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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JUSTINA BELL, individually and on behalf of all others similarly situated, **Plaintiff,** **-against-** **THROGGS NECK WALK-IN MEDICAL CARE P.C.; ADEPT INPATIENT MEDICAL SERVICES, P.C; WALK IN MEDICAL URGENT CARE, P.C.; FIRST CHOICE WALK IN MEDICAL CARE, P.C.; SOUTH NASSAU WALK-IN MEDICAL CARE, P.C.; DWELL MEDICAL GROUP, P.C.; and DR. JASMINDER LUTHRA, individually.** **Defendants.**	**Case No: 16-cv-4021** **CLASS ACTION COMPLAINT**

Plaintiff, Justina Bell, individually and on behalf of all others similarly situated, upon personal knowledge as to herself and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover overtime compensation, liquidated damages, and statutory penalties for Plaintiff and those similarly situated physician assistants who work or have worked for Throggs Neck Walk-In Medical Care, P.C.; Adept Inpatient Medical Services, P.C.; Walk In Medical Urgent Care, P.C.; First Choice Walk In Medical Care, P.C.; South

Nassau Walk-In Medical Care, P.C.; Dwell Medical Group, P.C. and Dr. Jasminder Luthra, individually (collectively, "Defendants").

2. Defendants collectively own and operate several emergency walk-in medical clinics in the greater New York City area. Specifically, Defendants own and operate the clinics formerly known as: Throggs Neck Urgent Care, 3231 East Tremont Avenue, Bronx, New York 10461 ("Tremont Clinic"); Throggs Neck Urgent Care/Urgent Care of Eastchester Road, 2304 Eastchester Road, Bronx, New York 10469 ("Eastchester Clinic"); Throggs Neck Urgent Care /Urgent Care of Riverdale, 5665 Riverdale Avenue, Bronx, New York 10471 ("Riverdale Clinic"); Throggs Neck Urgent Care/Yonkers Urgent Care, 909 Midland Avenue, Yonkers, New York 11385 ("Yonkers Clinic"); Throggs Neck Urgent Care, 1381 White Plains Road, Bronx, New York 10462 ("White Plains Road Clinic"); Urgent Care of Westchester County, 155 White Plains Road, Tarrytown, New York 10591 ("Tarrytown Clinic"); Nassau South Urgent Care/Urgent Care of Glendale, 88-89 Union Turnpike, Glendale, New York 11385 ("Glendale Clinic"); Nassau South Urgent Care, 808A Hicksville Road, Massapequa, New York 11758 ("Massapequa Clinic"); Nassau South Walk In Medical Care, 2710 Long Beach Road, 2nd Floor, Oceanside, New York 11572 ("Oceanside Clinic"); Nassau South Urgent Care, Middletown 643 Route 211E, Middletown, New York 10941 ("Middletown Clinic"); Walk-In Medical Urgent Care of New City, 236 S. Main Street, New City, New York 10956 ("New City Clinic"); and First Choice Walk In Medical Care, 210-12 Northern Boulevard, Bayside, New York 11361 ("Bayside Clinic").

3. After notice of this FLSA claim, the above clinics changed names to "Dwell Family Doctors." Dwell Family Doctors operates under the corporate entity of Dwell Medical Group, P.C.

4. In addition to the above listed clinics, Dwell Medical Group, P.C. also operates an additional walk-in clinic located at 50 Glen Cove Road, Greenvale, New York 11548 ("Roslyn Clinic") (collectively, "the Walk-In Clinics").

5. Other than change in name, however, the above clinics operate under the same ownership and management.

6. At all times relevant, Defendants have been part of a single integrated enterprise that has jointly employed Plaintiff and other physician assistants at the Walk-In Clinics.

