

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CLAUDIA DESILVA, GREGG LAMBDIN, KELLY IWASIUK, EILEEN BATES-BORDIES, MARGARET HALL, AND BRENDA GAINES,  
*on behalf of themselves and all other employees similarly situated,*

*Plaintiffs,*

v.

NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM INC., NORTH SHORE-LONG ISLAND JEWISH HEALTH CARE, INC, PENINSULA HOSPITAL CENTER, FOREST HILLS HOSPITAL, FRANKLIN HOSPITAL, GLEN COVE HOSPITAL, HUNTINGTON HOSPITAL ASSOCIATION, LONG ISLAND JEWISH MEDICAL CENTER, LONG ISLAND JEWISH HOSPITAL, ZUCKER HILLSIDE HOSPITAL, NORTH SHORE UNIVERSITY HOSPITAL, PLAINVIEW HOSPITAL, SCHNEIDER CHILDREN'S HOSPITAL, SOUTHSIDE HOSPITAL, STATEN ISLAND UNIVERSITY HOSPITAL, SYOSSET HOSPITAL, MICHAEL J. DOWLING, JOSEPH CABRAL, AND NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM 403B PLAN,

*Defendants.*

THIRD AMENDED COMPLAINT  
CLASS ACTION AND DEMAND  
FOR JURY TRIAL

Civil Action No. 10-cv-1341  
(JFB)(ETB)

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, Claudia Desilva, Gregg Lambdin, Kelly Iwasiuk, Eileen Bates-Bordies, Margaret Hall, and Brenda Gaines, individually, as well as all other employees similarly situated ("Class Members"), under the Fair Labor Standards Act of 1938 ("FLSA"), the Employee Retirement Income Security Act of 1974 ("ERISA") 29 U.S.C. § 1001 *et seq.*, the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*, New York Labor Law ("NYLL"), and

under the common law and various laws of the State of New York.

### 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. This Court's supplemental jurisdiction of claims arising under New York State Law is also invoked.

4. Venue is appropriate in the Eastern District of New York since the allegations arose in this district and at least one of the Named Plaintiffs resides in this District.

### CLASS ACTION ALLEGATIONS

5. The claims arising under New York State law, ERISA, and RICO are properly maintainable as a class action under Federal Rule of Civil Procedure 23 ("Rule 23").

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

7. The class 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. The class also consists of current and former employees of defendants whose pension and 401(k) or 403(b) plans were not credited with their non-reduced weekly wages and correct overtime compensation. Additionally, the class consists of current and former

employees of defendants who were injured by defendants' scheme to cheat employees out of their property and to convert the employees' property, including their wages and/or overtime pay, by misleading employees about their rights under the law.

8. Common questions of law and fact predominate in this action because the claims of Plaintiffs and Class Members are based on whether defendants' failure to credit employees' benefit plans with all time worked is in violation of ERISA; whether defendants' policies and practices of not properly paying employees for all hours worked is a part of a scheme to defraud Plaintiffs in violation of RICO; and whether defendants' conduct surrounding defendants' practice of not paying nonexempt employees for all hours worked and/or overtime for hours worked over 40 per week is in violation of the laws of New York State.

9. The class size is believed to be over 38,000 employees.

10. 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.

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

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

13. 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.

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

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

## PARTIES

### **A. Defendants**

15. Defendants North Shore-Long Island Jewish Health System, North Shore-Long Island Jewish Health Care, Inc., Peninsula Hospital Center, Forest Hills Hospital, Franklin Hospital, Glen Cove Hospital, Huntington Hospital Association, Long Island Jewish Medical Center, Long Island Jewish Hospital, Zucker Hillside Hospital, North Shore University Hospital, Plainview Hospital, Schneider Children's Hospital, Southside Hospital, Staten Island University Hospital, Syosset Hospital (collectively the "System"), Michael J. Dowling, Joseph Cabral, and North Shore-Long Island Jewish Health System 403(b) Plan, (together with the System, "defendants") are related organizations through, for example, common membership, governing bodies, and trustees and/or officers.

16. The System is an enterprise engaged in the operation of hospitals and/or the care of the sick and is a healthcare consortium.

17. The FLSA defines "employer" to include 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. As a result, including as further described below, the defendants are liable as employers under the FLSA.

18. Defendants are also jointly and severally liable as joint employers under 29 C.F.R. § 791.2 for the violations complained of herein.

19. In particular, the regulations allow for joint and several liability if employers

are not acting entirely independently of each other, or if employers are not completely disassociated from each other. This includes when one employer controls, is controlled by, or is under common control with the other employer. Commonly, this arrangement of employers is referred to as a “joint employer” or “single employer.”

20. Courts look to the economic realities of the enterprise and the totality of the circumstances to determine whether there is a joint or single employer relationship.

21. Here, defendants are jointly and severally liable under the Department of Labor regulations because they act directly or indirectly in the interest of an employer, and because they are not acting entirely independently or are not completely disassociated from each other. The following facts set forth some examples of the legal and factual basis supporting joint and several liability under the statute and regulations.

22. The System comprises a single, integrated enterprise, as they perform related activities through common control for a common business purpose.

23. In fact, according to the System, it is the largest healthcare provider in the region and has centralized functions such as finance, planning, purchasing and construction.

24. The System is ranked number one in New York and twentieth in the Nation in *Modern Healthcare* magazine for being an integrated health network.

25. Specifically, the Peninsula Hospital Center, Forest Hills Hospital, Franklin Hospital, Glen Cove Hospital, Huntington Hospital Association, Long Island Jewish Medical Center, Long Island Jewish Hospital, Zucker Hillside Hospital, North Shore University Hospital, Plainview Hospital, Schneider Children’s Hospital, Southside Hospital, Staten Island University Hospital, and Syosset Hospital, are each hospitals that are part of the integrated System.

26. Defendants together operate over 70 health care facilities and centers and employ approximately 38,000 individuals.

27. Further, the System and its component entities are controlled and operated through centralized management. For example, centralized management includes Michael J. Dowling, President and Chief Executive Officer (“CEO”), and Joseph Cabral, the Senior Vice President and Chief Human Resources Officer, for the entire system and oversight by a senior executive team and board of directors.

