

Fill in this information to identify the case:Debtor 1 Murrysville Operations, LLC

Debtor 2

(Spouse, if filing)

United States Bankruptcy Court **WESTERN DISTRICT OF PENNSYLVANIA**Case number: 24-21230

FILED

U.S. Bankruptcy Court
WESTERN DISTRICT OF
PENNSYLVANIA

7/17/2024

Michael R. Rhodes, Clerk

Official Form 410**Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>US Department of Labor Wage and Hour Division</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	☒ No ☐ Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>US Department of Labor Wage and Hour Division</u> Name <u>1000 Liberty Ave. Federal Bldg Room 1416</u> <u>Pittsburgh, PA 15222</u> Contact phone <u>412-482-5171</u> Contact email <u>doherty.joseph@dol.gov</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different) <u>Northeast Regional Office</u> Name <u>1835 Market Street</u> <u>Mailstop WHD/19</u> <u>Philadelphia, PA 19103-2968</u> Contact phone <u>2676874038</u> Contact email <u>norwood.kim@dol.gov</u>
4. Does this claim amend one already filed?	☒ No ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	☒ No ☐ Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	☐ No ☒ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:	6055
7. How much is the claim?	\$ 1542859.96	Does this amount include interest or other charges? ☒ No ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information. Back wages and liquidated damages owed to workers.	
9. Is all or part of the claim secured?	☒ No ☐ Yes. The claim is secured by a lien on property. Nature of property: ☐ Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . ☐ Motor vehicle ☐ Other. Describe: _____	
Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)		
Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)		
Amount necessary to cure any default as of the date of the petition: \$ _____		
Annual Interest Rate (when case was filed) _____ % ☐ Fixed ☐ Variable		
10. Is this claim based on a lease?	☒ No ☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____	
11. Is this claim subject to a right of setoff?	☒ No ☐ Yes. Identify the property: _____	

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	☒ No ☐ Yes. <i>Check all that apply:</i>	Amount entitled to priority
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
	☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
	☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
	☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
	☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
	☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies	\$ _____
* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.		

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 7/17/2024
MM / DD / YYYY

/s/ Joseph Daniel Doherty

Signature

Print the name of the person who is completing and signing this claim:

Name	<u>Joseph Daniel Doherty</u>		
	First name	Middle name	Last name
Title	<u>Assistant District Director</u>		
Company	<u>US Dept of Labor Wage and Hour Division</u>		
Address	Identify the corporate servicer as the company if the authorized agent is a servicer		
	<u>1000 Liberty Ave. Federal Bldg Room 1416</u>		
	Number Street		
	<u>Pittsburgh, PA 15222</u>		
Contact phone	City State ZIP Code		Email
	<u>4124825171</u>		<u>doherty.joseph@dol.gov</u>

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JULIE A. SU,
ACTING SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

V.

COMPREHENSIVE HEALTHCARE MANAGEMENT
SERVICES, LLC, et al.

Defendants.

Case No. 2:18-cv-01608-WSS

Hon. William S. Stickman, IV

ACTING SECRETARY'S PHASE II PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the “Acting Secretary”) files the following Proposed Findings of Fact and Conclusions of Law with respect to the Phase II trial in this matter. The Acting Secretary respectfully requests that the Court adopt these Findings of Fact and Conclusions of Law and enter judgment under the Fair Labor Standards Act (“FLSA” or “Act”), 29 U.S.C. § 201 *et seq.*, for the Acting Secretary, as set forth in her separately filed Proposed Final Judgment and Order.

A. Definitions

1. “Back Wages Summary” refers to the Excel file titled “CHMS_Wage_Computations_Sep 2015 to Mar 2023_2024-01-08” within PX-6.
2. “CBA” refers to the Collective Bargaining Agreement in place at one or more Facility Defendants during the relevant time period.
3. “Dkt.” refers to the material filed electronically in this matter.

4. “FLSA” or the “Act” refers to the Fair Labor Standards Act of 1938, 29 U.S.C. § 203, *et seq.*
5. “Joint Stip.” refers to the stipulations reached in this matter, which will be specifically identified by the Dkt. number and date.
6. “JX” refers to the Joint Exhibits admitted at the Phase II trial in this matter. *See* Dkt. 433.
7. “PFOF” refers to a proposed finding of fact set forth below.
8. “PX” refers to the Plaintiff Exhibits admitted at the Phase II trial in this matter. *See* Dkt. 433.
9. “Regional Consultant” and “Regional Director” refer to personnel that Defendants hired to supervise the operations of multiple Facility Defendants on behalf of Sam Halper.
10. The “relevant time period” for this matter extends from December 14, 2014 through at least February 11, 2023.¹ All PFOF refer to patterns and practices during the relevant time period, unless specified otherwise.
11. “Trial Tr.” refers to the Phase II trial transcripts, which are specifically identified by date.

¹ This is the last date in the final payroll records that Defendants produced. *See* Dkt. 343 at p. 1, n. 1.

B. Proposed Findings of Fact

I. Background

a. Defendants and Their Operations

1. The Defendants in this matter are:

A. Fifteen current and former residential skilled nursing, rehabilitation, and assisted living facilities located in or around the Pittsburgh metropolitan area (hereinafter “Facility Defendant” or “Facility Defendants”).

B. CHMS Group LLC, an administrative company that provided, *inter alia*, unified payroll services to each Facility Defendant during the relevant time period (hereinafter “CHMS Group”).

C. Sam Halper, a past or present member of the ownership group for each Facility Defendant and CHMS Group (hereinafter “Mr. Halper”).

Dkt. 1; 02/03/2022 Joint Stip. 1 (Dkt. 268 at pp. 2–3); 08/28/2023 Joint Stips. 2–3 (Dkt. 360 at p. 2); 01/08/2024 Trial Tr. 60:4–22 (M. Shuey); 01/09/2024 Trial Tr. 120:4–21 (C. Matlack).

2. Defendant CHMS Group and Facility Defendants are commonly owned and have overlap in ownership, officers, directors, executives, and managers. PFOF 11, 126–128; 01/08/2024 Trial Tr. 69:18–70:3 (M. Shuey).

3. Facility Defendants’ principal business purpose has been to provide direct care to short- and long-term patients and residents who live on-site, with the goal of maintaining the patients’/residents’ health and well-being, improving functionality, and, if possible, enabling patients to return to their prior level of function and residence. 01/09/2024 Trial Tr. 124:21–24 (C. Matlack); 01/11/2024 Trial Tr. 187:22–188:9 (T. Slagle); 01/12/2024 Trial Tr. 65:11–18 (M. Swan); 01/16/2024 Trial Tr. 159:4–14 (A. Molinaro); 01/17/2024 Trial Tr. 156:16–157:2 (J. Shaffer); 01/18/2024 Trial Tr. 87:1–5 (C. Simmons); 01/18/2024 Trial Tr. 154:10–13 (E. Bainbridge); 01/18/2024 Trial Tr. 180:1–10 (C. Costic); 02/15/2024 Trial Tr.

5:15–25 (K. Hoke); PX-14² at 13:2–15 (02/03/2020); PX-15 at 11:14–21 (02/03/2020); PX-16 at 10:20–11:7 (02/03/2020); PX-18 at 12:10–16 (01/27/2020); PX-19 at 11:1–8 (01/27/2020); PX-23 at 10:18–11:3 (01/29/2020); PX-24 at 9:18–10:4 (01/28/2020); PX-26 at 10:16–25 (01/29/2020);

4. To conduct their operations, Facility Defendants have hired thousands of employees in various departments and roles, who principally performed work at Facility Defendants on Defendants’ behalf. These include departments that were directly responsible for patient care and departments that provided operational, administrative, or other support. The employees during the relevant time period are reflected in the Acting Secretary’s Schedule A, as amended. PFOF 126; 01/08/2024 Trial Tr. 61:16–62:5 (M. Shuey); 01/10/2024 Trial Tr. 24:24–25:7 (J. Martis); 01/12/2024 Trial Tr. 65:25–66:7, 68:6–14 (M. Swan); 01/16/2024 Trial Tr. 8:5–24 (J. Pattison); 01/17/2024 Trial Tr. 157:3–9 (J. Shaffer); 01/18/2024 Trial Tr. 62:19–24 (B. Perkins); 01/18/2024 Trial Tr. 105:19–106:6 (C. Anderson); PX-33 at 47:13–23; PX-7
5. Among other positions, Facility Defendants employed Registered Nurses (“RNs”), License Practical Nurses (“LPNs”), Certified Nursing Assistants (“CNAs”), Therapists, Aides, Admissions Coordinators, Clerks, Cooks, Social Services, Coordinators, Housekeeping and Maintenance technicians, and administrative staff (*e.g.*, receptionists). 01/08/2024 Trial Tr. 51:16–52:20, 60:23–61:5, 62:6–63:4 (M. Shuey); 01/09/2024 75:4–18 Trial Tr. (A. Walter); 01/16/2024 Trial Tr. 159:15–22 (A. Molinaro); 01/17/2024 Trial Tr. 119:7–18, 122:13–123:4 (J. Meiss); 01/17/2024 Trial Tr. 157:10–14 (J. Shaffer); 01/18/2024 Trial Tr. 182:5–10 (C. Costic).

² With respect to the designated deposition testimony (PX-13–35), the Acting Secretary’s citations are to the page number of the deposition transcript, not the PX page numbering, unless the deposition page is not numbered. For several of the depositions, the examination occurred over the course of two or more days. Because these deponents’ separate transcripts are combined into a single PX, the Acting Secretary’s citations also identify the date of the deposition where necessary.

6. For a variety of reasons, including because of the inherent nature of a skilled nursing home, Facility Defendant employees routinely perform work outside of their scheduled shifts and during their meal breaks. PFOF 92–93, 156–164; 01/09/2024 Trial Tr. 35:17–36:6, 38:22–39:17 (M. Gildea); 01/10/2024 Trial Tr. 34:10–14 (J. Martis) (“Q. How many employees would work through their lunch every week? A. I would say at some point probably everybody in the nursing staff did. It was widespread and because of the nature of the business.”); 01/10/2024 Trial Tr. 121:1–6 (M. Reichard: “[D]o you recall ever seeing or hearing that employees at these nursing facilities would work outside of their scheduled shifts? A. Yes. Q. How often did that happen? A. That happened often.”); 01/11/2024 Trial Tr. 144:19–147:22 (M. Murray); 01/12/2024 Trial Tr. 71:25–72:7, 95:14–96:8 (M. Swan); 1/16/2024 Trial Tr. 88:14–89:1, 89:24–90:9, 90:20–91:7, 91:21–24 (M. Yarnell); 01/16/2024 Trial Tr. 186:17–187:8 (A. Molinaro); 01/17/2024 Trial Tr. 72:18–73:14, 73:23–74:11 (D. Cox); 01/17/2024 Trial Tr. 129:7–17, 130:14–131:3 (J. Meiss); 01/18/2024 Trial Tr. 183:16–184:2 (C. Costic); 02/12/2024 Trial Tr. 74:20–25 (S. Halper: “Q. Are you aware of situations where employees maybe didn’t get to take their lunch because something was happening in a facility? A. I don’t remember specific examples but I’m aware generally at nursing homes that occurs, yes, emergencies.”); 02/14/2024 Trial Tr. 88:19–90:5 (M. Hough); JX-58 at “Time Data”; JX-79 (A. Pechman: “[D]uring the normal course of your operations, you might have a need to deploy an employee outside of their normal schedule.”); PX-1 at p. 130, ¶ 12; Back Wages Summary; PX-16 at 103:19–104:1 (02/03/2020).
7. For a variety of reasons—including, to a large degree, because of Facility Defendants’ persistent and severe understaffing (*see* PFOF 88–104)—Facility Defendant employees regularly work overtime hours. PFOF 156–57; 01/08/2024 Trial Tr. 148:18–149:16 (M. Shuey); 01/09/2024 Trial Tr. 33:4–14, 43:20–23 (M. Gildea); 01/10/2024 Trial Tr. 181:5–9 (C. Langham); 01/10/2024 Trial Tr. 238:15–25 (R. Wolarov); 01/11/2024 Trial Tr. 189:6–12 (T. Slagle); 01/16/2024 Trial Tr. 23:15–23 (J. Pattison); 01/17/2024 Trial Tr. 18:3–10 (P. Henline); 01/17/2024 Trial Tr. 25:13–23 (D. Henline); 01/18/2024 Trial Tr. 12:1–17 (L. Shuppas); PX-1 at pp. 129–30, ¶¶ 6, 12; PX-1 at p. 195, ¶ 5; PX-1 at p. 221, ¶ 3;

PX-1 at p. 237; PX-1 at p. 275; PX-21 at 71:5–10 (01/29/2020); PX-432; PX-512; PX-726; Back Wages Summary.

8. A significant portion of Facility Defendants’ employees are members of a union, such as the Service Employees International Union (“SEIU”). 01/09/2024 Trial Tr. 14:19–15:7 (M. Shuey); 01/09/2024 Trial Tr. 80:6–11 (A. Walter); 01/09/2024 Trial Tr. 168:17–169:2 (C. Matlack); 01/10/2024 Trial Tr. 245:3–6 (R. Wolarov); 01/16/2024 Trial Tr. 49:2–23, 54:15–55:5, 56:5–18, 57:16–58:10 (M. Yarnell); 01/17/2024 Trial Tr. 210:19–23 (J. Shaffer); 01/18/2024 Trial Tr. 158:18–159:2 (E. Bainbridge).
9. The departments within each Facility Defendant had department heads and personnel who purportedly supervised employees within that department. These positions included Admissions Directors; Business Office Managers; Human Resource Directors; MDS Coordinators (RNAC); Medical Records Directors; Human Resources Personnel; RN Educators; Social Work Directors; Assistant Directors of Nursing; Assistant Administrators; Dietary Supervisors; Directors of Activities; Directors of Nursing; Housekeeping Supervisors; Maintenance Supervisors; Rehabilitation Coordinators (Director of Rehab); RN Supervisors; and Unit Directors. 01/09/2024 Trial Tr. 124:13–20, 124:25–125:9 (C. Matlack); 01/10/2024 Trial Tr. 5:11–16, 59:22–60:5 (J. Martis); 01/10/2024 Trial Tr. 202:10–15 (S. Pentek); 01/17/2024 Trial Tr. 65:4–20 (D. Cox); 01/17/2024 Trial Tr. 157:10–158:8 (J. Shaffer).
10. These department heads and other supervisors report to the Nursing Home Administrator (sometimes referred to as the “Executive Director”). 01/09/2024 Trial Tr. 124:7–12 (C. Matlack); 01/10/2024 Trial Tr. 5:24–6:8 (J. Martis); 01/10/2024 Trial Tr. 101:23–102:12 (M. Reichard); 01/16/2024 Trial Tr. 159:23–160:9, 162:19–23 (A. Molinaro); 01/17/2024 Trial Tr. 155:6–12, 158:9–25 (J. Shaffer); PX-20 at 48:4–49:21 (01/28/2020); PX-29 at 158:6–21.
11. Mr. Halper and his ownership group acquired the Facility Defendants at various times during the relevant period. As of the dates set forth below, Halper and CHMS Group became employers under the Act for Schedule A employees at the identified Facility Defendant:

Facility Defendant	Acquisition Date
Brighton Rehabilitation and Wellness, a/k/a Comprehensive Healthcare Management Services, LLC	March 1, 2014
Maybrook-C Briarcliff Opco, LLC, d/b/a The Grove at Irwin or The Grove at North Huntington	August 15, 2016
Maybrook-C Evergreen Opco, LLC, d/b/a The Grove at Harmony	August 15, 2016
Maybrook-C Kade Opco, LLC, d/b/a The Grove at Washington	August 15, 2016
Maybrook-C Overlook Opco, LLC, d/b/a/ The Grove at New Wilmington	August 15, 2016
Maybrook-C Silver Oaks Opco, LLC, d/b/a/ The Grove at New Castle	August 15, 2016
Maybrook-C Whitecliff Opco, LLC, d/b/a The Grove at Greenville	August 15, 2016
Monroeville Operations LLC, d/b/a/ Monroeville Rehabilitation & Wellness Center	February 1, 2017
Murrysville Operation, d/b/a Murrysville Rehabilitation & Wellness Center	February 1, 2017
Mt. Lebanon Rehabilitation and Wellness Center, LLC	February 1, 2017
South Hills Operations LLC, d/b/a South Hills Rehabilitation and Wellness	February 1, 2017
Maybrook-C Latrobe Opco, LLC, d/b/a The Grove at Latrobe	February 15, 2017
Cheswick Rehabilitation and Wellness Center, LLC	September 18, 2017
North Strabane Rehabilitation and Wellness Center, LLC	September 18, 2017
North Strabane Retirement Village, LLC	September 18, 2017

02/03/2022 Joint Stip. 1(d) (Dkt. 268 at pp. 2–3).

12. Defendants developed and implemented uniform, or nearly uniform, employment policies to govern Facility Defendants’ operations and affairs. 01/10/2024 Trial Tr. 29:21–30:3 (J. Martis); JX-1–15 (Handbooks); JX-31–51 (CBAs).

b. *Mr. Halper Oversees and Controls Facility Defendants’ Employment Policies and Working Conditions*

13. On behalf of the ownership group, Mr. Halper served as the CEO for Facility Defendants. 01/08/2024 Trial Tr. 97:14–98:15 (M. Shuey); 01/09/2024 Trial Tr. 126:20–25 (C. Matlack); 01/10/2024 Trial Tr. 86:18–19 (M. Reichard); 01/10/2024 Trial Tr. 209:2–11 (S. Pentek); 01/16/2024 Trial Tr. 61:16–20, 62:21–63:7 (M. Yarnell); 01/16/2024 Trial Tr. 162:13–18, 169:25–170:4 (A. Molinaro); PX-35 at 9:18–21; PX-90; PX-201; PX-225–238; PX-240–251; PX-253–254; PX-289; PX-294; PX-307–310; PX-313; PX-315; PX-318–325; PX-416 at p.3; PX-466–468; PX-481–482; PX-484–485.

14. Mr. Halper, along with other Facility Defendant owners, sets the policies that govern Facility Defendants and their employees, including through the Facility Defendant

handbooks and the CBAs. PFOF 15, 35; 01/08/2024 Trial Tr. 61:16–22, 64:1–20 (M. Shuey); 01/09/2024 Trial Tr. 133:6–15 (C. Matlack); 01/10/2024 Trial Tr. 19:12–22 (J. Martis); 01/16/2024 Trial Tr. 79:15–23 (M. Yarnell); 01/16/2024 Trial Tr. 181:9–17 (A. Molinaro); 02/13/2024 Trial Tr. 123:18–20 (C. Rivera); 02/15/2024 Trial Tr. 132:9–16 (R. Goff); PX-16 at 84:7–12, 119:7–10 (02/03/2020); PX-17 at 17:11–14 (08/11/2020).

15. Mr. Halper exercises final authority over all employee compensation decisions on behalf of Defendants, including with respect to hiring, pay rates, supplemental compensation (*e.g.*, bonuses and shift differentials), payroll, and pay disputes. PFOF 21–23, 26–27, 32, 51–52, 55–56, 59, 72, 75, 201; 01/08/2024 Trial Tr. 64:1–20, 87:20–88:2, 132:5–133:1, 136:2–14, 137:7–21, 215:7–21, 216:5–217:4 (M. Shuey); 01/09/2024 Trial Tr. 126:20–127:6, 131:15–22, 132:3–133:5, 157:17–22, 160:15–161:8, 228:23–229:5, 229:12–230:1 (C. Matlack); 01/10/2024 Trial Tr. 17:2–18:6, 23:11–24:6, 40:6–12, 41:21–42:2, 77:6–12 (J. Martis); 01/10/2024 Trial Tr. 103:15–105:15, 138:17–23, 139:3–8, 158:6–18, 170:25–171:3 (M. Reichard); 01/10/2024 Trial Tr. 210:20–211:5, 213:16–21, 213:25–214:5 (S. Pentek); 01/12/2024 Trial Tr. 83:7–19 (M. Swan); 01/16/2024 Trial Tr. 100:15–101:22 (M. Yarnell); 01/16/2024 Trial Tr. 172:11–25, 179:22–180:8, 188:2–17 (A. Molinaro: “Q. Sir, you say Mr. Halper had to approve each and every single payroll that South Hills wanted to run? A. Yes.”), 210:3–12, 222:22–223:18, 234:9–16, 234:20–235:2; 01/17/2024 Trial Tr. 60:16–61:5 (D. Cox); 01/17/2024 Trial Tr. 175:3–176:4, 178:7–15 (J. Shaffer); 01/18/2024 Trial Tr. 57:22–58:7, 67:1–7, 13 (B. Perkins); 01/19/2024 Trial Tr. 16:4–17, 20:4–12, 99:24–100:4, 103:11–13 (M. Shuey); 02/13/2024 Trial Tr. 68:6–8 (D. Ferraro); 02/15/2024 Trial Tr. 151:13–20 (R. Goff); JX-68 at pp. 3–4; JX-78 at pp. 1–3; PX-1 at p. 152; PX-1 at p. 224; PX-1 at p. 227; PX-1 at p. 230; PX-1 at pp. 233–34; PX-1 at p. 242; PX-1 at pp. 244–45; PX-1 at p. 247; PX-1 at p. 252; PX-1 at p. 259; PX-1 at p. 261; PX-1 at pp. 263–65; PX-1 at p. 270; PX-1 at pp. 272–73; PX-13 at 18:14–19:2 (02/03/2020); PX-14 at 24:22–25:4 (02/03/2020); PX-20 at 26:15–27:17, 72:23–73:3 (01/28/2020); PX-21 at 19:23–20:3 (01/29/2020); PX-23 at 13:16–14:1 (01/29/2020); PX-35 at 21:1–10, 28:23–29:1, 57:8–19, 58:3–11, 58:19–22, 59:6–10; PX-121 at p. 2 (Brighton Payroll Supervisor Apr. 2015 email: “I have to have Sam’s approval on all pay decisions.”); PX-132; PX-133; PX-189 at p. 2 (S. Halper in Dec. 2015: “I must approve every change in status/pay.”); PX-259; PX-301;

PX-312 at p. 1 (M. Zapor to S. Halper: “No one else will be hired without your approval.”); PX-314; PX-344 at 1; PX-353; PX-387 at p. 1 (M. Gandl: “Margaret, I still have to get approval from Sam, I was not authorized to just pay them the hours.”); PX-406; PX-409; PX-413; PX-447; PX-475; PX-478; PX-488; PX-493; PX-519; PX-586; PX-706; PX-A.

16. Mr. Halper supervises and directs the day-to-day affairs of Facility Defendants with respect to issues affecting finances and employee compensation, both directly and through the Regional Consultants and CHMS Group. PFOF 17–19, 48, 76, 99; 01/08/2024 Trial Tr. 128:9–132:4 (M. Shuey); 01/09/2024 Trial Tr. 127:15–128:3 (“Q. If you could describe in certain terms, Dr. Matlack, how involved, if at all, was Mr. Halper in the day-to-day operations of these 15 buildings? A. Actively involved. Almost every decision that was made in the facilities required his approval.”), 128:11–18, 129:6–19 (C. Matlack: “As the regional human resources director, could you just give me a general sense of the amount of oversight, the intensity of it between Mr. Halper and the 15 buildings? A. It was incredibly intense. It was well known that the facilities could not make independent decisions without - well, they couldn't make independent decisions. They needed to have Mr. Halper's approval for pretty much everything.”), 220:6–15, 238:13–239:6; 01/10/2024 Trial Tr. 8:8–9:12, 14:20–15:3, 27:6–10, 75:15–76:5 (J. Martis); 01/10/2024 Trial Tr. 209:12–15 (S. Pentek); 01/12/2024 Trial Tr. 72:20–73:12 (M. Swan); 01/16/2024 Trial Tr. 60:15–61:15, 61:25–62:20, 65:21–66:6 (M. Yarnell); 01/17/2024 Trial Tr. 61:6–20 (D. Cox); 01/17/2024 Trial Tr. 166:10–17, 172:10–174:16, 174:23–175:2 (J. Shaffer); 02/13/2024 Trial Tr. 123:6–10 (“Q. Mr. Rivera, during phase one, you were going to testify, were you not, that Mr. Halper had an extensive role in the day-to-day affairs of the defendants in this case? A. Right.”); 02/15/2024 Trial Tr. 16:13–17:6 (K. Hoke); 02/15/2024 Trial Tr. 92:5–93:2 (C. Dziak); PX-1 at p. 152; PX-1 at p. 230; PX-1 at p. 237; PX-1 at p. 241.

17. At his request, Mr. Halper was copied on email correspondence through his Gmail account so he could monitor Facility Defendants' day-to-day affairs. 01/08/2024 Trial Tr. 113:21–114:3 (M. Shuey); 01/09/2024 Trial Tr. 147:1–5 (C. Matlack); 01/10/2024 Trial Tr. 112:16–18 (M. Reichard); 01/10/2024 Trial Tr. 209:12–25 (S. Pentek) (“Q. In your experience, Ms. Pentek, did Mr. Halper ever play a role with the day-to-day operations with Cheswick? A. Yes. Q. Tell me about that. A. So, Sam was kept up to date on basically everything that

happened in the building. It was just sort of understood that we kept him in the loop, copied him on emails just so he was aware of what was going on day to day. Q. When you say we kept him in the loop, who is we? A. Myself and the other department heads. So like I said before, RNACs, LNACs, HR, staffing, admissions, etc.”); PX-1 at p. 152; PX-29 at 65:18–22; PX-A; PX-B; PX-C.

18. Mr. Halper specifically requested that he be kept aware, via email and otherwise, of issues relating to Facility Defendant employees’ compensation. 01/16/2024 Trial Tr. 167:25–168:6 (A. Molinaro); 02/12/2024 Trial Tr. 101:4–16, 132:19–23 (S. Halper: “I do like to see a lot of emails that do I really need to be included on them, maybe not, but I like to know how much of what is going on.”); 02/13/2024 Trial Tr. 123:11–17 (C. Rivera); 02/15/2024 Trial Tr. 139:10–140:2, 140:9–17, 156:10–15 (R. Goff: “Q. [C]an you characterize what Mr. Halper’s general response was when he would learn from you there were pay errors? A. Yes. He initially when all these pay errors were happening, he said he wanted to be in the loop on these things”); PX-1 at p. 152 (Murrysville HR/Payroll employee: “Halper works on a daily basis and has first-hand knowledge of the working conditions and pay practices at this because I’m required to CC Mr. Halper on all of my emails with regards to timesheets, payroll errors, payroll status changes, and just general human resources and payroll related questions that I need answered.”).

19. Mr. Halper requires, and receives, the submission of regular weekly reports from Facility Defendants, which included detail on key aspects of their operations (*e.g.*, admissions levels, patient safety reports, staffing levels, new hires, union grievances, payroll issues, and discipline) and other issues affecting Facility Defendants’ day-to-day affairs. 01/08/2024 Trial Tr. 142:9–143:3 (M. Shuey); PX-479.

20. Facility Defendants cannot hire employees without approval from Mr. Halper. 01/08/2024 Trial Tr. 133:10–134:6 (M. Shuey); 01/16/2024 Trial Tr. 63:8–12 (“Q. To your knowledge, Mr. Yarnell, did Mr. Halper have to specifically approve the hiring of every Comprehensive employee? A. Based on the fact that the offer letters came directly from Sam, I think, yes.”); 01/16/2024 Trial Tr. 171:11–172:10 (A. Molinaro: “Nobody could be hired at any facility unless Mr. Halper approved it. We had to wait to hear from Mr. Halper to approve every

single employee that would be hired”); 01/17/2024 Trial Tr. 178:13–15 (J. Shaffer: “Sam would have to determine what the rate of pay would be. So I couldn’t make any kind of job offer until I got that information from him.”); PX-27, Brighton Dep. Tr. at 41:22-42:2 (01/30/2020); PX-35 at 29:2–8; PX-352; PX-545 at 2 (S. Halper: “Payroll needs an approval email from me.”); PX-A.

21. If a Facility Defendant employee performs work for Defendants without specific, prior approval from Mr. Halper, Defendants do not pay that employee unless Mr. Halper approves. 01/08/2024 Trial Tr. 134:11–18, 135:11–15 (M. Shuey); PX-627.
22. Mr. Halper, in conjunction with the Regional Consultants and CHMS Group, control whether a Facility Defendant employee is classified as exempt under the Act. 01/10/2024 Trial Tr. 18:22–19:11 (J. Martis); 01/09/2024 Trial Tr. 192:25–193:7 (C. Matlack); 01/10/2024 Trial Tr. 108:5–12, 110:21–24 (M. Reichard); 01/16/2024 Trial Tr. 173:12–21, 180:9–17 (A. Molinaro: “If South Hills decided, you know, that maintenance director, he shouldn’t be salaried, did the building have the authority to change his pay classification? A. No. Q. Why not? A. That was all handled through payroll. That was -- payroll, they had their directives from Sam, also.”); 01/17/2024 Trial Tr. 182:6–13 (J. Shaffer); 02/14/2024 Trial Tr. 7:10–13 (L. Desmet); 02/14/2024 Trial Tr. 130:20–22 (C. Hill); 02/15/2024 Trial Tr. 96:15–23 (C. Dziak); JX-78; PX-1 at p. 245; PX-13 Greenville at 18:14-19:2 (02/03/2020); PX-21 at 8:7–11 (08/11/2020); PX-22 at 7:5–17, 10:8–12 (08/11/2020); PX-360; PX-363; PX-416 at p. 1; PX-545 at p. 1; PX-594; PX-661.
23. Mr. Halper, in conjunction with the Regional Consultants and CHMS Group, exercises final authority over resolution of requested pay corrections for Facility Defendants. 01/08/2024 Trial Tr. 139:14–24, 141:5–11 (M. Shuey); 01/09/2024 Trial Tr. 162:21–163:3 (“Q. Ultimately, Dr. Matlack, if there was a disagreement about payroll, who had the final word as to how the disagreement would be resolved? A. Mr. Halper. How do you know? A. Because I was there, I was involved in the communications. It was common knowledge that nothing took place unless Mr. Halper approved it.”), 182:12–20; 01/16/2024 Trial Tr. 218:18–219:4 (A. Molinaro); 01/17/2024 Trial Tr. 61:21–62:14, 94:4–11 (D. Cox); 02/15/2024 Trial Tr. 29:2–8 (K Hoke); JX-62; PX-14 at 53:15–54:4 (02/03/2020); PX-16 at

79:18–22 (02/03/2020); PX-217; PX-262; PX-265 (S. Halper resolving payroll dispute by stating “[t]hen don’t pay”); PX-352; PX-355 at p. 2 (M. Gandl noting that list of errors could not be paid because they had “not been approved by management,” *i.e.*, Mr. Halper); PX-545; PX-613; PX-690 at 1 (C. Matlack: “Although we would contractually owe it, I would run it by Sam to be safe.”); PX-632; PX-635; PX-B.

c. Regional Consultants Supervise and Control Facility Defendants on Mr. Halper’s Behalf

24. Defendants’ “Regional Directors of Operations”—including John Reichard, Margaret Zapor-Reichard, Tom Lowden, and David Ferraro—exercise broad, day-to-day supervision over multiple Facility Defendants and the other Regional Consultants. 01/08/2024 Trial Tr. 130:6–132:4, 163:11–16 (M. Shuey); 01/09/2024 Trial Tr. 125:10–126:9, 135:17–20, 135:25–136:3 (C. Matlack); 01/10/2024 Trial Tr. 9:13–10:13 (J. Martis); 01/10/2024 Trial Tr. 90:3–11, 91:23–92:2, 94:7–21, 96:1–25, 102:17–103:1 (M. Reichard); 01/16/2024 Trial Tr. 60:4–11 (M. Yarnell); 01/16/2024 Trial Tr. 162:4–9, 169:21–24 (A. Molinaro); 01/17/2024 Trial Tr. 54:1–7, 55:12–56:22 (D. Cox); 01/17/2024 Trial Tr. 160:12–162:20 (J. Shaffer); PX-1 at p. 259.

25. The other Regional Consultants perform other functions for all Facility Defendants, including human resources, recruitment, business development, and patient/resident admissions, or supervise specific functions within Facility Defendants, such as Nursing, Clinical Reimbursement, Facilities Management, Environmental Services, Dietary, and Therapy. 01/09/2024 Trial Tr. 121:1–122:3, 122:15–123:17, 133:20–134:24, 188:8–15, 206:14–19 (C. Matlack); 01/10/2024 Trial Tr. 10:14–11:19, 25:8–26:1, 27:11–20, 28:12–29:13 (J. Martis); 01/10/2024 Trial Tr. 90:11–91:5, 127:3–8, 165:18–21 (M. Reichard); 01/12/2024 Trial Tr. 74:14–21, 76:13–17 (M. Swan); 01/10/2024 Trial Tr. 207:19–208:5; 01/16/2024 Trial Tr. 161:7–162:3 (A. Molinaro); 01/17/2024 Trial Tr. 167:5–168:9, 169:11–23 (J. Shaffer); 01/18/2024 Trial Tr. 56:24–57:2 (B. Perkins); 01/18/2024 Trial Tr. 184:20–186:2 (C. Costic); PX-537 (identifying David Lopus as “Regional Director of Recruitment” and identifying Ben Halper as “Regional Director, Admissions & Business Development”).

26. Facility Defendant personnel report to the Regional Consultants, both directly and through the Nursing Home Administrators, and the Regional Consultants in turn report to Mr. Halper. 01/08/2024 Trial Tr. 130:6–20 (M. Shuey); 01/09/2024 Trial Tr. 125:10–126:5, 127:10–15, 133:20–135:16, 135:25–136:3 (C. Matlack); 01/10/2024 Trial Tr. 9:22–10:6, 12:23–14:4 (J. Martis); 01/10/2024 Trial Tr. 92:3–25, 93:22–24, 101:23–102:12 (M. Reichard); 01/10/2024 Trial Tr. 207:5–25, 208:13–209:2 (S. Pentek); 01/12/2024 Trial Tr. 75:4–11, 85:14–86:4 (M. Swan); 01/16/2024 Trial Tr. 59:13–22, 60:15–61:4 (M. Yarnell); 01/16/2024 Trial Tr. 166:15–17 (A. Molinaro); 01/17/2024 Trial Tr. 53:17–25, 54:8–55:11, 57:12–18 (D. Cox); 01/17/2024 Trial Tr. 160:12–161:7, 164:23–165:5, 168:22–169:10 (J. Shaffer); 01/18/2024 Trial Tr. 57:9–15 (B. Perkins); 01/18/2024 Trial Tr. 184:20–186:2 (C. Costic); PX-1 at pp. 155–56, ¶ 4; PX-20 at 50:11–15 (01/28/2020); PX-35 at 12:19–24, 18:2–5.
27. The Regional Consultants assist Mr. Halper with hiring decisions for Facility Defendants. 01/10/2024 Trial Tr. 103:2–11 (M. Reichard); 01/17/2024 Trial Tr. 215:13–23 (J. Shaffer); 02/14/2024 Trial Tr. 18:8–15 (L. Desmet); 02/15/2024 Trial Tr. 90:6–8, 91:8–12 (C. Dziak); PX-28 at 132:1–22 (02/04/2020); PX-35 at 21:12–29; PX-A.
28. The Regional Consultants hold weekly meetings to discuss Facility Defendants’ affairs, including staffing issues and employee compensation issues. 01/10/2024 Trial Tr. 98:1–7, 99:5–15 (M. Reichard); PX-35 at 19:18–24.
29. The Regional Consultants hold quarterly meetings with senior personnel in each Facility Defendant to discuss the buildings’ operations and issues affecting those operations, including employee compensation issues. 01/10/2024 Trial Tr. 98:8–99:4 (M. Reichard); PX-35 at 17:2–15, 20:4–8.
30. The Regional Consultants were formally housed within CHMS Group for a period of time. 01/10/2024 Trial Tr. 9:13–18, 12:23–13:23 (J. Martis); 01/09/2024 Trial Tr. 121:1–7 (C. Matlack); 01/10/2024 Trial Tr. 87:4–9 (M. Reichard); 01/10/2024 Trial Tr. 214:6–13 (S. Pentek).

31. In or around January 2019, Mr. Halper and the other owners decided to re-organize the Regional Consultants into a newly created entity called Western Pennsylvania Consultants. 01/10/2024 Trial Tr. 100:12–101:1, 101:5–15 (M. Reichard); PX-31 at 54:5–10.

32. Despite this change, the Regional Consultants’ function and authority did not change, and they continue to report to Mr. Halper. 01/10/2024 Trial Tr. 101:2–4, 101:16–22 (M. Reichard); 01/17/2024 Trial Tr. 166:18–167:4 (J. Shaffer); PX-35 at 53:16–24.

d. Defendants’ Payroll Policies and Practices

33. Defendants maintain written pay policies for Facility Defendants and their employees, principally in the form of CBAs and employee handbooks. 01/16/2024 Trial Tr. 68:21–69:1 (M. Yarnell); JX-1–15; JX-31–JX-51.

34. CBAs and employee handbooks collectively govern every aspect of compensation, work conditions, and disciplinary action at Facility Defendants. 01/16/2024 Trial Tr. 69:2–10 (M. Yarnell); 01/17/2024 Trial Tr. 59:2–12 (D. Cox); JX-31–JX-51.

35. Mr. Halper and his agents negotiate the CBAs on behalf of Facility Defendants. 01/16/2024 Trial Tr. 49:24–51:2, 55:10–14, 61:21–24, 71:6–16, 73:7–20, 75:1–76:6, 79:4–14 (M. Yarnell); 01/17/2024 Trial Tr. 59:13–60:1, 62:15–63:2, 115:10–24 (D. Cox); 01/18/2024 Trial Tr. 10:18–11:1, 11:18–25, 30:23–32:10 (L. Shuppas); PX-14 at 59:7–21 (02/03/2020); PX-18 at 10:6–9 (08/11/2020); PX-19 at 15:20–22 (01/27/2020).

36. Facility Defendant employees are classified as either hourly or exempt employees under the Act. 01/08/2024 Trial Tr. 90:2–4 (M. Shuey); 01/10/2024 Trial Tr. 18:19–21 (J. Martis); 01/10/2024 Trial Tr. 107:22–24 (M. Reichard); 01/17/2024 Trial Tr. 181:9–16 (J. Shaffer); JX-1 at pp. 24–25; JX-2 at p. 24; JX-3 at p. 24; JX-4 at p. 24; JX-5 at p. 24; JX-6 at p. 24; JX-7 at p. 24; JX-8 at p. 24; JX-9 at p. 24; JX-10 at p. 24; JX-11 at p. 24; JX-12 at p. 25; JX-13 at p. 24; JX-14 at p. 24; JX-15 at p. 22.

37. Facility Defendant employees are paid every two weeks, according to the specific schedule in place at their location. 01/09/2024 Trial Tr. 228:15–16 (C. Matlack); 01/11/2024 Trial Tr. 21:18–22 (M. Murray); PX-5 at p. 10.

