

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SUSAN FRATTAROLA
1137 Mercy Street
Philadelphia, PA 19148,

-and-

ANNA MAY LAMPART
4160 Whiting Road
Philadelphia, PA 19154,

-and-

CASSANDRA RUFF
2443 Norwood Avenue
Abington, PA 19001,

-and-

PAMELA KIMBLE-ARMSTRONG
3757 Nathan Lane
Vineland, NJ 08361,

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

Plaintiffs,

v.

MERCY HEALTH SYSTEM OF SOUTHEASTERN
PENNSYLVANIA

Lansdowne Avenue & Baily Road
Darby, PA 19023,

-and-

MERCY CATHOLIC MEDICAL CENTER OF
SOUTHEASTERN PENNSYLVANIA

Lansdowne Avenue & Baily Road
Darby, PA 19023,

-and-

MERCY FITZGERALD HOSPITAL
Lansdowne Avenue & Baily Road

Darby, PA 19023,

-and-

MERCY PHILADELPHIA HOSPITAL
Lansdowne Avenue & Baily Road

Darby, PA 19023,

-and-

MERCY SUBURBAN HOSPITAL
1500 Lansdowne Avenue

Darby, PA 19023,

-and-

AMENDED COMPLAINT - CLASS
ACTION
AND DEMAND FOR JURY TRIAL

Civil Action No. 09-cv-5533

NAZARETH HOSPITAL
Lansdowne Avenue & Baily Road
Darby, PA 19023,

-and-

ST. AGNES CONTINUING CARE CENTER
Lansdowne Avenue & Baily Road
Darby, PA 19023,

-and-

H. RAY WELCH, JR.
One West Elm Street
Conshohocken, PA 19428,

-and-

ELYSE A. KAPLAN
One West Elm Street
Conshohocken, PA 19428,

-and-

CATHERINE BYRNE
One West Elm Street
Conshohocken, PA 19428,

Defendants.

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, Susan Frattarola, Anna May Lampart, Cassandra Ruff, and Pamela Kimble-Armstrong, 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 Employee Retirement Income Security Act of 1974 ("ERISA") 29 U.S.C. § 1001 *et seq.*; and under the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*; and under the common law and various laws of the Commonwealth of Pennsylvania including, but not limited to, 43 P.S. §§ 333.101, *et seq.*, the Pennsylvania Minimum Wage Act ("PMWA"), and 43 P.S. §§ 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 with the exception of Pamela Kimble-Armstrong who currently resides in Cumberland County, New Jersey.

CLASS ACTION ALLEGATIONS

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

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

6. The class consists of current and former employees of defendants whose pension and 403(b) plans were not credited with their non-reduced weekly wages and correct overtime compensation. Additionally, 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.

7. The class size is believed to be over 8,000 employees.

8. The 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.

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

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

11. 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.

12. 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 of not crediting employees with their non-reduced weekly wages and correct overtime compensation is a violation of ERISA; 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 in violation of the PMWA, the WPCL, state common law and other laws of the Commonwealth of Pennsylvania.

13. The class action is maintainable under subsections (2) and (3) of Rule 23(b) because the Plaintiffs and Class Members 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.

PARTIES

A. Defendants

14. Collectively, defendants Mercy Health System of Southeastern Pennsylvania, Mercy Catholic Medical Center of Southeastern Pennsylvania, Mercy Fitzgerald Hospital, Mercy Philadelphia Hospital, Mercy Suburban Hospital, Nazareth Hospital, St. Agnes Continuing Care Center, H. Ray Welch, Jr., Catherine Byrne, and Elyse A. Kaplan (collectively, "Named Defendants") are related organizations through, for example, common membership, governing bodies, trustees and/or officers and benefit plans.

15. Named Defendants' health care facilities and centers include the following: Mercy Fitzgerald Hospital, Mercy Philadelphia Hospital, Mercy Suburban Hospital, Nazareth Hospital, Mercy Home Health, St. Agnes Medical Center, St. Agnes, St. Agnes Continuing Care Center, St. Agnes Continuing Care Center at Grays Ferry Estates, St. Agnes Continuing Care Center at Columbus Street, St. Agnes Long-term Intensive Care, LLP, Mercy Catholic Medical Center of Southeastern Pennsylvania, Sister Marie Lenahan Wellness Center at Mercy Fitzgerald Hospital, Mercy Eastwick Wellness Center, Hearing and Balance Center at Mercy Fitzgerald Hospital, Psychiatric Crisis and Evaluation Center, Mercy Medical Associates at Eastwick, Mercy Medical Associates at Springfield, Mercy Medical Associates at Providence, Sleep Disorders Center, Mercy Rehab and Wellness - Havertown, Mercy Women First Gynecologic Associates, Mercy Family Health Care, Mercy Rehab Associates, The Vascular Center at Mercy Philadelphia Hospital, The Center for Wound Healing and Hyperbaric Medicine at Mercy Philadelphia Hospital, Mercy Suburban Hospital Breast Center, Mercy Cancer Care, Mercy Suburban's Geriatric Resource Center,

The Cardiovascular Center at Mercy Suburban Hospital, Mercy Suburban Center for Joint Replacement, Haverford Anesthesia Associates at Mercy Suburban Hospital, Mercy Suburban Hospital's Vascular Laboratory, Center for Physical Therapy and Rehabilitation, Center for Wound Healing and Hyperbaric Medicine, Nazareth Hospital Heart and Vascular Center, Nazareth Hospital Medical and Wellness Center, Center for Physical Therapy and Rehabilitation, Nazareth Hospital Vascular Center (collectively "Health Centers").

