

**BUCKLEY LAW P.C.**

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Regarding: Maza et al. v. Waterford et al.

Case No. 14CV03147

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See the attached Defendants' Waterford Operations, LLC and Coos Bay Rehabilitation's LLC Answer, Affirmative Defenses, and Counterclaim to Plaintiffs' Class Action Amended Complaint

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IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF JACKSON

**RENEE MAZA, JODI REAL, and STEVE PRICE**, individuals,

Plaintiffs,

vs.

**WATERFORD OPERATIONS LLC, and COOS BAY REHABILITATION, LLC**, a domestic limited liability company,

Defendants.

Case No. 14CV03147

**DEFENDANTS WATERFORD OPERATIONS, LLC AND COOS BAY REHABILITATION, LLC'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM TO PLAINTIFFS' CLASS ACTION AMENDED COMPLAINT**

Defendants Waterford Operations, LLC, and Coos Bay Rehabilitation, LLC (which are separate legal entities under Oregon law but which may, solely for convenience, hereinafter sometimes collectively be referred to as "Defendants") respond to the allegations made against them in the Class Action Amended Complaint filed by Plaintiffs Renee Maza, Jodi Real, and Steve Price (hereinafter sometimes collectively "Plaintiffs") as follows:

**1.**

In response to the allegations of paragraph 1, Defendants admit that Plaintiffs purport to bring this action under Oregon state wage and hour laws. Defendants deny any remaining allegations of paragraph 1.

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**2.**

In response to the allegations of paragraph 2, Defendants admit that Plaintiffs were formerly employed by Defendant Waterford Operations, LLC, which is located in Jackson County, Oregon. Defendants deny any remaining allegations of paragraph 2.

**3.**

Defendants admit the allegations of paragraph 3.

**4.**

In response to the allegations of paragraph 4, Defendant Waterford Operations admits that it has used the business names "Avamere at Waterford" and "Avamere at Three Mountains." Defendants deny any remaining allegations of paragraph 4.

**5.**

Defendants admit the allegations of paragraph 5.

**6.**

In response to the allegations of paragraph 6, Defendant Coos Bay Rehabilitation, LLC, admits that it has used the business name "Avamere Rehabilitation of Coos Bay." Defendants deny any remaining allegations of paragraph 6.

**7.**

In response to the allegations of paragraph 7, Defendant Waterford Operations, LLC, admits that it does business in Jackson County in the State of Oregon. Defendant Coos Bay Rehabilitation, LLC, admits that it does business in Coos County in the State of Oregon. Defendants deny any remaining allegations of paragraph 7.

**8.**

Paragraph 8 is a legally conclusory statement for which no answer is required.

**9.**

Paragraph 9 includes a legally conclusory statement for which no answer is required. As further answer, Defendant Waterford Operations, LLC, admits that it was formed as a

1 domestic limited liability company under the laws of the State of Oregon. Defendant Coos Bay  
2 Rehabilitation, LLC admits that it was formed as a domestic limited liability company under  
3 the laws of the State of Oregon.

4 **10.**

5 Defendants deny the allegations of paragraph 10.

6 **11.**

7 Defendants deny the allegations of paragraph 11.

8 **12.**

9 Defendants deny the allegations of paragraph 12.

10 **13.**

11 Paragraph 13 is a legally conclusory statement for which no answer is required.

12 **14.**

13 Paragraph 14 is a legally conclusory statement for which no answer is required. To the  
14 extent an answer is deemed required, Defendants deny any violation of any applicable wage  
15 and hour law.

16 **15.**

17 Defendants deny the allegations of paragraph 15.

18 **16.**

19 Defendants deny the allegations of paragraph 16.

20 **17.**

21 In response to the allegations of paragraph 17, Defendants admit that Defendants  
22 maintain computers in their respective facilities for use by employees, including computers that  
23 permit access to the Point Click Care software system. Defendants deny any remaining  
24 allegations of paragraph 17.

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**18.**

Defendants deny the allegations of paragraph 18.

