

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KENNETH LYNN

3 Michelle Court
Hulmeville, PA 19047,

-and-

CHARLENE AGNEW

275 Old Limekiln Road
Chalfont, PA 18914,

-and-

MARGARET KNAPP

428 Parkvale Avenue
Langhorne, PA 19047,

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

Plaintiffs,

v.

ARIA HEALTH SYSTEM

10800 Knights Road
Philadelphia, PA 19114

-and-

ARIA HEALTH – FRANKFORD CAMPUS

4900 Frankford Avenue
Philadelphia, PA 19124

-and-

ARIA HEALTH – TORRESDALE CAMPUS

Red Lion and Knights Roads
Philadelphia, PA 19114

-and-

ARIA HEALTH – BUCKS COUNTY CAMPUS

380 North Oxford Valley Road
Langhorne, PA 19047

-and-

KATHLEEN KINSLOW

Red Lion & Knights Road
Philadelphia, PA 19114,

-and-

ROY A. POWELL

Red Lion & Knights Road
Philadelphia, PA 19114,

-and-

MICHAEL E. PEPE

Red Lion & Knights Road

SECOND AMENDED COMPLAINT -
CLASS ACTION
AND DEMAND FOR JURY TRIAL

Civil Action No. 09-cv-5548

Philadelphia, PA 19114,

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 Kenneth Lynn, Charlene Agnew, and Margaret Knapp (“Plaintiffs”) individually, as well as all other employees similarly situated (“Class Members”), under the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201 *et seq.*; under the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1961 *et seq.*; and under the various laws of the Commonwealth of Pennsylvania including, but not limited to, 43 PA. CON. STAT. §§ 333.101, *et. seq.*, the Pennsylvania Minimum Wage Act (“PMWA”), and 43 PA. CON. STAT. §§ 260.1, *et. seq.*, the Wage Payment and Collection Law (“WPCL”), that require an employer to pay employees for all hours worked including premium pay when applicable.

JURISDICTION AND VENUE

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

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

PROCEDURAL BACKGROUND

4. On November 19, 2009, Plaintiffs filed a Class Action Complaint with this Court on behalf of Class Members, alleging violations of the FLSA, Employee Retirement Income Security Act (“ERISA”), and RICO against defendants Aria Health System, Aria Health, Roy A. Powell, Michael E. Pepe, Frankford Hospital Pension Plan, and Frankford Hospital Tax Sheltered Annuity (“Federal Action”). *See Lynn, et al. v. Aria Health Sys., et al.*, No. 09-5548, Dkt. No. 1.

5. On November 23, 2009, Plaintiffs filed a Class Action Complaint with the Court of Common Pleas of Philadelphia County, Pennsylvania Trial Division, November Term 2009, No. 4104, against the same defendants in the Federal Action alleging violations of various laws of the Commonwealth of Pennsylvania including, but not limited to the PMWA and the WPCL (“State Action”).

6. On December 28, 2009, the defendants removed the State Action to this Court (“Removed Action”). *See Lynn, et al. v. Aria Health Sys., et al.*, No. 09-06157, Dkt. No. 1..

7. On January 28, 2010, Plaintiffs moved to remand the State Action to the Court of Common Pleas of Philadelphia County, Pennsylvania Trial Division. *See Lynn, et al. v. Aria Health Sys., et al.*, No. 09-06157, Dkt. No. 14.

Court’s September 15, 2010 Order

8. On September 15, 2010, this Court denied Plaintiffs’ Motion to Remand, consolidated the Removed Action with the Federal Action and directed the Plaintiffs to file a consolidated complaint within 20 days. *See Lynn, et al. v. Aria Health Sys., et al.*, No. 09-06157, Dkt. No. 42; *see also Lynn, et al., v. Jefferson Health Sys. Inc., et al.*, No. 09-6086, Dkt. No. 84 (setting forth the Court’s reasoning for the consolidation order).

9. In denying Plaintiffs' Motion to Remand, the Court invoked ERISA preemption, basing its decision on the similarity between the ERISA recordkeeping claims and the state law recordkeeping claim, the allegations that demonstrated the relationship between the parties and the requested remedy. *See Lynn, et al., v. Jefferson Health Sys. Inc., et al.*, No. 09-cv-6086, Dkt. No. 84 at 7. Moreover, this Court found that Plaintiffs' WPCL and breach of contract claims are as well subject to preemption by § 301 of the Labor Management Relations Act ("LMRA"). *See id.* at 11.

10. In its September 15, 2010 Order, the Court did not dismiss any of Plaintiffs' state law claims and instead consolidated the Federal and Removed Actions.

Plaintiffs' Amended Class Action Complaint

11. In accordance with this Court's Order, on September 28, 2010, Plaintiffs filed an Amended Class Action Complaint in the Federal Action alleging violations of the FLSA, ERISA, RICO, and the various laws of the Commonwealth of Pennsylvania including, but not limited to PMWA and the WPCL. *See Lynn, et al. v. Aria Health Sys., et al.*, No. 09-5548, Dkt. No 79.

12. In re-pleading the state law claims, based on the September 15, 2010 Order concerning ERISA preemption, Plaintiffs made clear that they were not seeking fringe benefits for their state law claims. That is, for each state law cause of action, Plaintiffs specifically pled that "Plaintiffs and Class Members are not, however, seeking recovery under the [state law claim] for fringe benefits of any plan benefits protected by ERISA even if such amounts were recoverable ..." *See id.*, at ¶283 (PMWA), ¶285 (WPCL), ¶288 (breach of express oral contract), ¶291 (implied contracts), ¶294 (breach of express written contract), ¶296 (action in assumpsit), ¶298 (accounting at law), ¶301 (quantum meruit), ¶304 (unjust

enrichment), ¶307 (fraud), ¶310 (negligent misrepresentation), ¶313(conversion), ¶315 (accounting at equity), and ¶317 (failure to keep accurate records).

13. In addition, given this Court's holding concerning LMRA preemption, Plaintiffs proposed two subclasses in the Amended Complaint. *See id.*, at ¶116(a),(b) One subclass included the workweeks for which Class Members were subject to collective bargaining agreements and the second subclass included workweeks for which Class Members were not subject to a collective bargaining agreement. Plaintiffs created these two subclasses in the Amended Complaint to manage both the Court's LMRA § 301 preemption concerns and allow those class members not subject to a collective bargaining agreement to continue to pursue their claims because, of course, Class Members cannot be subject to LMRA preemption for any work weeks they were not covered by a collective bargaining agreement. Instead, preemption can only apply for those workweeks during which Class Members were covered by a collective bargaining agreement.

Court's September 8, 2011 Order

14. On September 8, 2011, this Court dismissed Plaintiffs' Amended Class Action Complaint and directed Plaintiffs to remedy certain pleading deficiencies. *See Lynn, et al. v. Aria Health Sys., et al.*, No. 09-5548, Dkt. No. 156 at 19.

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

16. Moreover, the Court required Plaintiffs to include additional information about the Named Plaintiffs including: which defendant they reported to, who directly supervised

their employment, and who set their rate of pay. *See id.* at 12 n.47.

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

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

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

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

Plaintiffs' Second Amended Complaint

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

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

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

24. Plaintiffs have not re-pled any ERISA claims.

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

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

27. Finally, Plaintiffs are only alleging a cause of action for failure to keep accurate records pursuant to Pennsylvania statute. *See* (¶¶ 461-62).

CLASS ACTION ALLEGATIONS

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

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

30. The class consists of current and former employees of defendants who were injured by defendants' scheme to cheat employees out of their property and to convert the

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

31. The class size is believed to be over 3,100 employees.

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

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

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

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

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

37. The class action is maintainable under subsections (2) and (3) of Rule 23(b) because the Plaintiffs seek injunctive relief, common questions of law and fact predominate

among the Plaintiffs and Class Members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

DEFENDANTS

A. Factual Information

38. As a centralized and integrated healthcare delivery system providing a comprehensive spectrum of medically necessary healthcare services to the residents of Northeast Philadelphia, defendants Aria Health System, Aria Health – Frankford Campus, Aria Health - Torresdale Campus, Aria Health – Bucks County Campus, Kathleen Kinslow, Roy A. Powell, Michael E. Pepe, and Dorinda Carolina (“defendants”), together with the Health Care Facilities (defined below) are referred to herein as “Aria System.”

39. Aria Health System is a tax exempt, not-for-profit umbrella organization over Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and Aria Health – Bucks County Campus. In May 2009, Aria Health System changed its name to Aria Health System from Frankford Health Care System of Philadelphia to reflect its expanded regional vision for health care service delivery. Effective December 2008, Aria Health System separated from Jefferson Health System.

40. In addition to Aria Health - Frankford Campus, Aria Health - Torresdale Campus, and Aria Health Bucks County Campus, Aria Health System also runs other locations within its system locations that it identifies on its website and in tax filings. Those locations include Aria System’s “strong network of outpatient centers and primary care physicians,” as described on its website. These include: Aria Health, The Pavilion (9501 Location), The Pavilion (2451 Location), Bucks County Behavior Center, The Professional Court, The Aria Health Heart Center, Center for Gynecology & Women’s Health, Sexual

Assault Response Program/Rape Crisis Center, Pain Management Center, Aria Health-Torresdale Regional Resource Trauma Center, The Cancer Center at Aria Health-Torresdale, The Behavioral Health Center for Older Adults, Aria Health Physician Services, Hospital Medical Imaging, System Service Corporation, TF Development, Ltd., TMB Enterprises Partnership, Juniata Medical Building Partners, Health Care Incorporated, Vitas Hospice, Aria Health Center Clinic, Aria Health-Torresdale Wellness Center, Aria Health-Bucks County Fitness Center, Total Joint Replacement Program at Aria Health-Bucks County, Aria's Health Source Call Center, MossRehab at Aria Health-Frankford, MossRehab at Aria Health-Bucks County, Aria Orthopedics and Sports Medicine Center of Bucks County, Aria Health's WorkHealth Program, Aria Health's Chest Pain Center, Breast Health Program at Aria Health, Aria Health's Ophthalmology Service, Professional Home Health Services, Aria Health's Oral Medicine Service, Sleep Diagnostic Center at Aria Health-Bucks County, and Sleep Diagnostic Center at The Professional Court (collectively, "Health Care Facilities").