16. Named Defendants affiliated health care facilities and centers include the following: Catholic Health East, Mercy Elderly Housing Corporation, Mercy Family Support, Mercy Health Foundation of Southeastern PA, Mercy Home Health Services, Mercy Home Health, Mercy Health System of Southeastern PA, Mercy Management of Southeastern PA, East Norriton Physician Services, Nazareth Medical Office Building, Nazareth Physician Services, Inc., Nazareth Anesthesia Associates, Inc., Nazareth Community MH/MR Center, Inc., Nazareth Home Care, Nazareth Home Health Agency, Keystone Mercy Health Plan, Nazareth Imaging Associates, Inc., Nazareth Medical Equipment Company, Nazareth Medical Office Building Associates, Nazareth Medical Office Building Associates, L.P., Northeast Physician Services, St. Agnes Long-term Intensive Care, LLP, St. Agnes Cardiology Associates, P.C., St. Agnes Home Care, St. Agnes Medical Equipment, St. Agnes Preferred Healthcare Network, St. Agnes Radiology Associates, St. Agnes Radiology Associates, P.C., St. Agnes Skilled Nursing Facility, Mercy Health Plan, Mercy Suburban Hospital, Nazareth Healthcare Foundation, Mercy Eastwick, Inc., St. Agnes Continuing Care Center Foundation, Mercy Catholic Medical Center of Southeastern PA, St. Agnes Continuing Care Center, NE Physician Services, Inc., Mercy Suburban Emergency Physicians, Mercy Home Care Equipment, Mercy Health Plan Physicians & Surgeons, Ltd., Mercy Advanced Radiology

Center, Mercy Cardiovascular Cath Lab, LLC, Mercy Care, Mercy Care Corporation, Mercy Catholic Medical Center Apothecary, Inc., Mercy EKG Associates, Mercy Emergency Services, LLC, Mercy Fitzgerald Internal Medicine Practice, Mercy Fitzgerald Medical Office Building Condominium Association, Mercy Group Practice, LLC, Mercy Gynecologic Associates, Mercy Health Network, Mercy Health Network of Southeastern Pennsylvania, Mercy Health, Inc., Mercy Neurology Associates, P.C., Mercy Pathology Associates, Mercy Psychiatry Associates, P.C., Mercy Pulmonary Associates, P.C., Mercy Surgical at Mercy Philadelphia Hospital, Mercy Health Hospice, and VITAS Innovative Hospice Care (collectively, "Affiliates").

17. Together the Named Defendants, the Health Centers and the Affiliates are referred to as "Mercy Health System" or "defendants."

18. Mercy Health System is an enterprise engaged in the operation of a hospital and/or the care of the sick and is a healthcare consortium.

19. Defendants operate over 40 health care facilities and centers and employ approximately 8,000 individuals.

20. Defendants constitute an integrated, comprehensive, consolidated health care delivery system, offering a wide range of services.

21. For example, defendants have centralized supply chain management, and financial, computer, payroll and health records systems that are integrated throughout their locations.

22. Further, defendants' labor relations and human resources are centrally organized and controlled, including defendants' employment of a Vice President of Human Resources as part of the management team, as well as the maintenance of system-wide

policies.

23. Defendants share common management, including oversight and management by a senior executive team and board of directors.

24. Defendants have common ownership.

25. At all relevant times, Mercy Health System has suffered or permitted Plaintiffs and Class Members to perform work for it at its various health care locations.

26. Plaintiffs and Class Members are or have been employed by Mercy Health System and/or have been jointly employed by Mercy Health System.

27. Mercy Health System operates locations, either directly or indirectly, through the Health Centers and Affiliates, and therefore is the employer of Plaintiffs and Class Members who are or were employed at all locations.

28. As such, defendants are the employer (single, joint or otherwise) of the Plaintiffs and Class Members and/or alter egos of each other.

29. In light of the economic realities of the enterprise operated by Mercy Health System, Mercy Health System is a joint employer of all Plaintiffs Class Members.

30. Collectively, Mercy Health System comprises a single, integrated enterprise, as they perform related activities through common control for a common business purpose.

Plaintiffs' and Class Members' Employment With Defendants Mercy Health System of Southeastern Pennsylvania, H. Ray Welch, Jr., Catherine Byrne, and Elyse A. Kaplan

31. Named Plaintiff Frattarola was employed by Mercy Health System of Southeastern Pennsylvania, H. Ray Welch, Jr., Catherine Byrne, and Elyse A. Kaplan from approximately May 2007 to the present.

32. Named Plaintiff Lampart was employed by Mercy Health System of

Southeastern Pennsylvania, Mr. Welch, Ms. Byrne and Ms. Kaplan from approximately August 2007 through August 2009.

33. Named Plaintiff Ruff was employed by Mercy Health System of Southeastern Pennsylvania, Mr. Welch, Ms. Byrne and Ms. Kaplan from approximately October 2008 to the present.

34. Named Plaintiff Kimble-Armstrong was employed by Mercy Health System of Southeastern Pennsylvania, Mr. Welch, Ms. Byrne and Ms. Kaplan from approximately December 2004 through November 2008.

35. All other Plaintiffs and Class Members were also employed by Mercy Health System of Southeastern Pennsylvania, Mr. Welch, Ms. Byrne and Ms. Kaplan during their employment.

36. Defendant Mercy Health System of Southeastern Pennsylvania is liable to the Plaintiffs and the Class Members as an employer, as a principal due to the acts of its agents, due to the existence of a single enterprise and because it is an alter ego of the other defendants.

37. Mercy Health System of Southeastern Pennsylvania was the Plaintiffs' and Class Members' employer because it acted directly or indirectly in the interest of an employer with respect to employees.

38. For example, Mercy Health System of Southeastern Pennsylvania, directly or indirectly, 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.

39. Mercy Health System of Southeastern Pennsylvania accomplished this by integrating payroll records systems among defendants, centralizing organization and control of labor relations and human resources among defendants, 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 among defendants.

40. During Plaintiffs' and Class Members' employment with Mercy Health System of Southeastern Pennsylvania, they understood that Mercy Health System of Southeastern Pennsylvania was their employer, either directly or indirectly, based on Mercy Health System of Southeastern Pennsylvania's control over Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies and other conditions of employment.

41. Plaintiffs' and Class Members' understanding resulted from Mercy Health System of Southeastern Pennsylvania's centralization and control of payroll records systems among defendants, centralization of the organization and control of labor relations and human resources among defendants, including through the employment of a Vice President of Human Resources, and maintenance of system-wide policies, including the policies at issue in this case, and certain employee benefit plans among defendants.

42. Mercy Health System of Southeastern Pennsylvania also was a principal acting through its agents, including its Affiliates, Health Centers and the other Named Defendants. Through its agents, it exercised 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 to otherwise treat Plaintiffs and Class Members as employees.