**19.**

Paragraph 19 is a legally conclusory statement for which no answer is required. To the extent an answer is deemed required, Defendants deny any violation of any applicable wage and hour law.

**20.**

Defendants deny the allegations of paragraph 20.

**21.**

In response to the allegations of paragraph 21, Defendants admit that some employees have been paid wages through a payroll debit card ("Pay Card").

**22.**

Defendants deny the allegations of paragraph 22.

**23.**

Defendants deny the allegations of paragraph 23.

**24.**

In response to the allegations of paragraph 24, Defendant Waterford Operations, LLC and Defendant Coos Bay Rehabilitation, LLC, each deny that they charged fees for an employee's use of a Pay Card. Plaintiffs have not specifically identified any alleged "fees for usage" incurred for use of the Pay Card. Defendants are without knowledge or information sufficient to form a belief as to what fees for usage are the subject of Plaintiffs' Complaint and therefore deny the allegations of paragraph 24.

**25.**

Paragraph 25 is a legally conclusory statement for which no answer is required. To the extent an answer is required, Defendants deny the allegations of paragraph 25.

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**26.**

Defendants deny the allegations of paragraph 26.

**27.**

Defendants deny the allegations of paragraph 27.

**28.**

Paragraph 28 is a legally conclusory statement for which no answer is required.

**29.**

In response to the allegations of paragraph 29, Defendant Waterford Operations, LLC, admits knowledge of the termination of Plaintiffs' employment with Defendant Waterford Operations, LLC. With respect to the remaining allegations of paragraph 29, Defendants are without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore deny the same.

**30.**

Paragraph 30 is a legally conclusory statement for which no answer is required. To the extent an answer is deemed required, Defendants admit that Defendants relied upon their respective hourly employees to accurately and fully record all hours worked and that Defendants relied upon these records to pay wages due to their respective employees in accordance with applicable law. Except as so admitted, Defendants deny the allegations of paragraph 30.

**31.**

In response to the allegations of paragraph 31, Defendants admit that Defendants offered Pay Cards as one method to pay wages to their respective employees. Except as so admitted, Defendants deny the allegations of paragraph 31.

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1 **I. PARTIES**

2 **32.**

3 Paragraph 32 includes a legally conclusory statement for which no answer is required by  
4 Defendants. As further answer, Defendants admit that Plaintiffs were formerly employed by  
5 Defendant Waterford Operations, LLC. Except as specifically admitted herein, Defendants  
6 deny the allegations of paragraph 32.

7 **33.**

8 Defendants deny the allegations of paragraph 33.

9 **34.**

10 In response to the allegations of paragraph 34, Defendants admit that they each have  
11 used a Kronos time-keeping system at their respective facilities. All remaining allegations of  
12 paragraph 34 are denied.

13 **35.**

14 In response to the allegations of paragraph 35, Defendants admit that each Defendant  
15 separately processes its own payroll for its respective employees. Each Defendant uses the  
16 services of the same payroll company to facilitate the payment of wages to their respective  
17 employees. All remaining allegations of paragraph 35 are denied.

18 **36.**

19 Defendants deny the allegations of paragraph 36.

20 **II. CLASS ACTION ALLEGATIONS**

21 **37.**

22 Defendants admit that Plaintiffs purport to seek class certification pursuant to ORCP 32.  
23 Defendants deny that Plaintiffs are similarly situated to each other, deny that Plaintiffs are  
24 similarly situated to any other individuals, and deny any allegation or implication that class  
25 certification is appropriate. Except as specifically admitted herein, Defendants deny each and  
26 every allegation contained in paragraph 37.

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**(Unpaid Wages Class)**

**38.**

Defendants admit that Plaintiffs purport to bring an action on behalf of a proposed class as defined by paragraph 38 of Plaintiffs' Complaint. Defendants deny that class treatment of Plaintiffs' claims is appropriate. Except as specifically admitted herein, Defendants deny each and every allegation contained in paragraph 38.

