

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

TORRI M. HOUSTON, individually, and)	
on behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:17-cv-00266-BCW
)	
SAINT LUKE'S HEALTH SYSTEM, INC.)	COLLECTIVE AND CLASS ACTION
and SAINT LUKE'S NORTHLAND)	
HOSPITAL CORPORATION,)	
)	
Defendants.)	

ANSWER TO FIRST AMENDED COMPLAINT

For their Answer to Plaintiff's First Amended Complaint ("Complaint"), Defendants Saint Luke's Health System, Inc. ("SLHS") and Saint Luke's Northland Hospital Corporation (now known as Saint Luke's North Hospital, referred to herein as "SLN") (collectively, "Defendants") deny all allegations not specifically admitted herein and provide the following answers. In so doing, Defendants quote the allegations in the Complaint for ease of reference:

JURISDICTION AND VENUE

1. Plaintiff and all other similarly situated employees work or worked for Defendant SLHS, a health care system including ten hospitals and campuses across the Kansas City region. Plaintiff worked at Defendant SLN, one of the hospitals operated by Defendant SLHS.

ANSWER: As to sentence one, admitted Plaintiff was an employee of SLN (formerly known as Saint Luke's Northland Hospital Corporation), of which Saint Luke's Health System ("SLHS") is the sole member. As to sentence two, admitted Plaintiff was an employee of SLN, of which Saint Luke's Health System is the sole member. Denied as to any and all remaining allegations.

2. Pursuant to their company-wide policies and procedures, SLHS and/or SLN failed to pay Plaintiff, and other similarly situated employees, for all hours worked and federal and/or state mandated overtime for all hours worked over forty (40) in a single workweek. SLHS' and/or SLN's rounding policy and practice is used in such a manner that it results, over a period of time, in the failure to compensate their employees properly for all time worked. SLHS' and/or SLN's systemic violations of federal and state wage laws were willful.

ANSWER: Denied.

3. Plaintiff, on behalf of herself and all others similarly situated, brings this lawsuit as: (a) a collective action under the Fair Labor Standards Act, ("FLSA"), 29 U.S.C. § 201 *et seq.*, to recover unpaid overtime wages owed to Plaintiff and all other similarly situated workers employed by Defendant SLHS and/or Defendant SLN; and (b) a Rule 23 class action under Missouri state law, including the Missouri Minimum Wage Law ("MMWL"), R.S.Mo. § 290.500 *et seq.*

ANSWER: Admitted Plaintiff purports to bring the claims as pleaded, but denied as to the propriety of any such action. Denied as to any and all remaining allegations.

4. Plaintiff's Consent to Be a Party Plaintiff pursuant to 29 U.S.C. § 216(b) is attached to this Complaint as Exhibit A.

ANSWER: Admitted Plaintiff's consent was attached as Exhibit A to her original Complaint. Denied as to any and all remaining allegations.

JURISDICTION AND VENUE

5. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over the FLSA claims of Plaintiff and all others similarly situated is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff seems to have accurately characterized the Fair Labor Standards Act. Denied as to any and all remaining allegations.

6. Missouri law authorizes court actions by private parties to recover damages for violation of the MMWL's wage and hour provisions. Jurisdiction over the state law claims of Plaintiff and all others similarly situated is based on 28 U.S.C. § 1367 and R.S.Mo. § 290.527, in that the state law claims are so related to the FLSA claims that they form part of the same case or controversy.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff seems to have accurately characterized Missouri. Denied as to any and all remaining allegations.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this judicial district.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted venue over Plaintiff's pleaded claim(s) is proper in this Court. Denied as to any and all remaining allegations.

PARTIES

8. Plaintiff is an individual residing in the State of Missouri.

ANSWER: Admitted upon information and belief.

9. Plaintiff was employed by SLHS and/or SLN from March 24, 2014 through January 2, 2017 as a Surgical Technologist at SLHS' and/or SLN's hospital campus located at 5830 NW Barry Road, Kansas City, Missouri 64154.

ANSWER: Admitted SLN employed Plaintiff between the dates and in the position pleaded at the address pleaded. Denied as to any and all remaining allegations.

10. Defendant SLHS is a non-profit corporation organized and existing under the laws of the State of Kansas, with its principal place of business located in the State of Missouri.

ANSWER: Admitted.

11. Defendant SLHS includes 10 hospitals and campuses across the Kansas City region, home care and hospice, behavioral health care, and dozens of physician practices.