43. Mercy Health System of Southeastern Pennsylvania exercised this authority through its integration of payroll records systems among defendants, centralization of the organization and control of labor relations and human resources among defendants, including through the employment of a Vice President of Human Resources, and maintenance of system-wide policies, including the policies at issue in this case, and certain employee benefit plans among defendants.

44. The Affiliates, Health Centers and the other Named Defendants acted within the authority given to them by Mercy Health System of Southeastern Pennsylvania to set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies and other conditions of employment, and to otherwise treat Plaintiffs and Class Members as employees.

45. Mercy Health System of Southeastern Pennsylvania, the various Affiliates and Health Centers and the other Named Defendants understood that Mercy Health System of Southeastern Pennsylvania was in control of their employment relationship with Plaintiffs and Class Members.

46. Further, Mercy Health System of Southeastern Pennsylvania its Affiliates and Health Centers and the other Named Defendants operated as a corporate combine, resulting in a single enterprise.

47. For example, during Plaintiffs' and Class Members' employment with Mercy Health System of Southeastern Pennsylvania, Mercy Health System of Southeastern Pennsylvania, its various Affiliates and Health Centers and the other Named Defendants shared common ownership and common management, including oversight and management by a senior executive team and board of directors.

48. Mercy Health System of Southeastern Pennsylvania, its Affiliates and Health Centers and the other Named Defendants acted in concert with one another to set 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 to otherwise treat Plaintiffs and Class Members as employees.

49. Mercy Health System of Southeastern Pennsylvania and its various Affiliates and Health Centers and the other Named Defendants acted in concert by centralizing supply chain management among defendants, integrating financial, computer, payroll and health records systems among defendants, centralizing organization and control of labor relations and human resources among defendants, 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 among defendants.

50. In addition, Mercy Health System of Southeastern Pennsylvania was the alter ego of the other Named Defendants and its various Affiliates and Health Centers.

51. During Plaintiffs' and Class Members' entire employment with Mercy Health System of Southeastern Pennsylvania, Mercy Health System of Southeastern Pennsylvania dominated and controlled its various Affiliates and Health Centers and the other Named Defendants.

52. For example, Mercy Health System of Southeastern Pennsylvania dominated and controlled its various Affiliates and Health Centers and the other Named Defendants by centralizing supply chain management among defendants, integrating financial, computer, payroll and health records systems among defendants, centralizing organization and control of labor relations and human resources among defendants, 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 among defendants.

53. Mercy Health System of Southeastern Pennsylvania engaged in this domination and control in order to actively control Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies and other conditions of employment, and to otherwise treat the Plaintiffs and Class Members as employees.

54. Mercy Health System of Southeastern Pennsylvania also dominated and controlled its various Affiliates and Health Centers and the other Named Defendants for the particular purpose of implementing and enforcing the illegal policies described in this Complaint.

55. As a result of Mercy Health System of Southeastern Pennsylvania's domination and control of its various Affiliates and Health Centers and the other Named Defendants for the purpose of implementing and enforcing the illegal policies described in this Complaint, Plaintiffs and Class Members have suffered damages and loss.

56. H. Ray Welch, Jr. is the President and CEO of Mercy Health System.

57. Mr. Welch's responsibilities include actively managing Mercy Health System.

58. In concert with others, Mr. Welch has the authority to, and does, make decisions that concern the policies defendants adopt and the implementation of those policies.

59. In concert with others, Mr. Welch has the authority to, and does, make decisions that concern defendants' operations, including functions related to employment, human resources, training, payroll, and the terms of employment provided to employees.

60. Due in part to his role as President, Mr. Welch is actively involved in the creation of the illegal policies complained of in this case.

61. Due in part to his role as President, Mr. Welch actively advises defendants' agents on the enforcement of the illegal policies complained of in this case.

62. Due in part to his role as President, Mr. Welch actively ensures defendants' compliance or non-compliance with federal and state law, including the requirements of the FLSA, ERISA, RICO, the PMWA, the WPCL, and state common law.

63. In concert with others, Mr. Welch has the authority to, and does, make decisions that concern the reviewing and counseling of defendants regarding employment decisions, including hiring and firing of Plaintiffs and Class Members.

64. In concert with others, Mr. Welch has the authority to, and does, make decisions that concern employees' schedules, hours and standard terms of employment.

65. Mr. Welch has the authority to, and does, make decisions that concern standard pay scales.

66. Mr. Welch has the authority to, and does, make decisions that concern defendants' human resources policies, the resolution of issues and disputes regarding policies and their applications, the counsel locations receive regarding human resources issues, and communications with employees about human resources issues and policies.

67. Mr. Welch has the authority to, and does, make decisions that concern defendants' employment and human resources records, including the systems for keeping and maintaining those records.

68. Mr. Welch has the authority to, and does, make decisions that concern training and education functions across Mercy Health System.

69. Mr. Welch has the authority to, and does, make decisions that concern the type and scope of training employees must attend as well as any compensation they receive for attending training.

70. Mr. Welch has the authority to, and does, make decisions that concern payroll functions across Mercy Health System.

71. Mr. Welch has the authority to, and does, make decisions that concern 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. Mr. Welch has the authority to, and does, make decisions that concern the terms of employment offered across Mercy Health System.

73. Mr. Welch has the authority to, and does, make decisions that concern the type and scope of the terms of employment made available to employees, the method and manner in which information regarding those terms is conveyed to employees, and the system for keeping and maintaining records related to employees' terms of employment.

74. Because Mr. Welch has authority to hire or fire employees, provide and direct support regarding human resources issues, including the hiring and firing of Plaintiffs and Class Members, and control the drafting and enforcement of the policies which govern the hiring and firing of employees, Mr. Welch has the power to hire and fire employees.

75. Because Mr. Welch has authority to establish work schedules and/or conditions of employment, provide and direct support regarding human resources issues, including work schedules and/or conditions of employment, control the drafting and enforcement of the policies which govern employees' schedules and/or conditions of

employment, establish the type and scope of training employees receive, and administer the remuneration employees receive, including standard remuneration levels and the type and scope of the remuneration made available to employees, Mr. Welch supervises and controls employees' work schedules and/or conditions of employment.

