicate, each copy of which shall have the same force and effect as an original. Signatures transmitted by facsimile or PDF (via e-mail) shall be acceptable and just as binding as a signature on the original hereof.
- k. Except as otherwise provided herein, all of the parties hereto agree to bear their own costs and expenses of the litigation, including fees of attorneys, to and including the effective date of this Agreement and the fulfillment of the terms hereof.
- l. This Agreement is subject to the approval of the Board of Commissioners of Evergreen as required by law. The parties agree to fully cooperate to obtain the approval of the Board.
- m. This Agreement is contingent in its entirety upon approval by the King County Superior Court in the Lawsuit as may deemed appropriate and necessary and/or required. The parties agree to fully cooperate to obtain the approval of the Court.

- n. If any phrase, sentence or paragraph of this Agreement shall to any extent be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and all other phrases, sentences and paragraphs of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first appearing herein above.

**Washington State Nurses Association**

By: Christine Himmelsbach

Printed Name: Christine Himmelsbach

Its: Assistant Executive Director of Labor

Date signed: February 10, 2011

**King County Public Hospital District No. 2 d/b/a  
Evergreen Hospital Medical Center**

By: Robert Malte

Printed Name: ROBERT MALTE

Its: CEO

Date signed: 2/11/11

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**HONORABLE GREGORY CANOVA**

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

DEBRA PUGH and AARON BOWMAN on  
their own behalf and on behalf of all persons  
similarly situated,

Plaintiffs,

v.

EVERGREEN HOSPITAL MEDICAL  
CENTER a/k/a KING COUNTY PUBLIC  
HOSPITAL DISTRICT #2,

Defendant.

**NO. 10-2-33125-5 SEA**

**DECLARATION OF  
CHRISTINE HIMMELSBACH**

Christine Himmelsbach declares and states as follows:

1. I am the Assistant Executive Director of Labor Relations for Washington State Nurses Association (WSNA) and make the following statements based on my personal knowledge.

2. WSNA is a union representing over 16,000 Registered Nurses (RNs) in Washington State. The WSNA mission statement is "The Washington State Nurses Association provides leadership for the nursing profession and promotes quality health care for consumers through education, advocacy, and influencing health care policy in the State of

**Declaration of Christine Himmelsbach - 1**  
Case No. 10-2-33125-5 SEA

LAW OFFICES OF  
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18 WEST MERCER STREET SUITE 400  
SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828

1 Washington.” In addition to being the Assistant Executive Director of Labor Relations for  
2 WSNA, I have also been a Registered Nurse since 1995.

3 3. On September 15, 2010, WSNA filed the original complaint in *Washington*  
4 *State Nurses Association v. King County Public Hospital District No. 2 d/b/a Evergreen*  
5 *Hospital Medical Center*, King County Superior Court Case No. 10-2-32896-3 SEA (“*WSNA*  
6 *v. Evergreen*”).

7 4. On or about the day WSNA filed the *WSNA v. Evergreen* complaint, WSNA  
8 Nurse Representative Sara Frey called the WSNA officers to inform them that the complaint  
9 had been filed.

10 5. On or about September 22, 2010, WSNA sent a postcard to current bargaining  
11 unit RNs at Evergreen Hospital, including current RNs who were not active members of  
12 WSNA, providing information about rest breaks and announcing that WSNA had initiated the  
13 *WSNA v. Evergreen* lawsuit against Evergreen regarding rest breaks. This message was also  
14 e-mailed to RNs at Evergreen and publicly posted on the WSNA website,  
15 <http://www.wsna.org>. A copy of the message is attached as Exhibit A.

16 6. On October 7, 2010, WSNA held a Local Unit Officer meeting at Evergreen.  
17 The Local Unit Officers are Evergreen RNs elected by their peers to bargaining unit officer  
18 positions such as Chair, Grievance Officer, and Secretary. Rank-and-file RNs also attend  
19 these meetings. At the October 7, 2010, meeting there was discussion about the *WSNA v.*  
20 *Evergreen* lawsuit and also the above-captioned lawsuit, *Pugh et al. v. Evergreen*.

21 7. On October 19, 2010, WSNA held a meeting to inform RNs about the *WSNA v.*  
22 *Evergreen* rest break lawsuit at Madison House in Kirkland, Washington. WSNA  
23 representatives were present at Madison House, a private meeting facility across the street  
24 from Evergreen, for several hours in order to accommodate the various schedules of  
25

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**Declaration of Christine Himmelsbach - 2**  
Case No. 10-2-33125-5 SEA

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1 Evergreen RNs. A copy of the October 12, 2010, message announcing this meeting is  
2 attached as Exhibit B.

3 8. On November 4, 2010, WSNA held another Local Unit Officer meeting where  
4 there was discussion about the *WSNA v. Evergreen* and *Pugh et al. v. Evergreen* lawsuits.

5 9. On November 9, 2010, Debra Pugh sent an email to all Evergreen RNs  
6 informing them that she had “filed a class action against Evergreen (this is separate from  
7 WSNA’s lawsuit) and all staff at Evergreen are able to join the class action simply by calling  
8 the attorney handling the case.” Pugh provided information about her attorneys, invited RNs  
9 to contact her personally with questions, and also requested that recipients pass her message  
10 along to RNs who no longer worked at Evergreen. A copy of this email is attached as Exhibit  
11 C.  
12

13 10. On December 2, 2010, WSNA held a Local Unit Officer meeting where there  
14 was discussion about the *WSNA v. Evergreen* and *Pugh et al. v. Evergreen* lawsuits.  
15

16 11. On December 3, 2010, WSNA sent a Local Unit Newsletter to all current  
17 bargaining unit RNs at Evergreen in electronic and hard-copy form. This Newsletter  
18 informed RNs that WSNA had “moved forward with a lawsuit against several area hospitals  
19 including Evergreen.” A copy of this Local Unit Newsletter is attached as Exhibit D.

20 12. On January 12, 2011, WSNA held a “Unity Dinner” meeting for RNs at the  
21 Wilde Rover Pub in Kirkland, Washington, to inform RNs about the *WSNA v. Evergreen* and  
22 *Pugh et al. v. Evergreen* rest break lawsuits, retaliation, and related issues. Over 40 nurses  
23 attended the meeting. WSNA posted announcements on bulletin boards at Evergreen  
24 encouraging nurses to attend the meeting, and publicly posted the announcement on the  
25

--  
**Declaration of Christine Himmelsbach - 3**  
Case No. 10-2-33125-5 SEA

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1 WSNA website. The announcement was also sent to about 300 RNs via the WSNA's e-mail  
2 newsletter, and to about 872 RNs via postcard. These announcements were sent to non-  
3 members as well as members of WSNA. WSNA staff also sent e-mails to groups of nurses  
4 asking them to talk up the meeting, post the announcement on the bulletin boards, and  
5 generally spread the word about the meeting to their co-workers. WSNA also made person-  
6 to-person phone calls to invite almost 700 RNs to the meeting, including non-members. A  
7 copy of the announcement is attached as Exhibit E.

8  
9 13. On or about February 3, 2011, WSNA held a Local Unit Officer meeting  
10 where there was discussion about the *WSNA v. Evergreen* and *Pugh et al. v. Evergreen*  
11 lawsuits.

12 14. On February 11, 2011, WSNA publicly posted an announcement on its  
13 website, informing RNs that WSNA and Evergreen had agreed to settle the rest break lawsuit.  
14 This announcement also informed RNs that a meeting about the settlement would be held on  
15 February 17, 2011, at Evergreen. This settlement announcement was also e-mailed to RNs at  
16 Evergreen. A copy of this announcement is attached as Exhibit F.

17  
18 15. On February 17, 2011, WSNA held a meeting at meeting at Evergreen to  
19 provide information and answer questions about the settlement. WSNA representatives were  
20 present for eight hours in order to accommodate the various schedules of Evergreen RNs. At  
21 the meeting, RNs were told about how they could refuse to accept settlement money and  
22 could pursue wage claims on their own, including through the *Pugh v. Evergreen* lawsuit. At  
23 this meeting, WSNA distributed a "Settlement Information" sheet to RNs. This "Settlement  
24 Information" sheet provided details about the policy change and back wage aspects of the  
25

--  
**Declaration of Christine Himmelsbach - 4**  
Case No. 10-2-33125-5 SEA

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

A-035

1 settlement, but also emphasized in bold print, “**However, you may refuse the settlement**  
2 **money that Evergreen will offer you and press your own claim for back wages.**” A copy  
3 of the “Settlement Information” sheet is attached as Exhibit G.

4 16. Also at the February 17, 2011, meeting at Evergreen was Debra Pugh, one of  
5 the class representatives in the *Pugh v. Evergreen* lawsuit. At the meeting Pugh shared her  
6 opinion as to WSNA’s settlement, and distributed a handout encouraging RNs not to  
7 participate in WSNA’s settlement and informing them of the *Pugh et al. v. Evergreen* lawsuit.  
8 A copy of this handout is attached as Exhibit H.  
9

10 17. Several RNs who could not make it to the meetings called WSNA to speak to  
11 representatives and learn about the *WSNA v. Evergreen* lawsuit.

12 18. On March 8, 2011, a “Compassion Fatigue Workshop” was held at Evergreen,  
13 where there was discussion about the *WSNA v. Evergreen* and *Pugh et al. v. Evergreen*  
14 lawsuits. Another “Settlement Information” document was distributed at this meeting. This  
15 document also detailed how RNs could opt-out of the *WSNA v. Evergreen* settlement. A copy  
16 of the document that was distributed is attached as Exhibit I.  
17

18 19. WSNA is preparing to mail a letter to all RNs affected by the *WSNA v.*  
19 *Evergreen* settlement explaining the settlement and describing how RNs can opt out of the  
20 settlement. A copy of the letter is attached as Exhibit J.

21 20. WSNA has also publicly posted the settlement agreement on its website.  
22

23 //

24 //

25 //

--  
**Declaration of Christine Himmelsbach - 5**  
Case No. 10-2-33125-5 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT LLP  
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SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Seattle Washington, this 10<sup>th</sup> day of March, 2011.

  
Christine Himmelsbach, MN, RN  
*Assistant Executive Director of Labor Relations for WSNA*

# EXHIBIT A

If this email does not display properly, please view our [online version](#).  
To ensure receipt of our email, please add [newsletter@wsna.org](mailto:newsletter@wsna.org) to your address book.  
Please do not reply to this automatic e-mail.



# Local Unit Newsletter

Digital Edition

*Evergreen Hospital MC WSNA Local Unit*

## EVERGREEN NURSES NEED THEIR REST BREAKS!

Uninterrupted breaks are about your safety and the safety of your patients. If you are not well rested, fatigue may negatively impact your safety as well as that of your patients. This is really about adequate staffing to ensure you have the resources to safely leave your patients for an uninterrupted break. Payment of missed breaks puts hospitals on notice that their nurses need to get their breaks or there will be consequences.

WSNA believes that not all Evergreen nurses are being afforded the breaks they are due and are not being correctly compensated when a break is missed. We have therefore, initiated a lawsuit in order to protect your rights, your safety and your patient's safety.

If you have questions or any information you feel may be helpful, please feel free to contact your WSNA Nurse Rep, Sara Frey at [sfrey@wsna.org](mailto:sfrey@wsna.org).

