

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
ADRIANA MORENO and LEONIDAS  
PEGUERO-TINEO, individually and on behalf of  
all others similarly situated,

Plaintiffs,

- against -

FUTURE CARE HEALTH SERVICES, INC.,  
AMERICARE CERTIFIED SPECIAL  
SERVICES, INC., ETHAN DREIFUS, ESAN  
DRESUS and MARTIN KLEINMAN,

Defendants.

Index No. \_\_\_\_\_

**SUMMONS**

Place of Trial: Kings County

The basis of venue is  
Defendants' place of business.

To the above named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiffs' attorneys within twenty (20) days after the service of this summons exclusive of the date of service (or within thirty (30) days after the service if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded below.

Dated: February 6, 2013  
New York, New York

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AMERICARE CERTIFIED SPECIAL SERVICES, INC.  
5923 Strickland Avenue  
Brooklyn, NY 11234

MARTIN KLEINMAN  
5923 Strickland Avenue  
Brooklyn, NY 11234

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
ADRIANA MORENO and LEONIDAS PEGUERO-TINEO, individually and on behalf of all others similarly situated,

Index No. \_\_\_\_\_

Plaintiffs,

**CLASS ACTION COMPLAINT**

- against -

FUTURE CARE HEALTH SERVICES, INC.,  
AMERICARE CERTIFIED SPECIAL SERVICES,  
INC., ETHAN DREIFUS, ESAN DRESUS and  
MARTIN KLEINMAN,

Defendants.

-----X

Plaintiffs, Adriana Moreno and Leonidas Peguero-Tineo, by their undersigned attorneys, for their class action complaint against Defendants, allege upon information and belief, except as to the allegations that pertain to Plaintiffs which are alleged upon personal knowledge, as follows:

1. Plaintiffs bring this class action, individually and on behalf of a class of similarly situated employees, to seek redress for systematic and class-wide underpayment of minimum wages and overtime pay, and for unjust enrichment against Defendants, providers of home health care services for the elderly and infirm in and around New York City, Future Care Health Services, Inc. ("Future Care"), Americare Certified Special Services, Inc. ("Americare"), Future Care's owners and/or operators Ethan Dreifus and Esan Dresus, and Americare's chairman and/or chief financial officer Martin Kleinman.

2. Defendants violated the provisions of the New York Labor Law ("NYLL"), as well as applicable regulations and common law principles of contract and unjust enrichment, by

failing to pay Plaintiffs and the Class they seek to represent 1) overtime at not less than one and one-half (1-1/2) times the basic minimum hourly rate for all hours worked in excess of forty (40) hours in a workweek, 2) all wages due for the work performed, 3) “spread of hours” premium required by the NYLL and applicable regulations, 4) minimum wage as required by the NY Health Care Worker Wage Parity Act during applicable periods, 5) reimbursement for business expenses borne for the benefit and convenience of the Defendants, including gloves and uniforms. Defendants also failed to provide Plaintiffs with various notices concerning their legal right to receive proper pay, and failed to preserve proper records required for properly calculating the wages due to Plaintiffs and the Class.

3. On behalf of the Class, Plaintiffs seek unpaid wages, actual, incidental, consequential and compensatory damages, pre-and post-judgment interest, and attorneys' fees and costs. To prevent recurrence of this conduct, Plaintiffs also seek injunctive relief on behalf of themselves and the Class.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action because Defendants operate their business in the State of New York, County of Kings.

5. Venue in this Court is proper under CPLR Section 503. Defendants regularly conduct business in the State of New York and within Kings County. Defendant Future Care and its owners and/or operators have an office located at 1794 Coney Island Avenue, Brooklyn, New York, and represent that they provide services in Kings County and elsewhere in the City of New York. Defendant Americare and its chairman and/or chief financial officer have an office located at 5923 Strickland Avenue, Brooklyn, New York, and represent that they provide services in

Kings County and throughout the City of New York. Accordingly, Plaintiffs' causes of action arise in this venue.