7. Defendants have been and are currently linked together through common corporate ownership and management. Throggs Neck Walk-In Medical Care P.C.; Adept Inpatient Medical Services, P.C.; Walk In Medical Urgent Care, P.C.; South Nassau Walk-In Medical Care, P.C. all list Defendant Dr. Jasminder Luthra as their Chief Executive Officer in their New York State corporate filings. In addition, Throggs Neck Walk-In Medical Care P.C., Adept Inpatient Medical Services, P.C., and Walk-In Medical Urgent Care, P.C. share the same executive offices – 15 Hendrick South, Irvington, New York 10533 – an address associated with Defendant Dr. Jasminder Luthra.

8. Prior to the name change, the Walk-In Clinics, with the exception of the Roslyn Clinic, referenced themselves as related clinics on their individual websites. In this regard, the clinics' former websites referenced the above locations as related locations in the "Contact Us" portion of their websites. The websites broke down the locations into groups based on geographic location – Bronx locations, Long Island locations, Westchester County locations, Rockland County locations, and Queens location – and did not differentiate in any way between corporate ownership or management.

9. The Walk-In Clinics are presently linked together through a central website – http://www.dwellfamilydoctors.com – which enables users to view all Walk-In Clinics operated by Defendants. This central website allows users to view all locations in its "Locations" tab, which lists all of the Walk-In Clinics contact information, and even clarifies their former names. As means of an example, the present website describes the former walk-in clinics located in the Bronx as "Formerly Throggs Neck Urgent Care" and the former Tarrytown Clinic as "Formerly Urgent Care of Westchester."[1]

10. In addition, the Walk-In Clinics' former dedicated websites redirect visitors to the Dwell Family Doctors website, which states that Dwell operates the Walk-In Clinics and employs the same providers and staff. For example, visiting Throggs Neck Urgent Care's former website – www.Throggsneckuc.com - redirects a visitor to a landing page informing visitors "Throggs Neck Urgent Care is now Dwell Family Doctors" and also states "New Name. Same Great Providers & Staff."[2]

11. At all times relevant, Defendants have shared employees, including Plaintiff and similarly situated physician assistants, between locations without requiring reapplication for employment or retraining, and have provided centralized schedules for their shared employees listing their placements among various Walk-In Clinics.

12. At all relevant times, Defendant Dr. Jasminder Luthra has been and remains involved in the ownership and day-to-day management of the Walk-In Clinics and their employees.

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[1] *See* Dwell Family Doctors, Home Page, available at http://www.dwellfamilydoctors.com (last accessed May 27, 2016).

[2] Dwell Family Doctors, Redirection Page, available at http://www.dwellfamilydoctors.com/welcome-throggs-neck/ (last accessed May 26, 2016).

13. Defendants at all times relevant to this Class Action Complaint have compensated Plaintiff and other similarly situated physician assistants on an hourly basis.

14. As a result, Plaintiff and other similarly situated physician assistants have been non-exempt employees of Defendants, and are thus entitled to 1.5 times their regular rate of pay for all hours worked over 40 in a given workweek.

15. Defendants have also instituted a policy and practice of splitting their employees' total weekly hours worked among the corporations' various payroll accounts. The result is that Defendants have failed to pay the appropriate overtime premium for total hours worked over 40 in a given week for the joint enterprises.

16. Defendants also failed to provide Plaintiff and similarly situated physician assistants with proper annual wage notices and accurate wage statements as required by the NYLL.

17. Plaintiff brings this action on behalf of herself and all others similarly situated current and former physician assistants who elect to opt into this action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") to remedy the violation of the FLSA's overtime provision.

18. Plaintiff also brings this action on behalf of herself and a class of similarly situated current and former physician assistants who work or have worked for Defendants in New York pursuant to Rule 23 of the Federal Rules of Civil Procedure to remedy violations of the New York Labor Law ("NYLL") Article 6, § 195 *et seq.* and Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

THE PARTIES

Plaintiff

Justina Bell

19. Justina Bell is an adult individual who currently is a resident of San Jose County, California. At the time of her employment with Defendants, she was a resident of New York County, New York.

20. Bell was employed by Defendants as a physician assistant from in or around October 2012 through September 2015.

21. A written consent form for Bell is filed with this Complaint.

Defendants

22. Defendants jointly employed Plaintiff and similarly situated employees at all times relevant.

23. Each Defendant had substantial control over Plaintiff's working conditions, and over the unlawful policies and practices alleged herein.