28. In fact, the System’s own website sets forth its shared common management, including oversight and management by a senior executive team and board of directors.

29. Additionally, defendants also broadcast a North Shore-Long Island Health System media portal discussing the System’s policies, structure and achievements which covers the defendants and their various locations and component entities.

30. Further, the System’s labor relations and human resources are centrally organized and controlled, including defendants’ employment of one Vice President of Human Resources as part of the management team, as well as the maintenance of system-wide policies and certain employee benefit plans covering all the defendants and their various locations and component entities.

31. In addition, the System has centralized supply chain management, and financial, computer, payroll and health records systems that are integrated throughout their locations.

32. Defendants have common ownership.

33. Therefore, the System constitutes an integrated, comprehensive, consolidated health care delivery system, offering a wide range of services.

34. These facts also support liability of the defendants based on principal/agency liability and as alter egos. For example, as discussed herein, the component entities implemented the policies as required by the System due to the control the System exercised on them, causing the fraud and wrongs at issue in this case.

35. Defendants are also liable to Plaintiffs and Class Members under a theory of joint venture.

36. Defendants engage in a joint venture of providing healthcare services, overseen by common operational control, by entering an agreement, established through their conduct in sharing the profits and losses.

37. Defendants jointly managed and controlled this venture as well as its employees and assets. For example, North Shore-Long Island Jewish Health System's 2009 Form 990 filed with the Internal Revenue Service lists the following as supported organizations: the Forest Hills Hospital, Franklin Hospital, Glen Cove Hospital, Huntington Hospital Association, Long Island Jewish Medical Center, North Shore University Hospital, Plainview Hospital, Southside Hospital, and Staten Island University Hospital. Additionally, defendants have a centralized approach to management and human resources, including having a Senior Vice President and Chief Human Resources Officer for the entire system, a senior executive board for the North Shore-Long Island Jewish Health System, system-wide policies, including those claimed herein, and a centralized payroll system.

38. Defendants are jointly and severally liable to the Plaintiffs and Class Members for the damages arising out of this joint venture.

39. Based in part on the foregoing, defendants are also jointly and severally liable for the violations occurring at their other health care facilities and centers: Knapp Cardia

Care Center, Suffolk County South Brookhaven Family Health Center West: Patchogue, Suffolk County Marilyn Shellabarger South Brookhaven Family Health Center East: Shirley, Coumadin Management Center at Brookhaven Memorial Hospital Medical Center, Diabetes Wellness Center, Hemodialysis Center, The Center for Wound Care and Hyperbaric Medicine, Bariatric Surgery Center of Excellence, Fortunato Breast Health Center, Contessa Nadia Farber Emergency Pavilion, Outpatient Infusion Center at Mather Hospital, Lymphedema Treatment Center at John T. Mather Memorial Hospital, Weiss Center for Pain Management, The Men's Prostate Health Center at Mather Hospital, Breast Imaging Center, Monter Cancer Center, Bioskills Education Center, Center for Emergency Medical Services, The Chiari Institute, Hagedorn Cleft Palate and Craniofacial Center, Specialty Medical Center at Forest Hills, the Alvin and Dorothy Schwartz Ambulatory Surgery Center, Center for Learning and Innovation, Arthur Smith Institute for Urology, Sleep Disorders Center, Cody Ambulatory and Inpatient Surgical Pavilion, The Balance Center, Center for Sleep Medicine, South Nassau's Counseling Center, Lactation Resource Center, Bellmore Primary Care Center, Valley Stream Cancer Center, Long Island Joint Replacement Institute, Sports Medicine and Rehabilitation Therapy (SMART) Center, The Wound Care Center at South Nassau Communities Hospital, Winthrop Pain Center, Osteoporosis Research, Diagnosis & Treatment Center, Winthrop Osteoporosis Network, Endoscopic Ultrasound Center, Diagnostic Motility Center, Infection Disease/Chronic Fatigue Syndrome, Wound Treatment Center, Liver, Biliary & Pancreatic Diseases Center, Crohn's & Colitis Center, Diabetes Education Center, Infectious Disease/Fever Center, Infectious Disease/Lyme Disease Center, Long Island Regional Poison & Drug Information Center at Winthrop, Sleep Disorders Center, Sports Medicine Center, Vein Center, Weight & Nutrition Center, Adult

Asthma Program, The Ambulatory Surgery Center, North Shore-LIJ Health System's Graduate Medical Education Programs, Sports Therapy and Rehabilitation Services (STARS), The North Shore-LIJ Institute for Nursing, CyberKnife Center, Human Genetics Center, Hypertrophic Cardiomyopathy Center, Kidney Center, Lung Cancer Center, Lung Center, New Life Center, Pediatric Diabetes Center, Pediatric Specialty Center, Rheumatoid Arthritis Center, Trauma Center, Travel Center, Institute for Cancer Care, Institute for Digestive Care, Institute for Family Care, Institute for Heart Care, Institute for Lung Care, Institute for Neuroscience, Institute for Specialty Care, McCann Endoscopy Center, Diabetes Care Center, Center for AIDS Research and Treatment, Center for Colon and Rectal Diseases, Center for Diabetes in Pregnancy, Center for Prenatal Diagnosis and Testing, Center for Tobacco Control, Center for Workplace Health and Wellness, The Women's Center at St. Francis Hospital, The Heart Center at St. Francis Hospital, The Physical Therapy Center of St. Francis Hospital, DeMatteis Center, The Center for Pediatric Specialty Care, Breast Health Center, Mammography & Breast, Diagnostic Center, Bay Shore Dialysis Center, Lindenhurst Dialysis Center, Emergency, Cardiac Care Center, Martin Luther King, Jr., Community Health Center, Eat Right Counseling Center, Hearing and Speech Center, Home Care Network, Hospice Care Network, The Pulmonary Care Center at Good Samaritan Hospital Medical Center, Radiation Oncology Center, Sleep Apnea Center, Suffolk Hearing and Speech Center, Comprehensive Epilepsy Center of Long Island, The Diabetes Care Center, St. Charles Sleep Disorders Center, Memorial Sloan-Kettering Cancer Center at Mercy, The Stroke Center, Express Care Center, The Sleep Disorders Center, Fay J. Lindner Center for Autism, Glengariff Health Care Center, Center for Advanced Medicine, Center for Human Reproduction, Port Jefferson Health Care Facility, the North Shore-LIJ

Office of Academic Affairs, RegionCare Infusion Therapy, RegionCare Nursing, Ann & Jules Gottlieb Women's Comprehensive Health Center, Florence and Robert A. Rosen Family Wellness Center, Orzac Center for Extended Care and Rehabilitation, and Woman and/or Child Care Center (collectively "Health Centers").