6. Plaintiffs bring causes of action based solely on and arising under the NYLL and common law principles of contract and unjust enrichment. The claims of Plaintiffs and the Class are claims for violations of New York law. These claims arise from Defendants' systematic wage abuse against its home health care workers in New York. Plaintiffs make no claims arising under federal law in this action.

## PARTIES

7. Plaintiff Adriana Moreno ("Moreno"), an individual residing at 928 Kelly Street, Bronx County, is a home health care worker employed by Defendants to work in and around the city of New York to provide home health care services to disabled and elderly clients of Defendants.

8. Plaintiff Leonidas Peguero-Tineo ("Peguero-Tineo"), an individual residing at 361 East 188th Street, Bronx County, is a home health care worker employed by Defendants to work in and around the city of New York to provide home health care services to disabled and elderly clients of Defendants.

9. Named Plaintiffs are "Home Care Aides" within the meaning of the New York Home Care Worker Wage Parity Act.

10. At all times relevant to this action, Defendant Future Care was and is a closely-held, for-profit domestic corporation formed in accordance with the laws of the State of New York conducting business in the State of New York, including Kings County. Future Care maintains a regular place of business at 1794 Coney Island Avenue, Brooklyn, New York. Future Care describes itself as a provider of "home care services for a wide variety of needs" in the city

of New York and Nassau County. Future Care further describes itself as “Licensed by the New York Department of Health.”

11. Upon information and belief, at all times relevant to this action, Defendants Ethan Dreifus and Esan Dresus were the owners, executive officers, and substantial shareholders of Future Care and their usual place of business is at 1794 Coney Island Avenue, Brooklyn, New York. At all times relevant to this action, they possessed and exercised operational control and policy making authority over Future Care’s employment policies, compensation policies, budgets, employee wages, hours and schedules and client services. Upon information and belief, there may be other owner-operators of Defendant Future Care, presently unknown to Plaintiffs, who may be liable as employers of Plaintiffs and the class, who Plaintiffs intend to join in this action.

12. At all times relevant to this action, Defendant Americare was and is a closely-held, for-profit domestic corporation formed in accordance with the laws of the State of New York conducting business in the State of New York, including Kings County. Americare maintains a regular place of business at 5923 Strickland Avenue, Brooklyn, New York. Americare describes itself as a provider of home care services and it “works closely with any referral source to develop a plan of care designed to respond to any issue or concern that may arise, obtain approval for home visits” and provide home care services throughout New York City, Long Island, and the Hudson Valley. Americare further describes itself as a “certified home health agency.”

13. Upon information and belief, at all times relevant to this action, Defendant Martin Kleinman was and is the owner, executive officer, and substantial shareholder of Americare and his usual place of business is at 5923 Strickland Avenue, Brooklyn, New York. At all times

relevant to this action, he possessed and exercised operational control and policy making authority over Americare's employment policies, compensation policies, budgets, employee wages, hours and schedules, and client services. Upon information and belief, there may be other owner-operators of Defendant Americare, presently unknown to Plaintiffs, who may be liable as employers of Plaintiffs and the class, who Plaintiffs intend to join in this action.

14. At all times relevant to this action, Plaintiffs and the Class were "employees" covered by the NYLL, and Defendants were "employers" of Plaintiffs and the Class of home health care workers they seek to represent, as those terms are defined by NYLL §§ 651 (5) and (6) and applicable regulations, 12 NYCRR § 142-2.14 and under NYLL §§ 2 (7) and 190 (3). Defendants are jointly and severally liable for the violations alleged in this Complaint.

15. The acts of Defendant Future Care charged in this Complaint were authorized, directed or accomplished by Defendants Ethan Dreifus and Esan Dresus, and the acts of Defendant Americare were authorized, directed or accomplished by Defendant Martin Kleinman, and possibly other owner-operators presently unknown to Plaintiffs, individually or jointly, by themselves, or by their agents, officers, employees or representatives, while actively engaged in the operation and management of Defendants' home care businesses in New York.

