

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

KIRSTEN JONES,)	
)	Cause No:
Plaintiff,)	
)	JURY TRIAL DEMANDED
vs.)	
)	
DR. SHAWN DAVAIE MOTLAGH,)	
DDS, PC d/b/a MERAMEC FAMILY)	
DENTISTRY)	
)	
Serve at:)	
Shawn Davaie Motlagh)	
1333 West Outer 21 Road)	
Arnold, Missouri 63010)	
)	
Defendant.)	
)	

**PETITION FOR VIOLATIONS OF THE MISSOURI MINIMUM WAGE LAW AND
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY**

Plaintiff Kirsten Jones brings this claim under the Missouri Minimum Wage Law (“MMWL”), Mo. Rev. Stat. § 290.500 *et seq.*, and under the common law of the State of Missouri, under the public policy exception to the employment at will doctrine for legal relief to redress the injuries done to her by Defendant. In support thereof, Plaintiff states:

GENERAL ALLEGATIONS

1. Plaintiff Kirsten Jones is a citizen of the State of Missouri and currently resides in the City of Saint Louis, Missouri.
2. Defendant Meramec Family Dentistry is a Missouri business located at 1333 West Outer 21 Road, Arnold, Missouri 63010.
3. At all relevant times to the allegations in this Petition, Defendant Dr. Shawn Davaie Motlagh, DDS, PC (“Dr. Davaie”) owned and operated Meramec Family Dentistry.

4. At all times relevant to the allegations in this Petition, Plaintiff was an employee within the meaning of Mo. Rev. Stat. § 290.500(3).

5. At all times relevant to the allegations in this Petition, Defendant was and is an employer within the meaning of Mo. Rev. Stat. § 290.500(4).

6. At all times relevant to the allegations in this Petition, Defendant was and is an health care provider within the meaning of Mo. Rev. Stat. § 191.900.1(7).

7. Venue in this Court is proper because the allegations that give rise to this Petition occurred in Jefferson County, Missouri.

FACTUAL ALLEGATIONS

8. Plaintiff was employed by Defendant Meramec Family Dentistry (“Meramec”) from November 2012 through her wrongful termination in September 2015.

9. When Plaintiff began working for Meramec, the practice was owned by Ozarks Family Dentistry, LLC, which eventually became Access Dental and Dentures, LLC.

10. Defendant Dr. Shawn Davaie Motlagh, DDS, PC (“Dr. Davaie”) purchased and assumed control of Meramec Family Dentistry (“Meramec”) in February 2015.

11. At all times relevant to this Petition, Plaintiff was employed by Defendant as an office manager. As an office manager, Plaintiff’s job duties included billing private insurance as well as medical assistance programs such as Missouri HealthNet (“MO Healthnet”).

12. Plaintiff was qualified for her position and performed her job duties in a good and competent manner.

13. During her employment, Plaintiff’s direct supervisors were Dr. Davaie and Christine Lewis.

14. As of January 2015, Plaintiff was making \$19.50 per hour and was paid time and a half for every hour she worked over forty in a workweek.

15. When Dr. Davaie took over the practice in February 2015, he told Plaintiff he could not afford to pay her overtime until more insurance payments came in.

16. Dr. Davaie raised Plaintiff's pay to approximately \$26.25 per hour, however, Plaintiff made \$2,100.00 every two week pay period regardless of how many hours she worked a week.

17. Plaintiff worked approximately sixty to seventy hours per workweek, but she was not paid overtime for every hour she worked over forty in a workweek, which is required by RSMo § 290.505.

18. In addition to the hours she worked in the office at Meramec, Plaintiff also worked from home after hours approximately fifteen to twenty-five hours a week.

19. In June 2015, Plaintiff told Dr. Davaie she was entitled to overtime for all the hours she worked over forty in a workweek. Dr. Davaie again responded that he could not afford to pay her overtime until the practice collected more money from MO Healthnet and private insurance claims.

20. In the summer of 2015, Plaintiff also became aware that some of the healthcare procedures performed by Dr. Davaie were misrepresented in the bills submitted to MO Healthnet and private insurance plans.