**(Lunch Class)**

**39.**

Defendants admit that Plaintiff purports to bring an action on behalf of a proposed class as defined by paragraph 39 of Plaintiffs' Complaint. Defendants deny that class treatment of Plaintiffs' claims is appropriate. Except as specifically admitted herein, Defendants deny each and every allegation contained in paragraph 39.

**(Pay Card Class)**

**40.**

Defendants admit that Plaintiffs purport to bring an action on behalf of a proposed class as defined by paragraph 40 of Plaintiffs' Complaint. Defendants deny that class treatment of Plaintiffs' claims is appropriate. Except as specifically admitted herein, Defendants deny each and every allegation contained in paragraph 40.

**(Late Payment Class)**

**41.**

Defendants admit that Plaintiffs purport to bring an action on behalf of a proposed class as defined by paragraph 41 of Plaintiffs' Complaint. Defendants deny that class treatment of Plaintiffs' claims is appropriate. Except as specifically admitted herein, Defendants deny each and every and every allegation contained in paragraph 41.

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**42.**

The first two sentences of paragraph 42 are legally conclusory statements for which an answer is not required. With respect to the third sentence of paragraph 42, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore deny the same.

**43.**

Paragraph 43 is a legally conclusory statement for which an answer is not required. Further, ORCP 32, which is referenced in paragraph 43, is a written statute that speaks for itself. To the extent Plaintiffs' paragraph 43 asserts any factual allegations, Defendants deny.

Numerosity of the Class (ORCP 32 A(1))

**44.**

With respect to the last sentence of paragraph 44, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore deny the same. All remaining allegations of paragraph 44 are denied.

Commonality (ORCP 32 A(2))

**45.**

Defendants deny the allegations of paragraph 45 and each discrete subpart thereto.

Typicality (ORCP 32 A(3))

**46.**

Defendants deny the allegations of paragraph 46 and each discrete subpart thereto.

Adequacy of Plaintiffs' Representation (ORCP 32 A(4))

**47.**

Defendants deny the allegations of paragraph 47 and each discrete subpart thereto.

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**III. COMMON ALLEGATIONS**

**57.**

The allegations of paragraph 57 are legal conclusions that do not a response from Defendants. To the extent a response is required, Defendants deny. Any factual allegations in paragraph 57 are denied.

**58.**

Defendants deny the allegations of paragraph 58.

**59.**

Paragraph 59 contains legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny. Defendants deny all factual allegations contained in paragraph 59.

**60.**

In response to the allegations of paragraph 60, Defendants are without knowledge or information sufficient to form a belief as to the allegations of what Plaintiff's may or may not have viewed, and therefore deny the same. All remaining allegations of paragraph 60 are denied.

**61.**

Defendants deny the allegations of paragraph 61.

**62.**

Defendants deny the allegations of paragraph 62.

**63.**

Defendants deny the allegations of paragraph 63.

**64.**

Defendants deny the allegations of paragraph 64.

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**71.**

In response to the allegations of paragraph 71, Defendant Waterford Operations, LLC, admits that it paid Plaintiff Jodi Real at the hourly rate of \$13.50 during part of the time that she was employed by Defendant Waterford Operations, LLC. Defendant Waterford Operations, LLC, denies any remaining allegations of paragraph 71. The allegations of paragraph 71 are not directed to Defendant Coos Bay Rehabilitation, LLC, and therefore no answer is required of Defendant Coos Bay Rehabilitation, LLC.

**72.**

Defendant Waterford Operations, LLC, admits the allegations of paragraph 72. The allegations of paragraph 72 are not directed to Defendant Coos Bay Rehabilitation, LLC, and therefore no answer is required of Defendant Coos Bay Rehabilitation, LLC.

**73.**

In response to the allegations of paragraph 73, Defendant Waterford Operations, LLC, admits that Plaintiff Steve Price was employed by Defendant Waterford Operations, LLC, as a RN/RCM. Defendants deny any remaining allegations of paragraph 73.

**74.**

In response to the allegations of paragraph 74, Defendant Waterford Operations, LLC, admits that Defendant Waterford Operations, LLC, paid Plaintiff Steve Price at the hourly rate of \$28.55 during part of the time that he was employed by Defendant Waterford Operations, LLC. Defendants deny the remaining allegations of paragraph 74.