#### **CLASS ACTION ALLEGATIONS**

16. Plaintiffs bring this case pursuant to CPLR Article 9 on behalf of a class (the "Class") consisting of all current and former hourly paid home health care workers employed by Defendants in New York for work performed during the period from six years preceding the filing of the complaint in this case, through the present (the "Class Period").

17. The Class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts are presently within the sole

knowledge of Defendants, there are at least hundreds of home health care workers employed by Defendants as of the date this Complaint was filed. Since the Class also includes former employees since the date six years before the filing of the complaint, the class is sufficiently numerous to warrant certification.

18. There are questions of law or fact common to the Class that predominate over any questions affecting individual members. Those questions include but are not limited to the following:

- a. whether Defendants have and are engaged in a pattern or practice of not paying all wages due for work performed and overtime, that is, one and one half (1 and 1/2 ) times the basic minimum hourly rate for all hours worked in excess of 40 in a work week;
- b. whether Defendants have and are engaged in a pattern or practice of not paying all minimum wages due for work performed as required by Public Health Law § 3614-c after March 31, 2011;
- c. whether Defendants have kept true and accurate time records for all hours worked by Plaintiff and the Class, as required by the NYLL §§195 and 661 and 12 NYCRR § 142-2.6;
- d. whether Defendants violated the NYLL by failing to pay Plaintiffs and the Class overtime wages and an extra hour's pay for the "spread of hours" worked;
- e. whether Defendants violated the NYLL by failing to pay Plaintiffs and the Class all wages, including overtime wages, in the proper pay period;
- f. whether, after April 9, 2011, Defendants violated the Wage Theft Prevention Act, NYLL § 195, by failing to give Plaintiffs and the Class yearly notice as required in the Act, in writing in English and in the language identified by each employee as the primary

language of such employee, at the time of hiring, on or before February first of each subsequent year of the employee's employment with the employer, containing, 1) the rate or rates of pay and basis thereof; 2) whether paid by the hour, shift, day, week, salary, piece, commission, or other; 3) allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; 4) the regular pay day designated by the employer; 5) any "doing business as" names used by the employer; 6) the physical address of the employer's main office or principal place of business, and a mailing address if different; 7) the telephone number of the employer; and 8) the regular hourly rate and overtime rate of pay.

g. Whether, after April 9, 2011, Defendants violated the Wage Theft Prevention Act, NYLL § 195, by failing to give Plaintiffs and the Class information required by the Act on the pay statements given by Defendants of the dates of work covered by that payment of wages, rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked.

h. whether Defendants are jointly and severally liable as employers under the NYLL for the violations alleged in this Complaint;

i. whether Defendants were unjustly enriched by their wage policies;

j. whether Defendants should be enjoined from continuing the alleged wrongful practices in violation of the NYLL and applicable regulations; and

k. what is the proper measure of damages for the type of injury and losses commonly suffered by Plaintiffs and the Class.

19. Plaintiffs' claims are typical of the claims of the Class, because they are all current or former 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 defenses that likely will be asserted by Defendants against Plaintiff are typical of the defenses that Defendants will assert against the Class members.

20. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced in pursuing complex and class action litigation who will adequately and vigorously represent the interests of the class.

21. Class action treatment is superior to other available methods 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. As a practical matter, absent a class action, there will be no lawsuits to recover the unpaid wages due to Plaintiffs and the Class because the amounts due and owing to each class member are too small to warrant the filing of individual litigation. Moreover, class members would be reluctant to file individual claims for fear of retaliation. 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 records that Defendants are legally required to maintain.

22. No individual class member has any interest in individually controlling the prosecution of a separate individual action. No other suits or complaints have been filed by any class member. Pursuing these small claims on an individual basis is neither practical nor efficient. In order to pursue these claims in a class action, Plaintiffs are waiving any claim on

their own behalf or on behalf of the Class in this lawsuit for liquidated damages under the NYLL.

