

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

JOHN DUNCHESKIE

673 Ferne Boulevard  
Drexel Hill, PA 19026,

-and-

DIANE READ

8153 Terry Street  
Philadelphia, PA 19136,

-and-

THELMA HARRIS

5418 Willows Avenue  
Philadelphia, PA 19143,

-and-

ELEANOR JACKSON

941 North 45<sup>th</sup> Street  
Philadelphia, PA 19104,

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

*Plaintiffs,*

v.

TEMPLE UNIVERSITY HEALTH SYSTEM, INC.

2450 West Hunting Park Avenue 4<sup>th</sup> Floor  
Philadelphia, PA 19129,

-and-

TEMPLE UNIVERSITY HOSPITAL, INC.

2450 West Hunting Park Avenue 4<sup>th</sup> Floor  
Philadelphia, PA 19140,

-and-

EPISCOPAL HOSPITAL

3509 North Broad Street Room 936  
Philadelphia, PA 19140

-and-

JEANES HOSPITAL

2450 West Hunting Park Avenue 4<sup>th</sup> Floor  
Philadelphia, PA 19140,

-and-

LAWRENCE R. KAISER

2450 West Hunting Park Avenue 4<sup>th</sup> Floor  
Philadelphia, PA 19129,

-and-

EDMOND F. NOTEBAERT

2450 West Hunting Park Avenue 4<sup>th</sup> Floor

SECOND AMENDED COMPLAINT -  
CLASS ACTION  
AND DEMAND FOR JURY TRIAL

Civil Action No. 09-cv-5551

---

Philadelphia, PA 19129,

-and-

JOSEPH MARSHALL

2450 West Hunting Park Avenue 4<sup>th</sup> Floor

Philadelphia, PA 19129

-and-

ROBERT BIRNBRAUER

2450 West Hunting Park Avenue 4<sup>th</sup> Floor

Philadelphia, PA 19129,

*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 John Duncheskie, Diane Read, Thelma Harris and Eleanor Jackson (“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 20, 2009, Plaintiffs filed a Class Action Complaint with this Court on behalf of Class Members, alleging violations of the FLSA, the Employee Retirement Income Security Act (“ERISA”), and RICO against defendants Temple University Health System, Inc., Temple University Hospital, Inc., Episcopal Hospital, Jeanes Hospital, Temple University Children’s Medical Center, Edmond F. Notebaert, Robert Birnbrauer, Temple University Health System, Inc. Defined Contribution Retirement Plan, Temple University Health System, Inc. 403B Plan, Temple University Hospital, Inc. – Defined Contribution Retirement Plan, Temple University Hospital – Episcopal Division Pension Plan, Jeanes Hospital Retirement Income Plan, Northeastern Hospital Philadelphia Defined Benefit Pension Plan, Northeastern Hospital Tax Sheltered Annuity Plan (“Federal Action”). *See Duncheskie, et al., v. Temple Univ. Health Sys., Inc., et al.*, No. 09-cv-5551, Dkt. No. 1.

5. On November 24, 2009, Plaintiffs filed a Class Action Complaint with the Court of Common Pleas of Philadelphia County, Pennsylvania Trial Division, November Term 2009, No. 4110, against the same defendants in the Federal Action alleging violations of various laws of the Commonwealth of Pennsylvania including, but not limited to the PMWA and the WPCL (“State Action”).

6. On December 18, 2009, the defendants removed the State Action to this Court (“Removed Action”). *See Duncheskie, et al., v. Temple Univ. Health Sys., Inc., et al.*, No.

09-06012, Dkt. No. 1.

7. On January 18, 2010, plaintiffs moved to remand the State Action to the Court of Common Pleas of Philadelphia County, Pennsylvania Trial Division. *See Duncheskie, et al., v. Temple Univ. Health Sys., Inc., et al.*, No. 09-06012, Dkt. No. 13.

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

8. On September 15, 2010, this Court denied Plaintiffs' Motion to Remand and consolidated the Removed Action into the Federal Action and directed the Plaintiffs to file a consolidated complaint within 20 days. *See Duncheskie, et al., v. Temple Univ. Health Sys., Inc., et al.*, No. 09-06012, Dkt. No. 44; *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 well subject to preemption by § 301 of the Labor Management Relations Act ("LMRA"). *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 violation of the FLSA, ERISA, RICO and the various laws of the Commonwealth of Pennsylvania including, but not

limited to PMWA and the WPCL. *See Duncheskie, et al., v. Temple Univ. Health Sys., Inc., et al.*, No. 09-5551, Dkt. No 145.

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 action Plaintiffs specifically pled that “Plaintiffs and Class Members are not, however, seeking recovery under the [state law claim] for fringe benefits or any plan benefits protected by ERISA even if such amounts were recoverable. . . .” *See id.*, at ¶287 (PMWA), ¶289 (WPCL), ¶292 (breach of express oral contract), ¶295 (implied contracts), ¶298 (breach of express written contract), ¶300 (action in assumpsit), ¶302 (accounting at law), ¶305 (quantum meruit), ¶308 (unjust enrichment), ¶311 (fraud), ¶314 (negligent misrepresentation), ¶317( conversion), ¶319 (accounting at equity), and ¶321 (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.* ¶117(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 (“CBA”). 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 CBA. Instead, preemption can only apply for those workweeks during which Class Members were covered by a CBA.

*Courts' 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 Duncheskie, et al., v. Temple Univ. Health Sys., Inc., et al.*, No. 09-5551, Dkt. No. 217 at 19 (citations omitted).

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 Health System's health centers and affiliates and the basis for liability. *See id.* at 13 n.49

16. Moreover, the Court required Plaintiffs to include additional information about the Named Plaintiffs including which defendant they reported to, who directly supervised their employment, and who set their rate of pay. *See id.* at 12 n.47.

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

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

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

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

*Plaintiffs' Second Amended Complaint*

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

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

23. Moreover, with respect to their FLSA claims, Plaintiffs specifically allege overtime claims under § 207 of the FLSA and 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 forced labor and wire fraud 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 to pursue their claims because their claims cannot be preempted by the LMRA during workweeks they were not

subject to a CBA.

27. Finally, Plaintiffs are only alleging a cause of action for failure to keep accurate records pursuant to Pennsylvania statute. *See* §§ 490-91.

### **CLASS ACTION ALLEGATIONS**

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

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

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

31. The class size is believed to be over 7,500 employees.

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

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

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

35. The Class Counsel concentrates its practice in employment litigation, and its

attorneys are experienced in class action litigation, including class actions arising under federal wage and hour laws.

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

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

## DEFENDANTS

### **A. Factual Information**

38. Defendants constitute a centralized and integrated healthcare delivery system, which provides a comprehensive spectrum of healthcare services to the residents of Philadelphia and its surrounding communities, and include Temple University Health System, Inc., Temple University Hospital, Inc., Episcopal Hospital, Jeanes Hospital, Lawrence R. Kasier, Edmond F. Notebaert, Joseph Marshall, and Robert Birnbrauer ("defendants") and together with the Health Care Facilities (defined below) are referred to herein as "Temple System."

39. Temple System's centralized organization dates back to 1994 when Temple University Health System, Inc. was founded. Today, Temple System is an integrated health

care system that serves more than 250,000 patients annually at its flagship hospital location, Temple University Hospital, Inc., its 2 community-based hospitals, Jeanes Hospital and Episcopal Hospital, and a network of specialists and primary care physicians.

40. Temple System also operated Northeastern Hospital, a community medical fixture for years, until it was closed in June 2009 and converted into a ambulatory care center. As such, Temple University Health System, Inc. is also liable as a joint employer for the violations occurring at Northeastern Hospital, as explained further herein.

41. In addition to these locations, Temple System also runs locations within its system locations it identifies on its website and in its tax filings. These locations are part of Temple System's "non-profit network of hospitals and physicians" that "provides a comprehensive array of inpatient and outpatient services" as described on Temple System's website. These locations include: Temple University Hospital – Episcopal Campus, Northeastern Ambulatory Care Center, Temple Lung Center, Temple Spine Center at Jeanes Hospital, Temple Burn Center, Temple Heart Center, Temple Digestive Disease Center, Sol Sherry Thrombosis Research Center, Temple Cancer Center, Temple Neurosciences Center – Neurology, Neurosurgery, & Interventional Radiology, Roxborough OB/Gyn Practice, Temple Orthopaedics & Sports Medicine, Jeanes Hospital Primary Stroke Center, Temple Physicians, Inc., Temple Transport Team, Temple East, Inc., Temple University Health System Foundation, Inc., Temple University of the Commonwealth System of Higher Education, Temple Healthcare Services, Inc., TUHS Insurance Company, LTD, TUHS Insurance Company, Inc., Temple Health Transport Team, Inc., Temple Health System Transport Team, Inc., Jeanes Hospital Auxiliary, Northeastern Hospital School of Nursing, Temple East Real Estate, Inc., Greater Philadelphia Health Services I d/b/a Elmira Jefferies Memorial

Home, Greater Philadelphia Health Services II d/b/a Northwood Nursing Center, Greater Philadelphia Health Services III d/b/a Temple Continuing Care Center, Anna T. Jeanes Foundation, Temple University School of Medicine, Temple CAREs Primary Clinic, Northeastern School of Nursing Diploma Program, Emergency Preparedness and Research Program, Cradle to Grave Program, Opportunities in Healthcare Program, Fortress Properties Trust Co., Fortress Properties, Inc., Temple University, Temple Professional Associates, Jeanes Heart Center, The Orthopaedic Center at Jeanes, Temple Bone Marrow Transplantation Program, Sleep Disorders Center at Jeanes, Women's Healthcare & Wellness Center, Jeanes Home Health, Jeanes Pulmonary Function Laboratory, Episcopal Hospital RN School of Nursing, Episcopal Campus Minor Care Center, Episcopal Campus Behavioral Health Center, Temple Abdominal Organ Transplant Program, Temple Liver Disease Program, The Intensive Care Nursery at Temple University Hospital, Temple Kidney Transplant Program, Temple Liver Transplant Program, The Liver Tumor Program at Temple University Hospital, Temple University Hospital's Occupational Health Program, Temple University Hospital's Palliative Care Program, Temple Bariatric Surgery Program, Temple Limb Salvage Center, OB/Colposcopy Clinic, Maternal – Fetal Center, Faculty Obstetrics & Gynecology Practice, Gyn/Family Planning Clinic, Acupuncture/Gynecology, Gynecologic Oncology, Reproductive Endocrinology & Fertility, Episcopal Obstetrics & Gynecology, and the former Temple University Hospital – Northeastern Campus, and Temple University Children's Medical Center (collectively, "Health Care Facilities").

