



### **Jurisdiction and Venue**

3. This Court has jurisdiction of this case. 29 U.S.C. §§ 216(b), 217 and 28 U.S.C. §§ 1331 and 1345.

4. This Court is the proper venue because all or a substantial part of the events or omissions giving rise to these allegations occurred in this judicial district.

### **Defendants**

5. Defendant Urgent Dental Center Avon LLC d/b/a Urgent Dental Center is an Indiana limited liability company with a principal place of business at 8252 Rockville Road Indianapolis, Indiana 46214 where it operates a dentist office and provides various dental services.

6. Defendant Joseph Shank is an individual and a resident of Indiana. Mr. Shank is the Human Resources (“HR”) Coordinator at Urgent Dental.

7. At all relevant times, Mr. Shank has actively managed and supervised Urgent Dental’s operations and its employees, including firing employees, and enforcing employee disciplinary procedures.

8. Mr. Shank has acted directly or indirectly in Urgent Dental’s interests with respect to its employees. Mr. Shank is therefore an “employer” under the FLSA. 29 U.S.C. § 203(d).

9. At all relevant times, Defendants engaged in business in Marion County, Indiana within this Court’s jurisdiction.

### **The FLSA Applies to Defendants**

10. Urgent Dental is an “enterprise” under the FLSA due to its related activities performed through unified operation or common control and for a common business purpose. 29 U.S.C. § 203(r).

11. Urgent Dental is an “enterprise engaged in commerce” under the FLSA, because it had (i) two or more employees who are engaged in or produced goods for commerce; and (ii) an annual gross volume of sales or business done greater than \$500,000 during the Investigation Period. 29 U.S.C. § 203(s)(1)(A).

### **FLSA 15(a)(3) Violations**

12. Defendants violated section 15(a)(3) of the FLSA that prohibits “any person” from “discharg[ing] or in any other manner discriminat[ing] against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter [8 of the Act], or has testified or is about to testify in any such proceeding.” 29 U.S.C. § 215(a)(3).

13. On or around October 2021, Ms. Ferguson began her employment at Urgent Dental as a business assistant.

14. On or around January 20, 2022, Ms. Ferguson made a complaint, via email, to Mr. Shank concerning unpaid overtime work. Ms. Ferguson advised Mr. Shank that she would contact the Wage and Hour Division if the overtime issue was not resolved. There were email exchanges back and forth between Mr. Shank and Ms. Ferguson regarding the payment of overtime hours.

15. On January 24, 2022, Ms. Ferguson contacted the Wage and Hour Division and filed a complaint related to her overtime pay at Urgent Dental.

16. On January 31, 2022, Mr. Shank issued a disciplinary write up to Ms. Ferguson for purportedly cursing in front of a patient. Ms. Ferguson denied this event occurred.

17. Beginning in February 2022, the Acting Secretary, through the Wage and Hour Division, began conducting an investigation into Defendants' compliance with the FLSA.

18. On or about February 14, 2022, the Wage and Hour Division contacted Urgent Dental and informed the company that it was conducting an investigation of Defendants relating to potential violations of the FLSA.

19. On February 21, 2022, Mr. Shank threatened to issue another disciplinary write up for Ms. Ferguson, due to an alleged dispute over a break and job duty Ms. Ferguson was assigned to complete that required her to leave the Urgent Dental office to make change for a patient. Mr. Shank eventually dismissed the disciplinary write up.

20. On or around March 4, 2022, Mr. Shank used unprofessional language when describing Ms. Ferguson to other employees. The other employees reported the incident to Ms. Ferguson.

21. On or about March 7, 2022, Ms. Ferguson made a written complaint to the owner of Urgent Dental, Dr. Rekha Chaudhari. The complaint was related to Mr. Shank's unprofessional comments about Ms. Ferguson to other employees. On March 9, 2022, Mr. Shank returned a short apology to Ms. Ferguson.

22. On March 14, 2022, Ms. Ferguson was terminated from her employment at Urgent Dental, effective immediately.

23. Beginning on or about January 20, 2022, and continuing through at least March 14, 2022, Defendants took numerous adverse employment actions against Ms. Ferguson who

inquired about overtime pay and whom Defendants believed had initiated and participated in the Acting Secretary's investigation. These actions included:

- a. Increasing the number of disciplinary write ups for Ms. Ferguson.
- b. Using unprofessional language when describing Ms. Ferguson to other employees.
- c. Terminating Ms. Ferguson's employment.

**COUNT ONE**

**(Violations of the Anti-Retaliation Provisions of the FLSA, 29 U.S.C. § 215(a)(3))**

24. The Acting Secretary incorporates by reference and re-alleges all allegations in this Complaint.

25. Defendants violated Section 15 of the FLSA, 29 U.S.C. § 215(a)(3), when they took adverse employment actions against Ms. Ferguson because of the employee's protected activities. Defendants unlawfully retaliated against Ms. Ferguson who inquired about overtime pay, initiated, was about to cooperate, or was perceived to be cooperating with the Acting Secretary's investigation.

26. Defendants' actions would dissuade a reasonable worker from engaging in protected activity, including filing complaints with the Acting Secretary or cooperating with an investigation of Defendants' employment practices.

**Prayer for Relief**

As a result of Defendants' repeated and willful FLSA violations, the Acting Secretary respectfully requests this Court enter an Order:

A. Permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those in active concert or participation with them, from violating Section 15(a)(3) of the FLSA, pursuant to 29 U.S.C. § 217, including specifically from taking any of the

following actions because an employee or former employee has engaged in, or is about to engage in, protected activity under the FLSA:

1. Terminating or threatening to terminate any employee;
2. Taking or threatening any legal action against any employee;
3. Creating any false pretext to discipline an employee;
4. Subjecting certain employees to break policies targeted at certain individual(s) as a condition of employment;
5. Blacklisting any employee or former employee;
6. Making any employee's working conditions less favorable, including by reducing or increasing any employee's hours of work or pay or assigning additional responsibilities; or
7. Interfering in any investigation of the Wage and Hour Division.

B. Finding Defendants liable for front pay, out-of-pocket costs, and punitive damages for unlawful retaliation, as well as any other legal or equitable relief as may be appropriate to effectuate the purposes of the FLSA's anti-retaliation provisions. 29 U.S.C. § 215(a)(3); 29 U.S.C. § 216(b).

C. Awarding costs and granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

**SEEMA NANDA**

Solicitor of Labor

**CHRISTINE Z. HERI**

Regional Solicitor

/s/Lydia J. Fakis

**LYDIA J. FAKLIS**

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of Labor*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Secretary's Complaint* and related attachments were served upon all parties in the above entitled and numbered cause by providing a copy via email with a read receipt requested:

**KATE G. ERDEL**

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Certified this 25th day of April 2023.

*/s/ Lydia J. Faklis* \_\_\_\_\_

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**Attorney**