21. Specifically, Plaintiff became aware that Dr. Davaie submitted bills stating certain extractions required surgery when they did not in order to increase the reimbursement amount.

22. Plaintiff also became aware that Dr. Davaie claimed teeth on patients were decayed when no decay existed so that he could perform additional procedures. Such procedures allowed for further reimbursement from MO Healthnet and private insurance plans.

23. Dr. Davaie directed Plaintiff to submit bills containing the misrepresentations cited above.

24. Plaintiff informed Dr. Davaie that she was not comfortable submitting bills that misrepresented the procedures he performed.

25. Specifically, in May 2015, Plaintiff told Dr. Davaie she would not bill a patient's extractions as surgical because Plaintiff knew the extractions in question did not require surgery. Dr. Davaie told Plaintiff she did not have a dental degree and that she was not to question his practice. He told her if she continued to do so, she could find a new job.

26. In June 2015, Plaintiff had various discussions with Dr. Davie about the misrepresentations he was making in his bills and to his patients. Plaintiff talked with Dr. Davaie about his practice of adding procedures patients did not need when another patient cancelled an appointment in an attempt to meet the specific production amount allotted for the day. For instance, if a patient that was scheduled for four fillings canceled their appointment, the patient scheduled to come in later that day for three fillings would end up getting seven fillings whether they needed them or not. Plaintiff also talked to Dr. Davaie about his practice of submitting bills for procedures like Full Mouth Debridement (FMD) and Scaling and Root Planing (SRP), procedures that normally take hours over the course of several appointments, when he only spent fifteen minutes with the patient.

27. Dr. Davaie responded to Plaintiff's complaints with increasing hostility. He repeatedly told Plaintiff that she was not to question his expertise and told her such complaints would eventually lead to her termination.

28. Despite Plaintiff's objections, Dr. Davaie continued to submit bills that misrepresented the services he performed and continued to perform procedures on patients that the patients did not need in order to increase their bill.

29. At the end of June 2015, Jared Ellis, a third party and advisor to Meramec Family Dentistry, stopped by the office. He asked Plaintiff how things were going and noted Plaintiff and several members of the staff were visibly upset. Plaintiff told Mr. Ellis her concerns about Dr. Davaie's billing practices. She also told Mr. Ellis that neither Plaintiff nor the other members of staff were being paid correctly. Mr. Ellis told Plaintiff to e-mail him her concerns and told Plaintiff he would discuss them with Dr. Davaie.

30. On or about July 7, 2015, Plaintiff e-mailed Mr. Ellis as he requested and told him her concerns about Dr. Davaie's irregular billing activity. Plaintiff also informed Mr. Ellis that Plaintiff and other Meramec employees were not being paid overtime, which is required by RSMo § 290.505.

31. Mr. Ellis forwarded the July 7th email to Dr. Davaie.

32. On or around July 9th, Plaintiff spoke to Dr. Davaie about the concerns she raised in her e-mail to Mr. Ellis. During this conversation, Dr. Davaie told Plaintiff, "This is the type of shit that gets you fired."

33. On or about July 15, 2015, Dr. Davaie hired a new general manager, Christine Lewis.

34. Prior to July 15, 2015, Dr. Davaie indicated he intended to hire Ms. Lewis to assist with claim collections. However, after Ms. Lewis began working for Meramec, it was clear Dr. Davaie intended Ms. Lewis to be Plaintiff's replacement.

35. After Ms. Lewis began working for Meramec, Plaintiff was required to train her on most of Plaintiff's job duties and was told she now reported to Ms. Lewis.

36. Ms. Lewis and Dr. Davaie told Plaintiff these changes were being made in order to lighten Plaintiff's workload. Ms. Lewis told Plaintiff she was there to address many of the concerns Plaintiff raised with Dr. Davaie regarding improper billing practices and unpaid overtime.