41. In total, Aria System employs more than 3,100 staff at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities and associates with nearly 500 practicing physicians in the Northeast Philadelphia area as well as surrounding communities.

42. Aria System's centralized control of Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities' operations can be seen by, among other things, Aria System's management of Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities' operations as a single,

integrated, comprehensive, and consolidated health care system performing related activities through common control for a common business purpose.

Aria System's Management and Ownership Structure

43. Aria System controls Aria Health System, Aria Health – Frankford Campus, Aria Health – Torressdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities' operations through common management, including a centralized human resource function as well as common ownership.

44. Tax filings confirm that Aria Health System as a not-for-profit corporation is the parent company of Aria Health – Frankford Campus, Aria Health – Torressdale Campus, and Aria Health – Bucks County Campus which are consequently governed by, and under the control of, Aria Health System's board of directors.

45. Aria System manages how Aria Health – Frankford Campus, Aria Health – Torressdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities' employees are hired by, among other things, centralizing all job openings on Aria Health System's website allowing applicants to browse for job vacancies and inviting them to apply to join Aria System's team.

46. Aria Health – Frankford Campus, Aria Health – Torressdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities understood that Aria Health System was in control of their employment relationship with employees/Plaintiffs as a result of Aria Health System's exercise of its authority to set the Plaintiffs' and Class Members' work hours, rate of pay, benefits, work policies, including the policies at issue in this case, and other conditions of employment, and by otherwise treating Plaintiffs and Class Members as employees.

47. Aria System further exerts its centralized control through common management including, Kathleen Kinslow, President and Chief Executive Officer (“CEO”) of Aria Health System, and Roy Powell who preceded Ms. Kinslow until his resignation in November 2010. Dorinda Carolina, Chief Human Resources Officer at Aria Health, who was preceded by Michael E. Pepe, until his resignation in 2011.

Aria Health System’s Presidents and Chief Executive Officers

48. As the President and CEO, Kathleen Kinslow has operational control over the Aria System, including Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities

49. Ms. Kinslow’s job responsibilities include actively managing Aria Health System’s, Aria Health – Frankford Campus’, Aria Health – Torresdale Campus’, Aria Health – Bucks County Campus’, and the Health Care Facilities’ financial affairs. For example, Ms. Kinslow has been actively involved in improving the financial status of Aria System through the implementation of new financing systems including the Integrated Provider Performance Incentive Plan.

50. Ms. Kinslow actively manages Aria System’s financial challenges by, among other things, shepherding Aria Health System’s efforts to build a \$280 million healthcare complex. The proposed complex will total about 455,000 square feet, with 228 beds. The complex plans include a 40,000 square foot medical office building, a 40,000 square foot ambulatory care facility, and a 375,000 square foot clinical hospital. The proposed complex will be operated as a integrated health care facility. For example, Ms. Kinslow is overseeing the regulatory process and partnering with the community to facilitate the new healthcare complex, to be located in Lower Mansfield.

51. Moreover, Ms. Kinslow, in concert with others, actively reviews internal processes to identify ways Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities can improve cost effectiveness by adjusting expenses and staff levels to reflect current patient volume.

52. Further, Ms. Kinslow has made it clear that she wants to be a visible leader and be approachable to people. In fact, Ms. Kinslow has led Aria Health System’s, Aria Health – Frankford Campus’, Aria Health – Torresdale Campus’, and Aria Health – Bucks County Campus’ initiative to be the first health system in Northeast Philadelphia and Bucks County to offer a content-rich mobile website for use on smart phones.

53. As President and CEO of Aria Health System, Ms. Kinslow regularly visits Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and Aria Health – Bucks County Campus.

54. In concert with others, Ms. Kinslow has the authority to, and does, make decisions that concern Aria System’s operations and significant functions, including functions related to employment, human resources, training, and payroll.

55. In her role as President and CEO, Ms. Kinslow, in concert with others, is involved in creating and/or implementing the illegal policies complained of in this case.

56. Ms. Kinslow has the authority to create, modify, or eliminate the illegal policies complained of in this case.

57. Roy Powell was the President and CEO of Aria Health System until his resignation in November 2010, and he had the same job responsibilities as Ms. Kinslow does.

58. As the President and CEO of Aria Health System, Mr. Powell had operational

control over and actively managed Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

59. Mr. Powell ensured that Aria System’s mission and values were adopted at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, which guided the daily operations and employees in their work each day .

60. In concert with others, Mr. Powell had the authority to make, and made, decisions that concerned Aria System’s operations and significant functions, including functions related to employment, human resources, training, and payroll.

61. In his role as President and CEO of Aria Health System, Mr. Powell, in concert with others, was involved in creating and/or implementing the illegal policies complained of in this case.

62. Mr. Powell had the authority to create, modify, or eliminate the illegal policies complained of in this case.

Aria Health System’s Management of Human Resources

63. Dorinda Carolina is the Chief Human Resources Officer at Aria Health System.

64. As the Chief Human Resources Officer, Ms. Carolina has operational control over Aria Health Sysem, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

65. In concert with others, Ms. Carolina is responsible for providing direction and control over, and is authorized to direct all aspect of, human resources functions across Aria

System, including Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities. For example, Ms. Carolina is actively involved in the significant functions of Aria Health System’s Aria Health – Frankford Campus’, Aria Health – Torresdale Campus’, Aria Health – Bucks County Campus’, and the Health Care Facilities’ operations including payroll policies, compensation, training, employee relations, recruitment, retention, diversity, and employee benefit programs.

66. In concert with others, Ms. Carolina creates, approves, and implements compensation and meal break policies that are implemented throughout Aria System including Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

67. In concert with others, Ms. Carolina is actively involved in payroll functions for Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.

68. In concert with others, Ms. Carolina reviews and counsels locations’ employment decisions, including hiring and firing of Plaintiffs and Class Members at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

69. Dorinda Carolina is actively involved in Aria Health System, Aria Health – Frankford Campus’, Aria Health – Torresdale Campus’, Aria Health – Bucks County Campus’, and the Health Care Facilities’ employment and human resources records, including systems for keeping and maintaining those records.

70. For instance, in concert with others, Ms. Carolina has operational control over

the system for keeping and maintaining employees' payroll records, the timing and method with which payment is conveyed to 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.

71. In concert with others, Ms. Carolina manages the performance of employees at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities and has operational control over the terms and conditions of employment for employees located at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

72. Further, in concert with others, Ms. Carolina controls the training and education functions for employees at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

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

74. As Chief Human Resources Officer, Ms. Carolina also writes articles for the employee newsletter "Pulse".

75. In her role as Chief Human Resources Officer, Ms. Carolina, in concert with others, is involved in creating and/or implementing the illegal policies complained of in this case.

76. Ms. Carolina has the authority to create, modify, or eliminate the illegal

policies complained of in this case.

77. Michael Pepe was the Chief Human Resources Officer at Aria Health System until 2011, and he had the same responsibilities Ms. Carolina.

78. As the Chief Human Resources Officer, Mr. Pepe had operational control over Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

79. In concert with others, Mr. Pepe was responsible for providing direction and control over, and was authorized to direct all aspects of, human resources functions across Aria System, including Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities. For example, Mr. Pepe was actively involved in operations, including payroll policies, compensation, training, employee relations, recruitment, retention, diversity, and employee benefit programs.

80. In concert with others, Mr. Pepe created, approved, and implemented compensation and meal break policies that were implemented throughout Aria System including Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.

81. In concert with others, Mr. Pepe was actively involved in payroll functions for Aria System, including Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.

82. In concert with others, Mr. Pepe reviewed and counseled locations' employment decisions, including hiring and firing of Plaintiffs and Class Members at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria

Health – Bucks County Campus, and the Health Care Facilities.

83. Mr. Pepe was actively involved in Aria Health System, Aria Health – Frankford Campus’, Aria Health – Torresdale Campus’, Aria Health – Bucks County Campus’, and the Health Care Facilities’ employment and human resources records, including systems for keeping and maintaining those records.

84. For instance, in concert with others, Mr. Pepe had operational control over the system for keeping and maintaining employees’ payroll records, the timing and method with which payment is conveyed to 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.

85. In concert with others, Mr. Pepe managed the performance of employees at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus ,and the Health Care Facilities and had operational control over the terms and conditions of employment for employees located throughout Aria System, including at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.

86. Further, in concert with others, Mr. Pepe controlled the training and education functions for employees at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

87. For example, Mr. Pepe was actively involved in determining the type and scope of training employees attended as well as any compensation they received for attending training.

88. In his role as Chief Human Resources Officer at Aria Health System, Mr. Pepe in concert with others, was involved in creating and/or implementing the illegal policies complained of in this case.

89. Mr. Pepe had the authority to create, modify, or eliminate the illegal policies complained of in this case.

90. The facts also demonstrate that Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities’ operations are interrelated in such a way that they are not completely disassociated from each other with respect to the employment of their 4,000 employees

Interrelation and Integration of Abington System’s Operations

91. Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities’ operations are interrelated in several demonstrable ways, some examples of which are set forth below.

92. Aria Health System’s website lists the various awards and recognitions for Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and Aria Health – Bucks County Campus.

93. Aria Health System was recently named one of Health Imaging & IT’s 2011 Top 25 Connected Healthcare Facilities. This list consists of institutions that demonstrate extensively developed clinical image distribution systems and advanced electronic medical records.