23. 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 Defendants.

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

25. 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 and the members of the Class.

#### **STATEMENT OF FACTS**

26. Plaintiff Moreno, a resident of Bronx County, was a home health care worker employed by Defendants to work in and around the city of New York to provide home health care services to disabled and elderly clients of Defendants. Plaintiff worked for Defendants as a home health care worker approximately from December, 2008 to July, 2012. At the direction of Defendants, she provided home health care services to homebound elderly clients based upon a schedule set and dictated by Defendants.

27. Plaintiff Peguero-Tineo, a resident of Bronx County, was a home health care worker employed by Defendants to work in and around the city of New York to provide home health care services to disabled and elderly clients of Defendants. Plaintiff worked for Defendants as a home health care worker for approximately one year, beginning in June, 2010 to August, 2011. At the direction of Defendants, she provided home health care services to homebound elderly clients based upon a schedule set and dictated by Defendants.

28. Despite the notation on Plaintiffs' pay stubs, Plaintiffs do not "live-in" the homes of Defendants' clients nor are they "exempt companions" and thus are not statutorily exempt from coverage under the New York Labor and Minimum Wage Laws and applicable regulations, 12 NYCRR Sections 142-2.1(b) and 142-2.14(c).

29. From approximately September, 2008 until April 2011, Moreno was paid \$7.50 per hour and overtime at the rate of time and one half the applicable minimum wage for the hours she worked over 40 in a workweek. From May 2011 until Moreno left her employment with Defendants in July 2012, she continued to care for the same clients performing the same work but her pay was reduced to what Defendants called a "live in" rate of \$115 to \$120 per day regardless of how many hours she worked. Moreno frequently was assigned and worked more than forty (40) hours during the course of a work week providing care to clients of Defendants. Plaintiff has worked as many as approximately sixty (60) hours in a work week providing care to clients of Defendants. When Defendants paid a live-in rate, Moreno was not paid any overtime premium for the hours she worked in excess of 40 hours in a week. Rather, she was paid the same flat daily rate regardless of her total work hours for the week.

30. From approximately June, 2010 until April 2011, Peguero-Tineo was paid \$8 per hour and overtime at the rate of time and one half the applicable minimum wage for the hours she worked over 40 in a workweek. From May 2011, until Peguero-Tineo left her employment with Defendants in August 2011, she continued to perform the same work but her pay was reduced to what Defendants called a "live in" rate of \$115 to \$120 per day regardless of how many hours she worked. Peguero-Tineo frequently was assigned and worked more than forty (40) hours during the course of a work week providing care to clients of Defendants. Plaintiff has worked as many as approximately eighty (80) hours in a work week providing care to clients of

Defendants. When Defendants paid a live-in rate, Peguero-Tineo was not paid any overtime premium for the hours she worked in excess of 40 hours in a week. Rather, she was paid the same flat daily rate regardless of her total work hours for the week.

31. Defendants required Plaintiffs, and continue to require members of the Class, to attend “in-service” training sessions approximately three times a year. These training sessions each last approximately four hours. Upon information and belief, Defendants do not pay Plaintiffs and the Class for the time spent in these mandatory “in-service” trainings that take place at Defendant Future Care’s office location.

32. Defendants required Plaintiffs, and continue to require members of the Class, to wear uniforms in the course of their employment. However, Defendants do not launder the required uniforms, nor do they pay Plaintiffs and the Class the additional amount per week required by the NYLL and applicable regulations to cover uniform laundering and maintenance.

33. Defendants required Plaintiffs, and continue to require members of the Class, to purchase latex gloves to use during the performance of certain job responsibilities. Plaintiffs and the Class have been obligated to purchase these supplies for the benefit of Defendants, their employer. By requiring Plaintiffs and the Class to purchase and pay for their own supplies, Defendants are making impermissible *de facto* deductions from the wages of Plaintiffs and the Class. NYLL § 193; 12 NYCRR § 142-2.10.