42. Temple System is a non-profit network of hospitals, health care facilities, and physicians that provides a comprehensive array of inpatient and outpatient services and that seeks to be both the top health system and the employer of choice in Philadelphia.

43. As such, Temple System is one of the larger healthcare employers in and around the Philadelphia area with a staff of more than 7,500 individuals.

44. Temple University Health System, Inc. maintains centralized control over Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities which can be seen by, among other things, Temple University Health System, Inc.'s management of Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, 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.

*Temple System's Management and Ownership Structure*

45. Temple System controls Temple University Hospital, Inc.'s, Jeanes Hospital's, Episcopal Hospital's, and the Health Care Facilities' operations through common management, including a centralized human resource function as well as common ownership.

46. Tax filings confirm that Temple University Health System, Inc. as a not for profit corporation is the sole member of Temple University Hospital, Inc., Jeanes Hospital, and Episcopal Hospital. Consequently, defendants Temple University Hospital, Inc., Jeanes Hospital, and Episcopal Hospital are governed by, and under the control of, Temple University Health System, Inc.'s board of directors.

47. Defendants' tax filings also confirm that Temple University Health System, Inc. is the parent organization for Temple University Hospital, Inc., Jeanes Hospital, and Episcopal Hospital.

48. Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities understood that Temple University Health System, Inc. was in control

of their employment relationship with employees/plaintiffs as a result of Temple University Health System, Inc.'s exercise of its authority to set the Plaintiffs' and Class Members' work hours, rates of pay, benefits, work policies, including the policies at issues in this case, and other conditions of employment, and otherwise treating Plaintiffs and Class Members as employees.

49. Temple System centrally manages how Temple University Hospital, Inc., Jeanes Hospital, and Episcopal Hospital's employees are hired by, among other things, centralizing all job openings on Temple University Health System, Inc.'s website allowing applicants to browse for job vacancies. Temple University Health System, Inc. implemented the centralized electronic job posting system to process the 10,000 applications they receive per year for the 600-700 new positions that need to be filled per year. The centralized system allows defendants to run a range of reports including applicants' EEO statistics, open positions, canceled positions, and filled positions.

50. Temple System further exerts its centralized control through common management, including Lawrence Kaiser, Executive Vice President for Health Sciences and Chief Executive Officer ("CEO") of Temple University Health System, Inc., and Robert Birnbauer, Vice President of Human Resources for Temple University Health System, Inc., and oversight by a senior executive team and board of directors.

*Temple System's Presidents and Chief Executive Officers*

51. Lawrence R. Kaiser is the Executive Vice President for Health Sciences and CEO of Temple University Health System, Inc.

52. As the CEO of Temple University Health System, Inc., Mr. Kaiser has operational control over Temple University Hospital, Inc., Jeanes Hospital, Temple Episcopal

Hospital, and the Health Care Facilities, constituting a collective \$1.2 billion clinical operation.

53. In fact, Mr. Kaiser's responsibilities include actively managing the Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Temple Episcopal Hospital, and the Health Care Facilities. For example, Mr. Kaiser has been actively involved in improving the financial status of the defendants by planting the Temple "T" in a number of locations around the suburbs of the Delaware Valley and exploring partnerships with other health-care providers. Mr. Kaiser has facilitated the Temple System's expansion strategy by helping to bring in more patients by ensuring the Temple System's facilities are well maintained and providing valet parking making the facilities easier for people to access. Mr. Kaiser also regularly meets with elected officials to ensure that Temple System can fulfill its role as Philadelphia's safety-net healthcare system.

54. Moreover, Mr. Kaiser, in concert with others, actively reviews internal processes to identify ways Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities can improve Temple System's cost effectiveness by adjusting expenses and staff levels to reflect current patient volume.

55. In concert with others, Mr. Kaiser has the authority to, and does, make decisions that concern Temple University Health System, Inc.'s, Temple University Hospital Inc.'s, Jeanes Hospital's, Episcopal Hospital's and the Health Care Facilities' operations and significant functions, including functions related to employment, human resources, training, and payroll.

56. In his role as CEO of Temple University Health System, Inc., Mr. Kaiser, in

concert with others, is involved in creating and/or implementing the illegal policies complained of in this case.

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

58. Prior to Mr. Kaiser's current tenure, Edmond F. Notebaert was the Executive Vice President and CEO of Temple University Health System, Inc., until his resignation in July 2010 and had the same job responsibilities as Mr. Kaiser.

59. As the CEO of Temple University Health System, Inc., Mr. Notebaert had operational control over Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

60. In fact, Mr. Notebaert's job responsibilities included actively managing Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Temple Episcopal Hospital, and the Health Care Facilities, including the closing of Temple System's former Northeastern Hospital location and converting the facility to an outpatient ambulatory care center.

61. Mr. Notebaert actively managed Temple University Health System, Inc.'s human resources issues and confronted the demands of the nursing strike and surrounding contract negotiations.

62. Mr. Notebaert oversaw the Temple System's financial struggles and actively managed the reductions in expenditures and inefficiencies to ensure the financial viability of the Temple System. Mr. Notebaert was specifically involved with budget reductions at all levels at Temple System, including non-hospital corporate operations and physician practices. Mr. Notebart attempted to reduce costs at Temple University Health System, Inc. by \$40 to

\$50 million.

63. In concert with others, Mr. Notebaert had the authority to make, and made, decisions that concerned Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities' operations and significant functions, including functions related to employment, human resources, training, and payroll.

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

65. Joseph Marshall was the President and CEO of Temple University Health System, Inc., until his resignation in December 2008, and had the same job responsibilities as Mr. Kaiser and Mr. Notebaert.

66. As the President and CEO of Temple University Health System, Inc., Mr. Marshall had operational control over Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

67. In fact, Mr. Marshall's responsibilities included actively managing Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Temple Episcopal Hospital, and the Health Care Facilities, including the reorganization of Temple System's institutions to allow it to continue to serve as a vital economic engine in the Fishtown, Port Richmond, and North Philadelphia neighborhoods that comprised a large portion of the Temple System's service area.

68. Mr. Marshall actively managed Temple University Health System, Inc.'s human resources issues by regularly meeting with employees at Temple University Hospital, Inc., Jeanes Hospital, and Episcopal Hospital, and realized that his decisions impacted

thousands of people directly.

69. Mr. Marshall oversaw the Temple System's reconfiguration of its Episcopal Health Center and the closure of two of Temple System's nursing homes.

70. Mr. Marshall oversaw the Temple System's financial struggles and actively managed the reductions in expenditures and inefficiencies to ensure the financial viability of the Temple System.

71. In concert with others, Mr. Marshall had the authority to make, and made, decisions that concerned Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities' operations and significant functions, including functions related to employment, human resources, training, and payroll.

72. In his role as President and CEO of Temple University Health System, Inc., Mr. Marshall, in concert with others, was involved in creating and/or implementing the illegal policies complained of in this case.

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

***Temple System's Management of Human Resources***

74. Temple System's senior executive team includes a centralized Human Resources department managed by Robert Birnbauer, Vice President of Human Resources at Temple University Health System, Inc.

75. Mr. Birnbauer is responsible for providing direction and control over, and is authorized to direct all aspects of, human resources functions across the Temple University Health System, Inc. For example, Mr. Birnbauer is actively involved in the significant

functions of Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities' operations, including payroll policies, compensation, training, employee relations, recruitment, retention, diversity, and employee benefit programs.

76. Mr. Birnbrauer is actively involved in the significant functions of Temple System's operations, including his role as Temple University Health System, Inc.'s chief negotiator for union contract negotiations.

77. In concert with others, Mr. Birnbrauer actively oversaw and managed the nurses' strike and their ultimate union agreement with the Temple University Health System, Inc.

78. Mr. Birnbrauer is actively involved in reviewing and counseling Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities regarding employment decisions, including hiring and firing of Plaintiffs and Class Members.

79. In concert with others, Mr. Birnbrauer makes decisions that set employees' schedules, hours, and standard benefit levels at Temple University Health System, Inc. as well as Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

80. Mr. Birnbrauer is actively involved in Temple University Hospital Inc.'s, Jeanes Hospital's, Episcopal Hospital's, and the Health Care Facilities' employment and human resources records, including the systems for keeping and maintaining those records.

81. Mr. Birnbrauer is actively involved in training and education functions across Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

82. Mr. Birnbrauer is actively involved in determining the type and scope of

training employees must attend as well as any compensation they receive for attending training.

83. Mr. Birnbauer is actively involved in payroll functions across Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Temple Episcopal Hospital, and the Health Care Facilities. In fact, defendants' own corporate representative admitted in sworn testimony that Mr. Birnbauer was actively and directly involved in the decision for Temple System to implement a centralized computerized payroll system.

84. Robert Birnbauer is actively involved in the system for keeping and maintaining employees' payroll records, the timing and method with which payment is conveyed to employees, and the manner and method in which employees receive payroll information, including their payroll checks.

85. In concert with others, Mr. Birnbauer manages the performance of employees at Temple University Health System, Inc, Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

86. Due in part to his role of overseeing human resources, training and education, Robert Birnbauer is actively involved in the creation of the illegal policies complained of in this case.

87. In concert with others, Mr. Birnbauer creates, approves, and implements Temple University Health System Inc.'s compensation and meal breaks policies that are implemented throughout Temple System.