94. Aria Health System publishes an internal monthly newsletter, “Pulse,” providing employees throughout Aria System with the latest organizational news and

updates. Aria Health System's Human Resources Department each month has a "Spotlight" section in the Pulse informing Aria System employees of pertinent issues such as benefits, performance evaluations, and recent staff appointments.

95. Aria Health System's Human Resources department recognizes one employee bi-monthly from each of its campuses with the CAREPlus Award given to this employees who help the Aria System provide high-quality service to the community. Moreover, Aria Health System, Aria Health – Frankford Campus, Aria Health – Torressdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities maintain an intranet website for internal communications.

96. Aria Health System, Aria Health – Frankford Campus, Aria Health – Torressdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities have integrated clinical imaging and patient data into an acute electronic health record system that provides radiologists, cardiologists, and clinicians access to medical images and patient data at the point of care. Moreover, Aria Health – Frankford Campus, Aria Health – Torressdale Campus, Aria Health – Bucks County Campus, Aria Health System, and the Health Care Facilities have automated workflow and eliminated communication barriers throughout Aria System, enabling caregivers to collaborate and simultaneously accelerate decision-making and patient care.

97. Moreover, Aria Health System, Aria Health – Frankford Campus, Aria Health – Torressdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities officially integrated the ExitCare Patient Education System into its centralized software applications to improve quality of care and patient outcomes.

98. Further, Aria Health System, Aria Health – Frankford Campus, Aria Health –

Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities recently implemented Allscripts Community Record software in order to provide Aria System employees with access to a single, unified patient record. Aria System’s centralized records securely exchanges information between clinical systems from multiple vendors without requiring users to log into a web portal or to view read-only documents, enabling Aria System employees to more easily collaborate on patient care, regardless of location or access to technology.

99. Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities recently launched a new mobile website and will soon launch a broad social media platform. Moreover, Aria System implemented the iRound system which relies on iPhones and iPads to facilitate rounds and traces in the areas of infection prevention and regulatory rounds.

100. Based in part on these facts, defendants can be held liable as employers of the Plaintiffs and Class Members for the violations complained of in this matter.

Statutory Definitions

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

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

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

Joint Employer Liability

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

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

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

Single Employer/Entity Liability

107. A single employer/entity relationship exists where two or more legally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a “single employer.” That is, separate companies may be so interrelated that they constitute a single employer.

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

Individual Liability

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

Agency Liability

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

Joint Venture Liability

111. Moreover, an employer can be held liable based upon their participation in a joint venture when each party to the venture makes a contribution, profits are shared, and

the parties maintain joint proprietary interest and right of mutual control over the subject matter of the enterprise.

Alter Ego Liability

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

Successor Liability

113. Under the doctrine of successor liability, the liability of a predecessor entity is extended to its successor for violations of remedial legislation including the FLSA when (1) there is substantial continuity of business operations from the previous entity to its successor; (2) the successor entity had notice of the pending lawsuit prior to acquiring the business or assets of the predecessor; and (3) the predecessor entity does not have the ability to provide adequate relief.

C. Aria Health System

Aria Health System Acts Directly and Indirectly as an Employer

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

- a. Aria Health System, as the entity in control of Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the

Health Care Facilities, employs more than 3,100 employees.

- b. Aria Health System through its centralized Human Resources department has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- c. Aria Health System acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Aria System, including at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities; centralizing organization and control of labor relations and human resources at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities, including through the employment of a Chief Human Resources Officer; and maintaining system-wide policies, including the policies at issue in this case.

115. Accordingly, it is plausible that Aria Health System is liable as a direct (or indirect) employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer.

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

- a. Aria Health System, as the entity in control of Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, employs more than 3,000 employees.
- b. Aria Health System through its centralized Human Resources department has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- c. Aria Health System acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Aria System, including at Aria

Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities; centralizing organization and control of labor relations and human resources at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, including through the employment of a Chief Human Resources Officer; and maintaining system-wide policies, including the policies at issue in this case.

117. Accordingly, it is plausible that Aria Health System is liable as a direct employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

118. Here, it is plausible that Aria Health System is liable as an employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer because it acts directly and/or indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health System, as the entity in control of Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, employs more than 3,100 employees.
- b. Aria Health System through its centralized Human Resources department has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- c. Aria Health System acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Aria System, including at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities; centralizing organization and control of labor relations and human resources at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, including through the employment of a Chief Human Resources Officer; and maintaining system-wide policies, including the policies at issue in this case.

119. Accordingly, it is plausible that Aria Health System is liable as a direct (or indirect) employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer.

Aria Health System Liable as a Joint Employer

120. Here, it is also plausible that Aria Health System and Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Employees work at Aria System’s locations, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities which are maintained by Aria Health System.
- b. Aria Health System exerts significant control over employees that work at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health System’s Chief Human Resources Dorinda Carolina has the authority to control the terms and conditions of employment for employees at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health System’s Human Resources department creates and implements compensation policies, including a meal break policy that is implemented throughout Aria System, including Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.
- e. Aria Health System also has the responsibility to maintain the time and costs associated with the work performed at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.

121. Accordingly, it is plausible that Aria Health System along with Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and, the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained herein because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee.

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

- a. Employees work at Aria System's locations, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities which are maintained by Aria Health System.
- b. Aria Health System exerts significant control over employees that work at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health System's Chief Human Resources Dorinda Carolina has the authority to control the terms and conditions of employment for employees at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks

County Campus, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.

- d. Further, Aria Health System's Human Resources department creates and implements compensation policies including a meal break policy that is implemented throughout Aria System, including Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.
- e. Aria Health System also has the responsibility to maintain the time and costs associated with the work performed at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.

123. Accordingly, it is plausible that Aria Health System along with Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus ,and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein.

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

- a. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are controlled and operated

through Abington System's common management, including Aria Health System's board of directors and senior executive team.

- b. Aria Health System exerts significant control over employees that work at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Chief Human Resource Officer Dorinda Carolina has the authority to control the terms and conditions of employment for employees at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health System's Human Resources department creates and implements compensation policies including a meal break policy that is implemented throughout Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.
- e. Job openings are centralized on Aria Health System's website allowing applicants to browse for job vacancies at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities and inviting applicants to apply.

125. Accordingly, it is plausible that Aria Health System along with Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained herein based on factors that exist in a health care setting.

Aria Health System Liable as a Single Employer/Entity

126. Here, it is also plausible that Aria Health System is liable as a single employer/entity for the violations complained herein at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are controlled and operated through Aria System’s common management, including, Aria Health System’s board of directors.
- b. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are managed by Aria Health System’s senior executive team including Kathleen Kinslow, President and CEO of Aria Health System; Roy Powell, former President and CEO; Dorinda Carolina, Chief Human Resources Officer for Aria Health System; and Michael Pepe, former Chief Human Resources Officer.
- c. Aria Health System’s operations are interrelated with Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, including, for example, centralized posting of job openings on Aria Health System’s website.
- d. Aria Health System maintains centralized control over the Human Resource departments Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities through Ms. Kinslow, Mr. Powell, Ms. Carolina and Mr. Pepe. Moreover, Aria Health System’s Human Resource department creates and implements compensation policies, including a meal break policy, implemented throughout Aria System.
- e. In terms of common ownership, Aria Health System is the parent umbrella organization over Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

127. As a result, it is plausible that Aria Health System is liable as a single employer/entity for the violations complained of at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

Aria Health System Liable as a Principal

128. Additionally, it is plausible that Aria Health System is liable to Plaintiffs and Class Members as a principal based on agency law. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Through its control, Aria Health System caused the illegal policies to be implemented at Aria Health – Frankford Campus, Aria Health – Torresdale

Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, and those policies caused the wrongs at issue in this case.

- b. Aria Health System controls and operates Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities through Aria Health System’s centralized management including management of labor relations.
- c. Moreover, Aria Health System maintains a central Human Resources department that creates and implements compensation policies, including a meal break policy, that applies to employees throughout Aria System, including Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.
- d. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities understood that Aria Health System was in control of their employment relationship with Plaintiffs and Class Members as a result of Aria Health System’s exercise of its authority to set the Plaintiffs’ and Class Members’ work hours, rates of pay, benefits, work policies, including the policies at issue in this case, and other conditions of employment, and by otherwise treating Plaintiffs and Class Members as employees.

129. Accordingly, it is plausible that Aria Health System is liable to Plaintiffs and Class Members under agency law.

Aria Health System Liable as a Joint Venture

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

- a. Aria Health System has engaged in a joint venture of providing healthcare services by entering into an agreement with Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities established through their conduct such as sharing of profits and losses.
- b. Aria Health System jointly managed and controlled the joint venture as well as Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities employees and assets by making contributions to defendants’ and Health Care Facilities’ operations and cash surplus and determining how those funds are shared by the defendants and Health Care Facilities.

131. Therefore, it is plausible that Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and Aria Health – Bucks County Campus are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

Aria Health System Liable as a Alter Ego

132. Furthermore, it is plausible that Aria Health System is also liable to Plaintiffs and Class Members as an alter ego as discussed above, including:

- a. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are controlled and dominated by the parent corporation Aria Health System due to, for example, its centralized management including Kathleen Kinslow, President and CEO of Aria Health System; Roy Powell, former President and CEO of Aria Health System; Dorinda Carolina, Chief Human Resources Officer Aria Health System; Michael Pepe, former Chief Human Resources Officer, and oversight by a senior executive team and board of directors.
- b. Aria Health System’s Human Resources department controls and dominates Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities’ compensation policies including a meal break policy that is implemented throughout Aria System, including at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities that results in employees not being paid for all hours worked.
- c. Based upon Aria Health System’s control and domination of Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities’ compensation policies including the meal break policy, Plaintiffs and Class Members are entitled to compensation for the time Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities permitted them to work, but failed to properly compensate them.