76. Because Mr. Welch has authority to establish employees' rate and method of payment and centrally control payroll functions, including standard pay scales, the provision of payroll information, and the timing of payment, Mr. Welch determines the rate and method of employees' payment.

77. Because Mr. Welch has authority with respect to defendants' centralized records, including a database regarding employees' employment records, and systems for keeping and maintaining payroll, the terms of employment, and other employment-related records, Mr. Welch maintains employees' employment records.

78. Because Mr. Welch provides day-to-day support regarding human resources issues, including employees' work schedules and/or conditions of employment, controls the drafting and enforcement of the policies which govern employees' schedules and/or conditions of employment, and administers the different remuneration available to employees, he is affirmatively, directly, and actively involved in operations of the defendants' business functions, particularly in regards to the employment of Plaintiffs and Class Members.

79. Because Mr. Welch is actively involved in the creation of the illegal policies complained of in this case, actively advises defendants' agents on the enforcement of the illegal policies complained of in this case and actively ensures defendants' compliance or non-compliance with federal and state law, including the requirements of the FLSA, ERISA,

RICO, the PMWA, the WPCL, and state common law, he actively participates in the violations complained of in this action.

80. Based upon the foregoing, Mr. Welch is liable to Plaintiffs and Class Members because of his active role in operating the business, his status as an employer, and/or according to federal and state law.

81. Catherine Byrne is the Senior Vice President of Human Resources for Mercy Health System.

82. Ms. Byrne is responsible for, provides direction and control over, and is authorized to direct all aspects of human resources functions across Mercy Health System.

83. Due in part to her role of overseeing human resources, training and education, and payroll and commission services, in concert with others, Ms. Byrne is actively involved in the creation of the illegal policies complained of in this case.

84. Due in part to her role of overseeing human resources, training and education, and payroll and commission services, in concert with others, Ms. Byrne actively advises defendants' agents on the enforcement of the illegal policies complained of in this case.

85. Due in part to her role of overseeing human resources, training and education, and payroll and commission services, in concert with others, Ms. Byrne actively ensures defendants' compliance or non-compliance with federal and state law, including the requirements of the FLSA, ERISA, RICO, the PMWA, the WPCL, and state common law.

86. Ms. Byrne is actively involved in reviewing and counseling defendants regarding employment decisions, including hiring and firing of Plaintiffs.

87. Ms. Byrne is actively involved in decisions that set employees' schedules, hours and standard terms of employment.

88. Ms. Byrne is actively involved in decisions that set standard pay scales.

89. Ms. Byrne is actively involved in the determination and drafting of human resources policies, the resolution of issues and disputes regarding policies and their application, the counseling locations receive regarding human resources issues, and communications with employees about human resources issues and policies.

90. Ms. Byrne is actively involved in defendants' employment and human resources records, including the systems for keeping and maintaining those records.

91. Ms. Byrne is actively involved in training and education functions across Mercy Health System.

92. Ms. Byrne is actively involved in determining the type and scope of training employees must attend as well as any compensation they receive for attending training.

93. Ms. Byrne is actively involved in payroll functions across Mercy Health System.

94. Ms. Byrne is actively involved in 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.

95. Ms. Byrne is actively involved in determining the terms of employment offered to employees across Mercy Health System.

96. Ms. Byrne is actively involved in determining the type and scope of the terms of employment made available to employees, the method and manner in which information regarding those terms is conveyed to employees, and the system for keeping and maintaining records related to employees' terms of employment.

97. Because Ms. Byrne has authority to hire or fire employees, provide and direct support regarding human resources issues, including the hiring and firing of employees, and control the drafting and enforcement of the policies which govern the hiring and firing of employees, Ms. Byrne has the power to hire and fire employees.

98. Because Ms. Byrne has authority to establish work schedules and/or conditions of employment, provide and direct support regarding human resources issues, including work schedules and/or conditions of employment, control the drafting and enforcement of the policies which govern employees' schedules and/or conditions of employment, establish the type and scope of training employees receive, and administer the remuneration employees receive, including the standard remuneration levels offered and the type and scope of the remuneration made available to employees, Ms. Byrne supervises and controls employees' work schedules and/or conditions of employment.

99. Because Ms. Byrne has authority to establish employees' rate and method of payment and centrally control payroll functions, including standard pay scales, the provision of payroll information, and the timing of payment, Ms. Byrne determines the rate and method of employees' payment.

100. Because Ms. Byrne has authority with respect to defendants' centralized records, including a database regarding employees' employment records, and systems for keeping and maintaining payroll, terms of employment, and other employment-related records, Ms. Byrne maintains employees' employment records.

101. Because Ms. Byrne provides day-to-day support regarding human resources issues, including employees' work schedules and/or conditions of employment, controls the drafting and enforcement of the policies which govern employees' schedules and/or

conditions of employment, and administers the terms of employment offered and remuneration available to employees, she is affirmatively, directly, and actively involved in operations of defendants' business functions, particularly in regards to the employment of Plaintiffs and Class Members.

102. Because Ms. Byrne is actively involved in the creation of the illegal policies complained of in this case, actively advises defendants' agents on the enforcement of the illegal policies complained of in this case and actively ensures defendants' compliance or non-compliance with federal and state law, including the requirements of the FLSA, ERISA, RICO, the PMWA, the WPCL, and state common law, Ms. Byrne actively participates in the violations complained of in this action.

103. Based upon the foregoing, Ms. Byrne is liable to Plaintiffs and Class Members because of her active role in operating the business, her role in the violations complained of in this action, her status as an employer, and/or otherwise according to federal and state law.

104. Elyse A. Kaplan was the Senior Vice President of Human Resources for Mercy Health System.

105. Ms. Kaplan was responsible for, provides direction and control over, and was authorized to direct all aspects of human resources functions across Mercy Health System.

106. Due in part to her role of overseeing human resources, training and education, and payroll and commission services, in concert with others, Ms. Kaplan was actively involved in the creation of the illegal policies complained of in this case.

107. Due in part to her role of overseeing human resources, training and education, and payroll and commission services, in concert with others, Ms. Kaplan actively advised defendants' agents on the enforcement of the illegal policies complained of in this case.

108. Due in part to her role of overseeing human resources, training and education, and payroll and commission services, in concert with others, Ms. Kaplan actively ensured defendants' compliance or non-compliance with federal and state law, including the requirements of the FLSA, ERISA, RICO, the PMWA, the WPCL, and state common law.