24. Defendants are part of a single integrated enterprise that has jointly employed Plaintiff and similarly situated employees at all times relevant.

25. During all relevant times, Defendants' operations are interrelated and unified.

26. During all relevant times, Defendants have applied the same employment policies, practices, and procedures to all physician assistants without regard to their specifically assigned clinic location(s).

27. During all relevant times, Defendants have centrally controlled the labor relations of the Walk-In Clinics.

28. During all relevant times, Defendants allowed employees to transfer or be shared by and between the Walk-In Clinics, including Plaintiff and similarly situated physician assistants, without reapplication for employment or retraining.

29. During all relevant times, Defendants have been Plaintiff's employers within the meaning of the FLSA.

Throggs Neck Walk-In Medical Care, P.C.

30. Together with the other Defendants, Throggs Neck Walk-In Medical Care, P.C. ("Throggs Neck Walk-In Medical Care") has owned and/or operated the Walk-In Clinics during the relevant time period.

31. Throggs Neck Walk-In Medical Care is a domestic for-profit corporation existing under the laws of New York.

32. Throggs Neck Walk-In Medical Care lists Dr. Jasminder Luthra as its Chief Executive Officer located at 15 Hendrick S, Irvington, New York 10533. Its principal executive office is listed as 3231 East Tremont Avenue, Bronx, New York 10461, the same location as the Tremont Clinic.

33. At all relevant times, Throggs Neck Walk-In Medical Care has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

34. Throggs Neck Walk-In Medical Care applies the same employment policies, practices, and procedures to all physician assistants at the above referenced clinics.

35. Plaintiff received paychecks from Throggs Neck Walk-In Medical Care during her employment.

36. Plaintiff received an employment contract from Throggs Neck Walk-In Medical Care for full-time employment in July 2013.

37. At all times relevant, Throggs Neck Walk-In Medical Care has had an annual gross volume of sales in excess of $500,000.

Adept Inpatient Medical Services, P.C.

38. Together with the other Defendants, Adept Inpatient Medical Services, P.C. ("Adept Inpatient Medical Services") has owned and/or operated the Walk-In Clinics during the relevant time period.

39. Adept Inpatient Medical Services is a domestic for-profit corporation organized and existing under the laws of New York.

40. Adept Inpatient Medical Services lists Dr. Jasminder Luthra as its Chief Executive Officer located at 15 Hendrick S., Irvington, New York 10533. Its principal executive office is listed as 15 Hendrick S., Irvington, New York 10533.

41. At all relevant times, Adept Inpatient Medical Services has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

42. Adept Inpatient Medical Services applies the same employment policies, practices, and procedures to all physician assistants at the above referenced clinics.

43. Plaintiff received paychecks from Adept Inpatient Medical Services during her employment.

44. At all times relevant, Adept Inpatient Medical Services has had an annual gross volume of sales in excess of $500,000.

Walk-In Medical Urgent Care, P.C.

45. Together with the other Defendants, Walk-In Medical Urgent Care, P.C. ("Walk-In Medical Urgent Care") has owned and/or operated the Walk-In Clinics during the relevant time period.

46. Walk-In Medical Urgent Care is a domestic for-profit corporation existing under the laws of New York.

47. Walk-In Medical Urgent Care lists Dr. Jasminder Luthra as its Chief Executive Officer located at 15 Hendrick S., Irvington, New York 10533. Its principal executive office is listed as 15 Hendrick S., Irvington, New York 10533.

48. At all relevant times, Walk-In Medical Urgent Care has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

49. Walk-In Medical Urgent Care applies the same employment policies, practices, and procedures to all physician assistants at the above referenced clinics.

50. At all times relevant, Walk-In Medical Urgent Care has had an annual gross volume of sales in excess of $500,000.

First Choice Walk In Medical Care, P.C.

51. Together with the other Defendants, First Choice Walk In Medical Care, P.C. ("First Choice Walk In Medical Care") has owned and/or operated the Walk-In Clinics during the relevant time period.

