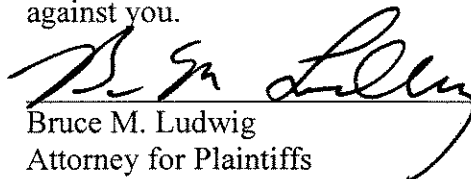


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 ATTORNEY FOR PLAINTIFFS  
 Additional Counsel Appeal on Signature Page

To Defendants:  
 You are hereby notified to file a written  
 response to the enclosed Amended  
 Complaint within twenty (20) days from  
 service hereof or a judgment may be entered  
 against you.

  
 Bruce M. Ludwig  
 Attorney for Plaintiffs

2007-01-15 11:2:37

TRACY BISHOP and :  
 PAMELA BROOKS and :  
 PEGGY CUNNINGHAM and :  
 NATIVIDAD REYES :

PLAINTIFFS, :

v. :

LEE'S INDUSTRIES, INC. d/b/a :  
 LEE'S CLEANING SERVICES, :  
 LEE'S COMPANIES, INC., and/or :  
 LEE'S HOME HEALTH SERVICES, :  
 and :  
 LEE'S HOME HEALTH SERVICES, INC., :  
 d/b/a LEE'S INDUSTRIES, INC. and/or :  
 LEE'S COMPANIES, INC. and NINA M. :  
 KINARD, President and CEO of Lee's :  
 Industries and ERIC LAMBACK, Vice :  
 President and Director of Operations of :  
 Lee's Industries, Inc., and President of :  
 Lee's Home Health Services, Inc. :

DEFENDANTS. :

COURT OF COMMON PLEAS  
 PHILADELPHIA COUNTY

JANUARY TERM 2007

NO. 1937

CIVIL ACTION-CLASS  
 ACTION AND ACTION FOR  
 DECLARATORY JUDGMENT

JURY TRIAL DEMANDED

**THIRD AMENDED CLASS ACTION COMPLAINT**

## PRELIMINARY STATEMENT

1. On behalf of a class of home health care workers, the named Plaintiffs seek redress for systematic and class wide underpayment of minimum wages and lack of overtime pay from Lee's Industries, Inc., a provider of home health care for the elderly and infirm in and around Philadelphia, Pennsylvania; from Lee's Home Health Services, Inc., a related entity which also provides home health care for the elderly and infirm in and around Philadelphia, Pennsylvania; from Nina M. Kinard, President and CEO of Lee's Industries, and Eric Lamback, Vice President and Director of Operations of Lee's Industries and President of Lee's Home Health Care, Inc.

2. This is a civil class action filed by Tracy Bishop, Pamela Brooks, Peggy Cunningham and Natividad Reyes, individually and on behalf of a class of home health care workers (hereinafter collectively known as "Plaintiffs") employed by Defendants, Lee's Industries, Inc., Lee's Home Health Services, Inc., Nina M. Kinard and Eric Lamback (hereinafter collectively known as "Defendants") for their consistent nonpayment and underpayment for work performed, in violation of the Pennsylvania Minimum Wage Act of 1968 ("PMWA"), 43 P.S. § 333.10 et seq., and the Pennsylvania Wage Payment Collection Law ("WPCL"), 43 P.S. § 260.1 et seq..

3. Defendants' unlawful practices, in violation of the PMWA and the WPCL, include their failure to pay Plaintiffs overtime at not less than one and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

4. Defendants also violated the PMWA and WPCL by not compensating Plaintiffs for time spent traveling to and between individual clients' homes where the Plaintiffs provided personal care, resulting in a failure to pay Plaintiffs for all hours worked. In some instances,

Defendants' failure to pay travel time resulted in Plaintiffs not receiving overtime premium pay for hours worked over forty (40) in a workweek. In all instances, Defendants' failure to pay any wages for travel time resulted in Plaintiffs receiving no wages for the time spent traveling, which violates the PMWA's requirement to pay minimum wage for all hours worked and the WPCL's requirement to pay wages when due. With respect to travel time, Defendants also violated the PMWA by failing to keep true and accurate records of the hours worked by each employee.