09/22/2010

The Washington State Nurses Association  
575 Andover Park West, Suite 101  
Seattle, WA 98188  
206-575-7979  
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# EXHIBIT B

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Please do not reply to this automatic e-mail.



# Local Unit Newsletter

Digital Edition

*Evergreen Hospital & MC WSNA Local Unit*

## DO YOU HAVE QUESTIONS ABOUT THE REST BREAK LAWSUIT?

Please join WSNA and its legal council for an informational session. If you would like to hear more about this important issue, have information you would like to share with us, or have questions, this is your opportunity! We want to hear from you and want to make sure all of your questions are answered.

**DATE:** October 19, 2010

**TIME:**  
7:30 – 10:00 am and 3:00 – 5:00 pm

**LOCATION:**  
Madison House (across from Evergreen to the south)  
12215 NE 128th St, Kirkland, WA 98034

***Coffee and Tea will be provided.***

WSNA realizes these times may not accommodate everyone's needs. If you are unable to attend, please feel free to contact your WSNA Nurse Rep, Sara Frey at 206-575-7979, ext. 3039 or [sfrey@wsna.org](mailto:sfrey@wsna.org)

10/12/2010

The Washington State Nurses Association  
575 Andover Park West, Suite 101  
Seattle, WA 98188  
206-575-7979  
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# EXHIBIT C

---

**From:** Debra Pugh, RN  
**Sent:** Tuesday, November 09, 2010 5:53 AM  
**To:** Grp Evergreen RNs  
**Subject:**

Good Morning:

To those of you who do not know me, I am a staff nurse in the ER. Are you tired of never getting all of your breaks or lunches? Aren't you tired of Evergreen utilizing your free labor and not paying the overtime for these missed breaks? **This is YOUR money and what Evergreen is doing is wrong!!!** I have filed a class action against Evergreen (this is separate from WSNA's lawsuit) and all staff at Evergreen are able to join the class action by simply by calling the attorney handling the case. Her name is Annette and she works at:

Breskin Johnson & Townsend PLLC  
1111 Third Avenue, Suite 2230  
Seattle, WA 98101  
(206) 652-8660

You can also call me if you have any questions at 425-582-7678/253-298-1560 or e mail [otp1pete@aol.com](mailto:otp1pete@aol.com). Please pass this on to RN's who no longer work at Evergreen as well as techs and ancillary staff.

**Debra Pugh, RN, MSN  
Emergency Department  
Evergreen Hospital**

# EXHIBIT D

If this email does not display properly, please view our [online version](#).  
To ensure receipt of our email, please add [newsletter@wsna.org](mailto:newsletter@wsna.org) to your address book.  
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# Local Unit Newsletter

Digital Edition

## Evergreen Hospital WSNA Local Unit

December 3, 2010

### In this Issue

- [Letter from your LU Chair](#)
- [Use Of Hospital Computers In The Workplace](#)
- [IPADS](#)
- [What is the Safe Staffing Committee?](#)
- [Get Involved!](#)
- [Breaks and Lunches](#)
- [Model of Care Changes at Evergreen – Important!!](#)
- [Get to Know WSNA](#)
- [Discipline on the Rise!](#)
- [Weingarten Rights!](#)
- [Recent Wins!!](#)
- [Your To Do List](#)

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## Letter from your LU Chair

Dear Evergreen Hospital Medical Center Registered Nurses,

Your Local Unit Leadership Team sends you warm wishes. Personally, I hope you have had a safe, happy, and healthy summer. It is hard to believe that one year ago we were in negotiations with the hospital to update our Collective Bargaining agreement or "the contract".

A great deal of effort went into these conversations and in the end your negotiating team, along with WSNA representation, and the hospital's team recommended approval and acceptance. I urge you to read your contract, understand what it means, and embrace the opportunities for involvement described within. Specific opportunities are described as follows. YES! Your time is paid while attending these committees. There is a lot going on in our hospital, and we need staff nurses from EVERY unit to volunteer on the following committees:

- Patient Care Committee\*
- Conference Committee\*
- Nurse Staffing Committee
- Grievance Officer
- Membership Committee

\*Minutes from these meetings are posted on Everlink under Human Resources, Union Bargaining Contracts, WSNA

## December 2010

### Local Unit Officers

Karen Ketner, Chair  
Darla Mihovilich, Secretary  
Cynthia Collette, Treasurer  
Susan Dunlap, Grievance  
Gerrienne Nicholls, Grievance

### WSNA Nurse Representative

Sara Frey  
(206) 575-7979, Ext. 3039  
[sfrey@wsna.org](mailto:sfrey@wsna.org)

## Upcoming Events

**Nurse Legislative Day**  
February 14, 2010, Olympia, WA

**WSNA Convention**  
April 28-29, 2011

Committee meetings. We encourage you to read them. The meeting minutes should give you a greater understanding of the nature of the different committees, how you could have your VOICES heard, and help you figure out where you might volunteer your time and effort.

Hilton Seattle Airport &  
Conference Center  
17620 International Blvd, Seattle,  
WA

Your Leadership Team is OPEN for suggestions. What is important to you? What facet(s) of Nursing (at EHMC or in general) would you like to explore in greater depth? Would you like to invite a guest speaker to a Local Unit Meeting? Travel to Olympia and participate in a legislative session? Opportunities are boundless. I believe that you get back what you give in this life. In addition, many hands make little work.

Today we have the possibility to create a unique RN environment at EHMC. This can only be achieved with an engaged membership. Attached are the Unit Representative and Leadership Team lists. Contact us!

Sincerely,

Karen Ketner RN  
Local Unit Chair

### Use Of Hospital Computers In The Workplace

WSNA is concerned about you being disciplined for things you say on-line or in email. Our advice is to confine the use of computers at work to the job you are doing. Do not use hospital computers for personal business or to address a work place problem. Management does monitor the use of their computer systems. There may be computers in the break room but don't be fooled into thinking those are not monitored as well.

Management Can:

- Red Flag specific sites.
- Generate detailed reports that state how long you were on the computer and what site you were on.
- Tell what computer you used.

If you leave a computer signed on under your password, someone else may write something or visit an inappropriate site and you will be held accountable.

WSNA cares about our nurses. We do not want to see you disciplined! It is happening more and more.

WSNA also encourages you to post responsibly on social networking pages. The best rule is, just don't discuss work online. Believe it or not, managers are spending their valuable work time checking those websites instead of focusing on what's going on in their unit!

Additionally, we are finding an increase of nurses being disciplined for inappropriate use of hospital email. Most frequently, issues arise when email chains via the "reply all" option start circulating. Just use common sense when it comes to what should be discussed in work emails and be aware of the "tone" of emails when hitting that "reply all" button. It is much easier for misunderstandings to arise via written conversation than when talking in person. Management is cracking down on those who do utilize this method to complain or "gossip." The

best approach would be to only deal with official hospital business via hospital email.

## IPADS

If you have purchased an Ipad and were denied reimbursement after submitting your educational expenses, please contact your Nurse Rep, Sara Frey. [sfrey@wsna.org](mailto:sfrey@wsna.org)

## What is the Safe Staffing Committee?

In 2008, the legislature enacted House Bill E2SHB 3123.SL. You can Google "E2SHB 3123.SL" to read the entire bill. Here is a small excerpt from the bill:

*"2) In order to protect patients and to support greater retention of registered nurses, and to promote evidence-based nurse staffing, the legislature intends to establish a mechanism whereby direct care nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing."*

Your help is needed on this committee! This is paid time. This is your time to help shape the staffing models you are working with. If you are interested in attending, please contact one of your Local Unit Officers or Nurse Rep, Sara Frey.

## Get Involved!

We want to hear from you!! What would you like to learn at local unit meetings? How can we better communicate with you? Do you feel you can participate in the Staffing Committee, Conference Committee, or Safety Committee? Who would be willing to volunteer to be a unit representative? Unit representatives are the eyes and ears of the Local Unit Officers, and they can assist us by informing us when something is "just not right" on their unit. Concerns may relate to general work environment issues, schedules, or other issues nurses on your unit have. The unit representative contacts the local unit officer about the unit's concerns to make them aware. The unit representative is the expert for their unit's working environment, but the time commitment you would need to make is minimal. We could use your help!

## Breaks and Lunches

We are making great progress on the lunch and break issue that has been of vital concern in WSNA's legislative efforts. As you are aware, we have moved forward with a lawsuit against several area hospitals including Evergreen, Tacoma General and Good Samaritan. We recently held an informational session for Evergreen. If you have questions or were not able to attend, please contact your Nurse Rep Sara Frey at (206) 575-7979, ext. 3039 or [sfrey@wsna.org](mailto:sfrey@wsna.org).

Read about two significant victories at WSNA website - 1) A lawsuit was decided in our favor at Sacred Heart Medical Center where nurses were not getting their full break periods--now a settlement must be decided upon, and 2) An arbitrator's decision went with us at the University of Washington, acknowledging that the employer must ensure nurses get their full, uninterrupted rest breaks—the employer has been obligated to track when and if each nurse gets a break. These wins are precedent-setting, and we hope they will help to promote better nurse staffing levels in all Washington hospitals before long. Staffing is of major interest to you all, we know. Please contact us with any other interests you have, so we can attend to your concerns!

### **Fatigue is dangerous for nurses and patients**

Nurses working long hours lead to an increase in medical and medication errors. Full uninterrupted rest and meal breaks are critical for nurses to maintain the mental alertness and focus required to provide safe and quality patient care for the duration of a shift.

### **Intermittent breaks aren't breaks at all!**

Brief interruptions in work – such as charting, conferring with colleagues, going to the bathroom, or getting a drink of water – do not provide enough rest during a shift. Claiming these intermittent breaks are adequate is detrimental to patient safety and nurse well-being.

### **Model of Care Changes at Evergreen – Important!!**

As you know, WSNA is closely following the changes to the Silver Tower Model of Care as well as changes in staffing in other departments. We are awaiting arbitration regarding the process utilized in making these changes as we do not agree that Evergreen has followed the contract in making these changes.

WSNA has already heard from nurses that they are not getting breaks and have to stay hours past the end of their shift to complete their work. We NEED to hear from you! There are things you can do to help us with addressing the problems that arise as a result of this massive change in your practice.

First, you will find "Assignment Despite Objection" forms on your unit. PLEASE fill these out after each shift if you experience any of the issues listed such as; insufficient support staff, inadequate nurse to patient ratio, any missed rest breaks, etc. You may give a copy to your manager but at the very least, please fax a copy to the WSNA Nurse Rep Sara Frey. Do not include patient identifying information but enough information to explain what kept you from being able to safely practice.

Please be sure to accurately record and account for all missed breaks and to accurately clock all time worked. This is very important that everyone is documenting so there is an accurate picture of actual time needed by staff to complete assignments. Please also follow your proper chain of command that Evergreen requires in terms of reporting issues.

It is important that each and everyone of you fill out these forms should you encounter problems with the launch of the new model. This information will be utilized to help support the concerns you have. Your manager may tell you that Evergreen does not recognize these forms.

Utilization of these forms is a union protected activity and serve as a tool to communicate legitimate practice concerns.

PLEASE FAX COMPLETED FORMS TO: Sara Frey, WSNA Nurse Rep, fax # 206-575-1908

If you need more forms or have questions, please contact me.

