

1 EXPEDITE
2 No hearing set
3 Hearing is set
4 Date: _____
Time: _____
Judge/Calendar: _____

5
6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 FOR THE COUNTY OF THURSTON

8 SYLVIA LIANG, MANUEL BRITO, and
9 SHAZIA ANWAR, individually and on behalf
of all those similarly situated,

NO. 20-2-02506-34

COMPLAINT

10 Plaintiffs,

11 v.

12 STATE OF WASHINGTON; WASHINGTON
13 STATE DEPARTMENT OF SOCIAL AND
14 HEALTH SERVICES, a Washington State
Agency; CHERYL STRANGE, in her official
capacity as the Secretary of the Washington
State Department of Social and Health Services,

15 Defendants.
16

17 **SUMMARY OF THE ACTION**

18 1. Plaintiffs Sylvia Liang, Manuel Brito, and Shazia Anwar are individual providers
19 (IPs) who provide in-home personal care services to individuals who are elderly, functionally
20 disabled, or otherwise eligible to receive Medicaid-funded in-home personal care services. The
21 services IPs provide include assisting clients with activities of daily living (ADLs) and
22 instrumental activities of daily living (IADLs), as those terms are defined in WAC 388-106, such
23 as eating, dressing, using the toilet, preparing meals, essential shopping, and housework.

24 2. Plaintiffs and other IPs contract with Defendant Washington State Department of

1 Social and Human Services (DSHS or Department) to provide these services to individuals who
2 qualify for in-home personal care services under the various Medicaid programs that the
3 Department administers. Before an IP can be paid for providing in-home personal care services to
4 a client, the IP must sign a fixed, standardized Client Service Contract authored and prepared by
5 DSHS (IP Contract). The IP Contracts require the IPs to provide the services and tasks included in
6 the client’s plan of care and to do so in a way that protects and promotes the client’s health, safety,
7 and well-being.

8 3. The Department conducts a Comprehensive Assessment Reporting Evaluation
9 (CARE) assessment to determine, among other things, an individual’s eligibility for long-term
10 care programs, the number of hours of in-home care an individual is authorized to receive, and the
11 client’s plan of care. In conducting the assessment, the Department evaluates the client’s ability to
12 care for themselves, including the client’s ability to perform ADLs and IADLs. Based on the
13 results of that assessment, the Department calculates the base number of hours of in-home care the
14 client is authorized to receive. The Department also uses the assessment to develop a care plan for
15 the client, which instructs IPs to perform specific, enumerated tasks on the client’s behalf during
16 the life of the plan.

17 4. Since at least 2014, DSHS has “adjusted,” or reduced, the number of base hours a
18 client is authorized to receive where DSHS has deemed that a “shared benefit” existed with
19 respect to an IP’s provision of in-home personal care services—either because DSHS determined
20 that the IP and the client shared the benefit of the IP performing one or more IADLs, or that two
21 or more clients living in the same household shared the benefit of an IP performing one or more
22 IADLs on behalf of one or more of those clients. The Department accomplishes the downward
23 adjustment to a client’s base hours due to “shared benefit” by coding a client’s “status” in the
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1 assessment for the relevant IADL as “shared benefit.” DSHS regulations assign a numeric value to
2 IADLs coded with a status of “shared benefit.” But for the “shared benefit” status coding, a client
3 would be authorized for a higher number of in-home care hours.

4 5. Defendants authorize IPs for payment in the DSHS payment system for a certain
5 number of hours of in-home personal care services for a given client. By DSHS regulation and
6 contract, the number of hours that DSHS authorizes an IP to be paid for performing in-home
7 personal care services for a client cannot exceed the number of in-home care hours the client is
8 authorized to receive as a benefit. DSHS pays IPs only for those in-home personal care hours it
9 authorizes to the client and to the IP as part of the client’s care plan.

10 6. IP Contracts are typically in effect for four years. CARE assessments are
11 conducted at least annually. Thus, DSHS typically prepares a client’s care plan *after* the IP signs
12 the IP contract obligating them to provide the services enumerated in that plan.