38. Each Facility Defendant uses a time clock to track employee time worked. 01/08/2024 Trial Tr. 88:11–15 (M. Shuey); 01/09/2024 Trial Tr. 38:11–21 (M. Gildea); 01/09/2024 Trial Tr. 203:16–20 (C. Matlack); 01/10/2024 Trial Tr. 20:8–16 (J. Martis); 01/10/2024 Trial Tr. 137:10–16 (M. Reichard); 01/10/2024 Trial Tr. 206:22–25 (S. Pentek); 01/11/2024 Trial Tr. 189:24–190:2 (T. Slagle); 01/16/2024 Trial Tr. 184:9–20 (A. Molinaro); 01/17/2024 Trial Tr. 123:11–15 (J. Meiss); 01/16/2024 Trial Tr. 182:22–183:12 (A. Molinaro); 01/17/2024 Trial Tr. 182:23–183:10 (J. Shaffer); 01/18/2024 Trial Tr. 78:15–20 (B. Perkins); 01/18/2024 Trial Tr. 140:20–24 (K. Lantzy); JX-58 at “Time Data”; PX-1 at p. 129, ¶ 8; PX-28 at 102:24–103:13 (02/04/2020).
39. Facility Defendant employees must punch in at the beginning of their shifts and punch out at the end of their shift. 01/12/2024 Trial Tr. 148:20–149:4 (J. Shadle); 01/16/2024 Trial Tr. 184:9–17 (A. Molinaro); 01/17/2024 Trial Tr. 123:16–21 (J. Meiss); 01/18/2024 Trial Tr. 89:17–21 (C. Simmons); 01/18/2024 Trial Tr. 107:5–7 (C. Anderson); 02/15/2024 Trial Tr. 75:18–22 (B. Tissue); JX-58 at “Time Data”; PX-13 at 54:2–9 (02/03/2020); PX-28 at 165:21–24 (02/04/2020); PX-133 at p. 1.
40. Facility Defendant time clocks record time to the actual minute. 01/18/2024 Trial Tr. 79:1–7 (B. Perkins); JX-58 at “Time Data”; JX-79; PX-1 at p. 259; PX-13 at 46:24–47:6 (02/03/2020); PX-28 at 124:19–125:13 (02/04/2020).
41. Defendants round time punches up or down to the nearest quarter-hour from the time of the punch. JX-1 at p. 28; JX-2 at p. 27; JX-3 at p. 27; JX-4 at p. 27; JX-5 at p. 27; JX-6 at p. 27; JX-7 at p. 27; JX-8 at p. 27; JX-9 at p. 27; JX-10 at p. 27; JX-11 at p. 27; JX-12 at p. 28; JX-13 at p. 28; JX-14 at p. 27; JX-15 at p. 25; PX-28 at 124:19–125:13, 126:14–23 (02/04/2020).
42. Defendants have formal policies relating to overtime work performed by Facility Defendant employees. JX-1 at p. 27; JX-2 at pp. 23, 26–27; JX-3 at pp. 23, 26–27, 47; JX-4 at pp. 23 26–27; JX-5 at pp. 23–24, 26; JX-6 at pp. 23–24; PX-7 at pp. 23–24, 26–27; PX-8 at pp. 26–27; JX-9 at pp. 24, 26; JX-10 at pp. 24, 26–27; JX-15 at 22, 24–25; JX-9 at pp. 24, 26; JX-31 at pp. 27–29; JX-32 at pp. 27–28; JX-32 at pp. 27–28; JX-33 at pp. 12–14; JX-34 at pp. 5, 8, 20; JX-35 at pp. 17–19; JX-36 at pp. 16–19; JX-37 at pp. 17–18.

43. Facility Defendants utilize the 8/80 Rule and/or a standard 40-hour workweek when calculating overtime. 08/28/2023 Joint Stip. 14 (Dkt. 360 at p. 4); 01/11/2024 Trial Tr. 61:18–62:10 (M. Murray); PX-5 at pp. 5–6.
44. Under the 8/80 rule, Defendants are required to pay non-exempt employees at a rate of time-and-one-half the regular rate of pay for hours worked in excess of 8 in any workday and in excess of 80 in any regularly recurring two-week period. 08/28/2023 Joint Stip. 15 (Dkt. 360 at p. 4); 01/11/2024 Trial Tr. 62:14–20 (M. Murray); PX-28 at 153:17–24 (02/04/2020).
45. Under the standard 40-hour workweek, Defendants are required to pay non-exempt employees at a rate of time-and-one-half the regular rate of pay for each hour after 40 hours in a 7-day workweek. 08/28/2023 Joint Stip. 16 (Dkt. 360 at p. 4); 01/11/2024 Trial Tr. 63:25–64:4 (M. Murray).
46. During the dates identified below, the following Facility Defendants used the 8/80 rule to determine overtime due for the following departments:

Brighton (03/14/2014 to 04/01/2017)	Department
	Central Supply
	CNA
	CNA Vent
	Cook
	Cook 2
	Cooks
	Dietary Aides
	Laundry
	LPN
	Maintenance
	Receiving (Dietary)
	Restorative CNA
Cheswick	Department
	Activity Aides
	CNA
	Cook
	Dietary Aides
	Housekeeping
	Laundry

	LPN
	Restorative CNA
The Grove at Latrobe	Department
	Activity Aides
	CNA
	Cook
	Dietary Aides
	Housekeeping
	Maintenance
North Strabane Rehab.	Department
	Activity Aides
	CNA
	Cook
	Dietary Aides
	Driver
	Housekeeping
	Laundry
	LPN
	Office/Receptionists
	Receptionist
North Strabane Ret.	Department
	Activity Aides
	CNA
	CNA ICF
	Cook
	Dietary Aides
	Housekeeping
	LPN
	Office/Receptionists
	Receptionist

PX-5 at pp. 5–6; PX-9 at pp. 2–6 (Interrog. 11); JX-31 at p. 28; JX-32 at p. 28 (noting change to Brighton as 04/01/2017); JX-33 at p. 12; JX-34 at p. 5; JX-40 at p. 12; JX-43 (renewing Cheswick CBA overtime provisions); JX-44 at p. 8.

47. Defendants purportedly have a policy that overtime work by Facility Defendant employees is prohibited without advance permission. 01/10/2024 Trial Tr. 52:11–15 (J. Martis); JX-1 at pp. 27–28; JX-2 at pp. 26–27; JX-3 at pp. 26–27; JX-4 at pp. 26–27; JX-5 at pp. 26–27; JX-

6 at pp. 26–27; JX-7 at pp. 26–27; JX-8 at pp. 26–27; JX-9 at pp. 26–27; JX-10 at pp. 26–27; JX-11 at p. 26; JX-12 at p. 28; JX-13 at p. 28; JX-14 at p. 27; JX-15 at p. 25; PX-581.

48. Mr. Halper, the Regional Consultants, and CHMS Group closely monitor the amount of overtime wages at each Facility Defendant. 01/08/2024 Trial Tr. 138:12–139:6 (M. Shuey); 01/10/2024 Trial Tr. 119:5–8 (M. Reichard); 01/19/2024 Trial Tr. 14:22–15:24 (M. Shuey); PX-104; PX-105; PX-115; PX-196; PX-426; PX-428; PX-511; PX-574; PX-584; PX-607; PX-616; PX-633; PX-634; PX-718; PX-762; PX-784; PX-779.

49. Defendants regularly offer various forms of compensation enhancements for Facility Defendant employees. These include, *inter alia*, lump-sum bonuses (referred to as “pick up” bonuses), shift differentials, the Baylor program, hazard pay, holiday pay, and gift cards. Employees regularly accept these offers and perform the requested additional work. 01/08/2024 Trial Tr. 114:9–22, 117:23–119:8, 127:21–128:5 (M. Shuey); 01/09/2024 Trial Tr. 83:17–19, 94:14–95:1 (A. Walter); 01/09/2024 Trial Tr. 141:22–142:20 (C. Matlack); 01/10/2024 Trial Tr. 22:12–22, 23:4–10, 24:19–24 (J. Martis); 01/10/2024 Trial Tr. 105:16–22, 127:25–128:7 (M. Reichard); 01/10/2024 Trial Tr. 215:19–23 (S. Pentek); 01/11/2024 Trial Tr. 205:23–206:20; 01/12/2024 Trial Tr. 22:1–8 (B. Leffler); 01/16/2024 Trial Tr. 24:23–25:4 (J. Pattison); 01/16/2024 Trial Tr. 99:13–24 (M. Yarnell); 01/16/2024 Trial Tr. 190:6–15, 192:3–7 (A. Molinaro); 01/17/2024 Trial Tr. 82:18–83:6, 83:14–84:7 (D. Cox); 01/17/2024 Trial Tr. 135:8–136:1 (J. Meiss); 01/17/2024 Trial Tr. 193:12–16 (J. Shaffer); 01/18/2024 Trial Tr. 21:20–22:9, 23:22–24:3 (L. Shuppas); 01/18/2024 Trial Tr. 69:15–22 (B. Perkins); 01/18/2024 Trial Tr. 170:22–24 (E. Bainbridge); PX-1 at p. 195, ¶ 4; PX-1 at p. 221, ¶ 6; PX-1 at p. 233; PX-1 at p. 237; PX-28 at 155:9–14 (02/04/2020); PX-35 at 32:25–33:1; PX-43, ¶ 3(viii); PX-44, ¶ 3(vi); PX-45, ¶ 3(vii); PX-46, ¶ 3(xiii); PX-47, ¶ 3(viii); PX-48, ¶ 3(ix); PX-51, ¶ 3(xvi); PX-69; PX-394 at 1; 56.1 ¶ 136; PX-512; PX-C.

50. The Baylor program involved paying an enhanced pay rate to Facility Defendant employees who agreed to work during weekends. 01/08/2024 Trial Tr. 115:24–116:12 (M. Shuey); PX-28 at 175:15–177:9 (02/04/2020); PX-69 at 1.

51. To offer bonuses, Facility Defendant personnel identify future staffing needs and request permission from Mr. Halper, either directly or through the Regional Consultants and/or

CHMS Group. 01/08/2024 Trial Tr. 120:11–19 (M. Shuey); 01/09/2024 Trial Tr. 95:4–18 (A. Walter); 01/09/2024 Trial Tr. 142:21–143:13 (C. Matlack); 01/10/2024 Trial Tr. 23:11–24:6 (J. Martis); 01/10/2024 Trial Tr. 105:23–106:2 (M. Reichard); 01/16/2024 Trial Tr. 97:25–98:17: (M. Yarnell); 01/17/2024 Trial Tr. 191:6–192:18 (J. Shaffer).

52. Facility Defendant personnel cannot offer bonuses without prior approval from Mr. Halper, either directly or through the Regional Consultants. 01/08/2024 Trial Tr. 120:20–121:12 (M. Shuey); 01/19/2024 Trial Tr. 31:14–25 (M. Shuey); 01/09/2024 Trial Tr. 143:13–144:2, 223:12–224:6 (C. Matlack); 01/10/2024 Trial Tr. 23:11–24:6 (J. Martis); 01/10/2024 Trial Tr. 106:3–6, 129:18–130:7 (M. Reichard); 01/16/2024 Trial Tr. 190:6–21, 191:16–192:2 (A. Molinaro); 01/17/2024 Trial Tr. 191:1–5 (J. Shaffer); 01/18/2024 Trial Tr. 69:23–70:4 (B. Perkins); 01/19/2024 Trial Tr. 31:14–25 (M. Shuey); PX-35 at 33:2–21; PX-394 at 3; PX-C.

53. After approval is received, Facility Defendant personnel advertise bonuses to employees, including the specific amount of the bonus. 01/09/2024 Trial Tr. 95:19–96:1 (A. Walter); 01/09/2024 Trial Tr. 144:3–13 (C. Matlack); 01/16/2024 Trial Tr. 97:14–24 (M. Yarnell); 01/17/2024 Trial Tr. 83:7–13 (D. Cox); PX-15 at 50:23–51:2 (02/03/2020); PX-18 at 92:2–10 (01/27/2020).

54. Defendants’ offers of pick-up bonuses to Facility Defendant employees do not have any conditions attached after the work was completed, *i.e.*, they are non-discretionary bonuses. 01/08/2024 Trial Tr. 119:9–120:2 (M. Shuey); 01/09/2024 Trial Tr. 96:12–14 (A. Walter); 01/09/2024 Trial Tr. 144:13–23 (C. Matlack); 01/10/2024 Trial Tr. 24:7–18 (J. Martis); 01/10/2024 Trial Tr. 129:2–5 (M. Reichard); 01/10/2024 Trial Tr. 188:13–24 (C. Langham); 01/12/2024 Trial Tr. 106:21–107:2 (M. Swan); 01/16/2024 Trial Tr. 25:5–9 (J. Pattison); 01/17/2024 Trial Tr. 136:5–11 (J. Meiss); 01/17/2024 Trial Tr. 84:8–16 (D. Cox); 01/17/2024 Trial Tr. 192:19–193:11 (J. Shaffer); 02/15/2024 Trial Tr. 21:5–8 (K. Hoke); 02/15/2024 Trial Tr. 104:23–105:5 (C. Dziak); JX-72 at p. 1 (D. Bernstein: “[O]nce the employee actually works the PU shift it should be paid together with payroll and that there shouldn’t be an email flurry after the fact to get it approved.”).

55. After bonuses are approved, offered, accepted, and the additional work performed, Mr. Halper, the Regional Consultants, and CHMS Group conduct a second review of bonuses, on an employee-by-employee basis, before they can be paid. 01/09/2024 Trial Tr. 145:9–145:20, 148:4–150:12 (C. Matlack); 01/10/2024 Trial Tr. 131:21–132:12 (M. Reichard); PX-394 at p. 3; PX-601; PX-608; PX-727; PX-C.
56. In almost every case, bonuses cannot be paid unless Mr. Halper provides specific approval, either directly or through the Regional Consultants. 01/19/2024 Trial Tr. 32:6–24 (M. Shuey); 01/10/2024 Trial Tr. 106:7–14 (M. Reichard: “Sam approved all the bonuses.”); JX-72; PX-35 at 60:4–61:3; PX-214 (M. Gandl: “Is this Bonus approved? Is it to be paid as Bonus?”); S. Halper: “I need to see email chain with my approval”); PX-385 at p. 5 (M. Neufeld: “I am not aware of any bonus, was it approved by Sam?”); PX-505; PX-567; PX-608; PX-C.
57. Shift differentials are an enhancement in an employee’s hourly rate given in exchange for the employee working during certain times. 01/08/2024 Trial Tr. 116:18–117:22, 127:21–128:5 (M. Shuey); 01/09/2024 Trial Tr. 141:22–142:17 (C. Matlack); 01/10/2024 Trial Tr. 22:12–23:3 (J. Martis); 01/10/2024 Trial Tr. 129:6–17 (M. Reichard); 01/16/2024 Trial Tr. 98:23–99:12 (M. Yarnell); 01/17/2024 Trial Tr. 84:17–25 (D. Cox); 01/17/2024 Trial Tr. 136:12–18 (J. Meiss); 01/17/2024 Trial Tr. 190:15–25 (J. Shaffer); PX-1 at p. 129, ¶ 6; PX-37, ¶ 3(x); PX-52 at p. 10; PX-69 at p. 2.
58. The shift differentials, which are also non-discretionary, are negotiated with the union and contained within the CBAs they range between a \$0.12 and \$5.00 enhancement in employees’ hourly rate. 01/08/2024 Trial Tr. 120:2–10 (M. Shuey); 01/10/2024 Trial Tr. 22:32–23:3 (J. Martis); 01/10/2024 Trial Tr. 221:17–24 (S. Pentek); 01/17/2024 Trial Tr. 85:1–11 (D. Cox); 01/18/2024 Trial Tr. 21:20–22:6 (L. Shuppas); 01/16/2024 Trial Tr. 98:23–99:24 (M. Yarnell); JX-2 at p. 26; JX-3 at p. 26; JX-4 at p. 26; JX-5 at p. 26; JX-15 at pp. 24–25; JX-31 at pp. 40, 51; JX-32 at pp. 39, 47; JX-33 at p. 16; JX-34 at p. 8; JX-35 at p. 43; JX-36 at pp. 42–43; JX-37 at p. 43; JX-38 at p. 44; JX-39 at pp. 52–53; JX-41 at p. 32; JX-44 at p. 8; PX-27 at 287:23–288:22 (01/30/2020); PX-44, ¶ 3(v).

59. Mr. Halper exercises final authority over whether shift differentials will be paid. PX-153; PX-193; PX-267 at p. 1; PX-408 at p. 1; PX-415 at p. 1 (S. Halper: “Do not pay diff”); PX-435 at p. 1; PX-443 at p. 1 (CHMS Group: “We would need approval from Sam that we can pay those differentials”).
60. Defendants have purported policies for breaks during the work day, including a purported policy that each Facility Defendant employee who has worked at least five hours in a shift is required to take a thirty-minute meal break. 01/08/2024 Trial Tr. 149:17–21, 150:22–25 (M. Shuey); 01/10/2024 Trial Tr. 33:3–5 (J. Martis); 01/10/2024 Trial Tr. 125:14–18 (M. Reichard); 01/16/2024 Trial Tr. 192:8–24 (A. Molinaro); JX-1 at pp. 20–21; JX-2 at p. 20; JX-3 at pp. 20–21; JX-4 at pp. 20–21; JX-5 at pp. 20–21, 30; JX-6 at p. 20; JX-7 at pp. 20–21; JX-8 at pp. 20–21; JX-9 at p. 20; JX-10 at pp. 20–21; JX-15 at p. 18; JX-32 at p. 26; JX-33 at p. 13; JX-34 at pp. 8, 18, 20; JX-35 at p. 18; JX-36 at pp. 16–19; JX-37 at p. 18; PX-581 at p. 2.
61. Facility Defendant employee meal breaks are supposed to be uninterrupted. 01/10/2024 Trial Tr. 68:16–19 (J. Martis); 01/16/2024 Trial Tr. 193:10–13 (A. Molinaro); JX-1 at p. 73; JX-12 at p. 74; JX-13 at p. 72; JX-32 at p. 26.
62. Defendants automatically deduct thirty minutes of work time from Facility Defendant employees’ timecards to account for the meal break, regardless of employees’ time clock punches. 01/08/2024 Trial Tr. 149:22–150:17 (M. Shuey); 01/09/2024 Trial Tr. 86:20–23 (A. Walter); 01/10/2024 Trial Tr. 33:15–34:1 (J. Martis); 01/10/2024 Trial Tr. 124:7–25 (M. Reichard); 01/11/2024 Trial Tr. 36:25–37:4, 38:11–16 (M. Murray); 01/16/2024 Trial Tr. 192:25–193:18 (A. Molinaro); 01/17/2024 Trial Tr. 193:17–23 (J. Shaffer); 01/19/2024 Trial Tr. 54:4–19 (M. Shuey); PX-1 at p. 130, ¶ 10; PX-1 at p. 195, ¶ 8; PX-1 at p. 221, ¶ 9; PX-1 at p. 234; PX-28 at 133:10–15 (02/04/2020), 11:11–18 (Aug. 12, 2020); PX-51, ¶ 3(xvii).
63. Notwithstanding their written procedures, Facility Defendant employees regularly punch in and out for their 30-minute meal breaks. 01/10/2024 Trial Tr. 33:6–10 (J. Martis); 01/11/2024 Trial Tr. 39:18–20, 42:25–4 (M. Murray testifying that approximately 40% of Facility Defendant employees reflected within Defendants’ time records punched in and out

for meal breaks at least once); 01/12/2024 Trial Tr. 150:23–25 (J. Shadle); 01/16/2024 Trial Tr. 89:14–23 (M. Yarnell); 01/16/2024 Trial Tr. 184:9–20, 192:11–13 (A. Molinaro); 01/17/2024 Trial Tr. 78:14–17 (D. Cox); 01/17/2024 Trial Tr. 226:16–18 (M. Edwards); 01/18/2024 Trial Tr. 47:11–14 (L. Shuppas); 01/18/2024 Trial Tr. 91:4–6 (C. Simmons); 02/12/2024 Trial Tr. 193:3–11 (A. Pechman); 02/15/2024 Trial Tr. 193:3–11 (K. Hoke); 02/15/2024 Trial Tr. 99:4–10 (C. Dziak); JX-63 at p. 1 (S. Halper Sept. 2015 email stating that staff needs to be disciplined for “missed lunch punches”); PX-1 at p. 153; PX-1 at p. 169, ¶ 6; PX-1 at p. 221, ¶ 8; PX-1 at p. 224; PX-1 at p. 226; PX-1 at p. 229; PX-1 at p. 233; PX-1 at p. 236; PX-1 at p. 238; PX-1 at pp. 246–47; PX-1 at p. 253; PX-1 at p. 256; PX-1 at pp. 258–59; PX-1 at p. 261; PX-1 at pp. 271–73; PX-1 at pp. 276–77; PX-1 at p. 288; PX-23 at 41:1–5 (01/29/2020); PX-28 at 124:18–125:1 (Aug. 12, 2020).

64. Facility Defendant employees are required to have four punches per shift over 5 hours: (1) a punch in at the beginning of the shift; (2) a punch out for the beginning of a meal break; (3) a punch in for the end of a meal break, and, (4) a punch out at the end of the shift. PX-28 at 127:14–25 (Aug. 12, 2020).

65. Facility Defendant employees are supposed to obtain advance permission before working through a meal break. 01/10/2024 Trial Tr. 34:21–25 (J. Martis); 01/16/2024 Trial Tr. 194:15–17 (A. Molinaro); 01/17/2024 Trial Tr. 195:2–13 (J. Shaffer); PX-28 at 133:16–134:1 (02/04/2020).

66. Facility Defendants purportedly have a policy that, if a Facility Defendant employee’s time punches are incorrect (*e.g.*, missed punch, work through meal break), the employee submits a missed punch/time adjustment form, signed by their supervisor, to have their work hours adjusted. 01/08/2024 Trial Tr. 214:11–215:6 (M. Shuey); 01/09/2024 Trial Tr. 77:7–15, 86:12–19 (A. Walter); 01/09/2024 Trial Tr. 158:3–12 (C. Matlack); 01/10/2024 Trial Tr. 33:6–10, 36:16–7 (J. Martis); 01/10/2024 Trial Tr. 123:15–25 (M. Reichard); 01/10/2024 Trial Tr. 185:20–186:15 (C. Langham); 01/10/2024 Trial Tr. 235:20–25, 238:24–239:19 (R. Wolarov); 01/12/2024 Trial Tr. 104:9–12 (M. Swan); 01/12/2024 Trial Tr. 156:25–158:10 (J. Shadle); 01/16/2024 Trial Tr. 122:4–13 (M. Yarnell); 01/17/2024 Trial Tr. 77:1–11, 15–23, 78:2–5 (D. Cox); 01/17/2024 Trial Tr. 194:20–195:1 (J. Shaffer); PX-1 at p. 130,

¶ 10; PX-13 at 45:2–8 (02/03/2020); PX-14 at 41:12–17 (02/03/2020); PX-15 at 35:21–36:1 (02/03/2020); PX-18 at 105:19–106:4 (01/27/2020); PX-23 at 42:1–10 (01/29/2020), 9:1–10:2 (01/30/2020); PX-27 at 155:18–22 (01/30/2020); PX-28 at 136:16–134:6 (02/04/2020); PX-44, ¶ 3 (xiv); PX-47, ¶ 3(ix); PX-164.

e. CHMS Group Controls Facility Defendants’ Pay Practices on Mr. Halper’s Behalf

67. Mr. Halper and other Facility Defendant owners own CHMS Group. 01/10/2024 Trial Tr. 8:3–7 (J. Martis); 01/10/2024 Trial Tr. 214:14–16 (S. Pentek); 02/12/2024 Trial Tr. 71:16–17 (S. Halper); PX-34 at 7:21–24, 12:19–22.

68. CHMS Group served as a contracted back-office provider for each Facility Defendant during the relevant time period. 01/09/2024 Trial Tr. 228:5–9 (C. Matlack); 01/10/2024 Trial Tr. 86:24–87:3, 87:10–21 (M. Reichard); 01/16/2024 Trial Tr. 59:6–12, 77:5–15, 78:5–7 (M. Yarnell); 01/17/2024 Trial Tr. 163:1–6, 14–25, 164:1–11 (J. Shaffer); PX-28 at 29:12–30:23, 31:15–32:1 (02/04/2020); PX-34 at 8:8–13.

69. CHMS Group processes payroll in a centralized, mostly uniform manner on behalf of each Facility Defendant. 08/28/2023 Joint Stip. 11 (Dkt. 360 at p. 3); 01/11/2024 Trial Tr. 21:13–17 (M. Murray); 02/12/2024 Trial Tr. 149:14–22 (A. Pechman: “Q. So when you’re testifying about what CHMS Group did or does for the facilities, is it fair to assume that stems across all of the facilities? A. Substantially. . . . [T]he payroll work is pretty much the same.”); PX-28 at 27:4–28:9, 55:4–14 (02/04/2020); PX-34 at 24:10–17.

70. The CHMS Group billing and payroll offices are in Hewlett, New York. 01/10/2024 Trial Tr. 88:2–3 (M. Reichard); 01/16/2024 Trial Tr. 78:5–7 (M. Yarnell); 01/17/2024 Trial Tr. 64:5–10 (D. Cox); PX-28 at 48:20–24 (02/04/2020); PX-30 at 10:2–14 (02/05/2019).

71. CHMS Group reports to Mr. Halper. 01/08/2024 Trial Tr. 129:9–20 (M. Shuey); 01/09/2024 Trial Tr. 127:7–9 (C. Matlack); 01/17/2024 Trial Tr. 165:6–11 (J. Shaffer: “Q. Do you have any general sense of the connection among Mr. Halper, Mr. Lowden and the back office you have been describing? A. The way that I understood it was that the back office also reported to Sam so they couldn’t function outside of anything that he approved or disapproved.”), 165:25–166:9; PX-34 at 11:4–8.

72. CHMS Group, subject to Mr. Halper's ultimate supervision and approval, exercises authority over compensation policies and payroll with respect to Facility Defendants and their employees. 01/08/2024 Trial Tr. 63:5–18, 87:20–88:2 (M. Shuey); 01/17/2024 Trial Tr. 64:17–65:12 (D. Cox); 01/17/2024 Trial Tr. 159:25–160:10 (J. Shaffer); PX-545.
73. Michael Neufeld has been the Chief Financial Officer of CHMS Group during the relevant time period, and he oversees CHMS Group's operations on Mr. Halper's behalf. 01/08/2024 Trial Tr. 112:15–17 (M. Shuey); 01/09/2024 Trial Tr. 147:19–25 (C. Matlack); 01/10/2024 Trial Tr. 88:10–18 (M. Reichard); PX-28 at 48:9–10 (02/04/2020); PX-34 at 26:1–10.
74. Mendy Gandl, David Bernstein, and Abraham Pechman have served as Directors of Payroll for CHMS Group. 01/08/2024 Trial Tr. 69:18–70:3, 112:10–12 (M. Shuey); 01/09/2024 Trial Tr. 147:19–24 (C. Matlack); 01/10/2024 Trial Tr. 89:2–18 (M. Reichard); 01/16/2024 Trial Tr. 78:8–18 (M. Yarnell); 01/17/2024 Trial Tr. 65:8–65:21 (D. Cox); 01/17/2024 Trial Tr. 165:15–20 (J. Shaffer); PX-28 at 22:4–11, 58:6–20 (02/04/2020); PX-34 at 35:22–25.
75. CHMS Group assists Mr. Halper with hiring decisions for Facility Defendants. 01/08/2024 Trial Tr. 132:5–14 (M. Shuey); 01/10/2024 Trial Tr. 17:2–25 (J. Martis); PX-16 at 34:18–35:4 (02/03/2020); PX-A.
76. CHMS Group oversees purchase of supplies and equipment for Facility Defendants, subject to Mr. Halper's final approval. 01/10/2024 Trial Tr. 106:20–107:15 (M. Reichard); 01/17/2024 Trial Tr. 164:12–22, 173:1–7 (J. Shaffer); PX-17 at 53:6–7 (01/27/2020); PX-18 at 33:10–25 (01/27/2020).
77. CHMS Group creates and maintains formal, memorialized payroll processes for all Facility Defendants. 01/08/2024 Trial Tr. 115:10–19, 129:3–8 (M. Shuey); PX-50, ¶ 3(x); PX-15 at 44:20–22 (02/03/2020); PX-16 at 36:10–22 (02/03/2020); PX-28 at 83:8–84:9 (02/04/2020); PX-69.
78. CHMS Group is supposed to maintain pay rate information and for Facility Defendant employees. 01/17/2024 Trial Tr. 184:3–4, 184:4–5 (J. Shaffer); PX-21 at 60:11–22

(01/29/2020); PX-23 at 19:12–16, 42:16–20 (01/29/2020); PX-28 at 85:23–87:18, 88:10–89:15, 132:1–18, 132:23–133:9 (02/04/2020).

79. CHMS Group runs payroll based on “payroll rules” that it creates for each Facility

Defendant to ensure compliance with Defendants’ compensation policies, which it develops and applies in consultation with Mr. Halper and the Regional Consultants. PX-13 at 44:17–21 (02/03/2020); PX-28 at 44:3–18, 65:8–66:6, 67:2–68:2, 80:8–18, 87:17–19, 129:3–8, 102:24–104:23, 150:8–151:5 (02/04/2020); PX-43, ¶ 3(v).

80. CHMS Group retrieves time punch data from Facility Defendants to complete payroll. This has involved collection of: (1) data directly from time clocks Facility Defendants use, and; (2) written summaries of time worked from Facility Defendant supervisory personnel.

01/08/2024 Trial Tr. 87:11–16 (M. Shuey); 01/09/2024 Trial Tr. 159:10–15 (C. Matlack); 1/10/2024 Trial Tr. 39:3–22 (J. Martis); 01/10/2024 Trial Tr. 137:17–23 (M. Reichard); 01/16/2024 Trial Tr. 185:2–11 (A. Molinaro); 01/17/2024 Trial Tr. 183:11–184:2 (J. Shaffer); 01/18/2024 Trial Tr. 189:8–13 (C. Costic); PX-28 at 27:4–24, 102:24–103:23, 104:19–23 (02/04/2020).

81. To obtain the written summaries of time data, CHMS Group’s protocol is to provide a weekly time report to each Facility Defendant. The human resources department and other Facility Defendant personnel review the time report, make changes, and return the edited report to CHMS Group, which is supposed to implement those changes. 01/09/2024 Trial Tr. 157:12–21 (C. Matlack); 01/10/2024 Trial Tr. 137:24–138:3 (M. Reichard); 01/12/2024 Trial Tr. 70:18–71:3, 90:13–21, 91:16–24, 92:6–14 (M. Swan); 02/12/2024 Trial Tr. 155:4–15 (A. Pechman); PX-13 at 37:10–38:4 (02/03/2020); PX-14 at 39:16–40:16 (02/03/2020); PX-16 at 76:19–77:21 (02/03/2020); PX-21 at 64:9–23 (01/29/2020); PX-22 at 45:17–46:6 (01/29/2020); PX-27 at 67:21–69:1 (01/30/2020); PX-28 at 102:24–104:9, 104:19–23 (02/04/2020); PX-44, ¶ 3(iii); PX-47, ¶ 3(x); PX-52 at p. 3; PX-160 at p. 1.

82. Facility Defendants notify CHMS Group if an employee was due supplemental compensation, including pick-up bonuses and shift differentials, which CHMS Group is supposed to incorporate into payroll. 01/09/2024 Trial Tr. 157:12–21 (C. Matlack); PX-13 at 43:25–44:3 (02/03/2020); PX-14 at 40:17–41:2 (02/03/2020); PX-15 at 36:2–9

(02/03/2020); PX-17 at 143:21–144:3 (01/27/2020); PX-23 at 33:16–41:2 (01/29/2020); PX-24 at 41:7–14 (01/28/2020); PX-28 at 113:7–114:3 (02/04/2020).

83. Because CHMS Group is the primary custodian of payroll and time records for each Facility Defendant, Facility Defendants have little to no access to time punch records for their employees. 01/18/2024 Trial Tr. 65:2–11 (B. Perkins); 02/15/2024 Trial Tr. 11:15–12:3, 16:7–11 (K. Hoke); PX-1 at p. 152 (Murrysville HR/Payroll employee: “The company headquarters in [New York] controls all of the access to employee timekeeping records. No one locally has access to the timeclock or associated software.”); PX-1 at p. 224; PX-1 at p. 229; PX-1 at pp. 236–37; PX-1 at p. 246; PX-1 at pp. 257–58; PX-1 at p. 262; PX-1 at p. 265; PX-1 at p. 273; PX-1 at p. 276; PX-1 at p. 289; PX-1 at p. 293; PX-2; PX-20 at 75:2–13 (01/28/2020); PX-21 at 35:1–6 (01/29/2020); PX-46, ¶ 3(vii); PX-344 at pp. 3–4; PX-335 at p. 7 (Brighton HRD: “[W]e just need the back-up to show the employee. We are held hostage without any reports.”).

84. CHMS Group sometimes instructs Facility Defendant personnel to restrict access to employee timesheets. PX-1 at p. 235; PX-1 at p. 276 (Murrysville RN Supervisor: “The corporate office was sending the timesheets to Cindy Bankosh, but recently ordered her that she is no longer allowed to let employees see the timesheets with their paystubs.”); PX-379 at p. 1 (M. Gandl “The time cards should be reviewed and corrected by department head and never given to anyone else. [K. Hoke:] Can you provide me with the PA statute showing that the employees are not entitled to this so I can review with my staff. [M. Gandl:] Is there any statute showing that the employer needs to provide punch details to employees”).

85. Facility Defendants cannot process, correct, or otherwise modify payroll for their employees independent of CHMS Group. 01/08/2024 Trial Tr. 87:20–88:2, 137:23–138:11 215:7–11 (M. Shuey); 01/09/2024 Trial Tr. 185:15–186:2 (C. Matlack); 01/10/2024 Trial Tr. 39:23–40:5, 40:24–41:3, 41:24–42:6 (J. Martis); 01/10/2024 Trial Tr. 138:11–16 (M. Reichard); 01/10/2024 Trial Tr. 220:4–11 (S. Pentek); 01/12/2024 Trial Tr. 93:6–94:3 (M. Swan); 01/16/2024 Trial Tr. 26:12–14 (J. Pattison); 01/16/2024 Trial Tr. 77:15–19, 78:1–4 (M. Yarnell); 01/17/2024 Trial Tr. 85:25–86:3 (D. Cox); 01/17/2024 Trial Tr. 185:24–186:2, 186:25–187:4 (J. Shaffer); 01/18/2024 Trial Tr. 65:5–11 (B. Perkins); 02/13/2024

Trial Tr. 130:11–17 (C. Rivera); 02/15/2024 Trial Tr. 26:15–27:1 (K. Hoke); 02/15/2024 Trial Tr. 110:1–4 (C. Dziak); 02/15/2024 Trial Tr. 150:25–151:2, 151:6–12, 157:19–25 (R. Goff); PX-2; PX-276; PX-673 at p. 1; PX-B.

86. Facility Defendants have limited ability to independently audit CHMS Group’s payroll process. 02/15/2024 Trial Tr. 11:15–12:3 (K. Hoke); PX-2; PX-27 at 210:11–14 (01/30/2020); PX-46, ¶ 3(viii).

87. Facility Defendant personnel frequently disagree with CHMS Group about payroll, particularly as to the resolution of payroll errors. 01/10/2024 Trial Tr. 41:4–7 (J. Martis); 01/09/2024 Trial Tr. 161:24–162:20 (C. Matlack); 01/10/2024 Trial Tr. 140:11–16 (M. Reichard: “Q. Do you ever recall an instance where the facility personnel would disagree with the CHMS Group payroll team about pay errors? A. Yes. Q. How often did that happen? A. Often.”); 01/12/2024 Trial Tr. 94:4–95:13 (M. Swan); 01/17/2024 Trial Tr. 186:3–24 (“Were there times, Ms. Shaffer, when you, your HR person, anyone in the building disagreed with the back office as to payroll? A. All the time. Q. What do you mean by all the time? A. Every single payroll there were issues.”); 02/15/2024 Trial Tr. 27:2–24 (K. Hoke); 02/15/2024 Trial Tr. 161:4–9 (R. Goff); PX-16 at 78:10–23 (02/03/2020).

f. Facility Defendants Suffer Persistent and Severe Staffing Issues

88. All Facility Defendants suffer persistent staffing shortages. 01/08/2024 Trial Tr. 143:24–144:20, 146:14–147:24, 148:18–149:16 (M. Shuey); 01/09/2024 Trial Tr. 85:17–24 (A. Walter); 01/09/2024 Trial Tr. 136:4–11, 140:25–141:7 (C. Matlack); 01/10/2024 Trial Tr. 31:6–32:10 (J. Martis); 01/10/2024 Trial Tr. 119:10–22 (M. Reichard); 01/10/2024 Trial Tr. 179:4–17 (C. Langham); 01/10/2024 Trial Tr. 214:18–215:4 (S. Pentek); 01/10/2024 Trial Tr. 234:6–14 (R. Wolarov); 01/12/2024 Trial Tr. 16:19–17:9 (B. Leffler); 01/12/2024 Trial Tr. 41:22–42:12, 42:23–25 (K. Miller); 01/12/2024 Trial Tr. 95:14–24, 96:9–13 (M. Swan); 01/12/2024 Trial Tr. 190:11–191:1 (Fr. Schwartz); 01/16/2024 Trial Tr. 14:14–21 (J. Pattison); 01/16/2024 Trial Tr. 81:5–9, 82:16–83:9, 83:15–17 (M. Yarnell); 01/16/2024 Trial Tr. 167:2–168:6, 188:18–23 (A. Molinaro); 01/17/2024 Trial Tr. 18:10–14 (P. Henline); 01/17/2024 Trial Tr. 68:11–69:14, 69:25–70:15 (D. Cox); 01/17/2024 Trial Tr. 126:4–127:3 (J. Meiss); 01/17/2024 Trial Tr. 187:7–21 (J. Shaffer); 01/17/2024 Trial Tr.

227:2–13 (M. Edwards); 01/18/2024 Trial Tr. 12:8–17, 17:17–18:3 (L. Shuppas); 01/18/2024 Trial Tr. 70:8–17 (B. Perkins); 01/18/2024 Trial Tr. 93:22–94:3 (C. Simmons); 01/18/2024 Trial Tr. 145:12–13 (K. Lantzy); 01/18/2024 Trial Tr. 192:20–193:12 (C. Costic); 01/19/2024 Trial Tr. 117:9–24 (M. Shuey); 02/12/2024 Trial Tr. 6:22–7:6, 8:19–24 (C. Clark); 02/12/2024 Trial Tr. 18:20–19:21, 39:14–16 (S. Isenberg); 02/12/2024 Trial Tr. 103:8–11, 134:10–21 (S. Halper); 02/13/2024 Trial Tr. 132:12–19 (C. Rivera); 02/14/2024 Trial Tr. 48:21–49:21 (R. Jordan); 02/14/2024 Trial Tr. 189:18–21 (C. Hill); 02/15/2024 Trial Tr. 19:2–16 (K. Hoke); 02/15/2024 Trial Tr. 72:3–6 (B. Tissue); 02/15/2024 Trial Tr. 146:6–23 (R. Goff); PX-1 at pp. 129, 131 ¶¶ 6, 14; PX-26 at 51:16–19 (01/29/2020); PX-35 at 30:10–25; PX-42, ¶ 3(ii); PX-48, ¶ 3(i); PX-355 at p. 1; PX-375 at pp. 2–3; PX-394; PX-406; PX-432; PX-475 at 9–10; PX-494; PX-498; PX-512; PX-537 at p. 2; PX-550; PX-673 at p. 2; PX-726; PX-773.

89. Facility Defendants’ nursing departments were the departments most acutely affected by the frequent staffing shortages. 01/10/2024 Trial Tr. 120:1–5 (M. Reichard); 01/16/2024 Trial Tr. 82:16–19, 83:18–84:7 (M. Yarnell); 01/16/2024 Trial Tr. 188:24–189:3 (A. Molinaro); 01/17/2024 Trial Tr. 69:25–70:10 (D. Cox); 01/17/2024 Trial Tr. 127:8–11, 23–25 (J. Meiss); 02/15/2024 Trial Tr. 19:2–16 (K. Hoke); 02/15/2024 Trial Tr. 146:6–23 (R. Goff); PX-550; PX-773.

90. Facility Defendants’ staffing shortages significantly impair their ability to operate, particularly as it relates to patient and resident care. 01/09/2024 Trial Tr. 141:8–13 (C. Matlack); 01/10/2024 Trial Tr. 32:8–10 (J. Martis); 01/11/2024 Trial Tr. 191:11–192:17, 193:4–18 (T. Slagle); 01/12/2024 Trial Tr. 96:25–97:6 (M. Swan); 01/16/2024 Trial Tr. 87:23–88:1 (M. Yarnell); 01/16/2024 Trial Tr. 189:4–14 (A. Molinaro); 01/17/2024 Trial Tr. 70:16–20 (D. Cox); 01/17/2024 Trial Tr. 127:4–9 (J. Meiss); 01/17/2024 Trial Tr. 188:21–189:3 (J. Shaffer); 01/18/2024 Trial Tr. 193:13–20 (C. Costic); 02/12/2024 Trial Tr. 20:4–10 (S. Isenberg); 02/15/2024 Trial Tr. 19:2–16 (K. Hoke); PX-355 at p. 1.

91. Facility Defendants’ staffing shortages are so severe that they often barely meet the required state staffing levels or fall below them. 01/09/2024 Trial Tr. 85:17–24 (A. Walter); 01/09/2024 Trial Tr. 140:25–141:7 (C. Matlack); 01/10/2024 Trial Tr. 24:19–24 (J. Martis);

01/10/2024 Trial Tr. 214:18–215:4 (S. Pentek); 01/12/2024 Trial Tr. 95:14–24 (M. Swan); 01/16/2024 Trial Tr. 13:1–20 (J. Pattison); 01/17/2024 Trial Tr. 187:7–21 (J. Shaffer); 02/14/2024 Trial Tr. 84:2–8, 86:21–87:9 (M. Hough); 02/14/2024 Trial Tr. 189:22–24 (C. Hill); 02/15/2024 Trial Tr. 97:10–98:2, 98:9–11 (C. Dziak); 02/14/2024 Trial Tr. 46:6–47:22 (R. Jordan); 02/15/2024 Trial Tr. 18:8–19:1 (K. Hoke); PX-19 at 41:16–25 (01/27/2020); PX-25 at 74:9–14 (01/28/2020); PX-26 at 53:20–54:1 (01/29/2020); PX-50, ¶ 3(vii); PX-345 at 2; PX-355 at 1; PX-498 at 1 (North Strabane Rehab NHA to M. Reichard: “PPD for today is 2.3 tomorrow its 2.7 both Saturday and Sunday it is 1.49.”).

