

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

NICHOLE WALKINSHAW,	)	Case No. 4:19-cv-03012-JMG-SMB
TYSHA BRYANT,	)	
APRIL ENDICOTT,	)	<b>SECOND AMENDED CLASS ACTION</b>
HEATHER NABITY,	)	<b>COMPLAINT</b>
MEGHAN MARTIN (f/k/a MEGHAN	)	
RINDONE)	)	<b>JURY TRIAL DEMANDED</b>
ALANDREA ELLWANGER,	)	
TROY STAUFFER,	)	
and all other similarly situated former or	)	
current employees of Defendant.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
COMMONSPIRIT HEALTH	)	
f/k/a CATHOLIC HEALTH	)	
INITIATIVES, CHI NEBRASKA d/b/a CHI	)	
HEALTH, and SAINT ELIZABETH	)	
REGIONAL MEDICAL CENTER	)	
	)	
Defendants.	)	
	)	

**INTRODUCTION**

1. The Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et. seq.*, the Nebraska Wage and Hour Act (NWAHA), Neb. Rev. Stat. §48-1201 *et. seq.*, and the Nebraska Wage Payment and Collection Act (NWPCA), Neb. Rev. Stat. §48-1228 *et. seq.* together require employers to pay their non-exempt employees an hourly minimum wage, one-and-a-half times employees’ regular wages for time worked in excess of forty hours in a given workweek, and to pay all wages due to employees on a timely basis. Plaintiffs Nichole Walkinshaw, Tysha Bryant, April Endicott, Heather Nabity, Meghan Martin, Alandrea Ellwanger, and Troy Stauffer allege that Defendants CommonSpirit

Health, CHI Nebraska, and Saint Elizabeth Regional Medical Center violated these provisions of state and federal law by adhering to a consistent policy and practice of paying nurses employed at healthcare facilities owned and operated by these Defendants less than overtime and minimum wages for work performed by nurses while they are away from their regular duty stations.

2. Defendant CHI Nebraska (“CHI Health”), together with its parent and subsidiary corporations CommonSpirit Health f/k/a Catholic Health Initiatives (“CommonSpirit”) and Saint Elizabeth’s Regional Medical Center (“SERMC”) (together, “Defendants”) owns and operates 14 acute care hospitals, two stand-alone behavioral health facilities, and more than 150 clinics throughout Nebraska and southwest Iowa. CHI Health has 11,000 employees, including approximately 3,000 registered nurses.

3. Since at least February of 2015, Defendants have purported to adhere to a practice requiring nurses employed at healthcare facilities owned and operated by Defendants to perform work while they are “on-call” (the “On-Call Practice”). Pursuant to the On-Call Practice, while nurses are on-call they are required to return to the hospital where they are employed within thirty minutes of being called in to work. In addition, the Policy requires nurses to perform “[w]ork relating to the principal activities of [their] position” by taking phone calls and working remotely (hereinafter, “On-Call Work”).

4. This “On-Call Work” is subject to the time-and-a-half and recordkeeping requirements of the FLSA, the minimum-wage requirements of the NWA, and the NWPCA. During periods in which nurses respond to, prepare for, and follow up on these at-home calls, they are working primarily for the benefit of CommonSpirit, CHI Health, and SERMC as their joint employers. The at-home calls generally consist of telephone

calls, emails, and text messages relating to patient services and answering patient questions. On-Call Work also includes the work involved in responding to and following up on these calls, emails, and text messages. On-Call Work is time-consuming and can occupy as many as 2-3 hours, or more, of a 14-hour on-call shift during the week, and as many as 15 hours during 50.5-hour weekend on-call shifts. Responding to at-home calls occupies the nurses' entire attention; they are unable to perform other work or to use the time spent responding to these calls for their family obligations, personal pursuits, or even to get a night's sleep.

5. In violation of the FLSA, NWH, and NWPCA, Defendants pay nurses at facilities covered by the Policy only \$2.00-\$4.00 per hour for time spent performing On-Call Work and do not credit or pay overtime for On-Call Work. Defendants have at all times failed even to keep accurate records of nurses' time spent performing On-Call Work, in violation of the FLSA. In addition to violating federal and Nebraska law, the compensation Defendants paid nurses who performed On-Call Work between March 1, 2016 and September 30, 2018 violated the written On-Call Policy, which required Defendants to pay nurses at a rate of "one and one-half times the base rate" received by nurses for their normal work. Defendants consistently failed to honor this provision of the Policy requiring payment of nurses at "one and one-half times the base rate" for On-Call Work.

6. Plaintiffs bring this action as a Collective Action pursuant to 29 U.S.C. § 216(b) and as a Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf of nurses working in Defendants' Nebraska and Iowa health care facilities to redress Defendants' violations of the FLSA, NWH, and NWPCA. Plaintiffs seek payment of

the wages owed to them under state and federal law, prejudgment interest, and other appropriate relief.

### **JURISDICTION & VENUE**

#### **Subject Matter Jurisdiction**

7. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b). This Court also has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1) there are 100 or more members in the proposed Class and Subclasses; (2) at least some members of the proposed Class and Subclasses have a different citizenship from at least one Defendant; and (3) the claims of the proposed Class and Subclass members exceed \$5,000,000 in the aggregate.

8. In addition, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs’ state-law wage and hour and breach of contract claims.

#### **Personal Jurisdiction**

9. This Court has personal jurisdiction over Defendants pursuant to 28 U.S.C. § 1332 and Neb. Rev. Stat. § 25-536 because Defendants transact business in and have significant contacts with this District, and because Plaintiffs’ claims arise directly out of Defendants’ substantial and systematic business operations in this District. In particular:

- a. Personal jurisdiction over Defendant CommonSpirit is proper because:

i. CommonSpirit was formed on or about January 31, 2019, from the merger of two hospital systems, Dignity Health (“Dignity”) and Catholic Health Initiatives (“CHI”). On January 28, 2019, CHI filed Amended and Restated Articles of Incorporation with the Colorado Secretary of State that changed CHI’s name to “CommonSpirit Health.” According to Defendants, CommonSpirit’s immediate corporate predecessor, CHI, “owns hospitals, medical facilities, clinics, and other health related [sic.] businesses throughout the country.” ECF No. 20 at 1. Through the merger of CHI and Dignity, CommonSpirit has assumed ownership of the facilities in Nebraska and Iowa that were formerly owned by CHI. According to documents submitted to the California Attorney General in support of the Dignity/CHI merger, “[s]ubstantially all of CHI’s regional and hospital corporations” were merged into CommonSpirit as part of the merger. CHI admitted in its 2018 Annual Report that the State of Nebraska is one of the regions in which CHI/CommonSpirit’s “operations are located primarily.” According to CHI’s 2018 Annual Report, CHI/CommonSpirit’s operations in Nebraska include fourteen acute-care hospitals located in the State of Nebraska, as well as two behavioral-health facilities and more than 150 clinics located in Nebraska and Southwest Iowa, including the hospitals and related healthcare facilities where Plaintiffs and members of the Class and the Collective are employed. On information and belief, CommonSpirit employs more than 3,000 nurses in Nebraska at its Nebraska-based

hospitals alone, and employs tens of thousands of employees at its hospitals and related healthcare facilities located in Nebraska. Plaintiffs' claims arise directly from Plaintiffs', Class-, and Collective-members' employment by CommonSpirit in Nebraska at hospitals and healthcare facilities owned by CommonSpirit in Nebraska. The services for which Plaintiffs demand legally adequate payment were provided in the course of providing medical services at CommonSpirit's hospitals to patients in Nebraska, while they were employed by CommonSpirit or by its immediate predecessor, CHI. Plaintiffs allege that CommonSpirit, acting as Plaintiffs' and Class- and Collective-members' employer, failed to pay timely overtime and minimum wages to its employees in Nebraska as required by the Fair Labor Standards Act, the Nebraska Wage and Hour Act, the Nebraska Wage Payment and Collection Act, and the 2017 On-Call Policy.

ii. CommonSpirit's immediate predecessor, CHI, acted as Plaintiffs', Class-, and Collective-members' "employer" in Nebraska within the meaning of 29 U.S.C. § 203 and Neb. Rev. Stat. §§ 48-1202 & 48-1229 by issuing bi-monthly pay stubs to named Plaintiffs in Nebraska and, on information and belief, to the Class, the Subclasses and the Collective in Nebraska and, on information and belief, by maintaining records of the wage rates and hours of work performed by Plaintiffs and Class- and Collective-members in Nebraska at hospitals and healthcare facilities owned by CommonSpirit as necessary to create and verify the

amount of work performed and compensation reflected on their pay stubs. On information and belief, since the January 31, 2019 merger forming CommonSpirit from the combination of CHI and Dignity, CommonSpirit performs the payroll and recordkeeping functions formerly performed by CHI.

b. Personal jurisdiction over Defendants CHI Nebraska, d/b/a CHI Health, and Saint Elizabeth's Regional Medical Center is appropriate because both Defendants are Nebraska corporations with corporate headquarters located in Omaha, Nebraska, and because Plaintiffs' claims arise from these Defendants' substantial and systematic business operations in this District.

### **Venue**

10. Venue is proper under 28 U.S.C. § 1391(b) and (c) because a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred in this District, and Defendants reside in and are subject to personal jurisdiction in this District.

### **PARTIES**

#### **Plaintiffs**

11. Plaintiff Nichole Walkinshaw was continuously employed by Defendants from June 2000 through approximately September 2019 as an hourly rate Registered Nurse (RN) at SERMC. From April 2016 through September 2019, Plaintiff Walkinshaw worked for Defendants as an Interventional Radiology Staff Nurse. Ms. Walkinshaw resides in Firth, Nebraska.

12. Plaintiff Tysha Bryant was employed by Defendants from August 2001 through approximately December 2019 as an hourly rate Registered Nurse (RN) at

SERMC. From September 2015 through December 2019, Ms. Bryant worked for Defendants as an Interventional Radiology Staff Nurse. Ms. Bryant resides in Firth, Nebraska.

13. Plaintiff April Endicott has been continuously employed by Defendants from August 2005 through the present in various capacities at SERMC. From April 2017 through the present, Ms. Endicott has worked for Defendants as an Interventional Radiology Staff Nurse at SERMC. Ms. Endicott resides in Wahoo, Nebraska.

14. Plaintiff Heather Nabity was employed by Defendants from August 2005 through 2014 and from December 8, 2015 through approximately September 2019 as an hourly rate Registered Nurse at SERMC. From December 2015 through September 2019, Ms. Nabity worked at SERMC as an Interventional Radiology Staff Nurse. Ms. Nabity resides in Lincoln, Nebraska.

15. Plaintiff Meghan Martin (f/k/a Meghan Rindone) was continuously employed by Defendants from August 2016 through approximately December 2019 as an hourly rate Registered Nurse in the Interventional Radiology Department at SERMC. She resides in Lincoln, Nebraska.

16. Plaintiff Alandrea Ellwanger was continuously employed by Defendants from April 2014 through April 2019 as an hourly-rate Registered Nurse at SERMC. From August of 2016 through April 2019, Plaintiff Ellwanger worked as a Registered Nurse in the Interventional Radiology Department at SERMC. She resides in Eagle, Nebraska.

17. Plaintiff Troy Stauffer was employed by Defendants from April 2004 through January 2017 as an hourly rate Registered Nurse at SERMC. Plaintiff Stauffer was employed by Defendants as an hourly rate Registered Nurse in the Interventional

Radiology Department at SERMC from December 2013 through January 2017. He resides in Lincoln, Nebraska.

**Defendants**

18. CommonSpirit Health (“CommonSpirit”), f/k/a Catholic Health Initiatives, is a 501(c)(3) non-profit corporation organized under, and governed by, the Colorado Corporations and Associations laws, including Articles 121 to 137 thereof, the Colorado Nonprofit Corporation Act. CommonSpirit is headquartered in Chicago, Illinois.

CommonSpirit was formed on or about January 31, 2019, from the merger of two hospital systems, Dignity Health (“Dignity”) and Catholic Health Initiatives (“CHI”). On January 28, 2019, CHI filed Amended and Restated Articles of Incorporation with the Colorado Secretary of State that changed CHI’s name to “CommonSpirit Health.”