ANSWER: Admitted SLHS is comprised of eight hospitals and various other healthcare entities located within the Kansas City region. Denied as to any and all remaining allegations.

12. Defendant SLN is a non-profit corporation organized and existing under the laws of the State of Missouri, with its principal place of business located in the State of Missouri.

ANSWER: Admitted.

13. Defendant SLHS owns and operates Defendant SLN.

ANSWER: Admitted SLHS is the sole member of SLN. Denied as to any and all remaining allegations.

14. Plaintiff and all similarly situated employees are non-exempt, hourly employees who work or worked for Defendant SLHS and/or Defendant SLN at their hospitals and campuses across the Kansas City region.

ANSWER: Admitted that Plaintiff was a non-exempt hourly employee of SLN. Denied as to any and all remaining allegations.

15. At all relevant times, Defendant SLHS and/or Defendant SLN were the employer and/or joint employer of Plaintiff, and all other similarly situated employees:

- a. Defendant SLHS and/or Defendant SLN had the power to hire and fire Plaintiff and all other similarly situated employees;
- b. Defendant SLHS and/or Defendant SLN supervised and controlled the work schedules and conditions of employment of Plaintiff and all other similarly situated employees;
- c. Defendant SLHS and/or Defendant SLN determined the rate and method of payment for Plaintiff and all other similarly situated employees; and
- d. Defendant SLHS and/or Defendant SLN maintained employment records (including time clock records) for Plaintiff and all other similarly situated employees.

ANSWER: Denied.

16. At all times relevant to this action, SLHS and/or SLN acted by and through their agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for SLHS and/or SLN.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, denied for lack of information and/or knowledge as to "all relevant times" and as to "agents, servants, and employees." Denied as to any and all remaining allegations.

GENERAL ALLEGATIONS

17. Plaintiff re-alleges the allegations set forth above.

ANSWER: Defendants incorporate all of their preceding ANSWERS as if fully restated here.

18. SLHS and/or SLN utilize a computerized system which tracks the exact time (accurate to 1 minute or less) an hourly employee clocks in and clocks out of work.

ANSWER: Admitted.

19. Even though SLHS and/or SLN maintain a system which records, to the minute, the time an employee clocks in and clocks out, SLHS and/or SLN utilize a rounding system in computing payroll.

ANSWER: Admitted, as is allowed under regulations implementing the FLSA, Department of Labor interpretations of those regulations, and applicable case law.

20. Per SLHS' and/or SLN's rounding policies and procedures, SLHS' and/or SLN's employees can clock-in or clock-out up to six minutes before or after the scheduled start time or end time of their shift. Under these circumstances, SLHS and/or SLN round the employees' clock-in or clock-out time to their respective start time or end time.

ANSWER: Admitted.

21. When there is an exception to the scheduled start time or end time of an employees' shift, or some other exception identified for that employees' shift, SLHS'

and/or SLN's rounding system is modified. On those occasions, the employees' clock-in or clock-out time may be rounded to the nearest six-minute interval.

ANSWER: Admitted.

22. SLHS and/or SLN do not utilize a consistent rounding policy for every shift worked by its employees.

ANSWER: Denied.

23. Viewed in a vacuum, the rounding system utilized by SLHS and/or SLN appears to be neutral, and favors neither SLHS and/or SLN nor their employees.

ANSWER: Admitted the rounding system used at SLN was facially neutral and complied with regulations implementing the FLSA, Department of Labor interpretations of those regulations, and applicable case law.

24. In reality, SLHS' and/or SLN's policy and practice of computing working time by "rounding" is used in such a manner that it has resulted, over a period of time, in the failure to compensate Plaintiff and all similarly situated employees properly for all the time they have actually worked. For example:

- a. On September 5, 2014, Plaintiff clocked in at 5:54 p.m., and SLHS and/or SLN rounded her clock-in time to 6:00 p.m. for purposes of computing payroll and the number of hours worked. Plaintiff clocked out at 6:36 a.m., and SLHS and/or SLN rounded her clock-out time to 6:30 a.m. for purposes of computing payroll and the number of hours worked. SLHS' and/or SLN's rounding system resulted in Plaintiff losing approximately twelve (12) minutes of compensable work time that shift. As such, SLHS' and/or SLN's rounding policy resulted in Plaintiff receiving no direct

hourly wage for approximately twelve (12) minutes of work during that workweek.