92. Facility Defendant employees routinely perform work before or after their scheduled shifts because of the staffing shortages, often at their supervisors’ request. 01/08/2024 Trial Tr. 143:24–144:20 (M. Shuey); 01/10/2024 Trial Tr. 179:4–14, 181:10–25 (C. Langham); 01/11/2024 Trial Tr. 201:8–202:6 (T. Slagle); 01/12/2024 Trial Tr. 95:14–96:4 (M. Swan); 01/17/2024 Trial Tr. 72:18–73:3, 74:12–25 (D. Cox); 01/17/2024 Trial Tr. 129:21–131:10 (J. Meiss); 01/18/2024 Trial Tr. 149:9–16 (K. Lantzy); 02/15/2024 Trial Tr. 72:7–11 (B. Tissue); JX-58 at “Time Data”; PX-1 at p. 131 ¶ 14; PX-1 at p. 221, ¶ 7; PX-341 at 1.

93. Facility Defendant employees routinely work additional shifts to make up for the staffing shortages, often at their supervisors’ request. 01/11/2024 Trial Tr. 202:23–24 (T. Slagle); 01/16/2024 Trial Tr. 23:24–24:11 (J. Pattison); 01/17/2024 Trial Tr. 72:18–73:3 (D. Cox); 01/17/2024 Trial Tr. 130:14–131:10 (J. Meiss); 01/18/2024 Trial Tr. 13:21–14:1 (L. Shuppas); 01/18/2024 Trial Tr. 114:2–9 (C. Anderson); 01/18/2024 Trial Tr. 170:10–18 (E. Bainbridge); 02/15/2024 Trial Tr. 19:25–20:3 (K. Hoke); 02/15/2024 Trial Tr. 72:7–16 (B. Tissue); PX-1 at p. 221, ¶ 4; PX-394 at p. 1.

94. Facility Defendants’ staffing shortages are so severe that Facility Defendant supervisors work additional shifts and routinely step in to perform work in the understaffed departments instead of performing their duties. 01/09/2024 Trial Tr. 100:14–20, 112:19–113:22 (A. Walter); 01/10/2024 Trial Tr. 215:5–12 (S. Pentek); 01/12/2024 Trial Tr. 148:12–19 (J. Shadle); 01/17/2024 Trial Tr. 128:15–129:6 (J. Meiss); 01/16/2024 Trial Tr. 12:1–12, 14:14–24 (J. Pattison); 01/17/2024 Trial Tr. 187:13–15 (J. Shaffer: “[T]here were times where I put on scrubs and worked as a nurse myself”); 01/18/2024 Trial Tr. 32:23–33:1

(L. Shuppas: “Me and Chasity were passing meds, getting people up, showered, dressed for breakfast. Patty, the administrator, was in the kitchen making breakfast. We did what we had to do. Q. The admin in the facility was in the kitchen making breakfast? A. Yes.”); 01/18/2024 Trial Tr. 106:22–107:4, 114:2–9, 114: 17–20 (C. Anderson); 02/14/2024 Trial Tr. 49:22–50:8, 50:16–19 (R. Jordan); PX-1 at p. 268; PX-15 at 14:10–18 (08/12/2020); PX-498 at p. 1; PX-773.

95. Facility Defendants often borrow employees from each other because of the understaffing. 01/12/2024 Trial Tr. 97:7–17 (M. Swan); 01/16/2024 Trial Tr. 14:2–13 (J. Pattison); 01/17/2024 Trial Tr. 201:9–17 (J. Shaffer); 01/18/2024 Trial Tr. 12:18–13:8 (L. Shuppas); PX-449; PX-498 at p. 1.

96. Defendants regularly rely on temporary agency staff to fill gaps in their staffing. 01/09/2024 Trial Tr. 100:5–13 (A. Walter); 01/10/2024 Trial Tr. 215:5–12 (S. Pentek); 01/12/2024 Trial Tr. 66:21–67:10 (M. Swan); 01/16/2024 Trial Tr. 220:21–221:11 (A. Molinaro); 01/17/2024 Trial Tr. 146:10–19 (J. Meiss); 01/18/2024 Trial Tr. 13:9–20 (L. Shuppas); 01/18/2024 Trial Tr. 94:7–17 (C. Simmons); 01/18/2024 Trial Tr. 164:8–14 (E. Bainbridge); 01/18/2024 Trial Tr. 198:6–12 (C. Costic); 01/19/2024 Trial Tr. 11:15–12:10 (M. Shuey); 02/14/2024 Trial Tr. 87:10–22 (M. Hough); PX-1 at pp. 268–69; PX-13 at 28:20–23 (02/03/2020); PX-14 at 39:4–6 (02/03/2020); PX-16 at 75:6–8 (02/03/2020); PX-17 at 116:23–25 (01/27/2020); PX-18 at 70:2–6 (01/27/2020), 17:2–7 (01/11/2020); PX-19 at 7:22–8:4 (08/11/2020); PX-25 at 61:16–19 (08/11/2020); PX-28 at 183:15–184:2 (02/04/2020); PX-41, ¶ 3(iii); PX-43, ¶ 3(xii); PX-48, ¶ 3(iii); PX-50, ¶ 3(vi); PX-51, ¶ 3(xiv); PX-259; PX-293; PX-299; PX-351; PX-355 at p. 1; PX-394 at p. 1; PX-406; PX-432; PX-494; PX-498; PX-773.

97. Defendants hired specific senior staff, including a Regional Director of Recruitment and a Regional Director of Human Resources, to try to mitigate their staffing shortages. 01/10/2024 Trial Tr. 127:3–8 (M. Reichard).

98. Because they do not have enough full-time employees, Defendants often recruit traveling nurses from across the U.S. to work at Facility Defendants. 01/16/2024 Trial Tr. 82:5–8 (M. Yarnell); 01/17/2024 Trial Tr. 80:8–81:11 (D. Cox); 01/17/2024 Trial Tr. 178:20–179:5

(J. Shaffer); 01/18/2024 Trial Tr. 13:9–20 (L. Shuppas); PX-1 at p. 220, ¶ 2; PX-27 at 151:16–21 (01/30/2020).

99. Defendants closely monitor staffing levels on a weekly or daily basis and were aware that Facility Defendants were barely at or below state staffing level requirements. PFOF 102; 01/17/2024 Trial Tr. 176:22–178:4 (J. Shaffer); 02/15/2024 Trial Tr. 19:17–24 (K. Hoke); 02/15/2024 Trial Tr. 95:19–96:3 (C. Dziak); PX-17 at 33:8–35:7 (01/27/2020); PX-23 at 29:19–30:2 (01/29/2020); PX-351; PX-394; PX-459; PX-642; PX-646; PX-673 at p. 2 (J. Reichard: “PBJ is tracking hours closely and managing PPD staffing on weekends everywhere is a Challenge.”); PX-718.

100. In some instances, Defendants deliberately maintain staffing levels at the minimum state requirement. 01/17/2024 Trial Tr. 176:17–23 (J. Shaffer: “As a general matter, did you as the administrator or anyone within the building for that matter have the authority to independently determine your staffing levels? A. No. Our nursing staff was required to run at 2.7. If it went over that for whatever reason, there would have to be an explanation.”), 177:11–178:4; 02/15/2024 Trial Tr. 18:18–19:1 (K. Hoke: Q. Are you saying that Mr. Halper and Ms. Zapor directed you to keep staffing as close as possible to the state minimum? A. Absolutely, yes. Q. Did you agree with that decision? A. Absolutely not. Q. Did you have authority to override Mr. Halper’s determination? A. I did not.”).

101. Facility Defendant personnel routinely complain about Facility Defendants’ staffing levels. 01/10/2024 Trial Tr. 15:4–16:21 (J. Martis); 01/12/2024 Trial Tr. 18:15–19:1 (B. Leffler); 01/12/2024 Trial Tr. 42:13–22 (K. Miller); 01/17/2024 Trial Tr. 18:15–22 (P. Henline); 01/17/2024 Trial Tr. 29:6–13 (D. Henline); 01/18/2024 Trial Tr. 193:21–23 (C. Costic); PX-351; PX-394 at p. 1; PX-498 at p. 1.

102. Facility Defendants routinely offer supplemental compensation to ameliorate staffing shortages. PFOF 49; 01/09/2023 Trial. 141:14–21 (C. Matlack); 01/10/2024 Trial Tr. 24:19–24 (J. Martis); 01/10/2024 Trial Tr. 105:16–22, 130:8–24 (M. Reichard); 01/16/2024 Trial Tr. 95:24–96:24 (M. Yarnell); 01/17/2024 Trial Tr. 136:2–4 (J. Meiss); 01/17/2024 Trial Tr. 190:7–14 (J. Shaffer); 01/18/2024 Trial Tr. 94:23–95:15 (C. Simmons); 01/18/2024 Trial Tr. 195:8–21 (C. Costic).

103. High employee turnover, including turnover caused directly by Defendants' pay practices, worsened the staffing shortages. 01/08/2024 Trial Tr. 144:21–145:5, 181:19–182:12 (M. Shuey); 01/10/2024 Trial Tr. 43:4–13 (J. Martis); 01/12/2024 Trial Tr. 95:14–96:24 (M. Swan); PX-351; PX-498 at 1; PX-726.
104. Multiple Facility Defendant employees quit because of the poor work conditions created by Facility Defendants' routine and severe understaffing. 01/10/2024 Trial Tr. 15:8–16:21 (J. Martis: "[T]he last week of my employment, we were terribly understaffed. We didn't have the employees to supplement and I said, you know, I have been telling you guys this for weeks, for months, actually, and if this is not done, finished by the end of the day, by four p.m., I'm resigning because I can't run a facility without staff."); 01/12/2024 Trial Tr. 4:22–24 (B. Leffler); 01/16/2024 Trial Tr. 17:10–16 (J. Pattison); 01/17/2024 Trial Tr. 71:20–23 (D. Cox); 01/17/2024 Trial Tr. 220:19–23, 236:15–17 (M. Edwards); 01/18/2024 Trial Tr. 86:18–20 (C. Simmons); PX-432.
 - g. *The Acting Secretary's Investigation Notified Defendants of Significant FLSA Violations*
105. The Wage and Hour Division began investigating Defendants in 2015. 01/08/2024 Trial Tr. 43:11–25 (M. Shuey).
106. The purpose of the Wage and Hour Division's investigation was to determine whether Defendants were complying with the Act. 01/08/2024 Trial Tr. 44:1–3 (M. Shuey).
107. Defendants produced some records to the Wage and Hour Division during the investigation, including pay and time records. 01/08/2024 Trial Tr. 68:10–13 (M. Shuey).
108. The Wage and Hour Division took those pay and time records at face value. 01/08/2024 Trial Tr. 68:10–21 (M. Shuey).
109. Through its investigation, the Wage and Hour Division communicated to Defendants and their counsel that investigators had discovered, among other things:
 - A. Regular, widespread payroll errors affecting Facility Defendant employees. 01/08/2024 Trial Tr. 53:21–54:3, 177:11–25 (M. Shuey).

- B. Defendants were failing to pay for all hours worked, including hours worked outside of employees' normal shifts and work performed during employees' thirty-minute meal breaks. 01/08/2024 Trial Tr. 70:24–71:14 (M. Shuey); 01/19/2024 Trial Tr. 84:11–20, 111:8–12 (M. Shuey).
 - C. Defendants were incorrectly calculating employees' "regular rate" for purposes of determining overtime. 01/08/2024 Trial Tr. 71:15–21 (M. Shuey); 01/19/2024 Trial Tr. 111:4–7 (M. Shuey).
 - D. Defendants were paying straight-time pay rates for overtime work performed by employees. 01/08/2024 Trial Tr. 71:21–72:1 (M. Shuey).
 - E. Some employees were misclassified as exempt from overtime under the Act. 01/08/2024 Trial Tr. 72:1–6 (M. Shuey).
 - F. Consistent complaints by employees regarding Defendants' pay practices. 01/08/2024 Trial Tr. 54:4–6 (M. Shuey).
 - G. Facility Defendant personnel could not independently correct errors. 01/08/2024 Trial Tr. 54:6–11 (M. Shuey).
 - H. Defendants had failed to pay all overtime due. 01/19/2024 Trial Tr. 111:1–3 (M. Shuey).
110. Upon discovering significant problems with Defendants' payroll system, the Wage and Hour Division notified CHMS Group and Defendants' legal counsel of those problems, as well as the need for additional records to determine back wages due. 01/08/2024 Trial Tr. 66:13–67:9, 68:22–69:17, 70:11–23, 177:11–25 (M. Shuey); 01/19/2024 Trial Tr. 107:18–108:20, 109:2–3, 109:21–110:20 (M. Shuey).
111. The Wage and Hour Division repeatedly asked Defendants to provide additional information regarding the discovered violations. 01/19/2024 Trial Tr. 109:14–20, 144:13–24 (M. Shuey).

112. Defendants did not disagree with or otherwise challenge the Wage and Hour Division’s investigative findings. 01/19/2024 Trial Tr. 110:21–25 (M. Shuey).
113. Notwithstanding multiple requests, and despite the fact that their counsel appeared, Defendants failed to attend the Wage and Hour Division’s “final conference,” during which the investigators wanted to discuss their findings, seek Defendants’ response, and find a way to bring Defendants into compliance with the Act. 01/08/2024 Trial Tr. 44:8–13 (M. Shuey); 01/09/2024 Trial Tr. 12:19–24 (M. Shuey); 01/19/2024 Trial Tr. 82:10–15, 108:21–109:13, 125:10–19 (M. Shuey).
114. At all relevant times, Defendants were aware of the Wage and Hour Division’s investigation. 01/08/2024 Trial Tr. 73:2–76:11 (M. Shuey); 02/15/2024 Trial Tr. 79:13–17 (B. Tissue: “Q. During the time that the Department of Labor was conducting its investigation, are you aware of anyone from CHMS Group who was present? A. There were CHMS people that were about the building at the time.”); PX-30 at 78:21–24 (02/05/2019) (E. Lahasky: “Q. You were familiar with that, I take it, back at the time the Department of Labor decided to come in and start doing an investigation? A. Yes.”); PX-71 (Executed Tolling Agreements).

II. Stipulations³ and Concessions

a. *Jurisdiction & Coverage*

115. The Court has jurisdiction over this action under Section 17 of the of the Act (29 U.S.C. § 17) and 28 U.S.C. §§ 1331, 1345. Dec. 17, 2021 Joint Stip. 1 (Dkt. 245 at p. 2); 08/28/2023 Joint Stip. 1 (Dkt. 360 at p. 2).
116. According to their dates of acquisition (*see* PFOF 11), the Facility Defendants have been limited liability corporations that operate as residential skilled nursing, rehabilitation,

³ At the close of trial, the Court directed the parties to confer regarding additional stipulations in light of Defendants’ concessions during trial. 02/15/2024 Trial Tr. 127:20–128:3. The Acting Secretary sent Defendants a list of proposed supplemental stipulations on April 22, 2024. Despite repeated follow-up, Defendants never conferred with the Acting Secretary.

retirement and/or assisted living facilities that engaged in the care of the sick, aged, or mentally ill who reside on the premises within the jurisdiction and venue of this Court, and, each constitutes an enterprise within the meaning of Section 3r of the FLSA. 08/28/2023 Joint Stip. 3 (Dkt. 360 at p. 2).

117. According to their dates of acquisition (*see* PFOF 11), Defendants' employees have regularly used goods and supplies that move in interstate commerce, such as food, medications, and office supplies. 08/28/2023 Joint Stip. 4 (Dkt. 360 at p. 2).

118. According to their dates of acquisition (*see* PFOF 11), each Defendant has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the FLSA, in that each Defendant has employees engaged in commerce or in the production of goods for commerce, or have employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and each Defendant has annual gross volume of sales made or business done of not less than \$500,000.00. 08/28/2023 Joint Stip. 5 (Dkt. 360 at p. 2).

119. The individuals listed in Schedule A attached to the Complaint, as amended, were employees of one or more Defendants, at some point between December 14, 2014 and the present. 08/28/2023 Joint Stip. 9 (Dkt. 360 at p. 3); PX-11.

120. Defendants, consistent with their dates of acquisition (*see* PFOF), compensated each of the individuals listed in Schedule A attached to the Complaint, as amended, for work done on behalf of, or for the benefit of, Defendants at some point after December 14, 2014. 08/28/2023 Joint Stip. 10 (Dkt. 360 at p. 3).

b. Awareness of the FLSA and Its Requirements

121. At all relevant times, Defendants, consistent with their dates of acquisition (*see* PFOF 11), were aware of the FLSA. 08/28/2023 Joint Stip. 12 (Dkt. 360 at p. 2).

122. At all relevant times, Defendants, consistent with their dates of acquisition (*see* Dkt. 268, ¶ 1(d)), were generally aware of the Act's requirements regarding compensation for overtime, including the requirement that their employees must receive overtime pay for

hours. worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. 08/28/2023 Joint Stip. 13 (Dkt. 360 at pp. 3–4).

123. At all relevant times, Defendants, consistent with their dates of acquisition (*see* PFOF 11), were generally aware of the Act’s requirements concerning the classification of employees as exempt from overtime, including, but not limited to, 29 U.S.C. § 213. 08/28/2023 Joint Stip. 19 (Dkt. 360 at p. 4).

124. At all relevant times, Defendants, consistent with their dates of acquisition (*see* PFOF 11), were aware of the Act’s requirement that they must pay for all work employees performed at Defendants’ behest and/or for their benefit. 08/28/2023 Joint Stip. 20 (Dkt. 360 at p. 4).

c. Liability

125. Mr. Halper is an “employer” under Section 3(d) of the FLSA of the individuals listed in Schedule A attached to the Complaint, as amended. 02/03/2022 Joint Stip. 1(b) (Dkt. 268 at p. 2); 08/28/2023 Joint Stip. 6 (Dkt. 360 at p. 3).

126. Mr. Halper and CHMS Group are joint employers of the individuals listed in Schedule A attached to the Complaint, as amended. 02/03/2022 Joint Stip. 1(a) (Dkt. 268 at p. 2); 08/28/2023 Joint Stips. 6–7 (Dkt. 360 at p. 3).

127. As of the dates identified in PFOF 11, each Facility Defendant is the employer of those employees who worked directly for that Facility. 02/03/2022 Joint Stip. 1(c) (Dkt. 268 at p. 2).

128. As of the dates identified in PFOF 11, each Facility Defendant is the joint employer of any employee who, from that date forward, worked directly for another Facility Defendant in which Halper held an interest. 02/03/2022 Joint Stip. 1(c) (Dkt. 268 at p. 2); 08/28/2023 Joint Stip. 8 (Dkt. 360 at p. 3).

129. Defendants, consistent with their dates of acquisition (*see* PFOF 11), were aware that some employees did not to obtain prior approval before working overtime hours. 08/28/2023 Joint Stip. 17 (Dkt. 360 at p. 4).
130. Except in rare cases, Defendants do not discipline employees for failing to obtain prior approval before working overtime hours. 08/28/2023 Joint Stip. 18 (Dkt. 360 at p. 4).
131. Some of Defendants' employees performed work on Facility Defendants' behalf at two or more Facility Defendants in the same pay period. 08/28/2023 Joint Stip. 21 (Dkt. 360 at p. 4).
132. Defendants do not aggregate the hours of employees who worked at two or more Facility Defendants in the same pay period for purposes of payroll. 08/28/2023 Joint Stip. 22 (Dkt. 360 at p. 5).

III. The Phase II Trial

133. The Acting Secretary called 39 witnesses during the Phase II Trial. Dkt. 432.
134. Those witnesses testified as to the working conditions and related events at the following Facility Defendants during the following periods:
- A. Michael Shuey (WHD Investigator): All Facility Defendants for full relevant time period. 01/08/2024 Trial Tr. 43:11–44:23, 59:11–60:1, 80:16–82:14, 84:17–85:1, 87:3–90:4; 01/19/2024 Trial Tr. 120:22–121:9 (M. Shuey).
 - B. Mark Gildea (Maintenance Supervisor): North Strabane Rehab. and North Strabane Ret. circa Sept. 2017 – June 2018. 01/09/2024 Trial Tr. 26:1–27:8; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 2467.
 - C. Ann Walter (DON): The Grove at Harmony circa Aug. 2016 – Apr. 2017. 01/09/2024 Trial Tr. 68:25–69:14, 102:25–103:3; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 7263.

- D. Dr. Catherine Matlack (Regional Consultant for Human Resources): All Defendants circa Mar. 2018 – Jan. 2019. 01/09/2024 Trial Tr. 121:1–7, 126:16–19.
- E. James Martis (DON): Mt. Lebanon circa Feb. 2017 – Aug. 2017. 01/10/2024 Trial Tr. 4:20–5:10, 58:17–59:3; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 4409.
- F. Margaret Reichard (Regional Director of Operations & Nursing Home Administrator for Greenville): All Facility Defendants circa Aug. 2016 – Oct. 2019 and The Grove at Greenville circa Oct. 2019 – Jan. 2020. 01/10/2024 Trial Tr. 85:9–21, 89:19–90:3, 91:6–22, 99:25–100:5.
- G. Corena Langham (CNA): Brighton circa May 2017 – Aug. 2019. 01/10/2024 Trial Tr. 191:18–192:9; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 3980.
- H. Sarah Pentek (Business Office Manager): Cheswick circa Nov. 2017 – Jan. 2020. 01/10/2024 Trial Tr. 202:1–4; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 5420.
- I. Richard Wolarov (RN): Brighton circa Mar. 2014 – Present. 01/10/2024 Trial Tr. 229:19–230:6; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 7646.
- J. Michael Murray (DOL Witness for Back Wages Summary): All Facility Defendants for full relevant time period. 01/11/2024 Trial Tr. 20:20–21:12, 28:8–29:16; JX-52–58; PX-5; Back Wages Summary.
- K. Thomas Slagle (LPN): Cheswick circa Sept. 2017 – Jan. 2018. 01/11/2024 Trial Tr. 186:24–187:21; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 6443.

- L. Brenda Leffler (CNA): The Grove at Greenville circa Aug. 2016 – Aug. 2021. 01/12/2024 Trial Tr. 4:4–5:1; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 4065.
- M. Kathryn Miller (CNA): Brighton circa Feb. 2016 – June 2018. 01/12/2024 Trial Tr. 36:12–15, 38:23–39:2; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 4769.
- N. Megan Swan (Director of Rehabilitation): South Hills circa Feb. 2017 – Oct. 2017. 01/12/2024 Trial Tr. 63:15–64:8, 64:24–65:10; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 6799.
- O. Janet Shadle: Mt. Lebanon RN Supervisor (ADN) circa Feb. 2017 – July 2017, and Mt. Lebanon RN circa Aug. 2017 – Aug. 2018. 01/12/2024 Trial Tr. 142:22–143:4; Back Wages Summary at “All Back Wages Combined” Excel Sheet, Rows 221964–221999.
- P. Father William Schwartz (Chaplain): Brighton Circa Mar. 2014 – Mar. 2020. 01/12/2024 Trial Tr. 177:2–15; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 6183.
- Q. Julie Pattison (DON): North Strabane Rehab. circa Sep. 2017 – Nov. 2017. 01/16/2024 Trial Tr. 6:10–16, 32:22–9; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 5365.
- R. Matthew Yarnell (SEIU President): Brighton, Mt. Lebanon, Murrysville, Monroeville, The Grove at Irwin, The Grove at Harmony, The Grove at Washington, The Grove at New Castle, Cheswick, North Strabane Rehab. North Strabane Ret. circa Mar. 2014 – Present. 01/16/2024 Trial Tr. 48:11–23, 54:10–59:5.
- S. Anthony Molinaro (Nursing Home Administrator): South Hills circa Feb. 2017 – Aug. 2017. 01/16/2024 Trial Tr. 158:23–25, 230:1–11.

- T. Patricia Henline (Cook): The Grove at Irwin circa Oct. 2016 – Mar. 2017.
01/17/2024 Trial Tr. 10:23–11:6, 20:18–24; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 2992.
- U. Denver Henline (Cook): The Grove at Irwin circa Nov. 2016 – June 2017.
01/17/2024 Trial Tr. 24:13–18, 34:25–35:2; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 2991.
- V. Denise Cox (SEIU Member Resource Center and Field Organizer): Brighton, Mt. Lebanon, Murrys ville, Monroeville, The Grove at Irwin, The Grove at Harmony, The Grove at Washington, The Grove at New Castle, Cheswick, North Strabane Rehab. North Strabane Ret. circa Mar. 2014 – Present. 01/17/2024 Trial Tr. 44:18–45:11, 47:14–52:25.
- W. Joyce Meiss (Activities Aide): The Grove at New Castle circa Aug. 2016 – Present. 01/17/2024 Trial Tr. 117:13–16, 118:4–6; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 4688.
- X. Jennifer Shaffer (Nursing Home Administrator): Murrys ville circa Aug. 2021 – Mar. 2022. 01/17/2024 Trial Tr. 213:7–19.
- Y. Margaret Edwards (CNA): Mt. Lebanon circa Oct. 2017 – Feb. 2018. 01/17/2024 Trial Tr. 219:13–220:14; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 2010.
- Z. Linda Shuppas (CNA ICF): North Strabane Ret. circa Sept. 2017 – Nov. 2019. 01/18/2024 Trial Tr. 5:15–6:11; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 6939.
- AA. Beverly Perkins (Medical Records; Human Resource Director): North Strabane Rehab. and North Strabane Ret. circa Sept. 2017 – June 2019. 01/18/2024 Trial Tr. 48:21–51:2, 74:14–17; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 5431.

- BB. Christal Simmons (CNA): Brighton circa June 2018 – Dec. 2018. 01/18/2024 Trial Tr. 86:10–17, 100:10–14; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 6395.
- CC. Chad Anderson (Dietary Manager): Brighton circa Apr. 2016 – Mar. 2017. 01/18/2024 Trial Tr. 123:3–6; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 157.
- DD. Kathleen Lantzy (CNA): Monroeville circa Feb. 2017 – Apr. 2017. 01/18/2024 Trial Tr. 137:5–25; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 3984.
- EE. Edith Bainbridge (CNA): The Grove at Irwin circa Aug. 2016 – Present. 01/18/2024 Trial Tr. 153:23–154:9; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 291.
- FF. Catherine Costic (née Russo) (Director of Social Services): The Grove at Irwin circa Nov. 2017 – July 2018. 01/18/2024 Trial Tr. 180:11–18; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 6024.
- GG. Camille Clark (CNA): The Grove at New Wilmington circa Aug. 2016 – Dec. 2016. 02/12/2024 Trial Tr. 5:22–24, 6:5–7; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 1234.
- HH. Shana Isenberg (CNA): The Grove at Greenville circa July 2017 – May 2019, Sept. 2020 – July 2023 and The Grove at New Castle circa Aug. 2019 – Sept. 2019. 02/12/2024 Trial Tr. 15:7–20, 41:8–9; Back Wages Summary at “All Back Wages Combined” Excel Sheet, Rows 118494–118605.
- II. Kris Hoke (Nursing Home Administrator): Murrys ville circa Feb. 2017 – May 2017. 02/15/2024 Trial Tr. 5:6–14, 44:14–45:14.

- JJ. Brenda Tissue (Wound Care RN): The Grove at Irwin circa Aug. 2016 – Jan. 2017. 02/15/2024 Trial Tr. 64:16–67:6; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 6999.
- KK. Cami Dziak (Human Resources Director): The Grove at Washington circa Sept. 2019 – Dec. 2019. 02/15/2024 Trial Tr. 111:25–112:8; Back Wages Summary at “All Back Wages By Employee” Excel Sheet, Row 1969.
- LL. Janet Thomas: Mt. Lebanon MDS Coordinator (RNAC) circa Feb. 2017 – Nov. 2017 and Mt. Lebanon RN Supervisor (ADN) circa Dec. 2017 – Apr. 2018. 02/15/2024 Trial Tr. 115:11–17, 116:13–16, 118:5–6; Back Wages Summary at “All Back Wages Combined” Excel Sheet, Rows 244744–244771.
- MM. Richard Goff (SEIU, Various Roles): Brighton circa Mar. 2014 – Jan. 2018, Mt. Lebanon, Monroeville and Murrys ville circa Feb. 2017 – Jan. 2018, and Cheswick, North Strabane Rehab., and North Strabane Ret. circa Sept. 2017 – Jan. 2018. 02/15/2024 Trial Tr. 130:12–131:10, 132:17–133:15, 134:13–138:7.

135. Defendants called 11 witnesses during the Phase II Trial. Dkt. 432.

136. Those witnesses testified regarding the following Facility Defendants during the following periods:

- A. Sam Halper (Defendant & Section 3(d) Employer): All Facility Defendants for full relevant time period. 02/12/2024 Trial Tr. 51:15–20, 64:14–24, 66:21–67:3, 67:21–25.
- B. Abraham Pechman (CHMS Group Director of Payroll): All Facility Defendants circa May 2018 – Present. 02/12/2024 Trial Tr. 147:19–148:1.
- C. David Ferraro: Regional Consultant for The Grove at Washington, The Grove at Irwin, Mt. Lebanon, and South Hills circa Nov. 2019 – Jan. 2021 and Cheswick,

North Strabane Rehab., Oct. 2023 – Present; Brighton Nursing Home Administrator circa Feb. 2021 – Oct. 2023. 02/13/2024 Trial Tr. 4:11–22, 8:11–20, 64:7–65:25, 66:9–67:6.

- D. Carlos Rivera (SEIU Administrative Organizer, Lead Organizer, Assistant Director for Long Term Care, Director for Long Term Care, Vice President for Long Term Care): Facility Defendants with SEIU CBAs, Mar. 2014 – circa 2022. 02/13/2024 Trial Tr. 82:5–83:25.
- E. Michelle Kunselman: The Grove at New Castle DON circa Aug. 2016 – Oct. 2018, The Grove at New Castle Nursing Home Administrator circa Oct. 2018 – 2021, The Grove at New Wilmington Nursing Home Administrator circa 2021 – Present. 02/13/2024 Trial Tr. 141:11–143:11; Back Wages Summary at “All Back Wages Combined” Excel Sheet, Rows 138281–138336.
- F. Jason Elmer: The Grove at New Castle Maintenance Worker circa Aug. 2016 – Nov. 2017, The Grove at New Castle Housekeeping Supervisor circa Dec. 2017 – June 2020, The Grove at New Wilmington Maintenance Director circa June 2020 – Present. 02/13/2024 Trial Tr. 180:4–14, 185:21–186:8; Back Wages Summary at “All Back Wages Combined” Excel Sheet, Rows 72503–72668.
- G. Lynn Desmet (Nursing Home Administrator): Cheswick circa Feb. 2019 – Present. 02/14/2024 Trial Tr. 3:17–22.
- H. Renea Jordan: South Hills ADON circa Dec. 2017 – June 2018, South Hills DON circa July 2018 – Present. 02/14/2024 Trial Tr. 23:9–18; Back Wages Summary at “All Back Wages Combined” Excel Sheet, Rows 126015–126150.
- I. Melissa Hough: Brighton Staff Nurse circa Sept. 2014 – 2015, Brighton RN Supervisor (ADN) circa 2015 – Dec. 2017, Brighton Unit Director circa Jan. 2018 – Jan. 2020, Brighton ADON circa Feb. 2020 – Mar. 2021; Brighton DON circa Apr. 2021 – Present. 02/14/2024 Trial Tr. 59:8–60:11, 61:3–8, 79:25–

81:15; Back Wages Summary at “All Back Wages Combined” Excel Sheet, Rows 112774–112966.

J. Cody Hill: Murrysville Admissions Director circa June 2019 – Apr. 2020, North Strabane Rehab. Assistant Nursing Home Administrator circa Apr. 2020 – Aug. 2020, The Grove at Latrobe Assistant Nursing Home Administrator circa 2021 – July 2022, The Grove at Latrobe Nursing Home Administrator circa July 2022 – Apr. 2023, Monroeville Nursing Home Administrator circa Apr. 2023 – Present. 02/14/2024 Trial Tr. 125:3–23, 126:8–19, 153:16–155:19, 156:20–157:2; Back Wages Summary at “All Back Wages Combined” Excel Sheet, Rows 106670–106700.

K. Jason Teitelbaum: Regional Consultant for the Grove at Washington circa 2018 – 2019 and 2020 – 2021⁴ and Brighton Nursing Home Administrator circa Oct. 2023 – Present. 02/14/2024 Trial Tr. 193:23–194:5, 194:10–17, 197:3–11, 205:9–206:9, 221:16–18.

IV. Defendants Failed to Maintain Accurate Records

137. As a systemic matter, Defendants’ payroll records understate the number of hours worked by Facility Defendant employees and fail to accurately record the pay due for those hours. PFOF 139–167, 184, 194, 208–216; 01/08/2024 Trial Tr. 67:23–68:9, 158:14–22, 159:13–21, 160:13–162:4, 172:1–173:14, 176:23–177:10, 178:20–23 (M. Shuey); 01/09/2024 Trial Tr. 166:15–21, 167:4–17 (C. Matlack); 01/10/2024 Trial Tr. 51:4–14 (J. Martis); 01/10/2024 Trial Tr. 143:7–144:21 (“Q. Ms. Reichard, Mr. Morris’ last sentence here, quote, your time clock totals one figure, yet they were paid a different figure, close quote. Was that what regularly occurred in this buildings’ payroll from what you saw? A. The payrolls were not reflective of the time that the employees worked. Q. Was that the case in all the buildings you had awareness of? A. Yes.”);

⁴ During Defendants’ re-direct examination, Mr. Teitelbaum testified generally as to Facility Defendants other than that Grove at Washington. 02/14/2024 Trial Tr. 226:12–227:7. However, he testified during the Acting Secretary’s re-cross examination that he had not identified any of these other Facility Defendants during his testimony. *Id.* at 227:13–20.

01/11/2024 Trial Tr. 47:10–15 (“Q. Mr. Murray, at any point in your involvement in this case did you see an instance where the hours in the time data did not match the hours in the pay data? A. Yes. Q. How often did you see that? A. Most of the records.”); 01/12/2024 Trial Tr. 69:1–70:7, 77:13–18 (M. Swan); 01/16/2024 Trial Tr. 103:12–22, 106:5–107:10 (M. Yarnell); 01/16/2024 Trial Tr. 198:11–18 (A. Molinaro); 01/17/2024 Trial Tr. 88:19–89:8, 89:21–25 (D. Cox); 01/17/2024 Trial Tr. 139:12–21, 143:3–10 (J. Meiss); 01/17/2024 200:1–14 (J. Shaffer: “Do you remember any times where there were Murrys ville employees working but then not paid for those hours? A. Yes. Q. How often did that happen? A. The checks were shorted often. It was not as common for them to not have a check at all, although that would happen occasionally as well. Q. Did this affect a lot of employees, a few employees? A. I would say not as many as some of the other issues and typically they had a paycheck. Again, it was typically, it was more that it wasn’t as much as it should have been.”); 01/18/2024 Trial Tr. 114:21–115:3, 120:7–19 (C. Anderson); 01/18/2024 Trial Tr. 142:23–143:2, 144:9–20 (K. Lantzy); 01/18/2024 Trial Tr. 198:13–21 (C. Costic); 01/19/2024 Trial Tr. 133:3–11 (M. Shuey); 02/12/2024 Trial Tr. 32:24–34:3 (S. Isenberg); 02/15/2024 Trial Tr. 108:20–25, 111:14–17 (C. Dziak); 02/15/2024 Trial Tr. 166:17–167:4, 168:4–13, 171:19–172:3, 174:4–6 (R. Goff: “Q. What about the second sentence, what did you mean when you said ‘it,’ referring to the payroll system, fails constantly and predictably? A. That was speaking to my experience since I had been dealing with Comprehensive that every payday there was a mistake and the mistakes were not based on one-offs like individuals were making mistakes. People can miss a punch all the time. That happens all the time. That is not what was causing it. What was causing it was the system itself.”); PX-1 at p. 129, ¶ 8; PX-1 at pp. 152–53; PX-1 at p. 157, ¶ 10; PX-1 at pp. 169–70, ¶¶ 3, 7; PX-1 at p. 224; PX-1 at pp. 226–30; PX-1 at pp. 233–34; PX-1 at p. 236; PX-1 at pp. 246–47; PX-1 at p. 253; PX-1 at p. 259; PX-1 at p. 266; PX-1 at p. 273; PX-369; PX-555; Back Wages Summary.

138. Defendants’ supervisory personnel are often frustrated by Defendants’ ineffective payroll process. 01/16/2024 Trial Tr. 19:11–14, 26:17–27:4 (J. Pattison: “Q. Did Mr. Morris [the NHA] express frustration about having to go to someone else to get approval for these

things? A. Yes. Q. What did he say about that? A. Well, he would cuss, you know, say things like that. Q. Okay. Without saying the cuss words, what would he say in relations to his inability to kind of correct the payroll issues? A. He would say like it's f'ing ridiculous that he would have to do that kind of stuff. If they would just pay the people, then people would stay there and come to work.”); 01/16/2024 Trial Tr. 218:15–17 (A. Molinaro: “It was ridiculous to have to keep doing them but we did them and we continued to do them because we were told to do them.”); 01/17/2024 Trial Tr. 169:24–170:17 (J. Shaffer: “[Murrysville’s HR Director] would get a lot of pushback from the back office she interacted with, the Comprehensive group and services, more than any other employee. She would get very frustrated and she would try to get guidance from Jim[, the Regional HR Consultants,] and it would pretty much be exasperation. He couldn’t typically do anything about it. Q. From what you saw, was Jim also frustrated? A. Very frustrated.”), 209:14–210:5; 02/15/2024 Trial Tr. 157:16–25 (R. Goff).

a. *Defendants’ Unified Payroll Has Suffered Years of Persistent, Widespread Errors*

139. Under Defendants’ payroll system, a significant number of errors occur multiple times a month, sometimes as often as every pay period. 01/08/2024 Trial Tr. 170:3–19 (M. Shuey); 01/09/2024 Trial Tr. 34:8–35:16, 43:20–23, 45:7–11, 45:15–21, 47:4–9, 48:23–49:19, 50:3–11 (M. Gildea); 01/09/2024 Trial Tr. 79:20–80:5, 90:3–10 (A. Walter); 01/10/2024 Trial Tr. 40:13–18, 42:19–25, 64:16–65:6 (J. Martis); 01/09/2024 Trial Tr. 160:1–14, 163:7–164:22, 176:22–177:5, 177:20–23 (C. Matlack); 01/10/2024 Trial Tr. 171:13–19, 139:15–23, 140:3–5, 150:23–151:16 (M. Reichard); 01/10/2024 Trial Tr. 222:8–16 (S. Pentek); 01/12/2024 Trial Tr. 119:20–120:4 (M. Swan); 01/16/2024 Trial Tr. 19:11–25 (J. Pattison); 01/16/2024 Trial Tr. 101:23–102:12, 102:22–103:6 (M. Yarnell); 01/16/2024 Trial Tr. 197:1–11, 197:19–198:6 (A. Molinaro); 01/17/2024 Trial Tr. 86:21–88:18 (D. Cox); 01/17/2024 Trial Tr. 136:22–138:5 (J. Meiss); 01/17/2024 Trial Tr. 186:3–24, 197:23–198:10, 198:16–18, 205:19–206:17 (J. Shaffer); 01/18/2024 Trial Tr. 16:5–14, 28:3–6 (L. Shuppas); 01/18/2024 Trial Tr. 60:2–19, 62:25–63:5, 66:6–12, 74:18–23 (B. Perkins); 1/18/2024 109:9–12 Trial Tr. (C. Anderson); 01/18/2024 Trial Tr. 195:22–196:18, 196:23–25 (C. Costic); 01/19/2024 Trial Tr. 117:25–119:11 (M. Shuey); 02/12/2024 Trial Tr. 31:22–32:2, 32:17–19 (S. Isenberg); 02/12/2024 Trial Tr. 61:18–20, 64:3–10, 120:2–13 (S. Halper conceding

existence of payroll errors at Facility Defendants); 02/14/2024 Trial Tr. 34:24, 35:9–13 (R. Jordan); 02/14/2024 Trial Tr. 91:22–24, 113:16–114:16, 119:25–120:14 (M. Hough); 02/15/2024 Trial Tr. 26:15–27:1 (K. Hoke); 02/15/2024 Trial Tr. 105:24–106:8 (C. Dziak); 02/15/2024 Trial Tr. 151:22–153:3, 157:10–15, 170:18–171:9 (R. Goff); JX-61 at pp. 2–4; JX-64; JX-67; JX-69; JX-71; PX-1 at p. 226; PX-1 at p. 237; PX-1 at p. 241; PX-1 at p. 244; PX-1 at p. 251; PX-1 at pp. 255–56; PX-1 at pp. 261–62; PX-1 at pp. 268–72; PX-1 at p. 276; PX-1 at p. 289; PX-14 at 43:15–44:1 (02/03/2020); PX-16 at 71:4–72:6 (02/03/2020); PX-28 at 181:20–182:1 (02/04/2020); PX-75; PX-87; PX-89; PX-136; PX-176; PX-270; PX-369; PX-384; PX-506; PX-568; PX-640; PX-B.