According to documents provided to the California Attorney General in support of the Dignity/CHI merger, the merger was accomplished “primarily through the reorganization and renaming of CHI’s current corporation, which will be governed by a governing body drawn equally from Dignity Health and CHI.” Within 36 months of the January 31, 2019 closing date, “substantially all of CHI’s regional and hospital corporations . . . will merge into” CommonSpirit. Substantially all of the assets and liabilities of CHI, and all of the assets and liabilities of Dignity with the exception of certain non-Catholic healthcare facilities that were consolidated into an independent entity during the merger, will be assumed by CommonSpirit as a result of the merger. According to CHI’s 2018 Annual Report, facilities that operated under the name “CHI Health” or “CHI” will continue to use those names after the merger is completed. According to documents submitted to the California Attorney General in support of the Dignity-CHI Merger, CHI and, as a result

of the merger and renaming of CHI, CommonSpirit, “is the parent of a number of nonprofit corporations that own and/or operate over one hundred acute care hospitals in eighteen states.” According to CHI’s Annual Report for 2018, CHI/CommonSpirit’s “operations are located primarily within ten regions,” including the State of Nebraska. According to the 2018 Annual Report, CHI/CommonSpirit’s operations in Nebraska include fourteen acute care hospitals located throughout the State of Nebraska. CHI/CommonSpirit’s operations in its “Nebraska Region”—which includes the State of Nebraska and a portion of southwest Iowa—also include “two stand-alone behavioral health facilities[] and more than 150 clinics.” CHI/CommonSpirit’s Annual Report boasts that CHI/CommonSpirit’s “Creighton University Medical Center – Bergan Mercy [located in Omaha, Nebraska] is the primary teaching partner of Creighton University’s health sciences schools.” CHI Health and Saint Elizabeth Regional Medical Center’s financial disclosures are consolidated in CHI/CommonSpirit’s annual financial statements, which CHI Health makes available on its website. According to the notes accompanying CHI/CommonSpirit’s financial statements, “CHI consolidates all direct affiliates in which it has sole corporate membership or ownership . . . and all entities in which it has greater than 50% equity interest with commensurate control.” Accordingly, CHI/CommonSpirit is the sole corporate member or the controlling shareholder of CHI Health and Saint Elizabeth Regional Medical Center. CHI/CommonSpirit employs the named Plaintiffs, the Collective, and the Class and Subclasses at its hospitals and other medical facilities in Nebraska and Iowa. Since at least February 6, 2015, CHI issued bi-monthly pay checks and pay stubs to named Plaintiffs and, on information and belief, to the Class, the Subclasses and the Collective. CHI’s name and corporate address are

printed on the bi-monthly pay stubs it issues to Plaintiffs, the Class and the Collective. In addition, on information and belief, CHI maintained records of Plaintiffs', Class-, and Collective-members' wage rates and hours worked as necessary to create and verify the amount of work performed and compensation reflected on their pay stubs. On information and belief, CommonSpirit has assumed these functions since it was formed from the January 31, 2019 merger of Dignity and CHI. As such, CommonSpirit is, together with CHI Health and Saint Elizabeth Regional Medical Center, an employer of Plaintiffs, the Class, and the Collective within the meaning of 29 U.S.C. § 203 and Neb. Rev. Stat. §§ 48-1202 & 48-1229.

19. CHI Nebraska, d/b/a CHI Health, (hereinafter, "CHI Health") is a Nebraska corporation with corporate headquarters located in Omaha, Nebraska. According to Defendants, CHI Health "is Plaintiffs' employer[.]" Defendants' Second Motion for Extension of Time to File Responsive Pleading at 1, n. 1, (April 8, 2019) ECF No. 12. According to CHI Health's website, CHI Health is "part of CommonSpirit Health." According to CHI's Annual Report for 2018, CHI/CommonSpirit is the corporate parent of CHI Nebraska, d/b/a CHI Health. CHI Health owns and operates "14 acute care hospitals, two stand-alone behavioral health facilities, and more than 150 clinics throughout Nebraska and southwest Iowa." CHI Health's consolidated earnings, revenues, and performance measures are consolidated in CHI/CommonSpirit's financial statements. According to the notes accompanying CHI/CommonSpirit's financial statements, "CHI consolidates all direct affiliates in which it has sole corporate membership or ownership . . . and all entities in which it has greater than 50% equity interest with commensurate control." Accordingly, CHI/CommonSpirit is the sole

corporate member or the controlling shareholder of CHI Health and Saint Elizabeth Regional Medical Center. CHI Health created, implemented, and enforced the On-Call Policy governing the conditions and compensation of on-call time and On-Call Work performed by nurses at its hospitals and related healthcare facilities. Moreover, CHI Health directly employed the supervisors of all named Plaintiffs and, on information and belief, of the members of the Collective and Class. As such, CHI Health is, together with CommonSpirit and Saint Elizabeth's Regional Medical Center, an employer of Plaintiffs, the Class, and the Collective within the meaning of 29 U.S.C. § 203 and Neb. Rev. Stat. §§ 48-1202 & 48-1229.

20. Saint Elizabeth Regional Medical Center ("SERMC") is a Nebraska corporation with corporate headquarters located in Lincoln, Nebraska. SERMC is directly owned by CHI Health and, together with CHI Health, its earnings and revenues are consolidated in CHI/CommonSpirit's financial statements. Every member of the CHI Health Board of Directors is a member of the Board of Directors of SERMC, and all but three of SERMC's seventeen-member Board of Directors is a member of the Board of CHI Health. SERMC issues W-2s to Plaintiffs and, on information and belief, members of the Collective and the Class. SERMC's name, corporate address, and Employer Identification Number appear on Plaintiffs' and, on information and belief, Class- and Collective-members' W-2s. As such, SERMC is, together with CommonSpirit and CHI Health, an employer of Plaintiffs, the SERMC Subclasses, and the SERMC Collective within the meaning of 29 U.S.C. § 203 and Neb. Rev. Stat. §§ 48-1202 & 48-1229.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

21. Plaintiffs bring Count I as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of the FLSA Collective, consisting of the following:

All persons who are or were jointly or severally employed by CommonSpirit and/or by its predecessor Catholic Health Initiatives, CHI Health, and/or SERMC, as medical nurses, who were paid an hourly wage, and who were subject to the On-Call Practice respecting compensation for On-Call Work, from February 6, 2016 through the present, at the following locations: CHI Health Laboratory in Omaha, Nebraska; Creighton University Medical Center in Omaha, Nebraska; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha, Nebraska; CHI Health-Mercy in Corning, Iowa; Mercy Hospital in Council Bluffs, Iowa; Midlands Hospital in Papillion, Nebraska; CHI Health Missouri Valley in Harrison County, Iowa; CHI Health – Nebraska Heart in Lincoln, Nebraska; CHI Health – Plainview in Plainview, Nebraska; CHI Health in Schuyler, Nebraska; Saint Elizabeth Medical Center in Lincoln, NE; Saint Francis Hospital in Grand Island, Nebraska; and CHI Health – Saint Mary’s in Otoe, Nebraska.

22. Plaintiffs have signed and filed with the Court Consents to Join in this litigation pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b). Dkt. Nos. 15-18. As this case proceeds, Plaintiffs anticipate that other individuals will likely file consent forms and join as opt-in plaintiffs.

23. Plaintiffs and members of the FLSA have been subjected to Defendants' repeated and consistent policies and practices that have resulted in willful violations of their rights under the FLSA, 29 U.S.C. § 201 *et. seq.*, and have caused loss of wages to Plaintiffs and the FLSA Collective.

24. These individuals would benefit from the issuance of court-supervised notice of this lawsuit and the opportunity to join by filing their written consent.

### **CLASS ACTION ALLEGATIONS**

25. Plaintiff brings Count II for violations of the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 48-1230, and the Nebraska Wage and Hour Act, Neb. Rev. Stat. § 48-1203, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the Class, as follows:

All persons who are or were jointly or severally employed by CommonSpirit and/or by its predecessor Catholic Health Initiatives, CHI Health, and/or SERMC, as medical nurses in the State of Nebraska, who were paid an hourly wage, and who were subject to the On-Call Practice respecting compensation for On-Call Work, from February 6, 2015 through the present, at the following locations: the CHI Health Laboratory in Omaha, Nebraska; Creighton University Medical Center in Omaha, Nebraska; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha; Midlands Hospital in Papillion, Nebraska; CHI Health Nebraska Heart in Lincoln, Nebraska; CHI Health – Plainview in Plainview, Nebraska; CHI Health in Schuyler, Nebraska; SERMC; Saint Francis Hospital in Grand Island, Nebraska; and CHI Health – Saint Mary's in Otoe, Nebraska (collectively "the Locations").

26. Plaintiff brings Counts III and IV as a class action for violations of the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. §§ 48-1228, *et seq.* and breach of contract pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the 2017 Policy Subclass, consisting of the following:

All persons who were employed by CommonSpirit and/or by its predecessor Catholic Health Initiatives, CHI Health, and/or SERMC, who were paid an hourly wage and who were subject to the On-Call Policy respecting compensation for On-Call Work from June 1, 2017 until September 30, 2018 (“2017 Policy”), at the least following locations: Creighton University Medical Center; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha; Midlands Hospital in Papillion, Nebraska; Saint Elizabeth Medical Center in Lincoln, NE; and Saint Francis Hospital in Grand Island, Nebraska and other Locations subject to a policy similar to the 2017 Policy.

27. Plaintiffs bring Counts V and VI as a class action for violations of the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. §§ 48-1228, *et seq.* and breach of contract pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the 2016 Policy Subclass, consisting of the following:

All persons who were employed by CommonSpirit and/or by its predecessor Catholic Health Initiatives, CHI Health, and/or SERMC, who were paid an hourly wage and who were subject to the On-Call Policy respecting compensation for On-Call Work from March 1, 2016 until May 31, 2017 (“2016 Policy”), at Saint

Elizabeth Regional Medical Center in Lincoln, NE and all other Locations that were subject to a policy similar to the 2016 Policy.<sup>1</sup>

### **Impracticability of Joinder**

28. The members of the Class and Subclasses are so numerous that joinder of all members is impracticable. On average, CommonSpirit, CHI, and SERMC employ about 260 nurses at each of their hospitals and other healthcare facilities in Nebraska, meaning that there are at least 1,760 members of the Class, 260 members of the 2017 Policy Subclass and at least several hundred members of the 2016 Policy Subclass.

29. Members of the Class and Subclasses are also geographically dispersed. Within Nebraska alone, CommonSpirit, CHI Health, and SERMC's hospitals are located across the State. Because the On-Call Policy requires nurses to live within thirty minutes of their duty station, Class and Subclass members must live close to the hospitals where they work. Thus, members of the Class and Subclasses are also geographically dispersed.

### **Commonality**

30. Common questions of law and fact exist as to members of the Class and Subclasses, including, but not limited to, the following:

- a. Whether Defendants violated Neb. Rev. Stat. § 48-1203 by failing to pay minimum wage to the Class during On-Call Work periods;
- b. Whether Defendants violated Neb. Rev. Stat. §§ 48-1230 and 48-1231 by refusing to pay timely wages to the Class for On-Call Work performed;

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<sup>1</sup> Plaintiffs are unable to identify at this time any of the Locations other than Saint Elizabeth Regional Medical Center because Defendants have refused to produce similar policies for other Locations in effect in or about the same period.

c. Whether Defendants violated Neb. Rev. Stat. §§ 48-1229 and 48-1230 by refusing to timely pay wages at the agreed-upon rate of time-and-a-half the regular base rate in 15-minute increments under the 2017 Policy to the 2017 Policy Subclass for On-Call Work performed;

d. Whether Defendants breached the terms of their employment contract with the 2017 Policy Subclass by failing to pay time-and-a-half for On-Call Work periods;

e. Whether Defendants violated Neb. Rev. Stat. §§ 48-1229 and 48-1230 by refusing to timely pay wages to the 2016 Policy Subclass in the agreed-upon amount of a guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times base rate under the 2016 Policy;

f. Whether Defendants breached the terms of their employment contract with the 2016 Policy Subclass by failing to pay time-and-a-half for On-Call Work periods;

g. Whether Defendants' violations of Neb. Rev. Stat. § 48-1230 were willful;

h. Whether Defendants CommonSpirit, CHI Health, and SERMC were joint employers of the Class and Subclasses; and

i. The proper measure of damages suffered by the Class and Subclasses and any other appropriate relief.

### **Typicality**

31. Plaintiffs' claims are typical of those of the Class and Subclasses.

Plaintiffs, like other members of the Class and Subclasses, were subjected to Defendants' policies and practices of failing to pay minimum wage and time-and-a-half compensation for On-Call Work performed, in violation of Neb. Rev. Stat. §§ 48-1203 & 48-1230 and the On-Call Policies. Plaintiffs' job duties and claims are typical of those of the Class and Subclasses.

### **Adequacy**

32. Plaintiffs Nichole Walkinshaw, Tysha Bryant, April Endicott, Heather Nabity, Meghan Martin, Alandrea Ellwanger, and Troy Stauffer ("the Class Representatives") have no conflicts with the Class and will fairly and adequately represent the interests of the Class.