37. Ms. Lewis asked Plaintiff to forward her the e-mail Plaintiff sent to Mr. Ellis and Dr. Davaie. Plaintiff complied with Ms. Lewis' request on July 22, 2015 and informed Ms. Lewis that Plaintiff was still not being paid properly. Shortly after Plaintiff sent Ms. Lewis the e-mail, Plaintiff and Ms. Lewis discussed Plaintiff's concerns over the phone. Ms. Lewis told Plaintiff she would address Plaintiff's concerns with Dr. Davaie.

38. From July 23, 2015 to July 30, 2015, Plaintiff was on vacation and not present in the office. Even though Plaintiff was on vacation, she performed work on behalf of Meramec remotely.

39. Prior to July 2015, Plaintiff was well-regarded by her supervisors and co-workers and had never been written-up. However, on July 31, 2015, the first day Plaintiff was back in the office after discussing her concerns about Dr. Davaie's billing practices and failure to pay overtime with Ms. Lewis, Plaintiff was written-up for "having a negative attitude" and for taking "trips outside of her lunch hour."

40. In fact, the “trips” Plaintiff took “outside of her lunch hour” were done at the request of Dr. Davaie who often sent Plaintiff on errands outside of the office to pick up office plants, supplies and lunch for Meramec employees. Dr. Davaie also required Plaintiff to conduct personal errands on his behalf such as waiting at his apartment to supervise a furniture delivery company assemble Dr. Davaie’s newly purchased bedroom and living room furniture.

41. When Plaintiff disputed Ms. Lewis’ characterization of Plaintiff’s “trips outside of the office,” Ms. Lewis told Plaintiff she had a bad attitude and needed to work on being a “team player.”

42. After Plaintiff was written up, Dr. Davaie and Ms. Lewis created an even more hostile work environment. Both Dr. Davaie and Ms. Lewis began nit-picking Plaintiff’s work and yelling and even cussing at her when she indicated she was not comfortable submitting certain bills because she did not believe they reflected the procedures Dr. Davaie performed.

43. Shortly thereafter, on September 8, 2015, Defendant terminated Plaintiff without cause.

**COUNT I: WRONGFUL TERMINATION IN VIOLATION OF MISSOURI PUBLIC
POLICY - RSMO § 191.905.1**

44. Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of her Petition.

45. Plaintiff entered in the performance of her duties in November 2012 and duly performed all the terms and conditions of her duties until September 8, 2015, at which time Defendant wrongfully discharged Plaintiff.

46. Plaintiff was ready, willing and able to continue in her position and to perform all the terms and conditions of that position.

47. The activities described in Paragraphs 20-28 are prohibited by Missouri Revised Statute §191.905.1.

48. Dr. Davaie is required to abide by RSMo §191.905.1 because he accepts reimbursement from a “medical assistance program” as defined by RSMo §191.900.1(9).

49. Just prior to her termination, Plaintiff reported Defendant’s multiple violations of RSMo §191.905.1 to her supervisors – Christine Lewis and Dr. Davaie himself.

50. In order to conceal his illegal conduct, Defendant created a false and pretextual reason to terminate Plaintiff.

51. Plaintiff’s termination violates the public policy of the State of Missouri in that Plaintiff was discharged because of her refusal to engage in illegal activity and in retaliation for reporting Defendant’s illegal conduct to her supervisors.

52. Plaintiff’s termination was in violation of the Missouri public policy, which prohibits at-will employees from being terminated for refusing to engage in and reporting conduct that violates Missouri and/or federal law and/or public policy.

53. As a result of her termination, Plaintiff has sustained lost wages and other benefits of employment, emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

54. Defendant’s conduct was outrageous because of its evil motive and reckless indifference to the rights of Plaintiff in wrongfully terminating her employment in violation of the public policy of the state of Missouri.

**COUNT II: WRONGFUL TERMINATION IN VIOLATION OF MISSOURI PUBLIC
POLICY - RSMO § 290.505**

55. Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of her Petition.

56. Defendant's failure to pay overtime is prohibited by Missouri Revised Statute § 290.505.

57. Just prior to her termination, Plaintiff reported Defendant's violation of RSMo §290.505. to her supervisors – Christine Lewis and Dr. Davaie himself.

