

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CASSANDRA RUFF
2443 Norwood Avenue
Abington, PA 19001,

-and-

KESHA CARDWELL
6637 North Fifth Street
Philadelphia, PA 19126,

-and-

LORETTA McDONNELL
342 Penn Avenue
Glenside, PA 19038,

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

Plaintiffs,

v.

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

-and-

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

-and-

ELKINS PARK HOSPITAL
60 East Township Line Road
Elkins Park, PA 19027,

-and-

GERMANTOWN HOSPITAL
East Penn & East Wister Streets
Philadelphia, PA 19144,

-and-

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

-and-

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

-and-

COMPLAINT- CLASS ACTION
AND DEMAND FOR JURY TRIAL

Civil Action No. _____

ALBERT EINSTEIN MEDICAL CENTER
EMPLOYEES RETIREMENT PLAN
Albert Einstein Healthcare Network
c/o Lynne R. Kornblatt
5501 Old York Road
Philadelphia, PA 19141,

-and-

ALBERT EINSTEIN HEALTHCARE NETWORK
TAX SHELTERED ANNUITY PLAN
Albert Einstein Healthcare Network
c/o Betty Ann Patton
5501 Old York Road
Philadelphia, PA 19141,

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, Cassandra Ruff, Kesha Cardwell, and Loretta McDonnell 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.*

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.

CLASS ACTION ALLEGATIONS

4. The claims arising under ERISA and RICO 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.

7. The class size is believed to be over 7,100 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 or was part of a scheme to defraud Plaintiffs in violation of RICO.

13. The class action is maintainable under subsections (2) and (3) of Rule 23(b) because the Plaintiffs seek injunctive relief, common questions of law and fact predominate among the Plaintiffs and Class Members and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

PARTIES

A. Defendants

14. Collectively, defendants Albert Einstein Healthcare Network, Albert Einstein Medical Center, Elkins Park Hospital, Germantown Hospital, Barry R. Freedman, Lynne R. Kornblatt, Albert Einstein Medical Center Employees Retirement Plan, and Albert Einstein Healthcare Network Tax Sheltered Annuity Plan (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: Einstein Center One, Victor Center for Jewish Genetic Diseases, Center for Robotic-Assisted Physical Rehabilitation, Albert Einstein Cancer Center, Outpatient Psychiatry Center, Belmont Residence at Germantown, The Frank A. Bove Center, Brain Aneurysm and AVM Center, Einstein Cardiology at Germantown, Einstein Dentistry at Germantown, Einstein

Ophthalmology at Germantown, Moss Rehabilitation Center at Einstein at Elkins Park, Moss Rehabilitation Center at Einstein at Elkins Park, Moss Rehabilitation Center at Albert Einstein Medical Center, Moss Rehabilitation Center at Frankford Hospital, Moss Rehabilitation Center at Sacred Heart Hospital, Moss Rehabilitation Center at Jenkintown, Moss Rehabilitation Center at Northeast Philadelphia, Moss Rehabilitation Center at Germantown, Moss Rehabilitation Center at Center City, and Moss Rehabilitation Center at Chalfont (collectively “Health Centers”).

16. Named Defendants affiliated health care facilities and centers include the following: Germantown Community Health Services, Germantown Hospital and Community Health Services, Belmont Center for Comprehensive Treatment, Belmont Behavioral Health, Willowcrest, Willow Terrace, MossRehab, Moss Rehabilitation Center, Einstein Healthcare Systems, Inc., Prestige Health, Health Partners, G.H.M.C. Management Inc., Friends of MossRehab, Rehab Ventures, Inc., Allied Orthotics & Prosthetics, L.L.C., Occupational Health Ventures, Magee-Moss Rehab, L.L.C., Philadelphia International Medicine, Jefferson Behavioral Health Network, Premier Purchasing L.L.P., Albert Einstein Medical Equipment Company, New Regional Medical Center, Inc., Samuel H Daroff Division of the Albert Einstein Medical Center, Einstein Family Practice at Mt. Airy, The Einstein Foundation, Einstein Practice Plan, Inc., Einstein Pain Institute, Alumni Association of the Albert Einstein Medical Center School of Nursing of Philadelphia, Albert Einstein Medical Associates, Inc., Albert Einstein Medical Practitioners, Inc., Einstein Community Health Associates, Inc., Einstein Community Health Associates – Pediatrics, Einstein Audiology Associates, Inc., Einstein E.N.T. Associates, Einstein Podiatry Associates, Einstein Women’s Healthcare, Einstein Bariatrics, Einstein Home Care, Inc., Einstein Hospice, Einstein Pediatric Home