140. The errors in Defendants’ payroll system affect a significant number of Facility Defendant employees, sometimes most employees in a pay period. 01/10/2024 Trial Tr. 40:19–23 (J. Martis); 01/18/2024 Trial Tr. 197:1–3 (C. Costic); 02/14/2024 Trial Tr. 113:16–114:16 (M. Hough: “Do you have any recollection of there being widespread negativity in employee morale at Brighton because of payroll in 2015? A. Yes.”); 02/15/2024 Trial Tr. 28:7–14 (K. Hoke); 02/15/2024 Trial Tr. 106:16–21 (C. Dziak); 02/15/2024 Trial Tr. 154:4–12 (R. Goff: “Q. The payroll errors that you are describing in these buildings, did they affect a few people, did they affect a lot of people? A. They seemed to affect a lot of people.”), 169:9–20; PX-1 at p. 152 (Murrysville HR/Payroll employee: “Since this company took over [Murrysville] on 02/1/2017, the majority of the employees working here have had significant errors in their pay. The errors are always in favor of the employer.”); PX-1 at p. 237; PX-1 at pp. 251–54; PX-1 at pp. 257–58; PX-1 at p. 264; PX-1 at p. 270; PX-1 at p. 275; PX-1 at p. 277; PX-1 at pp. 288–89; PX-1 at p. 293; PX-506; PX-B.

141. In some instances, Facility Defendant employees receive no paycheck at all. 01/16/2024 Trial Tr. 22:2–23:4 (J. Pattison: “There was a particular pay period. It was payday. The Department of Health was there for a survey and the entire facility gathered in the break room and informed me that nobody got paid and they were going to walk out and leave for the day and not come back. Q. Can you expound on that a little bit? A. Well, it kind of got heated. They said they didn’t get paid. I told them I don’t know if I got paid. Like I came to work, we have other priorities. They were adamant they were leaving. I actually short of -- I

begged them to stay and they said they would stay because I asked them, too, but it was a very heated conversation with the whole entire group. It was everybody that was going to leave because they didn't get a paycheck in their bank account."); 01/16/2024 Trial Tr. (J. Pattison); 01/16/2024 Trial Tr. 167:23–25, 211:21–212:16, 225:9–19 (A. Molinaro); 01/17/2024 Trial Tr. 200:1–6 (J. Shaffer); 01/18/2024 Trial Tr. 56:13–17, 73:22–74:2, 74:18–23 (B. Perkins); PX-345 at 1 (Mt. Lebanon NHA: "I have staff members from dietary, nursing and therapy extremely upset about not getting paid at all"); PX-506 at pp. 1–2 (South Hills NHA complaining of multiple missed paychecks); PX-522 at p. 5.

142. These myriad, widespread payroll errors regularly occur at each Facility Defendant. 01/09/2024 Trial Tr. 48:23–49:19 (M. Gildea); 01/10/2024 Trial Tr. 44:19–25 (J. Martis); 01/10/2024 Trial Tr. 139:18–23 (M. Reichard); 01/17/2024 Trial Tr. 210:6–10 (J. Shaffer); 02/15/2024 Trial Tr. 27:2–24 (K. Hoke); PX-1 at p. 251 (Mt. Lebanon Director of Rehab.: "Since this company took over the facility on 02/01/2017, as far as I'm aware, everyone at this facility, Monroeville, and Murrys ville has had problems with not being paid properly."); PX-B; Back Wages Summary.

143. Senior Defendant personnel routinely discuss with Mr. Halper and others that the payroll system had significant, widespread deficiencies. 01/08/2024 Trial Tr. 126:1–19 (M. Shuey); PX-1 at p. 269; PX-391 at p. 1; PX-608 at p. 1 (D. Bernstein "We had a problem with Bonuses and new hires and after some back and forth we made some changes to the process to speed things up to ensure employees would get paid accurately the first time around. So why is it that we're still getting approvals for bonuses after payroll has been processed?"); PX-642 at p. 1 (D. Bernstein: "Something is not falling into place with the bonus approval system.").

144. Defendants' payroll system was so deficient that they developed a reputation of not paying their employees accurately. 01/09/2024 Trial Tr. 139:20–24 ("Q. Dr. Matlack, if you know, what was the general reputation of the CHMS buildings with respect to staffing and payroll? A. The general reputation was that the staffing was not good and that payroll was often incorrect."), 178:18–21; 01/10/2024 Trial Tr. 120:12–15 (M. Reichard: "[T]here was a perception in the community that we did not pay our people as promised, the failure to

complete payroll errors in a timely fashion, those types of things.”); 01/12/2024 Trial Tr. 88:20–89:10 (M. Swan); 01/16/2024 Trial Tr. 88:2–13 (M. Yarnell); 01/17/2024 Trial Tr. 71:24–80:2 (D. Cox: “[I]t seems like this company has a bad reputation with its employees, is that fair to say? A. From talking to members, yes.”); 02/12/2024 Trial Tr. 39:2–8 (S. Isenberg); 02/15/2024 Trial Tr. 147:9–12; 170:3–7 (R. Goff: Q. What did you mean when you said, this is how people view Comprehensive? A. Well, I think that they had developed a reputation for not paying their employees and as a result, a lot of people were quitting.”); PX-528; PX-537 at p. 1 (Regional Director of Recruitment noting need to “repair the perception of the company” as to “pay roll issues”); PX-640.

145. Margaret Zapor-Reichard, the Regional Director of Operations who oversaw several Facility Defendants and who was otherwise knowledgeable about the circumstances of the remaining Facility Defendants, testified that this reputation was justified. 01/10/2024 Trial Tr. 127:18–21 (M. Reichard).
146. CHMS Group often disregards efforts by Facility Defendant personnel to reduce the number of payroll errors. 01/08/2024 Trial Tr. 179:11–23 (M. Shuey); PX-160 at p. 2; PX-188 at pp. 1–2.
147. Claims by Defendants’ witnesses that there were minimal pay errors are not credible. *Compare* 02/14/2024 Trial Tr. 35:21–36:3 (R. Jordan) *with* PFOF 139; PX-502; PX-506 (South Hills NHA Oct. 2017 Memo to Halper and CHMS Group: “I have spent a good part of the last two weeks working with my staff and the payroll department on payroll issues. . . . “I question why so many people feel they are owed shift diff, vacation, OT, and for so long.”); Back Wages Summary.
148. Defendants concede that their payroll system was plagued with errors during “transition” periods, *i.e.*, around the time that they acquired each Facility Defendant. 02/12/2024 Trial Tr. 98:3–13, 100:19–23, 133:11–15, 142:16–17 (S. Halper); 02/13/2024 Trial Tr. 104:23:3–104:4, 127:16–22, 130:4–10 (C. Rivera).

149. Defendants admit that these “transition” periods occurred over the course of at least four years but failed to specifically define what the dates of these “transition” periods were. 02/12/2024 Trial Tr. 98:3–13, 100:19–23 (S. Halper).
150. Defendants’ witnesses’ testimony that payroll errors occurred largely during “transition periods” was not credible. PFOF 322 (showing millions of dollars in back wages owed from 2018 onwards); 01/09/2024 Trial Tr. 181:7–10 (C. Matlack: “Q. After Mr. Pechman came in 2018 to oversee payroll, if I understand you, did the payroll errors you have been talking about lessen in frequency? A. No.”); 01/16/2024 Trial Tr. 236:5–10 (A. Molinaro: “Q. So just based on your discussions only with current Comprehensive employees in one of these buildings, are the pay errors you described, did they occur past 2017? A. Yes. Q. All the pay errors you described? A. Yes.”); 01/17/2024 Trial Tr. 71:11–13 (D. Cox: “Q. Have frequency of these complaints, have they been throughout the period you dealt with Comprehensive? A. Yes. They have gotten worse over the years. Q. Worse. How bad was it when you first started in ‘14? A. I was in the Member Resource Center then. It was bad then but like I said, it’s progressively gotten worse I think with staff leaving and they have less staff to work with. It’s gotten worse.”); 01/17/2024 Trial Tr. 198:16–18 (J. Shaffer, Murrysville NHA from approximately Aug. 2021 to March 2022 (PFOF 134(x)): Q. Is it fair to say, ma’am, that the issue of pay errors at Murrysville was widespread in the building? Oh, 100 percent, yes.”), 206:3–17 (“Q. Based on your conversations with your employees, were they having these pay issues before you got there? A. Yes, they were. Q. For how long? A. My impression was that it was from the time that the building changed hands. Q. You mean when Comprehensive came in? A. Yes. Q. That’s based on your direct conversations with the nurses, the kitchen aides, your department heads? A. Yes. It was a common statement, this never used to be a problem. That would be -- they would say that. Q. It didn't use to be a problem meaning before Comprehensive? A. Correct.”); 01/19/2024 Trial Tr. 106:2–107:17, 114:1–8, 115:13–116:7, 121:10–21 (M. Shuey) 02/13/2024 Trial Tr. 128:22–129:6, 134:12–22 (C. Rivera); 02/15/2024 Trial Tr. 105:24–106:8 (C. Dziak, HRD in 2019, describing pay errors for The Grove at Washington); 02/15/2024 Trial Tr. 152:20–153:3, 154:13–24, 168:14–19 (R. Goff: “Q. We heard testimony in this trial that the defendants acknowledged there were payroll errors but they were really focused around the

transition period, so the few months or so after Comprehensive purchased the homes. Is that consistent with your recollection? A. No. I would say I experienced them throughout my tenure when Comprehensive had taken over. So it wasn't like the first few pay periods after the purchase. It continued to happen for months afterwards. Q. To the same degree or severity that you have been describing? A. Yes."); PX-B.

b. *Defendants Paid According to Pre-Set Employee Schedules Instead of Time Punches*

151. Defendants designed their payroll system to pay Facility Defendant employees according to their pre-set schedule, instead of according to their time punches. 01/08/2024 Trial Tr. 88:11–89:5, 165:15–22 (M. Shuey); 01/09/2024 Trial Tr. 90:3–18, 91:2–5 (A. Walter); 01/10/2024 Trial Tr. 121:7–22 (M. Reichard); 01/16/2024 Trial Tr. 107:11–18 (M. Yarnell); 01/16/2024 Trial Tr. 185:21–186:25, 198:25–199:8, 228:20–229:11 (A. Molinaro); 01/17/2024 Trial Tr. 90:7–18 (D. Cox); 01/18/2024 Trial Tr. 63:23–65:1 (B. Perkins); 02/12/2024 Trial Tr. 80:2–6, 120:14–20, 121:23–122:3 (S. Halper); 02/12/2024 Trial Tr. 157:11–21 (A. Pechman); 02/15/2024 Trial Tr. 29:9–30:2 (K. Hoke); 02/15/2024 Trial Tr. 148:6–16 (R. Goff); PX-1 at p. 224; PX-1 at p. 227; PX-1 at p. 234; PX-28 at 129:4–130:2, 205:9–14 (02/04/2020); PX-341; PX-673 at 1–2.
152. Because of this policy, Defendants routinely do not compensate Facility Defendant employees for work those employees performed outside of their scheduled shift. 01/08/2024 Trial Tr. 145:6–12 (M. Shuey); 01/09/2024 Trial Tr. 90:3–18 (A. Walter); 01/10/2024 Trial Tr. 51:18–22 (J. Martis); 01/11/2024 Trial Tr. 202:7–15 (T. Slagle); 01/12/2024 Trial Tr. 109:7–17 (M. Swan); 01/16/2024 Trial Tr. 198:19–24 (A. Molinaro); 01/17/2024 Trial Tr. 89:6–8, 89:21–90:6 (D. Cox); 01/18/2024 Trial Tr. 63:23–65:1, 74:18–23 (B. Perkins); 02/15/2024 Trial Tr. 150:14–151:5, 153:5–15 (R. Goff); PX-1 at p. 242; PX-1 at p. 247; PX-1 at pp. 251–52; PX-1 at p. 259; PX-1 at p. 273; PX-1 at p. 293; PX-2; PX-341.
153. Defendants did make any attempt to modify the payroll system to pay according to punch until some point between May 2018 and 2019. 01/10/2024 Trial Tr. 175:15–23 (M. Reichard); PX-28 at 128:24–129:3 (02/04/2020).

154. Despite this purported change, the practice of paying according to schedule instead of punch did not completely cease. 01/19/2024 Trial Tr. 121:10–21 (M. Shuey); 02/15/2024 Trial Tr. (C. Dziak, The Grove at Washington HRD in 2019, testifying that she believed that employees were paid according to schedule instead of punch).

155. Defendants’ departure from paying according to schedule did not remove the other routine pay errors affecting significant numbers of Facility Defendant employees. PFOF 139, 322; 01/10/2024 Trial Tr. 175:24–176:3 (M. Reichard); 02/12/2024 Trial Tr. 182:6–13 (A. Pechman: Q. Do you recalculate those punches for overtime? A. Sure. Absolutely. Well, that’s the procedure. That’s the protocol. I can’t promise that every one of the processors did it correctly every single time.”), *Id.* at 194:3–5 (“Q. In your experience, sir, there are occasionally still pay errors that happen even to this day, right? A. Yes.”).

c. Facility Defendant Employees Routinely Work During Meal Breaks Without Pay

156. Instead of taking unpaid thirty-minute meal breaks, Facility Defendant employees regularly perform work on Defendants’ behalf (*e.g.*, direct patient care). 01/08/2024 Trial Tr. 151:9–152:17 (M. Shuey); 01/09/2024 Trial Tr. 84:3–7, 84:17–85:3, 85:9–11, 86:7–11 (A. Walter); 01/09/2024 Trial Tr. 153:24–154:13, 155:6–15, 156:3–6 (C. Matlack); 01/10/2024 Trial Tr. 34:2–14, 36:7–11 (J. Martis); 01/10/2024 Trial Tr. 123:12–14 (M. Reichard: “How often did CHMS employees work through their lunch in their nursing homes? A. As I recall, that occurred quite often.”), 124:1–5; 01/10/2024 Trial Tr. 185:7–19, 187:13–20 (C. Langham); 01/10/2024 Trial Tr. 216:10–217:2, 217:23–25 (S. Pentek); 01/10/2024 Trial Tr. 233:11–24, 237:5–19, 237:23–238:9, 249:24–250:3 (R. Wolarov); 01/11/2024 Trial Tr. 191:2–10, 192:22–25, 195:12–196:11 (T. Slagle); 01/12/2024 Trial Tr. 41:15–18, 43:9–15, 43:23–44:5 (K. Miller); 01/12/2024 Trial Tr. 10:21–11:10, 14:24–15:10, 16:15–18 (B. Leffler); 01/12/2024 Trial Tr. 102:12–103:5 (M. Swan); 01/12/2024 Trial Tr. 155:3–156:17 (J. Shadle); 01/12/2024 Trial Tr. 182:13–15 (Fr. Schwartz); 01/16/2024 Trial Tr. 17:17–18:15, 20:1–6, 21:1–4, 21:24–25:1 (J. Pattison); 01/16/2024 Trial Tr. 88:14–89:1, 93:15–94:24 (M. Yarnell); 01/16/2024 Trial Tr. 193:19–194:7 (A. Molinaro: Q. How often did South Hills employees during Comprehensive work through their lunch? A. Many times. Q. Was it on a daily basis? A. Daily basis.”), 228:20–229:13; 01/17/2024 Trial Tr. 76:6–14

(D. Cox); 01/17/2024 Trial Tr. 13:2–15, 15:11–16:6 (P. Henline); 1/17/2024 Trial Tr. 26:4–14, 28:24–29:21 (D. Henline); 01/17/2024 Trial Tr. 132:3–12, 132:21–133:10, 133:25–134:18 (J. Meiss); 01/17/2024 Trial Tr. 194:6–9 (J. Shaffer: “Q. Did you ever see times as the administrator where you would see Murrysville employees work through their meal breaks? A. It was very common.”); 01/18/2024 Trial Tr. 15:1–16, 17:3–5, 17:14–18, 37:9–39:1, 40:3–14, 45:22–46:23 (L. Shuppas); 01/18/2024 Trial Tr. 71:24–72:9, 73:13–18, 74:18–23 (B. Perkins); 01/18/2024 Trial Tr. 86:16–25, 90:11–91:11, 93:13–21, 98:21–99:3, 99:15–100:3 (C. Simmons); 01/18/2024 Trial Tr. 108:23–109:8 (C. Anderson); 01/18/2024 Trial Tr. 145:2–6, 145:14–15, 147:10–21, 148:5–149:3 (K. Lantzy); 01/18/2024 Trial Tr. 161:9–24, 162:5–11, 165:19–166:24, 167:16–23 (E. Bainbridge); 01/18/2024 Trial Tr. 194:18–23 (C. Costic); 01/19/2024 Trial Tr. 117:9–24 (M. Shuey); 02/12/2024 Trial Tr. 8:13–9:3, 9:24–11:4 (C. Clark); 02/12/2024 Trial Tr. 24:2–8, 25:11–26:8 (S. Isenberg); 02/14/2024 Trial Tr. 150:6–12, 176:4–13 (C. Hill); 02/14/2024 Trial Tr. 66:19–25, 70:23–71:6, 73:22–74:1, 78:5–11, 88:14–18 (M. Hough); 02/15/2024 Trial Tr. 70:22–71:9 (B. Tissue); 02/15/2024 Trial Tr. 99:17–100:18 (C. Dziak); 02/15/2024 Trial Tr. 148:17–149:17, 153:5–15 (R. Goff: “Q. Did you ever hear from any of the members that you described talking to, so in Brighton, the Golden Living homes, and the Consulate homes, that they were working through their meal breaks? A. Yes, that was routine. . . . I would say, as a matter of weekly, it was a matter of course.”); JX-58 at “Time Data”; PX-1 at p. 130, ¶ 11; PX-1 at p. 195, ¶ 8; PX-1 at pp. 221–22, ¶ 9–10; PX-1 at p. 234; PX-1 at p. 265; PX-1 at p. 277; PX-550 at pp. 1–3.

157. A principal reason that these employees do not take a full meal break is because Facility Defendants are persistently and severely understaffed. 01/08/2024 Trial Tr. 151:9–18 (M. Shuey); 01/09/2024 Trial Tr. 156:3–6 (C. Matlack) (“Q. Was it your general understanding that if a building had staffing issues, that the employees were more likely to be working through their meal breaks? A. Yes.”); 01/10/2024 Trial Tr. 185:11–16 (C. Langham); 01/10/2024 Trial Tr. 233:25–234:5 (R. Wolarov); 01/11/2024 Trial Tr. 191:11–15, 193:4–18, 194:20–22 (T. Slagle); 01/12/2024 Trial Tr. 11:23–12:8, 17:10–16 (B. Leffler); 01/12/2024 Trial Tr. 41:19–21 (K. Miller); 01/12/2024 Trial Tr. 103:6–8 (M. Swan); 01/16/2024 Trial Tr. 20:22–25 (J. Pattison); 01/16/2024 Trial Tr. 93:15–94:1

(M. Yarnell: Q. How often? A. I think that people worked through their meal breaks pretty often depending on what the staffing is on the units and in particular, nursing departments where there is a lot of constant change and either scheduled holes or there might be call-outs. So there's a lot of moving parts. There is also you're caring for frail people. People get sick. Emergencies happen. People work through lunch quite a bit."); 01/17/2024 Trial Tr. 26:4–8 (D. Henline); 01/17/2024 Trial Tr. 226:22–228:17 (M. Edwards); 01/19/2024 Trial Tr. 121:22–122:10 (M. Shuey); 01/18/2024 Trial Tr. 17:14–23 (L. Shuppas); 01/18/2024 Trial Tr. 91:12–19 (C. Simmons); 01/18/2024 Trial Tr. 145:7–9 (K. Lantzy); 02/12/2024 Trial Tr. 24:9–17 (S. Isenberg); 02/14/2024 Trial Tr. 54:14–55:1 (R. Jordan); 02/14/2024 Trial Tr. 176:4–13 (C. Hill); 02/15/2024 Trial Tr. 22:16–23:4 (K. Hoke); 02/15/2024 Trial Tr. 99:17–100:10 (C. Dziak); PX-1 at p. 130, ¶ 11; PX-1 at p. 195, ¶ 8; PX-1 at p. 221, ¶ 9; PX-550 at pp. 1–3.

158. Facility Defendant employees routinely perform work during their meal breaks without obtaining advance permission. 01/10/2024 Trial Tr. 35:1–10 (J. Martis); 01/10/2024 Trial Tr. 125:19–22 (M. Reichard); 01/10/2024 Trial Tr. 186:20–25 (C. Langham); 01/17/2024 Trial Tr. 133:17–24 (J. Meiss).

159. Facility Defendant personnel sometimes ask employees to work through their meal breaks to make up for staffing shortages. 01/10/2024 Trial Tr. 161:12–18 (M. Reichard); 01/12/2024 Trial Tr. 40:20–24, 43:3–8 (K. Miller); 01/17/2024 Trial Tr. 152:23–153:7 (J. Meiss); 01/17/2024 Trial Tr. 194:12–19 (J. Shaffer); 01/18/2024 Trial Tr. 148:5–149:3 (K. Lantzy).

160. Facility Defendant employees routinely complain that they do not have the ability to take a full thirty-minute meal during their shifts. 01/16/2024 Trial Tr. 18:10–12 (J. Pattison); 01/17/2024 Trial Tr. 229:24–230:11 (M. Edwards); 01/18/2024 Trial Tr. 18:4–6 (L. Shuppas).

161. Approximately 60% employees reflected in Defendants' time records have no time punches other than at the beginning and end of their shift. 01/11/2024 Trial Tr. 39:21–23 (M. Murray); JX-58 at "Time Data"; PX-28 at 128:1–9 (Aug. 12, 2020).

162. Defendants rarely, if ever, discipline employees for failing to adhere to the requirement that they punch in and out for meal breaks. 01/09/2024 Trial Tr. 156:14–18 (C. Matlack); 01/17/2024 Trial Tr. 78:6–21 (D. Cox); 01/17/2024 Trial Tr. 131:11–23 (J. Meiss); PX-49, ¶ 3(iii).
163. Some of Defendants’ management personnel understood the lack of punches for meal breaks to mean that the employee worked through the meal break. 01/10/2024 Trial Tr. 33:11–14 (J. Martis: “Q. Mr. Martis, if an employee did not punch out for a meal break, was it your understanding that the employee worked through their meal break? A. That is correct.”); 01/10/2024 Trial Tr. 125:9–12 (M. Reichard: “Q. So if a time record, Ms. Reichard, showed that somebody did not punch out for lunch, for example, was it your understanding that person worked? A. Yes.”).
164. For those employees who do punch in and out during the work day, those time punches regularly show that the employees are off the clock for approximately 5 minutes. JX-58 at “Time Data”; PFOF 311 (discussing 5 minute “average break length for all employees who did swipe out for a break from their hours”).
165. Largely because Defendants’ automatic thirty-minute deduction for meal breaks is not set up to correspond with Facility Defendants’ time punches, Defendants routinely do not pay for work performed during meal breaks. 01/10/2024 Trial Tr. 37:19–38:6, 51:4–17, 69:22–24 (J. Martis); 01/09/2024 Trial Tr. 83:22–84:2 (A. Walter); 01/09/2024 Trial Tr. 156:7–13, 167:4–17 (C. Matlack); 01/10/2024 Trial Tr. 142:2–11 (M. Reichard: “Q. Do you recall seeing the issue during your tenure as the regional director of hours unpaid for work arising for meal breaks? A. Yes. Q. How often did that happen? A. That happened often. Q. Did it happen in all the buildings as far as you’re aware? A. It happened in many of the building as far as I’m aware.”); 01/10/2024 Trial Tr. 187:4–7, 188:1–7 (C. Langham); 01/10/2024 Trial Tr. 235:1–11, 236:21–23, 237:23–238:9 (R. Wolarov); 01/12/2024 Trial Tr. 12:16–19, 14:24–15:10, 15:14–18 (B. Leffler); 01/12/2024 Trial Tr. 45:15–23 (K. Miller); 01/12/2024 Trial Tr. 158:11–159:13, 160:4–12 (J. Shadle); 01/16/2024 Trial Tr. 20:7–18 (J. Pattison); 01/16/2024 Trial Tr. 192:25–193:18, 198:19–21 (A. Molinaro); 01/17/2024 Trial Tr. 13:21–14:25, 16:17–20 (P. Henline); 01/17/2024 Trial Tr. 26:15–19,

26:20–27:8, 28:24–29:21 (D. Henline); 01/17/2024 Trial Tr. 80:1–3, 87:2–7, 88:24–89:5, 89:21–90:6 (D. Cox); 01/17/2024 Trial Tr. 139:19–140:2, 140:8–12 (J. Meiss); 01/18/2024 Trial Tr. 72:23–73:2, 74:18–23 (B. Perkins); 01/18/2024 Trial Tr. 86:18–25, 93:3–21 (C. Simmons); 01/18/2024 Trial Tr. 162:12–15, 169:24–170:9 (E. Bainbridge); 01/18/2024 Trial Tr. 146:20–147:9 (K. Lantzy); 01/19/2024 Trial Tr. 61:8–14, 122:11–20 (M. Shuey); 02/12/2024 Trial Tr. 27:7–10, 37:15–23, 39:14–18, 46:14–22, 47:11–20 (S. Isenberg); 02/12/2024 Trial Tr. 195:10–16 (A. Pechman); 02/15/2024 Trial Tr. 55:5–10 (K. Hoke); PX-1 at p. 130, ¶ 11; PX-1 at pp. 221–22, ¶¶ 9–10; PX-1 at p. 277; PX-6 at “BD & Bonus Summary Tables” Excel Sheet, Tab “Grand Totals” (showing approximately \$12 million in back wages attributable to automatic break deduction).

166. Mr. Pechman, CHMS Group’s Director of Payroll, admitted that Defendants’ failure to maintain accurate records of work performed during meal breaks has likely favored them over Facility Defendant employees. PX-28 at 161:10–21 (02/04/2020) (A. Pechman: it is a “fair assumption” that meal break errors would “generally favor the employer over the employee”).

d. Defendants Routinely Fail to Pay Promised Non-Discretionary Supplemental Compensation, Such as Bonuses and Shift Differentials

167. Defendants frequently fail to pay bonuses, shift differentials, and other enhanced compensation due to Facility Defendant employees. 01/08/2024 Trial Tr. 124:14–125:4 (M. Shuey); 01/09/2024 Trial Tr. 96:19–21 (A. Walter); 01/10/2024 Trial Tr. 53:20–54:2 (J. Martis); 01/09/2024 Trial Tr. 151:23–152:13, 167:18–168:16 (C. Matlack); 01/10/2024 Trial Tr. 145:6–14 (M. Reichard: “Do you recall seeing issues with shift differentials that were not paid? A. Yes. Q. How often did that occur? A. Often. Q. Did it occur with all the buildings you had awareness of? A. Yes.”); 01/10/2024 Trial Tr. 180:2–5, 184:15–22, 188:25–189:2 (C. Langham); 01/12/2024 Trial Tr. 107:3–13, 110:3–23 (M. Swan); 01/16/2024 Trial Tr. 16:16–17:1 (J. Pattison); 01/16/2024 Trial Tr. 110:24–112:20 (M. Yarnell); 01/16/2024 Trial Tr. 200:1–24 (A. Molinaro: “Q. How often did you see instances where South Hills employees under Comprehensive were not paid for bonuses that had been previously promised? A. Constantly. I mean every payroll. Q. Did this issue affect a lot of employees, a few employees? A. A lot of employees, three-quarters of the

e. *Facility Defendant Employees Routinely Complain About Widespread Pay Errors*

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(J. Shadle); 01/16/2024 Trial Tr. 19:15–21 (J. Pattison); 01/16/2024 Trial Tr. 214:17–24 (A. Molinaro); 01/17/2024 Trial Tr. 16:21–18:2 (P. Henline); 01/17/2024 Trial Tr. 30:21–31:19 (D. Henline); 01/17/2024 Trial Tr. 94:20–95:4, 95:13–25, 96:4–6 (D. Cox); 01/17/2024 Trial Tr. 198:19–25 (J. Shaffer); 01/18/2024 Trial Tr. 73:19–21 (B. Perkins); 01/18/2024 Trial Tr. 112:14–20, 115:19–23 (C. Anderson); 01/18/2024 Trial Tr. 160:12–19 (E. Bainbridge); 01/18/2024 Trial Tr. 197:4–12 (C. Costic); 02/12/2024 Trial Tr. 36:19–37:3 (S. Isenberg); 02/13/2024 Trial Tr. 136:22–25 (C. Rivera); 02/14/2024 Trial Tr. 149:4–10 (C. Hill); 02/15/2024 Trial Tr. 73:19–25, 74:15–22 (B. Tissue); 02/15/2024 Trial Tr. 109:18–25 (C. Dziak); PX-1 at p. 157, ¶ 10; PX-1 at p. 257; PX-27 at 223:3–24 (01/30/2020); PX-39, ¶ 3(ii)(b); PX-708; PX-792.

170. These complaints include:

A. Hours worked missing from paychecks, including time worked outside of shifts or during meal breaks. 01/09/2024 Trial Tr. 87:8–18, 91:9–15, 92:3–5 (A. Walter); 01/09/2024 Trial Tr. 34:8–35:16, 43:20–23, 45:7–11, 45:15–46:13, 48:14–22 (M. Gildea); 01/10/2024 Trial Tr. 38:11–17, 43:14–21 (J. Martis); 01/10/2024 Trial Tr. 153:4–13 (M. Reichard); 01/10/2024 Trial Tr. 187:21–25 (C. Langham); 01/10/2024 Trial Tr. 218:1–6 (S. Pentek); 01/11/2024 Trial Tr. 200:12–15, 200:19–21, 204:18–24 (T. Slagle); 01/12/2024 Trial Tr. 47:20–48:8 (K. Miller); 01/12/2024 Trial Tr. 160:13–161:16 (J. Shadle); 01/16/2024 Trial Tr. 21:5–13 (J. Pattison); 01/17/2024 Trial Tr. 13:24–14:18, 16:7–16 (P. Henline); 01/17/2024 Trial Tr. 26:20–27:3, 33:2–8 (D. Henline); 01/17/2024 Trial Tr. 141:22–142:2, 143:3–23, 144:14–22 (J. Meiss); 01/18/2024 Trial Tr. 16:24–17:8 (L. Shuppas); 01/18/2024 Trial Tr. 93:3–21 (C. Simmons); 01/18/2024 Trial Tr. 143:3–7, 143:14–20 (K. Lantzy); 02/12/2024 Trial Tr. 28:9–29:13 (S. Isenberg); PX-1 at p. 130, ¶ 9; PX-16 at 71:4–72:6, 108:5–11 (02/03/2020); PX-792 (M. Hough Oct. 2015 email: “I think I have been pretty patient through this whole process but this is getting ridiculous. When can I expect an answer about the pay that I worked for and haven’t received?”).

- B. Missing overtime pay, either because hours are missing or because the pay rate is incorrect. 01/09/2024 Trial Tr. 94:5–13 (A. Walter); 01/10/2024 Trial Tr. 182:7–183:12 (C. Langham); 01/10/2024 Trial Tr. 240:24–241:2 (R. Wolarov); 01/12/2024 Trial Tr. 20:2–13 (B. Leffler); 01/12/2024 Trial Tr. 51:4–18, 54:14–19, 55:6–17 (K. Miller); 01/16/2024 Trial Tr. 24:17–22 (J. Pattison); 01/17/2024 Trial Tr. 19:6–17, 21:17–19 (P. Henline); 01/17/2024 Trial Tr. 32:4–8, 32:14–21 (D. Henline); 01/17/2024 Trial Tr. 143:3–23, 144:14–22 (J. Meiss); 01/18/2024 Trial Tr. 20:21–21:19 (L. Shuppas); 01/18/2024 Trial Tr. 63:11–18 (B. Perkins); 02/15/2024 Trial Tr. 117:19–118:4, 118:11–25 (J. Thomas); 02/15/2024 Trial Tr. 8:14–9:1 (K. Hoke); PX-1 at p. 130, ¶ 12; PX-1 at p. 195, ¶ 7; PX-14 at 53:15–18 (02/03/2020).
- C. Missing bonuses, shift differentials, and other promised supplemental compensation. 01/09/2024 Trial Tr. 98:21–23 (A. Walter); 01/10/2024 Trial Tr. 43:21–24 (J. Martis); 01/10/2024 Trial Tr. 153:4–13 (M. Reichard); 01/10/2024 Trial Tr. 188:25–189:6 (C. Langham); 01/16/2024 Trial Tr. 25:20–24 (J. Pattison); 01/17/2024 Trial Tr. 224:12–18 (M. Edwards); 01/18/2024 Trial Tr. 23:16–19 (L. Shuppas); 01/18/2024 Trial Tr. 63:11–18, 70:18–71:4 (B. Perkins); 01/18/2024 Trial Tr. 95:22–97:18 (C. Simmons); 01/18/2024 Trial Tr. 171:7–12 (E. Bainbridge); 02/12/2024 Trial Tr. 34:15–35:3 (S. Isenberg); 02/14/2024 Trial Tr. 171:25–172:8 (C. Hill); 02/15/2024 Trial Tr. 8:14–9:1 (K. Hoke); PX-26 at 93:11–17 (01/29/2020); PX-51, ¶ 3(xii); PX-371; PX-792.
- D. Certain compensation, such as bonuses and/or shift differentials, not being included in the “regular rate.” 01/18/2024 Trial Tr. 22:10–23:3 (L. Shuppas); 02/12/2024 Trial Tr. 36:1–22 (S. Isenberg); 02/14/2024 Trial Tr. 172:4–8 (C. Hill: “Q. Those complaints included bonuses not being paid? A. Yes. Q. And bonuses not being included in the overtime rate that we just discussed, correct? A. Correct.”); PX-1 at p. 131, ¶ 13.
- E. Employees classified as exempt having their pay docked if they work fewer hours. PFOF 234.

171. Defendants’ widespread, persistent payroll errors are, and have been, a topic of frequent discussion among Facility Defendant personnel. 01/09/2024 Trial Tr. 48:23–49:19 (M. Gildea recalling daily management meetings for North Strabane Rehab. and North Strabane Ret. where pay issues were discussed “[m]any times” and all department heads and supervisors would complain “to the executive director and HR they’re not getting paid properly.”), 51:12–52:17; 01/10/2024 Trial Tr. 42:7–18 (J. Martis) (“Q. While you were at Mt. Lebanon, sir, how often did you hear employees complain about pay? A. It was so often that Mr. Richmond started holding weekly meetings and sometimes daily meetings as to tamp down the furor – people were angry. . . . Q. How large were these meetings[?] A. A lot of times I would go out and cover the floor somewhere because everybody wanted to attend them because so many people – it was so widespread.”); 01/10/2024 Trial Tr. 150:23–151:13 (M. Reichard); 01/12/2024 Trial Tr. 53:6–11 (K. Miller); 01/12/2024 Trial Tr. 68:15–69:7, 76:18–77:12 (M. Swan); 01/16/2024 Trial Tr. 180:25–181:5 (A. Molinaro); 01/17/2024 Trial Tr. 29:14–18, 34:14–24 (D. Henline); 01/18/2024 Trial Tr. 119:15–120:6 (C. Anderson); 01/18/2024 Trial Tr. 147:15–21 (K. Lantzy); 01/18/2024 Trial Tr. 189:14–18, 196:3–18 (C. Costic); 02/15/2024 Trial Tr. 27:2–24, 43:4–12 (K. Hoke); 02/15/2024 Trial Tr. 118:11–25 (J. Thomas); PX-345 at p. 2.

f. The SEIU Frequently Pursues Grievances and Notifies Defendants of Widespread and Persistent Payroll Errors

172. Union personnel regularly interact with Facility Defendant employees regarding their conditions of employment, including as to payroll issues. 01/16/2024 Trial Tr. 51:24–52:24, 55:6–56:4, 56:19–57:7, 58:11–59:5 (M. Yarnell); 01/17/2024 Trial Tr. 52:4–25 (D. Cox).

173. Facility Defendant employees frequently complain to union personnel regarding Defendants’ sustained, widespread payroll errors. 01/10/2024 Trial Tr. 245:7–12 (R. Wolarov); 01/16/2024 Trial Tr. 52:25–53:12, 55:23–56:4, 57:4–15, 94:13–19, 101:25–102:21, 103:7–11, 106:5–107:10, 110:3–112:20, 113:14–20 (M. Yarnell); 01/17/2024 Trial Tr. 81:25–82:2, 87:2–88:18 (D. Cox); 01/17/2024 Trial Tr. 211:10–11, 18–19 (J. Shaffer); 01/18/2024 Trial Tr. 26:15–27:19, 28:7–11, 28:19–22, 29:7–10, 30:10–13 (L. Shuppas); 01/18/2024 Trial Tr. 159:12–160:2 (E. Bainbridge).

174. Union personnel regularly and directly contact Defendants to raise payroll errors, both as to individual employees and at a facility-wide level. 01/09/2024 Trial Tr. 15:8–20, 21:21–22:1 (M. Shuey); 01/09/2024 Trial Tr. 169:20–170:9, 171:15–172:6 (C. Matlack); 01/16/2024 Trial Tr. 114:5–116:8, 121:22–3 (M. Yarnell); 01/17/2024 Trial Tr. 42:11–18, 45:12–14, 47:5–13, 53:7–16, 80:1–3, 93:2–10, 93:19–94:3, 96:18–97:2, 97:11–98:4, 99:3–6, 99:15–18 (D. Cox); 01/18/2024 Trial Tr. 27:20–28:2, 29:7–15 (L. Shuppas); 01/19/2024 Trial Tr. 13:16–23 (M. Shuey); 02/13/2024 Trial Tr. 133:23–134:11 (C. Rivera); JX-71; PX-350; PX-375 at p. 2 (C. Rivera Mar. 2017 Notes Summarizing Call with Halper: “There were employees from the Reliant homes, Priority and Maybrook. Employee morale is at an all-time low. In general all the nursing homes are encountering Staffing issues, Lack of and quality of supplies, Shift differentials being changed. Payroll issues, the inability to take time off with pay. Members feel that they cannot provide quality care for the residents.”); PX-532; PX-559; PX-585; PX-690.
175. After this contact, Facility Defendant personnel report the union’s communications to the Nursing Home Administrator, the Regional Consultants, and/or Halper. 01/09/2024 Trial Tr. 80:19–81:1 (A. Walter); 01/17/2024 Trial Tr. 211:21–212:8 (D. Cox); 01/18/2024 Trial Tr. 75:24–76:4 (B. Perkins); JX-59; PX-350 at p. 1.
176. Union personnel have complained to Defendants that their payroll system is systemically flawed. 01/16/2024 Trial Tr. 117:19–24, 124:25–125:9 (M. Yarnell); 02/15/2024 Trial Tr. 171:15–19, 178:13–21 (R. Goff: “Q. As a generally matter, sir, based on your total experience with Mr. Halper, with the Comprehensive buildings, with the payroll department, were those three groups, entities, whatever, Mr. Halper, the nursing homes themselves and the payroll office in New York, were they aware during your period of involvement and on a systemic level that the Comprehensive payroll system was not accurate? A. I had raised it to them to all of those people.”); PX-558 at p. 1 (R. Goff to S. Halper in Nov. 2017: “Your payroll system is designed to fail. It fails constantly and predicably. . . . Your payroll system is easily the worst I have ever seen and needs to be corrected immediately.”).

