

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**TANYA BARNES and JENNIFER
LONDON, on behalf of themselves
and all similarly situated individuals,**

Plaintiffs,

v.

**CUMBERLAND PEDIATRIC
DENTISTRY AND ORTHODONTICS,
PLLC, CUMBERLAND PEDIATRIC
DENTISTRY AND ORTHODONTICS
OF COOKEVILLE, PLLC,
CUMBERLAND PEDIATRIC
DENTISTRY OF LAWRENCEBURG,
PLLC, CUMBERLAND
PEDIATRIC DENTISTRY AND
ORTHODONTICS OF
MURFREESBORO, PLLC, BRYAN
BYRNSIDE, JENNIFER HOUSE,
BRENT MILLER, JACK STALKER,
FELIX VINCENT, and PETER
WOJTKIEWICZ,**

Defendants.

Collective Action

No. _____

Judge _____

Jury Demand

COMPLAINT

Plaintiffs Tanya Barnes (“Barnes”) and Jennifer London (“London”)(“Plaintiffs”), on behalf of themselves and all other similarly situated individuals (the “Putative Class”), hereby file this Complaint against Defendants Cumberland Pediatric Dentistry and Orthodontics, PLLC (“CPDO”), Cumberland Pediatric Dentistry and Orthodontics of Cookeville, PLLC (“CPDOC”), Cumberland Pediatric Dentistry and Orthodontics of Lawrenceburg, PLLC (“CPDOL”),

Cumberland Pediatric Dentistry and Orthodontics of Murfreesboro, PLLC (“CPDOM”)(CPDO, CPDOC, CPDOL, and CPDOM known collectively as “Cumberland Pediatric”), Bryan Byrnside (“Byrnside”), Jennifer House (“House”), Brent Miller (“Miller”), Jack Stalker (“Stalker”), Felix Vincent (“Vincent”), and Peter Wojtkiewicz (“Wojtkiewicz”) (all defendants collectively known as “Defendants”) and respectfully allege as follows:

PARTIES, JURISDICTION AND VENUE

1. This is an action for damages for unlawful violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, and, specifically, the collective action provision of the act found at § 216(b), to remedy violations of the wage provisions of the FLSA by Defendants which deprived Plaintiffs, as well as those similarly situated to the named Plaintiffs, of their lawful wages. Defendants have violated the overtime and/or record keeping provisions of the FLSA.

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 as this is a civil action and Plaintiff’s claims arise under laws of the United States.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events giving rise to this action occurred within this District and Defendants are located, reside, and/or do business in this District

4. Plaintiffs are citizens of the United States and reside in Tennessee. At all times material herein, Plaintiffs and the Putative Class have been employed by Defendants as office workers, dental assistants, and dental hygienists. Plaintiffs are identified in the caption of the Complaint and have given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such consents are attached to this Complaint as Exhibit A. Plaintiffs bring this action as a collective action on behalf of themselves and all others similarly situated in accordance with 29 U.S.C. § 216(b).

5. Cumberland Pediatric defendants are professional limited liability companies licensed to do business in the State of Tennessee. Their registered agent for services of process is Brent Miller, 739 President Place, Suite 200, Smyrna, Tennessee 37167. Cumberland Pediatric defendants are therefore subject to personal jurisdiction in Tennessee for the purpose of this lawsuit.

6. Defendants Byrnside, House, Miller, Stalker, Vincent, and Wojtkiewicz are and/or were the owners, board members, members, corporate officers and/or managing agents of one or more Cumberland Pediatric defendant. They did and/or do control directly or indirectly the management of the Defendants. They have actively engaged in business in the State of Tennessee and are subject to the personal jurisdiction of the State of Tennessee for the purposes of this lawsuit.

CAUSE OF ACTION – FLSA

7. Injunctive and declaratory relief, damages, and other appropriate legal and equitable relief are sought pursuant to the FLSA.

8. At all times material to this Complaint, Plaintiffs and the Putative Class were employed by the Defendants as office workers, dental assistants, and dental hygienists in Tennessee.

9. At all times material herein while employed by Defendants, Plaintiffs were engaged in activities in interstate commerce.

10. Defendants are an “employer” within the meaning of 29 U.S.C. § 203(d) and a “person” within the meaning of 29 U.S.C. § 203(a).

11. At all times material to this action, Defendants have been an enterprise engaged in commerce as defined by 29 U.S.C. § 203(r)(1), with an annual dollar business volume exceeding \$500,000.00.

12. The overtime provisions set forth in §207 of the FLSA apply to Defendants, to Plaintiffs, and to the Putative Class while Plaintiffs and the Putative Class were employed by Defendants.

13. At all times material to this Complaint, Defendants failed to post the wage and hour notices required by the FLSA and accompanying regulations. Accordingly, the doctrine of equitable tolling should be applied to toll the statute of limitations for the longest period that the Court deems appropriate. Plaintiffs have been employed by Defendants within the last two years.

14. Plaintiffs' and the Putative Class' duties were those of an hourly, non-exempt employee, specifically office worker, dental assistant, and dental hygienist.