**75.**

In response to the allegations of paragraph 75, Defendant Waterford Operations, LLC admits that Plaintiff Steve Price voluntarily quit his employment with Defendant Waterford Operations, LLC, on or before January 23, 2013. Any remaining allegations are denied.

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1 76.

2 In response to the allegations of paragraph 76, Defendants admit that Defendants  
3 received correspondence from Plaintiffs dated February 8, 2013, and March 1, 2013. Except as  
4 so admitted, Defendants deny the remaining allegations of paragraph 76.

5 77.

6 In response to the allegations of paragraph 77, Defendants deny that any wages are due  
7 to Plaintiffs or to any putative class member.

8 78.

9 Defendants deny the allegations of paragraph 78.

10 **FIRST CLAIM FOR RELIEF**

11 (Unpaid Wages Claim)

12 79.

13 In response to paragraph 79, Defendants re-allege and incorporate by this reference  
14 paragraphs 1 through 78, above, as though fully set forth herein.

15 80.

16 In response to the allegations of paragraph 80, Defendants admit that Plaintiffs were  
17 formerly employed by Defendant Waterford Operations, LLC. This lawsuit has not been  
18 certified as a class action. With respect to putative class members, Defendants are without  
19 information or knowledge sufficient to form a belief as to the truth of the allegations made as to  
20 them and therefore deny the same. Any remaining allegations of paragraph 80 are denied.

21 81.

22 In response to the allegations of paragraph 81, Defendant Waterford Operations, LLC  
23 admits that Plaintiffs were responsible for and expected to record all time worked by them  
24 using an electronic time keeping system and/or by completing written records of all time  
25 worked. This lawsuit has not been certified as a class action. With respect to putative class  
26 members, Defendants are without information or knowledge sufficient to form a belief as to the

1 truth of the allegations made as to them and therefore deny the same. Any remaining  
2 allegations of paragraph 81 are denied.

3 **82.**

4 In response to the allegations of paragraph 82, Defendants admit that Defendants have  
5 used Kronos time-keeping software as a means to record work time.

6 **83.**

7 Defendants deny the allegations of paragraph 83.

8 **84.**

9 Defendants deny the allegations of paragraph 84.

10 **85.**

11 Defendants deny the allegations of paragraph 85.

12 **86.**

13 Defendants deny the allegations of paragraph 86.

14 **87.**

15 Defendants deny the allegations of paragraph 87.

16 **88.**

17 Defendants deny the allegations of paragraph 88.

18 **89.**

19 In response to the allegations of paragraph 89, Defendants admit that each Defendant  
20 has used the Point Click Care software system in their respective facilities.

21 **90.**

22 Defendants deny the allegations of paragraph 90.

23 **91.**

24 In response to the allegations of paragraph 91, Defendants admit that the Point Click  
25 Care software system will track when a user has logged in or has logged out of the Point Click  
26 Care software system. All remaining allegations of paragraph 91 are denied.

1 **92.**

2 In response to the allegations of paragraph 92, Defendants admit that the Point Click  
3 Care software system will show when a user has accessed the Point Click Care software system  
4 and when the user is no longer accessing the software system. All remaining allegations of  
5 paragraph 92 are denied.

6 **93.**

7 The allegations of paragraph 93 are legal conclusions that do not require a response  
8 from Defendants. Defendants deny any factual allegations of paragraph 93.

9 **94.**

10 Paragraph 94 contains legal conclusions that do not require a response from Defendants.  
11 Defendants deny all factual allegations of paragraph 94.

12 **95.**

13 Defendants deny the allegations of paragraph 95.

14 **96.**

15 Defendants deny the allegations of paragraph 96.

16 **97.**

17 Defendants deny the allegations of paragraph 97.

18 **98.**

19 In response to the allegations of paragraph 98, Defendants admit that Defendants  
20 received correspondence from Plaintiffs dated February 8, 2013, and March 1, 2013. Except as  
21 so admitted, Defendants deny the remaining allegations of paragraph 98.