40. Additionally, based in part on the foregoing, defendants are jointly and severally liable for the violations at their affiliated health care facilities and centers: A. Holly Patterson Extended Care Facility, Adults and Children with Learning and Developmental Disabilities (ACLD), Aletta Co., Albert Einstein College of Medicine of Yeshiva University, Association for the Help of Retarded Children (AHRC), Atria Senior Living Group, Inc., Broadlawn Manor Nursing and Rehabilitation Center, Care Management Group of Greater NY, Carillon Nursing and Rehabilitation Center, Central Island Nursing and Rehab, Chaps Community Health Center, Inc., Cold Spring Hills Center for Nursing & Rehabilitation, Complete Women's Imaging, P.C., Feinstein Institute For Medical Research, Emergency Medicine Services of Staten Island, P.C., Fairview Nursing Care Center, Inc., F.E.G.S. Health and Human Services System (Corporate Office), Forest Hills Care Center LLC, Forest Hills Healthcare Physician, P.C., Forest Hills Diagnostic Imaging, P.C., Forest Hills Hematology & Oncology, P.C., Glen Cove Physician Hospital Organization, Inc., Glen-Haven Residential Health Care Facilities, Inc., Goethals Radiology, P.C., Pinegrove Manor II, LLC, Heart Institute at Staten Island University Hospital, Highfield Gardens Care Center of Great Neck, Hillside Hospital Houses, Inc., Huntington Hills Center for Health and Rehabilitation, Huntington Hospital Dolan Family Health Center, Inc., Huntington Hospital Nurses Association, Inc., Huntington Hospital Physician Hospital Organization, Inc., Hofstra University School of Medicine, Hospice Care Network, Krasnoff Consultative Services, LLC,

Long Island Jewish Medical Center At Home Pharmacy Inc., Long Island Jewish Medical Center Staff Society, Inc., Long Island Jewish-Hillside Medical Center, Long Island Medical Care, P.C., Multispecialty Physicians of University Hospital, P.C., Nassau University Medical Center, New York University School of Medicine, North Shore Community Services, Inc., North Shore Health Enterprises, Inc., North Shore Hospital Apartments, Inc., North Shore-LIJ Alliance, Inc., North Shore-Long Island Jewish Health System IPA #1, Inc., North Shore-Long Island Jewish Health System IPA #2, Inc., North Shore-Long Island Jewish Health System IPA #3, Inc., North Shore-Long Island Jewish Health System IPA #4, Inc., North Shore-Long Island Jewish Health System IPA #5, Inc., North Shore-Long Island Jewish Health System Laboratories, North Shore-LIJ Network Inc., North Shore-LIJ Radiology Services, P.C., North Shore-LIJ Service Alliance, Inc., North Shore-Long Island Jewish Health System Foundation, North Shore-Long Island Jewish Medical Care, P.C., North Shore Radiology at Glen Cove, P.C., North Shore University Hospital at Glen Cove Housing, Inc., North Shore University Hospital Housing, Inc., North Shore University Hospital Medical Staff Independent Practice Association, Inc., North Shore University Hospital Medical Staff Society, Inc., North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation, Ocean Breeze Home Care, Inc., Ocean View Management Corp., Parker Jewish Institute for Health Care and Rehabilitation, Oceanside Counseling Center, Inc., Regal Heights Rehabilitation and Health Care Center, Inc., Regency Alliance Services Inc., Richmond University Medical Center, The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc., S.I.U.H. Systems, Inc., Staten Island University Hospital Perinatology, P.C., Staten Island Imaging Corp., Staten Island Hospital Nurses Alumnae Association Inc., Staten Island Hospitalists, P.C., Staten Island Medical Intensivist, P.C.,

Staten Island Neonatology, P.C., Staten Island University Hospital Foundation, Staten Island University Hospital Perinatology, P.C., United Medical Surgical, P.C., University Physicians Oncology/Hematology Group, P.C., RegionCare, Inc., North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation, Transitions of Long Island, Inc., and Verrazano Radiology Associates, P.C. (collectively, “Affiliates”).

41. For the same reasons, defendants are jointly and severally liable to Plaintiffs and Class Members under New York State laws.

***Michael J. Dowling***

42. Under the FLSA, individuals can also be held individually liable for violations of its provisions

43. Michael J. Dowling is the President and Chief Executive Officer (“CEO”) of North Shore-Long Island Jewish Health System.

44. As the President and CEO of the System, Mr. Dowling has operational control over the System. Additionally, Mr. Dowling is listed as the Principal Officer of the North Shore-Long Island Jewish Health System on tax documentation.

45. In his role, Mr. Dowling controls significant functions of the business. For example, according to the System’s website, he oversees the \$5 billion integrated healthcare network.

46. Further, Mr. Dowling has been named as one of the most powerful people in healthcare according to *Modern Healthcare*.

47. In fact, Mr. Dowling’s responsibilities include actively managing the System. In fact, in a recent news article Mr. Dowling describes his active management style by installing new leaders and tying managers’ financial rewards to specific performance goals

after an acquisition. Mr. Dowling does not rely on consultants to serve as system executives. For example, Mr. Dowling personally attends a weekly training session with new hires and personally distributes pink slips.

48. In concert with others, Mr. Dowling has the authority to, and does, make decisions that concern the System's operations, including functions and conditions related to employment, human resources, training, payroll, maintenance of records and benefits.

49. Mr. Dowling has saved the System ten percent with the centralization of functions such as finance, planning, purchasing and construction. In fact, Mr. Dowling has been honored through his induction into the Business Hall of Fame for his integration of the System's health care institutions.