Care, Einstein Physicians Professional Association, Einstein Podiatry Associates, Einstein Neighborhood Healthcare, Elkins Park Pathology Associates, P.C., Elkins Park Radiology Associates, Ltd., Elkins Park Anesthesia Associates, P.C., Elkins Park Home Health Care, Back and Neck Center at Elkins Park Hospital, Germantown Anesthesia Services, Germantown Allergy Associates, Germantown Family Medicine Associates, P.C., Germantown Geriatrics Associates, P.C., Germantown Medical Associates, Germantown Neurological Associates, Germantown Orthopaedic Associates, Germantown Podiatry Associates, Germantown Radiology Associates, and Mt. Airy/Germantown Medical and Rehab Associates, L.L.C. (collectively, "Affiliates").

17. Together the Named Defendants, the Health Centers and the Affiliates are referred to as "Albert Einstein Healthcare Network" or "defendants."

18. Albert Einstein Healthcare Network 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 20 health care facilities and centers and employ approximately 7,100 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 and certain employee benefit plans.

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, Albert Einstein Healthcare Network 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 Albert Einstein Healthcare Network and/or have been jointly employed by Albert Einstein Healthcare Network.

27. Albert Einstein Healthcare Network 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 Albert Einstein Healthcare Network, Albert Einstein Healthcare Network is a joint employer of all Plaintiffs and Class Members.

30. Collectively, Albert Einstein Healthcare Network comprises a single, integrated enterprise, as they perform related activities through common control for a common business purpose.

31. Barry R. Freedman is the President and CEO of Albert Einstein Healthcare Network.

32. Mr. Freedman's responsibilities include actively managing Albert Einstein Healthcare Network.

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

34. In concert with others, Mr. Freedman has the authority to, and does, make decisions that concern defendants' operations, including functions related to employment, human resources, training, payroll, and benefits.

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

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

37. Due in part to his role as President, Mr. Freedman actively ensures defendants' compliance or non-compliance with federal law, including the requirements of the FLSA, ERISA and RICO.

38. In concert with others, Mr. Freedman 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.

39. In concert with others, Mr. Freedman has the authority to, and does, make decisions that concern employees' schedules, hours and standard benefit levels.

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

41. Mr. Freedman 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.

42. Mr. Freedman 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.

43. Mr. Freedman has the authority to, and does, make decisions that concern training and education functions across Albert Einstein Healthcare Network.

44. Mr. Freedman 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.

45. Mr. Freedman has the authority to, and does, make decisions that concern payroll functions across Albert Einstein Healthcare Network.

46. Mr. Freedman 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.

47. Mr. Freedman has the authority to, and does, make decisions that concern benefit plans across Albert Einstein Healthcare Network.

48. Mr. Freedman has the authority to, and does, make decisions that concern the type and scope of benefits available to employees, the method and manner in which information regarding those plans is conveyed to employees, and the system for keeping and maintaining records related to employees' benefits.

49. Because Mr. Freedman 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. Freedman has the power to hire and fire employees.

50. Because Mr. Freedman 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 employees' benefit programs, including standard benefit levels and the type and scope of benefits available to employees, Mr. Freedman supervises and controls employees' work schedules and/or conditions of employment.

51. Because Mr. Freedman 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. Freedman determines the rate and method of employees' payment.

52. Because Mr. Freedman has authority with respect to defendants' centralized records, including a database regarding employees' employment records, and systems for keeping and maintaining payroll, benefits, and other employment-related records, Mr. Freedman maintains employees' employment records.

53. Because Mr. Freedman 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 employees' benefit programs, 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.

54. Because Mr. Freedman 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 law, including the requirements of the FLSA, ERISA and RICO, he actively participates in the violations complained of in this action.

55. Based upon the foregoing, Mr. Freedman 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 law.

56. Lynne R. Kornblatt is the Vice President of Human Resources for Albert Einstein Healthcare Network.

57. Ms. Kornblatt is responsible for, provides direction and control over, and is authorized to direct all aspects of human resources functions across Albert Einstein Healthcare Network.

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

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

60. Due in part to her role of overseeing human resources, training and education,

and payroll and commission services, in concert with others, Ms. Kornblatt actively ensures defendants' compliance or non-compliance with federal law, including the requirements of the FLSA, ERISA and RICO.

61. Ms. Kornblatt is actively involved in reviewing and counseling defendants regarding employment decisions, including hiring and firing of Plaintiffs and Class Members.