88. Mr. Birnbauer, in concert with others, was involved in creating and/or implementing the illegal policies complained of in this case.

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

90. The facts also demonstrate that Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities are interrelated in such a way that they are not completely dissociated from each other with respect to the employment of their 7,500 employees.

***Interrelation and Integration of Temple System's Operations***

91. Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities' operations are interrelated in several demonstrable ways, some examples of which are provided below.

92. Temple System maintains centralized financial methodologies for debt management consistently applied across Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

93. Temple University Health System, Inc. issues audited financial statements on behalf of Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and Health Care Facilities.

94. Temple System has implemented integrated communication and payroll systems throughout Temple University Health System Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

95. Temple System uses an integrated supply chain management and procurement service allowing Temple University Health System, Inc. to manage purchase orders, purchase acknowledgments, advanced ship notifications, and invoices thereby reducing its operating costs.

96. Temple University Health System, Inc. has implemented changes to its drug dispensing policies, specifically an innovative Compliance Assessment Plan and survey procedure.

97. Moreover, Temple System maintains a comprehensive health information system involving integrated communication applications.

98. Temple University Health System, Inc.'s website lists the various awards and recognitions for Temple University Hospital, Inc., Jeanes Hospital, Temple University Episcopal Hospital, and the Health Care Facilities.

99. 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.

## **B. Legal Background**

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

### ***Statutory Definitions***

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 are present 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, demonstrating 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 injury or unjust loss complained of.

**C. Temple University Health System, Inc.**

*Temple University Acts Directly and Indirectly as an Employer*

113. Here, it is plausible that Temple University Health System, Inc. 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. Temple University Health System, Inc. is the entity in control of the other defendants who employ more than 7,500 employees, making it one of the largest employers in the Northeast Philadelphia area and its surrounding communities.
- b. Temple University Health System, Inc., 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. Temple University Health System, Inc. acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Temple System, including at Temple University Hospital, Inc., Jeanes Hospital, Temple University Hospital – Episcopal Campus and the Health Care Facilities; centralizing organization and control of labor relations and human resources among Temple University Hospital, Inc., Jeanes Hospital, Temple University

Hospital – Episcopal Campus, and the Health Care Facilities, including through the employment of a Vice President of Human Resources; and maintaining system-wide policies, including the policies at issue in this case, and certain employee benefit plans at Temple University Hospital, Inc., Jeanes Hospital, Temple University Hospital – Episcopal Campus, and the Health Care Facilities.

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

115. Here, it is also plausible that Temple University Health System, Inc. 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. Temple University Health System, Inc. is the entity in control of the other defendants who employ more than 7,500 employees, making it one of the largest employers in the Northeast Philadelphia area and its surrounding communities.
- b. Temple University Health System, Inc. 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. Temple University Health System, Inc. acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Temple System, including at Temple University Hospital, Inc., Jeanes Hospital, Temple University Hospital – Episcopal Campus, and the Health Care Facilities; centralizing organization and control of labor relations and human resources among Temple University Hospital, Inc. Jeanes Hospital, Temple University Hospital – Episcopal Campus and the Health Care Facilities, including through the employment of a Vice President of Human Resources, and maintaining system-wide policies, including the policies at issue in this case, and certain employee benefit plans at Temple University Hospital, Inc., Jeanes Hospital, Temple University Hospital – Episcopal Campus and the Health Care Facilities.

116. Accordingly, it is plausible that Temple University Health System, Inc. is liable

as a direct employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

117. Here, it is plausible that Temple University Health System, Inc. 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. Temple University Health System, Inc. is the entity in control of the other defendants who employ more than 7,500 employees, making it one of the largest employers in the Northeast Philadelphia area and its surrounding communities.
- b. Temple University Health System, Inc. 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. Temple University Health System, Inc. acts directly as Plaintiffs' and Class Members' employer by integrating payroll records systems throughout Temple System, including at Temple University Hospital, Inc., Jeanes Hospital, Temple University Hospital – Episcopal Campus and the Health Care Facilities; centralizing organization and control of labor relations and human resources among Temple University Hospital, Inc. Jeanes Hospital, Temple University Hospital – Episcopal Campus, and the Health Care Facilities, including through the employment of a Vice President of Human Resources, and maintaining system-wide policies, including the policies at issue in this case, and certain employee benefit plans at Temple University Hospital, Inc., Jeanes Hospital, Temple University Hospital – Episcopal Campus, and the Health Care Facilities.

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

***Temple University Health System, Inc. Liable as a Joint Employer***

119. Here, it is also plausible that Temple University Health System, Inc. and Temple University Hospital, Inc., Jeanes Hospital, Temple University Hospital – Episcopal

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 Temple University Health System, Inc.'s locations, including Temple University Hospital, Inc. Jeanes Hospital, Episcopal Hospital and the Health Care Facilities which are maintained by Temple University Health System, Inc.
- b. Temple University Health System, Inc. exerts significant control over employees that work at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, 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. Temple University Health System, Inc.'s Vice President of Human Resources Robert Birnbauer has the authority to control the terms and conditions of employment for employees at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities and is actively involved in significant functions including payroll policies, compensation, training, employee relations, recruitment, retention, diversity, and employee benefit programs.
- d. Further, Temple University Health System, Inc.'s Human Resources department creates and implements compensation and meal breaks policies that are implemented throughout Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

120. Accordingly, it is plausible that Temple University Health System, Inc. along with Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital 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.

121. It is also plausible that Temple University Health System, Inc. and Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, 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 Temple University Health System Inc.'s locations, including Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities which are maintained by Temple University Health System, Inc.
- b. Temple University Health System, Inc. exerts significant control over employees that work at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital 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. Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, has the authority to control the terms and conditions of employment for employees at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Temple University Health System, Inc.'s Human Resources department creates and implements compensation and meal breaks policies that are implemented throughout Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.
- e. Temple University Health System, Inc. also has the responsibility to maintain the time and costs associated with the work performed at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

122. Accordingly, it is plausible that Temple University Health System, Inc. along with Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein.

123. It is also plausible that Temple University Health System, Inc. and Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, 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. Employees work at Temple University Health System, Inc.'s locations, including Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital and the Health Care Facilities which are maintained by Temple University Health System, Inc.
- b. Temple University Health System, Inc. exerts significant control over employees that work at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, 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. Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, has the authority to control the terms and conditions of employment for employees at Temple University Hospital, Inc., Jeanes Hospital,

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

- d. Further, Temple University Health System, Inc.'s Human Resources department creates and implements compensation and meal breaks policies that are implemented throughout Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.
- e. Job openings are centralized on Temple University Health System, Inc.'s website allowing applicants to browse for job vacancies at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities and inviting applicants to apply to join Temple System's team.

124. Accordingly, it is plausible that Temple University Health System, Inc. along with Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, 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.

*Temple University Health System, Inc. Liable as a Single Employer/Entity*

125. Here, it is also plausible that Temple University Health System, Inc. is liable as a single employer/entity for the violations complained herein at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities based in part on the following:

- a. Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital and the Health Care Facilities are controlled and operated through Temple System's common management, including Temple University Health System's board of directors.
- b. Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital and the Health Care Facilities are managed by Temple University Health System, Inc.'s senior executive team, including Lawrence R. Kaiser, Executive Vice President for Health Sciences and CEO of Temple University Health System, Inc., former Executive Vice President and CEO of Temple University Health System, Inc., Edmond F. Notebaert, former President and CEO of Temple University Health System, Inc., Joseph Marshall, and Robert Birnbauer, Vice President of Human Resources at Temple University Health System, Inc.

- c. Temple University Health System, Inc.'s operations are interrelated with Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities through, for example, centralized job openings on Temple University Health System, Inc.'s website. Moreover, Temple University Health System, Inc.'s website lists the various awards and recognitions for Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Further, Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities use integrated supply chain management and procurement services which reduced operating expenses through common management of purchase orders, purchase acknowledgements, advanced ship notifications and invoices.
- d. Temple University Health System, Inc. maintains centralized control over the Human Resource departments for Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities through Mr. Kaiser and Mr. Birnbauer. Moreover, Temple University Health System Inc.'s Human Resource department creates and implements compensation policies, including a meal break policy.
- e. In terms of common ownership, Temple University Health System, Inc. is the sole corporate member of Temple University Hospital, Inc., Jeanes Hospital, and Episcopal Hospital.

126. As a result, it is plausible that Temple University Health System, Inc. is liable as a single employer/entity for the violations complained of at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

***Temple University Health System, Inc. Liable as a Principal***

127. Additionally, it is plausible that Temple University Health System, Inc. 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, Temple University Health System, Inc. caused the illegal policies to be implemented at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities, and those policies caused the wrongs at issue in this case.
- b. Temple University Health System, Inc. controls and operates Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities through Temple University Health System, Inc.'s centralized management, including management of labor relations.

- c. Moreover, Temple University Health System, Inc. maintains a central Human Resource department that creates and implements compensation policies, including a meal break policy that applies to employees throughout Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.
- d. Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital and the Health Care Facilities understood that Temple University Health System, Inc. was in control of their employment relationship with Plaintiffs and Class Members as a result of Temple University Health System, Inc.'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.

128. Accordingly, it is plausible that Temple University Health System, Inc. is liable to Plaintiffs and Class Members under agency law.

***Temple University Health System, Inc. Liable as a Joint Venture***

129. Furthermore, it is plausible that Temple University Health System, Inc. 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. Temple University Health System, Inc. has engaged in a joint venture of providing healthcare services by entering into an agreement with Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities, established through their conduct, such as sharing of profits and losses.
- b. Temple University Health System, Inc. jointly managed and controlled the joint venture as well as the other defendants' and the Health Care Facilities' employees and assets by making contributions to defendants' and the Health Care Facilities' operations and cash surplus and determining how those funds are shared by the defendants and the Health Care Facilities.

130. Therefore, it is plausible that Temple University Health System and Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities are jointly and severally liable to the Plaintiffs and Class Members for the damages arising

out of this joint venture.