133. Accordingly, Aria Health System may be held liable for the violations experienced by employees at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities as an alter ego.

Aria Health System Liable as a Successor

134. Furthermore, it is plausible that Aria Health System is also liable to Plaintiffs and Class Members as a successor to Frankford Health Care System. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Frankford Health Care System was officially renamed Aria Health System in May 2009.
- b. Prior to its rebranding, Aria Health System operated Frankford Hospital, Frankford Hospital – Torresdale, Frankford Hospital – Bucks County, and the Health Care Facilities while Frankford Health Care System was associated with Jefferson Health System. Once disassociated from Jefferson Health System and rebranded as Aria Health System, Aria Health System continued operating without interruption Aria Health – Frankford, Aria Health – Torresdale, Aria Health – Bucks County Campus, and the Health Care Facilities.
- c. Aria Health System has had notice of this lawsuit since its rebranding in May of 2009, prior to the filing of the original complaint in this matter in November 2009.

135. Accordingly, Aria Health System is liable to Plaintiffs and Class Members as a successor to the Frankford Health Care System.

136. Based upon the foregoing, Abington Health is a proper defendant in this action and it is plausible that it can be held liable as a successor.

D. Aria Health – Frankford Campus

Aria Health – Frankford Campus Acts Directly and Indirectly as an Employer

137. Here, it is plausible that Aria Health – Frankford Campus is liable as an employer of the Plaintiffs and Class Members based upon the FLSA’s definition of employer because it acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Frankford Campus’ Human Resources functions under the direction of Aria Health System’s centralized Human Resources department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs’

and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.

- b. Aria Health – Frankford Campus acts directly as Plaintiffs' and Class Members' employer by using Aria Health System's integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System's Chief Human Resources Officer and by implementing Aria Health System's system-wide policies, including the policies at issue in this case.

138. Accordingly, it is plausible that Aria Health – Frankford Campus is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer.

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

- a. Aria Health – Frankford Campus' Human Resources functions under the direction of Aria Health System's centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Aria – Frankford Campus acts directly as Plaintiffs' and Class Members' employer by using Aria Health System's integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System's Chief Human Resources Officer and by implementing Aria Health System's system-wide policies, including the policies at issue in this case.

140. Accordingly, it is plausible that Aria Health – Frankford Campus is liable as an employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

141. Here, it is plausible that Aria Health – Frankford Campus is liable as an employer of the Plaintiffs and Class Members based upon the PMWA’s definition of employer because it acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Frankford Campus’ Human Resources functions under the direction of Aria Health System’s centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs’ and Class Members’ work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Aria – Frankford Campus acts directly as Plaintiffs’ and Class Members’ employer by using Aria Health System’s integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System’s Chief Human Resources Officer and by implementing Aria Health System’s system-wide policies, including the policies at issue in this case.

142. Accordingly, it is plausible that Aria Health – Frankford Campus is liable as an employer of the Plaintiffs and Class Members based upon the PMWA’s definition of employer.

Aria Health – Frankford Campus Liable as a Joint Employer

143. Here, it is also plausible that Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, Aria Health System, and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Individuals are employed on the premises of Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the

Health Care Facilities which are maintained by Aria Health System.

- b. Aria Health – Frankford Campus’ employees are controlled by Aria Health System which maintains a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health – Frankford Campus operates under the direction Aria Health System’s Chief Human Resources Officer, Dorinda Carolina, who retains the authority to control the terms and conditions of employment for employees at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health – Frankford Campus implements Aria Health Systems’ compensation policies, including a meal break policy that is implemented throughout Aria Health System including at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities.
- e. Aria Health – Frankford Campus relies upon Aria Health System to maintain the time and costs associated with the work performed at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

144. Accordingly, it is plausible that Aria Health – Frankford Campus along with Aria Health System, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained herein because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee.

145. Here, it is also plausible that Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, Aria Health System, and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above, based on several non-exclusive factors that look to the totality of the circumstances including (1) whether the employment

takes place on the premises of the company; (2) how much control the company exerts over the employees; (3) the power to hire and fire; (4) power to control wages, hours and working conditions as well as quality standards; and (5) responsibility for recording and maintaining time and costs associated with the work. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Individuals are employed on the premises of Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities which are maintained by Aria Health System.
- b. Aria Health – Frankford Campus’ employees are controlled by Aria Health System which maintains a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health – Frankford Campus operates under the direction Aria Health System’s Chief Human Resources Officer, Dorinda Carolina, who retains the authority to control the terms and conditions of employment for employees at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work
- d. Further, Aria Health – Frankford Campus implements Aria Health Systems’ compensation policies, including a meal break policy that is implemented throughout Aria Health System including at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.
- e. Aria Health – Frankford Campus relies upon Aria Health System to maintain the time and costs associated with the work performed at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

146. Accordingly, it is plausible that Aria Health – Frankford Campus along with Aria Health System, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein.

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

- a. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are controlled and operated through Aria System’s common management, including Aria Health System’s board of directors and senior executive team.
- b. Aria Health System exerts significant control over employees that work at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health System’s Chief Human Resources Officer, Dorinda Carolina has the authority to control the terms and conditions of employment for employees at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health System’s Human Resources department creates and implements compensation policies, including a meal break policy, that are implemented throughout Aria Health System including at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

- e. Job openings are centralized on Aria Health System's website allowing applicants to browse for job vacancies at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities and inviting applicants to apply.

148. Accordingly, it is plausible that Aria Health – Frankford along with Aria Health System, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein based on factors that exist in a health care setting.

Aria Health – Frankford Campus Liable as a Single Employer/Entity

149. Here, it is also plausible that Aria Health – Frankford Campus is liable as a single employer/entity for the violations complained of herein at Aria Health System, Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are controlled and operated through Aria System's common management, including: Aria Health System's board of directors.
- b. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are managed by Aria Health System's senior executive team including Kathleen Kinslow, President and CEO of Aria Health System: Roy Powell, former President and CEO: Dorinda Carolina, Chief Human Resources Officer for Aria Health System: and Michael Pepe, former Chief Human Resources Officer.
- c. Aria Health System's operations are interrelated with Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, including, for example, centralized posting of job openings on Aria Health System's website.
- d. Aria Health System maintains centralized control over the Human Resources department of Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities through Ms. Kinslow, Mr. Powell, Ms. Carolina, and Mr. Pepe. Moreover, Aria

Health System's Human Resource department creates and implements compensation policies including a meal break policy, implemented throughout Aria System.

- e. In terms of common ownership, Aria Health System is the parent umbrella organization over Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

150. As a result, it is plausible that Aria Health – Frankford Campus is liable as a single employer/entity for the violations complained of at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

Aria Health – Frankford Campus Liable as a Joint Venture

151. Likewise, it is plausible that Aria Health – Frankford Campus is also liable to Plaintiffs and Class Members as an employer based upon their participation in a joint venture. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health - Frankford has engaged in a joint venture of providing healthcare services by entering into an agreement with Aria Health System, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities established through their conduct such as sharing of profits and losses.
- b. Aria Health - Frankford jointly managed and controlled the joint venture as well as Aria Health System's, Aria Health – Torresdale Campus', Aria Health – Bucks County Campus', and the Health Care Facilities' employees and assets by receiving contributions from Aria Health System's, Aria Health Torresdale Campus' Aria Health – Bucks County Campus', and the Health Care Facilities' operations and cash surpluses.

152. Therefore, it is plausible that Aria Health System. Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and Aria Health – Bucks County Campus are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

E. Aria Health – Torresdale Campus

Aria Health – Torresdale Campus Acts Directly and Indirectly as an Employer

153. Here, it is plausible that Aria Health – Torresdale Campus is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer because it acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Torresdale Campus' Human Resources functions under the direction of Aria Health System's centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Aria Health – Torresdale Campus acts directly as Plaintiffs' and Class Members' employer by using Aria Health System's integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System's Chief Human Resources Officer and by implementing Aria Health System's system-wide policies, including the policies at issue in this case.

154. Accordingly, it is plausible that Aria Health – Torresdale Campus is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer.

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

- a. Aria Health – Torresdale Campus' Human Resources functions under the direction of Aria Health System's centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Aria Health – Torresdale Campus acts directly as Plaintiffs' and Class Members'

employer by using Aria Health System's integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System's Chief Human Resources Officer and by implementing Aria Health System's system-wide policies, including the policies at issue in this case.

156. Accordingly, it is plausible that Aria Health – Torresdale Campus is liable as an employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

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

- a. Aria Health – Torresdale Campus' Human Resources functions under the direction of Aria Health System's centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Aria Health – Torresdale Campus acts directly as Plaintiffs' and Class Members' employer by using Aria Health System's integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System's Chief Human Resources Officer and by implementing Aria Health System's system-wide policies, including the policies at issue in this case.

158. Accordingly, it is plausible that Aria Health – Torresdale Campus is liable as an employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer.

Aria Health – Torresdale Campus as a Joint Employer

159. Here, it is also plausible that Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, Aria Health System, and the

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

- a. Individuals are employed on the premises of Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities which are maintained by Aria Health System.
- b. Aria Health– Torresdale Campus’ employees are controlled by Aria Health System which maintains a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health – Torresdale Campus operates under the direction Aria Health System’s Chief Human Resources Officer, Dorinda Carolina, who retains the authority to control the terms and conditions of employment for employees at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus , and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health – Torresdale Campus implements Aria Health Systems’ compensation policies including a meal break policy that is implemented throughout Aria Health System including at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus and the Health Care Facilities.
- e. Aria Health – Torresdale Campus relies upon Aria Health System to maintain the time and costs associated with the work performed at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

160. Accordingly, it is plausible that Aria Health – Torresdale Campus along with Aria Health System, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained herein because they do not act completely independently

or are not completely disassociated from each other with respect to the employment of a particular employee.