5. Plaintiffs seek their unpaid wages, liquidated damages, actual, incidental, consequential and compensatory damages, declaratory and injunctive relief, pre- and post-judgment interest, and attorneys' fees and costs.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action because Defendants operate their business in the Commonwealth of Pennsylvania and within Philadelphia County. Defendants have thereby obtained the benefits of the laws of the Commonwealth of Pennsylvania, clients residing in this Commonwealth, and the labor market of this Commonwealth.

7. Venue in this Court is proper under Rules 1006(a)(1), 1006(c)(1), and Rule 2179 of the Pennsylvania Rules of Civil Procedure. Defendants regularly conduct business in the Commonwealth of Pennsylvania and within Philadelphia County specifically. Moreover, much of the work which is the subject of Plaintiffs' claims, took place in Philadelphia County. Accordingly, Plaintiffs' causes of action arise in this venue.

8. Plaintiffs make no claims arising under federal law in this action. Rather, Plaintiffs bring causes of action based solely on, and arising from, Pennsylvania law. The claims of Plaintiffs and the Class are individual claims for violations of Pennsylvania law. These claims do not unite or enforce a single title or right to which Plaintiffs and the Class have a common and

undivided interest, but rather arise from Defendants' systematic wage abuse against its home health care workers in Pennsylvania.

9. This Court has inherent power to grant equitable relief in this civil action. See Pa. R.C.P. No. 1001(b). This Court is also empowered to grant declaratory relief pursuant to 42 Pa. C. S.A. § 7531 et seq. and Pa. R.C.P. No. 1602.

### PARTIES

10. Tracy Bishop, Pamela Brooks, Peggy Cunningham, and Natividad Reyes are home health care workers employed or previously employed by Defendants to work in and around Philadelphia, Pennsylvania to provide personal care and assistance to disabled and elderly clients of Defendants.

11. Plaintiff Tracy Bishop is a resident of Philadelphia. She worked for Defendants as a home health care worker for approximately ten (10) years, beginning in 1996 and ceasing employment with Defendants in approximately September 2006. At the direction of Defendants, she provided personal care and assistance to homebound elderly clients in Philadelphia based upon a schedule given to her by Defendants. She worked Monday through Friday, and every other weekend. As of January 2006, and after approximately ten years of employment, Ms. Bishop's regular rate of pay was \$7.75 per hour for hours worked during weekdays. At the time she ceased employment with Defendants, Ms. Bishop's regular rate of pay for weekday work was \$8.04 per hour. For weekend work, she was usually paid an additional twenty-five cents (\$.25) an hour. Without including the time she spent traveling to and between clients, Ms. Bishop regularly was assigned and worked more than forty (40) hours providing direct care to clients of Defendants. However, for those direct care hours in excess of 40, she received no

overtime premium from Defendants. Rather, she was paid for all direct care hours at her regular straight-time rates.

12. As part of her duties as an employee of Defendants, Ms. Bishop was required to spend time traveling to and between her assigned clients during the work day. Ms. Bishop typically was assigned three or four clients in a work day at their individual residences. Ms. Bishop regularly spent approximately thirty (30) minutes or more traveling to and between the homes of her assigned clients, which added hours to her work week. Ms. Bishop received no wages for any time spent traveling to and between her assigned clients. Defendants failed to record that travel time as hours worked.

13. Plaintiff Pamela Brooks is a resident of Chester, Pennsylvania. She was employed by Defendants from approximately February 2003 until August 2006 as a home health aide. At the direction of Defendants, she provided personal care and assistance to homebound elderly and infirm clients mostly in Delaware County, based upon a schedule provided by Defendants. As of approximately July 2006, Ms. Brooks had a regular rate of pay of \$9.18 per hour for work during weekdays. For weekend work, she was usually paid an additional twenty-five cents (\$.25) an hour. Without including the time she spent traveling between clients, Ms. Brooks often was assigned and worked in excess of forty (40) hours per week providing direct care to clients of Defendants. However, for those direct care hours beyond forty (40) in a workweek, she was not paid any overtime premium by Defendants. Rather, she was paid for direct care hours at her regular straight-time rates of pay.

14. Although Ms. Brooks' client schedule changed throughout her tenure with Defendants, she often was assigned two or more clients in a work day. As part of her duties as an employee of Defendants, Ms. Brooks was required to spend time traveling to and between her

assigned clients during the workday. She regularly spent approximately thirty (30) minutes or more traveling to and between the homes of her assigned clients. Ms. Brooks received no wages for the time she spent traveling to and between her assigned clients. Defendants failed to record that travel time as hours worked.