***Temple University Health System, Inc. as a Alter Ego***

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

- a. Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities are controlled and dominated by the parent corporation Temple University Health System, Inc. due to, for example, its centralized management, including Lawrence R. Kaiser, Executive Vice President for Health Sciences and CEO of Temple University Health System, Inc., Edmond F. Notebaert, Executive Vice President and CEO of Temple University Health System, Inc., Joseph Marshall, former President and CEO of Temple University Health System, Inc., and Robert Birnbauer, Vice President of Human Resources at Temple University Health System, Inc., and by a senior executive team and board of directors.
- b. Temple University Health System, Inc.'s Human Resource department controls and dominates Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities' compensation policies, including a meal break policy that is implemented throughout Temple University Health System, Inc. including Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities that results in employees not being paid for all hours worked.
- c. Based upon Temple University Health System, Inc.'s control and domination of Temple University Hospital, Inc.'s, Jeanes Hospital's, Episcopal Hospital's, and the Health Care Facilities' compensation policies including the meal break policy, Plaintiffs and Class Members are entitled to compensation for the time Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities permitted them to work, but failed to properly compensate them.

132. Accordingly, Temple University Health System, Inc. may be held liable for the violations experienced by employees at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities as an alter ego.

**D. Temple University Hospital, Inc.**

***Temple University Hospital, Inc. Acts Directly and Indirectly as an Employer***

133. Here, it is plausible that Temple University Hospital, Inc. 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. Temple University Hospital, Inc. employs approximately 4,000 employees, making it one of the largest employers in Northeast Philadelphia.
- b. Temple University Hospital, Inc.'s Human Resources functions under the direction of Temple University Health System, Inc.'s centralized Human Resource department and 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. Temple University Hospital, Inc. acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System, Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and by implementing Temple University Health System, Inc.'s system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

134. Accordingly, it is plausible that Temple University Hospital, Inc. is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer.

135. Here, it is also plausible that Temple University Hospital, Inc. 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. Temple University Hospital, Inc. employs 4,000 employees, making it one of the largest employers in Northeast Philadelphia.
- b. Temple University Hospital, Inc.'s Human Resources functions under the direction of Temple University Health System's centralized Human Resources department and 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. Temple University Hospital, Inc. acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System, Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and by implementing Temple University Health System, Inc.'s system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

136. Accordingly, it is plausible that Temple University Hospital, Inc. is liable as an employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

137. Here, it is plausible that Temple University Hospital, Inc. 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. Temple University Hospital, Inc. employs 4,000 employees, making it one of the largest employers in Northeast Philadelphia.
- b. Temple University Hospital, Inc.'s Human Resources functions under the direction of Temple University Health System's centralized Human Resources department and 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. Temple University Hospital, Inc. acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and by implementing Temple University Health System, Inc.'s system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

138. Accordingly, it is plausible that Temple University Health System, Inc. is liable as an employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer.

*Temple University Hospital, Inc. as a Joint Employer*

139. Here, it is also plausible that Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, Temple University Health System, Inc., 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 Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities which are maintained by Temple University Health System, Inc.
- b. Temple University Hospital, Inc.'s employees are controlled by Temple University Health System, Inc. 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. Temple University Hospital, Inc. operates under the direction Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, who retains the authority to control the terms and conditions of employment for employees at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.
- d. Further, Temple University Hospital, Inc. implements Temple University Health System, Inc.'s compensation policies, including a meal break policy that is implemented throughout Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.
- e. Temple University Hospital, Inc. relies upon Temple University Health System, Inc. to maintain the time and costs associated with the work performed at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

140. Accordingly, it is plausible that Temple University Hospital, Inc. along with Jeanes Hospital, Episcopal Hospital, Temple University Health System, Inc., 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.

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

- a. Individuals are employed on the premises of Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities which are maintained by Temple University Health System, Inc.
- b. Temple University Hospital, Inc.'s employees are controlled by Temple University Health System, Inc. 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. Temple University Hospital, Inc. operates under the direction Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, who retains the authority to control the terms and conditions of employment for

employees at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital and the Health Care Facilities.

- d. Further, Temple University Hospital, Inc. implements Temple University Health System, Inc.'s compensation policies including a meal break policy that is implemented throughout Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital and the Health Care Facilities.
- e. Temple University Hospital, Inc. relies upon Temple University Health System, Inc. to maintain the time and costs associated with the work performed at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

142. Accordingly, it is plausible that Temple University Hospital, Inc. along with Temple University Health System, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein.

143. It is also plausible that Temple University Hospital, Inc. along with Temple University Health System, Inc., Jeanes Hospital, Episcopal Hospital, 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. Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities are controlled and operated through Temple System's

common management including Temple University Health System, Inc.'s board of directors and senior executive team.

- b. Temple University Health System, Inc. exerts significant control over employees that work at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, 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. Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, has the authority to control the terms and conditions of employment for employees at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Temple University Health System, Inc.'s Human Resources department creates and implements compensation policies, including a meal break policy, that are implemented throughout Temple University Health System, Inc. including at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.
- e. Job openings are centralized on Temple University Health System, Inc.'s website allowing applicants to browse for job vacancies at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities and inviting applicants to apply to join Temple System's team.

144. Accordingly, it is plausible that Temple University Hospital, Inc. along with Temple University Health System, Inc., Jeanes Hospital, Episcopal Hospital, 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.

*Temple University Hospital, Inc. Liable as a Single Employer/Entity*

145. Here, it is also plausible that Temple University Hospital, Inc. is liable as a single employer/entity for the violations complained of herein at Temple University Health System, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities are managed by Temple University Health System, Inc.'s

senior executive team, including Lawrence R. Kaiser, Executive Vice President for Health Sciences and CEO of Temple University Health System, Inc., former Executive Vice President and CEO of Temple University Health System, Inc., Edmond F. Notebaert, former President and CEO of Temple University Health System, Inc., Joseph Marshall, and Robert Birnbauer, Vice President of Human Resources at Temple University Health System, Inc.

- b. Temple University Hospital, Inc.'s operations are interrelated with Temple University Health System, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities through, for example, centralized job openings on Temple University Health System, Inc.'s website. Moreover, Temple University Health System, Inc.'s website lists the various awards and recognitions for Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Further, Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities use integrated supply chain management and procurement services which reduced operating expenses through common management of purchase orders, purchase acknowledgements, advanced ship notifications, and invoices.
- c. Temple University Hospital, Inc.'s Human Resources are controlled by Temple University Health System, Inc.'s centrally controlled Human Resource department, including oversight by Mr. Birnbauer. Moreover, Temple University Hospital, Inc. implements compensation policies, including a meal break policy maintained by Temple University Health Ssystem, Inc.'s Human Resources department.

146. As a result, it is plausible that Temple University Hospital, Inc. is liable as a single employer/entity for the violations complained of at Temple University Health System, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

***Temple University Hospital, Inc. Liable as Joint Venture***

147. Likewise, it is plausible that Temple University Hospital, Inc. 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. Temple University Hospital, Inc. has engaged in a joint venture of providing healthcare services by entering into an agreement with Temple University Health System, Inc., Jeanes Hospital, Episcopal Hospital and the Heath Care Facilities established through their conduct such as sharing of profits and losses.

- b. Temple University Hospital, Inc. jointly managed and controlled the joint venture as well as Temple University Health System, Inc.'s, Jeanes Hospital's, Episcopal Hospital's and the Health Care Facilities' employees and assets by receiving contributions from Temple University Health System, Inc.'s, Jeanes Hospital's, Episcopal Hospital's and the Health Care Facilities' operations and cash surpluses.

148. Therefore, it is plausible that Temple University Hospital, Inc., Temple University Health System, Inc., Jeanes Hospital, and Episcopal Hospital are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

**E. Jeanes Hospital**

***Jeanes Hospital Acts Directly and Indirectly as an Employer***

149. Here, it is plausible that Jeanes Hospital 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. Jeanes Hospital employs over 1,100 employees.
- b. Jeanes Hospital's Human Resources functions under the direction of Temple University Health System, Inc.'s centralized Human Resource department and 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. Jeanes Hospital acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and by implementing Temple University Health System's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

150. Accordingly, it is plausible that Jeanes Hospital is liable as an employer of the

Plaintiffs and Class Members based upon the FLSA's definition of employer

151. Here, it is also plausible that Jeanes Hospital 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. Jeanes Hospital employs over 1,100 employees.
- b. Jeanes Hospital's Human Resources functions under the direction of Temple University Health System, Inc.'s centralized Human Resource department and 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. Jeanes Hospital acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and by implementing Temple University Health System's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

152. Accordingly, it is plausible that Jeanes Hospital is liable as an employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

153. Here, it is plausible that Jeanes Hospital 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. Jeanes Hospital employs over 1,100 employees.
- b. Jeanes Hospital's Human Resources functions under the direction of Temple University Health System, Inc.'s centralized Human Resource department and 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. Jeanes Hospital acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and by implementing Temple University Health System's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

154. Accordingly, it is plausible that Jeanes Hospital is liable as an employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer.

*Jeanes Hospital as a Joint Employer*

155. Here, it is also plausible that Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, Temple University Health System, Inc., 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 Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities which are maintained by Temple University Health System, Inc.
- b. Jeanes Hospital's employees are controlled by Temple University Health System, Inc., 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. Jeanes Hospital operates under the direction Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, who retains the authority to control the terms and conditions of employment for employees at Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital and the Health Care Facilities.

- d. Further, Jeanes Hospital implements Temple University Health System, Inc.'s compensation policies, including a meal break policy that is implemented throughout Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities.
- e. Jeanes Hospital relies upon Temple University Health System, Inc. to maintain the time and costs associated with the work performed at Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities.

156. Accordingly, it is plausible that Jeanes Hospital along with Temple University Hospital, Inc., Episcopal Hospital, Temple University Health System, Inc., 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.

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

- a. Individuals are employed on the premises of Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital and the Health Care Facilities which are maintained by Temple University Health System, Inc.