- b. On October 14, 2014, Plaintiff clocked in at 5:54 p.m., and SLHS and/or SLN rounded her clock-in time to 6:00 p.m. for purposes of computing payroll and the number of hours worked. Plaintiff clocked out at 6:35 a.m., and SLHS and/or SLN rounded her clock-out time to 6:30 a.m. for purposes of computing payroll and the number of hours worked. SLHS' and/or SLN's rounding system resulted in Plaintiff losing approximately eleven (11) minutes of compensable work time that shift. As such, SLHS' and/or SLN's rounding policy resulted in Plaintiff receiving no direct hourly wage for approximately eleven (11) minutes of work during that workweek.
- c. On March 24, 2015, Plaintiff clocked in at 5:54 p.m., and SLHS and/or SLN rounded her clock-in time to 6:00 p.m. for purposes of computing payroll and the number of hours worked. Plaintiff clocked out at 6:27 a.m., and SLHS and/or SLN rounded her clock-out time to 6:24 a.m. for purposes of computing payroll and the number of hours worked. SLHS's and/or SLN's rounding system resulted in Plaintiff losing approximately nine (9) minutes of compensable work time that shift. As such, SLHS' and/or SLN's rounding policy resulted in Plaintiff receiving no direct hourly wage for approximately nine (9) minutes of work during that workweek.

- d. On December 20, 2015, Plaintiff clocked in at 5:54 p.m., and SLHS and/or SLN rounded her clock-in time to 6:00 p.m. for purposes of computing payroll and the number of hours worked. Plaintiff clocked out at 7:21 a.m., and SLHS and/or SLN rounded her clock-out time to 7:18 a.m. for purposes of computing payroll and the number of hours worked. SLHS' and/or SLN's rounding system resulted in Plaintiff losing approximately nine (9) minutes of compensable work time that shift. As such, SLHS' and/or SLN's rounding policy resulted in Plaintiff receiving no direct hourly wage for approximately nine (9) minutes of work during that workweek.
- e. On February 17, 2016, Plaintiff clocked in at 11:54 p.m., and SLHS and/or SLN rounded her clock-in time to 12:00 a.m. for purposes of computing payroll and the number of hours worked. Plaintiff clocked out at 7:07 a.m., and SLHS and/or SLN rounded her clock-out time to 7:06 a.m. for purposes of computing payroll and the number of hours worked. SLHS' and/or SLN's rounding system resulted in Plaintiff losing approximately seven (7) minutes of compensable work time that shift. As such, SLHS' and/or SLN's rounding policy resulted in Plaintiff receiving no direct hourly wage for approximately seven (7) minutes of work during that workweek.
- f. On April 11, 2016, Plaintiff clocked in at 5:54 p.m., and SLHS and/or SLN rounded her clock-in time to 6:00 p.m. for purposes of computing payroll

and the number of hours worked. Plaintiff clocked out at 6:31 a.m., and SLHS and/or SLN rounded her clock-out time to 6:30 a.m. for purposes of computing payroll and the number of hours worked. SLHS' and/or SLN's rounding system resulted in Plaintiff losing approximately seven (7) minutes of compensable work time that shift. As such, SLHS' and/or SLN's rounding policy resulted in Plaintiff receiving no direct hourly wage for approximately seven (7) minutes of work during that workweek.

ANSWER: Denied.

25. From March 24, 2014 through January 2, 2017, the duration of Plaintiff's employment, the difference between her actual hours worked and the rounded hours for which she was paid by SLHS and/or SLN resulted in Plaintiff receiving no direct hourly wage (or overtime wage) for approximately 400 minutes (over 6 ½ hours) of compensable work.

ANSWER: Denied.

26. SLHS and/or SLN have no good faith basis to use such a rounding system as their time clocks record the actual clock-in and clock-out times to at least a one-minute accuracy.

ANSWER: Denied.

27. SLHS and/or SLN have complete knowledge of all hours worked by Plaintiff and all similarly situated employees, and yet their policies, practices, and/or procedures are designed to intentionally avoid paying their employees for all such hours worked.

ANSWER: Denied.

28. SLHS' and/or SLN's failure to pay their employees for all unpaid time has resulted in Plaintiff and all similarly situated employees being regularly and willfully denied proper compensation under the FLSA and/or the MMWL.

ANSWER: Denied.