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

- a. Individuals are employed on the premises of Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities which are maintained by Aria Health System.
- b. Aria Health– Torresdale Campus’ employees are controlled by Aria Health System which maintains a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health – Torresdale Campus operates under the direction Aria Health System’s Chief Human Resources Officer, Dorinda Carolina, who retains the authority to control the terms and conditions of employment for employees at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health – Torresdale Campus implements Aria Health Systems’ compensation policies including a meal break policy that is implemented throughout Aria Health System including at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

- e. Aria Health – Torresdale Campus relies upon Aria Health System to maintain the time and costs associated with the work performed at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus and the Health Care Facilities.

162. Accordingly, it is plausible that Aria Health – Torresdale Campus along with Abington Health, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein.

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

- a. Aria Health – Torresdale, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are controlled and operated through Aria System's common management, including Aria Health System's board of directors and senior executive team.
- b. Aria Health System exerts significant control over employees that work at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.

- c. Aria Health System's Chief Human Resources Officer, Dorinda Carolina has the authority to control the terms and conditions of employment for employees at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health System's Human Resources department creates and implements compensation policies, including a meal break policy, that are implemented throughout Aria Health System including at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus and the Health Care Facilities.
- e. Job openings are centralized on Aria Health System's website allowing applicants to browse for job vacancies at Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities and inviting applicants to apply.

164. Accordingly, it is plausible that Aria Health – Torresdale along with Aria Health System, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein based on factors that exist in a health care setting.

Aria Health – Torresdale Campus Liable as a Single Employer/Entity

165. Here, it is also plausible that Aria Health – Torresdale Campus is liable as a single employer/entity for the violations complained of herein at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are controlled and operated through Aria System's common management, including Aria Health System's board of directors.
- b. Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are managed by Aria Health System's senior executive team including Kathleen Kinslow, President and CEO of

Aria Health System; Roy Powell, former President and CEO; Dorinda Carolina, Chief Human Resources Officer for Aria Health System; and Michael Pepe, former Chief Human Resources Officer.

- c. Aria Health System's operations are interrelated with Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities, including, for example, centralized posting of job openings on Aria Health System's website.
- d. Aria Health System maintains centralized control over the Human Resource departments of Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities through Ms. Kinslow, Mr. Powell, Ms. Carolina, and Mr. Pepe. Moreover, Aria Health System's Human Resource department creates and implements compensation policies including a meal break policy, implemented throughout Aria System.
- e. In terms of common ownership, Aria Health System is the parent umbrella organization over Aria Health – Torresdale Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities

166. As a result, it is plausible that Aria Health – Torresdale Campus is liable as a single employer/entity for the violations complained of at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

Aria Health – Torresdale Campus Hospital Liable as a Joint Venture

167. Likewise, it is plausible that Aria Health – Torresdale Campus is also liable to Plaintiffs and Class Members as an employer based upon their participation in a joint venture. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Torresdale Campus has engaged in a joint venture of providing healthcare services by entering into an agreement with Aria Health System, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities established through their conduct such as sharing of profits and losses.
- b. Aria Health – Torresdale Campus jointly managed and controlled the joint venture

as well as Aria Health System's, Aria Health – Frankford Campus', Aria Health – Bucks County Campus', and the Health Care Facilities' employees and assets by receiving contributions from Aria Health System's, Aria Health – Frankford Campus', Aria Health – Bucks County Campus', and the Health Care Facilities' operations and cash surpluses.

168. Therefore, it is plausible that Aria Health System, Aria Health – Torresdale Campus, Aria Health – Frankford Campus, and Aria Health – Bucks County Campus are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

F. Aria Health – Bucks County Campus

Aria Health – Bucks County Campus Acts Directly and Indirectly as an Employer

169. Here, it is plausible that Aria Health – Bucks County Campus is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer because it acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Bucks County Campus' Human Resources functions under the direction of Aria Health System's centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Aria Health – Bucks County Campus acts directly as Plaintiffs' and Class Members' employer by using Aria Health System's integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System's Chief Human Resources Officer and by implementing Aria Health System's system-wide policies, including the policies at issue in this case.

170. Accordingly, it is plausible that Aria Health – Bucks County Campus is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer.

171. Here, it is also plausible that Aria Health – Bucks County Campus is liable as an employer of the Plaintiffs and Class Members based upon the WPCL’s definition of employer because it falls within the categories of employers covered by the statute and/or employs individuals and acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Bucks County Campus’ Human Resources functions under the direction of Aria Health System’s centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs’ and Class Members’ work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.
- b. Aria Health – Bucks County Campus acts directly as Plaintiffs’ and Class Members’ employer by using Aria Health System’s integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System’s Chief Human Resources Officer and by implementing Aria Health System’s system-wide policies, including the policies at issue in this case.

172. Accordingly, it is plausible that Aria Health – Bucks County Campus is liable as an employer of the Plaintiffs and Class Members based upon the WPCL’s definition of employer.

173. Here, it is plausible that Aria Health – Bucks County Campus is liable as an employer of the Plaintiffs and Class Members based upon the PMWA’s definition of employer because it acts directly and indirectly in the interest of an employer. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Bucks County Campus’ Human Resources functions under the direction of Aria Health System’s centralized Human Resource department, and it has suffered or permitted Plaintiffs and Class Members to perform work; set Plaintiffs’ and Class Members’ work hours, rates of pay, benefits, work policies, and other conditions of employment; and otherwise treated Plaintiffs and Class Members as employees.

- b. Aria Health – Bucks County Campus acts directly as Plaintiffs’ and Class Members’ employer by using Aria Health System’s integrated payroll record system and centralized organization and control of labor relations and human resources including Aria Health System’s Chief Human Resources Officer and by implementing Aria Health System’s system-wide policies, including the policies at issue in this case.

174. Accordingly, it is plausible that Aria Health – Bucks County Campus is liable as an employer of the Plaintiffs and Class Members based upon the PMWA’s definition of employer.

Aria Health – Bucks County Campus as a Joint Employer

175. Here, it is also plausible that Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health System, and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Individuals are employed on the premises of Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities which are maintained by Aria Health System.
- b. Aria Health – Bucks County Campus’ employees are controlled by Aria Health System which maintains a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health – Bucks County Campus operates under the direction Aria Health System’s Chief Human Resources Officer, Dorinda Carolina, who retains the authority to control the terms and conditions of employment for employees at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.

- d. Further, Aria Health – Bucks County Campus implements Aria Health Systems' compensation policies, including a meal break policy that is implemented throughout Aria Health System including at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities.
- e. Aria Health – Bucks County Campus relies upon Aria Health System to maintain the time and costs associated with the work performed at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities.

176. Accordingly, it is plausible that Aria Health – Bucks County Campus along with Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained herein because they do not act completely independently or are not completely disassociated from each other with respect to the employment of a particular employee.

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

- a. Individuals are employed on the premises of Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the

Health Care Facilities which are maintained by Aria Health System.

- b. Aria Health– Bucks County Campus’ employees are controlled by Aria Health System which maintains a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health – Bucks County Campus operates under the direction Aria Health System’s Chief Human Resources Officer, Dorinda Carolina, who retains the authority to control the terms and conditions of employment for employees at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health – Bucks County Campus implements Aria Health Systems’ compensation policies including a meal break policy that is implemented throughout Aria Health System including at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities.
- e. Aria Health – Bucks County Campus relies upon Aria Health System to maintain the time and costs associated with the work performed at Aria Health – Bucks Couin Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus and the Health Care Facilities.

178. Accordingly, it is plausible that Aria Health – Bucks County Campus along with Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein.

179. It is also plausible that Aria Health – Bucks County Campus along with Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities are also jointly and severally liable as joint employers of Plaintiffs and Class Members for the violations herein as discussed above, based on factors that exist in a health care setting such as: common management, officers and/or directors who have responsibility for more than one entity within the health care system; whether the health care

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

- a. Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities are controlled and operated through Aria System's common management including Aria Health System's board of directors and senior executive team.
- b. Aria Health System exerts significant control over employees that work at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus and the Health Care Facilities by maintaining a centralized Human Resources department which retains the power to control wages and working conditions, as well as the power to hire and fire employees.
- c. Aria Health System's Chief Human Resources Officer, Dorinda Carolina has the authority to control the terms and conditions of employment for employees at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Aria Health System's Human Resource department creates and implements compensation policies, including a meal break policy, that are implemented throughout Aria Health System including at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus and the Health Care Facilities.
- e. Job openings are centralized on Aria Health System's website allowing applicants to browse for job vacancies at Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities and inviting applicants to apply.

180. Accordingly, it is plausible that Aria Health – Bucks County Campus along with Aria Health System, Aria Health – Torresdale Campus, Aria Health – Frankford Campus, and the Health Care Facilities are joint employers and consequently jointly and severally

liable for the violations complained of herein based on factors that exist in a health care setting.