34. At all times relevant, Defendants are and were required to establish, maintain and preserve for not less than six years, weekly payroll records that show for each employee, among other information, the number of hours worked daily and weekly including the time of arrival and departure of each employee working a split shift of spread of hours exceeding ten hours. NYLL § 195 and 12 NYCRR §§ 142-2.6 (a)(4) and 142-2.18.

35. Upon information and belief, Defendants failed to establish, maintain, and preserve all such required records for Plaintiffs and the Class including but not limited to reflecting accurately Plaintiffs' time of arrival at and departure from the homes of Defendants' clients.

36. At all times relevant Defendants are and were required to give Plaintiffs and the Class yearly notice in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring when newly hired, and on or before February first of each subsequent year of the employee's employment with the employer, containing, 1) the rate or rates of pay and basis thereof; 2) whether paid by the hour, shift, day, week, salary, piece, commission, or other; 3) allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; 4) the regular pay day designated by the employer; 5) any "doing business as" names used by the employer; 6) the physical address of the employer's main office or principal place of business, and a mailing address if different; 7) the telephone number of the employer; and 8) the regular hourly rate and overtime rate of pay. NYLL § 195.

37. Upon information and belief, Defendants failed to provide notice to new hires and annual notice before February 1<sup>st</sup> of each year, to Plaintiffs and the Class as required by NYLL § 195.

38. Upon information and belief, Defendants failed to give Plaintiffs and the Class notice on their pay statements given by Defendants of the dates of work covered by that payment of wages, rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; the regular hourly rate or rates of pay; the overtime rate or

rates of pay; the number of regular hours worked, and the number of overtime hours worked as required by NYLL § 195.

39. Upon information and belief, Defendants failed to give Plaintiffs and the Class information on their pay statements as required by NYLL § 195 including information about changes to their rates of pay and the basis thereof.

40. Pursuant to 12 NYCRR §142-2.6, Defendants are also required to establish, maintain and preserve for not less than six years, weekly payroll records which, *inter alia*, shall show for each employee: name and address; social security number; wage rate; the number of hours worked daily and weekly, including the time of arrival and departure of each employee working a split shift or spread of hours exceeding 10; the amount of gross wages; deductions from gross wages; allowances, if any, claimed as part of the minimum wage; and net wages paid.

41. Upon information and belief, Defendants failed to maintain true, accurate and legible records for Plaintiffs and each member of the Class of the time worked on a daily and weekly basis, and of their times of arrival at and departure from the homes of Defendants' clients as required by 12 NYCRR §142-2.6. At all relevant times, Plaintiffs and the Class frequently worked a "spread of hours" or a shift longer than ten hours per day but were not paid for an additional hour of work at the minimum wage as required by the NYLL and applicable regulations. 12 NYCRR §142-2.4(a).

42. As part of their duties as employees of Defendants, Plaintiffs and the Class were assigned to care for clients and performed services including changing bed linens, helping clients bathe, picking up clients' prescriptions at the pharmacy, grocery shopping, laundry, and house-cleaning. Defendants provide home health care services to elderly and infirm individuals

residing in New York City and Nassau County. Defendants provide services essential to the care for eligible individuals at the homes of those individuals.

43. In order to conduct their home health care business, Defendants employ and assign home health care workers, such as Plaintiffs and the members of the Class, to provide home health care services to medically needy clients who have selected Defendants as their provider. Pursuant to a written or verbal schedule, Defendants assign Plaintiffs to provide this care at the respective homes of the clients.

44. Upon information and belief, Defendant Future Care, a licensed home care services agency, assigns home health care workers, such as Plaintiffs and the members of the Class, to care for the clients of Americare, a certified home health agency.