13 7. By reducing the number of in-home care hours a client is authorized to receive—
14 and consequently the number of hours for which an IP is paid—while requiring IPs to perform the
15 tasks set forth in the care plan, including the IADLs adjusted for “shared benefit,” DSHS has
16 violated the state Minimum Wage Act (MWA), RCW 49.46 et seq., which requires that IPs be
17 paid for all hours worked and prohibits employers from compensating employees other than with
18 money.

19 8. Defendants’ MWA violations were knowing and done with the intent to deprive
20 IPs of pay for all hours worked. Defendants therefore violated Washington’s Wage Rebate Act
21 (WRA), RCW 49.52 et seq.

22 9. By requiring IPs to sign IP Contracts obligating them to provide authorized
23 personal care services as set forth in the client’s plans of care, by limiting the number of paid
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1 hours to the number “authorized” by Defendants, and by reducing the number of authorized hours
2 because of “shared benefit,” DSHS has breached its duty of good faith and fair dealing to the IPs
3 inherent in those contracts.

4 10. Through this action, Plaintiffs seek damages on behalf of themselves and all other
5 similarly situated IPs for Defendants’ violations of the MWA and WRA and for breach of its duty
6 of good faith and fair dealing inherent in the IP Contracts stemming from DSHS’s application of
7 its “shared benefit” rules, policies, and procedures.

8 **PARTIES, JURISDICTION, AND VENUE**

9 **A. The Plaintiffs**

10 11. Sylvia Liang is a resident of King County and is an individual provider within the
11 meaning of RCW 74.39A.240 who has contracted with DSHS to provide in-home personal care
12 services to DSHS clients. She has worked as an IP since approximately 2006. During this time,
13 Ms. Liang has provided in-home personal care services as an IP to one or more DSHS clients.
14 DSHS has reduced the number of authorized hours of in-home personal care for one or more of
15 Ms. Liang’s clients, and consequently Ms. Liang’s number of paid hours of work performing in-
16 home personal care hours, because of Defendants’ “shared benefit” rules, policies, and practices.

17 12. Manuel Brito is a resident of Skagit County and is an IP who has contracted with
18 DSHS to provide in-home personal care services to DSHS clients. He has worked as an IP since
19 approximately 2007. During this time, Mr. Brito has provided in-home personal care services as
20 an IP to one or more DSHS clients. DSHS has reduced the number of authorized hours of in-home
21 personal care for one or more of Mr. Brito’s clients, and consequently Mr. Brito’s number of paid
22 hours of work performing in-home personal care hours, because of Defendants’ “shared benefit”
23 rules, policies, and practices.

24 13. Shazia Anwar is a resident of King County and is an IP who has contracted with

1 DSHS to provide in-home personal care services to DSHS clients. Between 2012 and the present,
2 Ms. Anwar has provided in-home personal care services as an IP to DSHS clients. DSHS has
3 reduced the number of authorized hours of in-home personal care for one or more of Ms. Anwar's
4 clients, and consequently Ms. Anwar's number of paid hours of work performing in-home
5 personal care hours, because of Defendants' "shared benefit" rules, policies, and practices.

6 14. Through this action, Plaintiffs seek damages on behalf of a proposed CR 23 class
7 comprised of:

8 all current and former IPs who contracted with DSHS to provide personal care
9 services for a client whose in-home care hours were reduced because DSHS,
10 through its agents, coded the client in a CARE assessment as having a status of
11 "shared benefit" with respect to one or more instrumental activity of daily living
(IADL).

11 **B. The Defendants**

12 15. Defendant State of Washington is the State and may be sued as provided under
13 law. It is expressly obligated under RCW 49.46.800 to "pay individual providers, as defined in
14 RCW 74.39A.240, in accordance with the minimum wage, overtime, and paid sick leave
15 requirements of this chapter," i.e., RCW 49.46.

16 16. Defendant Washington State Department of Social and Health Services (DSHS or
17 Department) is the State agency responsible for administering personal care services under the
18 State's various Medicaid programs. DSHS has a duty to authorize and pay for all needed, covered
19 personal care services for all eligible Medicaid beneficiaries in Washington State. DSHS is
20 headquartered at Office Building 2, 14th and Jefferson, Olympia, Washington, 98504.