Aria Health – Bucks County Campus Liable as a Single Employer/Entity

181. Here, it is also plausible that Aria Health – Bucks County Campus is liable as a single employer/entity for the violations complained of herein at Aria Health System, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, Aria Health – Torresdale Campus, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities are controlled and operated through Aria System's common management including, Aria Health System's board of directors.
- b. Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Bucks County Campus, and the Health Care Facilities are managed by Aria Health System's senior executive team including Kathleen Kinslow, President and CEO of Aria Health System; Roy Powell, former President and CEO; Dorinda Carolina, Chief Human Resources Officer for Aria Health System; and Michael Pepe, former Chief Human Resources Officer.
- c. Aria Health System's operations are interrelated with Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus and the Health Care Facilities, including, for example, centralized posting of job openings on Aria Health System's website.
- d. Aria Health System maintains centralized control over the Human Resource departments of Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities through Ms. Kinslow, Mr. Powell, Ms. Carolina and Mr. Pepe. Moreover, Aria Health System's Human Resource department creates and implements compensation policies, including a meal break policy.
- e. In terms of common ownership, Aria Health System is the parent umbrella organization over Aria Health – Bucks County Campus, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities

181. As a result, it is plausible that Aria Health – Bucks County Campus is liable as a single employer/entity for the violations complained of at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

Aria Health – Bucks County Campus Liable as a Joint Venture

182. Likewise, it is plausible that Aria Health – Bucks County Campus is also liable to Plaintiffs and Class Members as an employer based upon their participation in a joint venture. Some of the facts that support this basis for liability, as discussed more fully above, include:

- c. Aria Health – Bucks County Campus has engaged in a joint venture of providing healthcare services by entering into an agreement with Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, and the Health Care Facilities established through their conduct such as sharing of profits and losses.
- d. Aria Health – Bucks County Campus jointly managed and controlled the joint venture as well as Aria Health System's, Aria Health – Frankford Campus', Aria Health – Torresdale Campus', and the Health Care Facilities' employees and assets by receiving contributions from Aria Health System's, Aria Health – Frankford Campus', Aria Health – Torresdale Campus', and the Health Care Facilities' operations and cash surpluses.

183. Therefore, it is plausible that Aria Health System, Aria Health – Bucks County Campus, Aria Health – Frankford Campus, and Aria Health – Torresdale Campus are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

184. Further, under the FLSA, WPCL, and PMWA, individuals can be held liable to Plaintiffs and Class Members.

G. Kathleen Kinslow

Kathleen Kinslow Individually Liable as an Employer

185. It is plausible that Kathleen Kinslow, as President and CEO of Aria Health System, is liable as an employer to the Plaintiffs and Class Members based upon her significant operational control over Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

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

- a. implementing new financing systems, including the Integrated Provider Performance Incentive Plan;
- b. initiating expansion of Aria Health System by advocating the construction of new facilities to be integrated into the operations of Aria Health System, Aria Health – Frankford Campus, Aria Health Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities;
- c. in concert with others, actively reviewing internal processes to identify ways, Aria Health System, Aria Health – Frankford Campus, Aria Health Torresdale Campus, Aria Health – Bucks County Campus and the Health Care Facilities can improve Abington Health’s cost effectiveness by adjusting expenses and staff levels to reflect current patient volume;
- d. in concert with others, creating and/or implementing the illegal policies complained of in this case; and
- e. in concert with others, having the authority to create, modify, or eliminate the illegal policies complained of in this case.

186. Accordingly, Ms. Kinslow may be held liable as an employer for the violations experienced by employees at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

H. Roy A. Powell

Roy Powell Individually Liable as an Employer

187. It is plausible that Roy Powell, as President and CEO of Aria Health System, is liable as an employer to the Plaintiffs and Class Members based upon his significant operational control over Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. ensuring that Aria System’s mission and values were adopted at Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities which guided the daily operations and employees in their work each day;
- b. confronting the demands of the nursing shortage by leading an initiative to increase enrollment in the Dixon School of Nursing, a feeder school for Abington Memorial Hospital;
- c. in concert with others, actively reviewing internal processes to identify ways Aria System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities can improve Aria System’s cost effectiveness by adjusting expenses and staff levels to reflect current patient volume;
- d. in concert with others, creating and/or implementing the illegal policies complained of in this case; and
- e. in concert with others, having the authority to create, modify, or eliminate the illegal policies complained of in this case.

188. Accordingly, Mr. Powell may be held liable as an employer for the violations experienced by employees at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

I. Dorinda Carolina

Dorinda Carolina Individually Liable As An Employer

189. It is plausible that Dorinda Carolina, as Chief Human Resources for Aria Health System, is liable as an employer to the Plaintiffs and Class Members based upon her control, in concert with others, over significant aspects of Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

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

190. Accordingly, Ms. Carolina may be held liable as an employer for the violations experienced by employees at Aria Health System, Aria Health – Frankford Campus, Aria

Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

J. Michael E. Pepe

Michael Pepe Individually Liable as an Employer

191. It is plausible that Michael Pepe as former Chief Human Resources for Aria Health System, is liable as an employer to the Plaintiffs and Class Members based upon his control, in concert with others, over significant aspects of Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

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

192. Accordingly, Mr. Pepe may be held liable as an employer for the violations experienced by employees at Aria Health System, Aria Health – Frankford Campus, Aria Health – Torresdale Campus, Aria Health – Bucks County Campus, and the Health Care Facilities.

PLAINTIFFS

A. Named Plaintiffs

193. At all relevant times, Plaintiffs Kenneth Lynn, Charlene Agnew, and Margaret Knapp, were employees of the defendants within this District and reside within this District.

Kenneth Lynn

194. At all relevant times, as set forth in ¶¶38-100, defendants employed Mr. Lynn as a Registered Nurse (“RN”) at the Aria Health - Bucks County Campus location from approximately June 2007 to April 2009.

195. Mr. Lynn worked at Aria Health - Bucks County Campus from approximately June 2007 until December 2008, when it was then affiliated under the Jefferson Health System, Inc. and operating under the name of Frankford Hospital, Bucks County Campus. As such, the terms and conditions of his employment were set by Frankford Health Care System, including his pay rate, hours of work, and schedule. Mr. Lynn’s terms and conditions of employment remained unchanged after Frankford Health Care System’s separation from Jefferson Health System. The terms and conditions of Mr. Lynn’s employment were not governed by a collective bargaining agreement.

196. As an RN, Mr. Lynn typically worked the 7:00am to 7:30pm shift, 3 days each week, totaling 36 hours, exclusive of the 1.5 hours that were automatically deducted from his pay for meal periods. Furthermore, Mr. Lynn worked an additional 4-hour shift each week when available.

197. Mr. Lynn frequently worked through, or was interrupted during, his unpaid meal periods for a number of reasons, including but not limited to: catching up on patient charting and documentation; responding to “Rapid Response” pages; transporting a patient to another department for testing; and covering coworkers’ patients if they were transporting a patient or responding to a “Rapid Response” page. As a result, Mr. Lynn experienced 1.5 hours of uncompensated work each week. Given that Mr. Lynn typically worked 40 hours per week for which he was compensated, the uncompensated hours that he worked should have been paid at overtime rates.

198. Mr. Lynn’s direct supervisor was Donald Czmar, Unit Manager for the ICU and the Telemetry Unit. Furthermore, Mr. Lynn was supervised by a Charge Nurse, Patricia Coleman, who in turn, reported to Donald Czmar.

Charlene Agnew

199. At all relevant times, as set forth in ¶¶ 38-100, defendants employed Charlene Agnew as a RN at Aria Health System’s Aria Health- Bucks County Campus, Behavior Center location from approximately January 2009 to the present.

200. The terms and conditions of Ms. Agnew’s employment, including her pay rate, were initially set by Frankford Health Care System (*see* ¶¶ 38-100), but became governed by Aria Health System in May of 2009 after Frankford Health Care System’s name changed to Aria Health System. Ms. Agnew is typically granted an annual raise, and this is communicated to her in writing from Aria Health System. According to Ms. Agnew, Aria Health System issues Ms. Agnew’s paychecks and provided Ms. Agnew enrollment in its pension plan, which was available to all eligible employees throughout the Aria System. According to Ms. Agnew, Aria Health System maintains a website that provides continuing

education to all of Aria Health System's employees. Aria Health System also issued Ms. Agnew an identification badge and a system e-mail address. Ms. Agnew's employment terms and conditions are not subject to the terms of a collective bargaining agreement.

201. As an RN, Ms. Agnew works a number of different shifts, 4 days each week, typically totaling 32 hours, exclusive of the 2 hours that are automatically deducted from her pay for meal periods. Additionally, Ms. Agnew occasionally works beyond her regular scheduled shifts, up to and including 40 hours, for which she is compensated.

202. Ms. Agnew frequently works through, or is interrupted during, her unpaid meal periods because of her job responsibilities, including, but not limited to: processing new admissions; answering phone calls; manning the secure entrance to the Behavior Center; and responding to patient emergencies. Additionally, lack of adequate staffing causes Ms. Agnew to rarely receive the coverage necessary to enable her to take a full 30-minute meal break. As a result, Ms. Agnew experiences 2 hours of uncompensated time each week. Given that Ms. Agnew occasionally works 40 hours in workweek, that uncompensated time should have been paid at overtime rates.

203. Ms. Agnew's direct supervisors include Joe Richards, Nurse Manager and later Cathy Dennis, Nurse Manager. Furthermore, Mr. Richards and Ms. Dennis report to the Director of Geriatric Health, Judy Zipkin.

Margaret Knapp

204. At all relevant times, as set forth in ¶¶ 38-192, defendants employed Margaret Knapp as a RN at Aria Health System's Aria Health - Torrance Campus from approximately January 2009 to July 26, 2010.

205. In May of 2009, Aria Health System changed its name from Frankford Health Care System. As such, since May 2009, Ms. Knapp's terms and conditions of employment, including her pay rate, were set by Aria Health System. Aria Health System issued Ms. Knapp's paychecks and also enrolled Ms. Knapp in a pension and benefits plan, which was available to all eligible employees throughout Aria System. Aria Health System issued Ms. Knapp an identification badge as well as a system e-mail address. Furthermore, Aria Health System maintains an intranet site, available to all employees, which contains policy updates and system-wide news, to which Ms. Knapp had access. Moreover, the President of Aria Health System at the time, Roy Powell, occasionally visited the Aria Health – Torrance Campus and held meetings with employees in the event of system layoffs or major system acquisitions.