45. Upon information and belief, Americare creates work plans for Future Care's home health care workers and visits the homes of its clients to supervise the work of Future Care's home health care workers.

46. Defendants jointly have the right to control and in fact control the hours, hourly pay, duties, assignments, and schedules of Plaintiffs and the other class members.

47. Plaintiffs and the other members of the Class often are assigned to spend more than forty (40) hours in a given work week providing care to these home-bound clients. Since approximately May 2011, Defendants, as a matter of policy and practice, do not and did not pay Plaintiffs and the Class one and one half (1 and 1/2) times the New York State minimum wage rate for work in excess of forty (40) hours in a work week. Defendants paid only a flat "live in" rate of \$115 to \$120 a day for work performed regardless of how many hours Plaintiffs and the Class actually worked.

48. Defendants did not keep true, accurate and legible records of the time worked by Plaintiffs and the members of the Class.

49. Plaintiffs and the Class are “Home Care Aides” within the meaning of NY Public Health Law § 3614-c, also known as the “Home Care Worker Wage Parity Act.”

50. Under NY Public Health Law § 3614-c, also known as the “Home Care Worker Wage Parity Act,” governmental agencies “must obtain a written certification from the licensed home care services agency or other third party, on forms prepared by the department in consultation with the department of labor, which attests to the licensed home care services agency's or other third party's compliance with the terms of this section. Such certifications shall also obligate the certified home health agency, long term home health care program, ..., on no less than a quarterly basis, all information from the licensed home care services agency or other third parties necessary to verify compliance with the terms of this section. Such certifications and the information exchanged pursuant to them shall be retained by all certified home health agencies, long term home health care programs, or managed care plans, and all licensed home care services agencies, or other third parties for a period of no less than ten years, and made available to the department upon request.”

51. Upon information and belief, Defendants made the required certifications concerning compliance with the wage provisions of NY Public Health Law § 3614-c, also known as the “Home Care Worker Wage Parity Act.”

52. Defendants failed to pay Plaintiffs and members of the Class, the applicable minimum rate of home care aide total compensation established pursuant to Public Health Law § 3614-c.

53. Defendants' actions, as alleged herein, were intentional and not made in good

faith.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **(New York Labor Law, Article 19: Unpaid Wages and Overtime Wages)**

54. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

55. During the Class Period, Plaintiffs and members of the Class were “employees” within the meaning of NYLL §§ 2(7), 190(2) and 12 NYCRR § 142-2.14.

56. During the Class Period, Defendants were employers within the meaning of NYLL §§ 651(6) and 190 (3).

57. During the Class Period, Defendants failed to pay Plaintiffs and the Class overtime wages of not less than one and one-half times the New York State minimum wage rate for each hour worked in excess of 40 hours in a workweek in violation of the NYLL, Article 19, §650, *et seq.*, and 12 NYCRR §142-2.2.

58. Defendants also failed to pay Plaintiffs and the Class their regular hourly wage for the time spent in mandatory “in-service” training sessions. To the extent, the time spent at these “in-service” training sessions caused Plaintiffs and the Class to work more than 40 hours in one week, Plaintiffs and the Class are required to be compensated at one and one-half times the New York State minimum wage rate.

59. Defendants mandate that Plaintiffs and the Class purchase their own supplies, including, but not limited to, required latex gloves, and to launder their own uniforms. Such expenses constitute impermissible *de facto* deductions from Plaintiffs’ and the Class’s wages in violation of NYLL § 193.

60. Due to Defendants' violations of the NYLL, Plaintiffs and members of the Class are entitled to recover from Defendants all of the wages due them for hours worked at their regular rate of pay and unpaid overtime wages of not less than one and one-half times the New York State minimum wage rate for each hour worked in excess of 40 hours in a workweek, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest. In light of Defendants' longstanding and ongoing violations of the NYLL and applicable regulations, Plaintiffs also seek injunctive relief precluding Defendants from continued violations of these laws and affirmatively mandating their compliance with the provisions of the NYLL.

