

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

CASSANDRA RUFF  
2443 Norwood Avenue  
Abington, PA 19001,

-and-

KESHA CARDWELL  
6637 North Fifth Street  
Philadelphia, PA 19126,

*on behalf of themselves and all other employees similarly  
situated,*

*Plaintiffs,*

v.

ALBERT EINSTEIN HEALTHCARE NETWORK  
5501 Old York Road  
Philadelphia, PA 19141,

-and-

ALBERT EINSTEIN MEDICAL CENTER  
York and Tabor Roads  
Philadelphia, PA 19141,

-and-

BARRY R. FREEDMAN  
5501 Old York Road  
Philadelphia, PA 19141,

-and-

LYNNE R. KORNBLATT  
5501 Old York Road  
Philadelphia, PA 19141,

*Defendants.*

SECOND AMENDED COMPLAINT-  
CLASS ACTION  
AND DEMAND FOR JURY TRIAL

Civil Action No. 09-cv-5550

NATURE OF CLAIM

1. This is a proceeding for injunctive and declaratory relief and monetary damages to redress the deprivation of rights secured to plaintiffs Cassandra Ruff and Kesha Cardwell (“Plaintiffs”) individually, as well as all other employees similarly situated (“Class Members”), under the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201 *et seq.*; under the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1961 *et seq.*; and under the various laws of the Commonwealth of Pennsylvania

including, but not limited to, 43 PA. CON. STAT. §§ 333.101, *et. seq.*, the Pennsylvania Minimum Wage Act (“PMWA”), and 43 PA. CON. STAT. §§ 260.1, *et. seq.*, the Wage Payment and Collection Law (“WPCL”), that require an employer to pay employees for all hours worked including premium pay when applicable.

### **JURISDICTION AND VENUE**

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343 (3) and (4) conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights; under 28 U.S.C. § 1337 conferring jurisdiction of any civil action arising under any Act of Congress regulating interstate commerce; under the Declaratory Judgment Statute, 28 U.S.C. § 2201; under 29 U.S.C. § 216(b); and under 18 U.S.C. § 1964(a) and (c).

3. Venue is appropriate in the Eastern District of Pennsylvania since the allegations arose in this district and the Plaintiffs reside in this district.

### **PROCEDURAL BACKGROUND**

4. On November 19, 2009, Plaintiffs filed a Class Action Complaint with this Court on behalf of Class Members, alleging violations of the FLSA, the Employee Retirement Income Security Act (“ERISA”), and RICO against defendants Albert Einstein Healthcare Network, Albert Einstein Medical Center, Elkins Park Hospital, Germantown Hospital, Barry R. Freedman, Lynne R. Kornblatt, Albert Einstein Medical Center Employees Retirement Plan, and Albert Einstein Healthcare Network Tax Sheltered Annuity Plan (“Federal Action”). *See Ruff, et al. v. Albert Einstein Healthcare Network, et al.*, No. 09-5550, Dkt. No. 1.

5. On November 24, 2009, Plaintiffs filed a Class Action Complaint with the

Court of Common Pleas of Philadelphia County, Pennsylvania Trial Division, November Term 2009, No. 4111, against the same defendants in the Federal Action alleging violations of various laws of the Commonwealth of Pennsylvania including, but not limited to, the PMWA and the WPCL (“State Action”).

6. On December 18, 2009, the defendants removed the State Action to this Court (“Removed Action”). *See Ruff, et al. v. Albert Einstein Healthcare Network, et al.*, No. 09-6013, Dkt. No. 1.

7. On January 18, 2010, Plaintiffs moved to remand the State Action to the Court of Common Pleas of Philadelphia County, Pennsylvania Trial Division. *See Ruff, et al. v. Albert Einstein Healthcare Network, et al.*, No. 09-6013, Dkt. No. 12.

***Court’s September 15, 2010 Order***

8. On September 15, 2010, this Court denied Plaintiffs’ Motion to Remand and consolidated the Removed Action into the Federal Action and directed the Plaintiffs to file a consolidated complaint within 20 days. *See Ruff, et al. v. Albert Einstein Healthcare Network, et al.*, No. 09-6013, Dkt. No. 40; *see also Lynn, et al., v. Jefferson Health Sys. Inc., et al.*, No. 09-6086, Dkt. No. 84 (setting forth the Court’s reasoning for the consolidation order).

9. In denying Plaintiffs’ Motion to Remand the Court invoked ERISA preemption, basing its decision on the similarity between the ERISA recordkeeping claims and the state law recordkeeping claim, the allegations that demonstrated the relationship between the parties, and the requested remedy. *See Lynn, et al., v. Jefferson Health Sys. Inc., et al.*, No. 09-cv-6086, Dkt. No. 84 at 7. Moreover, this Court found that Plaintiffs’ WPCL and breach of contract claims are as well subject to preemption by § 301 of the Labor Management Relations Act (“LMRA”). *Id.* at 11. However, this Court did not dismiss any of

Plaintiffs' state law claims and instead consolidated the Federal and Removed Actions.

10. In finding ERISA preemption of Plaintiffs' state law claims, this Court held that "The compensation or 'fringe benefits' Plaintiffs seek based on their state law claims cannot logically be separated from their associated retirement plan contributions and other ERISA benefits." *See id.* at 6. Moreover, the Court found the LMRA § 301 preempted Plaintiffs' WPCL and breach of contract claims because the "Court must interpret the terms of the CBA [collective bargaining agreement] to determine whether the CBA [collective bargaining agreement] expressly precludes the validity of other individual employment contracts (which they appear to do)." *See id.* at 10.

***Plaintiffs' Amended Class Action Complaint***

11. In accordance with this Court's Order, on September 28, 2010, Plaintiffs filed an Amended Class Action Complaint in the Federal Action alleging violations of the FLSA, ERISA, RICO, and the various laws of the Commonwealth of Pennsylvania including, but not limited to PMWA and the WPCL. *See Ruff, et al. v. Albert Einstein Healthcare Network, et al.*, No. 09-5550, Dkt. No 102. Plaintiffs re-filed their state law claims that this Court found to be preempted, but that had not dismissed in order to preserve their rights, including their right to an appeal.

12. In re-pleading the state law claims, Plaintiffs made clear that they were not seeking fringe benefits for their state law claims. That is, for each state law cause of action, Plaintiffs specifically pled that "Plaintiffs and Class Members are not, however, seeking recovery under the [state law claim] for fringe benefits or any plan benefits protected by ERISA even if such amounts were recoverable. . . ." *See id.*, ¶282 (PMWA), ¶284 (WPCL), ¶287 (breach of express oral contract), ¶290 (implied contracts), ¶293 (breach of express

written contract), ¶295 (action in assumpsit), ¶297 (accounting at law), ¶300(quantum meruit), ¶303 (unjust enrichment), ¶306 (fraud), ¶309 (negligent misrepresentation), ¶312 (conversion), ¶314 (accounting at equity), and ¶316 (failure to keep accurate records).

13. In addition, given this Court's holding concerning LMRA preemption, Plaintiffs proposed two subclasses in the Amended Complaint. *See id.* ¶115(a), (b) One subclass included the workweeks for which Class Members were subject to collective bargaining agreements and the second subclass included workweeks for which Class Members were not subject to a collective bargaining agreement. Plaintiffs created these two subclasses in the Amended Complaint to manage both the Court's LMRA § 301 preemption concerns and allow those class members not subject to a collective bargaining agreement to continue to pursue their claims because, of course, Class Members who are or were not covered by a collective bargaining agreement cannot be subject to LMRA preemption. Instead, preemption can only apply for those workweeks during which a Class Member was covered by collective bargaining agreement.

*Court's September 8, 2011 Order*

14. On September 8, 2011, this Court dismissed Plaintiffs' Amended Class Action and directed Plaintiffs' counsel to remedy certain pleading deficiencies. *See Ruff, et al. v. Albert Einstein Healthcare Network, et al.*, No. 09-5550, Dkt. No. 182 at 19.

15. Specifically, the Court instructed Plaintiffs to plead with "greater clarity" the specific provision of the FLSA under which they seek damages and the legal relationship between all of the defendants including the defendants' health centers and affiliates and the basis for liability. *See id.* at 13 n.49

16. Moreover, the Court required Plaintiffs to include additional information

about the Named Plaintiffs including: which defendant they reported to, who directly supervised their employment, and who set their rate of pay. *See id.* at 12 n.47.

17. For Plaintiffs' ERISA claims, this Court found that they fail because Plaintiffs have failed to allege an FLSA violation and "absent any description of the terms of the ERISA plan to which Plaintiffs were subject, it is impossible to determine whether it was 'the responsibility of the ERISA plan to keep records, in the first instance, of the number of hours plaintiffs worked.'" *See id.* at 14-15.

18. In dismissing Plaintiffs' RICO claims, this Court found that mailing paychecks that inform the Plaintiffs that they were undercompensated does not further the alleged fraud. *See id.* at 16 (citing *Cavallaro v. UMass Memorial Health Care Inc.*, No. 09-cv-40152, 2010 WL 3609535 (D. Mass. July 2, 2010)).

19. Moreover, this Court declined to exercise supplemental jurisdiction over Plaintiffs' state law claims. *See id.* at 18.

20. This Court also granted Plaintiffs leave to re-plead.

***Plaintiffs' Second Amended Complaint***

21. Accordingly, this Second Amended Complaint re-pleads the underlying factual allegations with more clarity in light of this Court's instructions in the September 8, 2011 Order.

22. With respect to Plaintiffs' FLSA claims, the allegations specifically identify defendants' entities where Named Plaintiffs reported, the relationship between all of the defendants including the health centers and affiliates and the basis of liability, the relationship between the defendants and other entities listed in the Second Amended Complaint, the Named Plaintiffs' direct supervisor, who set the Named Plaintiffs' rate of pay,

and other terms and conditions of Named Plaintiffs employment.

23. Moreover, with respect to their FLSA claims, Plaintiffs specifically allege overtime claims under § 207 of the FLSA, including gap time claims based on 29 C.F.R. § 778.315.

24. Plaintiffs have not pled any ERISA claims.

25. For the RICO claims, Plaintiffs allege that defendants engaged in wire fraud, and forced labor, as opposed to mail fraud, with the requisite specificity required.

26. With respect to this Court's finding of preemption of the state law claims in its September 15, 2010 Order, Plaintiffs and Class Members continue to allege they are not seeking recovery of fringe benefits of any plan benefits protected by ERISA. Further, Plaintiffs continue to propose two subclasses of Class Members to manage both the Court's LMRA § 301 preemption concerns and allow those Class Members claims for those workweeks they were not subject to a collective bargaining agreement to continue because their claims cannot be preempted by the LMRA during workweeks they were not subject to a collective bargaining agreement.

27. Finally, Plaintiffs are only alleging a cause of action for failure to keep accurate records pursuant to Pennsylvania statute. *See* §§ 365-66.

### **CLASS ACTION ALLEGATIONS**

28. The claims arising under RICO, the PMWA, the WPCL, and state common law are properly maintainable as a class action under Federal Rule of Civil Procedure 23.

29. The class action is maintainable under subsections (1), (2) and (3) of Rule 23(b).

30. The class consists of current and former employees of defendants who were

injured by defendants' scheme to cheat employees out of their property and to convert the employees' property, including their wages and/or overtime pay, by misleading employees about their rights under the FLSA and state law. The class also consists of current and former employees who worked for defendants, were paid hourly, and were not paid for all the time they worked including applicable premium pay.

31. The class size is believed to be over 7,000 employees.

32. Plaintiffs will adequately represent the interests of the Class Members because they are similarly situated to the Class Members and their claims are typical of, and concurrent to, the claims of the other Class Members.

33. There are no known conflicts of interest between the Plaintiffs and the other Class Members.

34. The Class Counsel, Thomas & Solomon LLP, is qualified and able to litigate the Plaintiffs' and Class Members' claims.

35. The Class Counsel concentrates its practice in employment litigation, and its attorneys are experienced in class action litigation, including class actions arising under federal wage and hour laws.

36. Common questions of law and fact predominate in this action because the claims of all Plaintiffs and Class Members are based on whether: defendants' policy was part of a scheme to defraud Plaintiffs in violation of RICO; and defendants' policies and practice of not properly paying employees for all hours worked including applicable premium pay violates the PMWA, the WPCL, state common law, and other laws of the Commonwealth of Pennsylvania.

37. The class action is maintainable under subsections (2) and (3) of Rule 23(b)

because the Plaintiffs seek injunctive relief, common questions of law and fact predominate among the Plaintiffs and Class Members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

## DEFENDANTS

### **A. Factual Information**

38. As a centralized and integrated healthcare delivery system, which provides a comprehensive spectrum of healthcare services to the residents of the Philadelphia region, defendants Albert Einstein Healthcare Network, Albert Einstein Medical Center, Barry R. Freedman, and Lynne R. Kornblatt, together with the Health Care Facilities (defined below), are referred to herein as “Einstein.”

39. Originally founded as a Jewish hospital, Einstein has been providing health care throughout Philadelphia for more than 140 years. During that time, Einstein’s centralized health care system has grown from a single hospital to one that includes multiple hospitals and a network of outpatient centers and primary care physicians in Northeast Philadelphia.

40. Just last month, Einstein announced a new organizational naming structure and debuted a new logo system in an effort to further unite and centralize a growing network of locations and services. According to Einstein’s website, the organization has “reinvigorated its identity to more accurately convey its breadth and depth of healthcare services being provided throughout the region.”