206. As an RN, Ms. Knapp typically worked the 7:00am to 7:30pm shift, 3 days each week, totaling 36 hours, exclusive of the 1.5 hours that were automatically deducted from her pay for meal periods and the approximately 1 hour of work that Ms. Knapp performed prior to her shifts each week for which she was not compensated, as discussed further herein. Furthermore, Ms. Knapp frequently worked past her regularly scheduled shifts, and occasionally worked an extra shift in a workweek, for which she was compensated, pushing her hours worked beyond 40 in a given workweek.

207. Ms. Knapp frequently worked through, or was interrupted during, her unpaid meal periods because of her job responsibilities, including but not limited to: catching up on charting and paperwork; responding to patient call bells which required her immediate attention; answering phone calls; and answering doctors' questions with regards to patients' statuses. Additionally, lack of adequate staffing often resulted in Ms. Knapp being unable to

get the coverage necessary for her to take a full 30-minute meal period. Furthermore, Ms. Knapp worked approximately 1 hour each week prior to her shifts, taking report and responding to emergency situations for which she was not compensated. As a result, Ms. Knapp experienced between 2.5 and 3 hours of uncompensated time in a workweek. Given that Ms. Knapp worked up to and in excess of 40 hours in a given workweek, the uncompensated time should have been paid at her regular rate up to and including 40 hours, and at overtime rates for hours in excess of

208. Ms. Knapp's direct supervisors were Karen Kemp, Head Nurse and Mary Ellen Reotter, Shift Supervisor. Ms. Kemp and Ms. Reotter, in turn, reported to the Director of Nursing, Sandra Myerson.

B. Class Members

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

BASES FOR LIABILITY

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

services (Quantum Meruit, Unjust Enrichment, Conversion, Accounting at Law, and Accounting at Equity).

211. As to the defendants' legal obligations to pay Plaintiffs and Class Members for all compensable time worked, the defendants' liability arises because the defendants knowingly permitted Plaintiffs and Class Members to perform work for which they did not pay Plaintiffs and Class Members as required by the FLSA and state law. In addition to offering proof that defendants did not pay Plaintiffs and Class Members for work that they knowingly permitted Plaintiffs and Class Members to perform, liability for these violations can be proven in a variety of ways. Several non-exclusive examples of how such liability can be proven are as follows:

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

FACTUAL BACKGROUND

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

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

214. As discussed below, defendants and the Health Care Facilities 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

215. One of the policies resulting in Plaintiffs and Class Members not receiving compensation for all time worked is defendants’ “Meal Break Deduction Policy.” Defendants maintain the Meal Break Deduction Policy throughout their facilities and centers.

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

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

218. Plaintiffs and Class Members do in fact perform work during those breaks and are not paid for that time. During this time, employees perform tasks such as continuing

regular job duties, making/answering phone calls to and from doctors and other hospital departments, catching up on paperwork and patient charts, interacting with doctors and patient family members, responding to emergency situations, and responding to incoming calls and alerts to cell phones and pagers that the defendants and Health Care Facilities require employees to carry at all times. Furthermore, lack of adequate staffing often prevents Plaintiffs and Class Members from having a complete uninterrupted meal periods during their shifts.

219. Defendants' Meal Break Deduction Policy is legally challengeable in several respects.

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

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

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

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

224. Regardless of the location, the defendants' policies uniformly shift to the Plaintiffs and Class Members the defendants' statutory responsibility to ensure that the

Plaintiffs and Class Members are paid for time worked during meal breaks. In particular, at all of the defendants' locations, one of the common pillars of the defendants' policy is that Plaintiffs and Class Members are responsible for ensuring all time worked during meal periods is properly credited and paid to Plaintiffs and Class Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

239. Defendants do not take into account literature and surveys in the medical field which show that employees with similar job duties in the same or similar hospitals work

during meal periods at far higher rates than that for which defendants credit the Plaintiffs and Class Members for such meal periods. Defendants have not attempted to systematically inquire as to whether such inconsistencies between such surveys and defendants' own payment to Plaintiffs and Class Members indicate a serious, systemic problem in regards to Plaintiffs and Class Members not getting paid for all time worked.

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

241. As a result of the uniform policy, all Plaintiffs and Class Members are entitled to compensation for all time they performed work for defendants, including during their

unpaid breaks. Thus, overall, defendants' policy leads to employees not being compensated for all hours worked.

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

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

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

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

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

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

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

Unpaid Pre- and Post- Schedule Work Policy

248. Another policy resulting in uncompensated time for Plaintiffs and Class Members is defendants' "Unpaid Pre- and Post-Schedule Work Policy."

249. Under this policy, defendants suffered or permitted Plaintiffs and Class Members to perform work before the start and/or after the end of their scheduled shifts.

250. 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 Pre- and Post-Schedule Work Policy").

251. For example, employees were not permitted to record all of their work performed before or after scheduled shifts.

252. Additionally, even if time was recorded before or after scheduled shifts, it was not compensated properly.

253. Employees often had to complete their regular shift responsibilities before their scheduled shift and/or after their scheduled shift ended. During this time, for example, employees gave report to relief, received report, and completed required documentation and charts for patient treatments and conditions. This time spent working was uncompensated.

254. Defendants' Unpaid Pre- and Post-Schedule Work Policy is also legally challengeable in several respects.

255. First, despite not compensating employees for their work before and after their scheduled shift, defendants fail to ensure that employees do not perform work before and after their shifts. As discussed above, the defendants and the Health Care Facilities operate on a 24/7 basis and expect Plaintiffs and Class Members to respond to demands regardless of whether it is outside of their scheduled shifts.

256. Additionally, the defendants do not prohibit Plaintiffs and Class Members from working before and after their shifts and do not have rules against such work.

257. Second, as discussed above, defendants cannot shift their statutory obligation to record and pay for all hours worked to their employees, including requiring employees to record deviations from their scheduled hours. In fact, defendants routinely only paid employees for their scheduled shifts and not for work performed before and after employees' scheduled shifts.

258. Third, the Unpaid Pre- and Post-Schedule Work Policy results in extensive uncompensated work being performed by employees.

259. As described by the Plaintiffs, they, like other Class Members, often performed work during before and after their shifts and as such, their experiences are shared by all Class Members.

260. The amount and frequency of such uncompensated work was so substantial that it reflects the defendants' actual policy or practice for the compensation of Plaintiffs and Class Members for time worked before and after their shifts.

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

262. As discussed above, the defendants made no efforts to prevent Plaintiffs and Class Members from working before and after their scheduled shifts for which Plaintiffs and Class Members did not receive compensation.

263. Additionally, as discussed above, in terms of inquiring about whether employees were working uncompensated time, as well as making sure that work did not happen, defendants failed to conduct regular and effective audits and surveys which would have revealed the uncompensated work being performed by Plaintiffs and Class Members and to adequately monitor employees to ascertain whether uncompensated work is being performed and to enforce policies which ensure compensation for all time worked.

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

265. Defendants also fail to engage in effective training of their managers or their employees to ensure they understand that employees must be compensated for all hours worked, including during, before and after their shifts.

266. Defendants did not routinely discipline employees who fail to record work performed before and after their scheduled shifts.

267. Defendants do not take account of literature and surveys in the medical field which show that employees with similar job duties in the same or similar hospitals perform work before and after their scheduled shifts.

268. In addition, defendants know or should have known that the Plaintiffs and Class Members perform work before and after their scheduled shifts, but still do not pay them for this time pursuant to their Unpaid Pre- and Post-Schedule Work Policy.

269. For example, defendants were aware such work was performed because the defendants permit, and often request, that such work be done by their employees. This work is done on the defendants' and the Health Care Facilities' premises during operational hours, and in full view of defendants' managers and supervisors. Thus, defendants permit that such work be done and have actual and constructive knowledge it is being performed.

270. Plaintiffs and Class Members also had conversations with defendants' managers in which they discussed how they were working before or after their scheduled shift and were not getting paid for such work.

271. Defendants also know that employees are receiving assigned tasks that must be completed by the appointed deadline, which results in employees having worked beyond their scheduled shifts even though they are not being paid for the work.

272. Although defendants, including managers, were aware employees performed this work beyond their scheduled work shifts, employees continued to perform work for which they were not compensated.

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

274. Additionally, Plaintiffs' and Class Members' claims under the Unpaid Pre- and Post-Schedule Work Policy do not arise under any collective bargaining agreement, and instead arise under federal and state law.

275. Plaintiffs and Class Members subject to the Unpaid Pre- and Post-Schedule Work Policy are members of Subclass 2.

- a. Subclass 2A includes all Class Members for workweeks during which they were not subject to a collective bargaining agreement.
- b. Subclass 2B 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.

Unpaid Training Policy

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

277. However, defendants fail to pay employees for all time spent attending such training sessions (the “Unpaid Training Policy”).

278. Often these training activities occurred during regular working hours; were required by defendants; and were directly related to their position with defendants. Further, Plaintiffs and Class Members were often required to actively participate in the training.

279. For example, employees attended mandatory in-services and training sessions covering topics such as CPR certification and recertification, new treatments, and new equipment. Furthermore, employees completed Continuing Education Units in order to maintain their licenses. Such training and education related to employees’ jobs by, for example, providing instruction on techniques to be used by employees when performing their jobs and regularly occurred during working hours.

280. Even though defendants know or should have known their employees are performing such work, defendants fail to compensate their employees for such work.

281. Defendants’ Unpaid Training Policy is also legally challengeable in several respects.

282. First, defendants fail to ensure that employees are compensated for all training time, despite requiring employees to complete such training.

283. Second, consistent with routinely paying employees only for their scheduled shifts, defendants shift their statutory obligation to record and pay for all hours worked by requiring employees to record time for training performed.

284. Third, the Unpaid Training Policy results in extensive uncompensated work being performed by employees.

285. As described by the Plaintiffs, they often completed training without compensation and their experiences are shared by Class Members.

286. The amount and frequency of such uncompensated work was so substantial that it reflects the defendants' actual policy or practice for the compensation of Plaintiffs and Class Members for training.