21 17. Defendant Cheryl Strange is the Secretary of DSHS. She is responsible for
22 administering personal care services through the various Medicaid programs administered by
23 DSHS. SEIU 775 sues Ms. Strange in her official capacity. All acts alleged to be done by
24 Defendant Cheryl Strange as Secretary of DSHS were done under color of state law.

1 **C. Jurisdiction and Venue**

2 18. Jurisdiction of this Court arises pursuant to RCW 2.08.010 and RCW 4.92.010.

3 19. Venue lies in this Court pursuant to RCW 4.92.010(5) and the forum selection
4 clause in the IP Contracts in which the duty of good faith and fair dealing inheres.

5 **STATEMENT OF FACTS**

6 **A. The Provision Of Personal Care Services By IPs To DSHS Clients And DSHS’s**
7 **CARE Tool**

8 20. IPs provide “personal care services,” as defined in WAC 388-106-0010 (“personal
9 care services” or “services”), to clients of DSHS. With the exception of certain “client
10 participation,” DSHS pays for the services the IPs provide to the clients. IPs assist clients with
11 tasks such as toileting, bathing, meal preparation, and household chores, allowing clients to live
12 in the community instead of in costly state-run institutions.

13 21. DSHS conducts “Comprehensive Assessment Reporting Evaluation” (“CARE”)
14 assessments (WAC 388-106-0050 to -0075) and classifications (WAC 388-106-0080 to -0145).
15 For every Medicaid beneficiary for whom DSHS provides in-home personal care services (client
16 or beneficiary), DSHS completes a CARE assessment. The CARE tool is an evaluation of the
17 client’s personal care needs based on an in-person interview in the client’s home or residence.
18 Through the CARE tool, DSHS determines the maximum number of in-home personal care
19 hours a client will receive.

20 22. The purposes of the CARE assessment include to: a) determine eligibility for
21 long-term care programs; b) identify a client’s strengths, limitations, goals, and preferences; c)
22 evaluate a client’s living situation and environment; d) evaluate a client’s physical health and
23 functional and cognitive abilities; e) determine the availability of informal supports, shared
24 benefits, and other non-departmental paid resources; f) determine the need for intervention; g)

1 determine the need for case management activities; h) determine a client’s classification group
2 that will set the client’s number of hours of in-home care; i) determine the need for referrals; and
3 j) develop a plan of care.

4 23. The tool is designed to assess a client’s ability to perform ADLs using self-
5 performance, support provided, status, and assistance available, and IADLs using self-
6 performance, status, and assistance available.

7 24. The plan of care is subject to state and federal Medicaid requirements.

8 25. DSHS determines the amount of long-term care services clients may receive in
9 their own home through a classification system. The Department classifies clients depending on
10 their cognitive performance, their clinical complexity, whether they have mood or behavioral
11 challenges, and the amount of assistance they need performing activities of daily living. Using
12 CARE, DSHS classifies clients into one of 17 groups for in-home care, each with an associated
13 number of “base hours”: **A** (low [22 base hours], medium [47 base hours], high [59 base hours]);
14 **B** (low [39 base hours], medium [69 base hours], medium-high [84 base hours], high [129 base
15 hours]); **C** (low [73 base hours], medium [115 base hours], medium-high [158 base hours], high
16 [176 base hours]); **D** (low [120 base hours], medium [168 base hours], medium-high [215 base
17 hours], high [260 base hours]); **E** (medium [327 base hours], high [393 base hours]).

18 26. The Department adjusts these assigned base hours to account for informal support,
19 shared benefit, age-appropriate functioning, and other assistance that the Department deems
20 available to meet an individual’s needs for in-home personal care services.

21 27. The client’s plan of care, which consists of assessment details and a service
22 summary generated by CARE, WAC 388-106-0010 (“plan of care”), sets forth the tasks the IP is
23 responsible for performing for the client. The plan itself contains a list of tasks assigned to the IP
24

1 and instructions on how those tasks should be completed. DSHS ensures that IPs actually
2 perform the tasks identified in the plan of care through various quality control measures such as
3 random client interviews and surveys.