41. Therefore, the umbrella name for defendants' organization has transitioned from Albert Einstein Healthcare Network to simply Einstein Healthcare Network.<sup>1</sup>

42. According to their website, defendants' new "E" logo "represents a network of entities locking together in a system symbolizing the network's culture of cooperation and collaboration, where quality and insight can come from anywhere."

43. Einstein includes the following hospital and medical center locations: Albert Einstein Healthcare Network, Albert Einstein Medical Center, and Einstein Medical Center Elkins Park. This past year, defendants announced that Montgomery Healthcare System is an official member of Einstein and has broken ground on a replacement hospital for Montgomery Hospital and Medical Center in East Norriton, Pennsylvania.

44. In addition to these locations, Einstein also runs other locations within its system, locations which it identifies on its website and in its tax filings. These locations include the following: Einstein Medical Center Elkins Park, Einstein Center One, Victor Center for Jewish Genetic Diseases, Albert Einstein Cancer Center, Outpatient Psychiatry Center, Einstein Cardiology at Germantown, Einstein Dentistry at Germantown, Einstein Ophthalmology at Germantown, Germantown Community Health Services, Belmont Center for Comprehensive Treatment, Belmont Behavioral Health, Willowcrest, Willow Terrace, MossRehab, Einstein Healthcare Systems, Inc., G.H.M.C. Management Inc., Friends of MossRehab, Rehab Ventures, Inc., New Regional Medical Center, Inc., Einstein Practice Plan, Inc., Einstein Pain Institute, Einstein Community Health Associates, Inc., Einstein Bariatrics, Einstein Neighborhood Healthcare, Germantown Family Medicine Associates, P.C., MossRehab/Einstein at Elkins Park, Germantown Hospital and Community Health

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<sup>1</sup> For the purposes of this Second Amended Complaint, to maintain continuity and clarity, Plaintiffs herein refer to defendants by their previous names.

Services, The Moss Rehabilitation Research Institute, Germantown Management Company, Belmont Behavioral Health at Einstein Medical Center Philadelphia, Belmont Behavioral Health at Germantown Community Health Services, Belmont Behavioral Health at Philadelphia Center for Human Development, Einstein Crisis Response Center at Germantown, Philadelphia Center for Human Development, Inpatient Psychiatry Center, Germantown Intensive Outpatient Program, Community Outreach Program for Elders (COPE,) Einstein Institute of Heart & Vascular Health, Einstein Center for Organ Disease and Transplantation, Einstein Center for Orthopedic Sciences, Marion-Louise Saltzman Women's Center, Germantown Women's Center, Outpatient and Pre-Admission Testing Lab, MossRehab Main Campus, MossRehab at Tabor Road, MossRehab at Aria Health – Frankford, MossRehab at Aria Health – Bucks County Campus, MossRehab at Sacred Heart Hospital, MossRehab at Blue Bell, MossRehab at Center City, MossRehab at Einstein Center One, MossRehab at Chalfont, MossRehab – The Clubhouse, New Jersey, MossRehab – The Clubhouse, Philadelphia, MossRehab at Germantown, MossRehab at Jenkintown, MossRehab at Moss Plaza, MossRehab at Castor Avenue, MossRehab Driving School, MossRehab Regional Amputee Center, Drucker Brain Injury Center – Inpatient Program, Arthritis Center, Spine Program of the Department of Orthopedics, The Hand Center at MossRehab, Joint Replacement Center, Right Hemisphere Stroke Center, Travel Resource Center, MossRehab Stroke and Neurological Disease Center, Holland Pediatrics, Elkins Park Pediatrics, Huntingdon Valley Pediatrics, Fort Washington Pediatrics, Einstein Plaza – Germantown, Einstein Plaza – Lawncrest, Einstein Plaza – Rising Sun, Einstein Plaza – Mayfair, Einstein Plaza – Olney, Einstein Plaza – Port Richmond, Einstein Plaza – Roxborough, Einstein Plaza – Northeast, Einstein Plaza – Wadsworth, Center for Breast

Health, and Gutman Diabetes Institute. Collectively, these locations are referred to herein as the “Health Care Facilities.”

45. Presently, Einstein employs more than 7,000 individuals in its various locations, including its hospitals, medical center locations, and the Health Care Facilities.

46. Einstein’s centralized control of the operations of Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities is apparent from, among other things, Einstein’s management of these operations as a single, integrated, comprehensive, and consolidated health care system performing related activities through common control for a common business purpose.

***Einstein’s Management and Ownership Structure***

47. Albert Einstein Healthcare Network controls the operation of Albert Einstein Medical Center and the Health Care Facilities, including a centralized human resource function as well as common ownership.

48. Albert Einstein Healthcare Network’s tax filings confirm that Einstein Healthcare Network is the parent corporation of Albert Einstein Medical Center and the Health Care Facilities. Albert Einstein Healthcare Network provides the following centralized services for Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities: system-wide health education, health promotion, fundraising activities, system-wide planning, setting system-wide goals, overseeing system-wide fund management, and providing administrative and general services. The various Einstein locations, including Albert Einstein Medical Center and the Health Care Facilities, pay a management fee for these centralized services.

49. Einstein also centrally manages how Einstein employees are hired at the

various Einstein locations, including Albert Einstein Medical Center and the Health Care Facilities by, among other things, centralizing all job postings on Einstein's "E-careers" website, allowing applicants to browse for job vacancies at all Einstein locations, including Albert Einstein Medical Center and the Health Care Facilities and inviting them to apply to join the Einstein family.

50. Moreover, Einstein first considers its own employees, including employees from other Einstein locations for any jobs that become available at the various locations. Einstein's human resources professionals also help employees pursue jobs that most interest them at Einstein by offering education services, résumé assistance, and coaching.

51. As noted above, Einstein's recent announcement and re-branding, including a redesigning of the Einstein logo, is designed to more emphasize the system's continued efforts to more closely integrate its services and operations.

52. Einstein further exerts its centralized control through common management including Barry Freedman, President and CEO of Albert Einstein Healthcare Network, and Lynne Kornblatt, Vice President of Human Resources for Albert Einstein Healthcare Network.

***Albert Einstein Healthcare Network's President and CEO***

53. As the President and CEO of Albert Einstein Healthcare Network, Mr. Freedman has operational control over Albert Einstein Medical Center and the Health Care Facilities.

54. Mr. Freedman has been actively involved in Einstein's acquisition of Montgomery Healthcare System and the construction of a new state of the art medical center in East Norriton, Pennsylvania.

55. Moreover, Mr. Freedman has also actively managed Einstein's implementation of new technology aimed at improving patient care, such as the Cerner Millennium software which provides health care professionals at Einstein with access to evidence-based knowledge that will help them provide better care to patients.

56. Mr. Freedman's job responsibilities include actively managing the employment decisions of Albert Einstein Medical Center and the Health Care Facilities.

57. Mr. Freedman's job responsibilities also include actively managing the financial affairs of Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

58. As President and CEO of Albert Einstein Healthcare Network, Mr. Freedman is the principal officer of Albert Einstein Healthcare Network's tax filings.

59. In concert with others, Mr. Freedman has the authority to, and does, make decisions that concern the operations and significant functions of Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities, including functions related to employment, human resources, training and payroll.

60. In his role as President and CEO of Albert Einstein Healthcare Network, Mr. Freedman, in concert with others, is involved in creating and/or implementing the illegal policies complained of in this case.

61. Mr. Freedman has the authority to create, modify, or eliminate the illegal policies complained of in this case.

***Einstein's Management of Human Resources***

62. Einstein's senior executive team includes a centralized Human Resources department managed by Lynne Kornblatt, Vice President of Human Resources at Albert

Einstein Healthcare Network.

63. In concert with others, Ms. Kornblatt actively manages Albert Einstein Healthcare Network's Human Resources department and has operational control over the terms and conditions of employment for employees located at all Einstein locations, including Albert Einstein Medical Center and the Health Care Facilities, including wages paid for employees at these locations.

64. In concert with others, Ms. Kornblatt is responsible for providing direction and control over, and is authorized to direct all aspects of, human resources functions across Einstein. For example, Ms. Kornblatt is actively involved in significant functions of the operations of Albert Einstein Medical Center and the Health Care Facilities, including payroll policies, compensation, training, employee relations, recruitment, retention, diversity, and employee benefit programs.

65. In concert with others, Ms. Kornblatt approves and implements Albert Einstein Healthcare Networks' compensation and meal break policies that are implemented throughout all Einstein locations, including Albert Einstein Medical Center and the Health Care Facilities.

66. In concert with others, Ms. Kornblatt makes decisions that set employees' schedules, hours, and standard benefit levels at Albert Einstein Healthcare Network as well as all Einstein locations.

67. In concert with others, Ms. Kornblatt reviews and counsels all Einstein locations on employment decisions, including hiring and firing of Plaintiffs and Class Members at all Einstein locations.

68. For example, Ms. Kornblatt is actively involved in the centralized recruitment

of employees to work at Einstein locations and oversaw the decision to outsource employee recruitment for employees at all Einstein locations, including Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

69. Ms. Kornblatt also oversaw Einstein's decision last year to undergo a second round of layoffs that mostly affected administrative and clerical workers at locations throughout the Einstein system, including Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

70. Ms. Kornblatt is actively involved in managing the employment and human resources records for all Einstein locations, including making decisions regarding the policies, practices, and systems for keeping and maintaining such records.

71. For instance, in concert with others, Ms. Kornblatt has operational control over the system for keeping and maintaining employees' payroll records, the timing and method with which payment is conveyed to employees, and the manner and method in which employees receive payroll information, including their payroll checks.

72. Moreover, Albert Einstein Healthcare Network's Human Resources department has the responsibility for recording and maintaining time and costs associated with the work performed by employees on the premises of all Einstein locations, including Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

73. Further, in concert with others, Ms. Kornblatt controls the training and education functions for employees at all Einstein locations, including Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

74. For example, Ms. Kornblatt is actively involved in determining the type and scope of training employees must attend as well as any compensation they receive for

attending training.

75. Due in part to her role of overseeing human resources and training and education, Ms. Kornblatt is actively involved in the creation of the illegal policies complained of in this case.

76. In concert with others, Ms. Patton had the authority to create, modify, or eliminate the illegal policies complained of in this case.

77. Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities are interrelated in such a way that they are not completely dissociated from each other with respect to the employment of their 7,000 employees.

***Interrelation and Integration of Einstein's Operations***

78. Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities are interrelated in several demonstrable ways. Some examples are set forth below:

79. Einstein's website lists the various awards and recognitions received by the various Einstein locations. Moreover, Einstein's website also states the Einstein's new branding efforts, described above, will provide "a clear link between the entities that encompass Einstein's growing network."

80. Einstein has centralized recruitment efforts which were outsourced to external experts to help Human Resources fill 1,500 jobs per year at Einstein locations, including Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

81. Albert Einstein Healthcare Network also sets a centralized standard for professional behavior for its employees at all Einstein locations, including Albert Einstein

Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities, with its Code of Conduct.

82. Albert Einstein Healthcare Network maintains a Corporate Compliance Program for the various Einstein locations, the stated purpose of which is to ensure compliance with all federal and state laws that are applicable to its operations. For example, Albert Einstein Healthcare Network's Corporate Compliance Officer coordinates personnel issues with Human Resources to ensure that all Einstein employees disclose any criminal convictions as part of a reference check.

83. Albert Einstein Healthcare Network maintains a compliance program called Comply Line that can be accessed by all employees at the Einstein locations to voice concerns or report misconduct that could give rise to legal liability.

84. Albert Einstein Healthcare Network maintains centralized resources for all Einstein locations for medical information, including a department of library services, "Luria Medical Libraries."

85. Albert Einstein Healthcare Network created a centralized website "E-net" for employees at all Einstein locations to communicate and inform each other of their achievements and activities and provide feedback on issues that affect Einstein.

86. Albert Einstein Healthcare Network created the Albert Einstein Healthcare Network Office of Continuing Medical Education ("CME") that offers employees at all Einstein locations opportunities through a variety of CME activities.

87. Albert Einstein Healthcare Network provides a free Language Bank Program providing both in-person interpreter and telephone interpretation services for patients and families at all Einstein locations, including Albert Einstein Healthcare Network, Albert

Einstein Medical Center, and the Health Care Facilities.

88. Albert Einstein Healthcare Network maintains an integrated document workflow solution, including a Health Information Management Suite, for all Einstein locations, including Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

89. Albert Einstein Healthcare Network implemented a comprehensive, integrated health information system involving both software applications and hardware utilized by all Einstein locations, including Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

## **B. Legal Background**

90. The basis for the defendants' liability stems from the definitions set forth in the applicable statutes, theories of liability developed under those statutes, and the common law.

### ***Statutory Definitions***

91. Under the FLSA, an employer includes any person acting "directly or indirectly" in the interest of an employer in relation to an employee, and an employee is anyone who is suffered or permitted to work.

92. The PMWA defines an employer as any individual, partnership, association, corporation, business trust, or any person or group of persons acting, "directly or indirectly," in the interest of an employer in relation to any employee.

93. The WPCL defines an employer as any person, firm, partnership, association, corporation, receiver, or other officer of a court of this Commonwealth and any agent or officer of any of the above-mentioned classes employing any person in this Commonwealth.