15. Plaintiff Peggy Cunningham is a resident of Philadelphia. She began her employment with Defendants as a home health aide in approximately March 2005. At the time of the filing of this Amended Complaint, she is still employed by Defendants. At the direction of Defendants, she provides personal care and assistance to homebound elderly and infirm clients in and around Philadelphia based upon a schedule provided by Defendants. Ms. Cunningham's current regular rate of pay, weekday work, is \$7.14 per hour for hour worked during the week. For weekend work, she was usually paid an additional twenty-five cents (\$.25) an hour. Without including the time Ms. Cunningham spent traveling to and between clients, she often was assigned work in excess of forty (40) hours per week providing direct care to clients of Defendants. However, for those direct care hours beyond forty (40) in a work week, she was not paid any overtime premium by Defendants. Rather, she was paid for all direct care hours at her regular straight time rates of pay.

16. Although Ms. Cunningham's schedule changed while employed with Defendants, she was often assigned two or more clients a day. As part of her duties as an employee of Defendants, she was required to spend time traveling to and between the homes of her assigned clients during her workday. Ms. Cunningham spent approximately thirty (30) minutes or more traveling to and between the residences of her assigned clients. She received no wages for the time she spent traveling during her normal workday to and between the homes of her assigned clients. Defendants also failed to record that travel time as hours worked.

17. Plaintiff Natividad Reyes is a resident of Philadelphia. She was employed by Defendants from approximately November 2004 until July 2006 as a home health aide. Her regular rate of pay during her employment was approximately \$7.00 per hour for hours worked during the week. For weekend work, Ms. Reyes would usually receive an additional twenty-five cents (\$.25) an hour. At the direction of Defendants, she provided personal care and assistance to homebound elderly and infirm clients in and around Philadelphia based upon the schedule provided by Defendants. Although Ms. Reyes' schedule changed while with Defendants, she often saw two or more clients a day. As part of her duties as an employee of Defendants, she was required to spend time traveling to and between the homes of her assigned clients during the workday. Ms. Reyes spent approximately thirty (30) minutes or more traveling to and between the residences of her assigned clients. Ms. Reyes received no wages for the time she spent traveling during her normal work day to and between the homes of her assigned clients. Defendants failed to record that travel time as hours worked.

18. As employees of Defendants, Plaintiffs were subject to a compensation policy, whereby their rate of pay for a pay period was retroactively reduced from their regular rates to the minimum wage (\$5.15 per hour prior to January 2007) if their weekly timeslips were not submitted and received by Defendants by Monday morning of the week following the pay period. Defendants' unilaterally imposed policy resulted in a substantial reduction in the compensation paid for such prior pay period.

19. At all times relevant to this action, Defendant Lee's Industries, Inc. was and is a closely held, for profit, domestic corporation formed in accordance with the laws of the Commonwealth of Pennsylvania, and conducting business in the Commonwealth of Pennsylvania, including Philadelphia County. While its registered office is at 3858 Pulaski

Avenue, Philadelphia, PA 19140, its principal office location and regular place of business is 5350 Belfield Avenue, Philadelphia, PA 19144.

20. Defendant Lee's Industries, Inc. does business as Lee's Cleaning Services, and/or Lee's Companies, Inc., even though those latter names are not registered in Pennsylvania. It also does business as Lee's Home Health Services, Inc., a subsidiary or related corporation. Lee's Industries, Inc., or entities under which it does business, provides home health care workers to medically needy seniors in the homes of those seniors, who reside in Pennsylvania, including in Philadelphia County.

21. At all times relevant to this action, Defendant Lee's Home Health Services, Inc., was and is a domestic business corporation formed under the laws of the Commonwealth of Pennsylvania, and conducts business in the Commonwealth of Pennsylvania, including Philadelphia County. Lee's Home Health Services, Inc. is a closely held for profit corporation. Its registered office and regular place of business is 245 N. 5<sup>th</sup> Street, Reading, PA 19601.