COLLECTIVE AND CLASS ACTION ALLEGATIONS

29. Plaintiff re-alleges the allegations set forth above.

ANSWER: Defendants incorporate all their preceding ANSWERS as if fully restated here.

30. Plaintiff brings Count I, the FLSA claim arising out of SLHS' and/or SLN's unlawful rounding policy, as an "opt in" collective action pursuant to 29 U.S.C. § 216(b) on behalf of herself and the following class: All persons currently and formerly employed by Defendant SLHS and/or Defendant SLN in hourly positions who worked at any time during the last three (3) years within the United States.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff purports to bring the action as pleaded, but denied as to the propriety of any such action and/or class. Denied as to any and all remaining allegations.

31. Plaintiff, individually and on behalf of all others similarly situated, seeks relief on a collective basis challenging SLHS' and/or SLN's above-described FLSA violations. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from SLHS' and/or SLN's records, and potential opt-in plaintiffs may easily and quickly be notified of the pendency of this action.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff purports to bring the action as pleaded, but denied as to the propriety of any such action and/or class. Denied as to any and all remaining allegations.

32. Plaintiff brings Count II, the MMWL claim arising out of SLHS' and/or SLN's unlawful rounding policy, as a class action under Fed. R. Civ. P. 23, on behalf of herself and the following class: All persons currently and formerly employed by Defendant SLHS and/or Defendant SLN in hourly positions who worked at any time during the last two (2) years within the State of Missouri.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff purports to bring the action as pleaded, but denied as to the propriety of any such action and/or class. Denied as to any and all remaining allegations.

33. Plaintiff brings Count III, the unjust enrichment/quantum meruit claim, as a class action under Fed. R. Civ. P. 23, on behalf of herself and the following class: All persons currently and formerly employed by Defendant SLHS and/or Defendant SLN in hourly positions who worked at any time during the last five (5) years within the State of Missouri.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff purports to bring the action as pleaded, but denied as to the propriety of any such action and/or class. Denied as to any and all remaining allegations.

34. Plaintiff brings Count IV, the breach of contract claim, as a class action under Fed. R. Civ. P. 23, on behalf of herself and the following class: All persons currently and formerly employed by Defendant SLHS and/or Defendant SLN in hourly

positions who worked at any time during the last five (5) years within the State of Missouri.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff purports to bring the action as pleaded, but denied as to the propriety of any such action and/or class. Denied as to any and all remaining allegations.

35. Plaintiff's MMWL claims (Count II), unjust enrichment/quantum meruit claim (Count III), and breach of contract claim (Count IV) described in detail below, satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action pursuant to Fed. R. Civ. P. 23.

ANSWER: Denied.

36. These classes each number in the hundreds or thousands of persons. As a result, joinder of all class members in a single action is impracticable. Class members may be informed of the pendency of this action through regular mail, e-mail, and/or posting of an approved notice.

ANSWER: Denied.

37. There are common questions of fact and law to the classes that predominate over any questions affecting only individual class members. The questions of law and fact common to the classes arising from SLHS' and/or SLN's actions include, without limitation, the following:

- a. Whether SLHS and/or SLN violated the law when they failed to pay Plaintiff and class members for all hours worked;

- b. Whether SLHS and/or SLN had policies and practices of failing to compensate Plaintiff and class members for all time worked;
- c. Whether SLHS and/or SLN failed to pay Plaintiff and class members overtime compensation required under R.S.Mo. § 290.500 *et seq.*;
- d. Whether SLHS and/or SLN were unjustly enriched by virtue of their policies and practices with respect to Plaintiff's and class members' pay;
- e. Whether SLHS and/or SLN willfully violates state and federal wage and hour laws; and
- f. Whether SLHS and/or SLN maintained a lawful timekeeping system.

ANSWER: Denied.

38. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

ANSWER: Denied.

39. Plaintiff's claims are typical of those of the respective classes in that class members have been employed in the same or similar positions as Plaintiff and were subject to the same or similar unlawful practices as Plaintiff.

ANSWER: Denied.

40. A class action is the superior method for the fair and efficient adjudication of Plaintiff's claims. SLHS and/or SLN have acted or refused to act on grounds generally applicable to the classes. The presentation of separate actions by individual

class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants, and/or substantially impair or impede the ability of class members to protect their interests.

ANSWER: Denied.

41. Plaintiff is an adequate representative because she is a member of each of the classes and her interests do not conflict with the interests of the members of those classes she seeks to represent. The interests of the members of the classes will be fairly and adequately protected by Plaintiff and her undersigned counsel, who are experienced prosecuting complex wage and hour, employment, and class action litigation.