*Joint Employer Liability*

94. In addition to and consistent with the broad statutory definitions described above, the FLSA and state statutes allow for employees to have more than one employer when two or more entities are not acting completely independently or are not completely disassociated from each other with respect to the employment of a particular employee they are liable as joint employers and therefore jointly and severally responsible for the payment of wages. *See* 29 C.F.R. § 791.2

95. An employer can also be a joint employer based on five non-exclusive factors based on the totality of the circumstances including (1) whether the employment takes place on the premises of the company; (2) how much control the company exerts over the employees; (3) the power to hire and fire; (4) power to control wages, hours and working conditions as well as quality standards; and (5) responsibility for recording and maintaining time and costs associated with the work.

96. Joint employers in the health care setting can also exist where factors such as common management, officers, and/or directors who have responsibility for more than one entity within the health care system; whether the health care system's human resources department provides administrative support to other entities in the health care system and the nature of the common management support provided; common personnel policies; common health care plans; and centralized posting of job vacancies as well as priority for those vacancies demonstrate that the separate entities act as a joint employer.

*Single Employer/Entity Liability*

97. A single employer/entity relationship exists where two or more legally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in

fact only a “single employer.” That is, separate companies may be so interrelated that they constitute a single employer.

98. Factors considered in determining whether two or more entities are a single employer include (1) common management; (2) interrelation between operations; (3) centralized control over labor relations; and (4) common ownership.

***Individual Liability***

99. Both state and federal law allow individuals to be held liable as employers, based on factors including the individual’s operational control over significant aspects of the business, the individual’s control over a business’s financial affairs, the individual’s ability to cause the corporation to compensate (or not compensate) employees in accordance with state and federal law, and an individual’s ownership interest.

***Agency Liability***

100. In Pennsylvania, an employer can also be liable under common law agency based upon (1) manifestation by the principal that the agent shall act for him; (2) the agent’s acceptance of the undertaking; and (3) the understanding of the parties that the principal is to be in control of the undertaking.

***Joint Venture Liability***

101. Moreover, an employer can be held liable based upon their participation in a joint venture when each party to the venture makes a contribution, profits are shared, and the parties maintain joint proprietary interest and right of mutual control over the subject matter of the enterprise.

*Alter Ego Liability*

102. Further, an employer can be found liable under an alter ego theory. A parent corporation is liable for acts of its subsidiaries when the facts demonstrate (1) control and domination by the parent corporation; (2) such control must have been used to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the complained of injury or unjust loss.

**C. Albert Einstein Healthcare Network**

*Albert Einstein Healthcare Network Acts Directly and Indirectly as an Employer*

103. Here, it is plausible that Albert Einstein Healthcare Network is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer because it acts directly and/or indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Healthcare Network, as the entity in control of the other defendants and the Health Care Facilities, employs more than 7,000 employees.
- b. Albert Einstein Healthcare Network through its centralized Human Resource department has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- c. Albert Einstein Healthcare Network acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Einstein, including at Albert Einstein Medical Center and the Health Care Facilities; centralizing organization and control of labor relations and human resources among Albert Einstein Medical Center and the Health Care Facilities, including through the employment of a Vice President of Human Resources; and maintaining system-wide policies, including the policies at issue in this case, and certain employee benefit plans at Albert Einstein Medical Center and the Health Care Facilities.

104. Accordingly, it is plausible that Albert Einstein Healthcare Network is liable as a direct (or indirect) employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer.

105. Here, it is also plausible that Albert Einstein Healthcare Network is liable as an employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer because it falls within the categories of employers covered by the statute and/or employs individuals and acts directly and/or indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Healthcare Network, as the entity in control of the other defendants and the Health Care Facilities, employs more than 7,000 employees.
- b. Albert Einstein Healthcare Network through its centralized Human Resource department has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- c. Albert Einstein Healthcare Network acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Einstein, including at Albert Einstein Medical Center and the Health Care Facilities; centralizing organization and control of labor relations and human resources among Albert Einstein Medical Center and the Health Care Facilities, including through the employment of a Vice President of Human Resources; and maintaining system-wide policies, including the policies at issue in this case, and certain employee benefit plans at Albert Einstein Medical Center and the Health Care Facilities.

106. Accordingly, it is plausible that Albert Einstein Healthcare Network is liable as a direct employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

107. Here, it is plausible that Albert Einstein Healthcare Network is liable as an employer of the Plaintiffs and Class Members based upon the PMWA's definition of

employer because it acts directly and/or indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Healthcare Network, as the entity in control of the other defendants and the Health Care Facilities, employs more than 7,000 employees.
- b. Albert Einstein Healthcare Network through its centralized Human Resource department has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- c. Albert Einstein Healthcare Network acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Einstein, including at Albert Einstein Medical Center and the Health Care Facilities; centralizing organization and control of labor relations and human resources among Albert Einstein Medical Center and the Health Care Facilities, including through the employment of a Vice President of Human Resources; and maintaining system-wide policies, including the policies at issue in this case, and certain employee benefit plans at Albert Einstein Medical Center and the Health Care Facilities.

108. Accordingly, it is plausible that Albert Einstein Healthcare Network is liable as a direct (or indirect) employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer.

***Albert Einstein Healthcare Network Liable as a Joint Employer***

109. Here, it is also plausible that Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities are jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Employees work at Einstein's locations, including Albert Einstein Medical Center and the Health Care Facilities, which are maintained by Albert Einstein Healthcare Network.

- b. Albert Einstein Healthcare Network exerts significant control over employees that work at Albert Einstein Medical Center and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Abington Health's Vice President of Human Resources, Lynne R. Kornblatt, has the authority to control the terms and conditions of employment for employees at Albert Einstein Medical Center and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Albert Einstein Healthcare Network's Human Resources department creates and implements compensation policies including a meal break policy that is implemented throughout Einstein, including Albert Einstein Medical Center and the Health Care Facilities.
- e. Albert Einstein Healthcare Network also has the responsibility to maintain the time and costs associated with the work performed at Albert Einstein Medical Center and the Health Care Facilities.

110. Accordingly, it is plausible that Albert Einstein Healthcare Network along with Albert Einstein Medical Center and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained herein because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee.

111. It is also plausible that Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above, based on several non-exclusive factors that look to the totality of the circumstances including: (1) whether the employment takes place on the premises of the company; (2) how much control the company exerts over the employees; (3) the power to hire and fire; (4) power to control wages, hours and working conditions as well as quality standards; and (5) responsibility for

recording and maintaining time and costs associated with the work. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Employees work on the premises of Einstein's locations, including Albert Einstein Medical Center and the Health Care Facilities which are maintained by Albert Einstein Healthcare Network
- b. Albert Einstein Healthcare Network exerts significant control over employees that work at Albert Einstein Medical Center and the Health Care Facilities, by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Albert Einstein Healthcare Network's Vice President of Human Resources, Lynne R. Kornblatt, has the authority to control the terms and conditions of employment for employees at Albert Einstein Medical Center and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Albert Einstein Healthcare Network's Human Resource department creates and implements compensation policies including a meal break policy that is implemented throughout Einstein, including Albert Einstein Medical Center and the Health Care Facilities.
- e. Albert Einstein Healthcare Network also has the responsibility to maintain the time and costs associated with the work performed at Albert Einstein Medical Center and the Health Care Facilities.

112. Accordingly, it is plausible that Albert Einstein Healthcare Network, along with Albert Einstein Medical Center, and the Health Care Facilities, are joint employers and consequently jointly and severally liable for the violations complained of herein.

113. It is also plausible that Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above, based on factors that exist in a health care setting such as: common management, officers, and/or directors who have responsibility for more than one entity within the health care system; whether the health care system's human resources department provides administrative

support to other entities in the health care system and the nature of the common management support provided; common personnel policies; common health care plan; and centralized posting of job vacancies as well as priority for those vacancies. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Medical Center and the Health Care Facilities are controlled and operated through Albert Einstein Healthcare Network's common management, including Albert Einstein Healthcare Network's board of directors and senior executive team.
- b. Albert Einstein Healthcare Network exerts significant control over employees that work at Albert Einstein Medical Center and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Albert Einstein Healthcare Network's Vice President of Human Resources, Lynne R. Kornblatt, has the authority to control the terms and conditions of employment for employees at Albert Einstein Medical Center and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Albert Einstein Healthcare Network's Human Resources department creates and implements compensation policies including a meal break policy that is implemented throughout Einstein including Albert Einstein Medical Center and the Health Care Facilities.
- e. Job openings are centralized on Einstein's website allowing applicants to browse for job vacancies at locations throughout Einstein, including Albert Einstein Medical Center and the Health Care Facilities and inviting applicants to apply to join Einstein's team.

114. Accordingly, it is plausible that Albert Einstein Healthcare Network, along with Albert Einstein Medical Center and the Health Care Facilities, are joint employers and consequently jointly and severally liable for the violations complained herein based on factors that exist in a health care setting.

*Albert Einstein Healthcare Network Liable as a Single Employer/Entity*

115. Here, it is also plausible that Albert Einstein Healthcare Network is liable as a single employer/entity for the violations complained herein at Albert Einstein Medical Center and the Health Care Facilities based in part on the following:

- a. Albert Einstein Medical Center and the Health Care Facilities are controlled and operated through Albert Einstein Healthcare Network's common management, including Albert Einstein Healthcare Network's board of directors.
- b. Albert Einstein Medical Center and the Health Care Facilities are managed by Albert Einstein Healthcare Network's senior executive team including Barry R. Freedman, President and CEO of Albert Einstein Healthcare Network, and Lynne R. Kornblatt, Vice President of Human Resources for Albert Einstein Healthcare Network.
- c. Albert Einstein Healthcare Network's operations are interrelated with Albert Einstein Medical Center and the Health Care Facilities, including, for example, centralized posting of job openings on Einstein's website. Moreover, Albert Einstein Healthcare Network's website lists the various awards and recognitions received by the various Einstein locations, including Albert Einstein Medical Center and the Health Care Facilities. Albert Einstein Healthcare Network's website also contains a calendar of events that are being held at all Einstein locations such as support groups.
- d. Albert Einstein Healthcare Network maintains centralized control over the Human Resource departments for Albert Einstein Medical Center and the Health Care Facilities through Ms. Kornblatt. Moreover, Albert Einstein Healthcare Network's Human Resources department creates and implements compensation policies, including a meal break policy that applies to all Einstein locations, including Albert Einstein Medical Center and the Health Care Facilities.

116. As a result, it is plausible that Albert Einstein Healthcare Network is liable as a single employer/entity for the violations complained of at Albert Einstein Medical Center and the Health Care Facilities.

***Albert Einstein Healthcare Network Liable as a Principal***

117. Additionally, it is plausible that Albert Einstein Healthcare Network is liable to Plaintiffs and Class Members as a principal based on agency law. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Through its control, Albert Einstein Healthcare Network caused the illegal policies to be implemented at Albert Einstein Medical Center and the Health Care Facilities, and those policies caused the wrongs at issue in this case.
- b. Albert Einstein Healthcare Network controls and operates Albert Einstein Medical Center and the Health Care Facilities through Albert Einstein Healthcare Network's centralized management, including management of labor relations.
- c. Moreover, Albert Einstein Healthcare Network maintains a central Human Resources department that creates and implements compensation policies, including a meal break policy, that applies to employees throughout Einstein, including at Albert Einstein Medical Center and the Health Care Facilities.
- d. Albert Einstein Medical Center and the Health Care Facilities understood that Albert Einstein Healthcare Network was in control of their employment relationship with Plaintiffs and Class Members as a result of Albert Einstein Healthcare Network's exercise of its authority to set the Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, including the policies at issue in this case, and other conditions of employment, and by otherwise treating Plaintiffs and Class Members as employees.

118. Accordingly, it is plausible that Albert Einstein Healthcare Network is liable to Plaintiffs and Class Members under agency law.

***Albert Einstein Healthcare Network Liable as a Joint Venture***

119. Likewise, it is plausible that Albert Einstein Healthcare Network is also liable to Plaintiffs and Class Members as an employer based upon its participation in a joint venture.

Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Healthcare Network has engaged in a joint venture of providing healthcare services by entering into an agreement with Albert Einstein Medical Center and the Health Care Facilities, established through their conduct such as sharing of profits and losses.

- b. Albert Einstein Healthcare Network jointly managed and controlled the joint venture as well as the other defendants' and the Health Care Facilities' employees and assets by making contributions to defendants' and Health Care Facilities' operations and cash surplus and determining how those funds are shared by the defendants and Health Care Facilities.

120. Therefore, it is plausible that Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

***Albert Einstein Healthcare Network Liable as a Alter Ego***

121. Furthermore, it is plausible that Albert Einstein Healthcare Network is also liable to Plaintiffs and Class Members as an alter ego. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Medical Center and the Health Care Facilities are controlled and dominated by the parent corporation Albert Einstein Healthcare Network due to, for example, its centralized management, including Barry R. Freedman, President and CEO of Albert Einstein Healthcare Network, and Lynne R. Kornblatt, Vice President of Human Resources for Albert Einstein Healthcare Network, and oversight by a senior executive team and board of directors.
- b. Albert Einstein Healthcare Network's Human Resources department controls and dominates Albert Einstein Medical Center and the Health Care Facilities' compensation policies including a meal break policy that is implemented throughout Einstein including at Albert Einstein Medical Center and the Health Care Facilities, that results in employees not being paid for all hours worked.

122. Based upon Albert Einstein Healthcare Network's control and domination of Albert Einstein Medical Center's and the Health Care Facilities' compensation policies including the meal break policy, Plaintiffs and Class Members are entitled to compensation for the time Albert Einstein Healthcare Network, Albert Einstein Medical Center and the Health Care Facilities permitted them to work but failed to properly compensate them.