109. Ms. Kaplan was actively involved in reviewing and counseling defendants regarding employment decisions, including hiring and firing of Plaintiffs.

110. Ms. Kaplan was actively involved in decisions that set employees' schedules, hours and standard terms of employment.

111. Ms. Kaplan was actively involved in decisions that set standard pay scales.

112. Ms. Kaplan was actively involved in the determination and drafting of human resources policies, the resolution of issues and disputes regarding policies and their application, the counseling locations receive regarding human resources issues, and communications with employees about human resources issues and policies.

113. Ms. Kaplan was actively involved in defendants' employment and human resources records, including the systems for keeping and maintaining those records.

114. Ms. Kaplan was actively involved in training and education functions across Mercy Health System.

115. Ms. Kaplan was actively involved in determining the type and scope of training employees must attend as well as any compensation they receive for attending training.

116. Ms. Kaplan was actively involved in payroll functions across Mercy Health System.

117. Ms. Kaplan was actively involved in 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.

118. Ms. Kaplan was actively involved in determining the terms of employment offered to employees across Mercy Health System.

119. Ms. Kaplan was actively involved in determining the type and scope of the terms of employment made available to employees, the method and manner in which information regarding those terms is conveyed to employees, and the system for keeping and maintaining records related to employees' terms of employment.

120. Because Ms. Kaplan had authority to hire or fire employees, provide and direct support regarding human resources issues, including the hiring and firing of employees; and control the drafting and enforcement of the policies which govern the hiring and firing of employees, Ms. Kaplan had the power to hire and fire employees.

121. Because Ms. Kaplan had authority to establish work schedules and/or conditions of employment, provide and direct support regarding human resources issues, including work schedules and/or conditions of employment, control the drafting and enforcement of the policies which govern employees' schedules and/or conditions of employment, establish the type and scope of training employees receive, and administer the remuneration employees receive, including the standard remuneration levels offered and the type and scope of the remuneration made available to employees, Ms. Kaplan supervised and controls employees' work schedules and/or conditions of employment.

122. Because Ms. Kaplan had authority to establish employees' rate and method of payment and centrally control payroll functions, including standard pay scales, the provision of payroll information, and the timing of payment, Ms. Kaplan determined the rate and

method of employees' payment.

123. Because Ms. Kaplan had authority with respect to defendants' centralized records, including a database regarding employees' employment records, and systems for keeping and maintaining payroll, terms of employment, and other employment-related records, Ms. Kaplan maintained employees' employment records.

124. Because Ms. Kaplan provided day-to-day support regarding human resources issues, including employees' work schedules and/or conditions of employment, controls the drafting and enforcement of the policies which govern employees' schedules and/or conditions of employment, and administers the terms of employment offered and remuneration available to employees, she was affirmatively, directly, and actively involved in operations of defendants' business functions, particularly in regards to the employment of Plaintiffs and Class Members.

125. Because Ms. Kaplan was actively involved in the creation of the illegal policies complained of in this case, actively advises defendants' agents on the enforcement of the illegal policies complained of in this case and actively ensures defendants' compliance or non-compliance with federal and state law, including the requirements of the FLSA, ERISA, RICO, the PMWA, the WPCL, and state common law, Ms. Kaplan actively participated in the violations complained of in this action.

126. Based upon the foregoing, Ms. Kaplan is liable to Plaintiffs and Class Members because of her active role in operating the business, her role in the violations complained of in this action, her status as an employer, and/or otherwise according to federal and state law.

127. Defendants maintain ERISA plans.

Plaintiffs' and Class Members' Employment With Named Defendants, Health Centers and Affiliates

128. The Named Defendants, Health Centers and Affiliates are liable to the Plaintiffs and the Class Members because they acted directly and indirectly in the interest of an employer toward Plaintiffs and Class Members and due to their operation as a single or enterprise entity.

129. During Plaintiffs' and Class Members' entire employment with Named Defendants, Health Centers and Affiliates, the Named Defendants, Health Centers and Affiliates, either directly or indirectly, 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.

130. Named Defendants, Health Centers and Affiliates accomplished this directly by exercising control over Plaintiffs' and Class Members' employment conditions, and indirectly by integrating their payroll records systems, centralizing their organization and control of labor relations and human resources, including their 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.

131. During Plaintiffs' and Class Members' entire employment with Named Defendants, Health Centers and Affiliates, Plaintiffs and Class Members understood that Named Defendants, Health Centers and Affiliates, were their employers, either directly or indirectly, based on Named Defendants', Health Centers' and Affiliates' involvement with Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies and other conditions of employment.

132. Plaintiffs' and Class Members' understanding also resulted from Named

Defendants', Health Centers' and Affiliates' direct exercise of control over Plaintiffs' and Class Members' employment conditions, and from Named Defendants', Health Centers' and Affiliates' indirect control over Plaintiffs and Class Members through the integration of defendants' payroll records systems, centralization of defendants' organization and control of labor relations and human resources, including their employment of a Vice President of Human Resources, and defendants' maintenance of system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

133. Further, the Named Defendants, Affiliates and Health Centers operated as a corporate combine, resulting in a single enterprise.

134. During Plaintiffs' and Class Members' entire employment with Named Defendants, Health Centers and Affiliates, the Named Defendants, Health Centers and Affiliates shared common ownership and common management, including oversight and management by a senior executive team and board of directors.

135. During Plaintiffs' and Class Members' entire employment with Named Defendants, Health Centers and Affiliates, the Named Defendants, Health Centers and Affiliates acted in concert with one another to set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies and other conditions of employment, and to otherwise treat Plaintiffs and Class Members as employees.

136. Named Defendants, Health Centers and Affiliates acted in concert by centralizing their supply chain management, integrating their financial, computer, payroll and health records systems, centralizing organization and control of their labor relations and human resources, including through their 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.

137. Collectively, Named Defendants, Health Centers and Affiliates comprise a single, integrated enterprise, as they perform related activities through common control for a common business purpose.