177. Union personnel and Facility Defendant employees regularly pursue or threaten grievances against Defendants with respect to compensation practices. 01/09/2024 Trial Tr. 80:6–18, 81:2–12 (A. Walter: “Q. Let me ask you about the union grievances that you addressed here. Tell me a little bit about that. A. When payroll wasn’t right, we had a very strong union at The Grove at Harmony. It was the SEIU and they would literally grieve every time a paycheck was wrong or a bonus wasn’t implemented.”), 92:8–18; 01/09/2024 Trial Tr. 171:6–9 (C. Matlack); 01/16/2024 Trial Tr. 130:13–21, 130:25–131:11 (M. Yarnell); 01/17/2024 Trial Tr. 99:19–100:6, 105:2–9 (D. Cox); 01/18/2024 Trial Tr. 23:7–15, 27:20–22, 28:12–29:6 (L. Shuppas); 01/18/2024 Trial Tr. 113:18–22 (C. Anderson); 01/18/2024 Trial Tr. 165:2–5, 165:12–18, 166:18–21, 171:7–12, 176:15–18 (E. Bainbridge); 02/15/2024 Trial Tr. 177:19–23 (R. Goff); PX-16 at 132:2–8 (02/03/2020); PX-18 at 154:25–155:5 (01/27/2020); PX-22 at 66:19–23 (01/29/2020); PX-26 at 50:9–15 (01/29/2020); PX-27 at 296:5–8 (01/30/2020); PX-28 at 143:9–24, 144:24–145:3 (Aug. 12, 2020); PX-44, ¶ 3(ix); PX-45, ¶ 3(x); PX-49, ¶ 3(x); PX-50, ¶ 3(xii); PX-270; PX-422; PX-506 at 1; PX-585; PX-690 at pp. 1–2.
178. Union personnel, including Carlos Rivera, fought with Mr. Halper to correct payroll errors affecting Facility Defendant employees and were frustrated by Mr. Halper’s lack of responsiveness. 01/16/2024 Trial Tr. 145:19–22, 154:18–155:14 (M. Yarnell); 02/15/2024 Trial Tr. 175:25–176:19 (R. Goff); JX-71.
179. Defendants regularly respond to the union and members by assuring them that the payroll errors would be corrected, but often do not follow through on those assurances. 01/16/2024 Trial Tr. 131:12–15, 132:7–19, 133:10–17 (M. Yarnell); 01/17/2024 Trial Tr. 100:11–15, 105:10–21 (D. Cox); 02/15/2024 Trial Tr. 157:5–15, 178:8–13 (R. Goff).
180. CHMS Group regularly claims to the union that it has corrected payroll errors, when that is not true. 02/15/2024 Trial Tr. 160:14–161:9 (R. Goff); JX-72 at pp. 1–2 (R. Goff to M. Gandl: “All of this is incorrect.”).
181. Defendants’ routine assurances that payroll errors would be corrected led the union to delay or forgo arbitrations. 01/16/2024 Trial Tr. 132:20–133:13, 156:21–157:10 (M. Yarnell); 01/18/2024 Trial Tr. 41:14–18 (L. Shuppas).

182. Facility Defendant employees often decline to pursue grievances or abandon pending grievances because of their frustration with Defendants’ payroll practices and because they believe it is futile to seek missing pay. 01/10/2024 Trial Tr. 82:14–20 (J. Martis); 01/16/2024 Trial Tr. 135:1–17 (M. Yarnell); 01/17/2024 Trial Tr. 107:5–14 (D. Cox); 01/18/2024 Trial Tr. 165:6–9 (E. Bainbridge).

183. The lack of union arbitrations did not affect Facility Defendant personnels’ understanding that Defendants’ payroll system was afflicted by persistent, widespread errors. 01/10/2024 Trial Tr. 83:1–7 (J. Martis); 01/18/2024 Trial Tr. 135:19–21 (C. Anderson).

g. Defendants’ Process for Correcting Payroll Errors Is Ineffective

184. Defendants’ process for correcting payroll errors is, and has been, generally ineffective. 01/08/2024 Trial Tr. 217:5–12 (M. Shuey); 01/10/2024 Trial Tr. 56:2–16 (J. Martis); 01/09/2024 Trial Tr. 182:21–183:7 (C. Matlack); 01/10/2024 Trial Tr. 155:1–3 (“Q. As a general matter, Ms. Reichard, was the process to correct payroll errors in these facilities effective? A. No.”); 01/12/2024 Trial Tr. 105:18–106:1, 120:5–21 (M. Swan); 01/16/2024 Trial Tr. 220:21–221:11 (A. Molinaro: “Q. In your experience, sir, at South Hills under Comprehensive, was the process to correct pay errors effective? A. It was not at all.”); 01/17/2024 Trial Tr. 101:14–21 (D. Cox: “Q. As a general matter, the payroll correction process you have knowledge about, was it effective in getting pay errors fixed? A. No.”); 02/15/2024 Trial Tr. 110:5–13 (C. Dziak); 02/15/2024 Trial Tr. 157:16–25 (R. Goff: “Q. As a general matter, sir, was the process that Comprehensive used at the buildings you dealt with to correct pay errors reliable? A. It did not seem to work. I can tell you without a doubt that the local administrators, who are my counterparts, we are on opposite sides, if you will, right, were extremely frustrated and at times would even vent to me because they were spending half of their job trying to fix payroll errors but they didn’t have power to fix them.”), 167:22–168:3 (R. Goff: “What did you mean when you told Mr. Halper your payroll system is designed to fail? A. What I meant was is that there was no mechanism for payroll errors to be corrected that would be useful to the employees and in the way that they would go about correcting them wouldn't necessarily lead to them being correct.”); PX-506

at p. 2 (South Hills NHA: “Each time I have asked for payment (my paycheck) I ask when I can expect checks in the future. I continue not to have an understanding nor confidence of this pay process.”).

185. Defendants sometimes used inconsistent pay error correction protocols, leading Facility Defendant personnel to express confusion about the processes to attempt to correct payroll errors. PX-28 at 91:11–92:11 (02/04/2020); PX-162 at p. 2; PX-175 at p. 1 (Brighton HRD: “We are not consistent. We need to be. It causes major problems on our end.”).
186. Facility Defendant personnel routinely follow Defendants’ procedures for requesting corrections or other adjustments for employee paychecks, including submission of required documentation. 01/09/2024 Trial Tr. 43:20–44:19, 45:15–46:20 (M. Gildea); 01/09/2024 Trial Tr. 73:6–19, 82:14–18, 88:1–89:4, 91:16–21, 93:14–25, 96:22–97:2 (A. Walter); 01/10/2024 Trial Tr. 36:16–37:18, 44:7–18, 65:7–23, 69:3–17, 72:7–12 (J. Martis); 01/10/2024 Trial Tr. 126:16–23 (M. Reichard); 01/10/2024 Trial Tr. 186:1–20 (C. Langham); 01/10/2024 Trial Tr. 218:16–21, 219:14–220:3 (S. Pentek); 01/10/2024 Trial Tr. 235:12–25, 242:10–244:15 (R. Wolarov); 01/11/2024 Trial Tr. 195:17–19, 196:12–197:2, 202:25–203:7 (T. Slagle); 01/12/2024 Trial Tr. 105:1–17 (M. Swan); 01/12/2024 Trial Tr. 156:25–158:10, 164:22–165:2, 166:4–9 (J. Shadle); 01/17/2024 Trial Tr. 138:6–19, 140:13–22, 144:14–22 (J. Meiss); 01/16/2024 Trial Tr. 131:17–23 (M. Yarnell); 01/16/2024 Trial Tr. 204:15–19, 214:10–15 (A. Molinaro); 01/17/2024 Trial Tr. 183:11–184:12, 186:8–12, 196:4–14 (J. Shaffer); 01/17/2024 Trial Tr. 224:12–18 (M. Edwards); 01/18/2024 Trial Tr. 14:2–25, 15:17–21, 18:7–12, 33:5–10, 47:11–23 (L. Shuppas); 01/18/2024 Trial Tr. 72:10–19 (B. Perkins); 01/18/2024 Trial Tr. 91:20–92:12 (C. Simmons); 01/18/2024 Trial Tr. 109:19–110:21 (C. Anderson); 01/18/2024 Trial Tr. 143:8–13, 146:9–15 (K. Lantzy); 01/18/2024 Trial Tr. 162:25–163:3, 165:25–166:3 (E. Bainbridge); 02/12/2024 Trial Tr. 108:21–23 (S. Halper: Q. Do you know whether employees in say the last eight years utilized those missed punch forms? A. I believe that they did.”); 02/14/2024 Trial Tr. 56:22–57:1 (R. Jordan); 02/15/2024 Trial Tr. 24:1–11 (K. Hoke); 02/15/2024 Trial Tr. 84:8–11 (B. Tissue); 02/15/2024 Trial Tr. 106:9–15 (C. Dziak); 02/15/2024 Trial Tr. 149:22–150:10 (R. Goff); JX-66; PX-1 at p. 130–31, ¶¶ 11–12; PX-1 at pp. 156–57, ¶¶ 8–9; PX-1 at p. 195,

¶ 8; PX-1 at p. 230; PX-1 at p. 235; PX-1 at p. 258; PX-2; PX-160 at p. 2; PX-265; PX-300; PX-342 at p. 2; PX-349; PX-361; PX-369; PX-371; PX-385; PX-550 at p. 3; PX-555; PX-B.

187. Facility Defendant personnel also regularly submit additional detailed, specific proof in support of payroll correction requests. 01/17/2024 Trial Tr. 203:9–204:5 (J. Shaffer); 02/15/2024 Trial Tr. 75:10–17 (B. Tissue); PX-550 at pp. 1–3; PX-B.

188. Facility Defendant employees generally exercise good faith in submitting their payroll correction requests, *i.e.*, they do not seek compensation unless they honestly believe they have earned it. 01/12/2024 Trial Tr. 69:1–17 (M. Swan); 01/18/2024 Trial Tr. 17:17–21 (L. Shuppas); 01/09/2024 Trial Tr. 85:17–24 (A. Walter: “Q. In signing those forms, how did you verify hours worked? A. We would double-check our schedule, we would double-check the Kronos, double-check charting to see when the people were there. Q. In doing that verification, did you have any doubts of the hours worked? A. I know that a lot of the staff worked more hours than what they were paid for.”); 02/13/2024 Trial Tr. 137:23–138:7 (C. Rivera); 02/14/2024 Trial Tr. 106:9–11 (M. Hough); 02/15/2024 Trial Tr. 76:4–8 (B. Tissue).

189. Facility Defendants attempt to track payroll errors through various means, including detailed tracking spreadsheets listing the errors, and they submit these tracking materials to CHMS Group and/or Mr. Halper each payroll to seek correction. 01/08/2024 Trial Tr. 182:13–23, 183:13–18, 185:23–186:12 (M. Shuey); 01/09/2024 Trial Tr. 3:16–5:15 (M. Shuey); 01/09/2024 Trial Tr. 81:25–82:10, 82:19–23 (A. Walter); 01/12/2024 Trial Tr. 92:15–93:5, 117:23–118:8 (M. Swan); 01/16/2024 Trial Tr. 182:22–183:12, 215:6–24 (A. Molinaro); 01/17/2024 Trial Tr. 203:9–205:3 (J. Shaffer); 01/18/2024 Trial Tr. 199: 7–15 (C. Costic); JX-65; PX-1 at p. 238; PX-1 at p. 265; PX-27 at 18:2–9 (08/12/2020); PX-75; PX-87; PX-89; PX-175; PX-180; PX-270; PX-349; PX-365 at p. 1 (M. Reichard: “Please confirm the hourly employees who are requesting OVT are included on the last payroll error spreadsheet.”); PX-355; PX-369; PX-370; PX-371; PX-384; PX-403.

190. Facility Defendants have limited or no capacity to track the status of payroll requests after sending them to CHMS Group. 01/08/2024 Trial Tr. 138:4–11, 215:7–17 (M. Shuey); 02/15/2024 Trial Tr. 28:15–29:1 (K Hoke); PX-531 at p. 2.

191. Defendants' payroll errors became so pervasive that Facility Defendant personnel and union personnel regularly struggled to keep track of all the errors. 01/09/2024 Trial Tr. 7:11–8:8 (M. Shuey); 01/10/2024 Trial Tr. 157:4–9 (M. Reichard: "Q. Is this statement from the facility in this case that there were so many errors it was, quote, difficult to track? A. Yes. Q. Is that what routinely happened in these buildings? A. Yes."); 01/11/2024 Trial Tr. 198:9–14, 203:8–13 (T. Slagle); 02/15/2024 Trial Tr. 164:10–21 (R. Goff); PX-370 (K. Hoke: "[I]t is getting difficult to track due to the number of spreadsheets that we continue to send with all of the issues . . .").
192. Defendants often fail to timely address payroll correction requests. 01/08/2024 Trial Tr. 221:4–11 (M. Shuey); 01/09/2024 Trial Tr. 185:6–14 (C. Matlack); 01/10/2024 Trial Tr. 115:6–116:4 (M. Reichard); 01/12/2024 Trial Tr. 78:19–22 (M. Swan); 01/16/2024 Trial Tr. 182:22–183:12, 202:15–23, 215:6–17, 221:12–222:4 (A. Molinaro); 01/17/2024 Trial Tr. 100:7–10 (D. Cox); 01/17/2024 Trial Tr. 205:4–15 (J. Shaffer); 01/18/2024 Trial Tr. 199:16–20 (C. Costic); 02/15/2024 Trial Tr. 163:18–164:9 (R. Goff); JX-66; JX-68; PX-27 at 312:23–313:5 (01/30/2020); PX-75; PX-257 at p. 1 (M. Gandl: "Do you want it paid earlier than that?," S. Halper: "Nope"); PX-349; PX-351 at 1; PX-365 at 2; PX-368 at p. 1; PX-369 (K. Hoke notifying S. Halper of Murrys ville pay errors that remained unresolved after 6 weeks); PX-370; PX-384; PX-385; PX-398; PX-409; PX-475 at p. 3; PX-502; PX-522 at p. 2; PX-528 at p. 1 (T. Lowden to M. Gandl: "This has been hanging out there since APRIL and I have put it on my weekly report since I started."); PX-550.
193. This lack of timeliness results in some payroll errors not being corrected. 01/10/2024 Trial Tr. 155:4–15 (M. Reichard).
194. Despite Facility Defendant employees' adherence to Defendants' policies for seeking correction of pay errors—including submission of required documentation—Defendants often fail to correct the errors. 01/08/2024 Trial Tr. 217:5–12 (M. Shuey); 01/09/2024 Trial Tr. 44:20–23, 46:21–23, 48:14–22 (M. Gildea); 01/09/2024 Trial Tr. 89:8–14, 91:22–25 (A. Walter); 01/09/2024 Trial Tr. 158:24–159:9 (C. Matlack); 01/10/2024 Trial Tr. 157:11–19, 162:4–15, 163:25–164:4 ("Q. Ms. Reichard, did you see instances where the facilities would send the requested documentation to CHMS Group payroll and it would still not

result in the error being corrected? A. Yes. Q. How often did that happen? A. Often.”); 01/10/2024 Trial Tr. 186:1–187:12 (C. Langham); 01/10/2024 Trial Tr. 236:1–3 (R. Wolarov); 01/11/2024 Trial Tr. 197:14–19, 198:9–17, 199:20–200:7, 203:8–12 (T. Slagle); 01/12/2024 Trial Tr. 12:16–19 (B. Leffler); 01/12/2024 Trial Tr. 78:23–79:5, 106:2–11 (M. Swan); 01/12/2024 Trial Tr. 158:11–159:13, 165:3–15 (J. Shadle); 01/16/2024 Trial Tr. 92:17–20, 123:3–21, 129:9–15 (M. Yarnell) (“Q. What do you mean futility? A. Like people would do the process and got the supervisor to sign it but it still was not corrected. Q. How often did that happen? A. It was pretty regular. Q. Did it happen in all the buildings? A. I believe so. Q. Did it happen during the entire period of Comprehensive’s ownership? A. I believe so.”), 144:20–22; 01/16/2024 Trial Tr. 204:15–19, 214:10–15, 218:5–14 (A. Molinaro); 01/17/2024 Trial Tr. 100:22–101:4, 102:1–10 (D. Cox); 01/17/2024 Trial Tr. 142:3–20, 143:24–144:4, 144:23–145:6, 146:23–6 (J. Meiss); 01/17/2024 Trial Tr. 186:3–24, 196:15–17, 203:9–205:15 (J. Shaffer); 01/18/2024 Trial Tr. 14:18–15:4, 17:9–13 (L. Shuppas); 01/18/2024 Trial Tr. 72:20–73:2 (B. Perkins); 01/18/2024 Trial Tr. 92:17–20 (C. Simmons); 01/18/2024 Trial Tr. 110:22–111:17, 111:23–112:2, 115:24–116:15 (C. Anderson); 01/18/2024 Trial Tr. 142:19–22, 146:23–147:6 (K. Lantzy); 01/18/2024 Trial Tr. 163:4–164:7, 166:4–17, 169:5–12 (E. Bainbridge); 01/19/2024 Trial Tr. 64:15–22, 119:15–120:3 (M. Shuey); 02/12/2024 Trial Tr. 27:7–23 (S. Isenberg); 02/15/2024 Trial Tr. 24:22–25:8 (K. Hoke); 02/15/2024 Trial Tr. 74:4–14, 74:23–75:9 (B. Tissue); 02/15/2024 Trial Tr. 102:21–103:5, 107:1–6 (C. Dziak); PX-1 at pp. 130–31, ¶¶ 11–12; PX-1 at p. 156, ¶ 8; PX-1 at p. 195, ¶ 8; PX-1 at p. 235; PX-1 at p. 264; PX-2; PX-160 at p. 1; PX-162 at p. 2 (Brighton payroll supervisor Sept. 2015 email to CHMS Group: “The managers are sending in the Daily Adjustment Forms for missed punches/approved OT/time off and it is not reflected on the timecard so they are unsure of how to complete the timecards to have the employees paid correctly”); PX-175; PX-180; PX-187 at p. 1; PX-276 at p. 2 (Brighton HRD: “Even if we give you proof you do not pay them.”); PX-334; PX-349; PX-358 at p. 4; PX-361; PX-368 at p. 1 (M. Zapor to M. Gandl: “[T]oday’s payroll is not good. Per Paula, she submits weekly edits to Joseph and physically writes in +3 to reflect differentials, etc. In response, Joseph will ask Paula. ‘Why should I do this?’ She responds and the edits are not applied. Thereby, edits are not applied and the payroll issues remain unresolved.”); PX-370 (K. Hoke: “[T]here still are numerous

issues with people not being paid correctly, missing hours after she had sent the required information, not being paid OT, etc.”); PX-371 (M. Reichard: “[E]dits are not applied and the payroll issues remain unresolved.”); PX-528; PX-550 at p. 3 (North Strabane Rehab HR Director: “She turned in several sheets signed that she did not get a lunch break. Some of these sheets were not recorded.”); Back Wages Summary.

195. Facility Defendant personnel regularly contact Mr. Halper and/or the Regional Consultants to raise payroll errors that CHMS Group has not resolved, including those affecting missing overtime. PX-162; PX-217; PX-265; PX-349; PX-369; PX-370; PX-531 at p. 2; PX-550; PX-B.
196. Payroll errors are not corrected even when Defendants’ personnel assure that they will be corrected. 01/12/2024 Trial Tr. 125:10–126:3 (M. Swan); 01/16/2024 Trial Tr. 222:23–223:4 (A. Molinaro); 01/17/2024 Trial Tr. 26:20–27:3, 32:4–13 (D. Henline); 01/17/2024 Trial Tr. 203:9–205:15 (J. Shaffer).
197. CHMS Group regularly claims that it has fixed a payroll error, despite that being untrue. 01/08/2024 Trial Tr. 219:20–221:3, 224:22–225:12 (M. Shuey); 01/16/2024 Trial Tr. 128:24–129:7 (M. Yarnell); 02/15/2024 Trial Tr. 37:16–38:11 (K. Hoke); 02/15/2024 Trial Tr. 104:1–11, 110:25–111:8 (C. Dziak); PX-531 at p. 2; PX 620 at p. 2 (Monroeville Payroll employee: “I went through the paystubs and checks and saw 99% of these items were not fixed even though we received an email stating they were corrected.”).
198. Facility Defendant personnel routinely have to re-raise previously identified payroll errors because CHMS Group does not correct them. 01/08/2024 Trial Tr. 219:20–220:23, 221:4–11 (M. Shuey); 01/09/2024 Trial Tr. 44:24–45:3 (M. Gildea); 01/09/2024 Trial Tr. 91:22–92:2, 96:22–97:2 (A. Walter); 01/10/2024 Trial Tr. 187:1–12 (C. Langham); 01/10/2024 Trial Tr. 236:4–8 (R. Wolarov); 01/11/2024 Trial Tr. 197:21–198:5, 198:22–199:6 (T. Slagle); 01/12/2024 Trial Tr. 12:25–13:14 (B. Leffler); 01/12/2024 Trial Tr. 46:9–18 (K. Miller); 01/12/2024 Trial Tr. 120:23–121:9 (M. Swan); 01/12/2024 Trial Tr. 158:11–159:13 (J. Shadle); 01/16/2024 Trial Tr. 215:6–17, 218:5–17 (A. Molinaro); 01/17/2024 Trial Tr. 27:4–8 (D. Henline); 01/17/2024 Trial Tr. 203:9–205:15 (J. Shaffer); 02/15/2024

Trial Tr. 103:6–12 (C. Dziak); PX-175 at 3–4; PX-270; PX-349; PX-370; PX-531 at p. 2; PX-B.

199. CHMS Group, supervised by Mr. Halper, closely scrutinizes payroll correction requests and demands multiple forms of proof to justify processing the correction. 01/10/2024 Trial Tr. 56:20–57:8 (J. Martis); 01/10/2024 Trial Tr. 223:18–224:15 (S. Pentek); 01/16/2024 Trial Tr. 223:5–224:1 (A. Molinaro); 01/17/2024 Trial Tr. 184:13–25, 197:13–21 (J. Shaffer); 01/18/2024 Trial Tr. 66:6–23 (B. Perkins); 02/12/2024 Trial Tr. 181:11–14 (A. Pechman: Q. Would you ever just take some other employee’s word for it that a particular employee was there that day? A. We want to see proof that they were in the facility.”); 02/15/2024 Trial Tr. 110:14–24 (C. Dziak); 02/15/2024 Trial Tr. 161:19–162:13 (R. Goff); PX-1 at p. 264; PX-300; PX-562; PX-B.

200. Defendants normally refuse to accept Facility Defendant supervisors’ confirmation of work performed by Facility Defendant employees. 01/09/2024 Trial Tr. 183:2–16 (C. Matlack); 01/10/2024 Trial Tr. 57:9–18, 80:13–25 (J. Martis); 01/10/2024 Trial Tr. 155:15–19 (“Q. As a general matter, Ms. Reichard, would a nursing home administrator vouching for an employee that worked, would that be sufficient to satisfy the payroll team within CHMS Group? A. It would not.”), 160:9–21 (M. Reichard); 01/10/2024 Trial Tr. 224:16–23 (S. Pentek); 01/16/2024 Trial Tr. 223:5–224:1 (A. Molinaro); 01/17/2024 Trial Tr. 101:22–25 (D. Cox); 01/17/2024 Trial Tr. 185:1–7 (J. Shaffer: “Would it be enough to satisfy the back office if you vouched for the employee being there notwithstanding the missing punch? A. Absolutely not. Q. Why not? A. They wanted physical proof and my word was not good enough for them.”); 02/15/2024 Trial Tr. 25:13–26:3 (K. Hoke); PX-265 at p. 1 (despite being informed that Brighton NHA vouched for employee with missing punches, Halper instructs CHMS Group not to pay the employee); PX-300 at p. 1 (M. Zapor: “I am unsure as to why the attestation from the NHA and ADON/Scheduler does not suffice.”).

201. If CHMS Group, subject to Mr. Halper’s supervision and control, does not feel it receives sufficient proof to justify a payroll correction request, it will refuse that request. 01/16/2024 Trial Tr. 123:25–124:9 (M. Yarnell); 01/18/2024 Trial Tr. 67:14–24 (B. Perkins:

“Q. Were there ever instances where overtime was not approved even though you had submitted the proper forms? A. There were a couple but I can’t give specifics of whom they were for. Q. When that occurred, was there ever a reason given for why overtime was not approved? A. That it couldn’t be proven by the employee. Q. This was after the employee had submitted to you a form signed by their manager that they had worked? A. Yes, and then we scanned it and sent it to the New York office.”); 02/15/2024 Trial Tr. 162:14–22 (R. Goff: “Q. How often would you see, if at all, that an employee would provide the requested proof but the correction was still not made? A. It happened pretty -- more regularly than one could possibly imagine. It was pretty common and that was the part I guess from my perspective was so angering was that I was directing the workers to do the thing that Sam directed me to do, which was to follow the protocol, and they would do it and they would not get paid.”), 163:10–13; PX-265.

202. Some Facility Defendant personnel encouraged employees not to submit missed punch/time adjustment forms. 01/18/2024 Trial Tr. 164:15–165:1 (E. Bainbridge: “Q. So oftentimes you would have to rely on that agency supervisor to sign your forms? A. Yes. Q. Would those agency supervisors always be available to sign those forms? A. Yes. You have to track them down. Q. You were always able to track them down, though? A. Yes, but they always didn’t want to sign off on them because they didn’t want their name on there. They were starting to get yelled at for it. Q. Who was yelling at them for it? A. The administrator.”); 02/15/2024 Trial Tr. 102:6–20 (C. Dziak: “Q. Did either Ms. Bercosky or the DON ever indicate filling out those forms would make them look bad? A. They indicated that’s why they would try to correct from missing their meal breaks by getting the person lunch the next day. Q. So if I understand you, you are saying Ms. Bercosky instead of having employees fill out the form, would try to make it right some other way, for example, buying a meal? A. Yes. Q. What was the point of doing that to try to encourage employees to accept some other thing, a meal, as opposed to filling out the form? A. So they wouldn’t have to fill out those forms to make them look bad.”).

203. Some Facility Defendant personnel advised employees not to pursue payroll corrections because it would be futile to do so. 02/12/2024 Trial Tr. 29:14–30:3 (S. Isenberg: “Q. Did any of your supervisors ever question why you and your colleagues would even submit

these forms? A. Cheryl did one time. Q. What did she say? A. I think that was one of the last times I turned one it. She said, I don't know why you're doing this. What's the point. Q. This is Ms. Bence? A. Yes. Q. Do you know what she meant? A. She knew just as well as we did that we weren't going to get reimbursed for it. Q. So you understood her to mean there is no point in filling out these missed punch forms? A. Yes.”).

204. Facility Defendant employees complain often to their supervisors and union personnel that Defendants' payroll error correction process is ineffective. 01/16/2024 Trial Tr. 124:10–13 (M. Yarnell); 01/17/2024 Trial Tr. 102:11–15 (D. Cox).

205. Facility Defendant personnel fight with CHMS Group every pay period, or nearly every pay period, to pursue pay owed to the employees. 01/09/2024 Trial Tr. 172:21–173:17 (C. Matlack: “Q. As a general matter was there a lot of stress or tension or friction . . . with respect to the payroll process and these employees? A. Yes. Q. Why do you say that? A. I characterized at one point the payroll process seemed to be adversarial. Even after the employee worked and the time was recorded in the timekeeping system, they still had to justify other work that they did even though it had been approved through the bonus approval process, through the introduction of a shift differential, whatever the incentive was, they still needed to try to make a case just so they could get themselves paid.”); 01/16/2024 Trial Tr. 224:13–18 (A. Molinaro); 01/17/2024 Trial Tr. 203:9–206:2 (J. Shaffer); 01/18/2024 Trial Tr. 20:4–10 (L. Shuppas); 01/18/2024 Trial Tr. 68: 9–21 (B. Perkins); 01/18/2024 Trial Tr. 199:21–200:2 (C. Costic); PX-1 at p. 195, ¶ 7; PX-1 at p. 251; PX-371; PX-550; PX-B.

206. Facility Defendant employees regularly give up on complaining about payroll errors and/or pursuing payroll corrections because Defendants' process for correcting pay errors is ineffective. 01/10/2024 Trial Tr. 183:15–20 (C. Langham); 01/10/2024 Trial Tr. 236:9–20, 244:16–245:2 (R. Wolarov); 01/12/2024 Trial Tr. 52:5–16 (K. Miller); 01/17/2024 Trial Tr. 103:17–104:4 (D. Cox); 01/17/2024 Trial Tr. 142:21–143:2 (J. Meiss); 01/17/2024 Trial Tr. 225:4–8, 228:18–229:3 (M. Edwards); 01/18/2024 Trial Tr. 98:21–99:3 (C. Simmons).

207. Facility Defendant employees regularly quit out of frustration regarding payroll. 01/09/2024 Trial Tr. 48:3–6, 48:14–22 (M. Gildea); 01/09/2024 Trial Tr. 101:13–19

(A. Walter); 01/09/2024 Trial Tr. 140:20–24 (C. Matlack: “What role, if any, did the payroll issues you described have on the issue of turnover? A. It affected morale to the point where people chose to leave because they were concerned about not getting paid correctly.”), 179:8–12 (“Q. How often did you see, Dr. Matlack, from what you can remember, CHMS employees would leave specifically because of the payroll glitches you are talking about in this email? A. Frequently.”); 01/10/2024 Trial Tr. 42:7–13, 43:1–10 (J. Martis: “[W]e had so many staff members that were leaving or threatening to leave that it was a daily problem. . . .”); 01/10/2024 Trial Tr. 120:16–25 (M. Reichard: “Q. Do you recall ever seeing or hearing that Comprehensive employees would leave, quit because of the payroll errors you are describing? A. We lost employees because of the payroll errors. Q. How often did that happen? A. More often than I would have liked to have seen. Q. Was this the case at all the buildings that you can recall? A. To my recollection, buildings were losing staff, yes.”); 01/10/2024 Trial Tr. 179:23–180:5, 190:7–23 (C. Langham); 01/11/2024 Trial Tr. 207:5–7 (T. Slagle); 01/12/2024 Trial Tr. 70:2–70:7, 74:6–13, 89:5–10, 110:11–13, 126:24–127:23 (M. Swan); 01/16/2024 Trial Tr. 12:13–22, 27:11–28:5 (J. Pattison); 01/16/2024 Trial Tr. 84:8–85:1 (M. Yarnell); 01/16/2024 Trial Tr. 167:2–168:6, 187:1–4, 197:19–198:6, 219:5–10, 226:1–9 (A. Molinaro); 01/17/2024 Trial Tr. 30:8–13 (D. Henline); 01/17/2024 Trial Tr. 70:21–71:10, 71:20–23, 104:5–17 (D. Cox); 01/17/2024 Trial Tr. 145:7–146:9 (J. Meiss); 01/17/2024 Trial Tr. 210:11–18 (J. Shaffer); 01/17/2024 Trial Tr. 220:15–16, 236:12–16 (M. Edwards); 01/18/2024 Trial Tr. 19:1–3 (L. Shuppas); 01/18/2024 Trial Tr. 86:18–25 (C. Simmons); 01/18/2024 Trial Tr. 105:3–7, 111:8–17, 112:3–13, 112:21–23, 117:14–20 (C. Anderson); 01/18/2024 Trial Tr. 138:16–20 (K. Lantzy); 01/18/2024 Trial Tr. 198:3–12 (C. Costic); 02/12/2024 Trial Tr. 12:4–9 (C. Clark); 02/12/2024 Trial Tr. 38:10–39:1 (S. Isenberg); 02/15/2024 Trial Tr. 8:2–13, 27:2–24 (K. Hoke); 02/15/2024 Trial Tr. 111:9–13 (C. Dziak); 02/15/2024 Trial Tr. 118:5–10 (J. Thomas); 02/15/2024 Trial Tr. 170:3–7 (R. Goff); PX-1 at p. 256; PX-1 at pp. 268–69; PX-35 at 31:19–24; PX-341 at 1; PX-369; PX-398; PX-403; PX-435; PX-506 at p. 1 (South Hills NHA: “We have had several resignations due to payroll issues in the last few weeks alone, and more prior to that.”); PX-673 at p. 1 (J. Reichard: “Cheswick has had punch issues and has had multiple staff resign over payroll.”).

V. Defendants Failed to Pay Overtime Due

208. Because Defendants fail to accurately count hours worked, fail to compensate at the correct wage rates, and misclassify employees as exempt from the Act's overtime requirements, they regularly fail to pay all overtime compensation due to Facility Defendant employees. PFOF 316–320; 01/08/2024 Trial Tr. 157:12–158:8 (M. Shuey); 01/09/2024 Trial Tr. 34:8–35:16, 43:20–23, 45:7–11 (M. Gildea); 01/09/2024 Trial Tr. 83:9–13, 90:3–18, 92:8–15 (A. Walter); 01/10/2024 Trial Tr. 51:23–52:10 (J. Martis); 01/10/2024 Trial Tr. 141:5–9, 163:24–164:2 (M. Reichard); 01/10/2024 Trial Tr. 181:22–182:9, 184:15–22 (C. Langham); 01/10/2024 Trial Tr. 220:15–22, 221:2–12 (S. Pentek); 01/10/2024 Trial Tr. 237:5–9, 239:20–240:15, 244:16–18 (R. Wolarov); 01/11/2024 Trial Tr. 201:3–7, 203:17–204:17, 206:23–25 (T. Slagle); 01/12/2024 Trial Tr. 19:9–20:1, 20:17–21:11 (B. Leffler); 01/12/2024 Trial Tr. 51:4–18, 54:21–55:5 (K. Miller); 01/12/2024 Trial Tr. 109:18–110:2 (M. Swan); 01/12/2024 Trial Tr. 164:7–21, 165:16–166:3 (J. Shadle); 01/12/2024 Trial Tr. 188:19–189:1, 193:10–12 (Fr. Schwartz); 01/16/2024 Trial Tr. 102:13–16 (M. Yarnell); 01/16/2024 Trial Tr. 199:9–25 (A. Molinaro: “Q. Do you know if any of the missing hours implicated overtime? So if somebody worked 43 hours, for example, but only got paid for 39? A. Definitely. Definitely many, many times.”), 211:5–13, 228:20–229:3; 01/17/2024 Trial Tr. 18:23–19:5, 23:8–10 (P. Henline); 01/17/2024 Trial Tr. 31:25–32:1, 36:8–15 (D. Henline); 01/17/2024 Trial Tr. 140:23–141:16, 143:3–10 (J. Meiss); 01/17/2024 Trial Tr. 200:15–25 (J. Shaffer: “Q. Did you ever see instances where Murrysville employees were missing overtime? A. Yes. Q. How often did you see that? A. It was very often.”); 01/18/2024 Trial Tr. 19:14–20:3, 28:19–22 (L. Shuppas); 01/18/2024 Trial Tr. 60:2–61:3, 61:14–62:18, 74:18–23 (B. Perkins); 02/12/2024 Trial Tr. 9:9–11, 11:9–22 (C. Clark); 02/12/2024 Trial Tr. 32:3–11 (S. Isenberg); 02/12/2024 Trial Tr. 121:12–22 (S. Halper: “I know generally now that there were issues related to overtime pay.”); 02/13/2024 Trial Tr. 134:8–11 (C. Rivera); 02/15/2024 Trial Tr. 30:7–13 (K. Hoke: “Q. How often did you see instances where Murrysville employees under Comprehensive were missing overtime? A. Every paycheck. Every paycheck they got they were usually missing overtime. Q. How many employees would be affected by missing overtime, roughly? A. I would say half of the employees.”); 02/15/2024 Trial Tr. 73:3–18, 74:1–3, 76:4–77:9 (B. Tissue); 02/15/2024 Trial Tr. 107:23–108:12 (C. Dziak); 02/15/2024 Trial Tr. 121:17–21, 122:6–9 (J. Thomas);

02/15/2024 Trial Tr. 155:1–16 (R. Goff); PX-1 at p. 130, ¶ 12; PX-1 at p. 170, ¶ 8; PX-1 at p. 195, ¶ 7; PX-1 at p. 224; PX-1 at p. 229; PX-1 at pp. 236–37; PX-1 at p. 240 (Mt. Lebanon employee paycheck showing negative 9 OT hours, resulting in paycheck being reduced by half); PX-1 at p. 242; PX-1 at p. 244; PX-1 at p. 247; PX-1 at p. 254; PX-1 at p. 258; PX-1 at pp. 264–65; PX-1 at pp. 268–70; PX-1 at p. 273; PX-1 at p. 277; PX-345; PX-369; PX-384; PX-385 at p. 1; PX-389 at p. 2; Back Wages Summary.

209. In addition, in some pay periods where Facility Defendant employees worked overtime hours, Defendants failed to pay all regular wages due (*i.e.*, “overtime gap time”). 01/08/2024 Trial Tr. 174:12–175:2 (M. Shuey); 01/11/2024 Trial Tr. 136:2–13, 139:11–20 (M. Murray); PX-34 at 52:16–22; Back Wages Summary (showing \$3,390,161.04 in overtime gap time owed).

a. *Defendants Pay Overtime Hours at the Incorrect Rate*

210. Defendants regularly pay overtime hours worked at Facility Defendant employees’ straight-time rate, *i.e.*, they do not pay the Act’s required time-and-a-half premium. 01/08/2024 Trial Tr. 172:1–173:14 (M. Shuey); 01/09/2024 Trial Tr. 165:20–166:14 (C. Matlack); 01/10/2024 Trial Tr. 53:10–19 (J. Martis); 01/10/2024 Trial Tr. 141:11–142:1 (M. Reichard); 01/10/2024 Trial Tr. 240:16–23 (R. Wolarov); 01/12/2024 Trial Tr. 51:22–25 (K. Miller); 01/12/2024 Trial Tr. 107:22–108:11 (M. Swan); 01/16/2024 Trial Tr. 110:3–23 (M. Yarnell); 01/17/2024 Trial Tr. 201:1–8 (J. Shaffer); 01/19/2024 Trial Tr. 122:21–123:10 (M. Shuey); 02/12/2024 Trial Tr. 34:4–14 (S. Isenberg); 02/15/2024 Trial Tr. 30:14–14 (K. Hoke); 02/15/2024 Trial Tr. 117:13–18 (J. Thomas); 02/15/2024 Trial Tr. 155:17–25 (R. Goff); PX-1 at p. 195, ¶ 7; PX-1 at p. 239 (Mt. Lebanon employee paycheck showing straight-time rate for 81 hours); PX-1 at p. 249 (Mt. Lebanon employee paycheck showing straight-time rate for 87.5 hours); PX-28 at 215:10–21, 217:20–218:7 (02/04/2020); PX-345 at p. 1; *see also, e.g.*, Back Wages Summary at Tab “08 Pay Data Computed Reg Rate,”

Row 2769 (showing 87.5 REG hours⁵ for L. Alexander), *id.* at Row 2808 (showing 93.75 REG hours for M. Alexander), *id.* at Row 2855 (showing 91 REG hours for C. Alford), *id.* at Row 3199 (showing 92.5 REG hours for M. Allen), *id.* at Row 3209 (showing 109.75 REG hours for N. Allen), *id.* at Row 8328 (showing 94 REG hours for E. Bainbridge), *id.* at Row 14222 (showing 90 REG hours for M. Beck), *id.* at Row 21652 (showing 106.5 REG hours for R. Botting), *id.* at Row 22122 (showing 113.5 REG hours for D. Bowser), *id.* at Row 23166 (showing 87.5 REG hours for T. Bradley), *id.* at Row 28118 (showing 134.5 REG hours for S. Brown), *id.* at Row 31057 (showing 138.25 REG hours for C. Burton), *id.* at Row 38379 (showing 103.5 REG hours for R. Cerula), *id.* at Row 46009 (showing 88.5 REG hours for T. Connor), *id.* at Row 61524 (showing 102.5 REG hours for C. Desormeau), *id.* at Row 77823 (showing 92.25 REG hours for I. Fortson), *id.* at Row 86000 (showing 84.5 REG hours for L. Gilmore), *id.* at Row 87618 (showing 97.75 REG hours for E. Goodwine), *id.* at Row 88012 (showing 90.25 REG hours for J. Gorman), *id.* at Row 91789 (showing 106.25 REG hours for R. Greenberg), *id.* at Row 94398 (showing 96.75 REG hours for H. Gurung), *id.* at Row 108958 (showing 99.5 REG hours for L. Holmes), *id.* at Row 116981 (showing 92.5 REG hours for S. Isenberg), *id.* at Row 118032 (showing 100 REG hours for D. Jackson), *id.* at Row 127068 (showing 87.25 REG hours for F. Kelly), *id.* at Row 134128 (showing 87.5 REG hours for B. Kozar), *id.* at Row 142418 (showing 102.5 REG hours for A. Lewis), *id.* at Row 151043 (showing 87 REG hours for V. Markina), *id.* at Row 158104 (showing 86.5 REG hours for B. McCullough), *id.* at Row 172331 (showing 84 REG hours for T. Moore), *id.* at Row 181677 (showing 85.5 REG hours for D. Nowaski), *id.* at Row 200250 (showing 85.5 REG hours for J. Rebosky), *id.* at Row 212485 (showing 81 REG hours for N. Sargent), *id.* at Row 223655 (showing 96 REG hours for D. Sicilia), *id.* at Row 238796 (showing 95 REG hours for R. Sylvester), *id.* at Row 241443 (showing 100 REG hours for E. Thomas), *id.* at Row 247258 (showing 80.75 REG hours for J. Undereiner), *id.* at Row 259012 (showing 81.5 REG hours for

⁵ Hours identified as “REG” hours in the pay data reflect hours paid at employees’ base rate, as opposed to “OT” hours. 01/11/2024 Trial Tr. 47:16–24, 123:14–22 (M. Murray). For hourly employees, it should not be possible for “REG” hours to exceed 80 in a pay period, as hours over 80 are overtime hours.