## Get to Know WSNA

Do you know that information related to WSNA and your Local Unit at Evergreen is just a few key strokes away? By going to the WSNA website, you can gain access to a wide range of information on your union, including how you are represented in Olympia at the legislative sessions and issues related to nursing practice under the Nurse Practice Act. Educational opportunities are posted here as well, in addition to current concerns such as information related to the flu, WSNA's position on healthcare reform and more recently links for nurses interested in helping with relief efforts in Haiti. Also, surveys are often posted at the website to gather pertinent information related to the work environment.

As a member of WSNA, it is important to periodically check out your own Local Unit information. All you need to do is click on "Find Your Local Unit" or "Labor Relations" on the top tab. Then scroll down to Evergreen under the Seattle Area listing. Under your Local Unit page you will find the names and contact information for your Local Unit Officers. We are your representatives in the Union and represent you during contract negotiations, at Conference Committee each month and during a grievance or disciplinary action if necessary. The information on your Local Unit page also includes your WSNA contract, previous newsletters published and topics pertinent to your work environment such as missed breaks and meals. We encourage you to talk to us regarding concerns that you may have or contact your Nurse Representative at WSNA directly. Empower yourself with knowledge and discover the importance of being part of a profession that makes you more than "just a nurse."

## Discipline on the Rise!

We at WSNA are monitoring the number of nurses being disciplined, as it seems that the number is on the rise. Discipline should be for just cause only and should be instructive and progressive in nature. That usually means that the least punitive discipline is given out for a first offense, unless the action being disciplined is very serious. In other words, if the breach of a policy or rule is your first infraction and has caused little or no harm, you should not be given a final written warning, a suspension or a termination. The hospital may disagree—they may consider something "serious" when we do not, but contact your Local Unit Grievance Officer and talk it over with them if you feel you have been unfairly disciplined. The issue may not have been thoroughly investigated or there are other factors like inadequate staffing that may have contributed.

No one should be targeted, when others have similar behavior and are not even reprimanded or given any discipline at all. Let us know right away if you feel you have been singled out, if you have been disciplined, or have been treated unfairly in some way; you may

choose to file a grievance if this is the case. Often, the facts listed in the discipline are not accurate. There are timelines to be able to dispute any type of discipline so it is important to contact someone immediately. Even if you choose not to pursue a grievance, you always have the option to place a rebuttal to any discipline in your personnel file.

What happens if I don't dispute the discipline? If you continue to receive progressive discipline, you risk of being terminated. Any undisputed discipline will likely be considered accurate as you did not dispute it when it was given. It is important to contact us immediately so we can help you to understand your options. We hear all too often from nurses who are in the final stages of discipline and they did not contact us earlier to dispute an earlier inaccurate document.

Please contact us if you are disciplined! Additionally, it is even more important to have adequate representation during the investigatory phase. Below is more information regarding your Weingarten Rights:

### **Weingarten Rights!**

**Before discussing your Weingarten Rights, you must know what an "investigatory meeting is."**

An investigatory interview is when you are asked to attend a meeting with your manager or director about any issue that you are involved with that could possibly lead to disciplinary action. This can include tardiness, overtime, patient complaints, peer complaints, etc. You can ask at the beginning of the meeting, "Is this a meeting that is disciplinary or that can lead to disciplinary action?" If they answer "Yes" then you have the right to ask for representation. If they say "No" and indicate that you don't need anyone, listen carefully to what is being discussed. If it starts to feel like it is discipline, you have the right to invoke your Weingarten rights.

**Remember your WEINGARTEN RIGHTS - it is under the Supreme Court's Weingarten decision, when an investigatory interview occurs, the following rules apply:**

**Rule 1** - The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making this request. (Note: If you ask the employer, "do I need union representation?" the answer may be no. It is up to you to make the statement that you want union representation.) Remember, management is not an appropriate representative so if they offer you the nursing supervisor or someone else to sit with you, that is not adequate.

**Rule 2** - After the employee makes the request, the employer must choose among three options. The employer must either:

- a. Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee; or
- b. Deny the request and end the interview immediately; or
- c. Give the employee a choice of: 1) having the interview without representation, or 2) ending the interview

**Rule 3** - If the employer denies the request for union representation and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal. So ...if called into a meeting with management, read the following (or present the Weingarten card)

to the management when the meeting begins. "IF THIS DISCUSSION COULD IN ANY WAY LEAD TO MY BEING DISCIPLINED OR TERMINATED, OR AFFECT MY PERSONAL WORKING CONDITIONS, I RESPECTFULLY REQUEST THAT MY UNION REPRESENTATIVE BE PRESENT AT THIS MEETING. WITHOUT REPRESENTATION PRESENT, I CHOOSE NOT TO PARTICIPATE IN THIS DISCUSSION." Please contact one of your local unit officers or Nurse Rep immediately if a situation arises where you need to use your Weingarten rights.

#### **Why do I need representation?**

You need to take a representative from WSNA in for meetings that are disciplinary or that could lead to discipline. The person's role is to take notes of what you say and what your manager says. Usually these meetings are emotional for the RN involved. After walking out of the director or manager's office, often the RN doesn't remember all that was said, how it was said, and what was agreed to, etc. Having a note taker can also prevent the "He Said/She Said" situations. The representative can also help you clarify confusing questions.

#### **Who can represent me?**

Your first choice is your Local Unit Grievance Officers. To contact them, call WSNA or the officers directly. If the Grievance Officers are not available, one of the other Local Unit Officers can attend. If they are not available, you can have a bargaining unit RN. If you can't find someone from your bargaining unit, find anyone that can write notes for you. Your WSNA Nurse Rep can also attend with you. (800) 231-8482, Ext. 3039,

#### **If they keep asking questions, can I leave?**

No, stay at the meeting, but do not answer questions until your representative has a chance to arrive. If you walk out, you can be disciplined for insubordination. Let them know, "I will listen but I'm going to withhold any comment until I can get a representative.

#### **Recent Wins!!**

We have had a variety of grievances filed this past year. The majority we have been able to resolve satisfactorily through the grievance process. Some of these involved pay issues, discipline or other. One in particular was set for arbitration and we were able to negotiate a very favorable resolution for the nurse involved prior to going to arbitration!

#### **Your To Do List**

**READ** = Be informed! Postcards, Newsletters, ANA, NFN, WSNA Website, Washington Nurse, and American Nurse.

**ATTEND** = Local Unit meetings, give us YOUR input! Contact an officer for information regarding future meetings.

**COMMUNICATE** = your concerns.

**GET INVOLVED** = There is a place for everyone and there are

numerous opportunities to participate in activities that affect your professional practice!

The Washington State Nurses Association  
575 Andover Park West, Suite 101  
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# EXHIBIT E

## **WSNA/Evergreen Hospital & MC**

*Washington State Nurses Association*



### **FREE Dinner!**

Your Local Unit wants to buy you dinner at Wilde Rover on the Kirkland waterfront!

Where: 111 Central Way, Kirkland, WA 98033

When: Wednesday, January 12, 2011, 5:00pm until 8:00pm

Why? After a long holiday season, it is time to focus on YOU!

Come find out: What is happening with the Rest Break lawsuit,

What you can do to combat retaliation from administration,

What to do if you are NOT receiving ALL of your breaks,

What negative consequences may impact YOU from the recent staffing changes,

What you can do to increase your power as a bargaining unit,

The financial & practical benefits of membership you may not know about

In attendance will be: YOUR Local Unit Elected Officers

WSNA Asst. Exec. Dir. of Labor Relations Christine Himmelsbach MN, RN

WSNA Labor Law Attorney Carson Glickman-Flora

YOUR WSNA Nurse Representative Sara Frey BSN, RN

YOUR WSNA Nurse Organizer Tara Goode BA BSN, RN

RSVP with Irene Mueller @ 206-575-7979 Ext 0, [imueller@wsna.org](mailto:imueller@wsna.org). Space is limited to the first 50.

Questions? Contact WSNA Nurse Organizer Tara Goode at 206-575-7979 Ext 3038 or [tgoode@wsna.org](mailto:tgoode@wsna.org)

01/04/11



Contact us at 1.800.231.8482 or e-mail [wsna@wsna.org](mailto:wsna@wsna.org) or visit our web site at [www.wsna.org](http://www.wsna.org)

# EXHIBIT F

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# Local Unit Newsletter Digital Edition

*Evergreen Hospital MC WSNA Local Unit*

## **WSNA and Evergreen Hospital Execute Landmark Settlement Over Nurse Rest Breaks**

We are proud to announce that WSNA and Evergreen have just entered into an agreement to settle WSNA's lawsuit over missed rest breaks for nurses at Evergreen.

This settlement not only includes payment for rest breaks missed in the past, but also sets forth sweeping changes to the way rest breaks are handled at Evergreen. WSNA and Evergreen have agreed to implement extensive changes in timekeeping, payroll, and policy that are designed to ensure that taking rest breaks is the norm, that you are appropriately staffed to allow for breaks and that nurses are properly compensated when rest breaks are missed.

WSNA representatives will be on-site to provide information and answer questions about this historic agreement on **Thursday, February 17, 2011 in Room Tan 136 from 6-10a.m. and 2-6p.m.**

Come be one of the first nurses at Evergreen to know about the new agreement and how it will benefit you personally!

02/11/10

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575 Andover Park West, Suite 101  
Seattle, WA 98188  
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# EXHIBIT G

## *WSNA v. Evergreen Hospital* - SETTLEMENT INFORMATION

On February 10, 2011, representatives from WSNA and Evergreen Hospital agreed to settle WSNA's rest break lawsuit. Evergreen agreed to a new rest break policy that will revolutionize the way nurses at Evergreen take rest breaks. WSNA hopes that Evergreen's new system will set the standard for other hospitals in Washington to follow! We will need to work together to hold Evergreen accountable to the new rest break procedures.

### **Overview**

- Evergreen will begin recording and paying for missed rest breaks, and will pay some back wages for its failure to pay for rest breaks in the past.
- Evergreen managers will adopt procedures to assure nurses receive rest breaks and conduct training on the new rest break procedures.
- Evergreen will promptly investigate any accusation of retaliation against nurses for exercising their rights under this settlement.

### **New System to Track Missed Breaks**

- Evergreen will keep records of missed breaks and will modify its Time and Attendance System to provide a method for nurses to record missed breaks.
- Evergreen will indicate how many rest breaks a nurse is entitled to for each shift.
- Nurses will be able to mark missed rest breaks in the Time and Attendance System.
- Evergreen will provide WSNA department-level data regarding missed rest breaks upon request.

### **New Policies for Missed Breaks**

- Evergreen will compensate nurses for missed breaks. Missed rest breaks will be treated as hours worked and will be compensated at 15 minutes straight time. If the missed rest break extends beyond the normal work day as defined in the collective bargaining agreement, the missed break will be compensated at 15 minutes at the overtime rate.
- If compensation for a missed break is denied, the supervisor will state a reason in the Time and Attendance System, and both the nurse and WSNA will be notified.
- Paychecks will reflect payments for missed breaks in a separate category if feasible and practicable for Evergreen's payroll system.
- If a rest break is interrupted during the first 10 minutes, nurses will have the option of taking a new 15-minute rest break, or the option of being paid for a missed break. If a rest break is interrupted after the first 10 minutes, nurses may resume and complete the remainder of the 15-minute break, or record a missed rest break.