50. In his role as CEO and President of the System, Mr. Dowling has been involved in the acquisition of Lenox Hill Hospital.

51. Mr. Dowling is on the Board of Trustees for the North Shore-Long Island Health System.

52. Mr. Dowling recently responded about his role as CEO, and how he has ensured that the System was not a collection of totally disassociated entities, and instead implemented consistent administrative oversight and leadership, so the same principles and standardized metrics applied across the whole system.

53. As President and CEO of the System, Mr. Dowling has served on many community boards in further promotion of the System.

54. Mr. Dowling's signature appears on the annual report for North Shore-Long Island Jewish Health System, outlining the initiatives for the System.

55. Based upon the foregoing, Mr. Dowling is liable to Plaintiffs and Class

Members because of his operational control over the corporation, his role in the violations complained of in this action, his status as an employer and/or according to law.

56. For the same reasons, Mr. Dowling is liable under New York State laws.

*Joseph Cabral*

57. Joseph Cabral is the Senior Vice President and Chief Human Resources Officer of the System.

58. As the Senior Vice President and Chief Human Resources Officer, Mr. Cabral has operational control over the System.

59. Mr. Cabral is actively involved in significant functions of the hospital, including payroll functions across the System. Mr. Cabral was involved in the transition from a manual time recording process to a computerized Kronos system.

60. In concert with others, Mr. Cabral has the authority to, and does, make decisions that concern the System's operations, including functions and conditions related to employment, human resources, training, payroll, maintenance of records and benefits.

61. Mr. Cabral, in concert with others, manages the performance of employees across the System. In fact, Mr. Cabral relies on system-wide cohesive processes across the System to measure talent engagement of employees.

62. As Chief Human Resources Officer, Mr. Cabral conducts presentations on his role as the head of all Human Resources functions. In this role, Ms. Cabral claims he develops and executes strategies affecting the System's employees.

63. Mr. Cabral, in concert with others, has been actively involved with the tuition reimbursement and training programs. Additionally, in Mr. Cabral's role as head of personnel, he has been involved in the recruiting of new employees.

64. In his role as Chief Human Resources Officer, Mr. Cabral has been actively involved in the benefit plans of the employees of the System. For example, he was involved in the automatic enrollment program for employees.

65. As Chief Human Resources Officer, Mr. Cabral has been actively involved in the Community Housing Innovation grant program for the System employees.

66. Based upon the foregoing, Mr. Cabral is liable to Plaintiffs and Class Members because of his operational control over the System, his role in the violations complained of in this action, his status as an employer, and/or otherwise according to federal and state law.

67. For the same reasons, Mr. Cabral is liable under New York State laws.

68. Defendants maintain an ERISA plan known as the North Shore-Long Island Jewish Health System 403b Plan.

## **B. Plaintiffs**

### ***Named Plaintiffs***

69. At all relevant times, Claudia DeSilva, Gregg Lambdin, Kelly Iwasiuk, Eileen Bates-Bordies, Margaret Hall, and Brenda Gaines, (“Plaintiffs”) were employees of defendants.

70. At all relevant times, as set forth in ¶¶ 18-67, the defendants employed Named Plaintiff Claudia DeSilva, and she worked at the Franklin location from approximately February 2006 to the present as a registered nurse in home care. As a registered nurse for defendants, Named Plaintiff DeSilva is typically scheduled to work from 8:30 am until 4:30 pm approximately five days a week totaling 37.5 hours, excluding any time for which Ms. DeSilva does not receive compensation.

71. In addition to the scheduled hours listed above, Ms. DeSilva worked time for

which she did not receive compensation, as further discussed below, including during her meal breaks which were typically missed or interrupted, for example, to drive between home visits, and continue home visits; before each scheduled shift for 30 minutes because, for example, she started her home visits at 8 am; and after each scheduled shift for 2.5 hours, for example, to finish home visits, complete required patient calls, complete log sheet, finish required paperwork and upload home visit reports to an online server. As a result, Ms. DeSilva experienced uncompensated time of at least 17.5 hours per week. Given that Ms. DeSilva typically worked 37.5 hours per week for which she received compensation, at least part of the uncompensated time worked should have been paid at overtime rates (*e.g.* the first 2.5 hours should have been paid at straight time rates and all additional hours should have been paid at overtime rates).

72. Named Plaintiff DeSilva is not a member of a union and is not subject to any CBA.

73. At all relevant times, as set forth in ¶¶ 18-67, the defendants employed Named Plaintiff Gregg Lambdin, and he worked at the Manhasset location from approximately September 1995 until September 2007, as a part-time registered nurse in the anesthesia department and acute pain service unit. As a nurse clinician for the defendants, Named Plaintiff Lambdin was typically scheduled from 8 pm until 8 am approximately twice a week, however once a month he worked 3 shifts a week. Therefore Mr. Lambdin worked 22.5 hours per week or 33.75 per week, depending on if he had to work a third shift, excluding time for which Mr. Lambdin did not receive compensation. On a rare occasion, Mr. Lambdin was called to work either a fourth 12-hour shift or an 8-hour shift for another RN, requiring him work over 40 hours in a single week.

74. In addition to the scheduled hours listed above, Mr. Lambdin worked time for which he did not receive compensation, as further discussed below, including during his meal breaks which were regularly missed or interrupted, for example, to consult with patients, and administer pain medication; before each scheduled shift for 40 minutes, for example, to change into his uniform, prepare for his shift, and inventory narcotics; after each scheduled shift for 30 minutes, for example, to give report; and for training such as Basic Cardio Pulmonary Life Support training which was approximately every 3 years for approximately 8 hours and in-service training on topics such as new equipment, and changes to policies and procedures, which was approximately every 18 months for approximately one hour. This resulted in additional uncompensated time of at least 3 hours and 5 minutes in weeks he worked 2 shifts per week (at least 4 hours and 15 minutes in weeks he worked 3 shifts per week) without training time and up to 11 hours and 5 minutes in weeks with Life Support training. Given that Mr. Lambdin was scheduled 33.75 hours per week for which he received compensation at least once a month, at least part of the uncompensated time he worked should have been paid at overtime rates (*e.g.*, the first 6.25 hours should have been paid at straight time rates and all additional hours should have been paid at overtime rates). To the extent Mr. Lambdin did not work over 40 hours in certain weeks, his claims would still be proper under New York Labor Law.