T. White), *id.* at Row 260437 (showing 84.25 REG hours for J. Williams), *id.* at Row 263055 (showing 87.5 REG hours for M. Wilson), *id.* at Row 270448 (showing 100 REG hours for A. Zielinske).

211. Until at least July 2019, Defendants’ payroll system automatically excluded all bonuses and shift differentials from employees’ “regular rate.” 01/08/2024 Trial Tr. 121:13–122:7, 145:6–17, 175:5–176:3 (M. Shuey); 02/12/2024 Trial Tr. 92:25–93:5, 120:21–25, 122:4–7 (S. Halper); 02/12/2024 Trial Tr. 160:19–161:1, 164:23–25 (A. Pechman); PX-28 at 154:11–155:8, 157:2–6, 158:5–17 (02/04/2020).

212. Despite claiming to have removed the automatic exclusion, Defendants have not ceased their practice of omitting bonuses and/or shift differential while calculating employees’ “regular rate.” 01/16/2024 Trial Tr. 70:14–71:3 (“Q. Did you see in the pay data for these 15 buildings, Mr. Murray, instances where the defendants did not appear to include all compensation for work performed in the employees’ regular rate? A. You mean including the differential fields? Q. Yes. A. Yes. Q. How often did that happen? A. I can’t recall how frequent it was. It was most of the records where there was time differentials not employees always paid a differential or a bonus. Q. So for those employees that received different categories of pay, was that additional pay consistently included in the employees regular rate? A. No.”), 151:14–153:9 (Murray discussing employee example in January 2023 of regular rate failing to include shift differential and bonus pay); 01/19/2024 Trial Tr. 123:11–23 (M. Shuey); 02/12/2024 Trial Tr. 162:2–6, 163:4–12 (A. Pechman: “Q. So after July of 2019, were shift differentials included in the regular rate for overtime purposes? A. As a rule. I can’t guarantee that errors haven’t been made”); 02/14/2024 Trial Tr. 171:19–24 (C. Hill, current Monroeville NHA: “When these workers are paid a bonus and they are now working overtime, which means they work more than 40 hours in a workweek, that bonus is not included in their hourly rate when they work overtime, correct? A. Correct.”); PX-1 at p. 131, ¶ 13; PX-6 at “Summary Tables” Excel Sheet, Tab “AH-01” (summarizing continuing pattern of shift differentials and bonuses not being included in employees’ regular rate).

213. In the routine instances where Defendants fail to pay bonuses and shift differentials due to Facility Defendant employees (PFOF 167), those missing amounts are not factored into the employees’ regular rate. 01/08/2024 Trial Tr. 126:20–25 (M. Shuey); 01/09/2024 Trial Tr. 152:14–17 (C. Matlack).

b. *Defendants Refuse to Combine Hours Worked Across Multiple Facility Defendants*

214. Facility Defendant employees sometimes work at more than one Facility Defendant in the same pay period such that they work overtime hours in that period. 08/28/2023 Joint Stip. 21 (Dkt. 360 at p. 4); PFOF 95; 01/10/2024 Trial Tr. 30:4–19 (J. Martis); 01/17/2024 Trial Tr. 201:9–22 (J. Shaffer); PX-311.

215. Despite their interrelated nature—including having unified payroll through CHMS Group—Defendants have an express policy of treating each Facility Defendant as a separate “employer” for purposes of counting hours. 08/28/2023 Joint Stip. 22 (Dkt. 360 at p. 5); 01/10/2024 Trial Tr. 55:4–21 (J. Martis); 01/10/2024 Trial Tr. 164:19–22 (M. Reichard: “Q. Do you know was it the policy of the company to not combine hours if an employee worked in more than one facility in the same pay period? A. Correct. They were all separate LLCs.”); 01/17/2024 Trial Tr. 201:9–202:6 (J. Shaffer); PX-28 at 88:3–13 (Aug. 12, 2020); PX-311 at p. 1.

216. When a Facility Defendant employee works at more than one Facility Defendant in the same pay period, Defendants’ refusal to aggregate their hours results in underpayment of overtime due. 01/17/2024 Trial Tr. 201:9–202:6 (J. Shaffer); PX-28 at 88:17–23 (Aug. 12, 2020); PX-311 at 1; Back Wages Summary.

VI. Defendants Did Not Carry Their Burden to Demonstrate Exemptions from the Act’s Overtime Requirements

217. Defendants concede that all Human Resources Directors—identified as “Personnel” their pay and time records—were misclassified for the entire relevant time period. 02/15/2024 Trial Tr. 94:1–22; PX-52 at p. 7.

218. During their case in chief, Defendants introduced evidence only as to ten positions, for only some Facility Defendants, for only some portions of the relevant time period.

219. Defendants did not introduce any non-testimonial evidence to support their claim that certain Facility Defendant employees are exempt from the Act's overtime requirements. *See* Dkt. 433.

a. *Defendants Did Not Prove that Schedule A Employees for Whom They Claim an Exemption Engaged in the Required Duties*

220. Defendants' evidence of employee duties is largely made up of generalized descriptions of assigned or expected work duties, rather evidence of the specific work that each employee claimed as exempt actually performed. *See, e.g.*, 02/13/2024 Trial Tr. 36:2–11 (D Ferraro: "Q. So there is an ADON at Cheswick? A. Yes. Q. Does that person play a role in the hiring process at Cheswick? A. I would expect that. Q. You are not certain? A. I don't know for sure what their exact role is but my expectation in the consulting -- what I would consult and I would expect from the facility is that they do have that role."), 42:21–23 ("Q. Does the clinical lead play a role in hiring employees? A. I would think they would hire the clinical staff."), 62:13–21 ("Q. So with regard to this series of facilities and we are talking about Irwin, Latrobe, New Castle, Monroeville, and Murrys ville. Based upon your time at each of these facilities, do you feel that you are able to answer the same questions I've asked for the facilities that you had responsibility for? A. I feel comfortable answering those type of questions for any facility in the country whether I have been in it or not. It's just the way they run."), 64:19–23 ("Q. Do you know whether the director of nursing at Irwin plays a role in the hiring process? A. I don't know exactly how -- I don't know how they couldn't but I have never been there when they hired somebody.").

221. Multiple Facility Defendant supervisors or department heads do not supervise the work of two or more full-time employees. 01/08/2024 Trial Tr. 167:4–11, 171:14–22 (M. Shuey); 01/09/2024 Trial Tr. 200:13–23 (C. Matlack); 01/10/2024 Trial Tr. 203:4–13 (S. Pentek); 01/16/2024 Trial Tr. 29:22–30:14 (J. Pattison discussing Activities Director and Maintenance Director); 01/18/2024 Trial Tr. 181:12–14 (C. Costic); 02/13/2024 Trial Tr. 45:17–21, 51:20–25, 59:25–60:3, 61:15–20 (D. Ferraro); PX-1 at p. 155, ¶ 3 (South Hills Maintenance Director); PX-1 at p. 237 (Murrysville RN Supervisor); PX-1 at p. 244 (Mt. Lebanon Director of Social Services); PX-1 at p. 247 (Mt. Lebanon Director of Activities); PX-1 at p. 270 (Murrysville Director of Activities); PX-13 at 24:13–22, 28:8–11

(02/03/2020); PX-14 at 29:8–14 (02/03/2020); PX-15 at 21:15–24 (02/03/2020); PX-16 at 53:14–17 (02/03/2020); PX-18 at 44:16–19, 44:24–45:15 (01/27/2020); PX-20 at 60:10–16, 66:18–21 (01/28/2020); PX-21 at 35:16–19, 42:7–10, 43:5–20 (01/29/2020); PX-26 at 36:10–14, 37:16–21, 39:12–15, 46:10–14, 46:22–25, 47:16–19 (01/29/2020).

222. Housekeeping supervisors and Maintenance supervisors perform little or no administrative or executive functions. 01/09/2024 Trial Tr. 200:24–201:20 (C. Matlack); PX-1 at p. 155, ¶ 2 (“I work as the Director of Maintenance at South Hills. My primary duties are to take care of maintenance, boilers, refrigeration, and [to] take care of other maintenance-related issues that arise.”).

223. Because of oversight by Mr. Halper, the Regional Consultants, and CHMS Group, Facility Defendant personnel generally do not exercise discretion or independent judgment in the performance of their duties or oversight of their departments. PFOF 15–16; 01/08/2024 Trial Tr. 167:12–19, 171:14–22 (M. Shuey); 01/09/2024 Trial Tr. 129:20–130:2, 130:16–14 (C. Matlack); 01/10/2024 Trial Tr. 26:5–27:5 (J. Martis); 01/10/2024 Trial Tr. 203:14–204:6 (S. Pentek); 01/12/2024 Trial Tr. 79:11–80:1, 88:7–16 (M. Swan); 01/16/2024 Trial Tr. 163:1–21 (A. Molinaro); 01/17/2024 Trial Tr. 171:21–172:9 (J. Shaffer: “From what you saw as the administrator[,] the department managers in Murrys ville, did they have the ability to exercise independent judgment on significant matters within their roles? A. I would say no. Q. Why would you say no? A. My personal belief in significant would have been to change the basic layouts of the department, not in a physical sense but in a business sense. They had no control over anything as far as business.”), 176:5–15; 01/19/2024 Trial Tr. 16:4–21 (M. Shuey); PX-1 at p. 237; PX-355 at 1 (K. Hoke: “I can manage a facility successfully, but I am unable to make the necessary decisions without jumping through hoops and it’s taking three times as long to get an answer in order to keep the ship sailing smooth. All of the administrators feel the same way and all are at a point of complete frustration.”).

224. Because of Mr. Halper’s extensive control, Facility Defendants do not have independent authority or discretion with respect to labor practices and policies, including hiring and payroll. PFOF 15–16; 01/09/2024 Trial Tr. 100:21–101:12 (A. Walter); 01/09/2024 Trial Tr.

131:23–132:1, 133:16–19, 161:9–23 (C. Matlack); 01/10/2024 Trial Tr. 17:17–18:6 (J. Martis); 01/12/2024 Trial Tr. 82:25–83:3 (M. Swan); 01/12/2024 Trial Tr. 145:11–13, 174:18–21 (J. Shadle); 02/13/2024 Trial Tr. 44:15–45:5 (D. Ferraro); 02/13/2024 Trial Tr. 161:6–19, 162:10–164:4 (M. Kunselman); 02/13/2024 Trial Tr. 191:15–17 (J. Elmer); 02/14/2024 Trial Tr. 81:21–82:16 (M. Hough); 02/14/2024 Trial Tr. 167:15–21 (C. Hill); 02/15/2024 Trial Tr. 17:7–19 (K. Hoke); 02/15/2024 Trial Tr. 116:17–22 (J. Thomas); PX-1 at p. 155, ¶ 3; PX-1 at p. 237; PX-1 at p. 254; PX-1 at p. 257; PX-1 at p. 270; PX-1 at p. 276.

225. Facility Defendant personnel do not have independent authority over employee rates of pay. PFOF 15–16; 01/09/2024 Trial Tr. 132:12–133:5 (“Q. Let’s talk about pay rates, Dr. Matlack. I think you said, correct me if I’m wrong, did the buildings have the ability to independently determine what they would pay their employees? A. No. Q. Why do you say that? A. Because Mr. Halper had to approve the rates of pay, even in locations that had a collective bargaining agreement that outlined what the rates of pay were, he wanted to know what they were and what they were being hired, what rates. Q. From what you saw, Dr. Matlack, did Mr. Halper exercise control over each individual employee pay rates at these buildings? A. Yes. Q. What is the basis of your knowledge with regard to that? A. Because I was included in the discussions and on the messages regarding the approvals.”); 01/10/2024 Trial Tr. 17:22–25 (J. Martis); 01/10/2024 Trial Tr. 105:2–15 (M. Reichard); 01/12/2024 Trial Tr. 83:4–6 (M. Swan); 02/13/2024 Trial Tr. 166:22–167:7 (M. Kunselman); PX-1 at p. 155, ¶ 3.

226. Facility Defendant personnel do not have independent authority over determining whether an employee would be classified as hourly or exempt under the Act. PFOF 22; 01/12/2024 Trial Tr. 83:20–23 (M. Swan); 02/13/2024 Trial Tr. 130:20–22 (C. Hill); 02/13/2024 Trial Tr. 167:23–168:6 (M. Kunselman); 02/15/2024 Trial Tr. 17:23–18:7 (K. Hoke).

227. Because of Mr. Halper’s extensive control, Facility Defendants do not have discretion to manage significant aspects of their day-to-day affairs, including staffing. PFOF 15–16; 01/09/2024 Trial Tr. 99:20–100:13 (A. Walter); 01/09/2024 Trial Tr. 128:4–10

(C. Matlack); 01/10/2024 Trial Tr. 15:4–16:21, 81:6–16 (J. Martis); 01/10/2024 Trial Tr. 215:25–216:9 (S. Pentek); 01/16/2024 Trial Tr. 62:21–63:1, 63:13–64:12, 64:22–65:20 (M. Yarnell); 01/16/2024 Trial Tr. 176:10–177:5, 183:19–184:2 (A. Molinaro); 01/17/2024 Trial Tr. 176:16–21, 179:6–16 (J. Shaffer); 02/15/2024 Trial Tr. 10:11–22, 11:4–14, 18:8–19:1, 61:4–11 (K. Hoke: “Q. While you were the administrator under Comprehensive, did you have independent authority to set the staffing levels for Murrysville? A. No.”); PX-134; PX-590; PX-601 at p. 1 (Because of his displeasure with bonuses, S. Halper directing that Murrysville scheduler be replaced and stating that “[t]heres plenty of management that can step in and micromanage the scheduling in the meantime.”).

228. Facility Defendant personnel do not have the ability to independently modify or depart from the employee handbooks that governed their operations. 01/10/2024 Trial Tr. 19:23–20:3 (J. Martis); 01/16/2024 Trial Tr. 80:17–81:4 (M. Yarnell); 01/16/2024 Trial Tr. 181:22–182:9 (A. Molinaro); 01/17/2024 Trial Tr. 182:20–22 (J. Shaffer).

229. Facility Defendant personnel do not have independent authority over the budgets that applied to their operations. PFOF 16; 01/09/2024 Trial Tr. 128:11–18 (“Q. Just as a general matter, Dr. Matlack, from what you recall, did any of the 15 CHMS buildings have authority to manage their own budgets? A. No. Q. Was there some threshold that you can recall below which a nursing home administrator could make a financial decision? A. No.”); 01/12/2024 Trial Tr. 83:24–84:14 (M. Swan); 01/16/2024 Trial Tr. 163:22–164:23 (A. Molinaro: “I had no control over the budget. I didn't even have a copy of the budget. I didn’t know what the budget was.”); 01/17/2024 Trial Tr. 63:12–64:4 (D. Cox); 01/17/2024 Trial Tr. 174:1–3 (J. Shaffer).

230. Facility Defendant personnel do not have independent authority over purchasing of supplies and equipment necessary to conduct their duties. PFOF-16, 76; 01/09/2024 Trial Tr. 53:10–54:7 (M. Gildea); 01/12/2024 Trial Tr. 80:2–81:14, 82:12–23, 136:3–21 (M. Swan).

b. *Defendants Did Not Prove that Schedule A Employees for Whom They Claim an Exemption Receive a Guaranteed Minimum Salary*

231. Defendants’ regular practice is to pay employees classified as exempt according to their hours worked if those employees work less than their full-time hours in a pay period. 01/08/2024 Trial Tr. 165:23–166:21, 169:2–16, 171:5–13 (M. Shuey); 01/09/2024 Trial Tr. 71:7–23, 72:22–73:5, 114:6–8 (A. Walter); 01/09/2024 Trial Tr. 208:10–20 (“Q. As a general matter, Dr. Matlack, other than Mr. Cook, did you see instances where a CHMS exempt employee had a reduced paycheck based on the number of hours they worked? A. Yes. Q. How often did that happen? A. Every so often. It was certain positions and certain facilities. Q. Did you see it for the entire time that you were the regional director of human resources? A. Yes.”); 01/10/2024 Trial Tr. 20:17–21:17 (J. Martis); 01/10/2024 Trial Tr. 145:18–146:4 (“Q. Ms. Reichard, we were talking earlier about salaried versus hourly employees. Do you ever recall seeing a salaried employee’s pay reduced if they worked less than 40 hours? A. Yes. Q. To be clear, what I’m talking about, ma’am, is not, for instance, the application of PTO or vacation but they literally received a smaller amount of money in their check? A. Yes. Q. How often did that happen? A. It happened on a number of occasions.”), 136:9–12 (“This issue of salaried employees being paid less if they worked less than 40 hours, did it occur in all the buildings as far as you are aware? A. Yes, it had happened in the buildings.”); 01/10/2024 Trial Tr. 205:4–23 (S. Pentek); 01/12/2024 Trial Tr. 110:24–111:16, 122:25–123:8, 123:19–21 (M. Swan); 01/16/2024 Trial Tr. 204:24–207:6, 228:20–229:8 (A. Molinaro); 01/17/2024 Trial Tr. 202:7–18 (J. Shaffer: “Q. You mentioned earlier issues with salaried employees getting paid according to hours. How many salaried employees did that affect at Murrys ville? A. I’m not sure I have a good judgment on that. Probably half. Q. Do you remember any of the departments that it would affect? A. Nursing, dietary, it would affect me. Q. Just to be sure, Ms. Shaffer, were there times when these employees would work under 80 hours and literally receive a smaller paycheck as a result? A. Absolutely.”); 01/18/2024 Trial Tr. 133:1–13 (C. Anderson); 01/18/2024 Trial Tr. 191:16–192:5 (C. Costic); 01/19/2024 Trial Tr. 7:23–8:1, 67:11–19, 68:3–6, 96:9–12, 116:23–117:3, 140:5–24, 141:5–22 (M. Shuey); 02/15/2024 Trial Tr. 31:8–32:5, 34:24–35:13, 35:21–25 (K. Hoke); JX-67 at p. 1 (The Grove at Washington NHA: “Tim Moninger, our Maintenance Director, was paid 71.75 hours instead of 72.00, he

is an exempt employee.”); PX-1 at p. 156, ¶ 7; PX-1 at p. 244; PX-1 at pp. 251–52; PX-1 at p. 257 (Murrysville RN Supervisor: “They will dock you for any time that you work less than a full shift.”); PX-1 at p. 263; PX-2; PX-37, ¶ 3(vii) (J. Reichard stating in June 2020 that it was necessary to change The Grove at Greenville’s payroll rules “so salaried employees were not being deducted pay”); PX-38, ¶ 3(v) (same for The Grove at New Wilmington); PX-171 at p. 1 (M. Gandl questioning why Brighton modified exempt employee’s time card to pay guaranteed minimum salary instead of just hours worked); PX-187 at p. 1; PX-267 at p. 3; PX-331 at p. 1 (Halper: “Mendy should we be docking a managers pay who worked 5 days”); PX-334 (M. Gandl: “The time cards are generated based on hourly calculations and we expect the HRD’s to correct them as needed. The time card wasn’t corrected properly explaining that [the Grove at Harmony NHA] should be paid her salary”); PX-342 at p. 1; PX-361 at p. 1; PX-369; PX-370 (K. Hoke: “We have salaried people still not being paid 80 hours.”); PX-386 (CHMS Group payroll employee stating that salaried employees need NHA approval to avoid being “penalized” if they work “more one day and less another day”); PX-413 at p. 2 (Halper, Regional Consultants and CHMS Group discussing need to educate payroll processors that “[e]xempt (salary) employees should be paid 40 hours per week and not be deducted pay if NHA or Premier Management staff edits to 8 hours.”); PX-495; PX-557 at p. 2 (North Strabane Rehab. NHA: “She is salary so should have been paid for 80 hours. Her pay was 9.25 hours short.”); PX-638; PX-712; *see also, e.g.*, Back Wages Summary at Tab “08 Pay Data Computed Reg Rate,” Rows 16472–16500 (showing payment according to hours for pay periods with few than 80 hours from January 2020 to January 2021 for the Grove at Irwin Housekeeping Supervisor A. Berggren); *id.* at Rows 56285–56303 (same for Monroeville RN Supervisor N. Davies between April 2021 and December 2021) *id.* at Rows 76848–76895 (same for Brighton Admissions Director J. Flowers between July 2018 and April 2020); *id.* at Rows 87739–87769 (same for Brighton Director of Activities J. Gordon between November 2021 and December 2022).

232. Because of this policy and practice, the pay for employees classified as exempt fluctuated depending on their hours worked. 01/10/2024 Trial Tr. 147:13–16 (M. Reichard: Q. Is it your recollection, ma’am, that for salaried employees, the level of compensation

would vary according to the timecards? A. It did.”); 01/10/2024 Trial Tr. 205:4–23 (S. Pentek); 01/12/2024 Trial Tr. 111:17–112:12, 116:22–117:16 (M. Swan); 01/16/2024 Trial Tr. 205:18–205:21 (A. Molinaro: “Q. Are you saying, sir, from what you saw at South Hills salary employees had fluctuating pay depending on the number of hours they were punched in? A. Yes.”), 226:10–24, 227:15–17; 01/18/2024 Trial Tr. 117:21–118:25, 121:10–122:5, 133:1–13, 134:24–7 (C. Anderson); 02/15/2024 Trial Tr. 32:6–9 (K. Hoke: (“Q. So salaried employees, in other words, did they have fluctuating pay based on hours if they worked under 80? A. Yes.”).

233. Other than bonuses or other specific, supplemental compensation, Defendants do not compensate employees classified as exempt for hours worked in excess of either their full daily shift or assigned pay period schedule at their overtime rates. 01/09/2024 Trial Tr. 33:24–35:16, 36:20–23 (M. Gildea); 01/10/2024 Trial Tr. 206:5–21 (S. Pentek); 01/16/2024 Trial Tr. 15:4–9, 17–19 (J. Pattison); 01/18/2024 Trial Tr. 134:24–7 (C. Anderson).

234. Numerous employees and their managers complained that employees classified as exempt were being paid a fluctuating salary based on hours worked. 01/09/2024 Trial Tr. 73:6–19 (A. Walter); 01/10/2024 Trial Tr. 21:20–22:8 (J. Martis); 01/16/2024 Trial Tr. 207:7–9 (A. Molinaro); 01/18/2024 Trial Tr. 118:10–17 (C. Anderson); 02/15/2024 Trial Tr. 8:14–9:1 (K. Hoke); PX-13 at 58:11–15 (02/03/2020); PX-14 at 44:20–45:2 (02/03/2020); PX-16 at 107:10–21 (02/03/2020); PX-369.

235. In response to some of these complaints, Defendants’ personnel stated that it was company policy to deduct compensation when employees classified as exempt worked fewer than full-time hours. 01/10/2024 Trial Tr. 22:9–11 (J. Martis: “Q. What, if anything, did Ms. Naylor or Ms. Zapor say to you when you raised these concerns? A. This was the policy of the corporation.”).

c. The Acting Secretary’s Evidence Otherwise Confirms that Defendants Had a Pattern and Practice of Misclassifying Employees as Exempt

236. Although she does not have a burden on this issue, the Acting Secretary introduced substantial evidence showing that Defendants had a general practice of mishandling employee exemptions under the Act. This evidence includes:

- A. Defendants do not have any formal process for determining whether Facility Defendant employees should be classified as exempt; Mr. Halper makes such determinations on a “case-by-case” basis, focusing principally on the proposed compensation amount. 01/09/2024 Trial Tr. 189:19–23 (C. Matlack: “Do you have any awareness if there was a process at CHMS if an employee or determining whether an employee was exempt or nonexempt? A. There was not a process that I’m aware of.”); 01/17/2024 Trial Tr. 181:17–20 (J. Shaffer: “Q. Can you give me an insight into the process, if any, that Murrysville went through to determine if someone, an employee would be hourly or salary? A. It seemed to be a very random process.”); PX-29 at 169:6–11; PX-706 at p. 1 (S. Halper July 2018 email: “[A]ny change in exempt employee is to be approved on a case by case basis based on a candidates prior work history and salaries.”).
- B. Defendants regularly fail to identify employees’ exempt status in their offer letters. 01/08/2024 Trial Tr. 103:22–104:7, 108:24–109:5) (M. Shuey); 01/09/2024 Trial Tr. 192:12–14 (C. Matlack) (“Q. That standard offer letter, did it have or did it address the issue of exempt status? A. The standard letter, no.”); PX-2; PX-529 at 1 (M. Gandl email: “Should we issue new offer letters for these folks, clarifying this is an exempt position?”).
- C. Defendants’ pay practices are inconsistent with the terms of the offer letters. 01/08/2024 Trial Tr. 104:7–17 (M. Shuey); 01/09/2024 Trial Tr. 29:18–30:5 (M. Gildea); 01/12/2024 Trial Tr. 72:8–14 (M. Swan); 01/19/2024 Trial Tr. 138:13–139:1 (M. Shuey); PX-2; PX-416; PX-529 at p. 1 (M. Gildea email: “My offer letter I signed as hourly pay rate not a salary position.”); PX-531 at p. 1 (M. Gandl: “I followed the directions I got from Sam in the email conversation we were all cc’d that they are salaried and the letter saying hourly was not to mean that.”).
- D. Defendants frequently change employees’ classification status without notifying them. 01/09/2024 Trial Tr. 190:6–9 (C. Matlack); 01/10/2024 Trial Tr. 114:10–

13 (M. Reichard: “Q. Was it the case that certain Comprehensive employees were switched from hourly to salary without prior notice? A. Yes.”), 147:4–7 (“Q. Ms. Reichard, you say here in [PX-334], again, I’m requesting this practice of changing peoples pay without notice[]. How prevalent was that practice? A. It was prevalent.”); 01/12/2024 Trial Tr. 72:8–14 (M. Swan); 01/12/2024 Trial Tr. 147:1–12 (J. Shadle); PX-2; PX-20 at 11:19–12:5 (08/22/2020); PX-22 at 7:5–11 (08/11/2020); PX-334 (M. Reichard Jan. 2017 email to Halper and CHMS Group: “Once again, I am requesting this practice of changing people’s pay without notice cease.”); PX-355 at p. 1.

E. Facility Defendant personnel were frequently confused about which employees were classified as hourly or exempt. 01/08/2024 Trial Tr. 111:16–24, 113:1–3, 113:9–20 (M. Shuey); 01/10/2024 Trial Tr. 108:17–109:1, 113:5–114:9 (M. Reichard); 01/12/2024 Trial Tr. 111:10–16 (M. Swan); 01/18/2024 Trial Tr. 189:20–190:1 (C. Costic); PX 01/19/2024 Trial Tr. 5:13–23, 139:2–14 (M. Shuey); JX-78 at p. 3; PX-1 at p. 244; PX-1 at p. 263; PX-355 at p. 1; PX-365 at 2; PX-531 at 1; PX-548; PX-611 at p. 1 (D. Bernstein: “This has been an ongoing issue and we would all like to get it resolved. At the root seems to be some misunderstanding since documents aren’t exactly unambiguous.”).

F. Facility Defendant employees regularly complained that they were unclear whether they were exempt. 01/10/2024 Trial Tr. 114:16–115:5; PX-365 at p. 2 (K. Hoke: “Employees at this point are becoming very irate and I am unable to give them answers to their questions because I am not getting timely responses to many issues that have been brought to light.”); PX-416.

G. Facility Defendant personnel regularly questioned or challenged exemption classifications. 01/09/2024 Trial Tr. 30:15–31:13 (M. Gildea); 01/09/2024 Trial Tr. 189:24–190:5, 193:12–194:16 (C. Matlack); 01/10/2024 Trial Tr. 109:8–110:1 (M. Reichard); 01/12/2024 Trial Tr. 162:23–163:15 (J. Shadle); 01/16/2024 Trial Tr. 173:22–174:25 (A. Molinaro); 01/18/2024 Trial Tr. 53:5–24 (B. Perkins); 01/18/2024 Trial Tr. 190:15–18, 190:22–191:7 (C. Costic); PX-1 at

p. 156, ¶ 5; PX-16 at 54:18–55:2 (02/03/2020); PX-27 at 12:14–19 (08/12/2020); PX-37, ¶ 3(iii); PX-44, ¶ 3(xviii); PX-46, ¶ 3(iv); PX-47, ¶ 3(iii)(a); PX-51, ¶ 3(xii); PX-262; PX-409 at p. 2; PX-531 at p. 1 (Cheswick NHA: “Unfortunately Mendy, there isn’t much explaining to do as I’m not even sure why it’s being done this way. It’s clear to them you’re not paying overtime rate for hours worked and classing it as a bonus – which is causing the immense frustration.”); PX-594.

H. Misclassified Facility Defendant employees work overtime hours. 01/09/2024 Trial Tr. 72:22–73:5 (A. Walter); 01/09/2024 Trial Tr. 239:11–18 (C. Matlack: “In this case, did you see instances where an employees that were not correctly classified did work overtime? A. Yes. Q. How often did you see that? A. Frequently. Q. At all 15 buildings? A. I can’t say at all 15, but several, yes.”); 01/18/2024 Trial Tr. 190:5–10, 190:22–191:15 (C. Costic); JX-58 at “Time Data”; PX-1 at p. 156, ¶ 6; PX-262; PX-548 at p. 2 (Admissions Director email: “When I was hired I was told I would be paid hourly. Since I have started I have not received any overtime pay.”); PX-561; PX-586 at p. 2; PFOF 324 (showing back wages due by department).

VII. Defendants Did Not Act in Good Faith; They Knowingly Violated the Act in Ways That Are Objectively Unreasonable

237. Defendants are, and have been, aware of the Act and its requirements. 08/28/2023 Joint Stip. Pp. 12–13, 19–20 (Dkt. 360 at pp. 3–4); 02/12/2024 Trial Tr. 119:4–20 (S. Halper).

238. Defendants are, and have been, aware of the Act’s requirement that employees must be paid for all work suffered or permitted, including work performed during meal breaks. 08/28/2023 Joint Stip. 20 (Dkt. 360 at 4); 02/12/2024 Trial Tr. 119:12–14 (S. Halper); JX-60 at p. 1 (S. Halper Sept. 2015 email: employees not taking lunch breaks “is a labor issue and is unacceptable”); JX-77 at p. 1; (A. Pechman discussing “clarification of the time card policy” to ensure the “timely and accurate” compensation); PX-13 at 90:9–23 (02/03/2020); PX-14 at 63:9–16 (02/03/2020); PX-15 at 56:16–23 (02/03/2020); PX-16 at 131:10–132:1

(02/03/2020); PX-18 at 154:17–24 (01/27/2020); PX-23 at 31:17–24 (01/30/2020); PX-27 at 296:1–4 (01/30/2020); PX-28 at 193:13–193:20 (02/04/2020); PX-29 at 240:7–241:3.

239. Defendants are, and have been, aware of the Act’s requirements regarding compensation for overtime, including the requirement that their employees must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. 08/28/2023 Joint Stip. 13 (Dkt. 360 at 3–4); PFOF 33–34, 42; 01/08/2024 Trial Tr. 179:1–5 (M. Shuey); PX-13 at 90:1–8 (02/03/2020); PX-15 at 56:10–15 (02/03/2020); PX-16 at 131:3–9 (02/03/2020); PX-18 at 154:13–16 (01/27/2020); PX-23 at 31:11–16 (01/30/2020).

240. Defendants admit that they have failed to comply with the Act. 01/08/2024 Trial Tr. 38:7–10 (Defendants’ Counsel: “That’s the one thing I agree with counsel that there is some element of this claim where the employer did not adequately do what was needed to meet the stringent requirements of the Fair Labor Standards Act.”).

241. Defendants are, and have been, aware that their failure to accurately pay Facility Defendant employees creates liability under the Act. 01/09/2024 Trial Tr. 10:10–22 (M. Shuey); PX-188 at p. 3 (Brighton payroll employee Sept. 2015 email to CHMS Group and Halper: “I understand your frustration having to adjust so many timecards at end of pay, but we must pay EE’s for working hours and PTO time missed on the DAF’s in the current pay.”); PX-217 at p. 2 (Brighton HRD: “[I]f one states they worked during lunch and we can prove that justifiably they did work. We need to pay them by law for hours worked or be subjected to a lawsuit.”); PX-300 at p. 1 (M. Reichard Nov. 2016 email to Halper and CHMS Group: “From a DOL prospective and a DOH perspective the productive hours need to be captured and paid to support compliance with wage and hour”); PX-470 at p. 1 (Payroll consultant notifying CHMS Group and M. Lahasky in Aug. 2017 that “[y]ou can either make it that it does not deduct the 30 minutes based on the employee selection or it can deduct lunch regardless and just record the employees yes or no selection (I believe SBV has this ability). . . . The flip side of it not changing the lunch deduction at all is that if there is an audit the DOL will want to know what actions you took based on the selection. You need to have some action or response based on this (independent of the employees own

actions).”); PX-483 at p. 2 (J. Reichard: “No matter whether we have the paper or not we must pay them.”).

242. Defendants are, and have been, aware that Facility Defendants are persistently and severely understaffed. PFOF 92–102, 168; 01/08/2024 Trial Tr. 145:18–24 (M. Shuey); 01/10/2024 Trial Tr. 32:11–33:2 (J. Martis); 01/09/2024 Trial Tr. 151:12–23 (C. Matlack) (“Q. Was there a general awareness within CHMS Group that you recall of persistent understaffing at these 15 buildings? A. Yes. Q. How do you know that? A. Because I was involved in the conversations regarding bonuses and hiring practices. Q. Dr. Matlack, do you know if Mr. Halper was aware of the persistent understaffing in these 15 buildings? A. Yes. Q. How did he know that? A. Because he had to approve the bonuses.”); 01/12/2024 Trial Tr. 17:17–18:11 (B. Leffler); 01/16/2024 Trial Tr. 85:16–22 (M. Yarnell); 01/16/2024 Trial Tr. 167:2–168:6, 189:15–190:5 (A. Molinaro: “Q. Do you know, sir, were either Mr. Halper or the regional personnel, were they aware of the staffing shortages you are describing? A. Yes.”); 01/17/2024 Trial Tr. 67:1–11, 69:15–24 (D. Cox); 01/17/2024 Trial Tr. 128:11–14 (J. Meiss); 01/17/2024 Trial Tr. 189:4–190:6 (J. Shaffer); 01/18/2024 Trial Tr. 94:4–11 (C. Simmons); 01/18/2024 Trial Tr. 192:25–193:5 (C. Costic); 02/12/2024 Trial Tr. 20:11–21:15 (S. Isenberg); PX-197 at p. 1 (Brighton HRD to S. Halper in May 2016: “[W]e do not have enough employees to work one per shift x 7 days. Especially, since we are not paying overtime.”); PX-341 at p. 1; PX-345 at pp. 1–2; PX-355 at p. 1; PX-498; PX-537 at p. 2; PX-C.

243. Defendants are, and have been, aware that employees routinely perform work outside of their scheduled shifts, including in response to staffing shortages. PFOF 92, 101–02, 170(A); 01/10/2024 Trial Tr. 121:1–6, 121:23–123:8 (M. Reichard); 01/16/2024 Trial Tr. 92:6–16 (“Q. Mr. Yarnell, for the buildings that you have direct knowledge of, do you know if the building managers, the DHAs, the DONs, were they aware that the members were working outside of the scheduled shifts as often as you said they did? A. They had to be aware. I mean yes.”), 93:21–93:4; JX-58 at “Time Data”; PX-673 at pp. 1–2.

244. Defendants have explicitly refused to pay some employees for work performed outside nursing home, despite being aware of that work. 01/12/2024 Trial Tr. 179:25–181:3, 183:2–

185:24 (Fr. Schwartz: “Q. Were you told . . . by payroll that someone said that you should not be paid? A. Yes. Q. Tell me about that discussions. A. From what I recall, they said Mr. Halper said that I was no longer on the payroll. Q. Why is that? A. Because I wasn’t there physically.”).

245. Defendants knew that high employee turnover, including that caused directly by their pay practices, worsened the staffing shortages. 01/10/2024 Trial Tr. 158:19–159:2 (M. Reichard); PX-351; PX-355 at p. 1 (K. Hoke: “First, I want say that my RNs are stating that they will be walking when they find out that no shift diff will be paid for them. . . . [The] number [needed staff] will only grow due to staff notifying us that they will be looking to leave as soon as they find another position The walls are starting to crumble here and it is getting more difficult to keep from total collapse.”).

246. Defendants are, and have been, aware that a Facility Defendant employee’s time punches reflect times when that employee is performing work on Defendants’ behalf. 01/08/2024 Trial Tr. 162:5–13 (M. Shuey); 01/09/2024 Trial Tr. 84:19–22 (A. Walter: “Q. How did you know that employees were working during the meal break? A. They would hit that they did not take a lunch on Kronos when they were punching out.”); 02/15/2024 Trial Tr. 24:12–21 (K. Hoke); JX-79 (A. Pechman describing “actual data from the prior pay period” as “accurate” reflection of whether employees were punching in early or late); PX-1 at p. 153 (Murrysville HR/Payroll employee: “The punch times are definitely accurate for everyone and have not been altered.”); PX-1 at p. 231; PX-1 at p. 265; PX-1 at p. 270; PX-13 at 51:8–12 (02/03/2020); PX-23 at 43:1–6 (01/29/2020); PX-28 at 205:18–24 (02/04/2020) (A. Pechman: “[Q.] So at all of the facilities, there is an ability to pay to the minute though, in terms of actual clock in time, actual clock out times. Correct? A. Correct. We can set the system to calculate actual time worked.”); PX-53 at p. 4 (in response to RFA regarding failure to maintain “records of all of the hours worked” by Schedule A employees, The Grove at Greenville refers Acting Secretary to “time information produced in this litigation”); PX-54 at p. 4 (same for The Grove at New Wilmington); PX-55 at p. 4 (same for The Grove at Harmony); PX-56 at p. 4 (same for The Grove at New Castle); PX-58 at p. 4 (same for The Grove at Washington); PX-61 at p. 4 (same for The Grove at Irwin); PX-63 at p. 4 (same for The Grove at Latrobe); PX-64 at p. 3 (same for North Strabane Ret.); PX-

65 at p. 3 (same for North Strabane Rehab.); PX-66 at p. 3 (same for Cheswick.); PX-57 at pp. 3–4 (in response to RFA regarding failure to maintain “records of all of the hours worked” by employees, South Hills refers Acting Secretary to “time cards previously produced”); PX-59 at pp. 3–4 (same for Mt. Lebanon); PX-60 at pp. 3–4 (same for Murrys ville); PX-62 at pp. 4–5 (same for Monroeville); PX-67 at p. 3 (same for Brighton); PX-341 at 1 (Brighton HRD: “Based on swipes, your system should do the calculations. . . . [P]lease get your program to calculate hours based on hours worked.”).

247. Defendants are, and have been, aware that their payroll system was configured to pay according to schedule instead of according to employees’ time punches. 01/08/2024 Trial Tr. 163:17–165:4 (M. Shuey); 01/09/2024 Trial Tr. 90:19–91:1 (A. Walter); 01/18/2024 Trial Tr. 65:12–21 (B. Perkins); 02/15/2024 Trial Tr. 30:3–6 (K. Hoke); JX-75; PX-13 at 12:18–14:9 (08/12/2020); PX-341; PX-673 at pp. 1–2.