### **Back Wages for Missed Rest Breaks**

WSNA has negotiated for Evergreen Hospital to pay \$375,000 as part of this settlement. This money will be distributed to nurses impacted by this settlement, including former nurses who worked anytime between September 15, 2007 and the effective date of the Settlement Agreement (the date that King County Superior Court approves the settlement) and used to pay associated legal costs such as court and attorneys fees. The funds will be prorated by the total number hours a nurse worked during the lawsuit time period. The back wages offered for a nurse who worked 4000 hours during the lawsuit time period will be twice as large as for a nurse who worked 2000 hours. **However, you may refuse the settlement money that Evergreen will offer you and press your own claim for back wages.**

If you have any questions, please contact your WSNA Local Unit Officers or your WSNA Nurse Representative, Sara Frey at 206-575-7979 ext. 3039

# EXHIBIT H

## The Truth about the Settlement

1. WSNA calculated that nurses are owed over \$1 million or more for past, unpaid rest breaks, but are settling out your claims for less than 30 cents on the dollar.
2. Nurses may be owed thousands of dollars and as much as over a million dollars more than the union's damages calculation.
3. This is a "sweetheart deal" for Evergreen at your expense.
4. WSNA is getting a quick deal with Evergreen because it is suing hospitals all over the state and wants to use the deal with Evergreen to get other hospitals to settle with them quickly.
5. WSNA is doing this so it can get the rest break policy changes going forward which don't amount to anything more than what the law requires Evergreen to do.
6. The changes to timekeeping, payroll and rest break policies that are part of the settlement are already required by Washington law, so you are getting nothing more than what is already required.
7. The changes may actually take away something already in the collective bargaining agreement, i.e. 15 minute rest breaks, not 10 minute breaks.
8. WSNA could have enforced the CBA 15 minute rest break provision anytime it wanted to in the past and didn't.
9. Under the Settlement agreement you will have to give up your right to full payment for all missed rest breaks to get anything.
10. But you have other options than this settlement. There is a different, Class action, lawsuit that has been filed in King County Superior Court seeking full payment for all rest breaks that does not involve WSNA.

# EXHIBIT I

## WSNA v. Evergreen Hospital - SETTLEMENT INFORMATION

On February 10, 2011, representatives from WSNA and Evergreen Hospital agreed to settle WSNA's rest break lawsuit. Evergreen agreed to a new rest break policy that will revolutionize the way nurses at Evergreen take rest breaks. Evergreen will begin recording and paying for missed rest breaks, and will pay some back pay for its failure to pay for rest breaks in the past. WSNA hopes that Evergreen's new system will set the standard for other hospitals in Washington to follow!

WSNA determined that the settlement was in the best interest of the nurses at Evergreen because it provides for improvements that the lawsuit could not achieve. The best that a court would have ordered, if it would have found in favor of WSNA, would be money damages and an injunction ordering the hospital to comply with the law for missed rest breaks. A court could not have ordered the specific changes in timekeeping, payroll, and policy provided by this settlement agreement. Additionally, the settlement agreement will be implemented on **June 1, 2011** – while pursuing a lawsuit to the finish may have taken years.

The specific terms of the settlement with Evergreen Hospital include:

- *Evergreen managers will adopt procedures to assure nurses receive rest breaks*
- *Evergreen will keep records of missed breaks and will modify its Time and Attendance System to provide a method for nurses to record missed breaks*
- *Evergreen will indicate how many rest breaks a nurse is entitled to for each shift*
- *Nurses will be able to mark missed rest breaks in the Time and Attendance System*
- *Evergreen will compensate nurses for missed breaks. Missed rest breaks will be treated as hours worked and will be compensated at 15 minutes straight time. If the missed rest break extends beyond the normal work day as defined in the collective bargaining agreement, the missed break will be compensated at 15 minutes at the overtime rate.*
- *If compensation for a missed break is denied, the supervisor will state a reason in the Time and Attendance System, and both the nurse and WSNA will be notified.*
- *Paychecks will reflect payments for missed breaks in a separate category if feasible and practicable for Evergreen's payroll system*
- *If a rest break is interrupted during the first 10 minutes, nurses will have the option of taking a new 15-minute rest break, or being paid for a missed break. If a rest break is interrupted after the first 10 minutes, nurses may resume and complete the remainder of the 15-minute break, or record and be paid for a missed rest break.*
- *Evergreen will promptly investigate any accusation of retaliation against nurses for exercising their rights under this settlement. If retaliation is found, Evergreen will provide re-training to ensure that retaliation does not recur.*
- *Evergreen will provide WSNA department-level data regarding missed rest breaks upon request*
- *Concerns about departments with excessive missed rest breaks or compliance with this settlement will be brought to the Conference Committee*
- *Evergreen will conduct training on the new rest break procedures*
- *A \$325,000 Settlement for back wages for missed breaks, which will be distributed on an hourly pro rata basis (nurses who worked more hours over the past 3 years will receive a greater sum than those who*

*did not). WSNA expects the average settlement to be about \$270.*

You have the option of participating in this settlement, or choosing not to participate in this settlement.

If you choose to participate in this settlement, you will be required to sign a release waiving your right to seek any further pay for rest breaks missed in the past. If you participate in the settlement, you will receive a check with taxes and authorized deductions taken out by Evergreen.

If you choose not to participate in this settlement, you will not be bound by the settlement, but you must return the check to Evergreen within sixty (60) days from the date you receive it. In order not to be bound by this settlement, you will be required to return the check, and to sign a form affirmatively refusing to participate in the settlement.

WSNA views this settlement as a major breakthrough in our effort to guarantee that nurses throughout the state are able to take rest breaks. By its willingness to recognize the importance of providing nurses the breaks they are owed under law, Evergreen Hospital has distinguished itself as a leader among Washington hospitals. WSNA hopes that Evergreen's new system will set the standard for other hospitals in Washington to follow!

# EXHIBIT J



**WASHINGTON STATE NURSES ASSOCIATION**

575 ANDOVER PARK WEST, SUITE 101, SEATTLE WA 98188 206-575-7979 206-575-1908 FAX WWW.WSNA.ORG

March 9, 2011

Dear Evergreen RN:

We are writing to inform you of a settlement in the lawsuit filed by the Washington State Nurses Association ("WSNA") and Evergreen Hospital. Last September, WSNA filed a state court lawsuit against Evergreen Hospital for Evergreen's failure to pay registered nurses for missed rest breaks, failure to assure that nurses receive their rest breaks, and failure to maintain a record keeping system of missed rest breaks.

We are delighted to inform you that Evergreen has agreed to settle the lawsuit on terms that will permanently and positively change the way rest breaks are handled at Evergreen. Evergreen will begin recording and paying for missed rest breaks, and will pay some back pay for its failure to pay for rest breaks in the past. Evergreen will also adopt procedures in each of its units to assure that RNs are able to take their rest breaks during their shifts while at the same time ensuring patient safety with adequate staffing. WSNA hopes that Evergreen's new system will set the standard for other hospitals in Washington to follow! As a result of the settlement, WSNA has dismissed its lawsuit against Evergreen.

In the next few days, you will receive a letter from Evergreen, along with a check for your portion of the settlement. Evergreen agreed to pay a total of \$375,000 to settle the lawsuit and your portion of that amount is dependent on the number of hours you worked during the past three and one-half years. Those who worked full-time during this period will receive about \$300.

You have the option of participating in this settlement, or choosing not to participate in this settlement. If you chose to participate, you must accept the check that Evergreen will send you and release your right to sue Evergreen for failure to provide you with rest breaks. If you want to pursue your own lawsuit, or be a participant in another lawsuit against Evergreen for backpay, you must return the check to Evergreen. Your check represents wages, and Evergreen has deducted payroll taxes. If you do not want to waive your right to sue Evergreen for missed rest breaks, you must return the check to Evergreen within 60 days of receiving it.

You may view the settlement online on WSNA's website by going to the Evergreen unit page or by typing [www.wsna.org](http://www.wsna.org) into your browser. If you have any questions, you may call: Sara Frey, BSN, RN WSNA Nurse Representative at 206-575-7979, extension. 3039.

Again, we are delighted that Evergreen has demonstrated a commitment to ensuring that RNs receive their rest breaks. We look forward to working with you to ensure that Evergreen's training program for its new rest break procedures are successful, and that all RNs receive their rest breaks.

Sincerely,

*Christine Himmelsbach*

Christine Himmelsbach, MN, RN  
Assistant Executive Director of Labor



1           3.     The WSNA kept me and other nurses informed about its lawsuit against  
2 Evergreen, and in February 2011, sent an e-mail informing me and other nurses that the lawsuit  
3 was settled. In March 2011, I received a letter from the WSNA that informed me that Evergreen  
4 would soon be sending out settlement checks and that I had the option of choosing not to  
5 participate in the settlement. The letter was clear that if I accepted the settlement check, I would  
6 release my right to sue Evergreen regarding missed rest breaks, and that if I wanted to pursue my  
7 own lawsuit against Evergreen or participate in another lawsuit, I needed to return the check to  
8 Evergreen. I did not find this to be confusing in any respect.

9           4.     Later in March, I received a letter and a settlement check from Evergreen. The  
10 letter clearly described the purpose of the check and the consequences of signing the check.  
11 Specifically, I understood that if I signed and cashed the check, I would be releasing the right to  
12 sue Evergreen regarding missed rest breaks. The letter informed me again of Debra Pugh's  
13 lawsuit and that if I signed the check, I would not be able to participate in that lawsuit. On the  
14 back of the check was clear language that was consistent with the letter. It informed me that by  
15 signing the check, I would release claims against Evergreen regarding missed rest breaks.  
16 Although the letter encouraged me to seek legal counsel to review the settlement, I felt that I was  
17 able to make an informed decision to accept the settlement check. Further, although the letter  
18 made clear that Evergreen desired my acceptance of the settlement, I felt no pressure from  
19 anyone at Evergreen. I signed and cashed the settlement check that I received.

20           5.     In early April 2011, I received a letter dated April 4, 2011 from David E. Breskin  
21 of the Breskin Johnson & Townsend PLLC law firm. Attached hereto as *Exhibit A* is a true and  
22 correct copy of the letter. I was upset that my address was given to this attorney and did not (and  
23 do not) want to participate in the class action lawsuit. Mr. Breskin's letter conveyed essentially  
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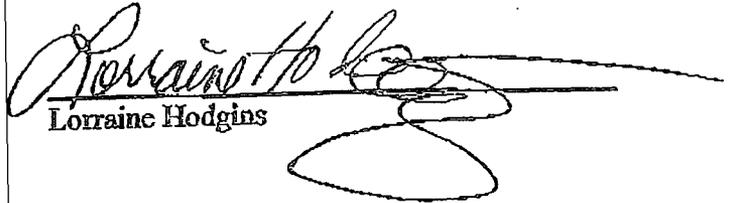
the same information as the letters I received from the WSNA and Evergreen -- if I cashed the settlement check from Evergreen, I could not be a part of the class action lawsuit over missed rest breaks.

SIGNED at Marysville, Washington this \_\_\_\_\_ day of August, 2011

[Signature Page Attached]  
Lorraine Hodgins

1 the same information as the letters I received from the WSNA and Evergreen – if I cashed the  
 2 settlement check from Evergreen, I could not be a part of the class action lawsuit over missed  
 3 rest breaks.