123. Accordingly, Albert Einstein Healthcare Network may be held liable for the violations experienced by employees at Albert Einstein Medical Center and the Health Care Facilities as an alter ego.

**D. Albert Einstein Medical Center**

***Albert Einstein Medical Center Acts Directly and Indirectly as an Employer***

124. Here, it is plausible that Albert Einstein Medical Center is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer because it acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Medical Center's Human Resources functions under the direction of Albert Einstein Healthcare Network's centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Albert Einstein Medical Center acts directly as Plaintiffs' and Class Members' employer by using Albert Einstein Healthcare Network's integrated payroll record system and centralized organization and control of labor relations and human resources including Abington Health's Vice President of Human Resources and by implementing Albert Einstein Healthcare Network's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

125. Accordingly, it is plausible that Albert Einstein Medical Center is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer.

126. Here, it is also plausible that Albert Einstein Medical Center is liable as an employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer because it falls within the categories of employers covered by the statute and/or employs individuals and acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Medical Center's Human Resources functions under the direction of Albert Einstein Healthcare Network's centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Albert Einstein Medical Center acts directly as Plaintiffs' and Class Members' employer by using Albert Einstein Healthcare Network's integrated payroll record system and centralized organization and control of labor relations and human resources including Abington Health's Vice President of Human Resources and by implementing Albert Einstein Healthcare Network's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

127. Accordingly, it is plausible that Albert Einstein Medical Center is liable as an employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

128. Here, it is plausible that Albert Einstein Medical Center is liable as an employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer because it acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Medical Center's Human Resources functions under the direction of Albert Einstein Healthcare Network's centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Albert Einstein Medical Center acts directly as Plaintiffs' and Class Members' employer by using Albert Einstein Healthcare Network's integrated payroll record system and centralized organization and control of labor relations and human resources including Abington Health's Vice President of Human Resources and by implementing Albert Einstein Healthcare Network's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

129. Accordingly, it is plausible that Albert Einstein Medical Center is liable as an employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer.

***Albert Einstein Medical Center as a Joint Employer***

130. Here, it is also plausible that Albert Einstein Medical Center, Albert Einstein Healthcare Network, and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Individuals are employed on the premises of Albert Einstein Medical Center and the Health Care Facilities which are maintained by Albert Einstein Healthcare Network.
- b. Albert Einstein Medical Center's employees are controlled by Albert Einstein Healthcare Network which maintains a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Albert Einstein Medical Center operates under the direction of Albert Einstein Healthcare Network's Vice President of Human Resources, Lynne R. Kornblatt, who retains the authority to control the terms and conditions of employment for employees at Albert Einstein Medical Center and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Albert Einstein Medical Center implements Albert Einstein Healthcare Network's compensation policies including a meal break policy that is implemented throughout Einstein, including at Albert Einstein Medical Center and the Health Care Facilities.
- e. Albert Einstein Medical Center relies upon Albert Einstein Healthcare Network to maintain the time and costs associated with the work performed at Albert Einstein Medical Center and the Health Care Facilities.

131. Accordingly, it is plausible that Albert Einstein Medical Center, along with Albert Einstein Healthcare Network and the Health Care Facilities, are joint employers and consequently jointly and severally liable for the violations complained herein because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee.

132. Here, it is also plausible that Albert Einstein Medical Center along with Albert Einstein Healthcare Network and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above, based on several five non-exclusive factors that look to the totality of the circumstances including: (1) whether the employment takes place on the premises of the company; (2) how much control the company exerts over the employees; (3) the power to hire and fire; (4) power to control wages, hours and working conditions as well as quality standards; and (5) responsibility for recording and maintaining time and costs associated with the work. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Individuals are employed on the premises of Albert Einstein Medical Center and the Health Care Facilities which are maintained by Albert Einstein Healthcare Network.
- b. Albert Einstein Healthcare Network exerts significant control over employees that work at Albert Einstein Medical Center and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Albert Einstein Healthcare Network's Vice President of Human Resources, Lynne R. Kornblatt, has the authority to control the terms and conditions of employment for employees at Albert Einstein Medical Center and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.

- d. Further, Albert Einstein Healthcare Network's Human Resources department creates and implements compensation policies, including a meal break policy, that are implemented throughout Einstein, including at Albert Einstein Medical Center and the Health Care Facilities.
- e. Albert Einstein Healthcare Network also has the responsibility to maintain the time and costs associated with the work performed at Albert Einstein Medical Center and the Health Care Facilities.

133. Accordingly, it is plausible that Albert Einstein Medical Center, along with Albert Einstein Healthcare Network and the Health Care Facilities, are joint employers and consequently jointly and severally liable for the violations complained of herein.

134. It is also plausible that Albert Einstein Medical Center along with Albert Einstein Healthcare Network and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above, based on factors that exist in a health care setting such as: common management, officers, and/or directors who have responsibility for more than one entity within the health care system; whether the health care system's human resources department provides administrative support to other entities in the health care system and the nature of the common management support provided; common personnel policies; common health care plans; and centralized posting of job vacancies as well as priority for those vacancies. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Medical Center and the Health Care Facilities are controlled and operated through Einstein's common management, including Albert Einstein Healthcare Network's board of directors and senior executive team.
- b. Albert Einstein Healthcare Network exerts significant control over employees that work at Albert Einstein Medical Center and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.

- c. Albert Einstein Healthcare Network's Vice President of Human Resources, Lynne R. Kornblatt, has the authority to control the terms and conditions of employment for employees at Albert Einstein Medical Center and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Albert Einstein Healthcare Network's Human Resources department creates and implements compensation policies, including a meal break policy, that are implemented throughout Einstein, including at Albert Einstein Medical Center and the Health Care Facilities.
- e. Job openings are centralized on Einstein's website, allowing applicants to browse for job vacancies at locations throughout Einstein, including Albert Einstein Medical Center and the Health Care Facilities, and inviting applicants to apply to join Einstein's team.

135. Accordingly, it is plausible that Albert Einstein Medical Center along with Albert Einstein Healthcare Network and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein based on factors that exist in a health care setting.

***Albert Einstein Medical Center Liable as a Single Employer/Entity***

136. Here, it is also plausible that Albert Einstein Medical Center is liable as a single employer/entity for the violations complained of herein at Albert Einstein Medical Center and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Medical Center and the Health Care Facilities are controlled and operated by Albert Einstein Healthcare Network's common management including Albert Einstein Healthcare Network's board of directors and Albert Einstein Healthcare Network's senior executive team including Barry R. Freedman, President and CEO of Albert Einstein Healthcare Network, and Lynne R. Kornblatt, Vice President of Human Resources for Albert Einstein Healthcare Network.
- b. Albert Einstein Medical Center's operations are interrelated with Albert Einstein Healthcare Network and the Health Care Facilities. For example, job openings are centralized on Albert Einstein Healthcare Network's website. Moreover, Einstein's website lists the various awards and recognitions received by the various Einstein

locations, including Albert Einstein Medical Center and the Health Care Facilities. Einstein's website also contains a calendar of events that are being held at the Abington Memorial Hospital locations, including Albert Einstein Medical Center and the Health Care Facilities, such as support groups.

- c. Human resources at Albert Einstein Medical Center are controlled by Albert Einstein Healthcare Network's centrally controlled Human Resources department, including oversight by Ms. Kornblatt. Moreover, Albert Einstein Medical Center implements compensation policies, including a meal break policy, maintained by Albert Einstein Healthcare Network's Human Resources department.

137. As a result, it is plausible that Albert Einstein Medical Center is liable as a single employer/entity for the violations complained of at Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

***Albert Einstein Medical Center Liable as a Joint Venture***

138. Likewise, it is plausible that Albert Einstein Medical Center is also liable to Plaintiffs and Class Members as an employer based upon its participation in a joint venture. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Albert Einstein Medical Center has engaged in a joint venture of providing healthcare services by entering into an agreement with Albert Einstein Healthcare Network and the Health Care Facilities established through their conduct such as sharing of profits and losses.
- b. Albert Einstein Medical Center jointly managed and controlled the joint venture as well as Albert Einstein Healthcare Network's and the Health Care Facilities' employees and assets by receiving contributions from Albert Einstein Healthcare Network's and the Health Care Facilities' operations and cash surpluses.

139. Therefore, it is plausible that Albert Einstein Medical Center, Albert Einstein Healthcare Network, and the Health Care Facilities are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

**E. Barry R. Freedman**

***Barry R. Freedman Individually Liable as an Employer***

140. It is plausible that Barry R. Freedman, as President and CEO of Albert Einstein Healthcare Network, is liable as an employer to the Plaintiffs and Class Members based upon his significant operational control over Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. being actively involved in Einstein's acquisition of Montgomery Healthcare System and the construction of new facilities throughout the various Einstein locations;
- b. implementing of new technology throughout Einstein, such as Cerner Millennium software;
- c. making employment decisions for the various Einstein locations, including Albert Einstein Medical Center, and the Health Care Facilities;
- d. serving as the principal officer of Albert Einstein Healthcare Network's tax filings;
- e. in concert with others, creating and/or implementing the illegal policies complained of in this case; and
- f. in concert with others, having the authority to create, modify, or eliminate the illegal policies complained of in this case.

141. Accordingly, Barry R. Freedman may be held liable as an employer for the violations experienced by employees at Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

**F. Lynne R. Kornblatt**

***Lynne R. Kornblatt Individually Liable as an Employer***

142. It is plausible that Lynne R. Kornblatt, as Vice President of Human Resources for Albert Einstein Healthcare Network, is liable as an employer to the Plaintiffs and Class

Members based upon her control, in concert with others, over significant aspects of Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. managing Abington Health's Human Resources department;
- b. supervising Albert Einstein Healthcare Network's, Albert Einstein Medical Center's, and the Health Care Facilities' human resource policies including payroll, compensation, training, employee relations, recruitment, retention, diversity, and employee benefit programs;
- c. creating, maintaining, and implementing compensation policies, including a meal break policy, implemented throughout Einstein, including at Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities;
- d. setting employees' schedules, hours, and standard benefit levels at Albert Einstein Healthcare Network as well as at Albert Einstein Medical Center and the Health Care Facilities;
- e. reviewing and counseling Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities regarding employment decisions, including hiring and firing of Plaintiffs and Class Members;
- f. determining the type and scope of training employees must attend, as well as any compensation they receive for attending training; and
- g. having the authority to create, modify, or eliminate the illegal policies complained of in this case.

143. Accordingly, Lynne R. Kornblatt may be held liable as an employer for the violations experienced by employees at Albert Einstein Healthcare Network, Albert Einstein Medical Center, and the Health Care Facilities.

### PLAINTIFFS

#### A. Named Plaintiffs

144. At all relevant times, Cassandra Ruff and Kesha Cardwell were employees of the defendants within this District and reside within this District.

*Cassandra Ruff*

145. At all relevant times, as set forth in ¶¶ 38-89, defendants employed Cassandra Ruff as a Registered Nurse (“RN”) at Albert Einstein Healthcare Network’s Albert Einstein Medical Center from approximately July 2005 to June 2008.

146. Albert Einstein Medical Network published an employee handbook containing policies and procedures and which was given to Ms. Ruff upon hire. Further, Albert Einstein Medical Network set Ms. Ruff’s pay rates and other terms and conditions of her employment, which was communicated to Ms. Ruff by her Nurse Manager, Victoria Jackson. Furthermore, Albert Einstein Healthcare Network issued Ms. Ruff’s paychecks and provided Ms. Ruff with a user name and password with which she could access her payroll information over Albert Einstein Healthcare Network’s intranet. The terms and conditions of Ms. Ruff’s employment were never governed by a collective bargaining agreement.

147. As an RN, Ms. Ruff typically worked the 7:00am to 7:30pm shift, 3 days each week, totaling 36 hours, exclusive of the 1.5 hours that were automatically deducted from Ms. Ruff’s pay for meal periods. Additionally, Ms. Ruff sometimes worked an extra hour beyond her scheduled shifts in a week if an unstable patient presented, for which she was compensated. Furthermore, Ms. Ruff occasionally worked an extra 12.5-hour shift during a pay period.

148. Ms. Ruff frequently worked through, or was interrupted during, her unpaid meal periods because of her job responsibilities, including but not limited to: completing charting and other backlogged paperwork while in the break room; answer doctors’ questions regarding patients’ conditions; and responding to patient call lights and telephone calls into her unit which required Ms. Ruff’s immediate response. Furthermore, given the lack of

adequate staffing, Ms. Ruff was often unable to obtain the coverage necessary to take a full 30-minute meal break. As a result, Ms. Ruff experienced 2 hours of uncompensated work during those weeks where she worked an additional 12.5 hour shift. Given that Ms. Ruff was compensated for 48 hours during those weeks, the uncompensated hours that she worked should have been paid at overtime rates.

149. Ms. Ruff's direct supervisor was Victoria Jackson, Nurse Manager of Tower 4, an ortho/trauma unit. Ms. Ruff also worked under the supervision of a Clinical Manager by the name of Regina.

150. Ms. Ruff does not recall ever having seen posters on Albert Einstein Healthcare Network's premises alerting her of her rights under federal wage and hour laws.

***Kesha Cardwell***

151. At all relevant times, as set forth in ¶¶ 38-89, defendants employed Kesha Cardwell as a Nursing Assistant, and later as an RN, at Albert Einstein Healthcare Network's Albert Einstein Medical Center from approximately June 2000 to September 2009.