248. Defendants were aware that, because of this configuration, Facility Defendant employees were routinely not being paid for hours worked outside of their schedule prior to the purported adjustment of the system sometime between May 2018 and 2019. 01/10/2024 Trial Tr. 151:17–152:14, 175:15–23 (M. Reichard); PX-341 at p. 1 (Brighton HRD: “Not having a system that calculates hours worked is providing a big issue here at Brighton and upsetting a lot of my employees. They are terminating their employment because of not being paid for hours worked. Based on Swipes, your system should do the calculations. . . . [P]lease get your program to calculate hours based on hours worked.”); PX-673 at 1 (J. Reichard in June 2018: “The issue of paying on their schedule rather than actual hours worked has always been the issue.”).

249. Defendants are, and have been, aware that Facility Defendant employees regularly work during some or all of their thirty-minute meal breaks, regardless of whether they get permission to do so. PFOF 156–157, 159–164, 170(A); 01/08/2024 Trial Tr. 143:24–144:20, 152:18–154:20, 155:7–24, 156:14–157:9 (M. Shuey); 01/09/2024 Trial Tr. 89:15–19 (A. Walter); 01/09/2024 Trial Tr. 153:24–154:3, 156:19–158:2 (C. Matlack); 01/10/2024 Trial Tr. 34:2–20, 35:21–36:6, 68:16–69:2 (J. Martis); 01/10/2024 Trial Tr. 126:16–19 (M. Reichard: “Q. To your knowledge, were the building managers, the department heads were

they aware that employees were regularly working through lunch? A. Yes.”), 126:24–127:2 (M. Reichard: “Q. Ma’am, do you know if Mr. Halper was aware that CHMS employees at these buildings were regularly working through their lunches? A. Yes.”); 01/10/2024 Trial Tr. 218:12–21 (S. Pentek); 01/10/2024 Trial Tr. 234:18–25, 250:7–14, 253:20–254:5 (R. Wolarov); 01/12/2024 Trial Tr. 15:21–23, 34:12–15 (B. Leffler); 01/12/2024 Trial Tr. 45:12–14 (K. Miller); 01/12/2024 Trial Tr. 103:9–15, 103:24–104:8 (M. Swan); 01/16/2024 Trial Tr. 20:19–21 (J. Pattison); 01/16/2024 Trial Tr. 94:25–95:21 (M. Yarnell: “Q. Do you know if Mr. Halper or his regional team, have they been aware of employees working through meal breaks at these buildings? A. Certainly.”); 01/16/2024 Trial Tr. 194:8–14, 195:21–196:3, 196:8–23 (A. Molinaro: “Q. Do you know, sir, were Mr. Halper or his regional team aware that South Hills employees were working through their breaks, meal breaks on a daily basis? A. Yes. Q. How do you know that? A. They were there. They would see. They knew this was happening. It just wasn’t – it wasn’t a priority. There were too many other things going on.”); 01/17/2024 Trial Tr. 13:16–20 (P. Henline); 01/17/2024 Trial Tr. 38:11–14 (D. Henline); 01/17/2024 Trial Tr. 79:1–14 (“Q. As a general matter, Ms. Cox, do you know if the building managers, the unit heads, the NHA, the DON, those folks, were they aware the employees were working through meal breaks? A. Yes.”), 79:20–80:7; 01/17/2024 Trial Tr. 133:11–16, 134:22–135:7 (J. Meiss); 01/17/2024 Trial Tr. 197:4–7 (J. Shaffer: [W]e had a night supervisor that never took a break. She was the only RN in the building. She would not take a meal break overnight shift.”); 01/17/2024 Trial Tr. 229:19–21 (M. Edwards); 01/18/2024 Trial Tr. 15:22–16:4 (L. Shuppas); 01/18/2024 Trial Tr. 145:16–146:8 (K. Lantzy); 01/18/2024 Trial Tr. 168:2–4 (E. Bainbridge); 02/12/2024 Trial Tr. 9:4–8, 11:5–8 (C. Clark); 02/12/2024 Trial Tr. 24:17–25:10, 26:15–19 (S. Isenberg); 02/12/2024 Trial Tr. 76:12–23 (S. Halper: “I heard about it in realtime. . . . [G]enerally speaking, I have been made aware that people missed breaks.”); 02/15/2024 Trial Tr. 23:5–14, 53:4–12, 60:18–61:3 (K. Hoke: “Q. With respect to ensuring that Murrysville employees got meal breaks, did you have the independent authority to ensure that you had enough staffing so that every employee could get a meal break every day? A. Employees were told to take meal breaks. They are required to take meal breaks but we did not have team members or employees on a day-to day basis so they could take them because our residents would not get the care they deserved. So there were employees that did not take meal

breaks because of that.”); 02/15/2024 Trial Tr. 85:24–86:2 (B. Tissue); 02/15/2024 Trial Tr. 99:17–100:18 (C. Dziak); JX-62; JX-75 (Halper and CHMS Group discussing changes to time clocks in Feb. 2018 to account for employees working through meal breaks); If a Facility Defendant employee’s time punches are inaccurate (*e.g.*, missed punch), Defendants require that the employee fill out and submit a missed punch/time adjustment form, signed by a supervisor, to pursue a payroll correction. 01/09/2024 Trial Tr. 77:7–15 (A. Walter); PX-18 at 121:14–21 (01/27/2020); PX-213; PX-217 at 2 (Brighton HRD in July 2016: “Due to the nature of our business sometimes the nurses are not able to take a lunch.”); PX-470 at p. 4 (M. Neufeld May 2017 email: “Hi jonah, I discussed with mordy your solution to the lunch problem.”); PX-550 at 3 (North Strabane Rehab NHA Oct. 2017 email to CHMS Group: “The Supervisor signed off on these missed lunch breaks. We were short handed and the aide worked through.”).

250. Despite knowing that employees were regularly working through meal breaks without permission, Defendants rarely, if ever, discipline employees for violating their policies requiring thirty-minute meal breaks. 01/08/2024 Trial Tr. 151:1–4 (M. Shuey); 01/09/2024 Trial Tr. 102:1–9 (“Q. Ms. Walter, let me go back to the meal breaks for a second actually. Did you ever discipline any employee for working during their lunch break? A. No. We would often tell them what the regulations are, what the rules are, but I can’t force anybody to take a meal break. Q. Is that because you needed people to work? A. I needed people to take care of my residents, yes, sir.”), 116:5–8; 01/10/2024 Trial Tr. 35:11–20 (J. Martis); 01/10/2024 Trial Tr. 125:25–126:3 (M. Reichard); 01/12/2024 Trial Tr. 103:20–23 (M. Swan); 01/16/2024 Trial Tr. 194:18–195:20 (A. Molinaro: “That didn’t happen with Comprehensive. It just didn’t seem like that was a priority, that was a concern. Q. Why did the discipline stop or slow down for employees working through their meal breaks? A. Because they weren’t getting paid for it. . . . It was so out of hand. It was like that wasn’t one of our priorities anymore either. There were so many other balls we were juggling, that it just kind of went by the wayside.”); 01/17/2024 Trial Tr. 78:18–21 (D. Cox); 01/17/2024 Trial Tr. 195:2–17 (J. Shaffer); 01/18/2024 Trial Tr. 195:5–7 (C. Costic); 02/12/2024 Trial Tr. 26:9–14 (S. Isenberg); 02/15/2024 Trial Tr. 85:24–86:2 (B. Tissue); 02/15/2024 Trial Tr.

23:15–25 (K. Hoke); 02/15/2024 Trial Tr. 100:19–23 (C. Dziak) 02/15/2024 Trial Tr. 149:18–21 (R. Goff); PX-49, ¶ 3(iii).

251. Some Defendants have expressly stated that their policy is not to pay overtime compensation for overtime hours worked or have instructed Facility Defendant employees to work while not punched in because they did not want their time sheets to show overtime hours worked. 01/17/2024 Trial Tr. 28:1–23, 38:8–10 (D. Henline); PX-1 at p. 130, ¶ 12 (The Grove at Greenville CNA: “I frequently complained about [missing overtime] to Debbie Hershman[, the Human Resources Director]. . . . [S]he told me that as a matter of Policy Greenville didn’t pay overtime for the first four (4) hours employees worked over 40 hours a week.”).
252. Defendants are, and have been, aware that Facility Defendant employees were not being paid for all hours worked, and/or were not being paid at the correct pay rates, which led to underpayment of overtime due. PFOF 15–19, 23, 72, 105–114, 138, 143, 148–49, 151–53, 169–171, 174–178, 195, 199–201, 234, 237–241, 246–249, 254–261, 264–76, 279; 01/08/2024 Trial Tr. 141:12–25, 162:15–24, 177:11–25, 179:24–180:6, 226:4–15 (M. Shuey); 01/09/2024 Trial Tr. 8:20–9:8 (M. Shuey); 01/09/2024 Trial Tr. 180:3–14 (C. Matlack: “Q. [D]id you ever discuss this issue with the CHMS Group payroll personnel? A. The payroll glitches? Q. Yes. A. Yes. Q. Tell me about that, please. A. Early on around the time I sent that email, I did discuss it with a man named David Bernstein who was in charge of payroll at the time. When Abraham Pechman was hired, I introduced myself to him to tell him we had concerns about payroll and I frequently shared them with Mr. Reichard and Ms. Zapor.”), 184:2–185:5; 01/10/2024 Trial Tr. 38:7–10, 38:18–39:2, 47:21–48:20 (J. Martis); 01/10/2024 Trial Tr. 139:24–140:2, 148:19–159:5 (M. Reichard: “Q. Was there an awareness at all times that you were involved as the regional director that there was a mismatch between the time worked and the hours paid for these employees? A. Yes. Q. Was that a regular issue? A. It happened often. Q. . . . Ms. Reichard, to your knowledge, was Mr. Halper aware that there was a regular issue of a mismatch between the time worked on the time records and the time paid on the pay records? A. Yes.”), 160:9–16, 167:9–24 (M. Reichard: “Throughout your tenure as the regional director, was there a general awareness within Comprehensive, the regional team, that employees in these buildings were

not being paid for all hours worked? A. Yes. Q. To your knowledge, during your time with the company, was there a general awareness within CHMS Group payroll that employees were not being paid for all hours worked? A. Yes. Q. Based on what you saw and heard, Ms. Reichard, was Mr. Halper at least generally aware that the employees in these nursing homes were not being paid for all time worked? A. Yes.”); 01/10/2024 Trial Tr. 222:17–223:7 (S. Pentek); 01/12/2024 Trial Tr. 169:15–170:2 (J. Shadle); 01/16/2024 Trial Tr. 22:2–23:8 (J. Pattison); 01/16/2024 Trial Tr. 106:5–20, 112:21–113:13 (M. Yarnell: “Q. Do you know if either Mr. Halper or his regional team were aware of all the pay errors you testified about today? A. Definitely aware of them.”), 136:6–11 (“Q. Mr. Yarnell, from everything you have seen through your entire time dealing with Comprehensive, is it your belief that Mr. Halper was aware that there were employees at these buildings who were not being paid for all hours worked? A. I believe so.”), 135:18–136:5; 01/16/2024 Trial Tr. 175:6–176:9, 208:22–209:8, 212:17–213:5, 214:10–15, 229:14–18 (A. Molinaro); 01/17/2024 Trial Tr. 35:23–36:7 (D. Henline); 01/17/2024 Trial Tr. 92:20–93:1, 94:12–19, 96:12–17, 107:22–108:14 (D. Cox); 01/17/2024 Trial Tr. 202:19–203:8, 207:11–209:4, 212:9–25 (J. Shaffer); 01/18/2024 Trial Tr. 58:13–59:6 (B. Perkins); 01/18/2024 Trial Tr. 116:22–117:8, 120:7–21 (C. Anderson); 01/19/2024 Trial Tr. 28:13–29:1 (M. Shuey); 02/12/2024 Trial Tr. 12:1–9 (C. Clark); 02/13/2024 Trial Tr. 123:21–124:9 (C. Rivera); 02/15/2024 Trial Tr. 8:2–9:1, 28:2–6, 43:25–44:4 (K. Hoke: “At all points that you have been describing, was Mr. Halper aware that Murrys ville employees under Comprehensive were not being paid for all time worked? A. He was aware.”); 02/15/2024 Trial Tr. 142:2–4, 156:5–23, 172:21–173:1, 173:25–174:3 (R. Goff: “Was Mr. Halper aware of the errors you just described for us? A. I emailed him regularly with the errors because he specifically asked me to and I had gone back and forth both with him and Mr. Bernstein on many of these issues.”); JX-67; PX-1 at p. 152; PX-1 at p. 226; PX-1 at pp. 236–37; PX-1 at pp. 251–52; PX-1 at p. 257; PX-1 at p. 264; PX-1 at p. 266; PX-1 at pp. 268–69 (A. Molinaro to Halper: “[Y]ou have directed your payroll staff to short the employees of the pay and the overtime they deserved by law.”); PX-1 at p. 273; PX-28 at 240:5–8 (02/04/2020); PX-30 at 150:1–8 (12/13/2021) (E. Lahasky: “Q. At some point you were aware of what problems? A. Problems with payroll. Q. Like the payroll was incorrect for employees at those facilities? A. Well, I would say that the punches didn’t match the pay.”);

PX-35 at 22:9–14, 35:15–38:4, 42:25–43:13, 44:1–11, 47:1–5; PX-127; PX-160 at p. 1; PX-162; PX-220; PX-260; PX-266; PX-270; PX-338 (Brighton HRD in Feb. 2017: “As I stated last night, there is no reason why these swipes are not calculating. This additional work we need to do is unacceptable. Something is wrong with Mendy’s program.”); PX-341; PX-345; PX-355; PX-361; PX-369; PX-395; PX-506; PX-555 at p. 1 (North Strabane Rehab NHA Nov. 2017 email to CHMS Group: “Your time clock totals one figure, yet they were paid a different figure.”); PX-608 at p. 1 (D. Bernstein: “I’m well aware of the areas that payroll can improve on and I wish it was as easy as snapping my fingers.”); PX-B; Back Wages Summary.

253. Despite knowing that employees routinely engage in overtime work without complying with their policies Defendants rarely, if ever, discipline employees for that work. PFOF 17–18, 48, 130; 01/10/2024 Trial Tr. 52:11–53:5, 53:6–9 (J. Martis); 01/12/2024 Trial Tr. 108:16–19 (M. Swan); JX-58 at “Time Data”; PX-14 at 52:21–53:14 (02/03/2020); PX-39, ¶ 3(v); PX-42, ¶ 3(vi); PX-43, ¶ 3(xi); PX-46, ¶ 3(xii); PX-47, ¶ 3(xi); PX-49, ¶ 3(iii); PX-50, ¶ 3(xi); PX-673 at p. 1.

254. Defendants are, and have been, aware that they regularly fail to pay all supplemental compensation promised to Facility Defendant employees. PFOF 170(C), 211–13; 01/16/2024 Trial Tr. 200:25–201:2 (A. Molinaro); PX-351; PX-369; PX-B.

255. Defendants are, and have been, aware of their obligation under the Act to include all supplemental pay received by Facility Defendant employees (*e.g.*, bonuses, shift differentials) in their determination of those employees’ “regular rate.” PFOF 121–22; 02/12/2024 Trial Tr. 92:25–93:5 (S. Halper); PX-28 at 192:19–193:11 (02/04/2020).

256. Despite this knowledge, Defendants had a deliberate policy of excluding supplemental compensation (*e.g.*, bonuses, shift differentials) from Facility Defendant employees’ “regular rate” for purposes of determining overtime. 01/08/2024 Trial Tr. 124:2–12 (M. Shuey); 01/10/2024 Trial Tr. 136:2–17 (M. Reichard: “Q. Is it your recollection that those pick-up bonuses, shift diffs were, quote, unquote, calculated separately? A. Yes.”); 01/18/2024 Trial Tr. 22:10–23:3 (L. Shuppas: “Q. When you worked those shift differentials, were they added to your overtime rate? A. No. Q. What did you do about it? A.

I went to Bev and a couple other people from the union went to Bev. They said it was normal. That's how they did it. It was separated. Q. So it was separated on the check? A. Yes. Q. It wasn't included in the hourly rate? A. Yes. Q. Was that a yes? A. Yes. Q. You went and spoke with them at payroll? A. Yes. Q. What happened after that? A. It still was just separated. Your shift differential was in a separate category. It was not added into your overtime.”), 24:14–24 (L. Shuppas: “Q. Now, on occasions that the bonuses were paid and you worked overtime -- A. Yes. Q. -- were they reflected on the overtime rate? A. No. They were separate, too. Q. They were separate like a shift differential? A. Yes. Q. Again, what did you do when that happened? A. They told us -- it was told to us by Bev and supervisors and that that was normal. They were separate from our overtime rates.”), 30:10–20 (L. Shuppas: “Q. As a union president, did you also receive complaints from members regarding the shift differentials not being added to overtime? A. Yes. Q. How often did you? A. They told us it wasn't – Comprehensive's reply was that it was always separate. It wasn't with our overtime rate at all whatsoever. Q. And this continued throughout your tenure at the facility? A. Yes.”); 02/12/2024 Trial Tr. 36:1–28 (S. Isenberg: “Your experience is that the Greenville payroll did not include your shift differentials In your base rate when calculating overtime? A. Right. Q. Who did you complain to about this? A. Debbie Hirshman and she said no, that's the way it is supposed to be. They didn't pay overtime on your shift differentials and that was paid out separate on the pay stub where you would have like your regular hours, your overtime hours and then your afternoon shift differential, your midnight shift differential, and it was all like there was 90 lines on there sometimes. Q. So just to be clear, ma'am. Your recollection is that Ms. Hirshman told you that it was Greenville's policy to not include shift differential pay when calculating overtime? A. Right.”); PX-1 at p. 131, ¶ 13 (The Grove at Greenville CNA in Sept. 2020: the Human Resources Director “explicitly told us that our shift differentials are not factored into our overtime pay, that they are not considered part of our regular rate”); PX-23 at 40:16–41:2 (01/29/2020) (Latrobe deponent testifying that a bonus appears on employee paychecks “as a separate line and it's not included in their wages”); PX-352 at p. 1 (S. Halper: “Terri please remove shift diff from hourly wages. That shift diff is calculated separately.”).

257. Defendants admit that their failure to factor in all compensation into Facility Defendant employees' regular rate violates the Act. 02/12/2024 Trial Tr. 191:14–25 (A. Pechman).
258. Despite recognizing in June 2018 that an “immediate[]” correction was necessary, CHMS Group did not attempt to correct this deficiency until over one year later, in July 2019 because “things happened” and they “got distracted.” 02/12/2024 Trial Tr. 161:21–162:2, 164:23–25 (A. Pechman).
259. Defendants know that their pay system still does not always ensure that all supplemental compensation is included in employees' regular rate. PFOF 212.
260. Some of Facility Defendants' owners, such as Ephram Lahasky, have been frustrated with how difficult it has been for them to get Mr. Halper to address persistent, widespread payroll errors. 01/16/2024 Trial Tr. 125:17–126:2, 126:6–127:10 (M. Yarnell).
261. Mrs. Zapor-Reichard was concerned that the U.S. Department of Labor would learn about the widespread payroll errors. 01/10/2024 Trial Tr. 117:15–20 (M. Reichard: “Q. Were you concerned at all about whether the DOL would walk into the facility? A. Somewhat. Q. Why? A. We continued to have payroll errors and issues that went unresolved.”).
262. Defendants' express pattern and practice is, and has been, to forgo affirmative efforts to confirm compliance with the Act and instead place responsibility on employees to identify and raise payroll errors. 01/10/2024 Trial Tr. 223:8–17 (S. Pentek); 01/16/2024 Trial Tr. 122:14–123:2 (M. Yarnell); 01/17/2024 Trial Tr. 102:16–103:6 (D. Cox); 01/17/2024 Trial Tr. 206:25–207:5 (J. Shaffer); 02/12/2024 Trial Tr. 193:12–23 (A. Pechman); 02/15/2024 Trial Tr. 38:12–15 (K. Hoke); 02/15/2024 Trial Tr. 156:19–157:4 (R. Goff: “The problem though is they weren't getting fixed and one of the things [Mr. Halper] had expressed to me was that he wanted us to impress upon the employees it was their responsibility to track their time and it was their responsibility to keep track of their paychecks. That was something which was frustrating given the situation. Q. Are you saying Mr. Halper represented to you or claimed to you that it was the employee's job, not the employer's, to ensure that their pay was correct? A. Right, to make sure their pay was correct.”); PX-28 at

80:8–90:3 (02/04/2020) (A. Pechman: “Q. So the onus is upon the employees to correct payroll errors. Is that accurate? . . . [A.] If there’s an error, we would need to have that made known to us. . . . [Q.] So if here an errors was made known, it was addressed on a case-by-case basis. But not steps were taken to identify whether or not this had occurred with any other employees because no employees had brought it to CHMS Group’s attention. Is that correct? A. Correct.”), 167:22–168:12 (02/04/2020).

263. CHMS Group instructs Facility Defendant managers not to raise pay errors that the employee did not first complain about, and reprimands them if they do. 02/15/2024 Trial Tr. 39:6–15, 56:9–13. (K. Hoke); PX-2; PX-377 (C. Bankosh to K. Hoke: Mendy Gandl “said we should only be listing people that actually complained that their checks were not correct”).
264. Defendants are, and have been, aware of the regular, widespread complaints about pay from Facility Defendant employees. PFOF 169–171, 174, 177, 195, 198; 01/08/2024 Trial Tr. 153:18–154:3, 230:22–231:1 (M. Shuey); 01/09/2024 Trial Tr. 34:8–35:16, 50:23–51:11, 52:24–53:2 (M. Gildea); 01/09/2024 Trial Tr. 175:1–176:2, 181:11–18 (“Q. Do you know one way or other, Dr. Matlack, was Mr. Halper aware of these employee pay complaints you have been describing? A. Yes. Q. How do you know that? A. Because Mr. Reichard and Ms. Zapor discussed it with him after I shared it with them. I was included in emails and in conversations about the issues. Q. How often did the discussion occur with Mr. Halper with respect to pay, employee pay complaints? A. He was notified every pay period there were concerns because he had to approve the corrections.”); 01/10/2024 Trial Tr. 43:25–44:6 (J. Martis: “Q. Can you quantify at all how many conversations you had, dozens, single digits, whatever number? A. They were so many. The one thing I can definitely recall is I used the phrase, that this seems like it’s routine. It’s not an error. It’s a routine thing that corporate is doing and I expressed that to Mr. Richmond, to Dee and to Margaret.”); 01/10/2024 Trial Tr. 115:18–116:10, 153:24–154:11 (M. Reichard); 01/16/2024 Trial Tr. 113:23–114:4 (M. Yarnell: “Was Mr. Halper and his regional team aware that there were pervasive employee complaints about pay in these Comprehensive buildings A. Yes. Q. Why do you say that? A. Because there were constant complaints about the pay in these buildings.”); 01/16/2024 Trial Tr. 214:17–215:4 (A. Molinaro);

01/17/2024 Trial Tr. 199:1–7 (J. Shaffer); 02/12/2024 Trial Tr. 121:7–11 (S. Halper: “Q. Well, you were aware in your communication with the buildings through email, you were aware, were you not, sir, there were pay complaints from the employees? A. I don’t know if ‘complaints’ is the right word, but that there were issues with pay, yes.”); 02/15/2024 Trial Tr. 49:14–22 (K. Hoke); 02/15/2024 Trial Tr. 103:13–104:7 (C. Dziak); PX-38, ¶ 3(iv); PX-171; PX-213; PX-265; PX-345; PX-365; PX-708 (July 2018 North Strabane Ret. LPN Supervisor email to E. Lahasky: “There have been at least 6 employees that have quit in the last 3 months because your company is crooked. Every payday their paychecks are short in some way. . . . Your company will not get away with not paying employees correctly.”).

265. Defendants often resist processing payroll corrections because they believe that the employee violated Defendants’ rules and policies. JX-62 at p. 1 (Brighton payroll employee stating that requested pay correction for meal break work was not processed because “‘everyone must take a lunch’”); JX-71 at p. 2; PX-1 at p. 152 (Murrysville HR/Payroll employee: “Mendy Gandl, the payroll manager, has been argumentative and reluctant to correct any issues regarding employees being under paid.”); PX-188 at p. 4 (M. Gandl: “We should not correct those time cards if they missed submitting them on time.”); PX-276; PX-341 (M. Gandl: “I’m not going to check each [time clock error]. The point is, we were given schedules for each position. Employees are expected to work their schedules based on position they fill.”); PX-300; PX-550; PX-579 at pp. 4–5 (M. Gandl: “We in payroll are the gatekeepers to prevent abuse”); PX-632 at p. 1 (CHMS Group payroll employee in response to payment request: “[T]here are no punches at all, not an in punch nor an out punch, on the day in question. . . . [T]here are rules in place that are put into place by people with more authority than me. Regardless of if I agree with them or not I have to follow them.”).

266. Defendants regularly refuse to pay compensation due to Facility Defendant employees because of Defendants’ belief that the employee had failed to comply with Defendants’ policies. 01/08/2024 Trial Tr. 156:14–157:9, 222:12–223:24 (M. Shuey); 01/09/2024 Trial Tr. 6:20–7:2 (M. Shuey); 01/17/2024 Trial Tr. 101:5–17 (D. Cox); 01/18/2024 Trial Tr. 72:23–73:5 (B. Perkins); 01/18/2024 Trial Tr. 92:21–93:3 (C. Simmons: “Q. What, if

anything, were you told when you were not paid for having worked through your lunch? A. I was always told the same thing. It's mandatory to take a lunch break and I had to take a lunch break. Q. Is this even though you performed job duties while you were working when you should have been taking a lunch break? A. Yes."); PX-1 at p. 130, ¶ 12 (The Grove at Greenville HRD stated to CNA that, "even if [her] supervisor verified I worked overtime, Greenville reserved the right to deny paying me for that time if it disagreed with then reason why I worked out late"); PX-1 at p. 169, ¶ 3 (Father William Schwartz: "[A] Human Resource officer informed me that since I was not physically clocking in, Mr. Sam Halper said I shouldn't be paid."); PX-1 at p. 195, ¶ 7; PX-1 at pp. 221–22, ¶ 9; PX-192 at p. 1 (M. Gandl: We have implemented DAF's so employees do not take advantage and just stay late. . . . Since they all abuse this we will not be accepting ANY overage corrections on time cards following period."); PX-213 at p. 1 (M. Gandl: "Recently we are getting many requests for not taking lunch and requesting to be paid. Our payroll staff in business office were advised **Everyone** must take lunch and this is not approved.") (emphasis in original); PX-217 at p. 4 (In response to submission of signed payroll correction paper from Brighton, M. Gandl states: "In general employees MUST take lunch. That was clear enough. Sam will need to approve no lunches if you want me to pay."); PX-371 (A. Molinaro: "Our corrections are very easy to understand and are just ignored. That is not fair to our staff.").

267. Regional Director of Operations John Reichard complained that Defendants' practice of having CHMS Group control Facility Defendants' payroll, and Defendants relying on that control to enforce their policies, was improper and harming Facility Defendants. PX-673 at pp. 1–2 ("[T]he NHA needs to be the one responsible for managing the staff. Payroll should alert them of concerns and the NHA should address. Payroll makes changes to things without alerting the NHA and this has caused the most issues along with paying on the schedule rather than hours worked. . . . When the payroll processors work with the NHA it can be managed, if the payroll processors direct the process the facilities struggle. . . . Payroll's job should be to notify the NHA. The responsibility of managing the staff should be on the NHA.").

268. Defendants are, and have been, aware of poor performance by CHMS Group's payroll personnel. 01/17/2024 Trial Tr. 208:3–209:9 (J. Shaffer: "Q. Do you remember talking

about the payroll issues with [the Regional Consultant for Human Resources]? A. Every single week, multiple emails, many, many. Q. In general, what was his response to you raising these concerns? A. In general he would say things like, well, it's Somebody's niece that's got the job now and she doesn't know anything. They just hire people that they can pay the least amount of money to that have no experience. He would blame it on that clerk. Oh, everybody is having problems with that clerk. . . . So that's when we started keeping a log and so pretty quickly after we started the log, they got rid of our original payroll clerk or at least took her out of our line and we had a different payroll clerk who maybe the first two weeks was okay and then the same issues started again. Q. Just to be clear, these clerks you are talking about that Mr. Schmerbeck said was family or didn't have experience, were these people in the back office? A. Yes.”); PX-30 at 147:6–16 (12/13/2021) (E. Lahasky: “Q. What’s your impression of Mendy Gandl’s performance as the head of payroll? A. I don’t know. I -- there were some complaints about him, but -- seemed okay to me, but again, he didn’t report to me, so. Q. What complaints did you learn about Mendy Gandl? A. I think payroll errors or something. It could have been even after the fact. May have been after he left they said he made errors. I don't remember. Something like that.”); PX-131 at p. 1 (After S. Halper instructs M. Neufeld to turn over control of Brighton payroll to M. Gandl, M. Neufeld responds: “We have to expect many complaints as soon as he takes over. We should put a better process in place to handle them.”); PX-368 at p. 1 (After M. Zapor writes to tell M. Gandl that “today’s payroll is not good,” and describes employees “who are still owed 100 hours in differentials,” S. Halper responds “this is unacceptable”).

269. Defendants are, and have been, aware of the Act’s requirements with respect to exempt employees, including the required job duties and the need for a minimum guaranteed salary. 08/28/2023 Joint Stip. 19 (Dkt. 360 at 4); PX-172 at 1 (Halper Sept. 2015 to M. Gandl: “[P]lease note that these employees are exempt and therefore if they work enough days they should be paid their full work week. They should not be automatically docked for early-ins, late outs etc.”).

270. Defendants are, and have been, aware that substantial numbers of Facility Defendant employees likely did not meet the required duties under the Act to be classified as exempt. PFOF 236(G); 01/09/2024 Trial Tr. 187:20–189:18, 190:19–23, 193:12–196:8, 197:9–22,

198:5–202:24 (C. Matlack); PX-656 (C. Matlack May 2018 email to D. Bernstein: “I am being told about half of our facility receptionists are classified as exempt. A receptionist would not satisfy an exemption requirement and I’m not sure why they would be classified this way.”); PX-679 (C. Matlack: “We have a number of positions that are mis-classified. For example, about half of the facility receptionists are exempt and they should not be. There are some others that are also problematic, such as maintenance workers listed as exempt. I brought this up to David Bernstein about a month ago and I think he was working on this, but I just heard about another facility employee who was just made exempt. This one is also one that will likely not satisfy an exemption status. I wanted you to be aware as this is a serious concern of mine.”); PX-683.

271. Defendants are, and have been, aware that substantial numbers of Facility Defendant employees classified as exempt did not have a guaranteed minimum salary. PFOF 234; 01/09/2024 Trial Tr. 211:9–25 (C. Matlack: “Q. Do you know one way or another, ma’am, was CHMS Group aware that employees classified as exempt in these buildings were being paid according to hours instead of their guaranteed minimum salary? A. Yes. Q. How do you know? A. I was on the emails as that example shows and on other emails where the payroll processor would say I don’t have punches for that. Q. Lastly, Dr. Matlack, was Mr. Halper aware that exempt employees of the 15 CHMS buildings were being paid according to their hours instead of their guaranteed minimum salary? A. Yes. Q. How did you know? A. Because he would see the payroll and approve the payroll process.”); 01/12/2024 Trial Tr. 112:6–17, 117:17–22 (M. Swan); PX-387 at 1 (M. Reichard to M. Gandl: “Exempt employees should be paid 40 hours per week. . . . As stated on multiple occasions they should not be docked as they typically work long hours and are on call evenings and weekends.”); PX-398.

272. Defendants were aware that their practices with respect to exempt employees created potential liability under the Act. 01/09/2024 Trial Tr. 208:21–209:12 (C. Matlack: “Q. Did you ever raise a concern about the practice of paying exempt employees according to their hours worked? A. Yes. Q. Tell me about that, please. A. I raised the concern several times to Mr. Reichard and Ms. Zapor so they could esc[a]late the concern. Q. What was your concern? A. My concern was that we were treating exempt employees as nonexempt

employees and not paying them appropriately. Q. What's the practical effect of paying an exempt employee according to their hours? A. The practical effect is that there's a variability in pay. They're not receiving their stated salary as an exempt employee and if that's the case and they work more than 40 hours in a week, then they should be compensated by paying them overtime."); JX-70 (J. Reichard Oct. 2017 email to Halper and CHMS Group: "Dol is being brought up here also. If we are going to change status from hourly to salary we should implement a notification process. I agree these positions should be salary but at minimum can we get a signed notification and possibly a salary review? The admission director at monroeville/Irwin is in the same situation. I would recommend reviewing and developing a policy in this area, particularly since the FLSA is still somewhat in play" and S. Halper's response of "Yes lets 'band aid' for now and discuss asap[.]"); PX-635 at p. 2 (Regional Director of Recruitment Mar. 2018 email to Halper and CHMS Group: "He is an exempt employee who was physically present 6 days that week. Docking him pay or forcing him to use PTO for part of that day is inappropriate, technically illegal, and will likely result in the loss of the Maintenance Director of our Cheswick Facility."); PX-133 at p. 1 (M. Neufeld stating that the Brighton NHA "chewed my ear off about admin people needing to punch in and out, saying we could have issues with DOL if they work too many hours."); PX-504 at p. 1 (Cheswick NHA to CHMS Group: "[A]ccording to FLSA shouldn't salaried people be paid weekly the same amount?"); PX-519; PX-635 at p. 1 (C. Matlack response: I think we need to address why exempt employees are punching a time clock. The whole reason they are classified as 'exempt' is that they are EXEMPT from the provisions of the Fair Labor Standards Act. They should be paid the set, agreed upon salary and it is up to their supervisor to monitor any abuses. When we dock exempt employees' pay like is outlined in this example, we negate their exempt status and could be liable for potential overtime payments. It is much safer to simply pay the 80 hours per pay period.").

273. Defendants knew that their reputation of failing to pay workers accurately (*see* PFOF 144–45) inhibited their ability to retain staff. 01/09/2024 Trial Tr. 137:8–23 ("Q. So, Dr. Matlack, you testified that pay issues played some connection with the reputation. What do you mean by that? A. Well, it was discussed in the facilities between staff, HR person. The executive director, the directors of nursing, they would bring it to Mr. Reichard and Ms.

Zapor's attention to let them know what was being discussed in the facilities. I heard about it when I was in the facilities. At one point, there was even I think a Facebook post discussing someone's pay being incorrect. So it was out on social media. Q. You're saying discussions, discussions about what? A. About the fact that they were having trouble staffing, they weren't attracting candidates for the rates of pay, payroll being incorrect, affecting moral[e]."), 177:6–9; 01/16/2024 Trial Tr. 202:24–203:14, 211:14–20 (A. Molinaro); 01/17/2024 Trial Tr. 72:9–14 (D. Cox); PX-334 (M. Reichard Jan. 2017 email to Halper and CHMS Group: "We as a company can not continue to make these changes [to employees' exempt status] without notification without recognizing the long term effects of retention or the lack thereof."); PX-351 at p. 1 (A. Molinaro: "The pay issues since Comprehensive took over were major reason had staffing issues all weekend. They need this shift diff or they will go work somewhere else."); PX-371 (M. Reichard: "We are losing staff due to pay issues."); PX-345; PX-435; PX-502 at p. 1 (South Hills NHA: "[D]irector of therapy has resigned; a good part of her reasoning is due to payroll concerns/misunderstanding."); PX-537 at p. 1 (Regional Director of Recruitment: "[W]e have been doing some hiring however we continue to [lose] staff. The primary cause of the loss of staff continues to stem from pay roll issues. We are continuing to explore community engagement options to help us possibly repair the perception of the company in that area."); PX-640.

274. Defendants knew that their reputation of failing to pay workers accurately (*see* PFOF 144–45) inhibited their ability to hire staff. 01/10/2024 Trial. Tr. 127:9–17 (M. Reichard); 01/09/2024 Trial Tr. 179:13–23 (C. Matlack: "Q. Let's go to the last sentence. Go ahead and read it, please. A. I think the scuttlebutt about payroll is hurting overall. Q. What did you mean by hurting overall? A. Well, the original question had to do with recruitment and why facilities weren't getting applicants. So I'm saying in reference to Facebook and people talking about what's going on in the workplace, I said I think that is hurting the ability to attract people to work in the facilities."); PX-640.

275. Defendants are, and have been, aware that many Facility Defendant employees refuse to work or threaten to cease work because of Defendants' payroll practices. PFOF 207; 01/09/2024 Trial Tr. 153:2–6 (C. Matlack); 01/10/2024 Trial Tr. 54:3–55:3 (J. Martis);

01/12/2024 Trial Tr. 100:25–101:3, 110:6–10 (M. Swan); 01/16/2024 Trial Tr. 22:2–23:10, 24:8–16 (J. Pattison); 01/17/2024 Trial Tr. 29:24–30:5 (D. Henline); 01/17/2024 Trial Tr. 240:21–241:9, 241:16–25 (M. Edwards); 01/18/2024 Trial Tr. 26:6–10 (L. Shuppas); 01/18/2024 Trial Tr. 117:9–13 (C. Anderson); JX-61 at p. 2 (“If Ashley Doerfer does not receive her check before the end of her shift today (3p), she will not work this weekend.”); JX-69; PX-351; PX-366; PX-403 at 1; PX-673 at 1 (J. Reichard: “[W]e spent 8 hours on the Cheswick staffing issues this weekend, including staff not picking up due to payment issues, etc.”).

276. Defendants know that they are responsible for all violations of the Act. PX-28 at 192:6–17 (02/04/2020).

277. Defendants can run payroll audits. PX-28 at 107:13–110:11, 139:6–17, 159:25–160:6 (02/04/2020); PX-41, ¶ 3(iv); PX-42, ¶ 3(v); PX-43, ¶ 3(xiii); PX-48, ¶ 3(v).

278. Except in rare instances, Defendants have not attempted to analyze or audit their payroll system to identify or understand the source of the perpetual pay errors. 02/12/2024 Trial Tr. 193:12–23 (A. Pechman) (explaining that CHMS Group relies on employees and facilities to raise errors); 02/15/2024 Trial Tr. 39:3–5 (K. Hoke); PX-13 at 53:14–20 (02/03/2020); PX-14 at 20:16–19 (08/12/2020); PX-22 at 6:9–14 (08/11/2020); PX-23 at 44:8–15 (01/30/2020); PX-24 at 7:13–15 (08/11/2020); PX-27 at 6:21–7:1 (08/12/2020); PX-28 at 170:17–23, 172:3–9, 172:22–24 (02/04/2020), 109:2–13, 109:18–24, 113:22–25, 114:10–14, 135:19–136:1, 136:9–16, 136:23–137:4, 145:19–25 (Aug. 12, 2020).

279. Since at least 2018, Defendants have known that back wages are due to Facility Defendant employees. 02/12/2024 Trial Tr. 123:17–20, 124:19 (S. Halper: “Q. You agree with me, do you not, sir, that the defendants in this case, including you, you also owe back wages to these employees, don’t you? A. I believe so. . . . A. Yes, I believe that I will owe money.”); 02/12/2024 Trial Tr. 192:8–10 (A. Pechman) (“Q. You’d agree with me there is some amount of backpay owed, right? A. Almost unquestionably.”); PX-28 at 130:14–131:6 (02/04/2020), 107:10–24, 108:16–20, 110:14–23, 112:12–14 (Aug. 12, 2020).

280. Despite conceding that they owe back wages, Defendants have disavowed any effort to independently ascertain their liability under the Act. Dkt. 174 at 2–4; 02/12/2024 Trial Tr. 192:1–7 (A. Pechman: “Q. You, sir, have not made any attempt either at your own behest or at the behest of your employer to ascertain the amount of money owed, is that right? A. No. Q. Is it not right or you did not do it? A. I did not make any calculation as to the backpay owed.”); PX-28 at 107:25–108:7 (Aug. 12, 2020); PX-30 at 153:2–15 (12/13/2021); PX-52 at p. 24.
281. Defendants refuse to pay any conceded back wages due until a judgment in this matter is issued. PX-28 at 106:19–107:16 (Aug. 12, 2020 (A. Pechman admitting that no adjustment checks have issued for Defendants concededly unlawful failure to pay overtime because they are waiting for the resolution of this suit to “resolve payments of underpaid overtime for failure to include shift differentials and bonuses in the regular rate for overtime purposes”).
282. Defendants did not consult with the U.S. Department of Labor to determine if their payroll policies and practices complied with the Act. 08/28/2023 Joint Stip. 23 (Dkt. 360 at p. 5).
283. With limited exception, Defendants did not take affirmative steps to ascertain the legality of their pay practices. PX-14 at 59:22–60:2 (02/03/2020); PX-15 at 46:20–47:16, 52:3–18, 54:6–11 (02/03/2020); PX-16 at 84:18–85:1, 122:15–21, 125:20–25, 129:11–16 (02/03/2020); PX-21 at 94:25–95:7 (01/29/2020); PX-23 at 16:15–21, 24:24–25:4, 44:24–45:6 (01/30/2020); PX-25 at 114:4–13 (01/28/2020); PX-28 at 92:18–93:3 (Aug. 12, 2020); PX-29 at 207:1–22, 211:23–212:25.
284. Rather than independently confirm that their compensation policies complied with the Act, both facially and as-applied, Defendants “assumed” they were compliant simply because the of the union’s involvement in negotiating and implementing those policies through the CBAs. PX-25 at 134:5–10 (01/28/2020); PX-29 at 211:23–212:5; PX-44, ¶ 3(viii).