58. In order to conceal his illegal conduct, Defendant created a false and pretextual reason to terminate Plaintiff.

59. Plaintiff's termination violates the public policy of the State of Missouri in that Plaintiff was discharged in retaliation for reporting Defendant's illegal conduct to her supervisors.

60. Plaintiff's termination was in violation of the Missouri public policy, which prohibits at-will employees from being terminated for refusing to engage in and reporting conduct that violates Missouri and/or federal law and/or public policy.

61. As a result of her termination, Plaintiff has sustained lost wages and other benefits of employment, emotional pain and suffering, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

62. Defendant's conduct was outrageous because of its evil motive and reckless indifference to the rights of Plaintiff in wrongfully terminating her employment in violation of the public policy of the state of Missouri.

COUNT III - VIOLATION OF THE MISSOURI MINIMUM WAGE LAW

63. Plaintiff hereby incorporates all previous paragraphs as if fully set forth herein.

64. At all relevant times, Plaintiff was an employee entitled to the rights, protections, and benefits provided under the MMWL, R.S.Mo. § 290.500, *et seq.*

65. At all relevant times, Defendant was an employer within the meaning of the MMWL.

66. Pursuant to the MMWL, employees are entitled to be paid at least minimum wage for all hours worked in each workweek, and also to be compensated at a rate of not less than one and one-half (1½) times the regular rate at which such employees are employed for all work performed in excess of forty (40) hours in a workweek.

67. Defendant, pursuant to his policy and practices, violated the MMWL by refusing to pay Plaintiff the overtime wages to which she is legally entitled.

68. Pursuant to R.S.Mo. § 290.527, Plaintiff seeks damages equal to all unpaid wages due within two (2) years preceding the filing of this Petition plus periods of equitable tolling, liquidated damages, costs, and reasonable attorneys' fees. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

COUNT IV – QUANTUM MERUIT

69. Plaintiff hereby incorporates all previous paragraphs as if fully set forth herein.

70. Plaintiff performed work, for which Defendant received a benefit, without receiving full compensation.

71. Defendant appreciated the fact of the benefit conferred upon it by Plaintiff.

72. The acceptance and retention of said benefit by Defendant is inequitable in light of the fact that Plaintiff was uncompensated and under-compensated for the benefits conferred upon Defendant as more fully described above.

73. The payment requested by Plaintiff for the benefits produced by her is based on customary and reasonable rates for such services or like services at the time and in the locality where the services were rendered.

74. Plaintiff seeks damages equal to all unpaid wages due within the five (5) years preceding the filing of this Petition plus periods of equitable tolling. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

COUNT V – UNJUST ENRICHMENT

75. Plaintiff hereby incorporates all previous paragraphs as if fully set forth herein.

76. Plaintiff performed work, for which Defendant received a benefit, without receiving full compensation.

77. Defendant appreciated the fact of the benefit conferred upon it by Plaintiff.

78. The acceptance and retention of said benefit by Defendant resulted in unjust enrichment in light of the fact that Plaintiff was uncompensated and under-compensated for the benefits conferred upon Defendant as more fully described above.

79. Plaintiff seeks damages equal to all unpaid wages due within the five (5) years preceding the filing of this Petition plus periods of equitable tolling. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court to enter judgment in her favor and against Defendant and thereafter:

A. Declare the conduct engaged in by Defendants to be in violation of Plaintiff's rights;

B. Award Plaintiff such damages as are fair and reasonable, including lost wages and other benefits of employment, compensatory damages, emotional distress damages, punitive damages, liquidated damages, pre and post judgment interest, front pay, all in an amount over \$25,000.00;

C. Restore Plaintiff to her rightful position of Office Manager with Defendant or, in lieu of reinstatement, order front salary and benefits for the period remaining until normal retirement;

D. Award Plaintiff equitable relief of back salary and fringe benefits up to the date of reinstatement and prejudgment interest for that entire period, or front salary and benefits accrual;

E. Award Plaintiff her costs and attorneys' fees; and

F. Grant such other relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues triable by a jury in the complaint.

Law Offices of Thomas E. Kennedy, III, L.C.

By: /s/ Sarah Jane Hunt

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