33. Plaintiffs Nichole Walkinshaw, Tysha Bryant, April Endicott, Heather Nabity, Meghan Martin, and Alandrea Ellwanger ("the 2017 Policy Subclass Representatives") have no conflicts with the 2017 Policy Subclass and will fairly and adequately represent the interests of the Subclass.

34. Plaintiffs Nichole Walkinshaw, Tysha Bryant, April Endicott, Heather Nabity, Meghan Martin, Alandrea Ellwanger, and Troy Stauffer ("the 2016 Policy Subclass Representatives") have no conflicts with the 2016 Policy Subclass and will fairly and adequately represent the interests of the Subclass.

35. Plaintiffs have retained counsel competent and experienced in complex class actions, the FLSA, and Nebraska labor and employment litigation. Plaintiffs'

counsel intends to commit the necessary resources to prosecute this action vigorously for the benefit of all Class and Subclass members.

### **Predominance and Superiority**

36. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class and Subclasses, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation because Defendants' common and uniform policies and practices of unlawfully failing to pay minimum wage and time-and-a-half compensation for On-Call Work to Plaintiffs, the Class and the Subclasses violates the NWA, the NWPCA, and Nebraska contract law. The damages suffered by individual Class and Subclass members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

## **FACTUAL ALLEGATIONS**

### **I. Defendants' Policy and Practice Regarding On-Call Work**

#### **(a) Defendants' On-Call Work Policy**

37. Since at least February 6, 2015, Defendants have adhered to a policy and practice (the "On-Call Practice" or "Practice") governing nurses' compensation for time spent "on-call." According to the Policy, "on-call" periods are time when nurses are required "to be available for work at times other than during their regular-scheduled shifts."

38. During on-call periods, nurses are required to perform certain duties related to their positions remotely, without actually reporting to their work station. These duties include responding to telephone calls, text messages, and emails from doctors and supervisors regarding hospital business, including scheduling patient procedures and patient care. Nurses are also required to perform preparatory and follow-up work related to these emails and calls. This “On-Call Work” can occupy as many as 2-3 hours, or more, of a nurse’s 14-hour on-call shift during the week, and as many as 15 hours during 50.5-hour weekend on-call shifts.

39. From at least February 6, 2015 until September 30, 2018, Defendants paid nurses an hourly rate of \$2.00 an hour for time spent performing On-Call Work during weekdays, and \$2.50 per hour for time spent performing On-Call Work during weekends.

40. As of at least March 1, 2016 Defendants adopted and applied a written version of their policy regarding On-Call Work (the “2016 Policy”). That Policy dictated that nurses would be paid at time-and-a-half the nurses’ normal hour rate of pay.

Specifically, the Policy provided that

[s]ituations where work can be taken care of over the phone or remotely without coming in to the facility will be paid a guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times base rate.

Pursuant to that Policy, these hours “were eligible for shift, weekend, and holiday premium differential, as applicable, regardless of number of hours worked.”

41. Despite this provision of the 2016 Policy, Defendants continued to compensate nurses at the rate of \$2.00/hour on weekdays, and \$2.50/hour on weekends, for On-Call Work.

42. The 2016 Policy also required nurses to do the following:

- a. Remain at a location where nurses may be reached by telephone or pager;
- b. Immediately return call to the hospital;
- c. Be available to return to the hospital within 30 minutes; and
- d. Be available all hours of the day or night to properly take and respond to calls and/or call back to the hospital.

43. Under the 2016 Policy, Defendants imposed the following additional standards and requirements:

- a. Setting the circumstances under which nurses' employees were eligible for call-back pay when called back to their duty station from an on-call shift;
- b. Setting the rate of compensation for nurses when called back to work;
- c. Determining the applicability of "holiday premium differentials" to work performed by nurses called in to their duty station, and determining what portions of nurses' work performed after being called back would be eligible for this additional pay; and
- d. Other circumstances that resulted in a different pay structure, such as for employees who were on call immediately after a regular shift and continue work into the on call schedule, or who are called back more than once in a 45-minute period while on-call, or, alternatively, more than once in a 38-minute period.

44. As of at least June 1, 2017, Defendants adopted and applied a written version of their policy regarding On-Call Work (the “2017 Policy”). The Policy dictated that nurses would be paid at time-and-a-half the nurses’ normal hourly rate of pay.

Specifically, the Policy provided that

[w]ork relating to the principal activities of a position that can be taken care of with a phone call or access to work from home will receive one and one-half times the regular base rate in 15-minute increments.

45. Despite this provision of the 2017 Policy, Defendants continued to compensate nurses at the rate of \$2.00/hour on weekdays, and \$2.50/hour on weekends, for On-Call Work.

46. The 2017 Policy also required nurses to do the following:

- a. provide a telephone number at which they can be reached or carry a beeper;
- b. prohibited nurses from being on-call in one department while working in another department;
- c. to report to a designated work area within 30 minutes of being called to work;
- d. refrain from engaging in any conduct while On-Call that would inhibit their ability to perform their work; and
- e. be available all hours of the day or night to properly take and respond to calls and/or call back to the hospital.

47. Under the 2017 Policy, Defendants imposed the following additional standards and requirements:

- e. Setting the circumstances under which nurses' employees were eligible for call-back pay when called back to their duty station from an on-call shift;
- f. Setting the rate of compensation for nurses when called back to work, and determining what expenses incurred by nurses called back to work were and were not reimbursable;
- g. Determining the applicability of "holiday premium differentials" to work performed by nurses called in to their duty station, and determining what portions of nurses' work performed after being called back would be eligible for this additional pay;
- h. Other circumstances that resulted in a different pay structure, such as for employees who were called back into work during a "call-back guarantee period" or who are called back more than once in a 45-minute period while on-call, or, alternatively, more than once in a 38-minute period;
- i. Provisions discouraging nurses from working "more than 16 hours in a row;" and
- j. Provisions dictating the precedence of the Policy over other policies governing on-call/call-back pay.

48. The 2017 Policy was signed by Erin Micanek, a Division Compensation Manager who was employed by CHI Health at the time the Policy was issued. The Policy was signed and approved by: (1) Carolyn Macfarlane, a Document Analyst at CHI Health, (2) Nancy Wallace, the Senior Vice President and Chief Human Resources

Officer of CHI Health, and (3) Micaneck, all of whom were CHI Health employees when the Policy was issued.

49. The 2017 Policy stated that it applied to the following facilities: Creighton University Medical Center; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha; Mercy Hospital in Council Bluffs, Iowa; Midlands Hospital in Papillion, Nebraska; SERMC; and Saint Francis Hospital in Grand Island, Nebraska.

**(b) CHI Health Amends the Policy in October of 2018**

50. CHI Health adopted a revised version of its On-Call Policy in October 2018 (the “2018 Policy”). The 2018 Policy continues to be in effect at facilities covered by the Policy. The 2018 Policy imposed the following requirements:

a. The 2018 Policy stated that nurses’ time spent on call was required to be scheduled through an electronic timekeeping system (“Kronos”). The 2018 Policy contained no provision for distinguishing and recording time spent performing On-Call Work from general on-call time;

b. Like the 2017 Policy, the 2018 Policy required on-call nurses to provide a telephone number where they could be reached while on-call but no longer permitted the use of a beeper;

c. The 2018 Policy continued to prohibit nurses from being on-call in one department while working in another;

d. The 2018 Policy continued to require nurses to be able to report to their work area within 30 minutes of being called;

e. The 2018 Policy required nurses who were on-call, regardless of whether they were performing On-Call Work, to be paid at the rate of \$3.00 per hour for 0 to 50 on-call hours and \$4.00 per hour for 51-plus on-call hours;

f. Like the 2017 Policy, the 2018 Policy set the rate of compensation for nurses when called back to work, and determined what expenses incurred by nurses called back to work were and were not reimbursable;

g. The 2018 Policy determined the applicability of “shift, weekend, and holiday premium differentials” to work performed by nurses called in to their duty station;

h. The 2018 Policy imposed other conditions and restrictions on nurses’ eligibility to receive call-back pay.

51. The 2018 Policy stated that it applied to the following facilities: the CHI Health Laboratory in Omaha, Nebraska; Creighton University Medical Center in Omaha, Nebraska; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha, Nebraska; CHI Health-Mercy in Corning, Iowa; Mercy Hospital in Council Bluffs, Iowa; Midlands Hospital in Papillion, Nebraska; CHI Health Missouri Valley in Harrison County, Iowa; CHI Health – Nebraska Heart in Lincoln, Nebraska; CHI Health – Plainview in Plainview, Nebraska; CHI Health in Schuyler, Nebraska; SERMC; Saint Francis Hospital in Grand Island, Nebraska; and CHI Health – Saint Mary’s in Otoe, Nebraska.

52. Since the adoption of the 2018 Policy, Defendants have compensated nurses for time spent performing On-Call Work at the rate of \$3.00

per hour for the first 50 hours of time spent on-call, and \$4.00 per hour for every hour on-call thereafter.

**(c) Defendants' Failure to Compensate Nurses for On-Call Work as Required by the FLSA, NWA, NWPCA, and the 2017 Policy**

53. Since at least February 6, 2015, Defendants have required nurses employed at their facilities to perform On-Call Work. During periods in which nurses perform On-Call Work, they are working primarily for the benefit of Defendants as their employer. On-Call Work generally consists of telephone calls, emails, and text messages relating to patient services and answering patient questions. On-Call Work also includes the work involved in responding to and following up on these calls, emails, and text messages. On-Call Work is time-consuming and can occupy as many as 2-3 hours, or more, of a 14-hour on-call shift during the week, and as many as 15 hours during 50.5-hour weekend on-call shifts.

54. On-Call Work occupies the nurses' entire attention; they are unable to perform other work or to use the time spent responding to these calls for their family obligations, personal pursuits, or even to get a night's sleep. For example:

a. Plaintiff April Endicott is frequently awoken in the middle of the night by calls during on-call periods, required to respond to the call, and then required to remain awake, sometimes for hours on end, to perform additional work in preparation for receiving a return call for another hospital staff member. Ms. Endicott has had to miss family

outings, gatherings, holidays, and her nieces' and nephews' sporting events and dance recitals while responding to calls, text messages, and emails and performing related work during on-call periods. Plaintiff Endicott has had to delay or forego performing routine tasks around the house—like mowing the lawn or cooking a meal—while responding to calls, texts, emails, and other communications and performing related follow-up tasks.

b. During time that Plaintiff Tysha Bryant spends on-call, she typically makes numerous phone calls, texts, and other communications to doctors and other hospital staff. The calls, texts, emails, and other communications include triage of patients, taking orders from other physicians, gathering patients' names and information, interpreting lab reports, giving orders, receiving orders, assessing nothing per oral (NPO) status of the patient (i.e., determining the safety of sedation), determining anticoagulation medication (affecting bleeding times), collaborating with floor staff nurse for patients' other procedures, and working with technicians in anesthesia, radiology, tomography, ultrasound, and nuclear medication. Calls also include scheduling procedures for the upcoming week. In some instances during on-call periods, Ms. Bryant was on the phone back and forth to providers, nurses, and hospital staff for up to 5 hours straight, without intermission. Like Plaintiff Endicott, Ms. Bryant has also had to miss numerous family events and holidays and to forego performing routine household activities like cooking or mowing the lawn

in order to give full attention to responding to calls, texts, emails, and other work-related communications while on-call.

c. Plaintiff Meghan Martin's On-Call Work also occupied her entire attention and prevented her from performing family obligations or other personal pursuits. Ms. Martin's On-Call Work included consulting by telephone, email, and text with "on-duty" hospital staff about patient care, including exchanging information about the patient's medical condition, what medications they receive, and the patient's meal schedule. In most cases, this would involve several phone calls to the nurse and doctor(s), as well as related work and preparation between calls. During some weekends, Plaintiff Martin would make 20-30 phone calls per patient with doctors, technicians, floor nurses, and the patient him/herself.

55. Pursuant to the On-Call Policy, Defendants have never paid Plaintiffs more than \$4.00/hour for this On-Call Work. At all relevant times, Defendants have failed to pay nurses the statutory minimum wage demanded by the NWA and the NWPCA, or the time-and-a-half rate required by the 2017 Policy and by the FLSA and Nebraska contract law. Instead, from at least February 6, 2015 until September 30, 2018, Defendants paid nurses \$2.00 per hour for weekday On-Call Work, and \$2.50 per hour for weekend On-Call Work. From October 1, 2018, through the present, Defendants paid nurses \$3.00/hour - \$4.00/hour for On-Call Work.

**(d) Defendants Failed to Maintain Records of On-Call Work Time**

56. At all times from at least February 6, 2015 to the present, Defendants have failed to maintain records of time spent by nurses performing On-Call Work.