4 SIGNED at Marysville, Washington this 25 day of August, 2011

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 7 Lorraine Hodgins  
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DECLARATION OF LORRAINE HODGINS - 3

Appendix

LIVENGOOD, FITZGERALD & ALSKOG  
 121 THIRD AVENUE  
 P.O. BOX 908  
 KIRKLAND, WASHINGTON 98033-0908  
 PHONE: (425) 822-9281 FAX: (425) 828-0908

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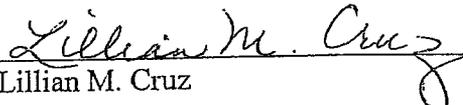
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**DECLARATION OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on August 26, 2011, I caused service of the foregoing to the following counsel of record:

<p><i>Attorneys for Plaintiffs:</i>  David E. Breskin  Daniel F. Johnson  Annette Messitt  Breskin Johnson &amp; Townsend, PLLC  1111 Third Avenue, Suite 2230  Seattle, WA 98101  WSBA #10607 – Breskin  WSBA #27848 - Johnson  WSBA #33023 – Messitt  Ph: 206-652-8660  Fax: 206-652-8290  Email: dbreskin@bjtlegal.com  djohnson@bjtlegal.com  amessitt@bjtlegal.com</p>	<input type="checkbox"/> via U.S. Mail <input type="checkbox"/> via Hand Delivery <input type="checkbox"/> E-Service <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via E-mail <input type="checkbox"/> via Overnight Mail
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**Dated:** August 26, 2011

  
Lillian M. Cruz

**EXHIBIT A**

April 4, 2011

Lorraine Hodgins

WA 98

Re: *Pugh and Bowman, et al v. Evergreen Hospital (10-2-33125-5)*

Dear Lorraine Hodgins:

We represent two Evergreen Registered Nurses, Debra Pugh and Aaron Bowman, in a class action lawsuit against Evergreen over missed rest breaks and meal breaks. All current and former nurses would be members of this class without the need to do anything or to retain an attorney to prosecute their claims.

We are writing because we understand that Evergreen has sent you checks from a different lawsuit brought by WSNA over missed rest breaks. You cannot cash this check and be a part of the class action lawsuit over missed rest breaks and we believe there are some very good reasons why you should not cash the check.

First, the check likely represents only 25% to 50% of the amount you are actually owed by law right now by Evergreen without any WSNA settlement, because the total amount Evergreen is paying nurses in these checks is only about \$300,000; yet Evergreen has admitted in sworn testimony in our case that it calculated and assumed that it owed nurses a total of \$600,000, in other words twice the amount Evergreen is paying in the checks sent out. WSNA has told us that they calculated and assumed that nurses were owed over \$1 million by Evergreen, in other words over three times the amount Evergreen is paying in the checks sent to you.

Our own calculations based on the time records we have suggest that you are owed a minimum of four times or more the amount Evergreen is paying. We calculate that depending on your department and work schedule, you could be entitled to a check worth several thousand dollars to as much as \$10,000.00. Just by way of example, if you worked twelve 10-hour shifts per month and missed just one break per shift, you would be owed approximately \$2,800 for your missed rest breaks over the past three years at straight time pay or approximately \$4,200 at overtime pay.

April 4, 2011  
Page 2

Second, the check sent to you by Evergreen does not include "double damages" that must be paid by law by an employer who wrongly withholds such pay. In other words, it is likely that Evergreen would have to pay twice the amount of the check sent to you just by applying the "double damages" award owed by law. By way of the example provided above, if the "double damages" were applied, you would be owed approximately \$5,600 for your missed rest breaks over the last three years at straight time pay or approximately \$8,400 at overtime pay.

As you can see, as a member of the class action lawsuit, you may be able to recover substantially more than the amount of the check you have been sent to give up your rights to missed rest breaks.

Of course, we cannot guarantee any result, but I can give you my learned opinion having been an employment lawyer in Seattle for 31 years. If you want to be a member of the rest break class action, you should return the check back to Evergreen. If you cash the check then Evergreen will argue that you cannot be a member of the class action.

If you have any questions about this matter, please give us a call at 206-652-8660.

Sincerely,

BRESKIN JOHNSON & TOWNSEND PLLC



David E. Breskin  
Attorney at law

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**HONORABLE LAURA GENE MIDDAUGH**

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

v.

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

NO. 10-2-32896-3

**DECLARATION OF SUSAN  
HANSER IN SUPPORT OF  
JOINT MOTION TO APPROVE  
SETTLEMENT**

Susan Hanser declares and states as follows:

1. I am employed as a registered nurse (“RN”) at Evergreen Hospital Medical Center (“Evergreen”) and make the following statements based on my personal knowledge.
2. My employment at Evergreen began in October 2001. I work in the Med/Surg unit.
3. I believe there are approximately 40 RNs working in the Med/Surg unit. I work day shift, 7:00 a.m. to 3:30 p.m. My position is .7 FTE. I am on an 8/80 shift. I work 3 days one week and 4 days the following week.
4. Med/Surg patients vary greatly in acuity. We have medical patients who suffer from congestive heart failure, diabetes, and geriatric issues. Surgical patients vary

**Declaration of Susan Hanser - 1**  
Case No. 10-2-32896-3 SEA

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

1 from simple appendectomies to complicated surgeries requiring much more care. Generally,  
2 the ratio of patients is 5 to 1, but can go as high as 6 to 1.

3 5. I don't know of a policy for taking breaks in my unit. When I want to take a  
4 rest break or meal break, I check in with another nurse and ask if they can watch my patients  
5 while I am gone and I do the same for other nurses when I am asked.

6 6. When I take a rest break or meal break I bring my phone with me. I  
7 frequently receive calls regarding my patients when I am on my meal break, but not usually  
8 when I take a rest break.

9 7. I take a morning rest break about 10% of the time. I rarely take an afternoon  
10 break. The other nurses on the Med/Surg unit take their rest breaks about 50% of the time.  
11 Sometimes there is just no one available to watch my patients or I am just too busy to take a  
12 rest break. When I take rest breaks, I am not always able to complete my work during my  
13 shift and I have to stay and work overtime. I will not take a rest break if I feel my patients  
14 will not receive adequate care while I am gone.

15 9. There is no way to report a missed rest break.

16 10.. I think that the settlement agreement between WSNA and Evergreen in this  
17 case is fair and that WSNA has fairly represented me and my coworkers. I am surprised at  
18 how quickly WSNA was able to settle this issue. With the ratios of patients to nurses getting  
19 higher the time is ripe for this settlement.

20 11. I think WSNA has done good job of keeping members of the bargaining unit  
21 up to date on this issue. I received an email and a flyer over the weekend regarding the  
22 settlement.

23 I attended the January 13<sup>th</sup> Unity Dinner, where we discussed the rest break lawsuit  
24 and the problems of the lack of rest breaks.

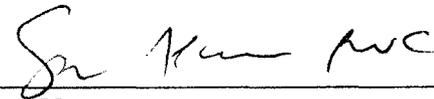
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**Declaration of Susan Hanser - 2**  
Case No. 10-2-32896-3 SEA

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

A-075

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing statements are true and correct.

3 SIGNED at Kirkland Washington, this 17<sup>th</sup> day of February, 2011.  
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7 Susan Hanser

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**Declaration of Susan Hanser - 3**  
Case No. 10-2-32896-3 SEA

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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HONORABLE LAURA GENE MIDDAUGH

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

DECLARATION OF DARLA  
MIHOVILICH

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

I, Darla Mihovilich, declare and state as follows:

1. I am employed as a registered nurse ("RN") at Evergreen Hospital Medical Center ("Evergreen") and make the following statements based on my personal knowledge.

2. I have been an RN with Evergreen for about 15 years. I work in the PACU (Pre Anesthesia Care Unit).

3. PACU is staffed by RNs working shifts with staggered start times. PACU is not a 24 hour unit; at night and on weekends our unit has RNs on call. I work a day shift, from 5:30 am to 2 pm.

4. RNs in our unit nearly always get their rest and lunch breaks. In my opinion, our unit is usually appropriately staffed; unlike some other units, we often have float nurses who assist to relieve us for our rest and lunch breaks.

DECLARATION OF DARLA MIHOVILICH - 1  
Case No. 10-2-32896-3 SEA

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

1           5.     I have heard from coworkers that some units, like the Family Maternity Center,  
2 the ER, Medical/Surgical, OSNO (Orthopedics, Spine, Neurology and Oncology), Acute  
3 Rehabilitation, the Hospice Care Center, the ICU (Critical Care Unit), the Progressive Care  
4 Unit, the NICU, the Pediatrics Unit, and the Home Health Care RNs, the nurses do not  
5 regularly get their rest breaks.

6           6.     I have heard that some units, such as Critical Care, instruct their RNs to use the  
7 “buddy system” to get their rest breaks. That means that they expect an RN to tell his or her  
8 “buddy” RN to cover their patients, in addition to the buddy RN’s own patients, while that  
9 RN takes a rest break. I have concerns about this system because some nurses, such as the  
10 ones in OSNO, may be assigned to 6 patients each, and if 6 patients to one nurse has been  
11 deemed safe, it seems like it would be unsafe for one nurse to go on break and leave another  
12 nurse with 12 patients to care for, which would exceed the current staffing ratios.

13           7.     Evergreen’s computerized time system is called Laborworks; in that system I  
14 am able to note if I did not get a lunch break during a shift, then a supervisor has to ok it in  
15 the system. I have heard that nurses also have to fill out a lengthy form if they miss a lunch  
16 break. Missed rest breaks, on the other hand, can’t be recorded in the Laborworks system.

17           8.     I participated in the mediated settlement discussions between WSNA and  
18 Evergreen Hospital on January 31, 2010. I had worked an on call night shift in the surgery  
19 recovery room the night before.

20           9.     Prior to the settlement discussions, I had participated in a unit dinner meeting  
21 to discuss the rest break lawsuit and retaliation concerns. One of the issues that the nurses  
22 spoke about (about 50 or so attended) was pressure felt not to take needed rest breaks because  
23 the obligation was on them to find coverage; some also talked about being accused by  
24 management of mismanaging their time if they don’t take their rest breaks. This doesn’t  
25 happen in my unit, because there Evergreen uses the float system so there is another qualified  
26 RN to cover my duties while I go on break. It also works because we use a staggered

DECLARATION OF DARLA MIHOVLICH - 2  
Case No. 10-2-32896-3 SEA

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

1 schedule, and because of the type of population of patients we care for (at any time we each  
2 have up to two patients in our care; each one is in our unit for about an hour).

3 10. One of the issues during the mediation was how Evergreen would assure that  
4 nurses actually got their rest breaks. This is what is important to nurses – we want to be able  
5 to take rest breaks so that we can remain alert and error-free when on duty with our patients.  
6 Sometimes, it is simply impossible to get a rest break due to patient needs. In the settlement,  
7 Evergreen promised to pay the higher overtime rate for any missed rest break that results in a  
8 nurse working past her scheduled shift end time. My hope is, and I know it is also WSNA's  
9 hope, that this will help ensure that Evergreen provides nurses with rest breaks.

10 11. At the settlement meeting, I was part of the discussion about what to settle for  
11 in terms of money. I don't think nurses were expecting any big payout. Even though some  
12 units, like mine, generally get their rest breaks, while others, like the ER, seem to usually not  
13 get rest breaks, the fact that Evergreen failed to keep any records of missed rest breaks means  
14 that about \$300 per person based on the hours they worked seemed like as fair a way to  
15 distribute the settlement as possible, and considering Evergreen's commitments to resolve the  
16 problem going forward.