4 **B. Shared Benefit**

5 28. DSHS reduces clients' base hours to account for what the Department describes as
6 "shared benefit." Specifically, DSHS reduces a client's base hours for certain IADLs (meal
7 preparation, ordinary housework, or essential shopping) if it determines that the IP receives a
8 "benefit" as an incidental by-product of the IP having provided meal preparation, ordinary
9 housework, or essential shopping for the client or if there are two or more clients in a multi-client
10 household who DSHS determines benefit from the same IADL task(s) being performed.
11 Specifically, DSHS's rules, policies, and practices define "shared benefit" to mean "(a) A client
12 and their paid caregiver both share in the benefit of an IADL task being performed; or (b) Two or
13 more clients in a multiclient household benefit from the same IADL task being performed." In
14 other words, if an IP prepares a meal for a client and the IP eats some of that meal, according to
15 DSHS's application of its shared benefit rule, policies, and practices, the IP "benefits" from
16 performing the task of meal preparation, and DSHS will not pay the IP for that work. And, if an
17 IP prepares a meal for two clients in a multi-client household, DSHS adjusts the hours of both
18 clients downward such that the IP is not paid for that work under either care plan. In the vast
19 majority of instances, the shared benefit adjustment is accomplished when the assessor codes an
20 IADL task in the CARE tool as "shared benefit" and assigns an amount of "assistance available"
21 as a shared benefit to that task.

22 29. DSHS calculates shared benefit adjustments according to a formula. Applying that
23 formula, a client whose needs were completely unmet by informal support or shared benefit
24 would have no adjustment at all. In contrast, a client whose needs were deemed completely met

1 by shared benefit would have her hours dropped to 1/3 her base. Finally, a client whose needs
2 were partially met through shared benefit would have her needs fall to somewhere between 1/3 of
3 base hours and base hours, depending on how much available assistance the Department
4 attributed to shared benefit.

5 30. As part of the CARE assessment, DSHS may add hours onto the number of base
6 hours if the client uses off-site laundry facilities, lives more than 45 minutes from essential
7 services, or burns wood as their sole source of heat. Where add-on hours apply, DSHS may
8 reduce these “add-on hours” if it deems that the Shared Benefit rule applies. DSHS accomplishes
9 such reductions with “shared benefit” coding for the statuses of housekeeping, essential
10 shopping, and wood supply, respectively.

11 31. At all times when DSHS’s “shared benefit” rules, policies, and practices have
12 been in effect, IPs have performed and continue to perform work for which they are not paid by
13 virtue of DSHS deeming their work as providing them or their clients a “shared benefit.”

14 32. DSHS has begun formal rule-making to eliminate “shared benefit” as a status and
15 as a basis to adjust client’s hours, and therefore the number of hours an IP is paid for working,
16 downward, effective March 1, 2021.

17 **C. IP Contracts**

18 33. When a client is authorized to receive in-home personal care services from an IP
19 and has chosen an IP qualified for payment, DSHS enters into a contractual relationship with that
20 IP whereby DSHS promises to compensate the IP on an hourly basis for the personal care hours
21 provided by the IP to the client up to the number of hours authorized for payment, and the IP
22 agrees to provide all services called for in the client’s plan of care or “Service Plan.” The IP
23 contracts do not specify the number of hours that will be authorized for payment to an IP.
24 Instead, they require IPs to agree that DSHS will pay only for authorized services in the client’s

1 Service Plan and that their monthly payment will not exceed the amount authorized in the
2 Service Plan. The Service Plans are plans of care developed as a result of the CARE assessments
3 described above. Consequently, key terms of the IP Contracts such as tasks to be performed and
4 the number of authorized hours are left undefined until an applicable CARE assessment is
5 completed.

6 34. DSHS’s shared benefit rules, policies, and practices result in DSHS reducing the
7 number of Department-paid base hours under the client’s Service Plan because the IP providing
8 the services, or each client in a multi-client household, receives some incidental “shared benefit”
9 from having provided those services to the client. DSHS’s shared benefit rules, policies, and
10 practices consequently reduce the number of Department-paid hours under the client’s Service
11 Plan. These policies and practices result in uncompensated hours worked by an IP. The result is
12 that IPs are not paid for all of the work they perform—work that the Department expects them to
13 perform under their clients’ Service Plans.