152. Ms. Cardwell began her employment with Albert Einstein Healthcare Network as a Nursing Assistant by submitting an application to an Albert Einstein Healthcare Network nurse recruiter, Nancy Pokorny. Ms. Cardwell received a written offer of employment from Albert Einstein Healthcare Network, which contained her pay rate and assignment. Once Ms. Cardwell obtained her degree from Frankford Hospital School of Nursing in 2001, she re-interviewed with Albert Einstein Healthcare Network for an RN position. Ms. Cardwell again received an offer of employment from Albert Einstein Healthcare Network that contained her new pay rate and unit assignment.

153. Albert Einstein Healthcare Network issued Ms. Cardwell an identification

badge bearing "Albert Einstein Medical Center." Albert Einstein Healthcare Network provided Ms. Cardwell with an employee handbook and also enrolled Ms. Cardwell in an employee pension plan. Additionally, Albert Einstein Medical Center issued Ms. Cardwell's paychecks. Moreover, Ms. Cardwell's terms and conditions of employment were not governed by a collective bargaining agreement.

154. Ms. Cardwell typically worked the 7:00am to 7:30pm shift, 3 days each week, totaling 36 hours, exclusive of the 1.5 hours that were automatically deducted from Ms. Cardwell's pay for meal periods. Additionally, Ms. Cardwell worked an extra 12.5-hour shift when available or when requested to do so by Albert Einstein Healthcare Network.

155. Ms. Cardwell frequently worked through, or was interrupted during, her meal periods because of her job responsibilities, including but not limited to: responding to doctors' inquiries regarding patients' statuses; answering questions from patients' family members; catching up on backlogged paperwork and patient charts; assisting less experienced coworkers with medical questions and procedures; responding to patient emergencies; and transporting patients to and from tests throughout Albert Einstein Medical Center. Additionally, due to the lack of adequate staffing, Ms. Cardwell was often unable to obtain the necessary coverage to enable her to take a full 30-minute meal break. As a result, Ms. Cardwell experienced 2 hours of uncompensated work during those weeks where she worked an additional 12.5 hour shift. Given that Ms. Cardwell was compensated for 48 hours during those weeks, the uncompensated hours that she worked should have been paid at overtime rates.

156. Ms. Cardwell's director supervisors were Dawn Blackwell, later replaced by Colleen, both of whom held the Nurse Manager position in the Ortho/Trauma Unit. Ms.

Cardwell's direct supervisor in the Surgical Step-Down Unit was Lisa Rodzea, Nurse Manager. Ms. Blackwell, Colleen, and Ms. Rodzea all reported to the Director of Nursing, Elizabeth Menschner.

157. Ms. Cardwell does not recall ever having seen posters on Albert Einstein Healthcare Network's premises alerting her of her rights under federal wage and hour laws.

**A. Class Members**

158. The Class Members include those employees of defendants who were suffered or permitted to work by defendants and not paid their regular or statutorily required rate of pay for all hours worked.

**BASES FOR LIABILITY**

159. As set forth more fully in this complaint, the defendants are liable for failing to pay Plaintiffs and Class Members for all compensable time worked (FLSA, WPCL, and PMWA); independently for not paying Plaintiffs and Class Members for all the time for which the defendants promised Plaintiffs and Class Members they would be paid (Breach of Express Oral Contract, Breach of Implied Oral Contract, Breach of Express Written Contract, Action in Assumpsit, Fraud, Negligent Misrepresentation); and independently for improperly benefitting from the services of Plaintiffs and Class Members and not paying for those services (Quantum Meruit, Unjust Enrichment, Conversion, Accounting at Law, and Accounting at Equity).

160. As to the defendants' legal obligations to pay Plaintiffs and Class Members for all compensable time worked, the defendants' liability arises because the defendants knowingly permitted Plaintiffs and Class Members to perform work for which they did not pay Plaintiffs and Class Members as required by the FLSA and state law. In addition to

offering proof that defendants did not pay Plaintiffs and Class Members for work that they knowingly permitted Plaintiffs and Class Members to perform, liability for these violations can be proven in a variety of ways. Several non-exclusive examples of how such liability can be proven are as follows:

- a. The defendants have a non-delegable legal obligation to ensure that Plaintiffs and Class Members are paid for all time they permit Plaintiffs and Class Members to work. Therefore, it is illegal for the defendants not to pay Plaintiffs and Class Members for all compensable time worked, specifically including any that arises from the defendants' attempts to shift to Plaintiffs and Class Members the statutory obligations that defendants pay Plaintiffs and Class Members for all compensable time.
- b. Alternatively, in terms of payment for meal breaks, it is illegal for defendants to automatically deduct meal periods from Plaintiffs and Class Members' pay when the defendants are knowingly permitting Plaintiffs and Class Members to work during that time.
- c. Alternatively, Plaintiffs and Class Members can demonstrate that the failure to pay for time worked was in fact the common practice of defendants.
- d. Alternatively, if defendants choose not to pay for work performed by Plaintiffs and Class Members and assert a defense that compensation for that time is not owed, to be successful, defendants must prove that they used all reasonable efforts to prevent the work from being performed and all reasonable efforts to inquire and pay for work that is performed.

### **FACTUAL BACKGROUND**

161. Across the United States, pay practices throughout the health care industry are being investigated for failure to properly pay hourly employees for all time worked, including overtime to those employees working over 40 hours in a week. *See* New York Times article "Pay Practices in Health Care Are Investigated," attached hereto as Ex A.

162. Class Counsel's investigation has confirmed that indeed there is a common practice in the healthcare industry that results in hourly employees not being compensated for all time worked, including overtime compensation.

163. As discussed below, defendants and the Health Care Facilities maintained an illegal “Meal Break Deduction Policy” that denied Plaintiffs and Class Members compensation for all hours worked, including applicable premium pay rates.

***Meal Break Deduction Policy***

164. Defendants maintain the Meal Break Deduction Policy throughout their facilities and centers.

165. Under this policy, defendants’ timekeeping system automatically deducts time from employees’ paychecks each day for meals, breaks, and other reasons.

166. Plaintiffs and Class Members have deducted at least thirty minutes from their pay for each shift they work which is long enough for a meal break. This deduction occurs on every such shift to every Plaintiff and Class Member, regardless of his or her position, unit, or location.

167. Plaintiffs and Class Members do in fact perform work during those breaks and are not paid for that time. During this time, employees perform tasks such as continuing regular job duties, making/answering phone calls to and from doctors and other hospital departments, catching up on paperwork and patient charts, interacting with doctors and patient family members, responding to emergency situations, responding to patient call lights, and assisting less experienced coworkers with questions and procedures. Furthermore, lack of adequate staffing often prevents Plaintiffs and Class Members from having a complete uninterrupted meal period during their shifts.

168. Defendants’ Meal Break Deduction Policy is legally challengeable in several respects.

169. First, despite automatically deducting time for meal break, defendants fail to ensure that employees do not perform work during those breaks.

170. To the contrary, defendants and the Health Care Facilities actually knowingly permit Plaintiffs and Class Members to be available to work throughout their shifts and consistently require their employees to work during their unpaid breaks. This is particularly the case given that the defendants and some or all of the Health Care Facilities operate on a 24/7 basis. They do not shut down their operations or take other sufficient steps to ensure that employees do not perform work during the breaks which they automatically deduct.

171. Nor do the defendants prohibit Plaintiffs and Class Members from working during their unpaid breaks and they do not have rules against such work.

172. Second, defendants admittedly shift their statutory obligation to record and pay for all hours worked to their employees.

173. Regardless of the location, the defendants' policies uniformly shift to the Plaintiffs and Class Members the defendants' statutory responsibility to ensure that the Plaintiffs and Class Members are paid for time worked during meal breaks. In particular, at all of the defendants' locations, one of the common pillars of the defendants' policy is that Plaintiffs and Class Members are responsible for ensuring all time worked during meal periods is properly credited and paid to Plaintiffs and Class Members.

174. Defendants' policies and practices do not make the defendants and their managers the ones responsible for ensuring that time they permit Plaintiffs and Class Members to work is paid and credited to the Plaintiffs and Class Members.

175. Pursuant to this policy at all locations, Plaintiffs and Class Members will not necessarily be paid for compensable work during meal periods if they themselves do not assume the responsibility to ensure the wages are paid.

176. Third, the Meal Break Deduction Policy results in extensive uncompensated work being performed by employees.

177. As described by the Plaintiffs, they, like other Class Members, often performed work during their meal breaks and as such, their experiences are shared by all Class Members.

178. At each of the defendants' facilities each day, Class Members work during a substantial percentage of meal periods and a substantially smaller number of meal periods are credited to the Class Members.

179. The amount and frequency of such uncompensated work was so substantial that it reflects the defendants' actual policy and practice for the compensation of Plaintiffs and Class Members during their meal periods.

180. Fourth, defendants do not have available to them the defense that they have used all reasonable efforts to prevent uncompensated work from being performed and all reasonable efforts to inquire whether such work was being performed.

181. As discussed above, defendants made no efforts to prevent Plaintiffs and Class Members from working during meal periods for which Plaintiffs and Class Members were not compensated.

182. Additionally, in terms of inquiring about whether employees were working uncompensated time, as well as making sure that work did not happen, defendants failed to conduct regular and effective audits and surveys which would have revealed the uncompensated work being performed by Plaintiffs and Class Members.

183. Further, defendants fail to adequately monitor employees to ascertain whether uncompensated work is being performed and to enforce policies which ensure compensation for all time worked.

184. Defendants do not systematically review the records of their employees' work to determine if uncompensated work is being performed and whether there are inconsistencies between those records and the wage payments to Plaintiffs and Class Members.

185. Nor do defendants engage in effective training of their managers or their employees to ensure they understand that employees must be compensated for all hours worked, including during meal breaks.

186. Moreover, reasonable efforts to record and pay employees properly would not include shifting to employees defendants' statutory obligations of properly recording time and compensating employees.

187. Defendants did not routinely discipline employees who fail to record their meal breaks.

188. Defendants do not take into account literature and surveys in the medical field which show that employees with similar job duties in the same or similar hospitals work during meal periods at far higher rates than that for which defendants credit the Plaintiffs and Class Members for such meal periods. Defendants have not attempted to systematically inquire as to whether such inconsistencies between such surveys and defendants' own payment to Plaintiffs and Class Members indicate a serious, systemic problem in regards to Plaintiffs and Class Members not getting paid for all time worked.

189. All Plaintiffs and Class Members, regardless of location, position, unit, or shift, are subject to the Meal Break Deduction Policy and are not fully compensated for work they perform during breaks, including, without limitation, hourly employees working at the defendants' facilities and centers, such as secretaries, housekeepers, custodians, clerks, porters, registered nurses, licensed practical nurses, transport nurses, nurse aides, administrative assistants, anesthetists, clinicians, medical coders, medical underwriters, nurse case managers, nurse interns, nurse practitioners, nurse aides, practice supervisors, professional staff nurses, quality coordinators, resource pool nurses, respiratory therapists, senior research associates, operating room coordinators, surgical specialists, admissions officers, student nurse techs, trainers, transcriptionists, occupational therapists, occupational therapy assistants, physical therapists, physical therapy assistants, radiation therapists, staff therapists, angiotechnologists, x-ray technicians, CAT scan technicians, mammographers, MRI technologists, sleep technologists, surgical technologists, radiographers, phlebotomists, respiratory technicians, respiratory care specialists, respiratory care practitioners, clinical coordinators, medical assistants, home care nurses, home health aides, clinical case managers, midwives, and other health care workers.

190. As a result of the uniform policy, all Plaintiffs and Class Members are entitled to compensation for all time they performed work for defendants, including during their unpaid breaks. Thus, overall, defendants' policy leads to employees not being compensated for all hours worked.

191. In addition, defendants know or should have known that the Plaintiffs and Class Members perform work during these meal and other unpaid breaks, but still do not pay them for this time pursuant to their Meal Break Deduction Policy.

192. One of the ways defendants are aware of such work being performed is because the defendants know they permit, and often request, that such work be done by the employees during their unpaid meal breaks. This work is done on the defendants' and the Health Care Facilities' premises during operational hours and in full view of defendants' managers and supervisors. Thus, defendants permit that such work be done and have actual and constructive knowledge it is being performed.

193. Defendants also know that employees are receiving assigned tasks that must be completed by the appointed deadline, which results in employees having to work through their meal breaks even though they are not getting paid for the work.

194. Accordingly, defendants should have known that Plaintiffs and Class Members perform work during their unpaid breaks. Even though defendants know or should have known their employees are performing such work, defendants fail to compensate their employees for such work.

195. As discussed more fully above, this additional uncompensated time should have been paid at overtime rates when Plaintiffs', as discussed above, and Class Members' scheduled shifts exceeded 40 hours in a week or when the uncompensated time from missed or interrupted meal breaks pushed their hours for the week over 40.

196. Plaintiffs and Class Members subject to the Meal Break Deduction Policy are members of Subclass I.

- a. Subclass 1A includes all Class Members for workweeks during which they were not subject to a collective bargaining agreement.
- b. Subclass 1B includes any Class Members who are or were subject to a collective bargaining agreement, only for the workweeks they were subject to the terms of such an agreement.