22. On information and belief, Lee's Home Health Services, Inc. is either a subsidiary of, an entity related to, or does business as, Lee's Industries, Inc., and is under common ownership and control. Lee's Home Health Services, Inc. also does business as Lee's Companies, Inc., an entity not registered with the Pennsylvania Corporation Bureau. Lee's Home Health Services, or entities under which it does business, provides home health care workers to medically needy seniors, in the homes of those seniors, who reside within the Commonwealth of Pennsylvania, including Philadelphia County.

23. At all times relevant to this action, Defendant Nina M. Kinard was the President and Chief Executive Officer of Lee's Industries, Inc. On information and belief, she is also a substantial shareholder in this closely held corporation. Her office or usual place of business is



at 5350 Belfield Avenue, Philadelphia, PA 19144. She resides at 9125 A. Ayrdale Crescent, Philadelphia, PA 19128. At all times relevant to this action, Defendant Kinard possessed and exercised operational control and policy making authority over Lee's Industries, Inc., including but not limited to control and authority over employment policies, compensation policies, budgets, employee wages, hours and schedules, client services, and contracts or agreements with public agencies.

24. At all times relevant to this action, Defendant Eric Lamback was the Vice President and Director of Operations for Lee's Industries, Inc. His office or usual place of business is 5350 Belfield Avenue, Philadelphia, PA 19144. He resides at 7813 Caversham Drive, Elkins Park, PA 19027. On information and belief, Eric Lamback is also a substantial stockholder in this closely held corporation. At all times relevant to this action, Defendant Lamback possessed and exercised policy making authority and operational control over Lee's Industries, Inc., including but not limited to control and authority over employment policies, compensation policies, employee wages, hours and schedules, client services and contracts or agreements with public agencies.

25. Defendant Eric Lamback is also the President and an incorporator of Defendant Lee's Home Health Services. On information and belief, he is also a substantial shareholder in this closely held corporation. At all times relevant to this action, Defendant Lamback possessed and exercised operational control and policy making authority over Lee's Home Health Services, including but not limited to control and authority over employment and compensation policies, employee wages, hours and schedules, client services, and contracts or agreements with public agencies to provide home care services.

26. At all relevant times to this action, Defendants, including individual Defendants Kinard and Lamback, “employed”, and were “employers” of, Plaintiffs and the class of home health care workers they seek to represent, as those terms are defined by the PMWA at 43 P.S. § 333.10 et seq. and the WPCL at 43 P.S. § 260.2a.

27. The acts of Defendants charged in this Amended Complaint were authorized, directed or done by Defendants Kinard and Lamback, individually or jointly, by themselves or by their agents, officers, employees or representatives, while actively engaged in the management of Defendants’ home care businesses in Pennsylvania.

### **CLASS ACTION ALLEGATIONS**

28. The individual Plaintiffs bring this case on behalf of a class of all current and former hourly paid home health care workers employed by Defendants in Pennsylvania for work performed during any time covered by this Amended Complaint (the “Class”). The time covered by this Amended Complaint (the “Class Period”) is anytime after three (3) years prior to the date the original Complaint was filed until the date of entry of judgment in this case. Plaintiffs bring these Class claims under Pennsylvania Rules of Civil Procedure 1701 et seq. and under §9.1 of the WPCL, 43 P.S. § 260.9a.

29. The persons in the Class are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts used to calculate that number are presently within the sole control of Defendants, upon information and belief, there are approximately 350 home health care workers employed by Defendants at the time of the Amended Complaint; over the years covered by this lawsuit, the number of class members increases due to turnover. Thus, Plaintiffs estimate a Class size of more than 1,000

individual home health care workers employed by Defendants in Pennsylvania during the Class Period.

30. The claims of the representative Plaintiffs are typical of the claims of the Class, because they are all hourly paid home health care employees of Defendants who sustained damages, including underpayment of wages, as a result of Defendants' common compensation policies and practices. The representative Plaintiffs will fairly and adequately protect the interests of the Class.

31. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

- (a) whether Defendants have and are engaged in a pattern or practice in Pennsylvania of not paying Plaintiffs overtime, that is, one and one half (1 ½ ) times their regular rate of pay for all hours worked in excess of forty (40) in a work week;
- (b) whether Defendants have and are engaged in a pattern or practice in Pennsylvania of not paying Plaintiffs for all hours worked in a day, specifically including time spent traveling to and between Defendants' clients;
- (c) whether Defendants are obligated to pay Plaintiffs for all time spent in traveling to and between Defendants' clients;
- (d) whether Defendants failed to keep true and accurate time records for all hours worked by Plaintiffs, as required by the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.108;

- (e) whether Defendants violated the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.101 et seq. by failing to pay Plaintiffs minimum wages and overtime wages for travel time;
- (f) whether Defendants violated the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq. by failing to pay Plaintiffs all wages due and owing, including minimum wages and overtime wages, in the proper pay period;
- (g) what is the proper measure of damages for the type of injury and losses commonly suffered by Plaintiffs.

32. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Treating this as a class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Class is readily identifiable from Defendants' records.

33. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the Defendants.

34. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impractical. Furthermore, the

amounts at stake for many of the Class members, while substantial, are not great enough to enable them to maintain separate suits against Defendants.

35. Defendants have acted, or failed to act, on grounds generally applicable to the Class.

36. Without a class action, Defendants will likely retain the benefit of their wrongdoing and will continue a course of action which will result in further damages to Plaintiffs.

37. Counsel for the Plaintiffs are experienced in class action prosecution of wage and hour claims, and will adequately and vigorously represent the interests of the class.

38. This forum is appropriate to litigate the claims of the Class because the bulk of the work that gave rise to the claims was performed in and around Philadelphia, Pennsylvania, because Defendant Lee's Industries is located in Philadelphia, and because all Defendants regularly conduct business in Philadelphia.

#### **STATEMENT OF FACTS**

39. Defendants provide home health care to elderly and infirm individuals ("clients") residing in Philadelphia and other counties in Pennsylvania. Defendants provide services essential to the medical care for eligible individuals at the homes of those clients as part of programs administered through the Commonwealth of Pennsylvania and other public agencies.

40. Defendants are Medicaid providers of home health care by virtue of agreements with the Pennsylvania Department of Public Welfare and various Area Agencies on Aging, including the Philadelphia Corporation on Aging.

41. In order to conduct their home health care business, Defendants employ and assign home health care workers, such as Plaintiffs, to provide personal care and assistance to

medically needy clients who have selected Defendants as their provider. Pursuant to a written or verbal schedule, Defendants assign Plaintiffs to provide this direct care, typically to several clients per day, at the respective homes of the clients.

42. At the time of hiring Plaintiffs, Defendants entered into oral agreements with each by offering to pay Plaintiffs a specified hourly rate of pay for all hours worked as home health care workers and by Plaintiffs accepting those offers of employment. Defendants reserved the right to increase that rate of pay and did so from time to time, but without changing the agreement to pay Plaintiffs the applicable rate for all hours worked.

43. Upon employing Plaintiffs, Defendants, by operation of law, entered into implied contracts with Plaintiffs under which Defendants were required to compensate Plaintiffs for all hours worked at least at rates, including the minimum wage and overtime pay, which are mandated by the PMWA, 43 P.S. § 333.10 et seq.

44. Within parameters, Defendants have the right to control and in fact control Plaintiffs' hours of work, assignments of clients, and schedules of times when clients are to be seen. Defendants require Plaintiffs to fill out daily records of clients visited and the time spent with each, and to submit those records to Defendants regularly.

45. Plaintiffs often are assigned by Defendants to spend more than forty (40) hours in a given work week providing direct care to home-bound clients of Defendants. Defendants pay Plaintiffs for direct care work performed in excess of forty (40) hours a week at that employee's regular rate of pay. Defendants, as a matter of policy and practice, do not and did not pay Plaintiffs one and one half (1 ½) times their regular rate of pay for direct care work in excess of forty (40) hours in a work week.

46. Beginning in January of 2006, Defendants adopted a new wage policy providing that when Plaintiffs and the members of the Plaintiff Class worked, providing direct care services, in excess of eighty (80) hours in a two-week pay period, they would be paid time and a half (1 ½) of their regular rate of pay for direct care work in excess of eighty (80) hours in that two-week pay period.

47. This wage policy constituted a promissory offer which was accepted by Plaintiffs and those members of the Plaintiff Class who continued to work for Defendants after January 1, 2006.