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

288. As above, defendants made no efforts to prevent Plaintiffs and Class Members from training without compensation nor did they inquire about whether employees were performing training without compensation. They also failed to conduct regular and effective audits and surveys which would have revealed the uncompensated work; to adequately monitor employees to ascertain whether uncompensated work is being performed and to enforce policies which ensure compensation for all time worked; to systematically review the records of their employees' work to determine if uncompensated work is being performed and whether there are inconsistencies between those records and the wage payments to Plaintiffs

and Class Members; and to engage in effective training of their managers or their employees to ensure they understand that employees must be compensated for all hours worked, including training time.

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

290. The defendants did not routinely discipline employees who fail to record training time.

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

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

- a. Subclass 3A includes all Class Members for workweeks during which they were not subject to a collective bargaining agreement.
- b. Subclass 3B 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.

293. Collectively, the Meal Break Deduction Policy, the Unpaid Pre- and Post-Schedule Work Policy, and the Unpaid Training Policy, are referred to herein as the "Unpaid Work Policies."

Additional Allegations

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

295. 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.

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

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

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

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

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

301. 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.

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

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

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

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

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

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

307. 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.

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

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

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

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

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

312. 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.

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

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

315. The wage payments, made by defendants' management and payroll representatives, including Ms. Kinslow, Mr. Powell, Ms. Carolina, and Mr. Pepe, misrepresented to Plaintiffs and Class Members that they were being properly compensated for all time worked, as required by law and set forth by the agreed upon terms of

employment, by transferring the incorrect amount in each wage payment wired to Plaintiffs and Class Members at times set pursuant to defendants' pay periods.

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

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

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

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

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

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

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

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

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

324. Plaintiffs and Class Members performed the labor and services during meal breaks, before and after scheduled shifts, and during training out of fear of losing their jobs and thus, the fear of suffering serious financial harm.

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

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

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

328. The predicate acts of forcing Plaintiffs and Class Members to perform labor and services by threatening severe harm in furtherance of the Scheme constitute a pattern of conduct unlawful pursuant to 18 U.S.C. § 1961(5) based upon both the relationship between the acts and continuity over the period of time of the acts. The relationship was reflected because the acts were connected to each other in furtherance of the Scheme. Continuity was reflected by both the repeated nature of the acts during and in furtherance of the Scheme and the threat of similar acts occurring in the future. The threat was reflected by the continuing and ongoing nature of the acts.

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

330. 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.

331. Defendants' management, including Ms. Kinslow, Mr. Powell, Ms. Carolina, and Mr. Pepe, intended to defraud Plaintiffs and Class Members at all times in an effort to benefit to the detriment of Plaintiffs and Class Members as a result of the continuance of the Scheme. Additionally, defendants, including Ms. Kinslow, Mr. Powell, Ms. Carolina, and Mr. Pepe, intended to force Plaintiffs and Class Members into performing labor and services

by threatening severe financial and reputational harm in the event that Plaintiffs and Class Members did not perform the required labor and services.

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

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

334. Management, including individual defendants Ms. Kinslow, Mr. Powell, Ms. Carolina, and Mr. Pepe are “persons” within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

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

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

337. 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.

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

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

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

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

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

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

344. 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.

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

346. Prior to seeking legal advice from Class Counsel, the Plaintiffs were never alerted to the defendants' concealment of their violation of the law by failing to pay the

Plaintiffs and Class Members properly. Plaintiffs and Class Members are under no duty to inquire of defendants that they were paid for all hours worked including applicable premium pay.

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

348. 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.

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

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

351. 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.

352. 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.

353. 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.

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

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

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

357. 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.

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

359. In particular, Plaintiffs and Class Members had express oral contracts with defendants including Ms. Kinslow, Mr. Powell, Ms. Carolina, and Mr. Pepe.

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

361. 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.

362. Specifically, defendants contracted to hire Plaintiffs and Class Members at a set rate of pay, with a minimum work schedule for a particular position, and under set terms of

employment. At the same time, Plaintiffs and Class Members contracted to provide defendants with labor and services.

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

364. As alleged herein, because of defendants' Meal Break Deduction Policy, Unpaid Pre- and Post-Schedule Work Policy, and Unpaid Training Policy, Plaintiffs and Class Members regularly worked hours both under and in excess of 40 per week and were not paid for all of those hours.

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

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

367. In particular, Plaintiffs and Class Members had implied contracts with the defendants including Ms. Kinslow, Mr. Powell, Ms. Carolina, and Mr. Pepe.

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

369. 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.

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

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

372. 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.

373. 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.

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

375. 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.

376. Defendants failed to act in good faith and breached the express and/or implied contract terms by failing to pay Plaintiffs and Class Members for all of the time Plaintiffs and Class Members worked including applicable premium pay. As a result of defendants' breach of express and implied contracts, Plaintiffs and Class Members have been harmed and as a direct and proximate result, have suffered damages including all amounts they should have been paid for all time worked including applicable premium pay.

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

378. 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.

379. 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.

380. 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.

381. 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.

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

383. 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.

384. 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.

385. 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.

386. 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.

387. 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.

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

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

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

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

392. 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.

393. 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.

394. 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.

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

396. 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.

397. 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.

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

399. 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.

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

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

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

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

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

405. Defendants, at all times, intended to defraud Plaintiffs and Class Members in order to secure employees by promising to pay for "all hours worked," while knowing their Unpaid Work Policies would result in Plaintiffs and Class Members not being paid for all hours worked.

406. By making these representations to Plaintiffs and Class Members, defendants knew they would be able to not only induce Plaintiffs and Class Members to accept employment but ultimately save millions of dollars a year by not paying Plaintiffs and Class Members for all hours worked pursuant to the Unpaid Work Policy, described in detail above, while still receiving the benefit of the labor and services performed by Plaintiffs and Class Members free of cost.

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

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

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

410. 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.

411. 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.

412. 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.

413. 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.

414. 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.

415. 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.

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

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

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

419. 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.

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

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

FIRST CAUSE OF ACTION
FLSA

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

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

SECOND CAUSE OF ACTION
RICO

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

425. 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.

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

THIRD CAUSE OF ACTION
Violation of Pennsylvania Minimum Wage Act

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

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

FOURTH CAUSE OF ACTION
Wage Payment and Collection Law

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

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

FIFTH CAUSE OF ACTION
Breach of Express Oral Contract

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

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

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

SIXTH CAUSE OF ACTION
Breach of Implied Contract

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

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

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

SEVENTH CAUSE OF ACTION
Breach of Express Written Contract

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

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

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

EIGHTH CAUSE OF ACTION

Action in Assumpsit

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

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

NINTH CAUSE OF ACTION

Accounting at Law

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

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

TENTH CAUSE OF ACTION

Quantum Meruit

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

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

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

ELEVENTH CAUSE OF ACTION

Unjust Enrichment

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

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

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

TWELTH CAUSE OF ACTION

Fraud

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

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

452. As a direct and proximate cause of defendants' misrepresentations, Plaintiffs and Class Members have suffered damages. Plaintiffs and Class Members are not, however,

seeking recovery of any plan benefits protected by ERISA even if such amounts were recoverable.

THIRTEENTH CAUSE OF ACTION
Negligent Misrepresentation

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

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

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

FOURTEENTH CAUSE OF ACTION
Conversion

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

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

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

FIFTEENTH CAUSE OF ACTION
Accounting at Equity

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

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

SIXTEENTH CAUSE OF ACTION

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

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

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

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

- a. an order preliminarily and permanently restraining defendants from engaging in the aforementioned pay violations;
- b. an award of the value of Plaintiffs' and Class Members' unpaid wages and any other amounts necessary to make them whole;
- c. 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;
- d. 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;

- 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;
- g. an accounting of the monetary benefit that was conferred upon defendants by Plaintiffs and Class Members working under and in excess of 40 hours per week on defendants' behalf without receiving compensation, including premium overtime compensation; and
- h. such other and further legal or equitable relief as this Court deems to be just and appropriate.

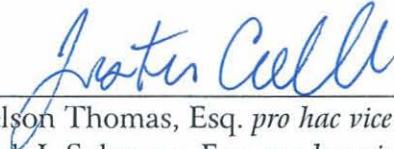
JURY DEMAND

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

Dated: November 10, 2011

THOMAS & SOLOMON LLP

By:



J. Nelson Thomas, Esq. *pro hac vice*

Patrick J. Solomon, Esq. *pro hac vice*

Michael J. Lingle, Esq. *pro hac vice*

Justin M. Cordello, Esq.

Attorneys for Plaintiffs and Class Members

693 East Avenue

Rochester, New York 14607

Telephone: (585) 272-0540

nthomas@theemploymentattorneys.com

psolomon@theemploymentattorneys.com

mlingle@theemploymentattorneys.com

jcordello@theemploymentattorneys.com

CERTIFICATE OF SERVICE

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

John M. Elliott
Mark Joseph Schwemler
Eric J. Bronstein
ELLIOT GREENLEAF & SIEDZIKOWSKI, P.C.
925 Harvest Drive
P.O. Box 3010
Blue Bell, PA 19422

Dated: November 10, 2011

By: Justin M. Cordello
THOMAS & SOLOMON LLP
Justin M. Cordello, Esq.
J. Nelson Thomas, Esq. *pro hac vice*
Patrick J. Solomon, Esq. *pro hac vice*
Michael J. Lingle, Esq. *pro hac vice*
Attorneys for Plaintiffs and Class Members
693 East Avenue
Rochester, New York 14607
Telephone: (585) 272-0540
jcordello@theemploymentattorneys.com
nthomas@theemploymentattorneys.com
psolomon@theemploymentattorneys.com
mlingle@theemploymentattorneys.com

Exhibit A

The New York Times

August 9, 2010

Pay Practices in Health Care Are Investigated

By ROBERT PEAR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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