*Additional Allegations*

197. With respect to their FLSA claims, Plaintiffs seek payment of both overtime pursuant to § 207 and gap time based upon 29 C.F.R. § 778.315. Specifically, Plaintiffs seek time and half their regular rate of pay for hours worked beyond 40 in any given work week that were not properly compensated by the defendants. Moreover, Plaintiffs seek their regular rate of pay for hours worked under 40 hours in any given work week, in which they also worked over 40 hours in such work week, that was not properly compensated by the defendants. Further, under state law, Plaintiffs seek their regular rate of compensation for hours worked under 40 in any given week and premium pay for hours worked beyond 40 in any given week.

198. Plaintiffs and Class Members were subject to defendants' timekeeping policies which fail to ensure that employees are compensated for all hours worked, including pursuant to the Meal Break Deduction Policy.

199. Even though defendants know its employees are performing such work, defendants fail to compensate their employees for such work.

200. Defendants' practice is to be deliberately indifferent to these violations of the statutory wage and overtime requirements.

201. For example, through the wage payments and payroll information they provided to employees, defendants deliberately concealed from their employees that they did not receive compensation for all compensable work that they performed and misled them into believing they were being paid properly.

202. Further, defendants, through their corporate publications and statements of their agents, represented that wages would be paid legally and in accordance with defendants' obligations pursuant to applicable federal and state laws.

203. Defendants misrepresented in their employee manuals and policy manuals to Plaintiffs and Class Members that they would be paid for all hours worked including those worked both under and in excess of 40 in a work week.

204. The defendants engaged in such conduct and made such statements to conceal from the Plaintiffs and Class Members their rights and to frustrate the vindication of the employees' federal rights.

205. Defendants intended for Plaintiffs and Class Members to rely upon defendants' misrepresentations that they would be paid for all the time worked, including applicable premium pay, in violation of the FLSA, WPCL, and PMWA.

206. Defendants, however, at all times, intended to violate applicable federal and state laws by failing to pay Plaintiffs and Class Members their regular or statutorily required rate of pay for all hours worked, including applicable premium pay.

207. Further, by maintaining and propagating the illegal Meal Break Deduction Policy, defendants deliberately misrepresented to Plaintiffs and Class Members that they were being properly paid for all compensable time, even though Plaintiffs and Class Members were not receiving pay for all time worked, including applicable premium pay.

208. Defendants engaged in such conduct and made such statements to conceal from Plaintiffs and Class Members their rights and to frustrate the vindication of the employees' rights. Such conduct by the defendants equitably tolls the statute of limitations

covering Plaintiffs' and Class Members' claims, and defendants are estopped from asserting statute of limitations defenses against Plaintiffs and Class Members.

209. Plaintiffs and Class Members exercised due diligence, but still were unaware of their rights.

210. Defendants' failure to pay overtime as required by the FLSA is willful.

211. Among the relief sought, Plaintiffs and Class Members seek injunctive relief to prevent defendants from continuing the illegal policies and practices perpetuated pursuant to the Meal Break Deduction Policy.

212. As used in this Complaint, "wired" means the transmission of any writing, signs, signals, pictures, or sounds, via wire, radio, or television communication.

213. As used in this Complaint, "forced labor" means knowingly obtaining the labor or services of a person by means of serious harm or threats of serious harm to that person or another person.

214. As used in this Complaint, "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

215. Plaintiffs and Class Members allege that defendants devised, intended to devise, and carried out a scheme to obtain free labor and services performed by Plaintiffs and Class Members, by threatening serious harm, while at the same time cheating Plaintiffs and Class Members out of their property and converting Plaintiffs' and Class Members' property, including their wages and/or overtime pay (the "Scheme"). Defendants' Scheme consisted of

illegally, willfully, and systematically withholding or refusing to pay Plaintiffs and Class Members their regular or statutorily required rate of pay for all hours worked in violation of law, as described previously in this Complaint, and of concealing from Plaintiffs and Class Members the fact that they were being deprived of their wages. Additionally, defendants' Scheme consisted of forcing Plaintiffs and Class Members to perform labor and services by threatening serious harm to Plaintiffs and Class Members if such work was not performed.

216. Defendants' Scheme involved the employment of material misrepresentations and/or omissions and other deceptive practices reasonably calculated to deceive Plaintiffs and Class Members. The Scheme involved depriving Plaintiffs and Class Members of their lawful entitlement to wages and overtime.

217. In executing or attempting to execute the Scheme and to receive the benefits of the Scheme, defendants repeatedly wired wage payments directly to Plaintiffs' and Class Members' bank accounts and/or to a third party which in turn transferred such payments to Plaintiffs and Class Members. These transactions occurred on a regular basis, and more than 100 such wirings occurred in the last 10 years.

218. The fraudulent statements included the wage payments wired to Plaintiffs' and Class Members' bank accounts. The wage payments, made on a predetermined schedule, were supposed to communicate to Plaintiffs and Class Members the full amount of wages they were entitled to pursuant to the employment agreements and as required by law.

219. The wage payments, made by defendants' management and payroll representatives, including Mr. Freedman and Ms. Kornblatt, misrepresented to Plaintiffs and Class Members that they were being properly compensated for all time worked, as required by law and set forth by the agreed upon terms of employment, by transferring the incorrect

amount in each wage payment wired to Plaintiffs and Class Members at times set pursuant to defendants' pay periods.

220. However, the fraudulent wage payments wired to Plaintiffs and Class Members actually represented an amount less than the full amount of wages owed to Plaintiffs and Class Members for all compensable work performed to the benefit of defendants.

221. Plaintiffs and Class Members had no reason to believe that defendants would not properly compensate them for all time worked, as required by law and set forth by the agreed upon terms of employment.

222. Plaintiffs and Class Members relied to their detriment on the misleading wage payments that defendants wired to Plaintiffs' and Class Members' bank accounts, and those misleading transmissions were a proximate cause of Plaintiffs' and Class Members' injuries.

223. Each time a wage payment and/or payroll information was wired to Plaintiffs and Class Members, Plaintiffs and Class Members were separately injured. Therefore, a separate cause of action accrues for each such injury.

224. The predicate acts of transmitting the misleading wage payments via wire in furtherance of the Scheme constitute a pattern of conduct unlawful pursuant to 18 U.S.C. § 1961(5) based upon both the relationship between the acts and continuity over the period of time of the acts. The relationship was reflected because the acts were connected to each other in furtherance of the Scheme. Continuity was reflected by both the repeated nature of the transmissions during and in furtherance of the Scheme and the threat of similar acts occurring in the future. The threat was reflected by the continuing and ongoing nature of the acts.

225. The predicate acts were related because they reflected the same purpose or goal (to retain wages and overtime pay due to Plaintiffs and Class Members for the economic benefit of defendants and members of the enterprise, while at the same time benefitting from the free labor and services performed by Plaintiffs and Class Members); results (retention of wages and overtime pay); participants (defendants and other members of the enterprise); victims (Plaintiffs and Class Members); and methods of commission (the Scheme and other acts described in the Complaint). The acts were interrelated and not isolated events, since they were carried out for the same purposes in a continuous manner over a substantial period of time.

226. Defendants' Scheme also involved the forced labor of Plaintiffs and Class Members to perform labor and services by threatening serious harm to Plaintiffs and Class Members. Specifically, defendants threatened serious financial harm to Plaintiffs and Class Members in the event Plaintiffs and Class Members failed to perform the requested labor and services for which defendants were not paying the Plaintiffs and Class Members. Additionally, defendants threatened reputational harm to Plaintiffs and Class Members if they failed to perform the required labor.

227. For example, defendants represented to Plaintiffs and Class Members that their employment would be in jeopardy if Plaintiffs and Class Members failed to complete all assigned tasks and projects. Defendants frequently required that this work be performed during periods defendants were not paying for such work, such as meal periods, before and after scheduled hours, and during training. Additionally, defendants assigned Plaintiffs and Class Members so many tasks, which were required to be completed by the appointed

deadline, that the only result was employees being forced to work through their meal breaks and before and after their shifts.

228. Plaintiffs and Class Members performed the labor and services during meal breaks out of fear of losing their jobs and thus, the fear of suffering serious financial harm.

229. Moreover, Plaintiffs and Class Members feared reputational harm, both internally and externally, for failure to perform their required labor and services. Specifically, defendants would openly question and criticize Plaintiffs and Class Members for being unable to complete their required assignments within the timeframe of their scheduled shifts. Such reputational harm could have a detrimental effect on Plaintiffs' and Class Members' employee evaluations, future wage increases, and the ability to obtain employment elsewhere. Plaintiffs and Class Members also feared possible termination if they were unable to complete their assigned duties.

230. This fear of reputational harm compelled Plaintiffs and Class Members to perform the labor and services required by defendants outside the confines of their scheduled shifts.

231. However, at all relevant times when carrying out their Scheme, unbeknownst to Plaintiffs and Class Members, defendants never intended to pay Plaintiffs and Class Members for the forced labor performed by Plaintiffs and Class Members. Thus, defendants not only gained the benefit from the labor and services performed by Plaintiffs and Class Members, but gained a financial benefit from not paying Plaintiffs and Class Members for the forced labor and services.

232. The predicate acts of forcing Plaintiffs and Class Members to perform labor and services by threatening severe harm in furtherance of the Scheme constitute a pattern of

conduct unlawful pursuant to 18 U.S.C. § 1961(5) based upon both the relationship between the acts and continuity over the period of time of the acts. The relationship was reflected because the acts were connected to each other in furtherance of the Scheme. Continuity was reflected by both the repeated nature of the acts during and in furtherance of the Scheme and the threat of similar acts occurring in the future. The threat was reflected by the continuing and ongoing nature of the acts.

233. The predicate acts were related, because they reflected the same purpose or goal (to force Plaintiffs and Class Members to perform labor or services); results (labor and services at no cost); participants (defendants and other members of the enterprise); victims (Plaintiffs and Class Members); and methods of commission (the Scheme and other acts described in the Complaint). The acts were interrelated and not isolated events, since they were carried out for the same purposes in a continuous manner over a substantial period of time.

234. At all relevant times, in connection with the Scheme, defendants acted with malice, intent, knowledge, and in reckless disregard of Plaintiffs' and Class Members' rights.

235. Defendants' management, including Mr. Freedman and Ms. Kornblatt, intended to defraud Plaintiffs and Class Members at all times in an effort to benefit to the detriment of Plaintiffs and Class Members as a result of the continuance of the Scheme. Additionally, defendants, including Mr. Freedman and Ms. Kornblatt, intended to force Plaintiffs and Class Members into performing labor and services by threatening severe financial and reputational harm in the event that Plaintiffs and Class Members did not perform the required labor and services.

236. Specifically, the Scheme resulted in not only saving millions of dollars in labor costs, but the intended additional benefit of the forced labor and services performed by Plaintiffs and Class Members.

237. Plaintiffs and each of the Class Members is a “person” within the meaning of 18 U.S.C. §§ 1961(3) and 1964.

238. Management, including individual defendants Barry Freedman and Lynne Kornblatt, are “persons” within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

239. Defendants, in association with the Health Care Facilities, were members of an “enterprise” under 18 U.S.C. §§ 1961(4) and 1962(a), which was engaged in or the activities of which affected interstate and foreign commerce.

240. Each defendant received income from a pattern of conduct unlawful under RICO, in which defendants participated through continuous instances of forced labor and continuous instances of providing Plaintiffs and Class Members with misleading wage payments which defendants wired and upon which Plaintiffs and Class Members relied to their detriment.

241. Plaintiffs and Class Members were injured in their business and property under 18 U.S.C. § 1964(c) by reason of defendants’ commission of conduct which was unlawful under RICO.

242. Every wage payment that defendants wired to Plaintiffs and Class Members as part of the Scheme constituted a new legal injury to Plaintiffs and Class Members.

243. Plaintiffs and Class Members became aware of each injury no sooner than the date of each misleading wage payment.

244. Therefore, each and every improper payment within the relevant statute of limitation period constitutes a new legal injury and the Plaintiffs and Class Members are entitled to recover based on the reduction in each improper payment.

245. Because of defendants' conduct, Plaintiffs and Class Members did not discover during the relevant statute of limitations period their claims that accrued earlier than four years before this Complaint was filed that the defendants were not paying them properly.

246. Plaintiffs and Class Members are not experts in proper payment under labor laws, and more specifically are not aware of what time is compensable for interrupted and missed meal breaks, nor how the defendants' internal computer systems were determining the amount they were being paid.

247. Further, when questioned, defendants falsely assured Plaintiffs and Class Members that defendants understood state labor laws and that based on that knowledge, defendants were ensuring that they were properly paying the Plaintiffs and Class Members.

248. Defendants made this representation despite the fact that such claims were false, fully knowing that Plaintiffs and Class Members were relying on the defendants' "expertise" and assurances.

249. Further, these assurances were not contradicted by the information in legal postings required by law to be displayed prominently at places of work to which Plaintiffs and Class Members had access.

250. Prior to seeking legal advice from Class Counsel, the Plaintiffs were never alerted to the defendants' concealment of their violation of the law by failing to pay the Plaintiffs and Class Members properly. Plaintiffs and Class Members are under no duty to

inquire of defendants that they were paid for all hours worked including applicable premium pay.

251. Further, not until the commencement of this action were Class Members made aware that the defendants' conduct in fact violated the law.

252. Plaintiffs and Class Members were not classified as exempt employees because hourly employees do not fall under one of the enumerated exemptions under the FLSA.

253. Defendants' practice is to be deliberately indifferent to these violations of the statutory wage and overtime requirements contained in the FLSA, PMWA, the WPCL, state common law, and other laws of the Commonwealth of Pennsylvania.