48. Defendants' designee for purposes of Pennsylvania Rules of Civil Procedure 4007.1(d)(3), Defendant Nina Kinard, confirmed in her deposition that, beginning in 2006, if an employee of Defendants worked over eighty (80) hours in a bi-weekly pay period they were to be paid time and a half (1/ ½) rates for direct care hours over eighty (80). She also admitted that if employees were not paid time and a half for hours worked in excess of eighty (80) hours in a bi-weekly pay period, Defendants would owe them for the overtime pay.

49. Despite its promises, Defendants did not consistently pay Plaintiffs and members of the Plaintiff Class overtime pay for hours in excess of eighty (80) in a bi-weekly pay period.

50. As a result of Defendants' failure to uniformly pay overtime rates for members of the Plaintiff Class who worked over eighty (80) hours of direct care work in a bi-weekly pay period subsequent to January 1, 2006, Plaintiffs and members of the Plaintiff Class suffered a loss of wages.

51. To the extent that Defendants, in accordance with its wage policy adopted in January, 2006, paid overtime rates for hours worked in excess of eighty (80) in a bi-weekly pay period, Defendants did not include all remuneration paid to their employees in the calculation of

the regular rate for purposes of overtime. Defendants paid Plaintiffs and members of the Plaintiff Class a higher hourly wage rate for evening and weekend work than it paid for weekday work. Notwithstanding this higher hourly rate, when overtime was paid, it was calculated based on the lowest hourly rate paid to the employee even though the employee received wages at higher hourly rates during that bi-weekly pay period.

52. By not paying overtime based upon “blended rate” one which includes all remuneration paid to employees, Plaintiffs and members of the Plaintiff Class suffered damages in the form of lost wages.

53. Pursuant to their assigned schedules and as part of their duties as employees of Defendants, Plaintiffs are required to travel to and between the home of each client during the normal workday. Time spent traveling to and between the homes of their assigned clients is not *de minimis*. It regularly averages thirty (30) or more minutes per client during the workday.

54. At all relevant times herein, Defendants, as a matter of policy and practice, did not consider travel time to and between clients during the workday as hours worked for purposes of compensation. Plaintiffs were not paid any wages for time spent traveling to and between the homes of clients to whom they were assigned.

55. Defendants provided Plaintiffs with the addresses of each client and a schedule when the client was to be seen. Defendants partially reimbursed Plaintiffs for travel expenses incurred for travel between those work sites. At all times relevant hereto, Defendants knew that Plaintiffs spent time each day traveling to and between clients to whom they were assigned.

56. Defendants did not keep true, accurate and legible records of the time Plaintiffs spent traveling to and between assigned clients’ residences during the workday. Defendants



intentionally failed to establish a method for recording the hours Plaintiffs spent traveling to and between assigned clients during the workday.

57. Plaintiffs did not agree to waive their rights to be paid minimum wage for each hour worked or to be paid overtime wages at premium rates for hours over forty (40) in a workweek. Any such agreement would be void and unenforceable.

58. During all times relevant to this law suit, Defendants have maintained a compensation policy that, in some cases, reduces the regular hourly rate of pay for Plaintiffs to a lower wage rate, i.e., minimum wage, for direct care work already performed. Time slips are to be submitted on a weekly basis, although payroll is made on a bi-weekly basis. Defendants require that time slips filled out by Plaintiffs and signed by the clients be submitted by 9:00 a.m. on Monday of the week following the week in which the work was performed. If those time slips are not received by Defendants by that Monday, the rate of pay for the prior work week is retroactively reduced to minimum wage, \$5.15 per hour prior to January 1, 2007, and \$6.25 effective January 1, 2007.

59. In any week in which Defendants reduced Plaintiffs' wage rate to the minimum wage rate and in which the affected employee had uncompensated travel time, the effective wage rate paid to the employee would be less than minimum wage.

60. Defendants' actions, as alleged herein, were intentional and not made in good faith within the meaning of either the PMWA or the WPCL.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Pennsylvania Minimum Wage Act – Failure to Pay Minimum Wage and Overtime Pay – Claims Against All Defendants**

61. Plaintiffs incorporate by reference all the preceding paragraphs of this Amended Complaint.

62. The Class Period for this Count is three (3) years prior to the date the original Complaint was filed until the date of entry of judgment.