VIII. The Acting Secretary's Summary of Defendants' Time and Pay Records is Just and Reasonable

a. *The Employment Records and Evidence Underlying the Acting Secretary's Summary*

285. Both during the investigation and this action, the Acting Secretary requested and obtained time and pay records from Defendants. 01/11/2024 Trial Tr. 24:5–20, 25:7–11, 33:9–12 (M. Murray); PX-28 at 91:1–6 (Aug. 12, 2020); PX-5 at p. 1.
286. Throughout this action, Defendants supplemented their production of time and pay records to provide new information and to update previously produced information. 01/11/2024 Trial Tr. 28:19–29:22 (M. Murray); PX-5 at p. 1.
287. The time and pay data provided ranges from August 2015 to March 2023. 01/11/2024 Trial Tr. 28:15–18, 109:16–21 (M. Murray); PX-5 at p. 1; Back Wages Summary.
288. Defendants time records contain millions of rows of daily time punch records, specific to each Facility Defendant and each employee for the relevant time period. 01/11/2024 Trial Tr. 20:20–21:12, 24:21–25:8, 32:14–8 (M. Murray); JX-58 at “Time Data.”
289. Defendants pay records contain millions of rows of pay data for each payroll period, specific to each Facility Defendant and each employee for the relevant time period. 01/11/2024 Trial Tr. 20:20–21:12, 24:21–25:8 (M. Murray); JX-58 at “Pay Data.”
290. These pay records contain specific detail as to the various compensation paid to each employee, for each pay period, during the relevant time period. 01/11/2024 Trial Tr. 57:3–7 (M. Murray); JX-58 at “Pay Data.”
291. For both the time and pay records, the Acting Secretary requested and received explanations of the records from Defendants to ensure that she had a full understanding of them. 01/11/2024 Trial Tr. 49:8–24, 51:12–21, 56:11–22, 63:7–11, 65:7–13, 138:1–14 (M. Murray).

b. *The Acting Secretary Created and Used a Reasonable Methodology for Summarizing Defendants' Employment Records as Accurately as Possible Given Their Record-Keeping Violations*

292. In most cases, the Acting Secretary accepted Defendants' time punch records at face value as evidence of hours worked. Exceptions to this include reconstruction done to account for employees who never punched for meal breaks, accounting for gaps in the records, and combining records for multi-facility employees. The Acting Secretary generally accepted Defendants' pay records at face value with respect to the amounts actually paid to employees and the hours for which employees were paid. 01/09/2024 Trial Tr. 12:25–13:3 (M. Shuey); 01/11/2024 Trial Tr. 33:13–15, 56:23–57:2, 64:15–17, 103:18–104:3, 113:9–13, 124:1–22 (M. Murray); 01/19/2024 Trial Tr. 131:9–132:3, 132:15–133:2, 135:7–16 (M. Shuey); PX-5 at pp. 1–4.
293. In some instances, Defendants' time and pay data contained gaps, such as missing punch times. 01/11/2024 Trial Tr. 29:23–30:22 (M. Murray); PX-5 at pp. 1–4.
294. When she discovered a gap, the Acting Secretary first asked Defendants to provide supplemental information to fill the gap. 01/19/2024 Trial Tr. 127:1–12 (M. Shuey).
295. If Defendants produced the missing information, which the Acting Secretary incorporated it. 01/11/2024 Trial Tr. 30:23–31:1, 36:2–9 (M. Murray); PX-5 at p. 1.
296. Michael Murray, an employee within the Acting Secretary's Office of Chief Information Officer ("OCIO"), imported Defendants' voluminous time and pay data into Microsoft Access. 01/11/2024 Trial Tr. 4:3–8, 23:7–24:4 (M. Murray); PX-5 at p. 1.
297. With direction from the Wage and Hour Division and the Acting Secretary's counsel, Mr. Murray developed a bespoke methodology that summarizes Defendants' voluminous time and pay data for purposes of determining back wages due. 01/11/2024 Trial Tr. 57:22–25, 58:4–13, 58:20–60:3 (M. Murray); PX-5.
298. Mr. Murray worked between 500–1,000 hours on the Acting Secretary's methodology and corresponding outputs over the course of five years. 01/11/2024 Trial Tr. 160:12–20 (M. Murray).

299. Mr. Murray modified the Acting Secretary's methodology in response to new information provided by Defendants' supplements of time and pay records. 01/11/2024 Trial Tr. 160:21–161:13 (M. Murray).
300. The Acting Secretary designed her methodology to account for the complex, voluminous nature of Defendants' time and pay records such that she could accurately determine Defendants' back wage liability. Among other things, the methodology:
- A. Accounts for differences on how Facility Defendants maintain time and pay records. 01/11/2024 Trial Tr. 53:15–54:6 (M. Murray); PX-5 at pp. 1–2.
 - B. Accounts for the three different pay period schedules Facility Defendants use. 01/11/2024 Trial Tr. 54:7–10, 64:18–65:6 (M. Murray); PX-5 at pp. 1, 10.
 - C. Matches each Facility Defendant employees' time records to their pay records, using either their unique assigned ID or by confirming employee identity with Defendants if necessary. 01/11/2024 Trial Tr. 45:12–46:12, 65:16–66:23, 129:15–130:1 (M. Murray); PX-5 at pp. 1–2.
 - D. Matches the time records, which are organized on a daily basis, to the correct pay records, which are organized on a bi-weekly, pay period basis. 01/11/2024 Trial Tr. 47:2–9, 55:19–56:10 (M. Murray); PX-5 at pp. 1–4.
 - E. Accounts for the periods during which certain Facility Defendants have used the 8/80 overtime rule instead of the 40-hour overtime rule. 01/11/2024 Trial Tr. 60:18–61:4, 119:22–120:2, 121:19–122:6, 122:13–25 (M. Murray); PX-5 at pp. 5–6.
 - F. Accounts for the numerous kinds of compensation that Defendants pay Facility Defendant employees for work performed. 01/11/2024 Trial Tr. 50:1–11, 51:4–18, 52:12–53:3 (M. Murray).

- G. Excludes employee compensation that does not arise directly from hours of work performed (*e.g.*, holiday pay, sick pay). 01/11/2024 Trial Tr. 48:15–49:2, 50:19–51:3, 51:22–52:11, 86:13–21 (M. Murray); PX-5 at p. 8.
- H. Excludes employee “hours” recorded in Defendants’ pay records that do not directly reflect work performed (*e.g.*, holiday time, sick time). 01/11/2024 Trial Tr. 88:3–16 (M. Murray); PX-5 at pp. 3–8.
- I. Accounts for pay received by each Facility Defendant employee in each pay period to determine what back wages, if any, they are owed for work performed during that pay period according to the time records. 01/11/2024 Trial Tr. 59:6–60:3, 123:5–22 (M. Murray); PX-5 at pp. 4, 9.
- J. Searches for and removes duplicate records, which lowers the amount of back wages due. 01/11/2024 Trial Tr. 66:24–67:20 (M. Murray); PX-5 at pp. 2–3.
- K. Performs a step-by-step process, beginning with each employees’ time punches, to determine the number of overtime hours worked in each pay period. 01/11/2024 Trial Tr. 69:17–70:3, 71:8–79:20, 184:20–185:4 (M. Murray); PX-5 at pp. 3–4.
- L. Determines the regular rate under the Act for each Facility Defendant employee’s pay period, accounting for all forms of compensation paid to that employee during the pay period for hours worked. 01/11/2024 Trial Tr. 70:4–13, 79:21–81:21, 84:25–86:12, 88:17–89:2, 141:12–22 (M. Murray); PX-5 at pp. 4, 8.
- M. Accounts for the different rules under the Act applicable to the regular pay component of overtime compensation and the premium pay component of overtime compensation. 01/11/2024 Trial Tr. 84:11–22, 87:2–20, 94:21–95:12, 154:24–155:19 (M. Murray); PX-5 at pp. 4, 7–8.
- N. Compares the hours worked and applicable regular rate for each Facility Defendant employee, for each pay period, as compared to the compensation paid

to that employee during that pay period, to determine back wages due, if any, for each employee for each pay period identified in Defendants’ records. 01/11/2024 Trial Tr. 71:4–7, 81:22–82:20, 89:3–21, 90:17–91:2, 92:1–13, 93:23–94:10, 124:23–125:2, 141:23–143:1, 150:20–151:13, 154:20–23 (M. Murray); PX-5 at pp. 1, 4.

301. Defendants’ time and pay records had enough data for Mr. Murray to analyze potential back wages for 7,811 Facility Defendant employees. 01/11/2024 Trial Tr. 109:22–25 (M. Murray).
302. Because approximately 99% of the time records had a beginning of day punch and an end of day punch, the Acting Secretary relied on those punch times to preliminary determine hours worked, which she later adjusted for meal break work (*infra* at PFOF 309–11). 01/11/2024 Trial Tr. 72:18–73:2 (M. Murray); PX-5 at pp. 1, 3–4.
303. Because Defendants’ time and pay records are incomplete, the Acting Secretary had to create and apply a few inferences to determine whether any back wages were due and in what amount. 01/11/2024 Trial Tr. 18:14–19:5 (M. Murray).
304. Because of the difficulty in aggregating hours worked by Facility Defendant employees in the same pay period at Facility Defendants with distinct pay schedules and distinct pay rules (*e.g.*, 8/80 OT versus 40 hour OT), the Acting Secretary created a sub-methodology to determine those back wages, which implicates less than 1% of the time records. 01/11/2024 Trial Tr. 67:21–68:22, 97:25–101:25, 117:12–21, 121:11–18, 185:14–24 (M. Murray); PX-5 at pp. 11–12.
305. Because of the difficulty in identifying during which week unpaid regular hours occurred—which arises because Defendants maintain their pay data on a bi-weekly basis only—the Acting Secretary computed and implemented a ratio to estimate how many unpaid regular hours occurred in each week of the pay period. 01/11/2024 Trial Tr. 76:8–78:16, 120:10–121:4 (M. Murray); PX-5 at pp. 3–4.

306. Where the time data had no punches for an employee's shift and no data in Defendants' "exception" field, the Acting Secretary's methodology filters those data out for purposes of determining back wages due. 01/11/2024 Trial Tr. 31:2–5, 73:3–19, 118:25–119:4 (M. Murray); PX-5 at p. 2.
307. Where the time data shows an employee had partial punches for a shift, and Defendants did not provide that missing data, the Acting Secretary used average, based on all other data available for the specific employee, to estimate the work hours for that shift. This affected approximately 1% of the time records. 01/11/2024 Trial Tr. 71:21–73:3, 74:8–13, 116:1–20 (M. Murray); PX-5 at p. 3.
308. Where a Facility Defendant employee punches in and out for at full, 30-minute meal break, the Acting Secretary's methodology does not calculate missing work time for that period because it accepts the time punches at face value. 01/11/2024 Trial Tr. 74:14–75:19, 132:4–11, 165:6–12 (M. Murray); 01/19/2024 Trial Tr. 136:11–138:5 (M. Shuey); PX-5 at pp. 1, 3.
309. Where a Facility Defendant has never punched in or out for a meal break, the Acting Secretary's methodology disregards Defendants' automatic 30-minute deduction but reduces the time worked from 30 minutes to 25 minutes. 01/11/2024 Trial Tr. 74:14–75:19, 131:16–132:11, 157:22–158:5 (M. Murray); PX-5 at pp. 3–4.
310. Notwithstanding the face of these time punches—which show no meal break taken—the Acting Secretary imposed this 5-minute reduction in light of evidence she gathered indicating that some employees who never punched for meal breaks received a full, uninterrupted 30-minute meal break. 01/11/2024 Trial Tr. 74:14–25 (M. Murray). PX-5 at pp. 3–4.
311. The Acting Secretary selected 5 minutes as the reduction because it is the "average break length for all employees who did swipe out for a break from their hours." PX-5 at p. 3.

312. Because the Acting Secretary does not contest a claim of exemption under the Act for Defendants’ Nursing Home Administrators, the summary excludes the Administrator categories in Defendants’ time and pay data (“Administrator,” “Administrator AL,” and “Administrator ICF”) from the back wage calculations. 01/11/2024 Trial Tr. 34:4–21, 170:7–21 (M. Murray); PX-5 at p. 7.
313. The Acting Secretary considered all available information to reach the most accurate calculation of back wage liability under the circumstances, including because of deficiencies in Defendants’ time and pay records. 01/19/2024 Trial Tr. 49:24–50:14, 53:1–8, 56:19–57:8, 126:8–25, 128:10–25, 129:5–130:6 (M. Shuey); PX-5 at pp. 1–4.
314. The Acting Secretary’s methodology does not rest on the premise that Facility Defendant employees never received uninterrupted meal breaks. 01/19/2024 Trial Tr. 133:16–25 (M. Shuey); PX-5 at pp. 1–4.
315. The Acting Secretary’s methodology includes inferences and adjustments that favor Defendants, including as to meal breaks, which significantly lower the back wages due. 01/11/2024 Trial Tr. 74:17–25, 96:21–97:11 (M. Murray); 01/19/2024 Trial Tr. 130:7–131:5, 134:1–135:6, 157:22–158:15 (M. Shuey); PX-5 at pp. 1–4.

c. The Acting Secretary’s Back Wage Computations

316. The Acting Secretary accurately summarizes Defendants’ time and pay records and accurately determines back wages due according to the data contained in those records and the Act’s requirements. 01/09/2024 Trial Tr. 14:14–18 (M. Shuey); 01/11/2024 Trial Tr. 104:19–24 (M. Murray); PX-5 at pp. 1–4.
317. Based on her summary of Defendants’ time and pay records, the Acting Secretary determined that Defendants are liable for \$20,548,880.57 in back wages. 01/11/2024 Trial Tr. 108:11–109:7 (M. Murray); Back Wages Summary.
318. The \$20,548,880.57 is comprised of \$3,634,678.81 in overtime gap time and \$16,914,201.76 in compensation due for overtime hours. 01/11/2024 Trial Tr. 108:11–109:7 (M. Murray); PX-6 at “Summary Tables” Excel Sheet, Tab “AH-01.”

319. The \$20,548,880.57 in back wages is due to approximately 5,600 current and former Facility Defendant employees in varying amounts according to each employee's specific time and pay data. 01/11/2024 Trial Tr. 110:1–18, 113:22–115:6 (M. Murray); Back Wages Summary.
320. The face of the time and pay records Defendants produced in this action (JX-52–JX-58), standing alone, largely establish their back wage liability. PFOF 292, 295; 01/08/2024 Trial Tr. 67:10–68:9, 72:20–1 (M. Shuey); 01/11/2024 Trial Tr. 113:1–8, 115:14–25, 125:3–6, 136:21–24, 185:5–13 (M. Murray); 01/19/2024 Trial Tr. 131:9–132:3 (M. Shuey); PX-5; Back Wages Summary.
321. The Acting Secretary's summary presents back wages due in multiple forms, including on a per-employee basis, by Facility Defendant, and by Date. PX-6.
322. The Acting Secretary broke down back wages due according to year:

Year	Unpaid Regular Wages	Unpaid OT Wages	Total Back Wages
2015	\$66,384.49	\$217,227.10	\$283,611.59
2016	\$379,871.65	\$1,102,407.66	\$1,482,279.31
2017	\$648,969.83	\$2,562,016.12	\$3,210,985.95
2018	\$598,366.89	\$2,970,030.21	\$3,568,397.10
2019	\$543,197.02	\$2,836,757.10	\$3,379,954.12
2020	\$485,476.54	\$2,550,027.67	\$3,035,504.21
2021	\$428,649.07	\$2,201,707.05	\$2,630,356.12
2022	\$434,543.93	\$2,258,017.64	\$2,692,561.57
2023	\$49,219.37	\$216,011.21	\$265,230.58
TOTAL	\$20,548,880.55		

PX-6 at "Summary Tables" Excel Sheet, Tab "AH-01."

323. The Acting Secretary broke down back wages due according to the violations specifically attributable to each Facility Defendant:

Primary Facility	Unpaid Regular Wages	Unpaid OT Wages	Total Back Wages
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Brighton Rehabilitation and Wellness, a/k/a Comprehensive Healthcare Management Services, LLC	\$1,720,407.58	\$5,053,721.06	\$6,774,128.64
Maybrook-C Briarcliff Opco, LLC, d/b/a The Grove at Irwin or The Grove at North Huntington	\$143,900.39	\$910,095.94	\$1,053,996.33
Maybrook-C Evergreen Opco, LLC, d/b/a The Grove at Harmony	\$249,407.66	\$1,011,289.16	\$1,260,696.82
Maybrook-C Kade Opco, LLC, d/b/a The Grove at Washington	\$129,631.23	\$752,957.45	\$882,588.68
Maybrook-C Overlook Opco, LLC, d/b/a/ The Grove at New Wilmington	\$116,180.56	\$817,058.22	\$933,238.78
Maybrook-C Silver Oaks Opco, LLC, d/b/a/ The Grove at New Castle	\$136,892.50	\$916,713.62	\$1,053,606.12
Maybrook-C Whitecliff Opco, LLC, d/b/a The Grove at Greenville	\$172,521.51	\$1,460,383.81	\$1,632,905.32
Monroeville Operations LLC, d/b/a/ Monroeville Rehabilitation & Wellness Center	\$45,419.00	\$661,386.19	\$706,805.19
Murrysville Operation, d/b/a Murrysville Rehabilitation & Wellness Center	\$63,293.79	\$708,136.19	\$771,429.98
Mt. Lebanon Rehabilitation and Wellness Center, LLC	\$74,228.50	\$884,406.41	\$958,634.91
South Hills Operations LLC, d/b/a South Hills Rehabilitation and Wellness	\$68,365.00	\$880,604.50	\$948,969.50
Maybrook-C Latrobe Opco, LLC, d/b/a The Grove at Latrobe	\$243,367.23	\$1,063,790.57	\$1,307,157.80
Cheswick Rehabilitation and Wellness Center, LLC	\$312,692.73	\$976,251.56	\$1,288,944.29
North Strabane Rehabilitation and Wellness Center, LLC	\$99,066.96	\$633,335.32	\$732,402.28
North Strabane Retirement Village, LLC	\$59,304.15	\$184,071.76	\$243,375.91

TOTAL	\$20,548,880.55
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PX-6 at “Summary Tables” Excel Sheet, Tab “AH-02.”

324. The Acting Secretary broke down back wages due according to each job category:

Primary Department	Unpaid Regular Wages	Unpaid OT Wages	Total Back Wages
Activity Aides	\$71,572.37	\$86,146.31	\$157,718.68
Admissions	\$529.77	\$43,233.67	\$43,763.44
Admissions Director	\$37,459.42	\$200,888.14	\$238,347.56
ADON	\$79,852.51	\$1,060,648.33	\$1,140,500.84
Asst Administrator	\$6,666.01	\$19,002.07	\$25,668.08
Business Office	\$24,555.06	\$207,952.34	\$232,507.40
Business Office (Regional)	\$0.00	\$0.00	\$0.00
Central Supply	\$13,854.95	\$41,759.90	\$55,614.85
Chaplain	\$175.34	\$310.47	\$485.81
CNA	\$1,158,988.10	\$2,991,076.83	\$4,150,064.93
CNA (RELO)	\$46,007.54	\$435,148.91	\$481,156.45
CNA (Temp)	\$13,132.85	\$56,710.73	\$69,843.58
CNA Baylor	\$865.49	\$14,017.59	\$14,883.08
CNA ICF	\$37,370.39	\$70,423.13	\$107,793.52
CNA Vent	\$0.00	\$7.73	\$7.73
Construction	\$24,149.34	\$42,639.68	\$66,789.02
Cook	\$61,804.07	\$218,569.67	\$280,373.74
Cook 2	\$5,264.54	\$4,715.31	\$9,979.85
Cooks	\$358.22	\$2,108.93	\$2,467.15
Dietary Aides	\$168,052.60	\$380,068.90	\$548,121.50
Dietary Supervisor	\$81,326.30	\$645,825.78	\$727,152.08
Dietician	\$15,497.15	\$88,355.66	\$103,852.81
Director of Activities	\$23,519.50	\$234,097.99	\$257,617.49
DON	\$100,087.41	\$1,476,974.47	\$1,577,061.88
Driver	\$9,724.95	\$67,537.43	\$77,262.38
Hospitality Nursing Aide	\$2,827.05	\$2,605.66	\$5,432.71
Housekeeping	\$130,892.04	\$237,538.29	\$368,430.33
Housekeeping Supervisor	\$3,050.93	\$95,569.39	\$98,620.32
In Service (Nursing)	\$18,234.62	\$82,223.13	\$100,457.75
Laundry	\$51,945.50	\$119,918.35	\$171,863.85
LPN	\$428,773.15	\$2,213,599.95	\$2,642,373.10
LPN - Infection Control	\$6,615.90	\$46,767.08	\$53,382.98
LPN (RELO)	\$851.66	\$19,575.67	\$20,427.33
LPN Baylor	\$14.72	\$11,035.78	\$11,050.50

LPN Charge	\$4,062.88	\$17,440.06	\$21,502.94
LPN ICF	\$976.11	\$1,241.00	\$2,217.11
LPN Special	\$0.00	\$0.00	\$0.00
LPN Supervisor	\$1,815.35	\$10,716.57	\$12,531.92
LPN Vent	\$432.05	\$11,761.80	\$12,193.85
LPNAC (MDS)	\$22,207.94	\$250,891.66	\$273,099.60
LTSR	\$49,478.09	\$66,573.16	\$116,051.25
Maintenance	\$46,666.64	\$100,361.12	\$147,027.76
Maintenance Supervisor	\$30,214.69	\$281,026.00	\$311,240.69
Marketing	\$0.00	\$0.00	\$0.00
MDS Coordinator (RNAC)	\$122,808.92	\$516,983.19	\$639,792.11
Medical Records	\$23,884.28	\$133,180.45	\$157,064.73
Nursing Coord	\$14,920.35	\$51,030.21	\$65,950.56
Nursing Secretary	\$13,440.17	\$36,865.72	\$50,305.89
Office	\$3,602.97	\$51,096.33	\$54,699.30
Office Employee	\$0.00	\$0.00	\$0.00
Office/Receptionists	\$528.33	\$3,848.56	\$4,376.89
OT	\$14,981.75	\$60,296.76	\$75,278.51
OT Assistants	\$19,156.43	\$116,907.02	\$136,063.45
Payroll	\$9,864.59	\$21,295.59	\$31,160.18
Personnel	\$21,451.68	\$270,267.67	\$291,719.35
PT	\$12,944.05	\$106,638.71	\$119,582.76
PT Assistants	\$21,519.59	\$92,791.80	\$114,311.39
Purchasing	\$758.27	\$362.02	\$1,120.29
Receiving (Dietary)	\$4,868.13	\$12,790.34	\$17,658.47
Receptionist	\$3,539.14	\$28,782.00	\$32,321.14
Rehab Aides	\$561.42	\$4,238.26	\$4,799.68
Rehab Coord- Director of Rehab	\$14,869.59	\$327,577.92	\$342,447.51
Residential Assistant	\$3,195.06	\$12,437.23	\$15,632.29
Respiratory Therapy	\$9,741.66	\$78,357.18	\$88,098.84
Restorative CNA	\$52,042.31	\$47,127.48	\$99,169.79
RN	\$115,503.15	\$874,999.82	\$990,502.97
RN - Infection Control	\$3,169.31	\$16,367.41	\$19,536.72
RN Baylor	\$2.31	\$18,453.29	\$18,455.60
RN Supervisor - Baylor	\$0.00	\$702.68	\$702.68
RN Supervisor (ADN)	\$115,025.01	\$931,743.58	\$1,046,768.59
RN Vent	\$221.78	\$12,173.70	\$12,395.48
Security	\$6,452.79	\$3,993.96	\$10,446.75
Social Work Director	\$22,535.07	\$114,551.17	\$137,086.24
Social Workers	\$24,706.68	\$224,682.07	\$249,388.75
Speech Therapist	\$10,428.64	\$81,984.31	\$92,412.95
Unit Directors	\$159,576.34	\$556,516.51	\$716,092.85
Wound Care LPN	\$7,295.04	\$51,893.49	\$59,188.53

Wound Care RN	\$21,210.79	\$96,200.69	\$117,411.48
TOTAL	\$20,548,880.56		

01/11/2024 Trial Tr. 111:11–25 (M. Murray); PX-6 at “Summary Tables” Excel Sheet, Tab “AH-03.”

325. The Acting Secretary broke down back wages due according to both the year and specific Facility Defendant. PX-6 at “Summary Tables” Excel Sheet, Tab “AH-04.”

326. The Acting Secretary’s summary shows back wages accrued as of the following dates (which reflect the dates contained within Defendants’ concessions of joint and several liability and employer status under the Act (Dkt. 268)):

- A. \$19,652,458.13 accrued on or after August 15, 2016.
- B. \$18,650,339.14 accrued on or after February 1, 2017.
- C. \$18,525,328.54 accrued on or after February 15, 2017.
- D. \$16,638,253.91 accrued on or after September 18, 2017.

Back Wages Summary.

327. Although Defendants’ violations of the Act are interrelated, Acting Secretary estimated: (1) the frequency of Defendants failing to pay employees for work performed outside of their normal schedule; (2) the frequency of Defendants paying straight time rates for overtime hours worked, and; (3) the frequency of Defendants failing to include the bonuses and shift differentials in the “regular rate.” PX-6 at “Summary Tables” Excel Sheet.

328. The Acting Secretary estimates that, if Defendants’ automatic break deduction of 30 minutes is re-applied to their pay and time records, they still owe \$8,370,411.15 in back wages, which consists of \$1,281,691.70 in overtime gap time due and \$7,088,719.45 in overtime due. In other words, the Acting Secretary’s best estimate of back wages due from Defendants’ meal break violations is \$12,178,469.41, consisting of \$2,352,987.10 in

overtime gap time due and \$8,543,790.61 in overtime due. PX-6 at “BD & Bonus Summary Tables” Excel Sheet, Tab “Grand Totals.”

329. The Acting Secretary estimates that, if the bonuses missing from the “regular rate” are not factored in, Defendants still owe \$18,803,685.17 in back wages, which consists of \$3,390,161.04 in overtime gap time and \$15,413,524.13 in overtime. In other words, the Acting Secretary’s best estimate of back wages due from Defendants’ failure to include bonuses in the “regular rate” is \$1,745,195.40, consisting of \$244,517.77 in overtime gap time due and \$1,500,677.63 in overtime due. PX-6 at “BD & Bonus Summary Tables” Excel Sheet, Tab “Grand Totals.”

330. The Acting Secretary broke the estimates down by year and by Facility Defendant. PX-6 at “BD & Bonus Summary Tables” Excel Sheet, Tab “By Year and Facility.”

331. Although the Acting Secretary has proven that Defendants willfully violated the Act, her summaries also include versions where the impact of a willfulness finding is omitted. PX-6 at “Summary Tables” Excel Sheet, Tabs “Not Willful.”

332. Because of the Acting Secretary’s filing date and the tolling agreements entered prior to litigation, even if willfulness is not found, Defendants still owe \$20,283,266.59 in back wages. PX-6 at “Summary Tables” Excel Sheet, Tab “AH-01 Not Willful.”

d. *Defendants Did Not Rebut the Acting Secretary’s Prima Facie Case on Back Wages*

333. Defendants do not contest the Acting Secretary’s methodology for determining back wages due. 01/11/2024 Trial Tr. 25:21–26:21 (“THE COURT: Am I correctly summarizing your position that you are not challenging the integrity of his methodology? You are only calling into question some of his conclusions? MR. SCHWARTZ: That’s exactly right.”).

334. Defendants did not attempt to establish any alternative methodology for determining back wages due. 02/12/2024 Trial Tr. 192:1–7 (A. Pechman: “Q. You, sir, have not made any attempt either at your own behest or at the behest of your employer to ascertain the amount of money owed, is that right? A. No. Q. Is it not right or you did not do it? A. I did not make any calculation as to the backpay owed.”).

335. None of Defendants’ witnesses testified specifically as to the Acting Secretary’s back wages summary.
336. Most of Defendants’ witnesses testified that they have little, if any, direct knowledge of Defendants’ time and pay records. 02/12/2024 Trial Tr. 113:5–15, 144:5–145:8 (S. Halper); 02/13/2024 Trial Tr. 70:17–19 (D. Ferraro); 02/13/2024 Trial Tr. 126:24–127:1, 140:14–16 (C. Rivera); 02/14/2024 Trial Tr. 17:7–9 (L. Desmet); 02/14/2024 Trial Tr. 43:4–22 (R. Jordan); 02/14/2024 Trial Tr. 91:25–92:15 (M. Hough); 02/14/2024 Trial Tr. 186:4–21 (C. Hill).
337. Most of Defendants’ witnesses testified that they had no basis to contest the information contained within Defendants’ time and pay records. 02/12/2024 Trial Tr. 145:6–8 (S. Halper: “Q. Whatever is on the face of those records, sir, you don’t have a basis to challenge the accuracy of them? A. Not myself, no.”); 02/14/2024 Trial Tr. 21:17–21 (L. Desmet); 02/14/2024 Trial Tr. 55:12–22 (R. Jordan); 02/14/2024 Trial Tr. 180:5–11, 186:22–25 (C. Hill); 02/14/2024 Trial Tr. 91:25–92:15, 123:25–124:3 (M. Hough).
338. Most of Defendants’ witnesses’ testimony lacked specificity as to hours worked and/or wages paid. 02/12/2024 Trial Tr. 77:13–14 (S. Halper claiming that the “super majority of the time everybody takes a lunch” or employees otherwise fill out paperwork and our paid, without offering any specific detail); 02/12/2024 Trial Tr. 173:11–14 (A. Pechman: “Q. So is it possible that there are payroll time records that show more than 40 hours or more than 80 hours when everything should be paid at straight time? A. Yes.”); 02/14/2024 Trial Tr. 55:23–56:4 (R. Jordan unable to identify any specific employees that received uninterrupted lunch); 02/14/2024 Trial Tr. 90:6–13 (same for M. Hough).
339. Defendant witnesses who made broad claims about Facility Defendants’ working conditions that are inconsistent with the rest of the record conceded that they rarely, if ever, personally and directly observe Facility Defendants’ working conditions. 02/12/2024 Trial Tr. 141:18–142:8, 143:25–144:4 (S. Halper); 02/14/2024 Trial Tr. 218:10–12, 218:25–219:11, 220:20–25, 224:9–14 (J. Teitelbaum).

C. Proposed Conclusions of Law

1. The Court has subject-matter jurisdiction over this action.
2. The Court has personal jurisdiction over Defendants.
3. Defendants are subject to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*,
4. The Fair Labor Standards Act requires employers to compensate employees for all time worked. 29 U.S.C. § 207(a); 29 C.F.R. § 778.109.
5. The Fair Labor Standards Act defines the term “employ” as “to suffer or permit to work.” 29 U.S.C. § 203(g).
6. The FLSA requires employers to pay their employees one and one-half times the employees’ “regular rate” for hours worked in excess of the forty hours in a workweek. 29 U.S.C. § 207(a)(1). 29 C.F.R. § 778.109.
7. Section 7(e) of the FLSA defines the “regular rate” as “all remuneration for employment paid to, or on behalf of, the employee” except for specific types of payment listed under subsection (e)(1) through (e)(8). 29 U.S.C. § 207(e).
8. Defendants bear the burden to establish that remuneration paid to an employee falls within an exception and should therefore not be included the “regular rate.”
9. An employer cannot be deemed to have paid all overtime wages due unless they have also paid all straight time wages due in that same period. Accordingly, the FLSA permits recovery of “overtime gap time” where there is proof of unpaid straight time hours in a pay period where the employee worked overtime hours.
10. Section 11(c) of the FLSA (29 U.S.C. § 211(c)), requires employers to maintain accurate records to ensure that all workers are paid the required wage for every hour worked.
11. Under the FLSA, an employer’s pay records must include hours worked per day and week, records of the amounts paid to each employee per week, premium overtime, as well as the daily starting and stopping time of individual employees.

12. Under the FLSA, employers must maintain and preserve for each individual employee records for each pay period that show the total deductions from wages paid.
13. Employers must maintain the required pay and time records for at least three years.
14. Defendants violated the FLSA in numerous respects, as detailed in the facts the Acting Secretary established in this matter.
15. Defendants failed to accurately record the hours worked by the employees identified on the Acting Secretary's Schedule A, as amended, in violation of FLSA Sections 207 and 211.
16. Defendants failed to pay the employees identified on the Acting Secretary's Schedule A, as amended, for all hours worked on Defendants' behalf. This includes, but is not limited to, Defendants' failure to pay employees for time worked outside of their pre-set schedules and Defendants' failure to pay employees for time worked during meal breaks.
17. Defendants' failure to pay employees for all hours worked led to the underpayment of overtime, in violation of FLSA Section 207.
18. Defendants failed to accurately record the pay rates due to the employees identified on the Acting Secretary's Schedule A, as amended, in violation of FLSA Sections 207 and 211.
19. Defendants failed to compensate employees identified on the Acting Secretary's Schedule A, as amended, at the correct pay rates. This includes, but is not limited to:
 - (1) Defendants' failure to pay any compensation for overtime hours worked;
 - (2) Defendants' payment of overtime hours at straight-time rates;
 - (3) Defendants' failure to factor non-discretionary bonuses, both paid and unpaid, into employees' "regular rate";
 - (4) Defendants' failure to factor shift differentials into employees' "regular rate," and;
 - (5) Defendants' failure to combine the hours for employees who worked at more than one Facility Defendant in the same pay period.

20. Defendants' failure to pay employees at the correct pay rates led to the underpayment of overtime, in violation of FLSA Section 207.
21. In certain pay periods where employees worked overtime, Defendants failed to pay all regular wages due to those employees.
22. Defendants' failure to pay all regular wages to employees who worked overtime hours renders them liable for overtime gap time under the FLSA.
23. Defendants did not carry the burden to establish that any employee on Schedule A, as amended, were lawfully classified as exempt from the FLSA's overtime requirements.
24. Because Defendants did not carry their burden to demonstrate that an exemption from overtime applies, none of the employees identified as being due back wages on the Acting Secretary's Schedule A, as amended, are exempt from the Act's overtime requirements.
25. Because Defendants' records are inaccurate, the Acting Secretary was entitled to prove back wages due according to the procedures set forth in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).
26. The Acting Secretary carried her burden to prove a prima facie case that Defendants' employees performed work for which they were improperly compensated.
27. The Acting Secretary's summary of Defendants' time and pay records, and her corresponding determinations of back wages due, are supported by sufficient evidence and are just and reasonable within the meaning of *Mt. Clemens*, meaning she also carried her burden to prove a prima facie case of back wages due.
28. Defendants failed to carry the burden under *Mt. Clemens* to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the Acting Secretary's evidence.

29. The Acting Secretary has proven that the employees identified on the Acting Secretary's Schedule A, as amended, are due \$20,548,880.57 in back wages because of Defendants' violations of the FLSA.
30. The FLSA's two-year statute of limitations (29 U.S.C. § 255(a)) is extended to three years if an employer's violation is "willful."
31. A "willful" violation occurs where the employer knew that its conduct was prohibited by the FLSA or showed reckless disregard for the legality of that conduct.
32. Defendants' violations of the FLSA were willful.
33. At all relevant points, Defendants were aware of the FLSA and its requirements.
34. Defendants were aware that they engaged in conduct prohibited by the FLSA, including:
(1) because they used a payroll system that was designed to deliberately undercount hours worked by the employees identified on the Acting Secretary's Schedule A, as amended; (2) because they used a payroll system that deliberately failed to factor in all compensation paid into employees' "regular rate"; (3) because they used a payroll system that systematically failed to accurately record hours worked and pay rates due, and; (4) because they were aware that, because of these systematic failures, and the failure to correct known errors, employees were not paid all overtime due.
35. The FLSA permits recovery of liquidated damages, equal to the amount of back wages awarded, for violations of the Act's overtime requirements. 29 U.S.C. § 216(c).
Liquidated damages are compensatory, not punitive, and are regularly awarded in FLSA actions to compensate employees for losses they might suffer by reason of not receiving their lawful wage at the time it was due.
36. To avoid imposition of liquidated damages, Defendants bear the "plain and substantial" burden of establishing both good faith and reasonable grounds for the violations at issue. If Defendants fail to meet these burdens, the Court is without discretion to deny liquidated damages.

37. Defendants have not met their burden to establish either good faith or reasonable grounds for their violations. Accordingly, the Court finds that Defendants are liable for \$20,548,880.57 in liquidated damages, an amount equal to their back wage liability.
38. Mr. Halper is a Section 3(d) employer of the employees identified on the Acting Secretary's Schedule A, as amended.
39. Mr. Halper is a joint employer of the employees identified on the Acting Secretary's Schedule A, as amended.
40. Mr. Halper is jointly and severally liable for the \$20,548,880.57 in back wages and \$20,548,880.57 in liquidated damages due to the employees identified on the Acting Secretary's Schedule A, as amended.
41. CHMS Group is a joint employer of the employees identified on the Acting Secretary's Schedule A, as amended.
42. CHMS Group is jointly and severally liable for the \$20,548,880.57 in back wages and \$20,548,880.57 in liquidated damages due to the employees identified on the Acting Secretary's Schedule A, as amended.
43. Consistent with the dates identified above, Facility Defendants are joint employers of the employees identified on the Acting Secretary's Schedule A, as amended.
44. Consistent with the dates identified above, Facility Defendants are jointly and severally liable for the \$20,548,880.57 in back wages and \$20,548,880.57 in liquidated damages due to the employees identified on the Acting Secretary's Schedule A, as amended.
45. Upon a showing of cause, the FLSA authorizes issuance of injunctive relief to restrain violations of Section 206 and 207. 29 U.S.C. § 217.
46. The Court has considered the required factors for an injunction, which include Defendants' past conduct, Defendants' current conduct, and whether Defendants can be counted on to comply with the FLSA in the future.

47. Based on the evidence presented in this matter, the Court finds that an injunction is warranted because of Defendants' significant past violations of the FLSA, their continuing, willful violations of the FLSA, and because there is a reasonable probability that Defendants will continue to violate the FLSA.

48. Defendants are permanently enjoined and restrained from violating the of the FLSA as follows:

- A. Defendants shall not violate Section 7(a) of the Fair Labor Standards Act, 29 U.S.C. § 207(a) by failing to pay their non-exempt employees at least time and one-half their regular rates for all hours worked in excess of forty per workweek;
- B. Defendants shall pay all non-exempt employees at least time and one-half their regular rates for all hours worked in excess of forty per workweek under Section 7(a) of the Fair Labor Standards Act, 29 U.S.C. § 207(a);
- C. Defendant shall not violate Section 11(c) of the Fair Labor Standards Act, 29 U.S.C. § 211(c), and 29 C.F.R. § 516, *et seq.*, by failing to make, keep, and preserve records of their employees and of the wages, hours, and other conditions and practices of employment;
- D. Defendants shall make, keep, and preserve records of their employees and of the wages, hours, and other conditions and practices of employment pursuant to Section 11(c) of the Fair Labor Standards Act and 29 C.F.R. § 516, *et seq.*;
- E. Defendants shall make, keep, and preserve the following records for all employees: first and last names, contact information, start and end dates, regularly hourly rate of pay, daily hours worked, total weekly hours worked, total daily or weekly straight-time earnings, and total premium pay for overtime hours. 29 C.F.R. § 516.2, and;
- F. Defendants shall make, keep, and preserve these records for at least three years. 29 C.F.R. § 516.5.

49. The Court retains jurisdiction of this action to ensure compliance with the judgment issued.

CERTIFICATE OF SERVICE

I hereby certify that, on June 10, 2024, I electronically filed the foregoing Acting Secretary's Phase II Proposed Findings of Fact and Conclusions of Law, as well as supporting documents, by using the CM/ECF system.

Date: June 10, 2024

/s/ Alejandro A. Herrera

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