22 **99.**

23 Defendants deny the allegations of paragraph 99.

24 **100.**

25 Defendants deny the allegations of paragraph 100.

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**101.**

Defendants deny the allegations of paragraph 101 and deny that Plaintiffs or any putative class members are entitled to the relief specified therein.

**SECOND CLAIM FOR RELIEF  
(Lunch Wages, Civil Penalty)**

**102.**

In response to paragraph 102, Defendants re-allege and incorporate by this reference paragraphs 1 through 101, above, as though fully set forth herein.

**103.**

Defendants deny the allegations of paragraph 103.

**104.**

Paragraph 104 asserts legal conclusions that do not require a response from Defendants. Any factual allegations of paragraph 104 are denied.

**105.**

Defendants deny the allegations of paragraph 105.

**106.**

Defendants deny the allegations of paragraph 106.

**107.**

Defendants deny the allegations of paragraph 107.

**108.**

Defendants deny the allegations of paragraph 108.

**109.**

Defendants deny the allegations of paragraph 109 and deny that Plaintiffs or any putative class members are entitled to the relief specified therein.

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**THIRD CLAIM FOR RELIEF**

**(Unlawful Deduction Claim)**

**110.**

In response to paragraph 110, Defendants re-allege and incorporate by this reference paragraphs 1 through 109, above, as though fully set forth herein.

**111.**

In response to the allegations of paragraph 111, Defendants admit Plaintiffs were formerly employed by Defendant Waterford Operations, LLC, and performed work in that capacity. This lawsuit has not been certified as a class action. With respect to putative class members, Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations made as to them and therefore deny the same. Any remaining allegations of paragraph 111 are denied.

**112.**

In response to the allegations of paragraph 112, Defendants admit that each Defendant offered Pay Cards as one method of wage payment to their respective employees. Defendants deny that either of them paid all of their respective employees by Pay Card. Defendants deny the remaining allegations of paragraph 112.

**113.**

Defendants deny the allegations of paragraph 113.

**114.**

In response to the allegations of paragraph 114, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 114 and therefore deny the same. Defendants deny that either of them charged any fees to their respective employees for use of Pay Cards.

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1 **115.**

2 In response to the allegations of paragraph 115, Defendants admit that some employees  
3 were paid final wages upon termination of employment by Pay Card. Defendants deny the  
4 remaining allegations of paragraph 115.

5 **116.**

6 Defendants deny the allegations of paragraph 116.

7 **117.**

8 In response to the allegations of paragraph 117, which appears to encompass all of  
9 Defendants' employees and which does not define what is meant by "service fees," Defendants  
10 are without knowledge or information sufficient to form a belief as to the truth of the  
11 allegations therein and therefore deny the same.

12 **118.**

13 The allegations of paragraph 118 assert legal conclusions that do not require a response  
14 from Defendants. To the extent a response is required from Defendants, Defendants deny.

15 **119.**

16 In response to the allegations of paragraph 119, which appears to encompass all  
17 employees and which does not specifically identify any "charges" allegedly deducted from  
18 wages, Defendants are without knowledge or information sufficient to form a belief as to the  
19 truth of the allegations therein and therefore deny the same.

20 **120.**

21 Defendants deny the allegations of paragraph 120 and deny that Plaintiffs or any  
22 putative class members are entitled to the relief specified therein.

23 **121.**

24 Defendants deny the allegations of paragraph 121 and deny that Plaintiffs or any  
25 putative class members are entitled to the relief specified therein.

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1 **THIRD [SIC] CLAIM FOR RELIEF**  
2 **(Late Payment at Termination Claim)**

3 **122.**

4 In response to paragraph 122, Defendants re-allege and incorporate by this reference  
5 paragraphs 1 through 121, above, as though fully set forth herein.