17 12. My understanding, and what has been explained to the nurses at Evergreen by  
18 representatives from WSNA and its attorneys, is that any nurse who does not want to waive  
19 individual claims for back pay can simply mail the check back to Evergreen and opt out of  
20 this settlement.

21 13. I feel like WSNA was trying to look out for our best interests and I think that  
22 WSNA will follow through with enforcing the settlement. I think that this settlement is as fair  
23 as it can be given the situation. I think WSNA has done a good job of keeping members up to  
24 date on this issue using emails, meetings, and mailings.

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DECLARATION OF DARLA MTHOVILICH - 3  
Case No. 10-2-32896-3 SEA

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

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Bothell, Washington, this 12<sup>th</sup> day of February, 2011.

Darla Mihovilich  
Darla Mihovilich

DECLARATION OF DARLA MIHOVILICH - 4  
Case No. 10-2-32896-3 SEA

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

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**HONORABLE LAURA GENE MIDDAUGH**

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

**DECLARATION OF JOHN  
SINCOCK**

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

John Sincock declares and states as follows:

- 1. I am employed as a registered nurse (“RN”) at Evergreen Hospital Medical Center (“Evergreen”) and make the following statements based on my personal knowledge.
- 2. I have been an RN since 1992. My employment at Evergreen began in 2002 in the Oncology Department, which was reorganized in 2004 into the Orthopedics, Spine, Neurology & Oncology (“OSNO”) Department. I work in the Oncology section of the OSNO Department, which is located on the 6<sup>th</sup> floor of the Hospital. The rest of the department is on the 7<sup>th</sup> floor.

**Declaration of John Sincock - 1**  
Case No. 10-2-32896-3 SEA

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1           3.       Oncology is staffed by about 25 RNs working various shifts and a mix of part-  
2 time and full-time. I work day shift, 7:00 a.m. to 3:30 p.m.

3           4.       Oncology patients are more complex than most orthopedic surgical patients.  
4 They have multiple system problems and extensive medical histories. Some require  
5 chemotherapy administration. A nurse has to spend extra time teaching a new chemotherapy  
6 patient about the agent before administering it, and then has to stay with the patient in case  
7 there is an allergic reaction. There are also added duties for these patients because they need  
8 pre-meds—sometimes intravenously. This necessitates checking the medications from the  
9 pharmacy, reviewing doctor's orders and dosage requirements, in addition to administering  
10 the medication.

11          5.       Until October of this year, each shift in Oncology was staffed with four RNs  
12 and one nursing technician ("tech"), with one RN assigned to four patients. In October the  
13 Hospital adopted what it called a "new model of care" for our department and changed the  
14 staffing to three RNs and two techs per shift, with each RN assigned to five to six patients,  
15 and the two techs covering 16 beds. In the new system, techs are assigned to take vital signs,  
16 a duty previously carried out by RNs for all patients twice a shift. Even with this change, the  
17 increased patient load per nurse has increased our workload from 25 to 50 percent. Under  
18 the old model, there was a cap of three patients per nurse if a patient was receiving a new  
19 chemo agent for the first time; now there is no cap. Electronic charting has added to the  
20 workload per patient. Most of the time I can only get the charting done for one patient  
21 during the shift, and have to work overtime to accomplish the rest of my charting. All of the  
22 nurses on my shift work from one-half to two hours after their shift in order to complete their  
23 work.

24          6.       When we had four nurses on the floor, nurses were paired up to cover each  
25 other for meal breaks. This buddy system was usually included on the assignment sheet  
26

**Declaration of John Sincock - 2**  
Case No. 10-2-32896-3 SEA

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A-082

1 which assigned nurses to patients and was distributed daily. This pairing does not work with  
2 three nurses per shift. Now I have to find another nurse to cover my patients so I can take a  
3 meal break. I have to make sure nothing complicated will be going on with any of my  
4 patients during that time. Most days I take my meal break, but frequently it may not be until  
5 2:00 or 2:30 p.m., an hour or so before the end of my shift. The charge nurse usually makes  
6 sure that nurses take their meal break. About once every six weeks or so I miss a meal break.

7 7. Missed meal breaks are recorded by entering a special code in our  
8 computerized time system, Laborworkx. We are also required to fill out a form explaining  
9 the reason for missing the meal break (or for working any overtime) and have it signed by the  
10 charge nurse. The Hospital pays nurses for a missed meal break, and if that means time  
11 worked for the day is over eight hours, the payrate is time and one-half. This shows up on  
12 my paycheck as overtime worked but is not identified specifically as a missed meal break.

13 8. As with meal breaks, in order to take a 15-minute rest break I need to find  
14 another nurse cover my patients. Once or twice a day, I cover for other nurses so they can  
15 take breaks. The covering nurse watches the call lights for the nurse on break and attends to  
16 patients' needs for medications or use of the bathroom.

17 9. There is no system for scheduling rest breaks; I just wait until there is a lull  
18 and try and find a nurse to cover for me. There is no procedure for recording rest breaks that  
19 are taken or missed. The Hospital does not pay nurses for missed rest breaks.

20 10. Most of the time I take my first rest break. This is important to me because I  
21 know I very possibly may not get my lunch break until as late as 2:00 p.m., seven hours after  
22 my shift begins. Even so, I probably miss the first break about 30 percent of the time. This  
23 usually occurs when morning medications (from 8:00 a.m. to 10:00 a.m.) take longer than  
24 usual and it gets too late to take a break before the next round of medications, other  
25 scheduled duties, and then patient lunches, which can arrive anytime between 12 noon and  
26

**Declaration of John Sincock - 3**  
Case No. 10-2-32896-3 SEA

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A-083

1 1:00 p.m. Nurses need to be present for patient lunches, especially if they have diabetic  
2 patients who have insulin requirements. A nurse might have as many as three diabetic  
3 patients, or potentially all five or six could be.

4 11. When I take a rest break, I leave the floor and go to the break room. I am not  
5 required to carry my cell phone, but I always do, so that the nurse covering my patients can  
6 call me if needed. About a third of the time I will get a call from the covering nurse, or  
7 another staff member (HUC or charge nurse), with a question about my patients.

8 12. I would say half of the nurses on my shift take a morning break; the others  
9 don't even try. Some have told me it's not fair for me to take a break when they are unable  
10 to. Taking rest breaks is much more difficult now that we are assigned five patients. Some  
11 nurses don't take rest breaks because they know it will mean working more overtime at the  
12 end of the shift. Others find it difficult to leave their patients. I wouldn't leave my patients  
13 to take a rest break if I felt they were not safe.

14 13. I never take a second rest break during my shift. This is true for the other  
15 nurses in my unit as well. The charge nurse is aware that no one takes an afternoon rest  
16 break. There is no time to take a second rest break when lunch is taken at 2:00 p.m. or 2:30  
17 p.m. At 3:00 p.m. the evening shift arrives to take report, and our shift ends at 3:30 p.m.  
18 After the shift ends we all work overtime to complete our day's charting. Previously, before  
19 the change in our patient load, we probably worked 15 minutes' overtime to complete our  
20 work. Taking meal and rest breaks and covering breaks for others eventually means working  
21 more overtime at the end of the day. The only way to remedy the situation would be to have  
22 more staffing and fewer patients assigned per nurse.

23 14. I rarely have downtime during my shift to take an "intermittent" break. Even  
24 taking a bathroom break can be difficult. Occasionally I might have a few minutes at the  
25 nurses' station when I can make a personal phone call. I don't consider these rare intervals a  
26

**Declaration of John Sincock - 4**  
Case No. 10-2-32896-3 SEA

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A-084

1 rest break. The purpose of a rest break is to refresh, and this is not refreshing. And I am still  
2 on duty watching for call lights.

3 15. I don't recall receiving any communications from management regarding  
4 taking rest breaks. The first day the "new model" was implemented in our department, I  
5 asked the charge nurse to cover my patients so I could take a break. A manager who was  
6 present told me I could do that this one time, but I shouldn't get in the habit of asking the  
7 charge nurse to cover for me. I have been told by charge nurses that it is not fair for me to  
8 take a break when others can't get theirs. There is a clear policy that nurses should take a  
9 meal break or document why they are unable to.

10 16. When nurses miss breaks they get worn down and eventually get sick more  
11 frequently. We feel overworked and morale goes down. Nurses can be too tired to pay  
12 proper attention to their charting and some data may not get entered. Nurse fatigue can also  
13 result in instructions not getting conveyed accurately to the incoming shift. All of these  
14 things can compromise patient safety.

15 17. I think that the settlement agreement between WSNA and Evergreen in this  
16 case is fair, and I am pleased with it overall. My one reservation is that I will have to wait to  
17 see how the new procedures to ensure that we get our rest breaks will work once they are put  
18 into practice.

19 18. I am surprised at how quickly WSNA was able to settle this issue; I expected  
20 it to take much longer.

21 19. I think WSNA has done a decent job of keeping members of the bargaining  
22 unit up to date on this issue.

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26 **Declaration of John Sincock - 5**  
Case No. 10-2-32896-3 SEA

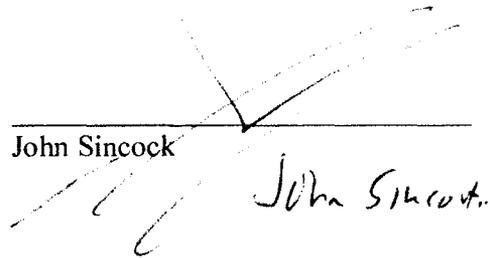
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Kirkland Washington, this 15<sup>th</sup> day of February, 2011.

  
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John Sincock

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**HONORABLE LAURA GENE MIDDAUGH**

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

**DECLARATION OF KAREN  
AZIZ KETNER**

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Karen Aziz Ketner declares and states as follows:

1. I am employed as a registered nurse (“RN”) at Evergreen Hospital Medical Center (“Evergreen”) and make the following statements based on my personal knowledge.

2. I have been an RN since 1998; my employment at Evergreen began in 2001. I work in the Comprehensive Procedure Center (CPC). There are about 14 RNs in our unit. I work a day shift, from 9:00 a.m. to 5:30 p.m.

3. In CPC we have a mobile team, we service inpatients with gastrointestinal issues, and we do outpatient care. We infuse medications, blood, fluids – everything except chemotherapy. The work our unit does touches the whole hospital.

**Declaration of Karen Aziz Ketner - 1**  
Case No. 10-2-32896-3 SEA

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4. In my unit everyone pretty much always gets their rest and meal breaks, because we have 1 to 2 float nurses to give breaks. On the rare occasion one of us does not get a break, but that usually only happens when it is extremely busy. When that happens the charge nurse is aware of it based on the daily assignment sheet.

5. As local unit chair, I have heard from other nurses in our bargaining unit that in some other units at Evergreen, such as the ER, Critical Care, and Home Health nurses have a hard time getting their rest breaks.

6. Missed meal breaks are recorded by entering a special code in our computerized time system, Laborworks. We can't put in for a missed rest break on this system.

7. When I take a rest break, I am allowed to leave the unit. I am not required to bring a cell phone or pager with me on my breaks.

8. In our unit we never have taken intermittent breaks.

9. I don't recall ever seeing a rest break policy from Evergreen.

10. When nurses miss their rest breaks there is a profound impact on critical thinking, nursing judgment and patient safety.

11. I think that the settlement agreement between WSNA and Evergreen in this case is reasonable and fair. WSNA was very objective in their representation of our bargaining unit

12. I think this case was settled in a very timely manner.

13. I think WSNA has done an excellent job of keeping members of the bargaining unit up to date on this issue through mailings, email communication, and updates in meetings.