57. The 2016 Policy required Defendants to record nurses' time spent performing On-Call Work on a "Time Edit Log." However, Defendants did not maintain records of time spent by nurses performing On-Call Work while the Policy was in effect.

58. The 2017 Policy required Defendants to record nurses' time spent performing On-Call Work on a "Time Edit Log." However, Defendants did not maintain records of time spent by nurses performing On-Call Work while the Policy was in effect.

59. The 2018 Policy contained no provision requiring Defendants to record time spent performing On-Call Work. From October 1, 2018 through the present, Defendants have continued to fail to keep records of time spent by nurses performing On-Call Work.

**II. Defendants' Employment Relationship with Plaintiffs**

60. From at least February 6, 2015 through the present, Defendants have acted as the employer of Plaintiffs and members of the Class and Collective. Relevant factors in determining the existence of an employer/employee relationship are whether the defendant: (a) had the power to hire and fire the employee, (b) supervised and controlled the employee's work schedule or conditions of employment, (c) determined the rate and method of payment, and (d) maintained employment records.

**(a) Power to Hire and Fire Nurses**

61. CHI Health hired all members of the Collective and Class who began to work after their respective hospitals were acquired by CHI Health. All Plaintiffs who began to work after SERMC was acquired by CHI Health in 2014 were hired by CHI Health employees. Plaintiffs Meghan Martin and Nichole Walkinshaw were hired by Mike Hopkins, then-Director of Radiology at SERMC, in August of 2016. According to his LinkedIn profile, Mr. Hopkins was employed by CHI Health in his capacity as Director of Radiology.

62. CHI Health has retained the power to hire and fire Plaintiffs, the Collective, and the Class through their respective supervisors, all of whom were employed by CHI Health, as follows:

a. Plaintiffs April Endicott, Heather Nabity, Tysha Bryant, and Nichole Walkinshaw are supervised by Jesse Thomas, the Director of the Radiology Department.

b. Plaintiff Troy Stauffer was initially supervised by Mike Hopkins, formerly the Director of Radiology and Oncology services at SERMC, and then was supervised by Sarah Schultz, who is the current Radiology Supervisor at SERMC.

63. On information and belief, since at least February 6, 2015, all members of the Class and Collective were supervised in their respective positions by CHI Health employees who had the authority to terminate their employment.

**(b) Supervision and Control of Nurses' Work and Work Schedules**

64. CHI Health established the On-Call Work Policy in October 2010 and revised the Policy in June of 2017. Per the terms of the Policy, CHI Health is scheduled to review the Policy in June 2020. The Policy was signed by Erin Micanek, a Division Compensation Manager who was then a CHI Health employee. As described in Section I, *supra*, the On-Call Policy regulates numerous aspects of nurses' day-to-day activities, including:

- a. Determining the rate of pay, and eligibility to receive pay, for time spent on-call, work performed while on-call, and work performed when called in to work;
- b. Restricting nurses from actively working in one department while on-call from working in another; and
- c. Requiring on-call nurses to be able to report to their work-station within 30 minutes of receiving a call.

65. Since at least February 6, 2015, each named Plaintiff was directly supervised by a CHI Health employee.

- a. Plaintiffs Heather Nabity, April Endicott, Tysha Bryant and Nichole Walkinshaw were supervised by Jesse Thomas, Director of Radiology and Radiation at SERMC. Ms. Walkinshaw was also hired and supervised by Mike Hopkins, formerly the Director of Radiology and Oncology services at SERMC.

b. Plaintiff Troy Stauffer was supervised by Sarah Schultz and by Mike Hopkins. Both Mr. Hopkins and Ms. Schultz were CHI Health employees while they occupied the positions in which they supervised Mr. Stauffer.

**(c) Determining the Rate and Method of Payment**

66. Since at least February 6, 2015, CHI Health has controlled the rate and method of payment received by nurses through the On-Call Policy. Pursuant to the On-Call Policy, CHI Health established the following rates of payment for nurses, including, but not limited to, the following terms:

a. Under the 2017 Policy, nurses placed in “on-call” status who were not performing On-Call Work would be paid at a rate of \$2 per hour on weekdays or \$2.50 per hour on weekends. Under the 2017 Policy, nurses performing On-Call Work were required to be paid, but were not paid, at a rate of time-and-a-half their normal hourly rate. Under the 2018 Policy, nurses performing On-Call Work were paid at a rate of \$3 per hour for their first fifty on-call hours worked, and \$4 per hour for each on-call hour thereafter.

b. Under the 2017 Policy, nurses who were called in to work while on call were paid at a rate of time-and-a-half after the first two hours worked. Under the 2018 Policy, nurses who were called in to work while on call began to receive time-and-a-half pay from the first hour worked.

c. Under both Policies, nurses called back to work were eligible for “shift, weekend, and holiday premium differentials as applicable.”

**(d) Maintenance of Employment Records**

67. Since at least February 6, 2015, CommonSpirit and SERMC have maintained Plaintiffs' and Class-, Subclass-, and Collective-members' employment records. SERMC issues W-2s to Plaintiffs and, on information and belief, to members of the Collective and the Class. SERMC's name, corporate address, and Employer Identification Number appear on Plaintiffs' and, on information and belief, Class-, Subclass-, and Collective-members' W-2s. Since at least February 6, 2015, CommonSpirit/CHI issued bi-monthly pay stubs to named Plaintiffs and, on information and belief, to the Class, Subclasses, and the Collective, from its corporate headquarters. CHI's name and corporate address are printed on the bi-monthly pay stubs it issues to Plaintiffs, the Class, the Subclasses, and the Collective. On information and belief, CommonSpirit/CHI maintains records of the wage rates and hours of worked performed by the Plaintiffs, Class, Subclasses, and Collective as necessary to create and verify the amount of work performed and compensation reflected on the pay stubs it issues to Plaintiffs, the Class, Subclasses, and Collective.

**III. Defendants Apply Their Practice of Undercompensating Nurses for On-Call Work to Plaintiffs**

68. Defendants have consistently violated the requirements of federal and Nebraska labor law and their own written Policy by (1) paying nurses, including Plaintiffs, the Collective, and the Class and Subclasses less than minimum wage; (2) failing to credit On-Call Work toward overtime required by the FLSA; and (3) paying nurses less than the time-and-a-half rate required by the FLSA and the 2017 On-Call Policy.

**(a) Nichole Walkinshaw**

69. Plaintiff Nichole Walkinshaw was continuously employed by Defendants from June 2000 through approximately September 2019 as an hourly rate Registered Nurse (RN) at SERMC. From April 2016 through September 2019, Plaintiff Walkinshaw worked for Defendants as an Interventional Radiology Staff Nurse.

70. The average length of Plaintiff Walkinshaw's workweek in her position as an Interventional Radiology Staff Nurse from April 2016 until October 2016 was approximately 38 hours of work performed at her duty station in the Interventional Radiology Department at SERMC.

71. In addition to work performed at her duty station in the Interventional Radiology Department at SERMC, from April 2016 through October 2016, Plaintiff Walkinshaw spent, on average, a total of 4 hours per week performing On-Call Work during weekend on-call shifts, and a total of 22.5 minutes per week performing On-Call Work during weekday on-call shifts. Plaintiff Walkinshaw was at all times compensated at the rate of \$2.00-\$2.50/hour for this On-Call Work, less than minimum wage.

72. From April 2016 through October 2016, Plaintiff Walkinshaw performed On-Call Work that, when combined with work performed at her duty station as an Interventional Radiology Staff Nurse, amounted to approximately 2.5 hours of overtime work performed per week on average. At no time did Defendants compensate Plaintiff Walkinshaw at the rate of 1.5 times her regular base rate of pay when her On-Call Work, combined with work performed at her duty station, exceeded forty hours in a given week. Rather, Defendants paid her only \$2.00-\$2.50/hour for this On-Call Work.

73. Plaintiff Walkinshaw's average rate of pay for work performed at her duty station as an Interventional Radiology Staff Nurse from April 2016 through October 2016 was approximately \$38.00/hour. From April 2016 through October 2016, Ms. Walkinshaw was paid \$2.00 per hour while performing On-Call Work during weekdays and \$2.50 per hour for On-Call Work during weekends.

74. During the week of July 31 until August 7, 2016, Plaintiff Walkinshaw performed 46.5 hours of work at her duty station at SERMC, and performed an additional approximately 50 minutes hours of On-Call Work. Defendants paid Plaintiff Walkinshaw no more than \$2.50/hour for this 50 minutes of On-Call Work, less than the rate of time-and-a-half her base rate of pay and less than minimum wage for these 50 minutes of overtime On-Call Work.

**(b) Tysha Bryant**

75. Plaintiff Tysha Bryant was continuously employed by Defendants since August 2001 through approximately December 2019 as an hourly rate Registered Nurse (RN) at SERMC. From September 2015 through the present, Ms. Bryant has worked for Defendants as an Interventional Radiology Staff Nurse.

76. The average length of Plaintiff Bryant's workweek in her position as an Interventional Radiology Staff Nurse from September 2015 until October 2016 was approximately 42.5 hours of work performed at her duty station.

77. In addition to work performed at her duty station in the Interventional Radiology Department at SERMC, Plaintiff Bryant, on average, typically spent 2 hours per week performing On-Call Work. Plaintiff Bryant was at all times compensated at the rate of \$2.00-\$2.50/hour for this On-Call Work, less than minimum wage.

78. Plaintiff Bryant's average rate of pay for work performed at her duty station as an Interventional Radiology Staff Nurse is \$35.67/hour. Prior to November 2018, Ms. Bryant was paid \$2.00 per hour for On-Call Work during weekdays. Since November 2018, Defendants have paid Ms. Bryant \$3.00 - \$4.00/hour for On-Call Work.

79. Plaintiff Bryant performed On-Call Work that, when combined with work performed at her duty station as an Interventional Radiology Staff Nurse, amounted to approximately 2 hours of overtime work performed per week on average. At no time have Defendants compensated Plaintiff Bryant at the rate of 1.5 times her regular base rate of pay when her On-Call Work, combined with work performed at her duty station, exceeded forty hours in a given week.

80. During the week of December 5 until December 12, 2015, Plaintiff Bryant performed more than forty hours of work at her duty station at SERMC, and performed an additional approximately 3 hours of On-Call Work. Defendants paid Plaintiff Bryant no more than \$2.50/hour for this On-Call Work, less than the rate of time-and-a-half her base rate of pay for these 3 hours of overtime On-Call Work and less than minimum wage.

81. During the week of April 3 until April 9, 2016, Plaintiff Bryant performed 41.25 hours of work at her duty station at SERMC, and performed approximately an additional two hours of On-Call Work. Defendants paid Plaintiff Bryant no more than \$2.50/hour for this On-Call Work, less than the rate of time-and-a-half her base rate of pay for these additional hours of overtime On-Call Work and less than minimum wage.

**(c) April Endicott**

82. Plaintiff April Endicott has been continuously employed by Defendants from August 2005 through the present in various capacities at SERMC. From April 2017 through the present, Ms. Endicott has worked for Defendants as an Interventional Radiology Staff Nurse.

83. The average length of Plaintiff Endicott's workweek in her position as an Interventional Radiology Staff Nurse since April 2017 is approximately 32 hours of work performed at her duty station.

84. In addition to work performed at her duty station in the Interventional Radiology Department at SERMC, Plaintiff Endicott has, on average, typically spent a total of 2 hours per week performing On-Call Work during weekday on-call shifts, and 6 hours per week performing On-Call Work during weekend on-call shifts. Plaintiff Endicott was at all times compensated at the rate of no more than \$4.00/hour for this On-Call Work, less than minimum wage.

85. Plaintiff Endicott's average rate of pay for work performed at her duty station as an Interventional Radiology Staff Nurse is \$33.91/hour. Prior to November 2018, Defendants paid Ms. Endicott \$2.00 per hour for On-Call Work performed during weekdays, and \$2.50 per hour for On-Call Work performed during weekends. Since November 2018, Defendants have paid Ms. Endicott \$3.00-\$4.00/hour for On-Call Work.

86. Plaintiff Endicott performs On-Call Work that, when combined with work performed at her duty station as an Interventional Radiology Staff Nurse, amounts to 3 hours of overtime work in a given week. At no time have Defendants compensated Plaintiff Endicott at the rate of 1.5 times her regular base rate of pay when her On-Call

Work, combined with work performed at her duty station, exceeds forty hours in a given week.

87. During the week of June 3 to June 9, 2018, Plaintiff Endicott performed 51.25 hours of work at her duty station at SERMC and performed at least an additional 28 minutes of On-Call Work, bringing the total number of hours worked in that week to 51.75. Defendants paid Plaintiff Endicott no more than \$2.50/hour for this On-Call Work, less than the rate of time-and-a-half her base rate of pay for these additional hours of overtime On-Call Work and less than minimum wage.