14 35. DSHS’s policies and practices for conducting the CARE assessments—which
15 formulate the clients’ need for in-home personal care services, determine the clients’ base hours,
16 and dictate what supports by the IP will constitute “shared benefit”—expressly confer on DSHS
17 the discretion to determine whether an IP or a client will be considered to derive a “shared
18 benefit” from the work performed by the IP.

19 36. IP Contracts are typically in effect for four years. CARE assessments are
20 conducted at least annually. Thus, DSHS typically prepares a client’s care plan *after* the IP signs
21 the IP contract obligating them to provide the services enumerated in that plan. DSHS typically
22 develops the Service Plans *after* DSHS enters into the IP Contracts with the IPs. The Department
23 thus sets the number of authorized hours in the Service Plan after the Department has already
24

1 entered into the IP Contract in which the Department limits paid hours to the number of
2 authorized hours. The IP Contract gives DSHS wide discretion to determine the quantity of hours
3 to be authorized and the types of services for which providers will be compensated. Under its
4 policies and practices, the Department reduces the number of authorized service hours to account
5 for the purported shared benefit of the services provided by the IP to the client *after* it has signed
6 the IP Contract with DSHS promising to pay only for authorized hours.

7 **D. DSHS Is Obligated To Pay Minimum Wage And Overtime Wages To IPs For Hours**
8 **Worked Under The Clients' Service Plans.**

9 37. Effective January 1, 2017, the MWA has provided, in pertinent part, that “the state
10 shall pay individual providers, as defined in RCW 74.39A.240, in accordance with the minimum
11 wage, overtime, and paid sick leave requirements of this chapter [MWA].” RCW 49.46.800(2).
12 Thus, any failure by DSHS subsequent to January 1, 2017, to pay IPs for all hours worked
13 providing services or tasks called for by their clients' Service Plans expressly violates the MWA.

14 **CLASS ACTION ALLEGATIONS**

15 38. During the Class Period, Plaintiffs and similarly situated IPs provided in-home
16 personal care services to clients whom DSHS, through its agents, coded as having shared benefit
17 for one or more IADL(s).

18 39. As a result of DSHS applying its shared benefit rules, policies, and procedures,
19 Plaintiffs and similarly situated IPs performed compensable work for which they were not paid.

20 40. The action is properly maintainable under CR 23(a) and (b)(3).

21 41. It is impracticable to join all class members as named plaintiffs because, on
22 information and belief, the class contains tens of thousands of IPs. This action meets the
23 requirements of CR 23(a)(1).
24

1 42. Under CR 23(a)(2), there are questions of law and fact common to the class
2 including, but not limited to:

- 3 a. Whether all personal care services DSHS expects IPs to provide to DSHS
4 clients pursuant to the clients' care plans are compensable work under the
5 MWA;
- 6 b. Whether Defendants' shared benefit scheme is adequate to ensure that IPs are
7 compensated for all wages to which they are entitled under the law;
- 8 c. Whether DSHS can limit its liability to pay IPs for all compensable work by
9 promulgating WAC 388-71-0515(11), under which it refuses to pay IPs for
10 services it deems a "shared benefit";
- 11 d. Whether DSHS's (or its agent's) determination that IPs or clients share in the
12 benefit of personal care services provided to DSHS clients by IPs make that
13 work non-compensable;
- 14 e. Whether IPs' contracts with DSHS incorporate the terms of the care plan by
15 reference and thus require IPs to perform the services set forth therein;
- 16 f. Whether DSHS's practice of executing contracts with IPs obligating them to
17 perform certain personal care tasks without specifying the tasks or the number
18 of hours DSHS will authorize for those services only for DSHS to later reduce
19 the IPs' authorized hours for shared benefit constitutes a breach of the duty of
20 good faith and fair dealing;
- 21 g. Whether the number of hours adjusted for shared benefit, as determined by
22 shared benefit status coding and as reflected in DSHS's data, is a proper
23 measure of damages;
- 24 h. Whether DSHS, in implementing its Shared Benefit rules, policies, and
practices, willfully failed and refused to pay IPs at least minimum wages for
all hours worked, subjecting it to liability for double damages, attorneys' fees,
and costs under RCW 49.52, et seq.;
- i. Whether, after accounting for hours adjusted for shared benefit, IPs are
entitled to time-and-a-half the regular rate of pay for hours worked over forty
in a week;
- j. Whether IPs are entitled to prejudgment interest on the monetary damages.