254. Defendants failed to act in good faith by failing to pay wages and overtime as required by the FLSA, PMWA, WPCL, and common law.

255. As a direct and proximate cause of defendants' failure to act in good faith, defendants violated the PMWA, WPCL, and common law, Plaintiffs and Class Members have suffered damages.

256. In addition, Plaintiffs and Class Members have suffered non-economic harm as a result of the Meal Break Deduction Policy, including, but not limited to, the personal loss of break and rest time, personal suffering, and emotional distress.

257. Because defendants' Meal Break Deduction Policy involve an employer intentionally misleading and deceiving employees about their wages and withholding wages legally and properly payable to employees, they are policies which are against the strong public policy of the Commonwealth of Pennsylvania with respect to employees' wages.

258. Additionally, as set forth in the allegations above, defendants fraudulently concealed from Plaintiffs and Class Members the facts that are the basis for their claims.

259. Because of such conduct, Plaintiffs and Class Members did not discover in the relevant statute of limitations period that the defendants were not paying them properly.

260. Plaintiffs and Class Members exercised due diligence, but still were unaware of their rights.

261. By entering into an employment relationship, defendants and Plaintiffs and Class Members entered into a contract for employment, including implied contracts and express contracts. While these contracts were generally oral express contracts and/or implied contracts, from time to time, these contracts were memorialized in writing.

262. Defendants, through their management, recruiters, and/or Human Resource employees, entered into express oral contracts with Plaintiffs and Class Members that were explicitly intended to order and govern the employment relationship between defendants and Plaintiffs and Class Members.

263. In particular, Plaintiffs and Class Members had express oral contracts with defendants including Barry R. Freedman and Lynne R. Kornblatt.

264. Plaintiffs and Class Members also had express oral contracts with the location where they worked.

265. These binding, express oral contracts provided that Plaintiffs and Class Members would provide services and labor to defendants in return for compensation under the provisions of the contract.

266. Specifically, defendants contracted to hire Plaintiffs and Class Members at a set rate of pay, with a minimum work schedule for a particular position, and under set terms of employment. At the same time, Plaintiffs and Class Members contracted to provide defendants with labor and services.

267. The terms of this express oral contract included defendants' explicit promise to compensate Plaintiffs and Class Members for "all hours worked," in return for the labor and services provided by Plaintiffs and Class Members. The labor and services provided by Plaintiffs and Class Members included tasks, as described in detail above, performed by Plaintiffs and Class Members pursuant to defendants' Meal Break Deduction Policy.

268. As alleged herein, because of defendants' Meal Break Deduction Policy, Plaintiffs and Class Members regularly worked hours both under and in excess of 40 per week and were not paid for all of those hours.

269. Defendants, in violation of the express agreement to pay Plaintiffs and Class Members for "all hours worked," failed to pay for time that Plaintiffs and Class Members worked including, but not limited to, during their meal breaks. Thus, defendants are liable to Plaintiffs and Class Members for breach of contract.

270. Defendants, through its management, recruiters, and/or Human Resource employees, also entered into implied contracts with Plaintiffs and Class Members as a result of their on-going dealings and course of conduct with Plaintiffs and Class Members.

271. In particular, Plaintiffs and Class Members had implied contracts with the defendants including Barry R. Freedman and Lynne R. Kornblatt.

272. Plaintiffs and Class Members also had implied contracts with the location where they worked.

273. Pursuant to these implied contracts, Plaintiffs and Class Members agreed with defendants that, among other things, defendants would pay Plaintiffs and Class Members for all hours worked.

274. Specifically, defendants contracted to hire Plaintiffs and Class Members at a set rate of pay, with a set work schedule for a particular position, and under set terms of employment. At the same time, Plaintiffs and Class Members contracted to provide defendants with labor and services.

275. The terms of these implied contracts included defendants' explicit promise to compensate Plaintiffs and Class Members for "all hours worked" by them during their employment period. This work included tasks performed by Plaintiffs and Class Members pursuant to defendants' Meal Break Deduction Policy, as discussed in detail above.

276. In addition, defendants' implied contract with Plaintiffs and Class Members embodied all binding legal requirements concerning the payment of such wages to Plaintiffs and Class Members that were in force at the time of that contract.

277. Defendants failed to compensate Plaintiffs and Class Members in compliance with this implied contract by failing to compensate Plaintiffs and Class Members for time that they worked, including pursuant to the Meal Break Deduction Policy.

278. As noted above, from time to time, the contracts between defendants and Plaintiffs and Class Members were memorialized in writing, were explicitly independent of any collective bargaining agreement, and were explicitly intended to order and govern the employment relationship between defendants and Plaintiffs and Class Members.

279. In those instances where a written contract exists, it provides that Plaintiffs and Class Members would provide services and labor to defendants in return for compensation under the provisions of the contract.

280. Defendants failed to act in good faith and breached the express and/or implied contract terms by failing to pay Plaintiffs and Class Members for all of the time Plaintiffs and

Class Members worked including applicable premium pay. As a result of defendants' breach of express and implied contracts, Plaintiffs and Class Members have been harmed and as a direct and proximate result, have suffered damages including all amounts they should have been paid for all time worked including applicable premium pay.

281. Both unwritten contracts and any written contracts between Plaintiffs and Class Members and defendants contained an implied covenant of good faith and fair dealing, which obligated defendants to perform the terms and conditions of the employment contract fairly and in good faith and to refrain from doing any act that would deprive Plaintiffs and Class Members of the benefits of the contract.

282. Such express written contracts contained an explicit provision whereby defendants promised to compensate Plaintiffs and Class Members for "all hours worked" during their employment period.

283. In addition, such express written contracts with Plaintiffs and Class Members embodied all binding legal requirements concerning the payment of such wages to the Plaintiffs and Class Members that were in force at the time of that contract.

284. Plaintiffs have not attached a copy of any express written contracts to their Complaint because such contracts were not the type of document which defendants regularly provided to employees. Rather, defendants generally maintained possession of such contracts.

285. As a result of defendants' breach of the duty of good faith and fair dealing, Plaintiffs and Class Members have been harmed and as a direct and proximate result, have suffered damages including all amounts they should have been paid for all the time worked, including applicable premium pay.

286. As detailed herein, Plaintiffs and Class Members had valid express and/or implied contracts with defendants.

287. Pursuant to these contracts, defendants had the legal obligation to account to Plaintiffs and Class Members for all monies rightfully due to them as a result of Plaintiffs' and Class Members' work on behalf of defendants.

288. Because the records kept by defendants failed to adequately and accurately disclose, among other things, hours worked by Plaintiffs and Class Members each work day, the total hours worked by Plaintiffs and Class Members each work week and/or the total overtime compensation due to Plaintiffs and Class Members for each work week, defendants failed to account to Plaintiffs and Class Members for all monies due them.

289. As a direct and proximate cause of defendants' failure to account, Plaintiffs and Class Members are uncertain as to the amount of the monetary benefit that was conferred upon defendants by working on defendants' behalf without receiving compensation, including applicable premium pay.

290. Plaintiffs and Class Members are entitled to a legal accounting of the monetary benefit that was conferred upon defendants by working on defendants' behalf without receiving compensation, including applicable premium overtime compensation.

291. In the event that Plaintiffs and Class Members are found not to have a contract claim, in the alternative, Plaintiffs and Class Members allege that defendants are liable to Plaintiffs and Class Members because they have been unjustly enriched and/or are liable under the theory of quantum meruit for their treatment of Plaintiffs and Class Members under the Meal Break Deduction Policy.

292. Plaintiffs and Class Members conferred a benefit upon defendants by working on defendants' behalf without receiving compensation, including premium overtime compensation.

293. The reasonable value for the benefit conferred upon defendants by Plaintiffs and Class Members was at least the applicable hourly rate for the time worked, including premium pay.

294. As detailed herein, rather than incur additional labor costs by paying non-exempt hourly-paid employees for all of the hours that they worked, defendants required Plaintiffs and Class Members to work hours under and in excess of 40 without receiving any compensation for those hours.

295. Defendants failed to compensate Plaintiffs and Class Members for all time worked, including pursuant to the Meal Break Deduction Policy.

296. Defendants had an appreciation or knowledge of the benefit conferred by these Plaintiffs and Class Members. For example, defendants' management has observed Plaintiffs and Class Members working through their unpaid meal breaks, directed Plaintiffs and Class Members to work during their unpaid meal breaks, and affirmatively told Plaintiffs and Class Members that they could not be paid for such time.

297. Defendants have received financial gain at the expense of Plaintiffs and Class Members because they did not pay Plaintiffs and Class Members for all hours worked and defendants kept the monies owed to the Plaintiffs and Class Members.

298. Defendants have received financial gain under such circumstances that, in equity and good conscience, defendants ought not to be allowed to profit at the expense of Plaintiffs and Class Members.

299. Defendants enjoyed the benefit of the monies rightfully belonging to the Plaintiffs and Class Members at the expense of the Plaintiffs and Class Members.

300. Defendants failed to act in good faith by failing to pay for all the time worked including applicable premium pay, which has unjustly enriched defendants to the detriment of Plaintiffs and Class Members.

301. Defendants failed to act in good faith and violated their obligations by failing to pay Plaintiffs and Class Members for the reasonable value of the services performed by Plaintiffs and Class Members for defendants.

302. As a direct and proximate result of defendants' unjust enrichment, Plaintiffs and Class Members have suffered injuries and are entitled to reimbursement, restitution, and disgorgement from defendants of the benefits conferred by Plaintiffs' and Class Members' work without compensation.

303. In the event that Plaintiffs and Class Members are found not to have a contract claim against defendants, in the alternative, Plaintiffs and Class Members allege that defendants are liable for having engaged in fraud and negligent misrepresentation in the course of maintaining their Meal Break Deduction Policy in their dealings with Plaintiffs and Class Members, for having converted property belonging to Plaintiffs and Class Members under the Meal Break Deduction Policy, and for an equitable accounting.

304. Defendants, through their managers and supervisors, made false representations to Plaintiffs and Class Members concerning the terms of the employment relationship.

305. Specifically, when Plaintiffs and Class Members were hired by defendants, through their managers, recruiters, and/or supervisors, it was misrepresented to Plaintiffs and Class Members that they would be fully compensated for all time worked.

306. These misrepresentations were material to the terms of Plaintiffs' and Class Members' employment contracts (express and implied), and Plaintiffs and Class Members relied on the misrepresentations in agreeing to accept and continue employment with defendants. This reliance was reasonable, as Plaintiffs and Class Members had every right to believe that defendants would abide by their obligations pursuant to applicable law.

307. Defendants, through their managers and supervisors, induced Plaintiffs and Class Members to accept employment with defendants by misrepresenting to Plaintiffs and Class Members that they would be fully compensated for all hours worked.

308. Defendants, through their managers and supervisors, affirmatively misled Plaintiffs and Class Members regarding the fact that defendants failed to pay Plaintiffs and Class Members for all hours worked by representing to Plaintiffs and Class Members that they would be paid for all time worked.

309. Defendants, at all times, intended to defraud Plaintiffs and Class Members in order to secure employees by promising to pay for "all hours worked," while knowing their Meal Break Deduction Policy would result in Plaintiffs and Class Members not being paid for all hours worked.

310. By making these representations to Plaintiffs and Class Members, defendants knew they would be able to not only induce Plaintiffs and Class Members to accept employment but ultimately save millions of dollars a year by not paying Plaintiffs and Class Members for all hours worked pursuant to the Meal Break Deduction Policy, described in

detail above, while still receiving the benefit of the labor and services performed by Plaintiffs and Class Members free of cost.

311. Additionally, there was no reasonable basis for defendants to believe these representations because defendants had a continuing practice and policy of failing to pay their employees for all the time worked, including applicable premium pay. Plaintiffs and Class Members relied upon defendants' representations by performing work and services for defendants. This reliance was reasonable, as Plaintiffs and Class Members had every right to believe that defendants would abide by their obligations to pay for all hours worked pursuant to applicable law.

312. As a direct and proximate cause of defendants' fraud and negligent misrepresentations, Plaintiffs and Class Members have suffered damages because they were not compensated for all hours that they worked both under and in excess of 40 hours per week.

313. At all relevant times, defendants had and continue to have a legal obligation to pay Plaintiffs and Class Members all earnings and overtime due. The wages belong to Plaintiffs and Class Members as of the time the labor and services were provided to defendants and, accordingly, the wages for services performed are the property of Plaintiffs and Class Members.

314. In refusing to pay wages and applicable premium pay to Plaintiffs and Class Members, defendants knowingly, unlawfully, and intentionally took, appropriated, and converted the wages and overtime earned by Plaintiffs and Class Members for defendants' own use, purpose, and benefit. At the time the conversion took place, Plaintiffs and Class Members were entitled to immediate possession of the amount of wages and overtime earned.

As a result, Plaintiffs and Class Members have been denied the use and enjoyment of their property and have been otherwise damaged in an amount to be proven at trial. This conversion was done in bad faith, oppressively, maliciously, and fraudulently and/or done with conscious disregard of the rights of the Plaintiffs and Class Members. This conversion was concealed from Plaintiffs and Class Members.

315. Defendants' failure to compensate Plaintiffs and Class Members for all the time they worked, including applicable premium pay, constitutes the conversion of the monies of Plaintiffs and the Class Members.

316. As a direct and proximate result of the conversion by defendants of monies belonging to Plaintiffs and Class Members, Plaintiffs and Class Members have suffered damages including all amounts they should have been paid at regular or premium rates for time worked.