75. Named Plaintiff Lambdin was not a member of a union and was not subject to a CBA while employed by defendants.

76. At all relevant times, as set forth in ¶¶ 18-67, the defendants employed Named Plaintiff Kelly Iwasiuk and she worked at Huntington Hospital as a floating registered nurse from approximately May 1, 2003 until November 1, 2007. Her scheduled shift was typically

from 7 pm until 7:30 am approximately three times per week, totaling 36 hours per week, excluding time for which Ms. Iwasiuk did not receive compensation.

77. In addition to the scheduled hours listed above, Ms. Iwasiuk worked time for which she did not receive compensation, as further discussed below, including during her meal breaks which were typically missed or interrupted, for example, to administer medicine, administer IVs, tend to patient safety, attend to patient hygiene, receive assignments to different units, and provide wound care; before each scheduled shift for 30 minutes, for example, to get her unit assignment and receive report; after her scheduled shift for 30 minutes, for example, to finish charting and give report, and twice a year for 1.25 hours as a result of an extreme emergency such as a patient coding. As a result, Ms. Iwasiuk experienced uncompensated time of at least 4.5 hours per week. Given that Ms. Iwasiuk typically worked 36 hours per week for which she received compensation, at least part of this uncompensated time should have been paid at overtime rates (*e.g.* the first 4 hours should have been paid at straight time rates and all additional time should have been paid at overtime rates).

78. Named Plaintiff Iwasiuk was a member of the Huntington Hospital Nurses' Association (HHNA) and was subject to their CBA.

79. At all relevant times, as set forth in ¶¶ 18-67, the defendants employed Named Plaintiff Eileen Bates-Bordies, and she worked at Southside Hospital from approximately May 1, 2001 until August 31, 2006 as a registered nurse in the Six Tower Medical Surgery Oncology Unit. Initially, as a registered nurse for the defendants, Ms. Bates-Bordies was typically scheduled from 3 pm until 11 pm approximately 5 days each week totaling 37.5 hours per week, excluding any time for which Ms. Bates-Bordies did not receive

compensation. In approximately August or September of 2004, Ms. Bates-Bordies' schedule switched to 7 pm until 7 am approximately 3 times each week totaling 34.5 hours per week, excluding any time for which Ms. Bates-Bordies did not receive compensation.

80. In addition to her scheduled hours listed above, Ms. Bates-Bordies worked time for which she did not receive compensation, as further discussed below, including during her meal breaks which were typically missed or interrupted, for example, to administer medication, administer IVs, answer phone calls, answer questions, and work on charting; before each scheduled shift for 15 minutes, for example, to gather her paperwork, get a list of her patients, and tend to emergencies; after each scheduled shift for an hour, for example, to finish charting, give report and care for patients; and for training including mandated in-service training on topics such as fire safety, HIPAA training, fall prevention, wound care, and charting which would last approximately one hour twice a year, and monthly staff meetings which would last approximately 45 minutes. As a result, during 3-day work weeks, Ms. Bates-Bordies experienced additional uncompensated time of at least 5.25 hours in weeks without training time and up to 6.25 hours in weeks with training time. During the time period that Ms. Bates-Bordies typically worked 34.5 hours per week for which she was compensated, at least part of this uncompensated time she worked should have been paid at overtime rates (*e.g.* the first 5.5 hours should have been paid at straight time rates and all additional hours should have been paid at overtime rates). When working a 5-day work week, Ms. Bates-Bordies experienced additional uncompensated time of at least 8.75 hours in weeks without training time and up to 9.75 hours in weeks with training time. Given that Ms. Bates-Bordies typically worked 37.5 hours per week for which she was compensated, at least part of this uncompensated time she worked should have been paid at overtime rates

(e.g. the first 2.5 hours should have been paid at straight time rates and all additional hours should have been paid at overtime rates).

81. Named Plaintiff Bates-Bordies was a member of NYSNA and was subject to their CBA.

82. At all relevant times, as set forth in ¶¶ 18-67, the defendants employed Named Plaintiff Margaret Hall from approximately July 1, 1991 until April 1, 2009. From approximately June 1998 until June 2006, excluding from approximately June 2005 until September 2005 when Ms. Hall was not working as a result of an injury, Ms. Hall worked as a registered nurse at the Manhasset Location in the medical/surgery unit, and leukemia bone marrow transplant unit. From approximately June 2006 until April 2009, Ms. Hall worked as a field registered nurse in the home care unit.

83. From approximately June 1998 until June 2006, as a registered nurse, Ms. Hall was typically scheduled to work from 7 am until 7 pm approximately three times a week for a weekly total of 34.5 hours, excluding time for which Ms. Hall did not receive compensation. However, Ms. Hall would regularly pick up seven additional 12-hour shifts per month which resulted in a weekly total of 46 hours when working 4 shifts a week, or a weekly total of 57.5 hours when working 5 shifts a week, excluding any time for which Ms. Hall did not receive compensation. Further, from approximately June 2005 until June 2006 (except any time Ms. Hall was out due to injury), Ms. Hall would pick up home-care visits which would amount to an additional 6 hours a week, excluding any time for which Ms. Hall did not receive compensation.

84. In addition to her scheduled hours listed above, Ms. Hall worked time for which she did not receive compensation, as further discussed below, including during her

meal breaks which were regularly missed or interrupted, for example, to administer pain medication, tend to emergencies, tend to patient needs, and complete charting; before each scheduled shift for 10 minutes, for example, to receive report; after each scheduled shift for 45 minutes, for example, to finish with patients, finish charting and give report; and for training such as CPR training which would occur approximately every 2 years for approximately 8 hours, and staff meetings which would occur approximately 4 times a year for approximately an hour. As a result, Ms. Hall experienced additional uncompensated time of at least 3.75 hours in weeks without training time and up to 11.75 hours in weeks with training time. Often this uncompensated time should have been paid at overtime rates when Ms. Hall's scheduled shifts exceeded 40 hours in a week as discussed above. Further, given that Ms. Hall typically worked 34.5 hours per week for which she was compensated, at least part of this uncompensated time she worked should have been paid at overtime rates (*e.g.* the first 5.5 hours should have been paid at straight time rates and all additional hours should have been paid at overtime rates).