43. The named Plaintiffs will fairly and adequately protect the interests of the class
members as required by CR 23(a)(4).

44. Pursuant to CR 23(b)(3), class certification is appropriate here because common
questions of law or fact common to members of the class predominate over any questions

1 affecting only individual members, and because a class action is superior to other available
2 methods for the fair and efficient adjudication of the controversy.

3 CAUSES OF ACTION

4 CLAIM I - CLAIM FOR FAILURE TO PAY MINIMUM WAGES AND OVERTIME 5 WAGES IN VIOLATION OF THE WASHINGTON STATE MINIMUM WAGE ACT, 6 RCW 49.46

7 45. Plaintiffs re-allege paragraphs 1 through 44 above.

8 46. Effective January 1, 2017, the State was expressly obligated under RCW
9 49.46.800 to pay IPs in accordance with the minimum wage and overtime requirements of RCW
10 49.46. Under the MWA regulations, “hours worked” means “all hours during which the
11 employee is authorized or required by the employer to be on duty on the employer’s premises or
12 at a prescribed work place.” The time spent by IPs performing housework, meal preparation,
13 shopping, and wood supply, which were expected, presumed, and determined to be necessary
14 prior to the adjustment under Defendants’ shared benefit rules, policies, and practices, constitutes
15 “hours worked” under Washington law. Under the MWA, since January 1, 2017, all such time
16 constitutes compensable work time by the IPs that must be paid.

17 47. Under the MWA, the Department cannot lawfully compensate IPs in other than
18 legal tender of the United States or checks on banks convertible into cash on demand at full face
19 value, subject to deductions charges, or allowances as may be permitted by rules of the director
20 of the Department of Labor & Industries. In other words, the Department cannot pay the IPs for
21 hours worked by in-kind “benefits.”

22 48. Under the MWA, the Department cannot lawfully discriminate in the payment of
23 wages based on household or family status.

24 49. At all times in which its shared benefit rules, policies, and practices were in effect,
DSHS has failed and refused to pay IPs for all hours worked.

1 50. DSHS's past and continuing failure to pay IPs for hours worked but not paid due
2 to its shared benefit regulations, policies, and practices violates RCW 49.46.020, RCW
3 49.46.090(1), RCW 49.46.130(1), and RCW 49.46.800.

4 51. As a result of Defendants' acts and omissions, the class members have been
5 damaged in amounts not yet calculated.

6 **CLAIM II – CLAIM FOR WILLFUL WAGE VIOLATIONS OF THE WAGE REBATE**
7 **ACT, RCW 49.52**

8 52. Plaintiffs re-allege paragraphs 1 through 51 above.

9 53. By applying its shared benefit rules, policies and procedures, DSHS caused IPs to
10 perform compensable work for which they were not paid. Consequently, DSHS has willfully, and
11 with the intent to deprive IPs of their wages, failed and refused to pay IPs for all hours worked as
12 is required by the MWA.

13 54. In failing to pay wages to their employees as alleged above, DSHS acted willfully
14 and with the intent to deprive IPs of these wages, and therefore violated and continues to violate
15 RCW 49.52.050(2).

16 55. By refusing to pay IPs wages owed to them under the MWA because the IPs or
17 their clients ostensibly received a "shared benefit" because of the IPs' performance of personal
18 care tasks, DSHS unlawfully rebated IPs' wages in violation of RCW 49.52.050(1).

19 56. As a result of Defendants' acts and omissions, the class members have been
20 damaged in amounts not yet calculated.

21 **CLAIM III - CLAIM FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR**
22 **DEALING**

23 57. Plaintiffs re-allege paragraphs 1 through 56 above.

24 58. There is in every contract an implied duty of good faith and fair dealing that
obligates the parties to cooperate with each other so that each may obtain the full benefit of

1 performance. The duty of good faith and fair dealing arises when the contract gives one party
2 discretionary authority to determine a contract term.