52. First Choice Walk In Medical Care is a domestic for-profit corporation existing under the laws of New York.

53. First Choice Walk In Medical Care does not list any chief executive officer or principal executive office in its New York State corporate filings. First Choice Walk In Medical Care lists its address as 210-02 Northern Boulevard, Bayside, New York 11360, the same location as the Bayside Clinic.

54. At all relevant times, First Choice Walk In Medical Care has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

55. First Choice Walk In Medical Care applies the same employment policies, practices, and procedures to all physician assistants at the above referenced clinics.

56. At all times relevant, First Choice Walk In Medical Care has had an annual gross volume of sales in excess of $500,000.

South Nassau Walk-In Medical Care, P.C.

57. Together with the other Defendants, South Nassau Walk-In Medical Care, P.C. ("South Nassau Walk-In Medical Care") has owned and/or operated the Walk-In Clinics during the relevant time period.

58. South Nassau Walk-In Medical Care is a domestic for-profit corporation existing under the laws of New York.

59. South Nassau Walk-In Medical Care lists Dr. Jasminder Luthra as its Chief Executive Officer located at 2710 Long Beach Road, Oceanside, New York 11572, the same address as the Oceanside Clinic.

60. At all relevant times, South Nassau Walk-In Medical Care has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

61. South Nassau Walk-In Medical Care applies the same employment policies, practices, and procedures to all physician assistants at the above referenced clinics.

62. At all times relevant, South Nassau Walk-In Medical Care has had an annual gross volume of sales in excess of $500,000.

Dwell Medical Group, P.C.

63. Together with the other Defendants, Dwell Medical Group, P.C. ("Dwell Medical") has owned and/or operated the Walk-In Clinics during the relevant time period.

64. Dwell Medical is a domestic for-profit corporation existing under the laws of New York. Its initial filing date with New York State was December 8, 2015.

65. Dwell Medical does not list any chief executive officer or principal executive office in its New York State corporate filings. Dwell Medical lists its address as 2710 Long Beach Road, Oceanside, New York 11572, the same address as the Oceanside Clinic. Dwell Medical's current website lists this address as being "Formerly Nassau South Urgent Care."[3]

66. When redirecting users from the Walk-In Clinics' former websites to its current website, Dwell Medical identifies each clinics' former name and states "New Name. Same Great Providers & Staff."

67. Dwell Medical owns and operates the Walk-in Clinics, and applies the same employment policies, practices, and procedures to all employees, including physician assistants.

68. At all relevant times, Dwell Medical has maintained control, oversight, and direction over similarly situated physician assistants at all the Walk-In Clinics, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

[3] Oceanside Location, Dwell Family Doctors Website, available at http://www.dwellfamilydoctors.com/locations/#oceanside (last accessed May 27, 2016).

69. Dwell Medical had notice of this FLSA claim prior to its formation and prior to any acquisition or merger, if any, of the corporate co-Defendants in this matter.

70. Dwell Medical has continued the business operations of the Walk-In Clinics without substantial change in polices, practices, ownership, and supervisory personnel. As means of an example, Luthra remains involved in the day-to-day management of employees at the various Clinics, and remains an owner of the Walk-In Clinics.

71. Dwell Medical utilizes the same facilities to provide the same medical services as did co-Defendants Throggs Neck Walk-In Medical Care, Adept Inpatient Medical Services, Walk-In Urgent Care, First Choice Walk In Medical Care, and South Nassau Walk-In Medical Care.

72. At all times relevant, Dwell Medical has had an annual gross volume of sales in excess of $500,000.

Dr. Jasminder Luthra

73. Upon information and belief, Dr. Jasminder Luthra ("Luthra") is a resident of the State of New York.

74. At all relevant times, Luthra has been an owner and operator of the Walk-In Clinics and corporate Defendants.

75. Luthra is listed as "Chief Executive Officer" of Throggs Neck Walk-In Medical Care, Adept Inpatient, Walk-In Urgent Care, and South Nassau Walk-In Medical Care.