**(d) Heather Nabity**

88. Plaintiff Heather Nabity was employed by Defendants from August 2005 through 2014 and from December 8, 2015 through approximately September 2019 as an hourly rate Registered Nurse at SERMC. From December 2015 through September 2019, Ms. Nabity worked at SERMC as an Interventional Radiology Staff Nurse.

89. The average length of Plaintiff Nabity's workweek in her position as an Interventional Radiology Staff Nurse was approximately 42.75 hours of work performed at her duty station.

90. In addition to work performed at her duty station in the Interventional Radiology Department at SERMC, Plaintiff Nabity has, on average, typically spent a total of 1-2 hours per week performing On-Call Work during weekday on-call shifts, and 4-6 hours per week performing On-Call Work during weekend on-call shifts. Plaintiff Nabity was at all times compensated at the rate of no more than \$4.00/hour for this On-Call Work, less than minimum wage.

91. Plaintiff Nabity's average rate of pay for work performed at her duty station as an Interventional Radiology Staff Nurse was approximately \$40.00/hour. Prior to November 2018, Defendants paid Ms. Nabity \$2.00 per hour for On-Call Work during weekdays, and \$2.50 per hour for On-Call Work during weekends. Since November 2018, Defendants have paid Ms. Nabity \$3.00-\$4.00/hour for On-Call Work.

92. Plaintiff Nabity performed On-Call Work that, when combined with work performed at her duty station as an Interventional Radiology Staff Nurse, amounted to as many as 7 hours of overtime work. At no time have Defendants compensated Plaintiff Nabity at the rate of 1.5 times her regular base rate of pay when her On-Call Work, combined with work performed at her duty station, exceeded forty hours in a given week.

93. During the week of December 5 until December 12, 2015, Plaintiff Nabity performed more than forty hours of work at her duty station at SERMC, and performed an additional approximately 3 hours of On Call Work. Defendants paid Plaintiff Nabity no more than \$2.50/hour for this On-Call Work, less than the rate of time-and-a-half her base rate of pay for these 3 hours of overtime On-Call Work and less than minimum wage.

94. During the week of June 3 until June 9, 2018, Plaintiff Nabity performed 44.5 hours of work at her duty station at SERMC, and performed approximately at least an additional 30 minutes of On Call Work. Defendants paid Plaintiff Nabity no more than \$2.50/hour for this On-Call Work, less than the rate of time-and-a-half her base rate of pay for these additional hours of overtime On-Call Work and less than minimum wage.

**(e) Meghan Martin**

95. Plaintiff Meghan Martin was continuously employed by Defendants from August 2016 through approximately December 2019 as an hourly rate Registered Nurse in the Interventional Radiology Department at SERMC.

96. From August of 2016 until June 2017, the average length of Plaintiff Martin's workweek in her position as a Registered Nurse was approximately 32 hours of work performed at her duty station. From June 2017 through December 2019 the average length of Plaintiff Martin's workweek in her position as a Registered Nurse was approximately 24 hours of work performed at her duty station.

97. In addition to work performed at her duty station in the Interventional Radiology Department at SERMC, Plaintiff Martin has, on average, typically spent a total of 4-6 hours per week performing weekday and weekend On-Call Work. Plaintiff Martin was at all times compensated at the rate of no more than \$4.00/hour for this On-Call Work, less than minimum wage.

98. Plaintiff Martin's average rate of pay for work performed at her duty station as a Registered Nurse was \$29/hour. Prior to November 2018, Defendants paid Ms. Martin \$2.00 per hour for On-Call Work during weekdays and \$2.50 per hour for on-call work during weekends. Since November 2018, Defendants have paid Ms. Martin no more than \$4.00 per hour for On-Call Work.

99. Plaintiff Martin performed On-Call Work that, when combined with work performed at her duty station as an Interventional Radiology Staff Nurse, amounted to as many as 3.5 hours of overtime work. At no time have Defendants compensated Plaintiff

Martin at the rate of 1.5 times her regular base rate of pay when her On-Call Work, combined with work performed at her duty station, exceeded forty hours in a given week.

100. During the week of January 29 until February 4, 2017, Plaintiff Martin performed 35 hours of work at her duty station at SERMC, and performed approximately an additional 6 hours of On-Call Work, bringing the total number of overtime On-Call Work hours in that week to approximately 1 hour. Defendants paid Plaintiff Martin no more than \$2.50/hour for this On-Call Work, less than the rate of time-and-a-half her base rate of pay and less than minimum wage for this 1 hour of overtime work.

101. During the week of May 14, 2017, Plaintiff Martin performed 37.5 hours of work at her duty station at SERMC, and performed approximately an additional 5 hours of On-Call Work, bringing the total number of overtime On-Call Work hours in that week to 2.5 hours. Defendants paid Plaintiff Martin no more than \$2.50/hour for this On-Call Work, less than the rate of time-and-a-half her base rate of pay and less than minimum wage for these 2.5 hours of overtime work.

**(f) Alandrea Ellwanger**

102. Plaintiff Alandrea Ellwanger was continuously employed by Defendants from April 2014 through April 2019 as an hourly-rate Registered Nurse at SERMC. From August of 2016 through April 2019, Plaintiff Ellwanger worked as a Registered Nurse in the Interventional Radiology Department at SERMC.

103. The average length of Ms. Ellwanger's workweek in her position as an hourly-rate Registered Nurse in the Interventional Radiology Department at SERMC was approximately 32 hours of work performed at her duty station.

104. In addition to work performed at her duty station in the Interventional Radiology Department at SERMC, Plaintiff Ellwanger has, on average, typically spent thirty minutes per week performing On-Call Work on weekdays and 3-5 hours performing On-Call Work over the weekend.. She was at all times compensated at the rate of no more than \$4.00/hour for this On-Call Work, less than minimum wage. For example, during the week of January 14, 2018, Plaintiff Ellwanger performed approximately 40 minutes of On-Call Work for which she was paid \$2.00/hour.

105. Plaintiff Ellwanger's average rate of pay for work performed at her duty station as a Registered Nurse is approximately \$30/hour. Prior to November 2018, Defendants paid Ms. Ellwanger no more than \$2.00 per hour for On-Call Work during weekdays, and \$2.50 per hour for On-Call Work during weekends. After November 2018, Defendants paid Ms. Ellwanger no more than \$3.00 per hour - \$4.00 per hour for On-Call Work.

106. During either the week of April 29 to May 5, 2018 or the week of May 6 to May 12, 2018, Plaintiff Ellwanger performed 41.25 hours of work at her duty station at SERMC.<sup>2</sup> Plaintiff Ellwanger performed approximately at least an additional 5 minutes of On-Call Work in the week of April 29 to May 5, 2018 and at least an additional 19 minutes of On-Call Work in the week of May 6 to May 12, 2018. Defendants paid Plaintiff Ellwanger no more than \$2.50/hour for this On-Call Work, less than the rate of time-and-a-half her base rate of pay and less than minimum wage for these additional hours of overtime work.

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<sup>2</sup> Plaintiffs are not able to identify at this time in which of these two weeks Plaintiff Ellwanger worked 41.25 hours at her duty station at SERMC because Defendants did not produce her time records for the period from January 2017 on.

(e) **Troy Stauffer**

107. Plaintiff Troy Stauffer was employed by Defendants from April 2004 through January 2017 as an hourly rate Registered Nurse at SERMC. Plaintiff Stauffer has been employed by Defendants as an hourly rate Registered Nurse in the Interventional Radiology Department at SERMC from December 2013 through January 2017.

108. From September of 2015 through January 2017, the average length of Plaintiff Stauffer's workweek in his position as a Registered Nurse was approximately 40 hours of work performed at his duty station.

109. In addition to work performed at his duty station in the Interventional Radiology Department at SERMC, Plaintiff Stauffer, on average, typically spent a total of .5 hours per week performing On-Call Work during weekday on-call shifts, and as many as 1.25 hours per week performing On-Call Work during weekend on-call shifts. Defendants at all times paid Plaintiff Stauffer no more than \$4.00/hour for this On-Call Work, less than minimum wage.

110. Plaintiff Stauffer's average rate of pay for work performed at his duty station as a Registered Nurse from September of 2015 through January 2017 was \$33/hour. During his employment prior to November 2018, Defendants paid Mr. Stauffer \$2.00 per hour for weekday On-Call Work, and \$2.50 per hour for On-Call Work, during weekends.

111. Plaintiff Stauffer performed On-Call Work that, when combined with work performed at his duty station as an Interventional Radiology Staff Nurse, amounted to as many as 2.5 hours of weekly overtime work. At no time have Defendants

compensated Plaintiff Stauffer at the rate of 1.5 times his regular base rate of pay when his On-Call Work, combined with work performed at his duty station, exceeded forty hours in a given week.

112. During the week of December 13-19, 2015, Plaintiff Stauffer performed approximately 24 hours of work at his duty station at SERMC and performed an additional .5 hours of On-Call Work, bringing the total number of hours worked in that week to 24.5. Defendants paid Plaintiff Stauffer no more than \$4.00/hour for this On-Call Work, less than minimum wage for these .5 hours of overtime On Call Work.

113. During the week of April 24 to April 30, 2016, Plaintiff Stauffer performed 41 hours of work at his duty station at SERMC and performed at least an additional 20 minutes of On-Call Work. Defendants paid Plaintiff Stauffer no more than \$4.00/hour for this On-Call Work, less than the rate of time-and-a-half his base rate of pay, and less than minimum wage, for these additional hours of overtime On Call Work.

#### **IV. CommonSpirit's Liability for CHI's Violations**

114. Under the FLSA, a succeeding employer may be responsible for a predecessor's liabilities where: (1) the alleged successor was a "bona fide" successor; (2) the alleged successor had notice of the potential FLSA liability; and (3) the predecessor employer is not able to provide complete relief. Whether a succeeding employer is a "bona fide" successor depends on (1) whether there was substantial continuity of business operations between the predecessor and successor; (2) the extent to which the alleged successor used the same plant and/or facilities that the predecessor used; (3) the extent of the successor's use of the same or substantially the same workforce; (4) the existence of the same jobs under the same conditions; (5) whether the supervisors in the predecessor

carried over to the successor; (6) the successor's use of the same machinery, equipment, and methods of production; and (7) whether the alleged successor provided the same product or service to its customers.

**(a) CommonSpirit is CHI's Bona Fide Successor**

115. There is a substantial continuity of business operations between CommonSpirit and CHI. CommonSpirit was formed on January 28, 2019, when CHI filed Amended and Restated Articles of Incorporation with the Colorado Secretary of State that changed CHI's name to "CommonSpirit Health." According to materials submitted to the California Attorney General in support of the Dignity-CHI Merger, the Merger was accomplished "primarily through the reorganization and renaming of CHI's current corporation." CommonSpirit is governed by 12 directors drawn from Dignity and CHI's respective boards of directors, plus the CEOs of Dignity and CHI, who act as co-CEOs of Common Spirit. "Substantially all of CHI's regional and hospital corporations" were merged into CommonSpirit as part of the merger. According to a document bearing the trademarks of both CHI and Dignity, entitled "CHI – Dignity Health Definitive Agreement Announcement Merger FAQ" and dated December 6, 2017 (hereinafter, "Merger FAQ"), CHI and Dignity "do not anticipate any changes to" their "legacy organizations, joint ventures, joint operating agreements, and partnerships . . . as a result of the combination at this time."

116. CommonSpirit uses the same plant and facilities as CHI. According to the Merger FAQ, "there are no current plans to close any facilities as a result of the [Dignity-CHI] combination." After the merger, CommonSpirit owns and operates the hospitals and other healthcare facilities that previously were owned and operated by CHI.

117. CommonSpirit uses substantially the same workforce and maintains the same jobs, under the same conditions, as CHI. No significant layoffs have occurred at former CHI hospitals since the merger and CommonSpirit has not announced plans to carry out any major staffing changes.

118. CommonSpirit continued the supervisory positions that were maintained by CHI at its hospitals and healthcare facilities before the merger. All Plaintiffs and, upon information and belief, substantially all members of the Class and Collective are supervised by the same people as before the CHI/Dignity merger.

119. CommonSpirit uses the same equipment and facilities as were employed by CHI at its hospitals and healthcare facilities before the merger. According to the Merger FAQ, “[t]here are no plans to sell or transfer any assets of Catholic Health Initiatives or Dignity Health as a result of the combination.”

120. CommonSpirit provides the same service to its patients as provided by CHI. According to the Merger FAQ, patients at CommonSpirit hospitals and healthcare facilities “will continue to receive high-quality care at the hospitals and facilities in their communities.” CHI and Dignity “do not anticipate any disruption in service or access as a result of the combination.” CommonSpirit continues to accept the same insurance coverage for its services as CHI and Dignity did before the merger.