85. From approximately June 2006 until April 2009, as a nurse in home care, Ms. Hall was typically scheduled to work from 9 am until 5 pm approximately five days a week, totaling 37.5 hours, excluding any time for which Ms. Hall did not receive compensation. However, Ms. Hall would regularly pick up an additional full schedule of home visits on both Saturdays and Sundays which resulted in a total of 52.5 hours per week, excluding any time for which Ms. Hall did not receive compensation.

86. In addition to her scheduled hours listed above, Ms. Hall worked time for which she did not receive compensation, as discussed further below, including during her meal breaks which were typically missed or interrupted, for example, to make and return

phone calls to doctors, confer with physical and occupational therapists, and complete visit reports; before each scheduled shift for an hour, for example, for scheduled home visits; after each shift for 4 hours, for example, to make required calls to patients, submit visit reports, document messages from physical and occupational therapists, contact vendor services for equipment or staffing needs and complete case manager duties; and for training such as CPR training which would occur approximately every 2 years for approximately 8 hours. As a result, Ms. Hall experienced additional uncompensated time of at least 27.5 hours in weeks without training time and up to 35.5 hours in weeks with training time. Often this uncompensated time should have been paid at overtime rates when Ms. Hall's scheduled shifts exceeded 40 hours in a week as discussed above. Further, in those weeks that Ms. Hall worked 37.5 hours for which she was compensated, at least part of this uncompensated time she worked should have been paid at overtime rates (*e.g.* the first 2.5 hours should have been paid at straight time rates and all additional hours should have been paid at overtime rates).

87. Named Plaintiff Hall was not a member of a union and was not subject to any CBA while employed by defendants.

88. At all relevant times, as set forth in ¶¶ 18-67, the defendants employed Named Plaintiff Brenda Gaines, and she worked at the Long Island Jewish Medical Center in the 5 North Unit as a unit nurse from approximately July 1990 until December 2004, and as a visiting registered nurse in the home care unit from approximately December 2004 until June 2009.

89. From approximately July 1990 until December 2004, as a unit nurse, Ms. Gaines was typically scheduled to work from 8 pm until 8:30 am approximately three times a week totaling 36 hours, excluding any time for which Ms. Gaines did not receive

compensation. Further, approximately once every 2 years while working as a unit nurse, Ms. Gaines would pick up an extra half shift resulting in a work week of 42 hours, excluding any time for which Ms. Gaines did not receive compensation.

90. In addition to the scheduled hours listed above, Ms. Gaines worked time for which she did not receive compensation, as discussed further below, including during her meal breaks which were typically missed or interrupted, for example, to administer IVs, change dressings, and address patient needs; before each shift for 15 minutes, for example, to gather necessary equipment for patient care and receive report; after each shift for 15 minutes, for example, to finish charting and tend to ongoing emergencies; and for training including CPR once every 2 years for approximately 4 hours. As a result, Ms. Gaines experienced additional uncompensated time of at least 2.5 hours in weeks without training time and up to 6.5 hours in weeks with training time. This time should have been paid at overtime rates when Ms. Gaines scheduled shifts exceeded 40 hours in a week, as discussed above. Further, given that Ms. Gaines typically worked 36 hours per week for which she was compensated, at least part of this uncompensated time she worked should have been paid at overtime rates (*e.g.* the first 4 hours should have been paid at straight time rates and all additional hours should have been paid at overtime rates).

91. From approximately December 2004 until June 2009, as a visiting nurse in home care, Ms. Gaines typically worked from 9 am until 5 pm approximately five times a week totaling 37.5 hours, excluding any time for which Ms. Gaines did not receive compensation. Occasionally, Ms. Gaines would work extra scheduled time. For example, on one occasion in 2005, Ms. Gaines was asked to come into work for 4 hours to prepare for a homecare documentation inspection, resulting in a work week of 41.5 hours, excluding any

time she did not receive compensation.

92. In addition to the scheduled hours listed above, Ms. Gaines worked time for which she did not receive compensation, as discussed further below, including during her meal breaks which were typically missed or interrupted, for example, to complete charting, travel to home visits, and attend emergencies; before her scheduled shift once a week for 30 minutes, for example, to pick up equipment from the office needed for home visits, set up her computer and prepare for home visits; after each scheduled shift for 4 hours, for example, to complete case-management duties, type up her report and the reports for the physical therapists, follow-up on calls, and complete charting; and for training including CPR once every 2 years for approximately 4 hours. As a result, Ms. Gaines experienced additional uncompensated time of at least 22 hours in weeks without training time and up to 26 hours in weeks with training time. This uncompensated time should have been paid at overtime rates when Ms. Gaines' scheduled shifts exceeded 40 hours in a week, as discussed above. Further, given that Ms. Gaines typically worked 37.5 hours per week for which she received compensation, at least part of this uncompensated time she worked should have been paid at overtime rates (*e.g.* the first 2.5 hours should have been paid at straight time rates and all additional hours should have been paid at overtime rates).

93. Ms. Gaines was not subject to a union contract or CBA and was not a member of a union.

***Class Members***

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

### FACTUAL BACKGROUND

95. The System is one of the largest health care providers on Long Island, New York.

96. 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 Exhibit A.

97. 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.

98. 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 and Break Deduction Policy***

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

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

101. Plaintiffs and Class Members are 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 their position, unit or

location.

102. The System operates on a 24/7 basis, and in doing so, defendants do not ensure that Plaintiffs and Class Members perform no work during the breaks. Further, defendants actually expect Plaintiffs and Class Members to be available to work throughout their shifts and consistently require their employees to work during their unpaid breaks.

103. Plaintiffs and Class Members do in fact perform work during those breaks and are not paid for that time. During this time, employees were performing tasks such as continuing regular job duties, answering/returning phone calls, equipment maintenance, completing documentation, tending to emergency situations, driving between home care visits, administering medications, administering IVs, and charting.