76. Upon information and belief, Luthra holds an equivalent position for First Choice Walk In Medical Care and Dwell Medical.

77. At all relevant times, Luthra has had the power over personnel decisions at the Walk-In Clinics, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

78. In this regard, Plaintiff interviewed with Luthra for employment with Defendants, and was ultimately hired by Luthra. Luthra determined Plaintiff's initial and subsequent rates of pay, and offered her full-time employment beginning in or around July 2013, and signed on behalf of Defendants when offering her a full-time employment contract.

79. At all times relevant, Luthra has been actively involved in managing the day-to-day operations of the Walk-In Clinics.

80. At all times relevant, Luthra has had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.

81. At all times relevant, Luthra has had the power to transfer the assets and/or liabilities of the Walk-In Clinics.

82. At all times relevant, Luthra has had the power to declare bankruptcy on behalf of the Walk-In Clinics.

83. At all times relevant, Luthra has had the power to enter into contracts on behalf of the Walk-In Clinics.

84. Luthra is a covered employer within the meaning of the FLSA, and at all relevant times, has employed and/or jointly employed Plaintiff and similarly situated employees.

JURISDICTION AND VENUE

85. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1337, and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

86. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

87. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

88. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(1) because Defendants operate business within this district, and all Defendants are residents of the State of New York.

COLLECTIVE ACTION ALLEGATIONS

89. Plaintiff brings the First Cause of Action, the FLSA overtime claim, on behalf of herself and all similarly situated current and former physician assistants employed by Defendants for a period of three years prior to the filing of this Class Action Complaint and the date of final judgment in this matter, and who elect to opt-in to this action (the "FLSA Collective Members").

90. At all relevant times, Plaintiff and the FLSA Collective Members are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subject to Defendants' common practices, policies, and routines with regards to their compensation, including their willful failing and refusing to pay Plaintiff at the legally required overtime rate for all hours worked forty in any given workweek. Plaintiff's claims stated herein are essentially the same as those of the other members of the FLSA Collective.

91. All of the work that Plaintiff and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiff and the FLSA Collective have performed.

92. As part of their regular business practices, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice and/or policy of violating the FLSA with

respect to Plaintiff and the FLSA Collective. These policies and practices include, but are not limited to:

a. Willfully failing to pay Plaintiff and the FLSA Collective 1.5 times their regular rate of pay for hours that they worked in excess of 40 hours per week; and

b. Willfully paying its employees, including Plaintiff and the FLSA Collective, from different payroll accounts for work performed for the joint enterprise in an attempt to reduce any amount of overtime compensation owed.

93. Defendants are aware or should have been aware that federal law required them to pay its employees, including Plaintiff and the FLSA Collective, an overtime premium for hours worked in excess of 40 per workweek.

94. Plaintiff and the FLSA Collective have all performed the same primary duties.

95. Defendants' unlawful conduct has been widespread, repeated, and consistent.

96. The First Causes of Action is properly brought under and maintained as an opt-in collective action pursuant to 29 U.S.C. 216(b).

97. The FLSA Collective Members are readily ascertainable.

98. For the purpose of notice and other purposes related to this action, the FLSA Collective Members' names and addresses are readily available from Defendants' records.

99. Notice can be provided to the FLSA Collective Members via first class mail to the last address known to Defendants.

CLASS ALLEGATIONS

100. Plaintiff brings the Second and Third Causes of Action, NYLL claims, under Rule 23, on behalf of herself and a class of persons consisting of:

> All persons who work or have worked as a physician assistant at any clinic owned and/or operated by Throggs Neck Walk-In Medical Care, Adept Inpatient Medical Services, Walk-In Medical Urgent Care, First Choice Walk In Medical Care, South Nassau Walk-In Medical Care, and Dwell Medical Group between May 31, 2010 through the date of final judgment in this matter (the "Rule 23 Class").