**(b) CommonSpirit Had Notice of CHI’s Potential Liability**

121. CommonSpirit had adequate notice of CHI’s potential liability for unpaid minimum wages and overtime for On-Call Work performed. The 2017 Policy, on its face, recognized that On-Call Work must be compensated under federal and Nebraska labor law. The 2017 Policy required CHI to pay nurses who performed On-Call Work at the

rate of “one- and one-half times the regular base rate in 15-minute increments.”

CommonSpirit was formed by CHI filing amended Articles of Incorporation with the Colorado Secretary of State changing CHI’s name to “CommonSpirit Health.” According to documents submitted to the California Attorney General in support of the Merger, CommonSpirit was formed “primarily through the reorganization and renaming of CHI’s current corporation.” According to the same documents, CommonSpirit assumed CHI’s existing debts and liabilities in the Merger. One of CommonSpirit’s two co-CEOs is the former CEO of CHI, and half of CommonSpirit’s board of directors is composed of former CHI board members. After the merger, CommonSpirit has retained substantially the same supervisory employees in the roles they occupied prior to the Merger.

CommonSpirit’s Board of Directors includes six members of CHI’s former Board. CHI’s CEO is one of CommonSpirit’s two Co-CEOs. All three employees who signed and issued the 2017 Policy — (1) Erin Micanek, a Division Compensation Manager, (2) Carolyn Macfarlane, a Document Analyst, and (3) Nancy Wallace, the Senior Vice President and Chief Human Resources Officer — continue to be employed in these positions. Prior to the merger, and as detailed in Part IV, *infra*, several of the named Plaintiffs repeatedly complained to their supervisors about the amount of time they were spending performing On-Call Work and that they were undercompensated for this work. Because CommonSpirit is managed by the same people as managed CHI, agreed to assume CHI’s liabilities, and was formed through a merger rather than an acquisition by an arm’s-length purchaser, CommonSpirit had sufficient notice of nurses’ potential claim that On-Call Work must be compensated according to Nebraska and federal wage and hour law and the terms of 2017 On-Call Work Policy.

**(c) CHI Is Unable to Afford Complete Relief**

122. According to materials submitted to the California Attorney General in support of the Dignity-CHI Merger, “[s]ubstantially all of CHI’s regional and hospital corporations” were merged into CommonSpirit as part of the merger and CommonSpirit assumed CHI’s existing liabilities. Because CommonSpirit assumed CHI’s assets and liabilities as part of the Merger, CHI no longer holds assets independent of CommonSpirit that could be used to satisfy a judgment in favor of Plaintiffs, the Collective, and the Class and Subclasses. Further, because CommonSpirit has assumed managerial responsibility for CHI’s hospitals and operations, CHI cannot provide the injunctive relief requested on behalf of Plaintiffs, the Collective, and the Class and Subclasses.

**V. Defendants’ Violations Were Willful**

123. CHI, CHI Health, and CommonSpirit were aware that On-Call Work is subject to the statutory minimum wage, overtime, and recordkeeping requirements imposed by the FLSA, the NWA, and the NWPCA. The 2017 Policy recognized that On-Call Work must be compensated pursuant to these statutory minimums. In particular, the 2017 Policy required that On-Call Work be compensated at the rate of “one and one-half times the regular base rate in 15-minute increments,” and further required that time spent performing On-Call Work be recorded and records of this time preserved by Defendants. Thus, the 2017 Policy recognized that On-Call Work qualifies, not only for the statutory minimum wage, but for time-and-a-half nurses’ “regular base rate.”

124. Before the Merger, several named Plaintiffs repeatedly complained to their supervisors about the amount of On-Call Work they were required to perform and that they were undercompensated for performing this work. For example:

a. No later than February of 2016, Plaintiff Walkinshaw complained to her supervisor, Sarah Schultz, the Supervisor of Radiology at SERMC, that she and other nurses typically receive several phone calls from work each weekend and that nurses should be compensated for receiving these calls and performing related work. Ms. Schultz permitted Ms. Walkinshaw to record active work time for On-Call Work that Ms. Walkinshaw performed on one weekend, but never permitted her to record such On-Call Work after that.

b. No later than January of 2017, Plaintiff Stauffer also notified his supervisor, Sarah Schultz, that Plaintiffs were not being compensated adequately for On-Call Work.

c. In August of 2018, Plaintiff Heather Nabity presented the 2017 Policy to her supervisor, Jesse Thomas, Director of Radiology at SERMC, and inquired why nurses were not being compensated according to the terms of the Policy. Thomas said he would contact the human resources department “for clarification.”

d. On or about the week of September 3, 2018, Plaintiff Nabity reported to Mr. Thomas that Plaintiff Tysha Bryant had performed On-Call Work over the preceding weekend and requested that Bryant be paid for it pursuant to the 2017 Policy. Mr. Thomas refused.

e. In early September of 2018, Plaintiffs Bryant and Ellwanger called the Human Resources (“HR”) Department at CHI/CommonSpirit. Although their call went unanswered, they left a message with the national HR department of CHI/CommonSpirit noting their complaint that they were not being compensated per the 2017 Policy for On-Call Work.

f. On October 1-4, 10, and 17, 2018, Plaintiff Endicott sent emails and placed phone calls with the HR Departments of SERMC, CHI Health, and CHI/CommonSpirit regarding Defendants’ failure to pay adequately for On-Call Work.

g. Plaintiffs Endicott and Martin met with Jesse Thomas on October 17, 2018. During the meeting, Mr. Thomas stated that nurses “will be getting paid for the on-call phone calls,” and discussed with Plaintiffs in detail how their On-Call Work time should be recorded and compensated. In particular, Mr. Thomas stated that nurses’ On-Call Work “will always be rounded up to 15-minute increments of time and a half.” During the meeting, Plaintiff Endicott specifically asked Mr. Thomas if Plaintiff Bryant would be getting paid for the On-Call Work she had performed over Labor Day Weekend that year. Mr. Thomas confirmed that Ms. Bryant would be getting paid for that On-Call Work. Plaintiff Endicott further asked if she would be paid for phone calls she had taken during the weekend of September 30, 2018. Mr. Thomas replied: “Yes. Actually, HR is asking me to go back two years for back pay.” However, at no time did Defendants follow through on this promise to compensate Ms. Bryant and Ms. Endicott as Mr. Thomas confirmed they would do.

h. Between October 18, 2018 and February 5, 2019, Plaintiffs corresponded at least thirteen additional times with representatives of the HR Departments of SERMC, CHI Health, CHI/CommonSpirit, and/or with their immediate supervisors regarding Defendants' failure to compensate them for On-Call Work. In some of this correspondence, Plaintiffs specifically referenced the straight-time and overtime requirements of the FLSA.

i. On Thursday, June 6, 2019, Mr. Thomas convened a meeting with nurses employed at SERMC to announce that Defendants are abandoning their policy of requiring nurses to perform On-Call Work. He provided no further information at the meeting about his previous statements on October 17, 2018 that nurses employed at SERMC would be compensated at minimum wage and time-and-a-half for On-Call Work they had already performed, including his statement on October 17, 2018 that "HR is asking me to go back two years for back pay."

125. CommonSpirit's Board of Directors includes six members of CHI's former Board. CHI's CEO is one of CommonSpirit's two Co-CEOs. All three employees who signed and issued the 2017 Policy — (1) Erin Micanek, a Division Compensation Manager, (2) Carolyn Macfarlane, a Document Analyst, and (3) Nancy Wallace, the Senior Vice President and Chief Human Resources Officer— continue to be employed in these positions. Despite their knowledge that On-Call Work was required to be compensated at the statutory minimum wage required by the NWhA and the NWPCA, and at the overtime rate required by the FLSA, CHI and CommonSpirit at all times failed to compensate Plaintiffs, the Class and Subclasses, and the Collective as required by federal and Nebraska law, in knowing and willful violation of these requirements.

126. Despite their awareness that On-Call Work is subject to the recordkeeping requirements of the Fair Labor Standards Act, 29 U.S.C. § 211(c), Defendants have at all times failed to maintain records of On-Call Work performed by Plaintiffs, the Collective, and the Class and Subclasses that distinguish On-Call Work from general on-call time. By failing to record, report, and/or preserve records of hours worked by Plaintiffs and the Collective, Defendants have failed to make, keep, and preserve records with respect to their employees sufficient to determine their wages, hours, and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, et seq., including 29 U.S.C. § 211(c) and § 215(a).

**COUNT I**  
**Violations of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 207**  
**(On Behalf of the Collective)**

127. The foregoing paragraphs are incorporated as if fully set forth herein.

128. The Fair Labor Standards Act (FLSA) requires all employers engaged in interstate commerce to pay their non-exempt employees who work for more than forty hours per week time-and-a-half the employees' normal base rate of pay. *Id.* § 207.

129. From at least February 6, 2015 through the present, CommonSpirit, CHI Health, and SERMC have been and continue to be an employer engaged in interstate commerce and/or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203. CommonSpirit, CHI Health, and SERMC jointly and severally perform employment-related functions such as: (1) having and exercising the power to hire and fire nurses, (2) supervising and controlling nurses' work schedule or conditions of employment, (3) determining the rate and method of nurses' payment, and (4) maintaining payroll and other employment records of Plaintiffs and the Collective.

130. In addition, before January 31, 2019, CHI was the sole corporate member or the controlling shareholder of all of its affiliated hospitals and healthcare facilities in Nebraska and Iowa. Since January 31, 2019, CommonSpirit has assumed CHI's role as the sole corporate member or controlling shareholder of all its affiliated hospitals and healthcare facilities in Nebraska and Iowa. Due to its performance of these functions and its ownership and control over its affiliates, CommonSpirit is the "employer" of Plaintiffs and the Class within the meaning of 29 U.S.C. § 203(d).

131. At all relevant times, CommonSpirit, CHI Health, and SERMC had gross operating revenues in excess of \$500,000.

132. Plaintiffs and members of the Collective are employees of Defendants within the meaning of 29 U.S.C. § 203(e) that are not subject to any of the exemptions provided under 29 U.S.C. § 213.

133. The FLSA's minimum-wage and overtime requirements apply to "work" performed by employees. An employee's time constitutes "work" if it is time spent predominantly for the benefit of the employer.

134. The time spent by nurses performing On-Call Work is time spent predominantly for Defendants' purposes. This On-Call Work consists of responding to telephone calls, emails, and text messages relating to patient services and answering patient questions. On-Call Work also includes the work involved in preparing for, responding to, and following up on these calls, emails, and text messages. This On-Call Work is time-consuming and could occupy as many as 2-3 hours, or more, of a nurse's 14-hour on-call shift during the week, and as many as 15 hours during 50.5-hour weekend on-call shifts. Responding to at-home calls occupies the nurses' entire attention;

they are unable to perform other work (and are expressly prohibited by the On-Call Work Policy from working in other departments) or to use the time spent responding to these calls for their family obligations or personal pursuits.

135. CommonSpirit, CHI Health, and SERMC violated and continue to violate the FLSA by failing to pay Plaintiffs and the Collective the overtime pay required by 42 U.S.C. § 207 when their work performed at their duty station combined with their On-Call Work exceeds forty hours in a given week. At all relevant times, CommonSpirit, CHI Health, and SERMC failed to count On-Call Work in computing Plaintiffs' and the Collective's overtime compensation, and failed to pay Plaintiffs and the Collective for hours of On-Call Work that, by themselves or in combination with work performed at their work stations, amounted to more than forty hours per week. By failing to compensate Plaintiffs and the Collective at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, CommonSpirit, CHI Health, and SERMC violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. § 207(a)(1).

136. As detailed in Part V, *supra*, CommonSpirit, CHI Health, and SERMC's violations of 29 U.S.C. § 206 & 207 were willful within the meaning of 29 U.S.C. § 255(a).

137. As a result of Defendants' failure to pay the overtime compensation required by the FLSA for On-Call Work, the named Plaintiffs and the Collective have sustained lost wages and interest on wages.

**COUNT II**

**For Violations of the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 48-1231, and Nebraska Wage and Hour Act, Neb. Rev. Stat. §§ 48-1203 & 48-1206 (On Behalf of the Class)**

138. The foregoing paragraphs are incorporated as if fully set forth herein.

139. The Nebraska Wage and Hour Act (“the NWhA”), Neb. Rev. Stat. § 48-1203, requires all employers to pay their employees a minimum wage, according to the following schedule:

a. Seven dollars and twenty-five cents per hour through December 31, 2014;

b. Eight dollars per hour on and after January 1, 2015, through December 31, 2015; and

c. Nine dollars per hour on and after January 1, 2016.