- b. Jeanes Hospital's employees are controlled by Temple University Health System, Inc. 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. Jeanes Hospital operates under the direction Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, who retains the authority to control the terms and conditions of employment for employees at Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities.
- d. Further, Jeanes Hospital implements Temple University Health System, Inc.'s compensation policies, including a meal break policy that is implemented throughout Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities.
- e. Jeanes Hospital relies upon Temple University Health System, Inc. to maintain the time and costs associated with the work performed at Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities

158. Accordingly, it is plausible that Jeanes Hospital, along with Temple University Health System, Inc., Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein.

159. Here, it is also plausible that Jeanes Hospital along with Temple University Health System, Inc., Temple University Hospital, Inc., Episcopal Hospital, 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. Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities are controlled and operated through Temple System's common management including Temple University Health System, Inc.'s board of directors and senior executive team.
- b. Temple University Health System, Inc. exerts significant control over employees that work at Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital 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. Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, has the authority to control the terms and conditions of employment for employees at Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Temple University Health System, Inc.'s Human Resources department creates and implements compensation policies, including a meal break policy, that are implemented throughout Temple University Health System, Inc., including at Jeanes Hospital, Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities.
- e. Job openings are centralized on Temple University Health System, Inc.'s website allowing applicants to browse for job vacancies at Jeanes Hospital, Temple university Hospital, Inc., Episcopal Hospital, and the Health Care Facilities and inviting applicants to apply to join Temple System's team.

160. Accordingly, it is plausible that Jeanes Hospital along with Temple University Health System, Inc., Temple University Hospital, Inc., Episcopal Hospital, 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

*Jeanes Hospital Liable as a Single Employer/Entity*

161. Here, it is also plausible that Jeanes Hospital is liable as a single employer/entity for the violations complained of herein at Temple University Health System,

Inc., Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities.

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

- a. Jeanes Hospital, Temple University Hospital, Episcopal Hospital and the Health Care Facilities are managed by Temple University Health System, Inc.'s senior executive team including Lawrence R. Kaiser, Executive Vice President for Health Sciences and CEO of Temple University Health System, Inc., former Executive Vice President and CEO of Temple University Health System, Inc., Edmond F. Notebaert, former President and CEO of Temple University Health System, Inc., Joseph Marshall, and Robert Birnbauer, Vice President of Human Resources at Temple University Health System, Inc.
- b. Jeanes Hospital's operations are interrelated with Temple University Health System, Inc., Temple University Hospital, Episcopal Hospital, and the Health Care Facilities through, for example, centralized job openings on Temple University Health System, Inc.'s website. Moreover, Temple University Health System, Inc.'s website lists the various awards and recognitions for Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Further, Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities use integrated supply chain management and procurement services which reduced operating expenses through common management of purchase orders, purchase acknowledgements, advanced ship notifications, and invoices.
- c. Jeanes Hospital's Human Resources are controlled by Temple University Health System, Inc.'s centrally controlled Human Resource department, including oversight by Mr. Birnbauer. Moreover, Jeanes Hospital implements compensation policies, including a meal break policy maintained by Temple University Health System, Inc.'s Human Resources department

162. As a result, it is plausible that Jeanes Hospital is liable as a single employer/entity for the violations complained of at Temple University Health System, Inc., Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities

***Jeanes Hospital Liable as Joint Venture***

163. Likewise, it is plausible that Jeanes Hospital 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. Jeanes Hospital has engaged in a joint venture of providing healthcare services by entering into an agreement with Temple University Health System, Inc., Temple University Hospital, Inc., Episcopal Hospital, and the Health Care Facilities established through their conduct such as sharing of profits and losses.
- b. Jeanes Hospital jointly managed and controlled the joint venture as well as Temple University Health System, Inc.'s, Temple University Hospital Inc.'s, Episcopal Hospital's and the Health Care Facilities' employees and assets by receiving contributions from Temple University Health System, Inc.'s, Temple University Hospital, Inc.'s, Episcopal Hospital's and the Health Care Facilities' operations and cash surpluses.

164. Accordingly, it is plausible that Jeanes Hospital, Temple University Hospital, Inc., Temple University Health System, Inc., and Episcopal Hospital are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

#### **E. Episcopal Hospital**

##### ***Episcopal Hospital Acts Directly and Indirectly as an Employer***

165. Here, it is plausible that Episcopal Hospital 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. Episcopal Hospital employs over 700 employees.
- b. Episcopal Hospital's Human Resources functions under the direction of Temple University Health System, Inc.'s centralized Human Resource department and 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. Episcopal Hospital acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and by implementing Temple University Health System's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

166. Accordingly, it is plausible that Episcopal Hospital is liable as an employer of the Plaintiffs and Class Members based upon the FLSA's definition of employer

167. Here, it is also plausible that Episcopal Hospital 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. Episcopal Hospital employs over 700 employees.
- b. Episcopal Hospital's Human Resources functions under the direction of Temple University Health System, Inc.'s centralized Human Resource department and 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. Episcopal Hospital acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and implementing Temple University Health System's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

168. Accordingly, it is plausible that Episcopal Hospital is liable as an employer of the Plaintiffs and Class Members based upon the WPCL's definition of employer.

169. Here, it is plausible that Episcopal Hospital 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. Episcopal Hospital employs over 700 employees.

- b. Episcopal Hospital's Human Resources functions under the direction of Temple University Health System, Inc.'s centralized Human Resource department and 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. Episcopal Hospital acts directly as Plaintiffs' and Class Members' employer by using Temple University Health System Inc.'s integrated payroll record system and centralized organization and control of labor relations and human resources, including Temple University Health System, Inc.'s Vice President of Human Resources and by implementing Temple University Health System's system-wide policies, including the policies at issue in this case, and certain employee benefit plans.

170. Accordingly, it is plausible that Episcopal Hospital is liable as an employer of the Plaintiffs and Class Members based upon the PMWA's definition of employer.

*Episcopal Hospital as a Joint Employer*

171. Here, it is also plausible that Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital, Temple University Health System, Inc., 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 Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital and the Health Care Facilities which are maintained by Temple University Health System, Inc.
- b. Episcopal Hospital's employees are controlled by Temple University Health System, Inc. 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. Episcopal Hospital operates under the direction of Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, who retains

the authority to control the terms and conditions of employment for employees at Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital and the Health Care Facilities.

- d. Further, Episcopal Hospital implements Temple University Health System, Inc.'s compensation policies, including a meal break policy that is implemented throughout Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital and the Health Care Facilities.
- e. Episcopal Hospital relies upon Temple University Health System, Inc. to maintain the time and costs associated with the work performed at Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital, and the Health Care Facilities.

172. Accordingly, it is plausible that Episcopal Hospital along with Temple University Hospital, Inc., Jeanes Hospital, Temple University Health System, Inc. 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.

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

- a. Individuals are employed on the premises of Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital and the Health Care Facilities which are maintained by Temple University Health System, Inc.
- b. Episcopal Hospital's employees are controlled by Temple University Health System, Inc., 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. Episcopal Hospital operates under the direction of Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, who retains the authority to control the terms and conditions of employment for employees at Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital and the Health Care Facilities.
- d. Further, Episcopal Hospital implements Temple University Health System, Inc.'s compensation policies, including a meal break policy that is implemented throughout Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital and the Health Care Facilities.
- e. Episcopal Hospital relies upon Temple University Health System, Inc. to maintain the time and costs associated with the work performed at Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital, and the Health Care Facilities

174. Accordingly, it is plausible that Episcopal Hospital, along with Temple University Health System, Inc., Temple University Hospital, Inc., Episcopal Hospital and the Health Care Facilities are joint employers and consequently jointly and severally liable for the violations complained of herein.

175. Here, it is also plausible that Episcopal Hospital along with Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, 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. Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital and the Health Care Facilities are controlled and operated through Temple System's common management including Temple University Health System, Inc.'s board of directors and senior executive team.
- b. Temple University Health System, Inc. exerts significant control over employees that work at Episcopal Hospital, Temple University Hospital, Inc.'s, Jeanes Hospital 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. Temple University Health System, Inc.'s Vice President of Human Resources, Robert Birnbauer, has the authority to control the terms and conditions of employment for employees at Episcopal Hospital, Temple University Hospital, Inc. Jeanes Hospital, and the Health Care Facilities, as well as the responsibility for recording and maintaining time and costs associated with the work.
- d. Further, Temple University Health System, Inc.'s Human Resource department creates and implements compensation policies, including a meal break policy, that are implemented throughout Temple University Health System, Inc. including at Episcopal Hospital, Temple University Hospital, Inc., Jeanes Hospital, and the Health Care Facilities.
- e. Job openings are centralized on Temple University Health System, Inc.'s website allowing applicants to browse for job vacancies at Episcopal Hospital, Temple university Hospital, Inc., Jeanes Hospital, and the Health Care Facilities and inviting applicants to apply to join Temple System's team.

176. Accordingly, it is plausible that Episcopal Hospital, along with Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital 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

*Episcopal Hospital Liable as a Single Employer/Entity*

177. Here, it is also plausible that Episcopal Hospital is liable as a single employer/entity for the violations complained of herein at Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. Episcopal Hospital, Temple University Hospital, Jeanes Hospital and the Health Care Facilities are managed by Temple University Health System, Inc.'s senior executive team, including Lawrence R. Kaiser, Executive Vice President for Health Sciences and CEO of Temple University Health System, Inc., former Executive Vice President and CEO of Temple University Health System, Inc., Edmond F. Notebaert, former President and CEO of Temple University Health System, Inc., Joseph Marshall, and Robert Birnbauer, Vice President of Human Resources at Temple University Health System, Inc.
- b. Episcopal Hospital's operations are interrelated with Temple University Health System, Inc., Temple University Hospital, Jeanes Hospital, and the Health Care Facilities through, for example, centralized job openings on Temple University Health System, Inc.'s website. Moreover, Temple University Health System, Inc.'s web site lists the various awards and recognitions for Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Further, Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital and the Health Care Facilities use integrated supply chain management and procurement services which reduced operating expenses by through common management of purchase orders, purchase acknowledgements, advanced ship notifications and invoices.
- c. Episcopal Hospital's Human Resources are controlled by Temple University Health System, Inc.'s centrally controlled Human Resource department, including oversight by Mr. Birnbauer. Moreover, Episcopal Hospital implements compensation policies, including a meal break policy, maintained by Temple University Health System, Inc.'s Human Resources department

178. As a result, it is plausible that Episcopal Hospital is liable as a single employer/entity for the violations complained of at Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, and the Health Care Facilities

*Episcopal Hospital Liable as Joint Venture*

179. Likewise, it is plausible that Episcopal Hospital 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. Episcopal Hospital has engaged in a joint venture of providing healthcare services by entering into an agreement with Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital and the Health Care Facilities, established through their conduct such as sharing of profits and losses.
- b. Episcopal Hospital jointly managed and controlled the joint venture as well as Temple University Health System, Inc.'s, Temple University Hospital Inc.'s, Jeanes Hospital's and the Health Care Facilities' employees and assets by receiving contributions from Temple University Health System, Inc.'s, Temple University Hospital, Inc.'s, Episcopal Hospital's and the Health Care Facilities' operations and cash surpluses.