6 **123.**

7 In response to the allegations of paragraph 123, Defendants re-allege their response  
8 contained in paragraph 111.

9 **124.**

10 In response to the allegations of paragraph 124, Defendants admit that each of their  
11 respective facilities maintain payroll records for their respective employees and that those  
12 payroll records detail the rate of pay and final wages upon termination to the extent an  
13 employee's employment has terminated.

14 **125.**

15 Defendants deny the allegations of paragraph 125.

16 **126.**

17 Defendants deny the allegations of paragraph 126.

18 **127.**

19 The allegations of paragraph 127 include legal conclusions that do not require a  
20 response from Defendants. Defendants deny all factual allegations of paragraph 127.

21 **128.**

22 Defendants deny the allegations of paragraph 128.

23 **129.**

24 The allegations of paragraph 129 include legal conclusions that do not require a  
25 response from Defendants. To the extent a response is required, Defendants deny.

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1 **130.**

2 Defendants deny the allegations of paragraph 130.

3 **131.**

4 Defendants deny the allegations of paragraph 131.

5 **132.**

6 Defendants deny the allegations of paragraph 132.

7 **133.**

8 Defendant Waterford Operations, LLC admits the allegations of paragraph 133. Any  
9 remaining allegations as to Defendants Coos Bay Rehabilitation, LLC, are denied.

10 **134.**

11 This lawsuit has not been certified as a class action. Defendants are without information  
12 or knowledge sufficient to form a belief as to the truth the allegations of paragraph 134 and  
13 therefore deny the same.

14 **135.**

15 In response to the allegations of paragraph 135, Defendants admit that Defendants relied  
16 upon their respective hourly employees to accurately and fully record all hours worked and that  
17 Defendants relied upon these records to pay wages due to their respective employees. Any  
18 remaining allegations are denied.

19 **136.**

20 In response to the allegations of paragraph 136, Defendants admit that Defendants could  
21 calculate wages due to their respective employees at termination in reliance on accurate and  
22 complete time records completed by the employees. Any remaining allegations are denied.

23 **137.**

24 In response to the allegations of paragraph 137, Defendant Waterford Operations, LLC,  
25 admits that it paid all wages earned and due to Plaintiffs upon termination of Plaintiffs'

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1 employment. Each Defendant has paid all final wages earned and due to their respective  
2 employees to the extent such employees' employment has terminated.

3 **138.**

4 Defendants deny the allegations of paragraph 138.

5 **139.**

6 Defendants deny the allegations of paragraph 139.

7 **140.**

8 In response to the allegations of paragraph 140, Defendants deny that either of them  
9 owe any wages to Plaintiffs.

10 **141.**

11 In response to the allegations of paragraph 141, Defendants admit that Defendants  
12 received correspondence from Plaintiffs dated February 8, 2013, and March 1, 2013. Except as  
13 so admitted, Defendants deny the remaining allegations of paragraph 141.

14 **142.**

15 Defendants deny the allegations of paragraph 142 and deny that Plaintiffs or any  
16 putative class members are entitled to the relief specified therein.

17 **143.**

18 Defendants deny the allegations of paragraph 143.

19 **144.**

20 Defendants deny the allegations of paragraph 144.

21 **145.**

22 Defendants deny the allegations of paragraph 145.

23 **146.**

24 Defendants deny the allegations of paragraph 146 and deny that Plaintiffs or any  
25 putative class members are entitled to the relief specified therein.

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1 147.

2 Defendants deny the allegations of paragraph 147 and deny that Plaintiffs or any  
3 putative class members are entitled to the relief specified therein.

4 148.

5 Except as expressly admitted herein, Defendants deny each and every allegation made  
6 in Plaintiffs' Complaint and further deny that this action may be properly certified as a class  
7 action.

8 **AFFIRMATIVE DEFENSES**

9 As further answer and for their affirmative defenses, Defendants allege as follows:

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Failure to State a Claim)**

12 149.

13 Plaintiffs' Complaint and each claim for relief set forth therein fails to state a claim  
14 upon which relief can be granted, including on the basis that none of the Plaintiffs was  
15 employed by Defendant Coos Bay Rehabilitation, L.L.C., and, accordingly, Plaintiffs are not  
16 entitled to any damages or relief from Defendant Coos Bay Rehabilitation, L.L.C.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Statute of Limitations)**

19 150.