3 59. In the IP Contracts between the IPs and DSHS, DSHS has a specific contractual
4 obligation to determine and pay providers for hours authorized in their clients' Service Plans.

5 60. DSHS typically prepares the Service Plans—in other words, it determines the
6 number of compensated hours for each IP—*after* the contracts are formed with the providers and
7 *after* the providers begin performing. At the time that DSHS and an IP execute an IP Contract,
8 neither DSHS nor the IP knows what services will be needed by the clients or how much will be
9 paid to the providers. The IP Contract thus gives DSHS discretion to set future contract terms,
10 namely, the quantity of hours and the types of services for which providers will be compensated.

11 61. Because the IP Contracts give DSHS wide discretion to determine after the IP
12 Contracts are finalized the quantity of hours to be authorized and the types of services for which
13 providers will be compensated, a duty of good faith and fair dealing attaches to DSHS's setting
14 and performing those future contract terms.

15 62. DSHS exercises its discretion to create the CARE process that produces the
16 Service Plans, and that reduces the number of hours those plans authorize for IPs based on
17 "shared benefit." DSHS's actions in doing so are governed by an implied covenant of good faith
18 and fair dealing.

19 63. DSHS violated that covenant when it exercised its discretion to designate work
20 done by the IP that would otherwise be paid as a "shared benefit," effectively converting
21 compensated work hours into unpaid volunteer time. When an IP provides a client the necessary
22 services called for in the client's Service Plan, those hours of work cannot be deemed "shared
23 benefit" by DSHS in order to reduce the economic burden on the Department for providing
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1 personal care services. To so characterize those hours conflicts with the Department’s obligations
2 to perform the IP Contracts in good faith and not act in a way that deprives the other party to the
3 contract—here, the IP—the benefit of the bargain and the IP’s reasonable expectations under the
4 IP Contract.

5 64. In implementing its shared benefit rules, policies, and practices, DSHS used its
6 discretion to implement a rule that eliminated a certain amount of compensation for hours
7 worked by IPs where the Department determined the IPs received some incidental benefit, or two
8 or more clients in a multi-client household received some shared benefit, from the IP having
9 provided personal care services to the DSHS clients. DSHS’s determinations that the IP receives
10 a “shared benefit” typically occur after the IP Contracts are executed and operate to reduce paid
11 hours for the IPs, even though DSHS knows, directs, and assumes that the IPs work those hours.
12 This is a violation of the implied covenant of good faith and fair dealing.

13 65. Among the contractual terms at issue in this claim is the determination of the
14 hours of care for which each client is eligible or authorized and, consequently, the maximum
15 number of hours for which each IP could be authorized for payment DSHS had discretion in its
16 performance of those terms because it created the CARE process that made those determinations.
17 DSHS had an implied duty of good faith and fair dealing in its performance of those terms.
18 DSHS violated that duty when it decided to reduce client’s authorized hours and the payments
19 for in-home care providers based on a determination that the performance of such services
20 resulted in a “shared benefit” to the IP or to their clients.

21 66. Class members were substantially harmed by DSHS’s breach of the duty of good
22 faith and fair dealing, because they were denied wages for work performed.

23 /////
24

1 **REQUEST FOR RELIEF**

2 THEREFORE, Plaintiffs requests that this Court:

- 3 1. Award damages to the individual plaintiffs and class members for lost wages in
4 amounts to be proven at trial, including wages owed pursuant to RCW 49.46.020, RCW
5 49.46.090, RCW 49.46.800, RCW 49.52.050, and DSHS's breach of the duty of good faith and
6 fair dealing, and wages equal to one and one-half the otherwise applicable regular rate of pay,
7 owed per RCW 49.46.130(1);
- 8 2. Award exemplary damages in amounts equal to double the wages due to the class
9 members from January 1, 2017, pursuant to RCW 49.52.070;
- 10 3. Award attorneys' fees and costs pursuant to RCW 49.46.090 and RCW 49.52.070
11 and all other applicable statutes;
- 12 4. Award prejudgment interest; and
- 13 5. Award such other and further relief as the Court deems just and proper.

14 DATED this 23rd day of December, 2020.

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