61. Defendants' failure to comply with the NYLL caused Plaintiffs to suffer loss of wages and interest thereon.

62. Defendants' failure to comply with the NYLL was willful.

## COUNT II

### (New York Labor Law, Articles 6 and 19 - Spread of Hours Pay)

63. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

64. During the Class Period, Defendants failed to pay Plaintiffs and the members of the Class an additional hour's pay at the basic minimum hourly wage rate for every day that they worked a spread of hours that exceeded 10 hours or a shift in excess of 10 hours, in violation of N.Y. Labor Law §190, *et seq.*, and 650, *et seq.*, and 12 NYCRR § 142.

65. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Class are entitled to recover from Defendants their unpaid wages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest. In light of Defendants' longstanding and ongoing violations of the NYLL and applicable regulations, Plaintiffs also seek injunctive relief

precluding Defendants from continued violations of these laws and affirmatively mandating their compliance with the provisions of the NYLL.

66. Defendants' failure to comply with the NYLL caused Plaintiffs to suffer loss of wages and interest thereon.

67. Defendants' failure to comply with the NYLL was willful.

### **COUNT III**

#### **(New York Labor Law Article 6 –Defendants' Failure to Pay Wages When Due)**

68. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

69. Defendants have failed to pay Plaintiffs and the Class members all wages due, including minimum wage and overtime wages, as well as wages under the NY Health Care Worker Wage Parity Act, for the hours they each worked for Defendants. The NYLL, Article 6, requires that wages be paid on an employee's regular payday for all hours worked.

70. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Class are entitled to recover from Defendants their unpaid wages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest. In light of Defendants' longstanding and ongoing violations of the NYLL and applicable regulations, Plaintiffs also seeks injunctive relief precluding Defendants from continued violations of these laws and affirmatively mandating their compliance with the provisions of the NYLL.

71. Defendants' failure to comply with the NYLL caused Plaintiffs to suffer loss of wages and interest thereon.

72. Defendants' failure to comply with the NYLL was willful.

## COUNT IV

### **(New York Labor Law Article 19 and 12 NYCRR §142-2.5(c) - Failure to Pay Additional Amounts for Laundering of Required Uniforms)**

73. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

74. The NYLL and the regulations promulgated thereunder, 12 NYCRR §142-2.5(c), provide that where an employer failed to launder or maintain required uniforms for any employee, he shall pay such employee, in addition to the minimum wage, the following amount for employees who work more than 30 hours per week: (1) \$6.40 per week on and after March 31,2000; (2) \$7.45 per week on and after January 1,2005; (3) \$8.40 per week on and after January 1, 2006; (4) \$8.90 per week on and after January 1, 2007; and (5) \$9.00 per week on and after July 24,2009.

75. Defendants require Plaintiffs and the Class to wear a uniform during the performance of their employment duties.

76. In failing to launder the required uniforms and in failing to pay Plaintiffs and the Class the additional required laundry costs incurred by Plaintiffs and the class, Defendants have violated the NYLL and 12 NYCRR §142-2.5.

77. Due to Defendants' violations of the NYLL, Plaintiffs and members of the Class are entitled to recover from Defendants the additional sums due them for laundering of required uniforms, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest. In light of Defendants' longstanding and ongoing violations of the NYLL and applicable regulations, Plaintiffs also seek injunctive relief precluding Defendants from continued violations of these laws and affirmatively mandating their compliance with the provisions of the NYLL.

78. Defendants' failure to comply with the NYLL caused Plaintiffs to suffer loss of wages and interest thereon.

79. Defendants' failure to comply with NYLL was willful.

## **COUNT V**

### **(New York Labor Law §§195 and 661; 12 NYCRR §142-2.6 - Failure to Comply With Notification Requirements And To Maintain Records)**

80. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

81. Defendants failed to comply with NYLL § 195 which sets out notice and record keeping requirements governing employers in the State of New York, and 12 NYCRR §142-2.6 governing the records which Defendants are required to maintain and preserve. Defendants' failure to comply with these provisions of the NYLL as set forth above prejudices Plaintiffs and the Class in learning of their legal rights and Defendants' violation of law, and in asserting their legal right to be paid in accordance with the law.