63. Pursuant to the PMWA, Plaintiffs are entitled to minimum wages for all hours worked in a workday and overtime pay at premium rates based on all hours worked in a workweek in excess of forty (40).

64. During the Class Period, Plaintiffs were not paid overtime rates that is, one and one half times (1½) times their regular rate of pay, for hours worked in excess of forty (40) in a workweek, as required by the PMWA, 43 P.S. §333.104(c).

65. The time Plaintiffs spent traveling to and between the homes of Defendants' clients during the course of the workday are hours worked under the PMWA and its regulations, specifically, 34 Pa. Code § 231.1(b).

66. By failing to pay Plaintiffs for time spent traveling to and between work assignments during the workday, Defendants did not pay Plaintiffs the minimum wage for all hours worked in violation of the Pennsylvania Minimum Wage Act (PMWA), 43 P.S. §§ 333.104 (a)(5)(a.1) and 333.104(c), and its implementing regulations.

67. For Defendants' violations of the PMWA, Plaintiffs are entitled to recover from Defendants the amount of their unpaid wages, both minimum wage and overtime pay, together with interest, costs and attorneys' fees.

68. Individual Defendants Kinard and Lamback are liable to Plaintiffs as they are each an "employer" under the PMWA.

## COUNT II

### Pennsylvania Minimum Wage Act – Failure to Calculate and Pay Overtime Pay at the Proper Rate – Claims Against All Defendants

69. Plaintiffs incorporate by reference all the preceding paragraphs of this Amended Complaint.

70. The class period for this Count is three years prior to the date the original Complaint was filed until the entry of judgment.

71. Under the PMWA, overtime shall be paid at not less than one-and-a-half ( $1\frac{1}{2}$ ) times an employee's regular rate of pay for all hours in excess of forty (40) hours in a work week. 34 Pa. Code § 231.41.

72. The regular rate of pay, pursuant to the PMWA, must include all remuneration for employment paid to or on behalf of the employee, with exceptions not relevant here. 34 Pa. Code § 231.43.

73. To the extent that Defendants paid overtime to members of the Plaintiff Class pursuant to Defendant's policy of paying overtime for hours worked in excess of eighty (80) in a bi-weekly pay period, Defendants did not properly calculate the regular rate of pay for purposes of calculating overtime.

74. Instead of using a blended rate, which would incorporate all wage rates paid to the employee, including wage rates above the base rate for weekday work, Defendants only utilized the base rate paid to the employee. As a result, Plaintiffs and members of the Plaintiff Class who worked more than 80 hours in a biweekly pay period after January 1, 2006 were underpaid wages.

75. For Defendants' violations of the PMWA as described herein, Plaintiffs are entitled to recover from Defendants the amount of their unpaid wages, together with interest, costs and attorney's fees.

76. Defendants Kinard and Lamback are individually liable to Plaintiffs for this violation of the PMWA as each is an "employer" under the PMWA.

### **COUNT III**

#### **Pennsylvania Wage Payment and Collection Law – Defendants' Failure to Pay Wages When Due – Claims Against All Defendants**

77. Plaintiffs incorporate by reference all preceding paragraphs of this Amended Complaint.

78. The Class Period for this Count is three (3) years prior to the date the original Complaint was filed until the date of entry of judgment.

79. Defendants have failed to pay Plaintiffs the orally agreed upon wages for each, for all the hours each worked for Defendants, including hours spent traveling as part of their duties.

80. Defendants have failed to pay Plaintiffs the implied agreed upon wages, based on the minimum wage and overtime rates set forth in the PMWA.

81. The WPCL requires that wages be paid on an employee's regular payday for all hours worked in the preceding pay period. Overtime pay is due, under the WPCL, no later than the next succeeding pay period after those wages are earned.

82. Defendants' failure to pay Plaintiffs all wages, including minimum wage and overtime wages, for all hours each worked for Defendants, constitutes a breach of the oral agreements and implied contracts which Defendants entered into with Plaintiffs.

83. Defendants' policies and their intentional and willful acts violate Plaintiffs' rights under the WPCL by failing to pay Plaintiffs all wages due on Plaintiffs' regular paydays, or, in the case of overtime wages, by the next succeeding pay period.