104. Moreover, defendants permit the Plaintiffs and Class Members to perform work during these meal and other unpaid breaks, but still do pay employees for that time pursuant to their Meal and Break Deduction Policy.

105. 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 defendants' premises during operational hours, and in full view of the defendants' managers and supervisors. Thus defendants permit that such work be done, and have actual and constructive knowledge it is being performed.

106. Plaintiffs and Class Members also had conversations with defendants' managers in which they discussed how they were working through their meals or unpaid breaks and were not getting paid for such work.

107. When questioned by employees about the Meal and Break Deduction Policy,

the defendants affirmatively stated that the employees were being fully paid for the work time for which they were entitled to be paid, even though defendants knew compensable work time was being excluded from the employees' pay. Such conversations occurred with Plaintiffs and Class Members on a number of occasions. These representations were part of a course of conduct (*see e.g.*, ¶¶ 232-241) to defraud Plaintiffs and Class Members from the pay they were owed, and to mislead them into believing they had been fully paid as required by law.

108. Further, defendants do not prohibit Plaintiffs and Class Members from working during their unpaid breaks and do not have rules against such work.

109. 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.

110. Plaintiffs and Class Members are also not relieved by another employee when their break comes, or asked to leave their work location. Further, given the demands of the health care industry and short staffing, defendants' management knew that to get the tasks done they assigned to Plaintiffs and Class Members, when they needed to get done, Plaintiffs and Class Members had to work through their meal breaks, even during times they were not paid for their meal breaks.

111. 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.

112. All Plaintiffs and Class Members, regardless of location, position, unit or shift,

are subject to the Meal and 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.

113. 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.

114. 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 from missed or interrupted meal breaks, pre- and post-schedule work, and training time, pushed their hours for the week over 40.

115. Additionally, Plaintiffs' claims under the Meal and Break Deduction Policy do not arise under any CBA, and instead arise under federal and state law.

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

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

***Unpaid Pre- and Post-Schedule Work Policy***

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

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

119. 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.

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

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

122. For example, employees often had to complete their regular shift responsibilities before and/or after their scheduled shift ended. During this time, for example, employees charted, completed inventory, met with a supervisor, gave report to relief, received report, attended to urgent situations, and completed general patient care

duties. This time spent working was uncompensated.

123. 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.

124. 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 from missed or interrupted meal breaks, pre- and post-schedule work, and training time, pushed their hours for the week over 40.

125. Additionally, Plaintiffs' claims under the Unpaid Pre- and Post-Schedule Work Policy do not arise under any CBA, and instead arise under federal and state law.

126. 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***

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

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

129. 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.

130. For example, employees attended mandatory in-services and training sessions covering topics such as CPR, new treatments, new equipment, wound care, safety topics, HIPAA information, and staff meetings. Such training 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.

131. Although defendants, including managers, were aware employees performed this training, employees continued to perform work for which they were not compensated.

132. For example, defendants scheduled and led the required training sessions attended by employees.

133. 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 from missed or interrupted meal breaks, pre- and post-schedule work, and training time, pushed their hours for the week over 40.

134. Additionally, Plaintiffs' claims under the Unpaid Training Policy do not arise under any CBA, and instead arise under federal and state law.

135. 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.

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

*Additional Allegations*

137. 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.

138. Even though defendants permitted its employees to perform such work, defendants fail to compensate its employees for such work.

139. Defendants’ practice is to be deliberately indifferent to these violations of the statutory wage and overtime requirements of the FLSA and NYLL.

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

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

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

143. 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 and NYLL.

144. 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.

145. 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.

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

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

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

149. 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.

150. Defendants sponsor pension and 401(k) or 403(b) plans including North Shore-Long Island Jewish Health System 403b Plan ("Plans").

151. Plaintiffs and Class Members participated in the Plans as plan participants and beneficiaries pursuant to 29 U.S.C. §1132(a)(1),(A)(3). Plaintiffs and Class Members are

participants in and/or are beneficiaries of the Plans.

152. Defendants failed to keep accurate records of all time worked by Plaintiffs and Class Members.

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

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

155. 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.

156. 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.

157. 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.

158. 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.

159. 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.

160. 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 required by law.

161. The wage payments, made by defendants' management and payroll representatives, including Mr. Dowling and Mr. Cabral, 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.

162. 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.

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

164. 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.

165. 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.

166. 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.

167. 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.

168. Defendants' Scheme also involved the forced labor of Plaintiffs and Class Member 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.

169. 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. The defendants frequently required that this work be performed during periods the 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 with 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.

170. 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.

171. 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.

172. 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.

173. 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.

174. 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.

175. 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.

176. 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.

177. Defendants' management, including Mr. Dowling and Mr. Cabral, intended to defraud Plaintiffs and Class Members at all times in an effort to benefit at the detriment of Plaintiffs and Class Members as a result of the continuance of the Scheme. Additionally, defendants, including Mr. Dowling and Mr. Cabral, 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.

178. 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.

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

180. Management, including individual defendants Michael J. Dowling and Joseph Cabral, are “persons” within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

181. The System, in association with the Health Centers and Affiliates, 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.

182. 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.

183. 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.

184. 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.

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

186. 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.

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

188. 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.

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

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

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

192. 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.

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

194. 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.

195. Defendants failed to act in good faith by failing to pay wages and overtime as required by New York Labor Law and state common law.

196. As a direct and proximate cause of defendants' failure to act in good faith, defendants violated the New York Labor Law and state common law.

197. In addition to the loss of wages, Plaintiffs and Class Members have suffered non-economic harms as a result of defendants' policies. These included, but are not limited to, the personal loss of break and rest time, personal suffering and emotional distress.

198. 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 that are against the strong public policy of the State of New York with respect to employees' wages.

199. 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.

200. Defendants, through its 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.

201. 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.

202. 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.

203. 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.

204. 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.

205. The defendants, in violation of the express agreement to pay plaintiffs 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.

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

207. In particular, Plaintiffs and Class Members had implied contracts with North Shore-Long Island Jewish Health System, Inc., Michael J. Dowling and Joseph Cabral.

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

209. Pursuant to the terms of 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.

210. 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.

211. 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.

212. 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.