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**Declaration of Karen Aziz Ketner - 2**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Kirkland Washington, this 17<sup>th</sup> day of February, 2011.

Karen Aziz Ketner  
Karen Aziz Ketner

**Declaration of Karen Aziz Ketner - 3**  
Case No. 10-2-32896-3 SEA

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A-089

HONORABLE LAURA GENE MIDDAUGH

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

**DECLARATION OF LINDA  
ALFORD**

v.

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Linda Alford declares and states as follows:

1. I am employed as a registered nurse (“RN”) at Evergreen Hospital Medical Center (“Evergreen”) and make the following statements based on my personal knowledge.
2. I have been an RN for about 12 years; I have been with Evergreen for about 6 and a half years. I work in PCU (Progressive Care Unit), but for most of my time with Evergreen I worked in OSNO (Ortho Spine Neuro and Oncology) in the silver tower. There are about 12 RNs in PCU on my shift. In OSNO when I was there, there were about 14 RNs on my shift. I work a night shift now, from 7:00 p.m. to 7:00 a.m.
3. In PCU I deal with high acuity cardiac and stroke patients that are being monitored.

**Declaration of Linda Alford - 1**  
Case No. 10-2-32896-3 SEA

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1           4.     In PCU we pretty regularly get our rest and meal breaks, but in OSNO, I  
2 almost never got a rest break, and when I was charge nurse in OSNO I hardly got my meal or  
3 rest breaks mainly because of the sheer amount of work the nurses have in that unit. In  
4 OSNO there was a lot of pressure on the charge nurse to make sure people took their breaks,  
5 but between the charge nurse duties and resolving other issues that would come up, it was  
6 often almost impossible to make sure everyone got breaks. When I was in OSNO they were  
7 starting to use the buddy system, but nurses didn't feel safe taking a break and leaving  
8 another nurse with double the amount of patients.

9           5.     When I take breaks now I am not often interrupted. In OSNO, on the  
10 occasions that I did get a break, sometimes I would eat my lunch while I charted because  
11 there was so much to do.

12           6.     Missed meal breaks are recorded by entering it into the computerized time  
13 system. We aren't able to put in for a missed rest break on this system.

14           7.     In CPU and in OSNO we haven't taken intermittent breaks.

15           8.     When nurses miss their rest breaks it causes anxiety; you can tell when a nurse  
16 hasn't taken breaks, they are flustered and have a hard time focusing. It compromises your  
17 effectiveness, and your ability to rationalize and to see the big picture.

18           9.     I think that the settlement agreement between WSNA and Evergreen in this  
19 case is good, and that the changes this settlement will make at Evergreen will help staff  
20 morale. Given the circumstances, I think WSNA did the best that they could representing  
21 our bargaining unit in this issue.

22           10.    I think WSNA has done a good job of keeping members of the bargaining unit  
23 up to date on this issue.

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26           **Declaration of Linda Alford - 2**  
Case No. 10-2-32896-3 SEA

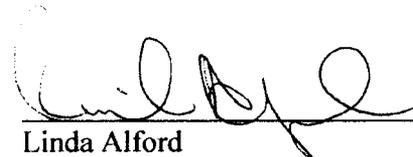
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Kirkland Washington, this 17 day of February, 2011.

  
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Linda Alford

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HONORABLE LAURA GENE MIDDAUGH

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

DECLARATION OF  
GERRIANNE NICHOLLS

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Gerrienne Nicholls declares and states as follows:

1. I am employed as a registered nurse ("RN") at Evergreen Hospital Medical Center ("Evergreen") and make the following statements based on my personal knowledge.

2. I became an RN in 1996. I started my employment as a staff nurse at Evergreen in September 2006.

3. I work in the Oncology unit. I am a nationally certified Oncology nurse, (RN,OCN) I am also nationally certified to administer chemotherapy. I work day shift, 7:00 a.m. to 3:30 p.m. My position is .6 FTE. My shift is a stable 2 week cycle. The first week I work Wednesday, Friday, Saturday and then Sunday, Thursday and Friday into the second week.

**Declaration of Gerrienne Nicholls - 1**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
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A-093

1           4.     The Oncology unit takes care of very sick cancer patients who require  
2 extensive medical care. In addition to providing post-operative and medical care, Oncology  
3 RNs who are certified to administer chemotherapy, provide chemotherapy for acute in-  
4 patient and out-patient populations at Evergreen Hospital. Some oncology patients require  
5 blood transfusions. The nurse to patient ratio used to be 4 to 1. It is now 5 to 1 or 6 to 1.

6           5.     There is no system in place for scheduling rest breaks in my unit. I ask  
7 another nurse if they can watch my patients while I take a rest break.

8           6.     When I take a rest break, I bring my phone with me. I am almost always  
9 interrupted during my rest break.

10          7.     I am able to take a morning rest break about 20% of the time. I never have an  
11 opportunity to take an afternoon break. Usually, it is just too busy to take a rest break. There  
12 is always more work than you have time to do. If you take rest breaks, you can't complete  
13 your charting without working overtime. If you work too much overtime, your supervisor  
14 criticizes you for not getting your work done. Some nurses clock out and finish charting "off  
15 the clock".

16          8.     Without rest breaks RNs are overly tired, more stressed, have less mental  
17 acuity, and are not able to take care of their nutritional needs.

18          9.     There is no way to report missed rest breaks, so I don't get paid for my missed  
19 rest breaks.

20          10.    I think that the settlement agreement between WSNA and Evergreen in this  
21 case is absolutely fair. Recently, everything WSNA has done for the RNs is positive. They  
22 do a good job of representing the bargaining unit. I was surprised how fast WSNA was able  
23 to settle this issue. I am concerned, though, that Evergreen will not make the staffing  
24 changes necessary for RNs to get their rest breaks.

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**Declaration of Gerrienne Nicholls - 2**  
Case No. 10-2-32896-3 SEA

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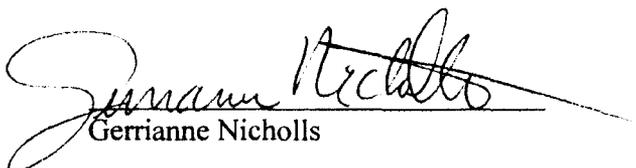
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11. I received emails and flyers that WSNA sent to keep me up to date on the lawsuit.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Kirkland Washington, this 17th day of February, 2011.

  
Gerianne Nicholls

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**HONORABLE LAURA GENE MIDDAUGH**

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

**NO. 10-2-32896-3**

v.

**DECLARATION OF  
CHRISTEN BINGAMAN**

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Christen Bingaman declares and states as follows:

1. I am employed as a registered nurse (“RN”) at Evergreen Hospital Medical Center (“Evergreen”) and make the following statements based on my personal knowledge.
2. I have been a staff nurse at Evergreen since I became an RN in September 1998.
3. I work in Progressive Care Unit (PCU). I work days, on 12 hour shifts. I work on a 2 week rotating schedule. One week I work Sunday, Wednesday and Thursday, the following week I work Tuesday, Friday and Saturday. My position is .9 FTE.

**Declaration of Christen Bingaman - 1**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
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1           4.     All PCU patients are acute care. They are all on heart monitors. The patients  
2 are suffering from heart failure, heart attacks, strokes and other very serious issues. Our  
3 patient to nurse ratio is supposed to be 3 to 1, but a lot of times it is 4 to 1.

4           5.     In PCU, there isn't a system to schedule or take rest breaks. If I feel I am able  
5 to take a rest break, I ask another nurse to cover for me.

6           6.     I bring my phone with me when I take a rest break. I often get interrupted  
7 during my rest break to answer questions or report on a patient. If it is an urgent situation, I  
8 go back to the unit.

9           7.     I take my first and second rest breaks about 50% of the time. I almost never  
10 take a third rest break. Sometimes it is just too busy to take a rest break. The acuity of the  
11 patients in PCU makes it very difficult, if not impossible, to hand off patients to another  
12 nurse who also has patients with the same acuity.

13          8.     Nurses who don't get to take rest breaks become fatigued and could make  
14 mistakes that affect patient care.

15          9.     The process in place to report missed rest breaks, is to let the charge nurse  
16 know if you are not getting your breaks in a timely manner. In the past I have tried to report  
17 missed rest breaks to a supervisor. I was told that I am only paid for missed meal breaks, not  
18 missed rest breaks and that I should have taken my rest break.

19          10.    I was surprised and glad when I heard about the settlement agreement between  
20 WSNA and Evergreen. The settlement sounds fair to me. WSNA does a good job  
21 representing me and my coworkers. I am impressed with how quickly WSNA was able to  
22 reach a settlement.

23          11.    WSNA has kept me up to date on the lawsuit. I have received flyers in the  
24 mail over the course of the lawsuit.

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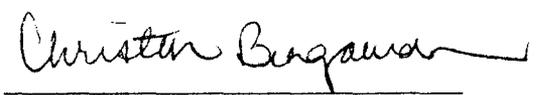
**Declaration of Christen Bingaman - 2**  
Case No. 10-2-32896-3 SEA

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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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Kirkland Washington, this 17<sup>th</sup> day of February, 2011.

  
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Christen Bingaman

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**HONORABLE LAURA GENE MIDDAUGH**

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

**DECLARATION OF ERICA  
HALL**

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Erica Hall declares and states as follows:

1. I am employed as a registered nurse ("RN") at Evergreen Hospital Medical Center ("Evergreen") and make the following statements based on my personal knowledge.

2. I started my employment as a staff nurse at Evergreen when I became an RN three and a half years ago. I have been a charge nurse for about the last 2 years.

3. I work in the Oncology unit. I work day shift, 7:00 a.m. to 3:30 p.m. My position is .6 FTE.

4. Oncology patients generally range from moderate to high acuity. They have multiple problems and many various medical issues. We administer chemotherapy to some patients which requires the nurse to closely monitor the patient's condition.

**Declaration of Erica Hall - 1**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT LLP  
11 WEST MERCER STREET SUITE 400  
SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828 **A-099**

1           5.       There is not a system for taking breaks in my unit. We just ask another nurse  
2 to cover for us. This "system" does not always work.

3           6.       When I take a rest break or meal break I bring my phone with me. I don't  
4 believe it is possible for the nurse covering for my break to be responsible for my cell phone  
5 and their phone and do their work at the same time.

6           7.       I take a morning rest break about 50% of the time. I take an afternoon break  
7 about 25% of the time. Sometimes it is just too busy to take a rest break. Sometimes, I  
8 would rather get my charting done than take a break. I don't like to have to stay late in order  
9 to finish my work.

10          8.       Rest breaks are necessary because nurses need to be able to rest and refresh  
11 their minds. Rest breaks relieve stress.

12          9.       There is no process in place to report missed rest breaks, therefore I do not  
13 report or get paid for my missed rest breaks.

14          10.      I think that the settlement agreement between WSNA and Evergreen in this  
15 case sounds fair. WSNA has done a good job representing me and the bargaining unit. I am  
16 pleased with how fast WSNA was able to settle this issue. I believe Evergreen has to be held  
17 accountable to ensure RNs get their rest breaks.

18          11.      WSNA has kept me up to date on this issue. I received emails and flyers over  
19 the course of the lawsuit.