180. Accordingly, it is plausible that Episcopal Hospital, Temple University Hospital, Inc., Temple University Health System, Inc., and Jeanes Hospital, are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

**F. Lawrence R. Kaiser**

*Lawrence Kaiser Individually Liable as an Employer*

181. It is plausible that Lawrence Kaiser as Executive Vice President and CEO of Temple University Health System, Inc. is liable as an employer to the Plaintiffs and Class Members based upon his significant operational control over Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. actively managing Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities

including actively working to improve defendants' financial status;

- b. having the authority to, and making, decisions that concern Temple University Health System, Inc.'s, Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, operations and significant functions, including functions related to employment, human resources, training and payroll;
- c. in concert with others, creating and/or implementing the illegal policies complained of in this case; and
- d. in concert with others, having the authority to create, modify, or eliminate the illegal policies complained of in this case;

182. Accordingly, Lawrence Kaiser may be held liable as an employer for the violations experienced by employees at Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

**G. Edmond F. Notebaert**

***Edmond Notebaert Individually Liable as an Employer***

183. It is plausible that Edmond Notebaert, as Executive Vice President and CEO of Temple University Health System, Inc., is liable as an employer to the Plaintiffs and Class Members based upon his significant operational control over Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. actively managing Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities including actively working to improve defendants' financial status;
- b. having the authority to, and making, decisions that concern Temple University Health System, Inc.'s, Temple University Hospital, Inc.'s, Jeanes Hospital's, Episcopal Hospital's operations and significant functions, including functions related to employment, human resources, training and payroll;
- c. actively managing human resources issues such as confronting the demands of the nurses' strikes surrounding contract negotiations

- d. actively managing Temple System's financial struggles and actively reducing expenditures and inefficiencies;
- e. actively overseeing the closing of Temple System's former Northeastern Hospital.
- f. in concert with others, creating and/or implementing the illegal policies complained of in this case; and
- g. In concert with others, having the authority to create, modify, or eliminate the illegal policies complained of in this case;

184. Accordingly, Edmond Notebaert may be held liable as an employer for the violations experienced by employees at Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

**H. Joseph Marshall**

***Joseph Marshall Individually Liable as an Employer***

185. It is plausible that Joseph Marshall, as President and CEO of Temple University Health System, Inc., is liable as an employer to the Plaintiffs and Class Members based upon his significant operational control over Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. actively managing Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities including actively working to improve defendants' financial status;
- b. having the authority to make, and making, decisions that concern Temple University Health System, Inc.'s, Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, operations and significant functions, including functions related to employment, human resources, training and payroll;
- c. actively managing the reorganization of Temple System's institutions in order to ensure continued service to North Philadelphia neighborhoods;

- d. actively meeting with Temple System employees;
- e. overseeing the reconfiguration of Episcopal Health Center and closing two Temple System nursing homes.
- f. in concert with others, creating and/or implementing the illegal policies complained of in this case; and
- g. in concert with others, having the authority to create, modify, or eliminate the illegal policies complained of in this case

186. Accordingly, Joseph Marshall may be held liable as an employer for the violations experienced by employees at Temple University Health System, Inc, Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities.

**I. Robert Birnbauer**

***Robert Birnbauer Individually Liable as an Employer***

187. It is plausible that Robert Birnbauer, as Vice President of Human Resources of Temple University Health System, Inc., is liable as an employer to the Plaintiffs and Class Members based upon his significant operational control over Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities. Some of the facts that support this basis for liability, as discussed more fully above, include:

- a. managing Temple University Health System, Inc.'s Human Resource department;
- b. supervising Temple University Hospital, Inc. Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities' human resources 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 Temple University Health System, Inc. including at Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital and the Health Care Facilities;
- d. setting employees' schedules, hours and standard benefit levels at Abington Health

as well as at Abington Memorial Hospital, Lansdale Hospital, and the Health Care Facilities;

- e. reviewing and counseling Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital 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.

188. Accordingly, Robert Birnbauer may be held liable as an employer for the violations experienced by employees at Temple University Health System, Inc., Temple University Hospital, Inc., Jeanes Hospital, Episcopal Hospital, and the Health Care Facilities

### PLAINTIFFS

#### **A. Named Plaintiffs**

189. At all relevant times, John Duncheskie, Diane Read, Thelma Harris and Eleanor Jackson were employees of defendants in this District and reside in this District.

#### ***John Duncheskie***

190. At all relevant times, as set forth in ¶¶ 39-189, defendants employed Mr. Duncheskie as a Registered Nurse (“RN”) at Temple University Health System’s Northeastern Hospital location from approximately March 21, 2007 until May of 2009 when it closed. Before this time, Mr. Duncheskie worked as a Respiratory Therapist at Northeastern Hospital from 1998 to 2006 on a part-time and per diem basis.

191. Mr. Duncheskie earned his degree from Episcopal School of Nursing, owned by Temple University Health System, Inc., at the end of 2006. Thereafter, Mr. Duncheskie applied for a position at Northeastern Hospital by submitting an application directly to who would become one of his supervisors, Ms. Petty Allen-Gordon, Manager of the Emergency

Room. Mr. Duncheskie's pay rate and employment terms were negotiated on his behalf between the Pennsylvania Association of Staff Nurses and Allied Professionals ("PASNAP") representatives and representatives of Temple University Health System, Inc. Thus, his employment terms were covered by a collective bargaining agreement. Temple University Health System, Inc. issued Mr. Duncheskie's paychecks, and paid Mr. Duncheskie premium payments in the form of shift differentials when he worked a weekend or evening shift. Additionally, Mr. Duncheskie was enrolled in the Temple University Hospital, Inc. Defined Contribution Retirement Plan, which was made available to all employees throughout Temple University Health System, Inc. Furthermore, Mr. Duncheskie attended town hall meetings at Northeastern Hospital where former CEO, Chip Marshal discussed major developments across Temple System, such as plans to expand or build new operations in and around Philadelphia.

192. As an RN Mr. Duncheskie typically worked 7:00am to 7:30pm shift, 3 days each week, totaling 36 hours, exclusive of the 1.5 hours that were automatically deducted from Mr. Duncheskie's pay for meal periods; the 1 to 2 hours of work Mr. Duncheskie performed both before and after his scheduled shifts, for which he was not compensated; and the 21 hours of Continuing Education Units Mr. Duncheskie completed each year, for which he was not compensated, as discussed further herein. Additionally, Mr. Duncheskie occasionally worked an additional shift, or hours beyond his regularly scheduled shift, for which he received compensation.

193. Mr. Duncheskie frequently worked through, or was interrupted during, his meal periods because of his job responsibilities, including but not limited to: responding to doctors' requests for patient updates; responding to pages over the intercom system;

attending to medical emergencies; and catching up on paperwork and charting. Additionally, lack of adequate staffing often prevented Mr. Duncheskie from being able to take a full meal period. Furthermore, Mr. Duncheskie often performed work before punching in and/or after punching out for his scheduled shift because medical emergencies required his immediate assistance and/or because he was required to replenish medication stocks. Additionally, Temple University Health System required Mr. Duncheskie to complete 21 hours of Continuing Education Units in order to maintain his license and employment at Northeastern Hospital, and Mr. Duncheskie was neither paid nor reimbursed for this training. Given that Mr. Duncheskie was scheduled for 36 hours each week, exclusive of the time which was automatically deducted for meal breaks, the uncompensated work should have been paid at his regular rate up to and including 40 hours, and at a premium rate for hours in excess of 40.

194. Mr. Duncheskie's direct supervisor was Ms. Petty Allen-Gordon, Manager of the Emergency Room. Mr. Duncheskie also worked under the supervision of a Charge Nurse, Maryanna Casina.

195. Mr. Duncheskie does not recall ever having seen posters on Temple University Health System's premises alerting him of his rights under federal wage and hour laws.

*Diane Read*

196. At all relevant times, as set forth in ¶¶ 39-189, defendants employed Ms. Read as an RN at the Temple University Health System's Jeanes Hospital location ("Jeanes") from approximately March 2006 to October 2008.

197. Ms. Read interviewed for the RN position with who would become one of her direct supervisors, Beverly Caldwell, Unit Manager of the Acute Rehab Unit. Ms. Read

received an offer of employment over the phone from a Temple University Health System human resources director. The terms and conditions of Ms. Read's employment, including her pay rate, were set through negotiations between PASNAP and representatives of Temple University Health System, Inc. Thus, Ms. Read's employment terms were covered by a collective bargaining agreement.

198. Upon hire, Ms. Reid received an employee handbook published by the Temple University Health System and a welcome letter from the System's CEO, Chip Marshall. *See* ¶¶ 65-73. The System issued Ms. Read an identification badge and enrolled Ms. Read in the Temple University Health System, Inc. Defined Contribution Plan, which was available to all eligible employees at the System's member institutions. Further, Ms. Read's paychecks were issued by both Jeanes Hospital and Temple University Health System, Inc.