101. Excluded from the Rule 23 Class Members are Defendants, Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

102. The members of the Rule 23 Class ("Rule 23 Class Members") are readily ascertainable. The number and identity of the Rule 23 Class Members are determinable from the Defendants' records. The positions held, and the rates of pay for each Rule 23 Class Member, are also determinable from Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Federal Rule of Civil Procedure 23.

103. The Rule 23 Class Members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

104. Based on information and belief there are more than forty Rule 23 Class Members.

105. Plaintiff's claims are typical of those claims that could be alleged by any Rule 23 Class Member, and the relief sought is typical of the relief that would be sought by each Rule 23 Class Member in separate actions.

106. All the Rule 23 Class Members were subject to the same corporate practices of Defendants, as alleged herein, of failing to provide proper wage and hour notices, and failing to provide accurate wage statements.

107. Plaintiff and the Rule 23 Class Members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL.

108. Plaintiff and the Rule 23 Class Members have all been injured due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Rule 23 Class Members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class Members.

109. Plaintiff and other Rule 23 Class Members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

110. Plaintiff is able to fairly and adequately protect the interests of the Rule 23 Class Members and has no interests antagonistic to the Rule 23 Class Members.

111. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

112. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated

persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Rule 23 Class Members are small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Rule 23 Class Members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual Rule 23 Class Members would create a risk of inconsistent and/or varying adjudications with respect to the individual Rule 23 Class Members, establishing incompatible standards of conduct for Defendants and resulting in the impairment of the Rule 23 Class Members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

113. Upon information and belief, Defendants and other employers throughout the state violate the NYLL. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing these risks.

114. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

115. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting Plaintiff and the Rule 23 Class Members individually and include, but are not limited to, the following:

a. whether Defendants violated NYLL Article 6 and the supporting New York State Department of Labor Regulations;

b. whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the Rule 23 Class Members, and other records required by the NYLL;

c. whether Defendants failed to furnish Plaintiff and the Rule 23 Class Members with proper annual wage notices, as required by the NYLL;

d. whether Defendants failed to furnish Plaintiff and the Rule 23 Class Members with an accurate statements of wages as required by the NYLL;

e. the nature and extent of class-wide injury and the measure of damages for those injuries.

PLAINTIFF'S FACTUAL ALLEGATIONS

Justina Bell

116. Bell was employed by Defendants as a physician assistant from October 2012 through September 27, 2015.

117. Throughout her employment, Bell received bi-weekly paychecks from Defendants Throggs Neck Walk-In Medical Care and Adept Inpatient Medical Services.

118. At all times relevant, Defendants paid Plaintiff on an hourly basis.

119. At all times relevant to the Complaint, Bell was a non-exempt employee and is entitled to 1.5 times her regular rate of pay for all hours worked.

120. Throughout Bell's employment with Defendants, Defendants did not pay her the proper overtime premium of 1.5 her regular rate of pay for all overtime hours she worked or was suffered and/or permitted to work each workweek.

121. From October 2012 to July 2013, Bell worked as a part time employee of Defendants, approximately 12-24 hours per week.

122. Beginning in July 2013, Bell was offered full time employment by Defendants, specifically Defendant Luthra.

123. After becoming a full-time employee, Bell generally worked the following schedule, unless she missed time for sickness, vacation, or holidays:

a. From July 1, 2013 through December 2014, approximately four to five 10-12 hour shifts and one to two 7 hour shifts per week, equating to approximately 47-55 hours per week;

b. From January 2015 through September 27, 2015, approximately four to six 10-to-12 hour shifts and one to two 7 hour shifts per week, equating to approximately 50-65 hours per week.

124. Throughout her employment, Defendants freely transferred and shared Bell between various Walk-In Clinics.

125. Bell was not required to undergo any retraining, or was not required to reapply for employment, and was not required to sign any additional or different employment contracts for work performed at any of the Walk-In Clinics. In addition, Defendants provided Plaintiff with a centralized schedule containing her placement among the various Walk-In Clinics without any

differentiation between corporate ownership or payroll accounts. These schedules also placed other employees in various Walk-In Clinics without any differentiation in corporate ownership.