B. Plaintiffs

Named Plaintiffs

138. At all relevant times, Susan Frattarola, Anna May Lampart, Cassandra Ruff, and Pamela Kimble-Armstrong ("Plaintiffs") were employees under the FLSA, the PMWA, and the WPCL, employed within this District and reside within this District with the exception of Pamela Kimble-Armstrong who resides in Cumberland County, New Jersey.

Class Members

139. The Class Members are 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.

140. The Class Members can be broken down into the following Subclasses:

- a. Subclass A 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.
- b. Subclass B includes all Class Members for workweeks during which they were not subject to a collective bargaining agreement.

FACTUAL BACKGROUND

141. Mercy Health System is one of the largest health care providers in Eastern Pennsylvania.

142. As discussed below, defendants maintained several illegal pay policies that denied Plaintiffs and Class Members compensation for all hours worked, including applicable

premium pay rates.

Meal Break Deduction Policy

143. Pursuant to defendants' "Meal Break Deduction Policy," defendants' computerized timekeeping system automatically deducts one half-hour from employees' paychecks each day for a meal break.

144. Despite having this policy, defendants do not ensure that Plaintiffs and Class Members perform no work during the breaks.

145. Plaintiffs and Class Members do in fact perform work during those breaks and are not paid for that time.

146. Defendants know that the Plaintiffs and Class Members perform work during these meal breaks; but still do not pay them for this time pursuant to their Meal Break Deduction Policy.

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

148. Plaintiffs and Class Members allow defendants to operate on a 24/7 basis, and in doing so, Plaintiffs and Class Members often perform compensable work for defendants during their uncompensated meal breaks.

149. Defendants do not prohibit Plaintiffs and Class Members from working during their meal breaks and do not have rules against such work.

150. Although defendants' policy deducts 30 minutes of pay each shift, defendants expect Plaintiffs and Class Members to be available to work throughout their shifts and consistently require their employees to work during their unpaid meal breaks.

151. Plaintiffs and Class Members are not relieved by another employee when their

break comes, or asked to leave their work location.

152. Plaintiffs and Class Members are expected to eat without any change in demands from patients or relief by additional staff.

153. Further, all defendants' employees are required to respond to pages whether on break or not, as well as requests by patients, co-workers and management.

154. Further, defendants for years have been reducing staffing which imposes larger and larger burdens on Plaintiffs and Class Members to immediately respond to the defendants' needs regardless of whether Plaintiffs and Class Members are on a "meal break."

155. Defendants know that Plaintiffs and Class Members perform work during their meal breaks.

156. For example, Plaintiffs and Class Members perform work for the defendants, on defendants' premises, in plain sight, and at management's request.

157. Defendants' management has repeatedly observed Plaintiffs and Class Members working through their unpaid meal breaks. Defendants' management has gone so far as to direct Plaintiffs and Class Members to work during their unpaid meal breaks even though defendants' management knew that they would not be able to have a full meal break.

158. Plaintiffs and Class Members had conversations with defendants' managers in which they discussed how they were working through their meal periods and were not getting paid for such work.

159. When questioned by employees about the Meal Break Deduction Policy, the defendants affirmatively stated that the employees were being fully paid for the work time for which they were entitled to be paid, even though defendants knew compensable work time was being excluded from the employees' pay. Such conversations occurred with Plaintiffs and

Class Members on a number of occasions. These representations were part of a course of conduct (*see e.g.*, ¶¶ 178-81, 191-209, 267-82) to defraud Plaintiffs and Class Members from the pay they were owed, and to mislead them into believing they had been fully paid as required by law.

160. Further, given the demands of the health care industry and short staffing, defendants' management knew that to get the tasks done they assigned to Plaintiffs and Class Members, when they needed to get done, Plaintiffs and Class Members had to work through their meal breaks, even during times they were not paid for their meal breaks.

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

162. All Plaintiffs and Class Members 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 Mercy Health System's 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.

163. Plaintiffs and Class Members are entitled to compensation for all time they performed work for defendants, including during their unpaid meal breaks.

164. In addition, if Plaintiffs' and Class Members' hours had been properly calculated, the time spent working during meal breaks often would include work that should have been calculated at applicable premium pay rates.

165. All Plaintiffs and Class Members subject to the Meal Break Deduction Policy are members of Subclass 1.

Unpaid Preliminary and Postliminary Work Policy

166. Defendants suffered or permitted Plaintiffs and Class Members to perform work before and/or after the end of their scheduled shifts.

167. However, defendants failed to pay Plaintiffs and Class Members for all time spent performing such work as a result of defendants' policies, practices and/or time recording system (the "Unpaid Preliminary and Postliminary Work Policy").

168. In addition, if Plaintiffs' and Class Members' hours had been properly calculated, the time spent performing work before and/or after their shifts often would have included work that should have been calculated at applicable premium pay rates.

169. All Plaintiffs and Class Members subject to the Unpaid Preliminary and Postliminary Work Policy are members of Subclass 2.

Unpaid Training Policy

170. Defendants also suffered or permitted Plaintiffs and Class Members to attend compensable training programs.

171. However, defendants failed to pay Plaintiffs and Class Members for all time spent attending such training sessions (the "Unpaid Training Policy").

172. In addition, if Plaintiffs' and Class Members' hours had been properly calculated, the time spent attending training often would have included work that should have been calculated at applicable premium pay rates.

173. All Plaintiffs and Class Members subject to the Unpaid Training Policy are members of Subclass 3.

174. Collectively, the Meal Break Deduction Policy, the Unpaid Preliminary and Postliminary Work Policy, and the Unpaid Training Policy are referred to herein as the "Unpaid Work Policies."

Additional Allegations

175. 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 Unpaid Work Policies.

176. Even though Mercy Health System knows its employees are performing such work, Mercy Health System fails to compensate its employees for such work.

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

178. Through the paystubs and payroll information it provided to employees, Mercy Health System deliberately concealed from its employees that they did not receive compensation for all compensable work that they performed and misled them into believing they were being paid properly.

179. Further, by maintaining and propagating the illegal Unpaid Work Policies,

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.

180. 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.

181. As a result, employees were unaware of their claims.

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

183. Defendants, however, at all times, intended to violate applicable federal 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.

184. 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 Unpaid Work Policies.