199. As an RN Ms. Read typically worked the 7:00am to 3:30pm shift, 5 days each week, totaling 40 hours, exclusive of the 2 hours that were automatically deducted from Ms. Read's pay for meal periods and the approximately 1 hour each week of post-shift work Ms. Read performed, for which she was not paid, as explained herein. Additionally, Ms. Read occasionally worked up to 5 hours beyond her regularly scheduled shifts in a week if a patient emergency arose, for which she was compensated.

200. Ms. Read routinely 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; processing admissions and discharges; and responding to patient call bells and emergencies. Furthermore, due to the chronic understaffing by the System, Ms. Read rarely received the necessary coverage for her to take a full uninterrupted meal period. Furthermore, Ms. Read spent approximately 1 hour each week, after punching out at the end

of her scheduled shift, waiting for her relief person to arrive. As a result, Ms. Read experienced uncompensated time of at least 3 hours each week. Given that Ms. Read typically worked at least 40 hours each week for which she was compensated, the uncompensated hours that she worked should have been paid at overtime rates.

201. Ms. Read's director supervisors were Beverly Caldwell, Unit Manager in the Acute Rehab Unit; Louis Boone, Nurse Manager in the Telemetry Unit; Case, Unit Manager in the Medical/Surgical Unit; and Linda Krause, weekend supervisor in the Telemetry and Medical/Surgical Unit.

202. Ms. Read does not recall ever seeing posters on the System's premises alerting her of her rights under federal wage and hour laws.

***Thelma Harris***

203. At all relevant times, as set forth in ¶¶ 39-189, defendants employed Ms. Harris as an RN at Temple University Health System's Temple University Hospital location from approximately 1991 through 2002 and at its Northeastern Hospital location from approximately July of 2004 until May 2009 when the facility was closed.

204. While employed by Temple University Health System at Northeastern Hospital, Ms. Harris' pay rate and terms and condition of employment were negotiated on her behalf between PASNAP representatives and representatives of Temple University Health System. Thus, Mr. Harris' employment terms were governed by a collective bargaining agreement. Temple University Health System, Inc. issued Ms. Harris' paychecks, and defendants paid Ms. Harris additional remuneration in the form of shift differentials for weekend and overnight shifts that she worked. Furthermore, Ms. Harris was enrolled in the Temple University Health System, Inc. Defined Contribution Retirement Plan and the

Temple University Health System Employee Benefits System, both of which were available to employees throughout Temple System. Finally, when Northeastern Hospital closed in May of 2009, Ms. Harris received a termination from Temple University Health System, Inc. describing the termination of her benefits, the payment of her unused vacation days, as well as how to apply for another position in the Temple System.

205. As an RN at Northeastern Hospital, Ms. Harris typically worked the 7:00pm to 7:30am shift, 3 days each week, totaling 36 hours, exclusive of the 1.5 hours that were automatically deducted from her pay for meal periods. Ms. Harris also worked several hours beyond her regularly scheduled shift if an emergency arose which she was compensated for.

206. Ms. Harris frequently worked through, or was interrupted during, her unpaid meal periods because of her job responsibilities, including but not limited to: processing admissions from the emergency department; responding to patient crises; being interrupted by doctors calling into her unit with questions about patient statuses; interacting with patients' family members; catching up on charting and paperwork; and responding to patient call bells which required her immediate attention. Additionally, short staffing made taking a full 30-minute meal period difficult for Ms. Harris. As a result, Ms. Harris experienced uncompensated time of 1.5 hours each week. Given that Ms. Harris typically worked 36 hours each week, and occasionally worked several hours beyond that, which she was compensated for, the uncompensated time should have been paid at her regular rate, up to and including 40 hours, and at an overtime rate for hours in excess of 40.

207. Ms. Harris' direct supervisor was Marge Russo, Unit Manager. Ms. Harris also worked under the supervision of two shift supervisors, Eva Krall and Janet Paul.

208. Ms. Harris does not recall ever seeing posters on the System's premises alerting

her of her rights under federal wage and hour laws.

*Eleanor Jackson*

209. At all relevant times, as set forth in ¶¶ 38-188, defendants employed Ms. Jackson as an RN at Temple University Health System's Northeastern Hospital location from approximately March 1, 2001 to June 5, 2009 when the facility closed.

210. Jackson received a written offer of employment from Temple University Health System, which included Ms. Jackson's pay rate, including a \$3,000 signing bonus, Ms. Jackson's start date, and her assigned unit. Under Ms. Jackson's employment terms, she received remuneration in the form of shift differential payments for weekend shifts. Ms. Jackson was a member of PASNAP, and as such, her employment terms were subject to a collective bargaining agreement and were negotiated on Ms. Jackson's behalf between PASNAP and Temple University Health System, Inc. representatives. Temple University Health System, Inc. issued Ms. Jackson her paychecks.

211. As an RN Ms. Jackson typically worked the 7:00am to 7:30pm shift, 3 days each week, totaling 36 hours, exclusive of the 1.5 hours that were automatically deducted from Ms. Jackson's pay for meal periods. Additionally, Ms. Jackson worked approximately 1 to 2 hours beyond her regularly scheduled shift if a patient emergency arose and worked an additional 12.5-hour shift when available.

212. Ms. Jackson routinely worked through, or was interrupted during, her unpaid meal periods because of her job responsibilities, including but not limited to: responding to medical emergencies; receiving phone calls from doctors dictating orders; receiving phone calls from the recovery room, x-ray technicians, and physical therapists requesting patient statuses; and catching up on paperwork and charting. As a result, Ms. Jackson experienced

uncompensated time of 1.5 hours each week. Given that Ms. Jackson worked up to 2 hours beyond her regularly scheduled shifts and an extra 12.5 hour shift if available, the uncompensated hours that she worked should have been paid at overtime rates.

213. Ms. Jackson's director supervisors were Margaret Russo, Unit Manager in the Medical Surgical Unit; and Barbara McCluskey, Karen Cooper, Donna Simmons, and Russell Martini, Charge Nurses.

214. Ms. Jackson does not recall ever seeing posters on the System's premises alerting her of her rights under federal wage and hour laws.

**B. Class Members**

215. 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**

216. As set forth more fully in this complaint, the defendants are liable for failing to pay the Class Members for all compensable time worked (FLSA, WPCL and PMWA), and independently for not paying the Class Members for all the time for which the defendants promised the 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 Class Members and not paying for those services (Quantum Meruit, Unjust Enrichment, Conversion, Accounting at Law, and Accounting at Equity).

217. As to the defendants' legal obligations to pay Class Members for all compensable time worked, the defendants' liability arises because the defendants knowingly

permitted the Class Members to perform work for which they did not pay the Class Members as required by the FLSA and state law. In addition to offering proof that defendants did not pay Class Members for work that they knowingly permitted the 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 Class Members are paid for all time they permit the Class Members to work. Therefore, it is illegal for the defendants not to pay Class Members for all compensable time worked, and specifically including any that arises from the defendants' attempts to shift to Class Members the statutory obligations that defendants pay 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 Class Members' pay when the defendants are knowingly permitting the Class Members to work during that time.
- c. Alternatively, 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 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**

218. 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.

219. 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.

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

***Meal Break Deduction Policy***

221. 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.

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

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

224. In fact, defendants' own corporate representative has admitted, in sworn deposition testimony, that this automatic deduction occurs across defendants' System.

225. 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 patients' family members, responding to emergency situations, and responding to incoming calls and alerts to cell phones and pagers that the System requires employees to carry at all times, as well as to patient call bells which required immediate responses. Furthermore, lack of adequate staffing often prevents Plaintiffs and Class Members from having a complete

uninterrupted meal period during their shifts.

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

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

228. To the contrary, the Temple University Health System, Inc. actually knowingly permits 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 Temple University Health System, Inc. operates 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.

229. Moreover, defendants own corporate representative, in sworn testimony, acknowledges that defendants know that employees perform work during meal breaks and that defendants ask them to do so.

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

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

232. 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.

233. 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.

234. 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.

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

236. 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.

237. 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.

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

239. 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 as to whether such work was being compensated.

240. 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.

241. 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.

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

243. 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.

244. 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.

245. 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.

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

247. Defendants do not take 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.

248. 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 System's facilities and centers, such as secretaries, housekeepers, custodians, clerks, porters, registered nurses, licensed practical nurses, transport nurses, nurse aides, administrative assistants, anesthetists, clinicians, medical coders, medical underwriters, nurse case managers, nurse interns, nurse practitioners, nurse aides, practice supervisors, professional staff nurses, quality coordinators, resource pool nurses, respiratory therapists, senior research associates, operating room coordinators, surgical specialists, admissions officers, student nurse techs, trainers, transcriptionists, occupational therapists, occupational therapy assistants, physical therapists, physical therapy assistants, radiation therapists, staff therapists, angiotechnologists, x-ray technicians, CAT scan technicians, mammographers, MRI technologists, sleep technologists, surgical technologists, radiographers, phlebotomists, respiratory technicians, respiratory care specialists, respiratory care practitioners, clinical coordinators, medical assistants, home care nurses, home health aides, clinical case managers, midwives and other health care workers.

249. 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.

250. 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.

251. 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 Temple University Health System, Inc. 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.

252. 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.

253. 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.

254. 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.

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

- 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***

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

257. 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.

258. 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").

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

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

261. Employees often had to complete their regular shift responsibilities before and/or after their scheduled shift ended. During this time, for example, employees gave employees responded to medical emergencies and stocked medicines and supplies. This time spent working was uncompensated.

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

263. 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 Temple University Health System, Inc. operates on a 24/7 basis and expects Plaintiffs and Class Members to respond to the hospital demands regardless of whether they are outside of their scheduled shifts.

264. Additionally, Temple University Health System, Inc. does not prohibit Plaintiffs and Class Members from working before and after their shifts and do not have rules against such work.

265. 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.

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

267. 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.

268. 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.

269. 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.

270. 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.

271. 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.

272. 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.

273. 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.

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

275. 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.

276. 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.