126. Defendants failed to furnish Bell with proper annual wage notices required by the NYLL.

127. Defendants failed to furnish Bell with accurate statements of wages as required by the NYLL, Article 6 § 195(3), containing, among other items, the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on Behalf of Plaintiff and the FLSA Collective)

128. Plaintiff, on behalf of herself and those similarly situated, realleges and incorporates by reference all allegations in all preceding paragraphs.

129. At all relevant times, each of the Defendants have been, and continue to be, an employer engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of FLSA, 29 U.S.C. § 203. At all relevant times, each Defendant has employed "employee[s]," including Plaintiff and the FLSA Collective.

130. Plaintiff Bell and the FLSA Collective worked in excess of 40 hours the majority of the weeks worked in the relevant time period.

131. Defendants willfully failed to pay Plaintiff Bell and the FLSA Collective 1.5 times their regular rate of pay for all work in excess of 40 hours per workweek.

132. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described herein were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff Bell and the FLSA Collective.

133. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201 *et seq*.

134. As a result of Defendants' violations of the FLSA, Plaintiff Bell and the FLSA Collective have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq*.

SECOND CAUSE OF ACTION
New York Labor Law – Failure to Provide Proper Annual Wage Notices
(Brought on Behalf of Plaintiff and the Rule 23 Class)

135. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

136. Defendants have willfully failed to furnish Plaintiff and the Rule 23 Class with proper annual wage notices as required by NYLL, Article 6, § 195(1), in English or in the language identified by each employee as their primary language, at the time of hiring, and on or before February first of each subsequent year of the employee's employment with the employer, a notice containing: the rate or rates of pay and basis thereof, hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal

place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

137. Through their failure to provide Plaintiff and the Rule 23 Class with proper annual wage notices required by the NYLL, Defendants have violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

138. Due to Defendants' violations of NYLL, Article 6, § 195(1), Plaintiff and the Rule 23 Class are entitled to statutory penalties of fifty dollars for each day that Defendants failed to provide them with proper annual wage notices, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

THIRD CAUSE OF ACTION
New York Labor Law – Failure to Provide Accurate Wage Statements
(Brought on Behalf of Plaintiff and the Rule 23 Class)

139. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

140. Defendants have failed to furnish Plaintiff and the Rule 23 Class with accurate statements of wages with every payment of wages as required by NYLL, Article 6, § 195(3), listing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked.

141. Through their failure to provide Plaintiff and the Rule 23 Class with the wage statements required by the NYLL, Defendants have violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

142. Due to Defendants' violations of NYLL, Article 6, § 195(3), Plaintiff and the Rule 23 Class are entitled to statutory penalties of two hundred fifty dollars for each day that Defendants failed to provide them with proper wage statements, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, collectively and on behalf of all other similarly situated persons, prays for the following relief:

A. That, at the earliest possible time, Plaintiff be allowed to give notice of this collective action, or that the Court issue such notice, to all physician assistants who are presently working at, or who have worked at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, at Defendants' Walk-In Clinics. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid overtime compensation, and an additional and equal amount as liquidated damages, pursuant to the FLSA and the supporting United States Department of Labor Regulations;

C. Statutory penalties of fifty dollars for each day that Defendants failed to provide Plaintiff and the Rule 23 Class with proper annual wage notices, or a total of five thousand hundred dollars each, as provided for by NYLL, Article 6 § 198;

D. Statutory penalties of two hundred fifty dollars for each day that Defendants failed to provide Plaintiff and the Rule 23 Class with accurate wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

E. Reasonable attorneys' fees and costs of the action; and

F. Such other relief as this Court shall deem just and proper.

* * *

Dated: May 31, 2016
New York, New York

Respectfully submitted,

/s/ Armando A. Ortiz
Armando A. Ortiz (AO2120)

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Attorneys for Plaintiff and the Putative Class

FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against THROGGS NECK WALK-IN CARE PC and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate FITAPELLI & SCHAFFER, LLP ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney's fees from any settlement or judgment in the amount of the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

Signature

Justina Bell

Full Legal Name (Print)