185. Defendants sponsor pension and 403(b) plans (the "Plans") for their employees.

186. Plaintiffs and Class Members are participants in and/or beneficiaries of the Plans.

187. Defendants failed to keep accurate records of all time worked by Plaintiffs and Class Members. By failing to keep such records, defendants' records are legally insufficient to determine benefits.

188. Defendants failed to credit or even investigate crediting overtime pay as compensation used to determine benefits to the extent overtime may be included as

compensation under the Plans. Defendants, while acting as fiduciaries exercising discretion over the administration of the Plans, breached their duties to act prudently and solely in the interests of Plans' participants by failing to credit them with all of the hours of service for which they were entitled to be paid, including overtime to the extent overtime may be included as compensation under the Plans, or to investigate whether such hours should be credited. Under ERISA, crediting hours is a fiduciary function, independent of the payment of wages, necessary to determine participants' participation vesting and accrual of rights.

189. Plaintiffs and Class Members only seek the credit to their employee benefit plans for uncompensated hours worked.

190. As used in this Complaint, "mailed" means: (1) placing in any post office or authorized depository for mailed matter; any matter or thing to be delivered by the United States Postal Service; (2) causing to be deposited any matter or thing to be delivered by any private or commercial interstate carrier; (3) taking or receiving therefrom any such matter or thing; and/or (4) knowingly causing to be delivered by any such means any such matter.

191. Plaintiffs and Class Members allege that defendants devised, intended to devise, and carried out a scheme to cheat Plaintiffs and Class Members out of their property and to convert 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, as described previously in this Complaint.

192. 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.

193. In executing or attempting to execute the Scheme and to receive the financial benefits of the Scheme, defendants repeatedly mailed payroll checks, either directly to Plaintiffs and Class Members or between defendants' business locations. These mailings occurred on a regular basis and more than 100 such mailings occurred in the last 10 years.

194. The payroll checks were false and deceptive because they misled Plaintiffs and Class Members about the amount of wages to which they were entitled, and whether defendants had included all compensable work time, as well as their status and rights under the FLSA. Plaintiffs and Class Members relied to their detriment on the misleading payroll checks that defendants mailed and those misleading documents were a proximate cause of Plaintiffs' and Class Members' injuries.

195. Each time a paycheck was mailed to Plaintiffs and Class Members, Plaintiffs and Class Members were separately injured. Therefore, a separate cause of action accrues for each such injury.

196. Before Plaintiffs and Class Members received each separate paycheck, they were unaware of such injury.

197. Defendants' predicate acts of mailing the misleading payroll checks in furtherance of their 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 mailings 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.

198. Defendants' 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); 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.

199. 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.

200. Each of the Plaintiffs and Class Members is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964.

201. Each defendant is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

202. Defendants 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.

203. Each defendant received income from a pattern of conduct unlawful under RICO, in which defendants participated through continuous instances of providing Plaintiffs and Class Members with misleading documents which defendants mailed and upon which Plaintiffs and Class Members relied to their detriment.

204. 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.

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

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

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

208. Because of the defendants' conduct, the 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.

209. Additionally, as set forth in the allegations above, including ¶¶ 159, 178-81, the defendants fraudulently concealed from the Plaintiffs and Class Members the facts that are the basis for their claims. Further, such conduct by the defendants equitably tolls the statute of limitations covering Plaintiffs' and Class Members' claims.

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

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

212. The Plaintiffs and Class Members are not experts in proper payment under federal 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.

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

214. The 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.

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

216. 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.

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

218. 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.

219. 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 Unpaid Work Policies.

220. Defendants' practice is to be deliberately indifferent to these violations of the statutory wage and overtime requirements contained in the PMWA, the WPCL, state

common law and other laws of the Commonwealth of Pennsylvania.

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

222. 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.

223. In addition, Plaintiffs and Class Members have suffered non-economic harm as a result of the Unpaid Work Policies, including, but not limited to, the personal loss of break and rest time, personal suffering and emotional distress.

224. Because defendants' Unpaid Work Policies 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.

225. 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 Unpaid Work Policies.

226. 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.

227. Defendants 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.

228. In particular, Plaintiffs and Class Members had express oral contracts with Mercy Health System, H. Ray Welch, Jr., Catherine Byrne and Elyse A. Kaplan.

229. Plaintiffs and Class Members also had express oral contracts with those Named Defendants, Affiliates and Health Centers where they worked.

230. 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.

231. This express oral contract also included defendants' explicit promise to compensate Plaintiffs and Class Members for "all hours worked" by them during their employment period.

232. In addition, defendants' express oral 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.

233. As alleged herein, Plaintiffs and Class Members regularly worked hours both under and in excess of forty per week and were not paid for all of those hours.

234. The defendants failed to pay for time that Plaintiffs and Class Members worked including, but not limited to, during their meal breaks, time that Plaintiffs and Class Members spent in required, job-related training, and time that Plaintiffs and Class Members spent before and after their regular work hours performing work-related tasks.

235. Defendants 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.

236. In particular, Plaintiffs and Class Member had implied contracts with Mercy

Health System, H. Ray Welch, Jr., Catherine Byrne and Elyse A. Kaplan.

237. Plaintiffs and Class Members also had implied contracts with those Named Defendants, Affiliates and Health Centers who employed them.

238. 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.

239. 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.

240. 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.

241. 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 Unpaid Work Policies.

242. As noted above, from time to time, the contracts between Defendants, including Mercy Health System, Mr. Welch, Ms. Byrne, and Ms. Kaplan, and Plaintiffs and Class Members were memorialized in writing and were explicitly intended to order and govern the employment relationship between defendants and Plaintiffs and Class Members.

243. 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.

244. 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.

245. 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.

246. 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.

247. 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 and by failing to pay Plaintiffs and Class Members all time 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.

248. 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 violate any state law governing the employment relationship or any act that would deprive Plaintiffs and Class Members of the benefits of the contract.

249. Defendants breached their duty of good faith and fair dealing by failing to

compensate Plaintiffs and Class Members in accordance with the applicable laws for all the time worked, including applicable premium pay.

250. 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.

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

252. 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.

253. 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.

254. 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.

255. 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.

256. 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 Unpaid Work Policies.

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

258. 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 forty without receiving any compensation for those hours.

259. Defendants failed to compensate Plaintiffs and Class Members for all time worked, including pursuant to the Unpaid Work Policies.