15. Plaintiffs and the Putative Class routinely worked in excess of 40 hours per week but were never paid an overtime premium as required by the FLSA.

16. Plaintiffs worked hours while employed by Defendants for which they received no compensation and/or for which they were improperly paid at rates less than one and one-half times their normal hourly rate.

17. Defendants' actions, as set forth more fully below, in failing to compensate Plaintiffs in accordance with the overtime provisions of the FLSA were willful.

18. Defendants have engaged in conduct and actions that are deliberately designed to circumvent the overtime pay requirements set for in § 207 of the FLSA. Specifically, Defendants knowingly misclassified Plaintiffs and the Putative Class as exempt workers in an effort to avoid compensating them for hours worked in excess of 40 per week at the rate required under the FLSA.

In addition, Defendants circumvented the overtime pay requirements of § 207 of the FLSA by regularly paying overtime pay only if an employee worked in excess of 80 hours in a two-week period rather than if an employee worked in excess of 40 hours in a one-week period. Further, Defendants knowingly required Plaintiffs to perform work duties and activities prior to “clocking-in” for the day without compensation.

19. 29 U.S.C. §207(a)(1) provides that employees shall be paid overtime compensation at a rate of not less than one and one-half times their regular rate of pay for hours worked in excess of 40 hours per week. Since January 20th, 2014 and before, Defendants have violated, and are continuing to violate, 29 U.S.C. § 207(a)(1) by failing and refusing to compensate Plaintiffs and other persons working for Defendants in the positions of office worker, dental assistant, and dental hygienist for their hours of work in excess of 40 hours per week at a rate of not less than one and one-half times the regular rate at which the Plaintiffs are employed.

20. As a result of the violations of the FLSA, Plaintiffs and the Putative Class have suffered damages by failing to receive compensation during their tenure of employment with Defendants. In addition to the amount of unpaid wages owing to the Plaintiffs and the Putative Class, they are also entitled to an additional amount as liquidated damages pursuant to 29 U.S.C. § 216(b) and prejudgment interest.

21. Plaintiffs and the Putative Class are also entitled to an award of attorneys’ fees pursuant to 29 U.S.C. § 216(b).

22. Defendants’ actions in failing to compensate Plaintiffs and the Putative Class in accordance with the provisions of the FLSA were not in good faith.

23. Defendants are under a duty imposed by 29 U.S.C. § 211(c) and the regulations of the U.S. Department of Labor to maintain and preserve payroll and other employment records of

Plaintiffs and the Putative Class from which the amounts of the Defendants' liability can be ascertained.

24. There are numerous other similarly situated employees and former employees of Defendants who have been improperly compensated in violation of the FLSA and who would benefit from the issuance of court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Specifically, all employees and former employees of Defendants who have been employed by the Defendants as office workers, dental assistants, and dental hygienists for any individual or entity using the Cumberland Pediatric Dentistry and Orthodontics name should receive notice and the opportunity to join the present lawsuit. According to the Cumberland Pediatric website, www.cumberlandpediatricdentistry.com, Cumberland Pediatric has locations in five cities in Tennessee, each location with a dedicated staff of office workers, dental assistants, and dental hygienists.

PRAYER FOR RELIEF

WHEREFORE, premises considered, the named, representative Plaintiffs, individually, and on behalf of all other similarly situated persons, pursuant to 29 U.S.C. § 216(b), pray for the following relief:

1. that process issue against Defendants and that Defendants be required to answer within the time period provided by applicable law;
2. that the Court issue notice to all similarly situated persons;
3. that other similarly situated past or present employees be given the opportunity to join this lawsuit as party-plaintiffs by filing written consents pursuant to 29 U.S.C. § 216(b);

4. that Plaintiffs, and all others who file consents, be awarded damages in the amount of their unpaid wages, an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b), and prejudgment interest;
5. that Defendants be required to pay Plaintiffs' attorneys' fees;
6. that Defendants be required to pay the costs and expenses of this action;
7. that Plaintiffs be granted such other, further, and general relief to which they may be entitled; and,
8. that a jury be impaneled to hear this cause of action.

Respectfully submitted,

Tim Lee Law Firm

/s/ Timothy M. Lee
Timothy M. Lee (#32222)
Attorney for Plaintiffs
1033 Demonbreun St., Suite 300
Nashville, Tennessee 37203
P: (615) 988-0090
F: (615) 630-6430
tim@timleelawfirm.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Tanya Barnes et al., on behalf of themselves and all similarly situated individuals

(b) County of Residence of First Listed Plaintiff Lawrence
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Tim Lee Law Firm
1033 Demonbreun St., STE 300, Nashville, TN 37208
615-988-0090

DEFENDANTS

Cumberland Pediatric Dentistry and Orthodontics, PLLC et al.

County of Residence of First Listed Defendant Rutherford
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201, et seq.

Brief description of cause:
Violations of the Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 01/20/2017 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPOINTMENT _____ JUDGE _____ CLERK/JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Numerous Pediatric Dentistry Companies Facing Unpaid OT Lawsuit](#)