317. Pursuant to the relationship between defendants and Plaintiffs and Class Members, defendants had a legal duty and obligation to fully account to Plaintiffs and Class Members for all monies due as a result of Plaintiffs' and Class Members' work on behalf of defendants.

318. As a direct and proximate cause of defendants' conversion, fraud, and negligent misrepresentations, Plaintiffs and Class Members are uncertain as to the amount of the monetary benefit that was conferred upon defendants by working on defendants' behalf without receiving compensation, including applicable premium pay because of defendants' failure to meet their legal obligations.

319. Accordingly, Plaintiffs and Class Members are entitled to an equitable accounting of the monies owed them as a result of defendants' implementation and enforcement of their Meal Break Deduction Policy.

320. Plaintiffs and Class Members were not classified as exempt employees because hourly employees do not fall under one of the enumerated exemptions under the PMWA or WPCL.

321. Defendants failed to pay all wages due to Plaintiffs and Class Members on regular days designated in advance pursuant to the WPCL.

322. In addition, the wages of Plaintiffs and Class Members have remained unpaid for more than 30 days.

323. Plaintiffs and Class Members also allege that defendants have engaged in a failure to keep accurate records in the course of maintaining their Meal Break Deduction Policy in their dealings with Plaintiffs and Class Members.

324. As such, defendants failed to make, keep, and preserve true and accurate records of the hours worked by Plaintiffs and Class Members in violation of 43 PA. CON. STAT. § 260.8.

325. As set forth above, because there is no good faith contest or dispute regarding the amounts owed, Plaintiffs and Class Members are entitled to liquidated damages in the amount of 25% or \$500 for each payday in which such wages were not paid.

**FIRST CAUSE OF ACTION**  
***FLSA***

326. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

327. Defendants willfully violated their obligations under the FLSA and are liable to Plaintiffs and Class Members for both overtime pursuant to § 207 and based upon 29 C.F.R. § 778.315.

**SECOND CAUSE OF ACTION**  
***RICO***

328. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

329. Plaintiffs and Class Members bring these claims under 18 U.S.C. § 1964(c), which confers on private individuals the right to bring suit for any injury caused by a violation of 18 U.S.C. § 1962.

330. Defendants' conduct, and the conduct of other members of the enterprise, injured Plaintiffs and Class Members by forcing them to work and refusing to pay their regular or statutorily required rate of pay for all hours worked. Defendants conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity by devising a Scheme to obtain Plaintiffs' and Class Members' property by means of false or fraudulent representations, at least some of which were made in the misleading wage payments which defendants wired, and to force Plaintiffs and Class Members to work by threatening severe financial and reputational harm.

**THIRD CAUSE OF ACTION**  
***Violation of Pennsylvania Minimum Wage Act***

331. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

332. As a direct and proximate cause of defendants' acts, including defendants' failure to act in good faith, defendants violated the PMWA, and Plaintiffs and Class

Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery under the PMWA of any plan benefits protected by ERISA even if such amounts were recoverable under the PMWA.

**FOURTH CAUSE OF ACTION**  
***Wage Payment and Collection Law***

333. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

334. As a direct and proximate cause of defendants' acts, including defendants' failure to act in good faith, defendants violated the WPCL, and Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery under the WPCL of any plan benefits protected by ERISA even if such amounts were recoverable under the WPCL.

**FIFTH CAUSE OF ACTION**  
***Breach of Express Oral Contract***

335. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

336. Defendants are liable to Plaintiffs and Class Members for breach of their express oral contract.

337. As a direct and proximate cause of defendants' breach of this express oral contract, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**SIXTH CAUSE OF ACTION**  
***Breach of Implied Contract***

338. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

339. Defendants are liable to Plaintiffs and Class Members for breach of implied contracts.

340. As a direct and proximate cause of defendants' breach of implied contracts, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**SEVENTH CAUSE OF ACTION**  
***Breach of Express Written Contract***

341. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

342. Defendants are liable to Plaintiffs and Class Members for breach of their express written contract.

343. As a direct and proximate cause of defendants' breach of this express written contract, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**EIGHTH CAUSE OF ACTION**  
***Action in Assumpsit***

344. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

345. As a direct and proximate cause of defendants' breach of contractual duties, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**NINTH CAUSE OF ACTION**  
*Accounting at Law*

346. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

347. Plaintiffs and Class Members are entitled to an accounting at law of the monetary benefit that was conferred upon defendants by working under and in excess of 40 hours per week on defendants' behalf without receiving compensation, including premium overtime compensation. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**TENTH CAUSE OF ACTION**  
*Quantum Meruit*

348. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

349. Defendants are liable to Plaintiffs and Class Members based on quantum meruit.

350. As a direct and proximate cause of defendants' failure to pay Plaintiffs and Class Members the reasonable value of their services, including defendants' failure to act in good faith, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**ELEVENTH CAUSE OF ACTION**

***Unjust Enrichment***

351. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

352. Defendants have been unjustly enriched through their failure to pay for all time Plaintiffs and Class Members performed work.

353. As a direct and proximate cause of defendants' failure to pay Plaintiffs and Class Members the reasonable value of their services, including defendants' failure to act in good faith, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**TWELTH CAUSE OF ACTION**

***Fraud***

354. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

355. Defendants are liable to Plaintiffs and Class Members for fraud.

356. As a direct and proximate cause of defendants' misrepresentations, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**THIRTEENTH CAUSE OF ACTION**

***Negligent Misrepresentation***

357. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

358. Defendants are liable to Plaintiffs and Class Members for negligent misrepresentation.

359. As a direct and proximate cause of defendants' misrepresentations, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**FOURTEENTH CAUSE OF ACTION**  
*Conversion*

360. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

361. Defendants are liable to Plaintiffs and Class Members for conversion.

362. As a direct and proximate result of the conversion by defendants of monies belonging to Plaintiffs and Class Members, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**FIFTEENTH CAUSE OF ACTION**  
*Accounting at Equity*

363. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein

364. Plaintiffs and Class Members are entitled to an accounting at equity of the monetary benefit that was conferred upon defendants by working under and in excess of 40 hours per week on defendants' behalf without receiving compensation, including premium overtime compensation. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

**SIXTEENTH CAUSE OF ACTION**

***43 PA. CON. STAT. § 260.8 - Failure To Keep Accurate Records***

365. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

366. As a direct and proximate result defendants' failure to keep true and accurate record of hours worked by Plaintiffs and Class Members, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however, seeking recovery of any plan benefits protected by ERISA.

**WHEREFORE**, Plaintiffs and Class Members demand judgment against defendants in their favor and that they be given the following relief:

- a. an order preliminarily and permanently restraining defendants from engaging in the aforementioned pay violations;
- b. an award of the value of Plaintiffs' and Class Members' unpaid wages and any other amounts necessary to make them whole;
- b. liquidated damages under the FLSA equal to the sum of the amount of wages and overtime which were not properly paid to Plaintiffs and Class Members;
- c. all relief available under PMWA and WPCL including, without limitation, additional damages such as 25% of Plaintiffs' and Class Members' unpaid wages under the illegal policies described in their Complaint or \$500, whichever is greater, and an additional amount equal to the unpaid wages, but excluding relief available under any ERISA plan;
- d. an award of reasonable attorneys' fees, expenses, expert fees, and costs incurred in vindicating Plaintiffs' and Class Members' rights;
- e. an award of pre- and post-judgment interest;
- f. an accounting of the monetary benefit that was conferred upon defendants by Plaintiffs and Class Members working under and in excess of 40 hours per week on defendants' behalf without receiving compensation, including premium overtime compensation; and

- g. such other and further legal or equitable relief as this Court deems to be just and appropriate.

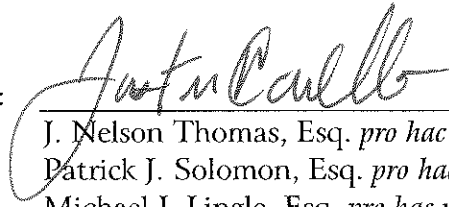
**JURY DEMAND**

Plaintiffs demand a jury to hear and decide all issues of fact in accordance with Federal Rule of Civil Procedure 38(b).

Dated: November 10, 2011

**THOMAS & SOLOMON LLP**

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2011, a copy of the foregoing Plaintiffs' Second Amended Complaint was served, via United States First Class Mail, on the following at the address shown below:

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Robin Sumner  
Sara B. Richman  
Justin J. Williams  
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Dated: November 10, 2011

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# Exhibit A

**The New York Times**

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August 9, 2010

## **Pay Practices in Health Care Are Investigated**

By ROBERT PEAR

WASHINGTON — The Obama administration is investigating pay practices throughout the health care industry after finding that many hospitals and nursing homes do not pay proper overtime to nurses and other employees who work more than 40 hours a week.

Hospitals around the country have paid millions of dollars in back wages to settle claims by the government and their employees. And many more hospitals are fighting class-action lawsuits that raise the same issues.

In St. Louis, the Labor Department has recovered more than \$1.7 million in back wages for 4,000 employees of hospitals and clinics operated by SSM Health Care, a Roman Catholic system.

In Boston, the Partners HealthCare System agreed to pay 700 employees more than \$2.7 million in overtime back wages to resolve a lawsuit by the department alleging violations of the Fair Labor Standards Act.

And under the proposed settlement of a class-action lawsuit in California, Kaiser Permanente would pay \$7.25 million to hundreds of registered nurse coordinators, case managers and other medical workers. The employees said they had been denied overtime pay because they were improperly classified as exempt. Kaiser denied wrongdoing but has agreed to the settlement.

Drinker Biddle & Reath, a national law firm based in Philadelphia, recently sent a bulletin to clients with this message: "Health Care Providers Beware! Your Wage/Hour Practices Are Under Scrutiny."

The Labor Department has hired 250 new wage-and-hour investigators, representing a staff increase of one-third. The government wants to make sure workers get "every penny they earn," said Kenneth Stripling, a Labor Department official leading enforcement efforts in Birmingham, Ala.

In New York, the department said, fewer than 36 percent of health care employers investigated by its Albany office were in compliance with the federal wage-and-hour law.

In Connecticut and Rhode Island, the department is investigating residential health care facilities. In Alabama and Mississippi, federal investigators are focusing on assisted-living and group homes.

Nursing assistants, licensed practical nurses, janitors and cooks "are particularly vulnerable to wage violations," Mr. Stripling said.

In many cases, employees say they were not paid for work performed during meal breaks.

"Most nurses put the patient first," said Charles D. Boal, a registered nurse who worked in the critical care unit of The Western Pennsylvania Hospital in Monroeville, near Pittsburgh.

"We often gave up lunch breaks to see that a patient was taken care of properly," he said. "If you brought your lunch from home or got food in the cafeteria and took it to the nursing unit, you would be interrupted by phone calls, by physicians and family members who wanted to talk to you. We really did not have an uninterrupted meal break."

Daniel T. Laurent, a spokesman for the hospital, declined to comment.

Labor Department regulations say, "Bona fide meal periods are not work time," and employers do not have to pay for them. But, they say, an hourly employee "must be completely relieved from duty" during a bona fide meal period.

"It is the duty of the management to exercise its control and see that the work is not performed" if the employer does not intend to pay for it, the rules say.

In some cases, workers and the government say, hospitals automatically reduce an employee's pay by the equivalent of 30 minutes per shift, on the assumption that the worker has taken a meal break, even when the employee missed it or was interrupted.

Catherine M. Gordon, a nurse at Buffalo General Hospital in New York, said that "chronic understaffing" increased the risk of wage-and-hour violations.

Ms. Gordon is a plaintiff in a lawsuit against Kaleida Health, a network that includes Buffalo General. "Going into health care, we know that we will have to work some weekends and holidays and night shifts," Ms. Gordon said. "But often we don't get our meal break."

Michael P. Hughes, a spokesman for Kaleida Health, one of the largest employers in western New York, said, "We believe this is a frivolous lawsuit."

In other cases, the Labor Department has found that hospitals failed to pay hourly employees for work before or after their scheduled shifts, and that home care agencies did not pay employees for time spent in travel between patients' homes.

J. Nelson Thomas, a founder of a Rochester law firm that represents health care workers in class-action lawsuits around the country, said: "Hospitals take advantage of the good instincts of

employees, knowing they will put the patient first. Some hospitals have cheated employees out of millions of dollars.”

His firm, Thomas & Solomon, has a Web site devoted to the issue.

The Fair Labor Standards Act generally requires that employees be paid at least the federal minimum wage of \$7.25 an hour, as well as one-and-a-half times their regular rates of pay for hours worked beyond 40 a week.

Partners HealthCare, in Boston, contacted the Labor Department after realizing that some affiliates might have violated the law. Employees often worked at more than one Partners hospital or clinic in the same week, but the company did not combine the hours worked at different sites to determine if overtime was due.

The University of Pittsburgh Medical Center is vigorously defending itself in a lawsuit filed by Mr. Thomas’s firm on behalf of hourly employees.

“Class-action lawsuits benefit the lawyers, not the consumers,” said Paul C. Wood, a spokesman for the medical center. The lawyers are often paid more than any plaintiffs, he added.

The Greater New York Hospital Association recently held a labor law seminar for its members and encouraged them to check their compliance with federal requirements.

“Hospitals are complicated organizations, and record-keeping for employees is astronomically complicated,” said Kenneth E. Raske, the president of the association. “Workers cannot just drop patient care when the lunch hour arrives. We are not like an assembly line, which can shut down at lunchtime, or a bank, where people work 9 to 5.”