140. Under the NWhA, Neb. Rev. Stat. § 48-1206(4), any employer who violates any provision of § 48-1203 shall be liable to the employees affected in the amount of their unpaid minimum wages, as the case may be.

141. Pursuant to the NWhA, Neb. Rev. Stat. § 48-1206(5), action to recover unpaid minimum wages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself, herself, or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. Pursuant to § 48-1206(5), the court in which any action is brought under this subsection shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney's fees to be paid by the defendant.

142. The Nebraska Wage Payment and Collection Act (“the NWPCA”), Neb. Rev. Stat. § 48-1230(1), requires each employer to pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee.

143. Under the NWPCA, Neb. Rev. Stat. §48-1231(1), an employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. Under § 48-1231(1), an employee denied full and timely payment of wages is entitled to recover the full amount of the judgment and all costs of such suit as well as attorneys’ fees. The wages at issue herein have been due and owing to Plaintiffs for more than 30 days after the regularly scheduled payday in which the wages should have been paid.

144. Plaintiffs and, upon information and belief, all members of the Class were scheduled to be paid all wages owed them by Defendants on a bi-weekly basis.

145. CommonSpirit, CHI Health, and SERMC violated Neb. Rev. Stat. § 48-1203 by paying Plaintiffs and the Class no more than \$4.00/hour for On-Call Work performed from at least February 6, 2015 through the present. Defendants violated Neb. Rev. Stat. §§ 48-1203, 48-1230, and failing to pay Plaintiffs and the Class at least the full minimum wage to which they are entitled within thirty days of the regular payday on which such wages were due. The wages at issue herein have been due and owing to Plaintiffs for more than 30 days after the regularly scheduled payday in which the wages should have been paid.

146. The named Plaintiffs and the Class have sustained lost wages and pre- and post-judgment interest on wages and have incurred attorney’s fees and costs in bringing this action.

**COUNT III**

**For Violations of the Nebraska Wage Payment and Collection Act,  
Neb. Rev. Stat. § 44-1228, *et seq*,  
(On Behalf of the 2017 Policy Subclass)**

147. The foregoing paragraphs are incorporated as if fully set forth herein.

148. The Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 48-1230(1), provides that “each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee.”

149. The NWPCA, Neb. Rev. Stat. § 48-1231(1), provides that “an employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court.” The statute provides that an employee denied full and timely payment of wages “shall be entitled to recover the full amount of the judgment and all costs of such suit” as well as attorneys’ fees.

150. The NWPCA defines “wages” to include “compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis.” Neb. Rev. Stat. § 48-1229(6).

151. From at least June 1, 2017 until September 30, 2018, pursuant to the 2017 On-Call Policy, Defendants agreed to and were obligated to pay Plaintiffs and 2017 Policy Subclass for On-Call Work at the rate of “one and one-half times the regular base rate in 15-minute increments.”

152. By its written terms, the 2017 Policy applied to nurses employed at the following hospitals and facilities: Creighton University Medical Center; Good Samaritan

Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha; Midlands Hospital in Papillion, Nebraska; Saint Elizabeth Medical Center in Lincoln, NE; and Saint Francis Hospital in Grand Island, Nebraska.

153. Defendants performed every aspect of the 2017 Policy as it was written, with the exception of the provision requiring Defendants to pay nurses at the rate of “one and one-half times the regular base rate in 15-minute increments” for On-Call Work performed. Specifically, Defendants and the Subclass adhered to each and every one of the following provisions of the 2017 Policy:

- a. Nurses were required to provide, and did provide, a telephone number at which they could be reached or carry a beeper;
- b. Defendants prohibited nurses from being on-call in one department while working in another department;
- c. Defendants required nurses to report to their designated work area within 30 minutes of being called to work and enforced that requirement;
- d. Pursuant to the written terms of the Policy, nurses refrained from engaging in any conduct while On-Call that would inhibit their ability to perform their work;
- e. Pursuant to the written terms of the Policy, nurses remained available at all hours of the day or night to properly take and respond to calls and/or call back to the hospital;
- f. Pursuant to the written terms of the Policy, Defendants paid nurses at the rate of time-and-a-half their hourly rate of pay when nurses were called

back to their work-station from an on-call status, beginning at the time the nurse arrived at his/her workstation.

g. Pursuant to the written terms of the Policy, Defendants did not pay nurses mileage for travel to and from their workstations when called to work from an on-call status.

h. Pursuant to the written terms of the Policy, Defendants paid nurses time-and-a-half when called back to work from an on-call status only if the nurse had, prior to being on-call, clocked out and physically left the premises of their workstation;

i. Pursuant to the written terms of the Policy, Defendants paid nurses who were called back from an on-call status a minimum of two hours' pay and, if the nurses worked longer than two hours, time-and-a-half for the entire shift;

j. Pursuant to the written terms of the Policy, Defendants paid nurses shift, weekend, and holiday premium differentials for hours worked after being called back from an on-call status, regardless of the number of hours worked;

k. Pursuant to the written terms of the Policy, Defendants paid nurses call-back pay only if they were on-call and off work premises when they were called back;

l. Pursuant to the written terms of the Policy, Defendants paid nurses in a "call-back guarantee period" time-and-a-half up until the beginning of their regular-scheduled shift.

m. Pursuant to the written terms of the Policy, if a nurse was called in more than once within a 45-minute period while on-call, Defendants would pay

the nurse one-and-one half times the base rate of pay without also paying the nurse the two-hour guaranteed minimum that would apply under the Policy if the nurse had been called back less frequently; however, if the nurse was called back 45 minutes or more after the last time s/he was called back, Defendants paid him/her a new two-hour guaranteed minimum, per the written terms of the 2017 Policy.

n. Pursuant to the written terms of the Policy, if a nurse clocked in less than 38 minutes before the regular start of his or her shift, Defendants paid the nurse regular straight-time instead of call-back pay.

o. Pursuant to the written terms of the Policy, Defendants generally discouraged nurses from working more than 16 hours in a row.

p. Pursuant to the written terms of the Policy, Defendants applied federal and state withholding tax deductions to call-back pay.

154. Despite the written terms of the 2017 Policy, for the period from at least June 1, 2017 through September 30, 2018, Defendants did not pay Plaintiffs and the Subclass for their On-Call Work at the agreed-upon rate of one and one-half times the regular base rate in 15-minute increments.

155. Plaintiffs and, upon information and belief, all members of the Subclass were scheduled to be paid all wages owed them by Defendants on a bi-weekly basis.

156. By failing to pay wages at the agreed-upon rate of one and one-half times the regular base rate in 15-minute increments within thirty days of the regular payday on which such wages were due, Defendants violated the NWPCA, § 48-1230.

157. The named Plaintiffs and the Class have sustained lost wages and pre- and post-judgment interest on wages and have incurred attorney's fees and costs in bringing this action.

**COUNT IV**  
**Breach of Contract**  
**(On Behalf of the 2017 Policy Subclass)**

158. The foregoing paragraphs are incorporated as if fully set forth herein.

159. Under Nebraska law, the elements of a breach of contract claim are: (1) the existence of a contract, (2) breach of the contract, and (3) damages which flow from the breach. The existence of a contract may be determined from the presence of a writing and from the conduct of the parties, the language used, the acts done by them, or other pertinent circumstances surrounding the transaction.

160. By its written terms, the 2017 Policy was in effect from at least June 1, 2017 through September 30, 2018. The 2017 Policy required Defendants to pay on-call nurses who perform “work relating to the principle activities of [their] position[s] that can be taken care of with a phone call or access to work from one” at the rate of “one and one-half times the regular base rate in 15-minute increments.”

161. By its written terms, the 2017 Policy applied to nurses employed at the following hospitals and facilities: Creighton University Medical Center; Good Samaritan Hospital in Kearney, Nebraska; Immanuel Hospital in Omaha, Nebraska; Lakeside Hospital in Omaha; Midlands Hospital in Papillion, Nebraska; Saint Elizabeth Medical Center in Lincoln, NE; and Saint Francis Hospital in Grand Island, Nebraska.

162. Defendants performed every aspect of the 2017 Policy as it was written, with the exception of the provision requiring Defendants to pay nurses at the rate of “one

and one-half times the regular base rate in 15-minute increments” for On-Call Work performed. Specifically, Defendants and the 2017 Policy Subclass adhered to each and every one of the following provisions of the 2017 Policy:

- a. Nurses were required to provide, and did provide, a telephone number at which they could be reached or carry a beeper;
- b. Defendants prohibited nurses from being on-call in one department while working in another department;
- c. Defendants required nurses to report to their designated work area within 30 minutes of being called to work and enforced that requirement;
- d. Pursuant to the written terms of the Policy, nurses refrained from engaging in any conduct while On-Call that would inhibit their ability to perform their work;
- e. Pursuant to the written terms of the Policy, nurses remained available at all hours of the day or night to properly take and respond to calls and/or call back to the hospital;
- f. Pursuant to the written terms of the Policy, Defendants paid nurses at the rate of time-and-a-half their hourly rate of pay when nurses were called back to their work-station from an on-call status, beginning at the time the nurse arrived at his/her workstation.
- g. Pursuant to the written terms of the Policy, Defendants did not pay nurses mileage for travel to and from their workstations when called to work from an on-call status.

h. Pursuant to the written terms of the Policy, Defendants paid nurses time-and-a-half when called back to work from an on-call status only if the nurse had, prior to being on-call, clocked out and physically left the premises of their workstation;

i. Pursuant to the written terms of the Policy, Defendants paid nurses who were called back from an on-call status a minimum of two hours' pay and, if the nurses worked longer than two hours, time-and-a-half for the entire shift;

j. Pursuant to the written terms of the Policy, Defendants paid nurses shift, weekend, and holiday premium differentials for hours worked after being called back from an on-call status, regardless of the number of hours worked;

k. Pursuant to the written terms of the Policy, Defendants paid nurses call-back pay only if they were on-call and off work premises when they were called back;

l. Pursuant to the written terms of the Policy, Defendants paid nurses in a "call-back guarantee period" time-and-a-half up until the beginning of their regular-scheduled shift.

m. Pursuant to the written terms of the Policy, if a nurse was called in more than once within a 45-minute period while on-call, Defendants would pay the nurse one-and-one half times the base rate of pay without also paying the nurse the two-hour guaranteed minimum that would apply under the Policy if the nurse had been called back less frequently; however, if the nurse was called back 45 minutes or more after the last time s/he was called back, Defendants paid

him/her a new two-hour guaranteed minimum, per the written terms of the 2017 Policy.

n. Pursuant to the written terms of the Policy, if a nurse clocked in less than 38 minutes before the regular start of his or her shift, Defendants paid the nurse regular straight-time instead of call-back pay.

o. Pursuant to the written terms of the Policy, Defendants generally discouraged nurses from working more than 16 hours in a row.

p. Pursuant to the written terms of the Policy, Defendants applied federal and state withholding tax deductions to call-back pay.

163. The 2017 Policy was signed by CHI Health employees who, upon information and belief, had the apparent and actual authority to issue the Policy on behalf of Defendants. Erin Micanek, a Division Compensation Manager employed by CHI Health, issued the Policy. The Policy was signed and approved by: (1) Carolyn Macfarlane, a Document Analyst at CHI Health, (2) Nancy Wallace, the Senior Vice President and Chief Human Resources Officer of CHI Health, and (3) Micanek, all of whom were CHI Health employees when the Policy was issued, and all of whom have continued to be employed in the same positions since the Dignity-CHI Merger forming CommonSpirit.

164. Defendants and the nurses honored and adhered to each and every one of these provisions of the 2017 Policy as contractual commitments from June 1, 2017 to September 30, 2018. As such, Defendants and the nurses at facilities covered by the Policy treated the Policy as stating contractual terms that were mutually assented to and

that governed Defendants' and the nurses' performance of their respective obligations as employer and employee.

165. Despite the contractual nature of the 2017 Policy, Defendants at all times failed to adhere to the provision of the 2017 Policy which stated that "work relating to the principle activities of [nurses'] position[s] that can be taken care of with a phone call or access to work from one" would be paid at the rate of "one and one-half times the regular base rate in 15-minute increments." As such, Defendants breached their contractual commitment under the terms of the 2017 Policy to pay nurses at the rate of time-and-a-half for On-Call Work performed.

166. As a result of Defendants' breach of its contract, Plaintiffs and the 2017 Policy Subclass have received lower hourly compensation for On-Call Work.

#### **COUNT V**

#### **For Violations of the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 44-1228, *et seq.*, (On Behalf of the 2016 Policy Subclass )**

167. The foregoing paragraphs are incorporated as if fully set forth herein.

168. The Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 48-1230(1), provides that "each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee."