213. Thus, 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.

214. As noted above, from time to time, the contracts between defendants, including North Shore-Long Island Jewish Health System, Inc., and Plaintiffs and Class Members were memorialized in writing independent of any collective bargaining agreement and were explicitly intended to order and govern the employment relationship between defendants and Plaintiffs and Class Members.

215. 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.

216. 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.

217. 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.

218. As detailed herein, Plaintiffs and Class Members had valid express and/or implied contracts with defendants. Those contracts were breached by defendants' failure to pay Plaintiffs and Class Members for all hours worked, as agreed upon by the parties, and defendants are liable for that breach.

219. 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.

220. Plaintiffs and Class Members conferred a benefit upon defendants by working on defendants' behalf without receiving compensation, including premium overtime compensation, by Plaintiffs and Class Members. Specifically, Plaintiffs and Class Members performed work-related tasks, to the benefit of defendants, without compensation pursuant to the Unpaid Work Policies. These work related tasks performed by Plaintiffs and Class Members included, but were not limited to, continuing their regular job duties, answering/returning phone calls, equipment maintenance, completing documentation, tending to emergency situations, charting, completing inventory, meeting with a supervisor, providing report to relief, and receiving report.

221. 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.

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

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

224. 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.

225. 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.

226. 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.

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

228. 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.

229. 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.

230. 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.

231. 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 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.

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

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

234. These misrepresentations were material, including that 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.

235. 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.

236. 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.

237. 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.

238. 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 thousands of dollars a year by not paying Plaintiffs and Class Members for all hours worked pursuant to the Unpaid Work Policy, described in detail above, while still receiving the benefit of the labor and services performed by Plaintiffs and Class Members free of cost.

239. 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.

240. As a direct and proximate cause of defendants’ fraud, 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.

241. At all relevant times, defendants had and continued 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.

242. 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.

243. 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.

244. 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.

245. Defendants failed to pay all wages due to Plaintiffs and Class Members on regular days designated in advance pursuant to New York Labor Law.

246. 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.

247. 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 New York Labor Law.

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

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

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

**SECOND CAUSE OF ACTION**  
***ERISA—Breach of Fiduciary Duty***

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

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

**THIRD CAUSE OF ACTION**  
***RICO***

252. 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.

253. 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.

**FOURTH CAUSE OF ACTION**  
***New York Labor Law***

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

255. As a direct and proximate cause of defendants' acts, including defendants' failure to act in good faith, defendants willfully violated the New York Labor Law and Plaintiffs and Class Members have suffered damages pursuant to Article 6 of the New York Labor Law, including N.Y. LAB. LAW § 190(8) and N.Y. LAB. LAW § 191 *et seq.* as well as under 12 N.Y. COMP. CODES R. & REGS.142-2.2.

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

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

257. Defendants willfully violated their obligations under the contract by failing to pay Plaintiffs or Class Members for all of the work performed for defendants and are liable to Plaintiffs and Class Members for breach of their implied contract.

258. As a direct and proximate cause of defendants' breach of the implied contract, Plaintiffs and Class Members have suffered damages.

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

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

260. Defendants willfully violated their obligations under the contract by failing to pay Plaintiffs and Class Members for all of the work performed for defendants and are liable to Plaintiffs and Class Members for breach of their express contract.

261. As a direct and proximate cause of defendants' breach of this express contract, Plaintiffs and Class Members have suffered damages.

**SEVENTH CAUSE OF ACTION**  
***Breach of Implied Covenant of Good Faith and Fair Dealing***

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

263. Defendants willfully violated their obligations under the common laws and state laws of New York by breaching the implied covenant of good faith and fair dealing.

264. As a direct and proximate cause of defendants' breach of the implied covenant of good faith and fair dealing, Plaintiffs and Class Members have suffered damages.

**EIGHTH CAUSE OF ACTION**  
***Quantum Meruit***

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

266. Defendants willfully violated their obligations by failing to pay Plaintiffs and Class Members for the reasonable value of the services performed by Plaintiffs and Class

Members and are liable to Plaintiffs and Class Members under quantum meruit.

267. As a direct and proximate cause of defendants' failure to pay Plaintiffs and Class Members for the reasonable value of services performed by Plaintiffs and Class Members for defendants, Plaintiffs and Class Members suffered damages.

**NINTH CAUSE OF ACTION**  
***Unjust Enrichment/Restitution***

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

269. As a result of defendants' conduct, the common laws and state laws of New York imply a contract obligating defendants to make restitution to Plaintiffs and Class Members, in the amount by which, in equity and good conscience, defendants have been unjustly enriched.

270. As a direct and proximate cause of defendants' actions, Plaintiffs and Class Members have suffered damages.

**TENTH CAUSE OF ACTION**  
***Fraud***

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

272. Defendants willfully violated their obligations by committing fraud against Plaintiffs and Class Members under the common laws and the state laws of New York and are liable to Plaintiffs and Class Members.

273. As a direct and proximate cause of the fraud committed by defendants, Plaintiffs and Class Members did not receive the statutorily mandated wages and suffered damages.

**ELEVENTH CAUSE OF ACTION**

***Conversion***

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

275. Defendants willfully violated their obligations under the common laws and state laws of New York by committing conversion.

276. As a result of defendants' actions, Plaintiffs and Class Members were damaged and are entitled to all funds converted by defendants with interest thereon, all profits resulting from such conversion, and punitive or exemplary damages.

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

- (a) an order preliminarily and permanently restraining defendants from engaging in the aforementioned pay violations;
- (b) an award crediting Plaintiffs' and Class Members' for all hours worked;
- (c) an award of the value of Plaintiffs' and Class Members' unpaid wages and overtime;
- (d) liquidated damages under the FLSA equal to the sum of the amount of wages and overtime which were not properly paid to Plaintiffs and Class Members;
- (e) under N.Y.LAB. LAW § 198, an additional amount as liquidated damages equal to one hundred percent of the total amount of wages found to be due;
- (f) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating Plaintiffs' and Class Members' rights;
- (g) an award of pre- and post-judgment interest;
- (h) the amount equal to the value which would make Plaintiffs and Class Members whole for the violations; and
- (i) 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: April 11, 2011

**THOMAS & SOLOMON LLP**

s/ Michael J. Lingle

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