20          12.      I attended the January 13<sup>th</sup> Unity Dinner where we discussed the rest break  
21 lawsuit and I thought it was awesome.

22 //

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**Declaration of Erica Hall - 2**  
**Case No. 10-2-32896-3 SEA**

LAW OFFICES OF  
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18 WEST MERCER STREET SUITE 400  
SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828 **A-100**

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at L.R. Stewart Washington, this 17<sup>th</sup> day of February, 2011.

Erica Hall  
Erica Hall

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HONORABLE LAURA GENE MIDDGAUGH

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

DECLARATION OF SUE  
DUNLAP

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Sue Dunlap declares and states as follows:

1. I am employed as a registered nurse ("RN") at Evergreen Hospital Medical Center ("Evergreen") and make the following statements based on my personal knowledge.

2. I have been an RN since 1985. I have been employed by Evergreen as a Home Health RN since August, 2002.

3. I work in Home Health Services. I work day shift, 8:00 a.m. to 5:30 p.m. My position is 1 FTE. I work Monday through Friday for three weeks then the fourth week I work Saturday and have a day off during the week.

4. Each morning I receive a list of patients to see that day. I call the patients and schedule the appointments. I am allowed an hour and 15 minutes for travel, patient care and

**Declaration of Sue Dunlap - 1**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD KGLITZIN & LAVITT LLP  
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SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828

1 documentation for each repeat patient. If I am assigned a new patient I am allowed 3 hours  
2 for travel, patient care and documentation.

3 5. There is no system for taking breaks in my department. I am supposed to be  
4 able to take rest breaks in between seeing patients, but it never works out that way. I feel like  
5 I am constantly trying to catch up with my scheduled appointments. If a patient's care takes  
6 longer than expected or I get stuck in traffic, I have to make up the time in order to be on  
7 time for my other appointments. I was told by a supervisor, that if I stopped for gas and to  
8 use the bathroom, that counted as a rest break.

9 6. I do not take any rest breaks.

10 7. Home Health nurses do not clock in and out like RNs who work in the  
11 hospital. We record each patient appointment on a computerized calendar system. There is  
12 no process in place to report missed rest breaks or missed meal breaks. I do not get paid for  
13 missed rest breaks or missed meal breaks.

14 8. I think that the settlement agreement between WSNA and Evergreen in this  
15 case sounds wonderful. I am happy with the way WSNA represents me an my coworkers. I  
16 am ecstastic with the time frame in which WSNA was able to settle this issue. This is a real  
17 win for RNs.

18 9. WSNA has kept me informed on this issue. I received emails and flyers with  
19 updates and heard about the settlement by email from WSNA.

20 I declare under penalty of perjury under the laws of the State of Washington that the  
21 foregoing statements are true and correct.

22 SIGNED at Seale, WA Washington, this 17th day of February, 2011.

23  
24  
25 Sue Dunlap  
Sue Dunlap

26 **Declaration of Sue Dunlap - 2**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT LLP  
18 WEST MERCER STREET SUITE 400  
SEATTLE, WASHINGTON 98119-5971  
(206) 285-2828

HONORABLE LAURA GENE MIDDGAUGH

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

DECLARATION OF AUDREY  
CLARK

v.

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Audrey Clark declares and states as follows:

1. I am employed as a registered nurse ("RN") at Evergreen Hospital Medical Center ("Evergreen") and make the following statements based on my personal knowledge.

2. I have been an RN at Evergreen for over 12 years. I work in the Family Maternity Center ("FMC"). I generally care for labor, post-partum, or anti-partum patients, and I also work as a triage nurse in the department.

3. I work a 12 hour day shift in FMC, from 7:00 a.m. to 7:30 p.m.

4. When I started at Evergreen we seemed to always get our breaks in FMC. Within the last few years, however, it seems like my coworkers and I have missed our rest breaks more frequently. I have heard that the 3 p.m. to 11 p.m. shift nurses have problems

Declaration of Audrey Clark - 1  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT LLP  
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SEATTLE, WASHINGTON 98119-3971

1 getting their breaks regularly in FMC. I would say I usually get my rest and meal breaks, but  
2 when I do miss a break I am not paid for that time and the attitude of management is that it's  
3 up to me to make sure I get my breaks.

4 5. Labor nurses have a 1 to 1 patient ratio, so we usually get our breaks, unless  
5 there is a critical patient and we don't have enough staff available to cover for breaks. Post-  
6 partum nurses currently use the buddy system to take rest breaks.

7 6. When I do miss a rest break, I report it to the charge nurse. They will usually  
8 just say "sorry," but that's about it.

9 7. We don't take intermittent breaks in my unit; we take 15 minute block breaks.  
10 If I am interrupted during my rest break with a call, I usually send the call to the nurse who is  
11 covering for me; otherwise, I will tell management and try to take the remainder of my break  
12 later on in my shift.

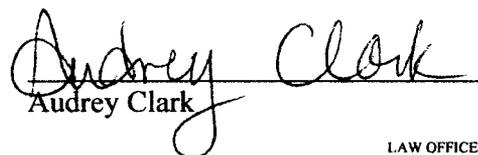
13 8. I believe that rest breaks are important for nurses. I think that a nurse's clarity  
14 can be diminished if she or he misses their rest breaks.

15 9. I think that the settlement agreement between WSNA and Evergreen in this  
16 case is great, and that it is fair for all parties. I trust that WSNA made this settlement  
17 agreement with our best interests in mind, and I trust WSNA to represent my coworkers and I  
18 on this issue and in general.

19 10. I think that WSNA was able to reach this settlement remarkably quickly.

20 I declare under penalty of perjury under the laws of the State of Washington that the  
21 foregoing statements are true and correct.

22  
23 SIGNED at Kirkland Washington, this 17<sup>th</sup> day of February, 2011.

24  
25   
26 Audrey Clark

**Declaration of Audrey Clark - 2**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT LLP  
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**HONORABLE LAURA GENE MIDDAUGH**

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

**DECLARATION OF LINDA  
MORRILL STERRITT**

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Linda Morrill Sterritt declares and states as follows:

1. I am employed as a registered nurse ("RN") at Evergreen Hospital Medical Center ("Evergreen") and make the following statements based on my personal knowledge.
2. My employment at Evergreen began in September 1997. I have been an RN since 1994. I work in the Emergency Room ("ER").
3. There are approximately 14 RNs working in the ER on my shift. I work evening shift, 2:00 p.m. to 2:30 a.m. My position is a .9 FTE.
4. ER patients vary greatly in acuity. Generally, the nurse to patient ratio in the ER is 1 to 4 in the higher acuity area and 1 to 7 in the lower acuity area.

**Declaration of Linda Morrillsterritt - 1**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
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SEATTLE, WASHINGTON 98119-3971

1           5.       I am not aware of any policy for taking breaks in my unit. When I want to  
2 take a rest break or meal break there must be a float RN on staff in order for me to get my  
3 break. A float RN is normally scheduled, but if there is a sick call that float RN would not be  
4 available and therefore I would not get my rest or meal breaks.

5           6.       When I take a rest or meal break I do not bring my phone with me.

6           7.       I almost always get my meal break and I get one 15-minute break about 25%  
7 of the time. If I take my first 15 minute break before lunch then I often do not get my lunch.

8           8.       In regards to how missed rest and meal breaks are recorded, the charge nurse  
9 has a sheet with the rest and meal breaks written out that we are suppose to put an X over the  
10 applicable time increment if we get a rest or meal break. The RN covering for another RN  
11 can also mark it off. This paper time-tracking system is used consistently.

12          9.       I have not been paid for my missed rest breaks.

13          10.      If I miss my meal break I let the charge nurse know and have not had a  
14 problem getting paid for my missed meal break.

15          11.      An RN today and their working environment is very stressful and challenging.  
16 Nurses not getting their rest and meal breaks is like running a marathon without getting a  
17 water break, you are just mentally and physically exhausted.

18          12.      I support this settlement and hope the hospital follows through. There must be  
19 policies in place to ensure RNs get their rest and meal breaks.

20          13.      I think that the settlement agreement between WSNA and Evergreen in this  
21 case is fair and that WSNA has fairly represented me and my coworkers.

22          14.      I think WSNA has done good job of keeping members of the bargaining unit  
23 up to date on this issue.

24                I attended the January 13<sup>th</sup> Unity Dinner, where we discussed the rest break lawsuit  
25 and the problems of the lack of rest breaks.

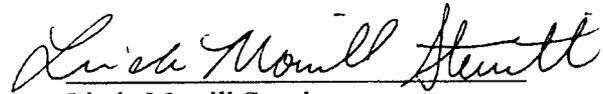
26                **Declaration of Linda Morrillsterritt - 2**  
                  Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT LLP  
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SEATTLE, WASHINGTON 98119-3971

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Kirkland Washington, this 17<sup>th</sup> day of February, 2011.

  
Linda Morrill Sterritt

**Declaration of Linda Morrillsterritt - 3**  
Case No. 10-2-32896-3 SEA

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

HONORABLE LAURA GENE MIDDGAUGH

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

WASHINGTON STATE NURSES  
ASSOCIATION,

Plaintiff,

NO. 10-2-32896-3

v.

**DECLARATION OF CYNTHIA  
COLLETTE IN SUPPORT OF  
JOINT MOTINO TO APPROVE  
SETTLEMENT**

KING COUNTY PUBLIC HOSPITAL  
DISTRICT NO. 2 d/b/a EVERGREEN  
HOSPITAL MEDICAL CENTER,

Defendant.

Cynthia Collette declares and states as follows:

1. I am employed as a registered nurse ("RN") at Evergreen Hospital Medical Center ("Evergreen") and make the following statements based on my personal knowledge.

2. My employment at Evergreen began in July 1999. I have been an RN since 1978. I work in the Maternal-Fetal Medicine ("MFM").

3. There are approximately 5 RNs working in the MFM department during my shift. I work day shift, 8:30 a.m. to 5:00 p.m., but can also work from 7:30 a.m. to 6:00 p.m.

My position is a .7 FTE.

4. MFM patients are all high risk diagnosis pregnant patients; therefore it's a high acuity department.

**Declaration of Cynthia Collette - 1**  
Case No. 10-2-32896-3 SEA

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

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5. I am not aware of any formal policy for taking rest or meal breaks in my department. My rest or meal break usually occurs when our clinic shuts down between 12:00 p.m. and 1:00 p.m. If I miss my rest or meal break I try to make it up at another time, but do not always get that chance.

6. When I take a rest or meal break I do bring my pager with me.

7. If I miss a rest break there is no way to record that missed rest break, but I can record a missed meal break in Laborworkx.

8. I have not been paid for my missed rest breaks.

9. Missed rest and meal breaks have a negative impact on both the RN and patient. When I do not get my breaks I am mentally and physically exhausted, therefore making it not possible for me to give my patients 100%.

10. I think that the settlement agreement between WSNA and Evergreen is fair and that WSNA has fairly represented me and my coworkers.

11. I think WSNA has done good job of keeping members of the bargaining unit up to date on this issue.

12. I attended the January 13<sup>th</sup> Unity Dinner, where we discussed the rest break lawsuit and the problems of the lack of rest breaks.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

SIGNED at Kirkland Washington, this 17<sup>th</sup> day of February, 2011.

  
Cynthia Collette

**Declaration of Cynthia Collette - 2**  
Case No. 10-2-32896-3 SEA

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT LLP  
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SEATTLE, WASHINGTON 98119-3971