84. As a result of the Defendants' violations of the WPCL set forth in this Count, Plaintiffs are entitled to recover the amount of their unpaid wages, liquidated damages, together with costs and attorneys' fees pursuant to the WPCL, 43 P.S. §§ 260.9a and 260.10.

85. Individual Defendants Kinard and Lamback are liable to Plaintiffs as they each are an "employer" under the WPCL, 43 P.S. § 260.2a.

#### COUNT IV

#### Pennsylvania Wage Payment and Collection Law – Defendants' Failure to Pay Wages Pursuant to its Overtime Policy - Claims Against All Defendants

86. Plaintiffs incorporate by reference all preceding paragraphs of this Amended Complaint.

87. The Class period for this Count is three (3) years prior to the date the original Complaint was filed until the date of entry of judgment.

88. Defendants entered into a unilateral contract with Plaintiffs and members of the Plaintiff Class when Defendant adopted a policy which provided, effective January 1, 2006, for the payment of overtime wages to members of the Plaintiff Class who worked in excess of eighty (80) hours in a bi-weekly pay period. Defendant's offer of additional wages was accepted by Plaintiffs and the members of the Plaintiff Class who continued to work for Defendants after January, 2006.

89. Notwithstanding this contract, Defendants did not uniformly pay overtime wages to members of the Plaintiff Class who worked providing direct care in excess of eighty (80) hours in a biweekly pay period.

90. Defendants breached their obligations imposed under this contract for the payment of additional wages, in the form of overtime pay, for hours worked in excess of eighty (80) in a bi-weekly pay period.

91. Defendants also violated the WPCL by not paying these overtime wages when due.

92. Defendants' failure to pay overtime rates pursuant to its agreement was intentional and willful.

93. As a result of Defendants' violations of the WPCL as set forth in this Count, Plaintiffs are entitled to recover the amount of unpaid wages, liquidated damages, together with costs and attorney's fees pursuant to 43 P.S. §§ 260.9(a) and 260.10.

94. Defendants Kinard and Lambach are individually liable to Plaintiffs as they each are an "employer" under WPCL, 43 P.S. § 260.2(a).

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, respectfully request that this Court grant the following relief:

1. Allow this action to proceed as a class action under Pa. R. Civ. Proc. 1701 et seq. for all claims alleged;
2. Allow the action to proceed as a collective action under 43 P.S. §260.9a of the WPCL for the claims in Count II;

3. Enter judgment against Defendants, jointly and severally, and in favor of Plaintiffs and each member of the Class, in the amount of their individual unpaid wages, an additional 25% as liquidated damages, penalties, actual and compensatory damages, and pre-and post-judgment interest as allowed by law;
4. Award Plaintiffs the attorneys' fees and costs incurred in this litigation;
5. Declare that Plaintiffs' rights have been violated and that Defendants' pay practices are illegal;
6. Enjoin Defendants to cease the practices found illegal or in violation of Plaintiff's rights; and
7. Grant Plaintiffs such further relief as this Court deems just and proper.

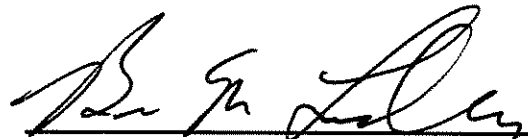
**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury for all issues triable by jury.

Respectfully submitted this 5<sup>th</sup> day of August, 2008 by:

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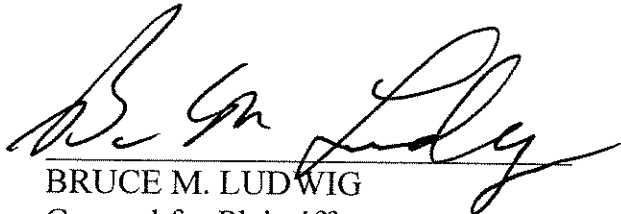
**CERTIFICATE OF SERVICE**

I, Bruce M. Ludwig, Esquire, hereby certify that on the date indicated below, I served a copy of the within Third Amended Complaint upon Counsel for Defendants by hand delivery as follows:

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Michael E. Lignowski, Esquire  
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DATED:

8/5/2008

  
BRUCE M. LUDWIG  
Counsel for Plaintiffs