20 Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(No Damages)**

23 151.

24 Defendants have paid Plaintiffs all wages due to them by virtue of their employment.  
25 Plaintiffs have not suffered any damages and are therefore not entitled to recover any damages  
26 alleged under any of their claims for relief.

**FOURTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

**152.**

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4 Plaintiffs had an affirmative duty to mitigate their alleged damages. Plaintiffs' claims  
5 are barred in whole or in part because Plaintiffs have failed to mitigate their damages, if any.  
6 Plaintiffs failed to mitigate their damages including in the following respects: By failing to  
7 accurately record and report all time worked by Plaintiffs to Defendants to ensure the proper  
8 payment of all wages due. Further, Defendants had a written, published policy strictly  
9 prohibiting off-the-clock work. Plaintiffs failed to report or to complain to Defendants of any  
10 off-the-clock work being performed by them in violation of Defendants' published policy. If  
11 Plaintiffs did complain, they were instructed to complete and submit accurate time records of  
12 all time worked to ensure proper payment of their wages. Defendants relied upon Plaintiffs to  
13 submit complete and accurate time records of all time worked by them to ensure the proper  
14 payment of their wages.

**FIFTH AFFIRMATIVE DEFENSE**

**(Plaintiffs' Own Acts or Omissions)**

**153.**

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18 Plaintiffs' damages, if any, were caused by Plaintiffs' own acts or omissions including  
19 in the following respects: By failing to accurately record and report all time worked to ensure  
20 the proper payment of all wages due to them; by failing to report errors, if any, in their time  
21 records to ensure the proper payment of wages; and, by using Pay Cards in such a manner as to  
22 incur fees from third-parties that were otherwise avoidable.

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**SIXTH AFFIRMATIVE DEFENSE****(Failure to Report Off-the-Clock Work)****154.**

At all material times, Defendants had a written policy published to all employees, including to Plaintiffs, strictly prohibiting off-the-clock work and providing a mechanism to report off-the-clock work to a manager, to Human Resources, or to a hotline. The written policy provided in pertinent part that "non-exempt employees should never perform any work for the Company off-the-clock. If you are asked to work off the clock, do not receive a required meal or break period, or do not receive pay for hours that you worked, you should immediately report the situation to your Manager, to Human Resources or to the Speak Up Hotline." Plaintiffs never reported any off-the-clock work performed by them during the course of their employment pursuant to this written policy or otherwise informed Defendants of any off-the-clock work performed by Plaintiffs.

**SEVENTH AFFIRMATIVE DEFENSE****(No Deductions by Defendants)****155.**

With respect to Plaintiffs' Third Claim for Relief for Unlawful Deductions, Defendants did not make any unauthorized deductions from Plaintiffs' wages. Rather, any deductions from Plaintiffs' wages paid through Pay Cards were made by third parties over whom Defendants did not exercise any control.

**EIGHTH AFFIRMATIVE DEFENSE****(Consent)****156.**

With respect to Plaintiffs' Third Claim for Relief for Unlawful Deductions, Plaintiffs consented to any usage fees, service fees, or any other fees charged by third parties over whom Defendants did not exercise any control.

**NINTH AFFIRMATIVE DEFENSE  
(TIMELY PAYMENT OF WAGES ON TERMINATION)**

**157.**

Defendant Waterford Operations, LLC, timely paid all final wages due to Plaintiffs upon termination of their employment in with compliance with ORS 652.140.

**TENTH AFFIRMATIVE DEFENSE  
(PREEMPTION)**

**158.**

Plaintiffs' claims against Defendant Coos Bay Rchabilitation, LLC, are barred or preempted, in whole or in part, by the terms of a collective bargaining agreement and/or applicable law including but not limited to the National Labor Relations Act.