82. In light of Defendants' longstanding and ongoing violations of New York Labor Laws and applicable regulations with respect to notice and recordkeeping, Plaintiffs also seek injunctive relief precluding Defendants from continued violations of these laws and affirmatively mandating their compliance with the provisions of the NYLL.

83. Defendants' failure to comply with the NYLL caused Plaintiffs to suffer loss of wages and interest thereon.

84. Defendants' failure to comply with the NYLL was willful.

## **COUNT VI**

### **(Breach of Contract)**

85. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint.

86. Upon information and belief, at all times relevant to this complaint, Defendants were required to certify and did certify that they paid Plaintiffs and members of the Class wages as required by NY Health Care Worker Wage Parity Act.

87. Upon information and belief, Defendants entered into a contract with government agencies to pay Plaintiffs and members of the Class wages as required by NY Health Care Worker Wage Parity Act.

88. The agreement to pay Plaintiffs and the Class wages as required by the NY Health Care Worker Wage Parity Act was made for the benefit of the Plaintiffs and the Class.

89. Defendants breached their obligation to pay Plaintiffs and the Class all wages they were due as required by the NY Health Care Worker Wage Parity Act and as result Plaintiffs and members of the Class were injured.

90. Plaintiffs and the Class, as third party beneficiaries of Defendants' contract with government agencies to pay wages as required by the NY Health Care Worker Wage Parity Act, are entitled to relief for the breach of this contractual obligation plus interest.

## COUNT VII

### **(Unjust Enrichment, Defendants' Failure to Pay All Wages Due Including Wages for Overtime, Minimum Wages under the NY Health Care Worker Wage Parity Act, And Spread of Hours)**

91. Under the common law doctrine of "unjust enrichment" insofar as Defendants, by their policies and actions, benefited from, and increased their profits and personal compensation by failing to pay Plaintiffs and the Class: (1) all wages due for work performed including but not limited to overtime for hours worked in excess of 40 hours in a workweek at one and one-half times the New York State minimum wage rate; (2) an extra hour at the minimum wage for working a "spread of hours" in excess of 10 hours or a shift longer than 10 hours; and (3) all

minimum wages due under NY Pub. Health § 3614-c, the New York Health Care Worker Wage Parity Act.

92. Defendants accepted and received the benefits of the work performed by Plaintiffs and the Class at the expense of Plaintiffs and the Class. Defendants Ethan Dreifus, Esan Dresus, Martin Kleinman and any other presently unknown owner-operators were unjustly enriched as they are and were the major shareholders and/or owners of Defendants Future Care and Americare. It is inequitable and unjust for Defendants to reap the benefits of Plaintiffs' and the Class's labor, without paying all wages due, which includes but is not limited to underpaid overtime and regular hours caring for the clients of Defendants, and failing to pay for required trainings, uniform expenses, and the pay due for spread of hours.

93. Plaintiffs and the Class are entitled to relief for this unjust enrichment in an amount equal to the benefits unjustly retained by Defendants, plus interest on these amounts.

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

A. Allow this action to proceed as a class action under CPLR Article 9 for all claims alleged, designate Plaintiffs as the representatives of the class and the undersigned counsel as counsel for the class;

B. 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, actual and compensatory damages, and pre-and post-judgment interest as allowed by law and enjoin Defendants from future violations;

C. Award Plaintiffs the attorneys' fees and costs incurred in this litigation;

D. Enjoin Defendants to cease the practices found illegal or in violation of Plaintiffs' rights, and;

E. Grant Plaintiffs such further relief as this Court deems just and proper.

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New York, New York

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