277. 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 Temple University Health System, Inc.'s 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.

278. 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.

279. 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.

280. 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.

281. 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.

282. 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.

283. 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***

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

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

286. 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.

287. For example, 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.

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

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

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

291. 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.

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

293. As described by the Plaintiffs, they often completed training and their experiences are shared by Class Members.

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

295. 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.

296. 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.

297. 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.

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

299. 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.

300. 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.

***Rounding Policy***

301. Defendants' admitted illegal Rounding Policy has resulted in Plaintiffs and Class Members working uncompensated time.

302. Under this policy, defendants' timekeeping system automatically rounds an employees' clock-in and clock-out times in a manner resulting in the under-compensation of employees.

303. Specifically, defendants' electronic timekeeping system rounds in defendants' favor by 14 minutes when employees clock in prior to their scheduled start time or clock out

after their scheduled end time. Conversely, defendants' electronic timekeeping system rounds in employees' favor by only 7 minutes when employees clock in after their scheduled start time or clock out before their scheduled end time. Thus, defendants' Rounding Policy is not carried out in a manner in which the benefits inure to both defendants and the Plaintiffs and Class Members equally over time. Rather, over a period of time, defendants' Rounding Policy results in a failure to compensate Plaintiffs and Class Members for all the time they actually worked.

304. During the time which is automatically rounded in defendants' favor, both before and after an employees' scheduled shift, Plaintiffs and Class Members are performing work which is both integral and indispensable to their principal activities. Such work includes, making/answering phone calls to and from doctors and other hospital departments, attending to patient emergencies and assisting in emergency procedures, giving and receiving report, as well as responding to patient call bells.

305. Defendants' Rounding Policy is legally challengeable in several respects.

306. First while defendants' computerized timekeeping system rounds employees' clock-in and clock-out times by 14 minutes in defendants' favor, the same system rounds employees' clock-in and clock-out times by only 7 minutes in employees' favor.

307. Contrary to the Department of Labors' regulations, the result of defendants' Rounding Policy is that over a period of time, the benefits of the policy amass in only one direction—the defendants'. Pursuant to the Rounding Policy, employees never receive as much rounded time in their favor as employees give up in defendants' favor.

308. In fact, defendants' own corporate representative, in sworn deposition testimony, admitted that defendants Rounding Policy does not comply with the Department

of Labor's regulations.

309. Second, defendants' Rounding Policy results in extensive uncompensated work being performed because employees are performing compensable work, integral and indispensable to their principal activities, during the time which is rounded in defendants' favor and thus not being paid to employees even though employees are on the clock

310. In addition, defendants know or should have known that the Plaintiffs and Class Members perform work during the time which is rounded in defendants' favor, but still do not pay them for this time pursuant to their Rounding Policy.

311. 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 while they are on the clock. This work is done on Temple University Health System's premises during operational hours, in full view of managers and supervisors. Thus, defendants permit that such work be done, and have actual and constructive knowledge it is being performed.

312. Furthermore, defendants are aware that employees are performing uncompensated work over the long term, as a result of defendants' Rounding Policy, because defendants' intentionally set up their computerized timekeeping system in such a way that it rounds employees' time in defendants' favor by 14 minutes while at the same time rounding in employees' favor by 7 minutes. Such a configuration can only be installed by deliberate action on behalf of the defendants.

313. As such, defendants' violation of state and federal law in this respect is willful.

314. As discussed more fully above, this additional uncompensated time should have been paid at overtime rates when Plaintiffs and Class Members' scheduled shifts

exceeded 40 hours in a week, or when the uncompensated time as a result of the Rounding Policy pushed their hours for the week over 40.

315. Plaintiffs and Class Members subject to the Rounding Policy are members of Subclass 4.

- a. Subclass 4A includes all Class Members for workweeks during which they were not subject to a collective bargaining agreement.
- b. Subclass 4B includes all 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.

***Failure to Include All Remuneration Policy***

316. Defendants also improperly calculated the overtime rate for Plaintiffs and Class Members.

317. For example, defendants failed to include all remuneration, such as bonuses and shift differentials, in the calculation of Plaintiffs' and Class Members' regular rate of pay used to calculate their overtime rate ("Failure to Include all Remuneration Policy").

318. All Plaintiffs and Class Members subject to the Failure to Include all Remuneration Policy are members of Subclass 5.

- a. Subclass 5A includes all Class Members for workweeks during which they were not subject to a collective bargaining agreement.
- b. Subclass 5B 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.

319. Collectively, the Meal Break Deduction Policy, the Unpaid Pre- and Post-Schedule Work Policy, the Unpaid Training Policy, the Rounding Policy, and the Failure to Include all Remuneration Policy are referred to herein as the "Unpaid Work Policies."

*Additional Allegations*

320. 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.

321. 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.

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

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

324. For example, through the wage payments and payroll information it 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.

325. Further, defendants, through their corporate publications and through statements of their agents, represented that wages would be paid legally and in accordance

with defendants' obligations pursuant to applicable federal and state laws.

326. 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.

327. 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.

328. 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.

329. 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.

330. 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.

331. 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.

332. Further, when questioned, defendants falsely assured Plaintiffs and Class Members that the defendants understood federal and state labor laws and that based on that

knowledge, the defendants were ensuring that they were properly paying the Plaintiffs and Class Members. For example, as discussed above, management made statements to Plaintiffs and Class Members that they were being compensated for all of the time for which they were entitled.

333. 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.

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

335. Defendants engaged in such conduct and made such statements to conceal from the Plaintiffs and Class Members their rights and to frustrate the vindication of the employees' rights. 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.

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

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

338. 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.

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

340. 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.

341. 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.

342. 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.

343. 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.

344. 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.

345. 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.

346. The wage payments, made by defendants' management and payroll representatives, including Lawrence R. Kasier, Edmond F. Notebaert, Joseph Marshall and Robert Birnbrauer, misrepresented to Plaintiffs and Class Members that they were being properly compensated for all time worked, as required by laws 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.

347. 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.

348. 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.

349. 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.

350. 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.

351. 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.

352. 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.

353. 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.

354. 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.

355. 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.

356. 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.

357. 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.

358. 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, but gained a financial benefit from not paying Plaintiffs and Class Members for the forced labor and services.

359. 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.

360. 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.

361. 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.

362. Defendants' management, including Lawrence R. Kasier, Edmond F. Notebaert, Joseph Marshall and Robert Birnbrauer, 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 Lawrence R. Kasier, Edmond F. Notebaert, Joseph Marshall and Robert Birnbrauer, 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.

363. 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.

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

365. Management, including individual defendants, Lawrence R. Kasier, Edmond F. Notebaert, Joseph Marshall and Robert Birnbrauer are "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

366. Temple University Health System, Inc. 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.

367. 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.

368. 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.

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

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

371. 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.

372. 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.

373. The 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.

374. 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.

375. 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.

376. 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.

377. 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.

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

379. 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.

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

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

382. 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.

383. 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.

384. 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.

385. 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.

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

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

388. 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.

389. 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.

390. In particular, Plaintiffs and Class Members had express oral contracts with the Temple University Health System, Inc.'s, Lawrence R. Kasier, Edmond F. Notebaert, Joseph Marhall and Robert Birnbrauer.

391. Plaintiffs and Class Members also had express oral contracts with the locations where they worked.

392. 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.

393. 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.

394. 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.

395. As alleged herein, because of defendants' Meal and 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 forty per week and were not paid for all of those hours.

396. 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.

397. Defendants, through their 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.

398. In particular, Plaintiffs and Class Members had implied contracts with the Temple University Health System, Inc.’s, Lawrence R. Kasier, Edmond F. Notebaert, Joseph Marshall and Robert Birnbrauer.

399. Plaintiffs and Class Members also had implied contracts with the locations where they worked.

400. 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.

401. 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.

402. 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.

403. 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.

404. 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.

405. As noted above, from time to time, the contracts between defendants, including Temple System 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.

406. 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.

407. 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.

408. 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.

409. 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.

410. 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.

411. 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.

412. 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.

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

414. 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.

415. 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.

416. 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.

417. 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.

418. 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.

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

420. 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.

421. 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.

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

423. 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.

424. 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.

425. 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.

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

427. 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.

428. 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.

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

430. 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.

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

432. 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.

433. 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.

434. 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.

435. 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.

436. 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.

437. 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 each 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.

438. 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.

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

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

441. 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.

442. 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.

443. 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.

444. 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.

445. 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.

446. 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.

447. 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.

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

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

450. 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.

451. 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.

452. 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***

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

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

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

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

456. 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.

457. 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***

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

459. 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***

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

461. 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***

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

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

464. 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***

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

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

467. 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***

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

469. Defendants are liable to Plaintiffs and Class Members for breach of their

express written contract.

470. 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*

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

472. 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*

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

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

**TENTH CAUSE OF ACTION**

*Quantum Meruit*

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

herein.

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

477. 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***

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

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

480. 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***

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

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

483. 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*

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

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

486. 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*

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

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

489. 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*

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

491. Plaintiffs and Class Members are entitled to an accounting at equity of the monetary benefit that was conferred upon defendants by working under and in excess of forty hours per week on defendants' behalf without receiving compensation, including premium overtime compensation. Plaintiffs and Class Members are not, however, seeking recovery 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*

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

493. 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 an in excess of forty 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.

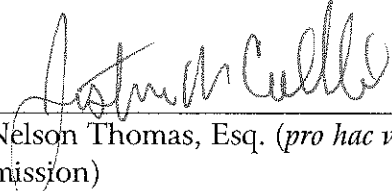
**JURY DEMAND**

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*  
admission)

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

Justin M. Cordello, Esq.

*Attorneys for Plaintiffs and Class Members*

693 East Avenue

Rochester, New York 14607

Telephone: (585) 272-0540

nthomas@theemploymentattorneys.com

mlingle@theemploymentattorneys.com

jcordello@theemploymentattorneys.com

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 B. Langel  
David S. Fryman  
Shannon D. Farmer  
Alexandra Bak-Boyчук  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103.

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.”