**ELEVENTH AFFIRMATIVE DEFENSE  
(Class Action – Failure to Satisfy the Requirements of ORCP 32)**

**159.**

Defendants allege that this suit can not be properly maintained as a class action pursuant to ORCP 32 because: (1) Plaintiffs can not establish the necessary elements for class treatment under ORCP 32; (2) common issues of fact or law do not predominate; (3) Plaintiffs' claims are not typical of the claims of the putative class; (4) Plaintiffs will not fairly or adequately protect the interests of the putative class; (5) Plaintiffs will not adequately represent the interests of the putative class; and, (6) a class action is not a superior method for the fair and efficient adjudication of the claims alleged in the Complaint.

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**INCORPORATION OF AFFIRMATIVE DEFENSES  
AGAINST CLASS MEMBERS**

**160.**

In the event that the Court certifies a class action in this suit despite Defendants' objections and opposition, then Defendants assert each of their affirmative defenses set forth herein against each and every member of the certified class.

**RESERVATION OF RIGHT TO AMEND**

**161.**

Defendants reserve the right to amend their Answer should Defendants learn the existence of additional affirmative defenses with respect to Plaintiffs' claims or the claims of any class member in the event of class certification.

**COUNTERCLAIMS**

As and for their counterclaims, Defendants allege as follows:

**FIRST COUNTERCLAIM FOR RELIEF**

**(Attorneys' Fees)**

**162.**

Defendants re-allege and incorporate by this reference the allegations of paragraphs 1 through 161 as though fully set forth herein.

**163.**

Defendants are entitled to an award of their reasonable attorney fees incurred herein under Oregon's wage and hour laws including pursuant to ORS 653.055(4) and ORS 652.615.

WHEREFORE, having answered the allegations of Plaintiffs' Complaint, Defendant Waterford Operations, LLC, and Defendant Coos Bay Rehabilitation, LLC, request the following relief:

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- A. That Plaintiffs' Complaint against Defendants Waterford Operations, L.L.C, and Coos Bay Rehabilitation, L.L.C, be dismissed with prejudice and that Plaintiffs take nothing thereby;
- B. For judgment in Defendants' favor and against Plaintiffs on Defendants' First Counterclaim for Relief for an award of reasonable attorney fees together with an award of post-judgment interest on such sums at the statutory rate of nine percent per annum until paid in full;
- C. For an award of Defendants' costs and disbursements incurred in defending this action together with an award of post-judgment interest on such sums at the rate of nine percent per annum until paid in full; and,
- D. For such other relief as the court deems just, proper, and equitable.

DATED this 29<sup>th</sup> day of August, 2014.

BUCKLEY LAW, P.C.

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*of Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS WATERFORD OPERATIONS, LLC AND COOS BAY REHABILITATION, LLC'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM TO PLAINTIFFS' CLASS ACTION AMENDED COMPLAINT**

On;

David Schuck  
Schuck Law, LLC  
10013 NE Hazel Dell Avenue, #178  
Vancouver, Washington 98665  
Email: [dschuck@wageclaim.org](mailto:dschuck@wageclaim.org)  
Facsimile: 503-575-2763

by **MAILING** a full, true and correct copy thereof in a scaled, postage-paid envelope, addressed as shown above, and deposited with the U.S. Postal Service at Lake Oswego, Oregon, on the date set forth below;

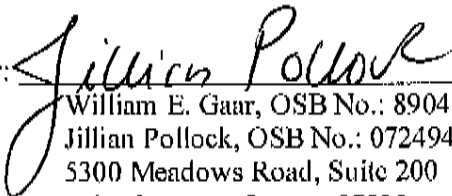
by causing a full, true and correct copy thereof to be **HAND-DELIVERED** to the party, at the address listed above on the date set forth below;

by **FAXING** a full, true and correct copy thereof to the party, at the fax number shown above, which is the last-known fax number for the party's office, on the date set forth below.

by sending a full, true and correct copy thereof to the part via **ELECTRONIC MAIL**, to the email address set forth above on the date set forth below.

DATED this 29th day of August, 2014.

**BUCKLEY LAW P.C.**

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Of Attorneys for Defendants