62. Ms. Kornblatt is actively involved in decisions that set employees' schedules, hours and standard benefit levels.

63. Ms. Kornblatt is actively involved in decisions that set standard pay scales.

64. Ms. Kornblatt 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.

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

66. Ms. Kornblatt is actively involved in training and education functions across Albert Einstein Healthcare Network.

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

68. Ms. Kornblatt is actively involved in payroll functions across Albert Einstein Healthcare Network.

69. Ms. Kornblatt 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.

70. Ms. Kornblatt is actively involved in benefit plans across Albert Einstein Healthcare Network.

71. Ms. Kornblatt is actively involved in determining the type and scope of benefits available to employees, the method and manner in which information regarding those plans is conveyed to employees, and the system for keeping and maintaining records related to employees' benefits.

72. Because Ms. Kornblatt 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. Kornblatt has the power to hire and fire employees.

73. Because Ms. Kornblatt 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 employees' benefit programs, including standard benefit levels and the type and scope of benefits available to employees, Ms. Kornblatt supervises and controls employees' work schedules and/or conditions of employment.

74. Because Ms. Kornblatt 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. Kornblatt determines the

rate and method of employees' payment.

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

76. Because Ms. Kornblatt 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 employees' benefit programs, she is affirmatively, directly, and actively involved in operations of defendants' business functions, particularly in regards to the employment of Plaintiffs and Class Members.

77. Because Ms. Kornblatt 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 law, including the requirements of the FLSA, ERISA and RICO, Ms. Kornblatt actively participates in the violations complained of in this action.

78. Based upon the foregoing, Ms. Kornblatt 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.

79. Defendants maintain ERISA plans known as the Albert Einstein Medical Center Employees Retirement Plan, and Albert Einstein Healthcare Network Tax Sheltered Annuity Plan.

B. Plaintiffs

Named Plaintiffs

80. At all relevant times, Cassandra Ruff, Kesha Cardwell, and Loretta McDonnell (“Plaintiffs”) were employees under the FLSA, employed within this District and reside within this District.

Class Members

81. 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.

FACTUAL BACKGROUND

82. Albert Einstein Healthcare Network is one of the largest health care providers in Eastern Pennsylvania.

83. 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

84. 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.

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

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

87. 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 the Meal Break Deduction Policy.

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

89. 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.

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

91. 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.

92. Plaintiffs and Class Members are not relieved by another employee when their break comes, or asked to leave their work location.

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

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

95. Defendants' management has repeatedly observed Plaintiffs and Class Members working though 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.

96. 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.

97. 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.*, ¶¶ 116-20, 139-49) 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.

98. 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.

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

100. 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 Albert Einstein Healthcare Network'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.

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

102. 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.

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

Unpaid Preliminary and Postliminary Work Policy

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

105. 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").

106. 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.

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

Unpaid Training Policy

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

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

110. 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.

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

112. 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

113. 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.

114. Even though Albert Einstein Healthcare Network knows its employees are performing such work, Albert Einstein Healthcare Network fails to compensate its employees

for such work.

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

116. Through the paystubs and payroll information it provided to employees, Albert Einstein Healthcare Network 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.

117. 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.

118. 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.

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

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

121. 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.

122. 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.

123. Defendants sponsor pension and 403(b) plans including the Albert Einstein

Medical Center Employees Retirement Plan, and Albert Einstein Healthcare Network Tax Sheltered Annuity Plan (the “Plans”) for their employees.

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

125. 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.

126. 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.

127. 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.

128. 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 in violation of federal law, as described previously in this Complaint.

129. 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.

130. 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.

131. 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.

132. 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.

133. 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.

134. 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.

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

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

137. 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.

138. 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.

139. 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.

140. 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.

141. 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.

142. Additionally, as set forth in the allegations above, including ¶¶ 97, 116-20, 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.

143. 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.

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

145. 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.

146. 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.

147. 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.

148. 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.

149. 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.

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

151. 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.

FIRST CAUSE OF ACTION
FLSA

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

153. 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

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

155. 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).

156. 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

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

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

FOURTH CAUSE OF ACTION
RICO

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

160. 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.

161. 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.

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


- (a) an order preliminarily and permanently restraining defendants from engaging in the aforementioned pay violations;
- (b) an award crediting Plaintiffs and Class Members for all hours worked under defendants' Plans;
- (c) an award of the value of Plaintiffs' and Class Members' unpaid wages, including fringe benefits;
- (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) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating Plaintiffs' and Class Members' rights;
- (f) an award of pre- and post-judgment interest; 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).

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THOMAS & SOLOMON LLP

By: 
Justin M. Cordello, Esq.
PA#209838
Attorneys for Plaintiffs and Class Members
693 East Avenue
Rochester, New York 14607
Telephone: (585) 272-0540
jcordello@theemploymentattorneys.com