260. 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.

261. 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.

262. 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.

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

264. 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.

265. 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.

266. 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 the Class Members' work without compensation.

267. 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 Unpaid Work Policies in their dealings with Plaintiffs and Class Members, for having converted property belonging to Plaintiffs and Class Members under the Unpaid Work Policies and for an equitable accounting.

268. Through the paystubs and payroll information it provided to employees, defendants deliberately concealed from its employees that they did not receive compensation for all the work they performed and misled them into believing they were being paid

properly.

269. Plaintiffs and Class Members are under no duty to inquire of defendants that they were paid for all hours worked including applicable premium pay. As a direct and proximate cause of defendants affirmatively misleading Plaintiffs and Class Members regarding the fact that they were to be paid for all hours worked, defendants are estopped from asserting statute of limitations defenses against Plaintiffs and Class Members.

270. Further, by maintaining and propagating the illegal policies, defendants deliberately misrepresented to Plaintiffs and Class Members that they were being properly paid for time worked, even though Plaintiffs and Class Members were not receiving pay for all time worked.

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

272. 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 forty in a work week.

273. 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.

274. Defendants, however, at all times intended to violate applicable state laws by failing to pay Plaintiffs and Class Members for all the time worked, including applicable premium pay.

275. 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 state law.

276. When defendants hired Plaintiffs and Class Members, they represented to Plaintiffs and Class Members that they would be fully compensated for all services performed.

277. Defendants affirmatively misled Plaintiffs and Class Members regarding the fact that defendants failed to pay Plaintiffs and Class Members for all hours worked.

278. Defendants 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.

279. 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.

280. 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' rights under federal and state law.

281. As a result, employees were unaware of their claims.

282. 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 forty per week.

283. 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 the Plaintiffs and Class Members.

284. 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.

285. 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.

286. 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.

287. 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.

288. 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.

289. 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 Unpaid Work Policies.

290. 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.

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

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

293. Plaintiffs and Class Members also allege that defendants have engaged in a failure to keep accurate records in the course of maintaining their Unpaid Work Policies in their dealings with Plaintiffs and Class Members.

294. 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 P.S. § 333.108.

295. As set forth above, because there is no good faith contest or dispute regarding the amounts owed, the 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

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

297. Defendants willfully violated their obligations under the FLSA and are liable to Plaintiffs and Class Members.

SECOND CAUSE OF ACTION

ERISA—Failure to Keep Accurate Records

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

299. Plaintiffs and Class Members bring these claims under 29 U.S.C. § 1132(a)(3), which confers on plan participants the right to bring suit to enjoin any violation of ERISA § 1059(a)(1).

300. Defendants failed to keep accurate records of all time worked by Plaintiffs and Class Members. By failing to keep such records, defendants' records are legally insufficient to determine benefits. Defendants failed to keep records "sufficient to determine the benefits due or which may become due" under the terms of the Plans as required by ERISA § 209(a)(1), 29 U.S.C. § 1059(a)(1).

THIRD CAUSE OF ACTION
ERISA—Breach of Fiduciary Duty

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

302. Defendants breached their fiduciary duties under 29 U.S.C. § 1104(a)(1).

FOURTH CAUSE OF ACTION
RICO

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

304. 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.

305. Defendants' conduct, and the conduct of other members of the enterprise, injured Plaintiffs and Class Members by 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 payroll checks which defendants mailed.

FIFTH CAUSE OF ACTION
Violation of Pennsylvania Minimum Wage Act

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

307. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable under the PMWA.

SIXTH CAUSE OF ACTION
Wage Payment and Collection Law

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

309. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable under the WPCL.

SEVENTH CAUSE OF ACTION
Breach of Express Oral Contract

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

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

312. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

EIGHTH CAUSE OF ACTION
Breach of Implied Contract

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

herein.

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

315. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

NINTH CAUSE OF ACTION
Breach of Express Written Contract

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

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

318. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

TENTH CAUSE OF ACTION
Action in Assumpsit

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

320. 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 for fringe benefits or any plan benefits protected by ERISA, even if

such amounts were recoverable.

ELEVENTH CAUSE OF ACTION

Accounting at Law

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

322. 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 forty hours per week on defendants' behalf without receiving compensation, including premium overtime compensation. Plaintiffs and Class Members are not, however, seeking recovery for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

TWELTH CAUSE OF ACTION

Quantum Meruit

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

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

325. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

THIRTEENTH CAUSE OF ACTION

Unjust Enrichment

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

herein.

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

328. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

FOURTEENTH CAUSE OF ACTION

Fraud

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

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

331. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

FIFTEENTH CAUSE OF ACTION

Negligent Misrepresentation

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

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

334. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

SIXTEENTH CAUSE OF ACTION

Conversion

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

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

337. 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 for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

SEVENTEENTH CAUSE OF ACTION

Accounting at Equity

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

339. 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 forty hours per week on defendants' behalf without receiving compensation, including premium overtime compensation. Plaintiffs and Class Members are not, however, seeking recovery for fringe benefits or any plan benefits protected by ERISA, even if such amounts were recoverable.

EIGHTEENTH CAUSE OF ACTION

43 P.S. § 333.108 - Failure To Keep Accurate Records

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

herein.

341. 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 records for 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) pursuant to ERISA, the crediting to Plaintiffs and Class Members for all hours worked under defendants' Plans;
- (c) an award of the value of Plaintiffs' and Class Members' unpaid wages, and any other amounts necessary to make them whole;
- (d) 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;
- (e) 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;
- (f) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating Plaintiffs' and Class Members' rights;
- (g) an award of pre- and post-judgment interest;
- (h) an accounting of the monetary benefit that was conferred upon defendants by Plaintiffs and Class Members working under an in excess of forty 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: September 28, 2010

THOMAS & SOLOMON LLP

By:


J. Nelson Thomas, Esq. (*pro hac vice*
admission)

Michael J. Lingle, Esq. (*pro hac vice*
admission)

Justin M. Cordello, Esq.

Attorneys for Plaintiffs and Class Members

693 East Avenue

Rochester, New York 14607

Telephone: (585) 272-0540

nthomas@theemploymentattorneys.com

mlingle@theemploymentattorneys.com

jcordello@theemploymentattorneys.com