169. The NWPCA, Neb. Rev. Stat. § 48-1231(1), provides that "an employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court." The statute provides that an employee denied full and timely payment of wages "shall be entitled to recover the full amount of the judgment and all costs of such suit" as well as attorneys' fees.

170. The NWPCA defines “wages” to include “compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis.” Neb. Rev. Stat. § 48-1229(6).

171. From at least March 1, 2016 until May 31, 2017, pursuant to the 2016 On-Call Policy or a policy similar to it, Defendants agreed to and were obligated to pay Plaintiffs and 2016 Policy Subclass for On-Call Work “a guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times base rate.”

172. Defendants performed every aspect of the 2016 Policy as it was written, with the exception of the provision requiring Defendants to pay nurses “a guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times base rate” for On-Call Work performed. Specifically, Defendants and the 2016 Policy Subclass adhered to each and every one of the following provisions of the 2016 Policy:

- a. Nurses were required to remain at a location where they could be reached by telephone or pager;
- b. Defendants required nurses to immediately return call to the hospital;
- c. Defendants required nurse to return to the hospital within 30 minutes of being called to work and enforced that requirement;

d. Pursuant to the written terms of the Policy, nurses remained available at all hours of the day or night to properly take and respond to calls and/or call back to the hospital;

e. Pursuant to the written terms of the Policy, Defendants paid nurses at the rate of time-and-a-half their hourly rate of pay when nurses were called back to their work-station from an on-call status;

f. Pursuant to the written terms of the Policy, Defendants paid nurses who were called back from an on-call status a minimum of two hours' pay;

g. Pursuant to the written terms of the Policy, Defendants paid nurses shift, weekend, and holiday premium differentials for hours worked after being called back from an on-call status, regardless of the number of hours worked;

h. Pursuant to the written terms of the Policy, if a nurse was called in more than once within a 45-minute period while on-call, Defendants would pay the nurse one-and-one half times the base rate of pay without also paying the nurse the two-hour guaranteed minimum that would apply under the Policy if the nurse had been called back less frequently; however, if the nurse was called back 45 minutes or more after the last time s/he was called back, Defendants paid him/her a new two-hour guaranteed minimum, per the written terms of the 2016 Policy.

i. Pursuant to the written terms of the Policy, if a nurse was scheduled to be on call immediately after a regular shift and continued working into the on call schedule, Defendants would pay the nurse regular pay.

j. Pursuant to the written terms of the Policy, if a nurse clocked in less than 38 minutes before the regular start of his or her shift, Defendants paid the nurse regular straight-time instead of call-back pay.

173. Despite the written terms of the 2016 Policy, for the period from at least March 1, 2016 through May 31, 2017, Defendants did not pay Plaintiffs and the Subclass for their On-Call Work the agreed-upon guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times the regular base rate.

174. Plaintiffs and, upon information and belief, all members of the Subclass were scheduled to be paid all wages owed them by Defendants on a bi-weekly basis.

175. By failing to pay wages in the amount of the agreed-upon guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times the regular base rate, within thirty days of the regular payday on which such wages were due, Defendants violated the NWPCA, § 48-1230.

176. The named Plaintiffs and the Subclass have sustained lost wages and pre- and post-judgment interest on wages and have incurred attorney's fees and costs in bringing this action.

**COUNT VI**  
**Breach of Contract**  
**(On Behalf of the 2016 Policy Subclass)**

177. The foregoing paragraphs are incorporated as if fully set forth herein.

178. Under Nebraska law, the elements of a breach of contract claim are: (1) the existence of a contract, (2) breach of the contract, and (3) damages which flow from the breach. The existence of a contract may be determined from the presence of a writing

and from the conduct of the parties, the language used, the acts done by them, or other pertinent circumstances surrounding the transaction.

179. By its written terms, the 2016 Policy was in effect from at least March 1, 2016 through May 31, 2017. The 2016 Policy required Defendants to pay on-call nurses who perform work “over the phone or remotely without coming in to the facility” in the amount of “a guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times base rate.”

180. Defendants performed every aspect of the 2016 Policy as it was written, with the exception of the provision requiring Defendants to pay nurses in the amount of “a guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times base rate.” Specifically, Defendants and the 2016 Policy Subclass adhered to each and every one of the following provisions of the 2016 Policy:

- a. Nurses were required to remain at a location where they could be reached by telephone or pager;
- b. Defendants required nurses to immediately return call to the hospital;
- c. Defendants required nurse to return to the hospital within 30 minutes of being called to work and enforced that requirement;
- d. Pursuant to the written terms of the Policy, nurses remained available at all hours of the day or night to properly take and respond to calls and/or call back to the hospital;

e. Pursuant to the written terms of the Policy, Defendants paid nurses at the rate of time-and-a-half their hourly rate of pay when nurses were called back to their work-station from an on-call status;

f. Pursuant to the written terms of the Policy, Defendants paid nurses who were called back from an on-call status a minimum of two hours' pay;

g. Pursuant to the written terms of the Policy, Defendants paid nurses shift, weekend, and holiday premium differentials for hours worked after being called back from an on-call status, regardless of the number of hours worked;

h. Pursuant to the written terms of the Policy, if a nurse was called in more than once within a 45-minute period while on-call, Defendants would pay the nurse one-and-one half times the base rate of pay without also paying the nurse the two-hour guaranteed minimum that would apply under the Policy if the nurse had been called back less frequently; however, if the nurse was called back 45 minutes or more after the last time s/he was called back, Defendants paid him/her a new two-hour guaranteed minimum, per the written terms of the 2016 Policy.

i. Pursuant to the written terms of the Policy, if a nurse was scheduled to be on call immediately after a regular shift and continued working into the on call schedule, Defendants would pay the nurse regular pay.

j. Pursuant to the written terms of the Policy, if a nurse clocked in less than 38 minutes before the regular start of his or her shift, Defendants paid the nurse regular straight-time instead of call-back pay.

181. Defendants and the nurses honored and adhered to each and every one of these provisions of the 2016 Policy as contractual commitments from March 1, 2016 to May 30, 2017. As such, Defendants and the nurses at facilities covered by the Policy treated the Policy as stating contractual terms that were mutually assented to and that governed Defendants' and the nurses' performance of their respective obligations as employer and employee.

182. Despite the contractual nature of the 2016 Policy, Defendants at all times failed to adhere to the provision of the 2016 Policy which stated that "[s]ituations where work can be taken care of over the phone or remotely without coming in to the facility will be paid a guaranteed minimum of 15 minutes or actual time worked, whichever is greater, at one and one-half times base rate." As such, Defendants breached their contractual commitment under the terms of the 2016 Policy to pay nurses at the rate of time-and-a-half for On-Call Work performed.

183. As a result of Defendants' breach of its contract, Plaintiffs and 2016 Policy Subclass have received lower hourly compensation for On-Call Work.

**COUNT VII**  
**Unjust Enrichment**  
**On Behalf of Both Subclasses**

184. The foregoing paragraphs are incorporated as if fully set forth herein.

185. Plaintiffs and both Subclasses were subject to Defendants' On-Call Policy and provided a service or benefit that was of value to Defendants and/or their patients by performing On-Call Work.

186. Plaintiffs and the Subclasses were not paid in accordance with Defendants' 2016 Policy and the 2017 Policy in effect at the time for the service or benefit or the

value of the service or benefit provided by Plaintiffs and the Subclasses to Defendants and/or their patients.

187. Defendants were unjustly enriched as a result of their retention of the value of the service or benefit provided by Plaintiffs and the Subclasses and/or their failure to pay wages to Plaintiffs and the Subclasses for the work they performed on Defendants' behalf.

188. As a result of Defendants' unjust enrichment, Plaintiffs and the Class have received lower hourly compensation for On-Call Work.

189. Justice and equity require Defendants to disgorge any benefit that Defendants unjustifiably obtained at Plaintiffs' and the Subclasses' expense.

#### **ENTITLEMENT TO RELIEF**

190. By paying Plaintiffs, the Collective, and the Class and Subclasses an hourly rate of between \$2.00 to \$4.00 per hour for On-Call Work performed, Defendants violated the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et. seq.*, the Nebraska Wage and Hour Act (WHA), Neb. Rev. Stat. §48-1201 *et. seq.*, the Nebraska Wage Payment and Collection Act (NWPCA), Neb. Rev. Stat. §48-1228 *et. seq.*, and their contractual obligations under the written terms of the On-Call Work Policy. Defendants' failure to maintain accurate records of On-Call Work performed by members of the Collective violates the recordkeeping requirements of the FLSA, 29 U.S.C. § 211(c).

191. CommonSpirit is liable both directly and as CHI's successor-in-interest after completion of the January 31, 2019 Merger. Substantially all of CHI's assets and liabilities were merged into CommonSpirit in the Merger. After the Merger, CommonSpirit continues to provide the same healthcare services at the same healthcare

facilities, using the same equipment and the same employees and supervisors as CHI did prior to the Merger. CommonSpirit continues to operate the hospitals and healthcare facilities that were formerly owned and controlled by CHI under their respective names.

192. Defendants' violations of the federal and state statutes in failing to pay nurses the statutory minimum wage and overtime while responding to at-home calls during on-call periods were willful. The 2017 Policy required nurses to be paid an hourly rate of time-and-a-half their normal rate of pay for time spent performing On-Call Work. Several of the named Plaintiffs have repeatedly complained that they are undercompensated for On-Call Work. Defendants recently acknowledged that the On-Call Policy violated state and federal wage-and-hour and contract law by stating that they will abandon the Policy's requirement that nurses perform On-Call Work. Therefore, Defendants knew, or were at least reckless with regard to the possibility that, On-Call Work falls within the protections of federal and state wage and hour laws.

193. All Plaintiffs have signed and filed with the Court Consents to Join in this litigation pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b). Dkt. Nos. 15-18.

194. Plaintiffs, the Class and Subclasses, and the Collective are entitled to lost wages, liquidated damages, attorney's fees, costs and any and all other relief allowed under law.

#### **PRAYER FOR RELIEF**

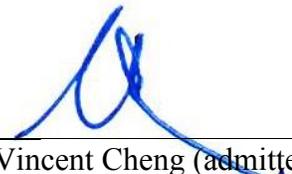
WHEREFORE, the named Plaintiffs and all others similarly situated respectfully request that this Court assume jurisdiction as to all counts alleged herein and grant the following relief:

- a. Declare Defendants' conduct to be violative of the legal rights of the named Plaintiffs, the Collective, and the Class and Subclasses;
- b. Enjoin Defendants and each of their officers, agents, successors, representatives, and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- c. Award Plaintiffs and the Collective Action Plaintiffs back wages for unpaid overtime compensation, and pre- and post-judgment interest, that are due and owing pursuant to 29 U.S.C. § 207;
- d. Award Plaintiffs and the Class back wages for unpaid minimum wages, and pre- and post-judgment interest, that are due and owing pursuant to Neb. Rev. Stat. §§ 48-1231, §§ 48-1203 & 48-1206;
- e. Award Plaintiffs and the Subclasses unpaid wages and damages, and pre- and post-judgment interest, that are due and owing pursuant to Neb. Rev. Stat. § 48-1231 and the 2016 Policy and the 2017 Policy;
- f. Require Defendants to disgorge any benefit that Defendants unjustifiably obtained at Plaintiffs' and the Subclasses' expense;
- g. Award civil penalties and liquidated damages pursuant to the FLSA, 29 U.S.C. § 216, and the NWPCA, Neb. Rev. Stat. §48-1232; and
- h. Award the Plaintiffs and all others similarly situated costs and reasonable attorney's fees, as provided by 29 U.S.C. § 216(b) and Neb. Rev. Stat. §48-1231 and
- i. Grant any such other and further relief to which Plaintiffs and the Class are entitled pursuant to Rule 54(c) of the Federal Rules of Civil Procedure or as the Court deems just and appropriate.

**JURY TRIAL DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure or any similar rule or law, Plaintiffs demand a trial by jury in Lincoln, Nebraska, for all causes of action and issues for which trial by jury is available.

Dated: August 10, 2020



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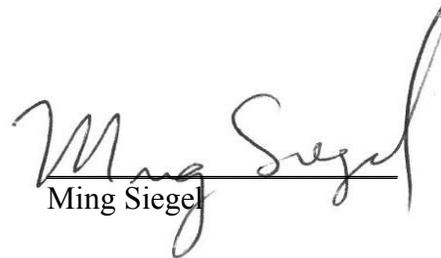
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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Ming Siegel, hereby certify that on August 10, 2020, a true and correct copy of the above and foregoing **SECOND AMENDED CLASS ACTION COMPLAINT** was electronically filed with the Clerk of the Court by using the CM/ECF system, which sends notice to the following counsel of record:

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Ming Siegel