ANSWER: Denied.

42. Maintenance of this action as a class action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each member of the classes who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in consistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

ANSWER: Denied.

ALLEGATIONS APPLICABLE TO ALL FLSA CLAIMS (COUNT I)

43. Plaintiff re-alleges the allegations set forth above.

ANSWER: Defendants incorporate all of their preceding ANSWERS as if fully restated here.

44. At all times material herein, Plaintiff and all others similarly situated have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted the FLSA applied to her during her SLN employment. Denied as to any and all remaining allegations.

45. The FLSA regulates, among other things, the payment of minimum wage and overtime pay by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 206(a); 29 U.S.C. § 207(a)(1).

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff has accurately characterized the FLSA. Denied as to any and all remaining allegations.

46. SLHS and/or SLN are subject to the minimum wage and overtime pay requirements of the FLSA because they are enterprises engaged in interstate commerce and their employees are engaged in commerce.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted has accurately characterized the FLSA. Denied as to any and all remaining allegations.

47. During all relevant times to this action, Defendant SLHS and/or Defendant SLN were the “employer” of Plaintiff and all similarly situated employees within the meaning of the FLSA. 29 U.S.C. § 203(d).

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff was an employee of SLN during the period pleaded in paragraph 9. Denied as to any and all remaining allegations.

48. During all times relevant to this action, Plaintiff and all similarly situated employees were SLHS' and/or SLN's "employees" within the meaning of the FLSA. 29 U.S.C. § 203(e).

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff was an employee of SLN during the period pleaded in paragraph 9. Denied as to any and all remaining allegations.

49. Plaintiff and all similarly situated employees are covered, non-exempt employees within the meaning of the FLSA. Accordingly, Plaintiff and all similarly situated employees must be paid minimum wage in accordance with 29 U.S.C. § 206.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff has accurately characterized the FLSA. Denied as to any and all remaining allegations.

50. Pursuant to the FLSA, employees are also entitled to be compensated at a rate of not less than one and one-half times the regular rate at which such employees are employed for all work performed in excess of 40 hours in a workweek. 29 U.S.C. § 207(a).

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff has accurately characterized the FLSA. Denied as to any and all remaining allegations.

51. Although the FLSA contains some exceptions (or exemptions) from the minimum wage and overtime requirements, none of those exceptions (or exemptions) applies here.

ANSWER: Denied.

52. Plaintiff and all similarly situated employees are victims of uniform and nationwide compensation policies. Upon information and belief, SLHS and/or SLN are applying the same unlawful compensation policies to all similarly situated employees in their hospitals and healthcare facilities nationwide.

ANSWER: Denied.

53. Plaintiff and all similarly situated employees are entitled to damages equal to the mandated minimum wage and overtime premium pay within the three (3) years preceding the filing of this Complaint, plus periods of equitable tolling, because SLHS and/or SLN acted willfully and knew, or showed reckless disregard of whether their conduct was prohibited by the FLSA.

ANSWER: Denied.

54. SLHS and/or SLN have acted neither in good faith nor with reasonable grounds to believe that their actions and omissions were not a violation of the FLSA, and as a result, Plaintiff and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid wages as described by Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b). Alternatively, should the Court find SLHS and/or SLN acted in good faith or with reasonable grounds in failing to pay minimum wage and overtime compensation, Plaintiff and all

similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

ANSWER: Denied.

55. As a result of these violations of the FLSA's minimum wage and overtime pay provisions, compensation has been unlawfully withheld by SLHS and/or SLN from Plaintiff and all similarly situated employees. Accordingly, pursuant to 29 U.S.C. § 216(b), SLHS and/or SLN are liable for the unpaid minimum wages and overtime premium pay along with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

ANSWER: Denied.

ALLEGATIONS APPLICABLE TO ALL MMWL CLAIMS (COUNT II)

56. Plaintiff re-alleges the allegations set forth above.

ANSWER: Defendants incorporate all of their preceding ANSWERS as if fully restated here.

57. At all times relevant, Plaintiff and the class members have been entitled to the rights, protections, and benefits provided under the Missouri Minimum Wage Law ("MMWL"), R.S.Mo. § 290.500 *et seq.*

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff has accurately characterized Missouri law. Denied as to any and all remaining allegations.

58. The MMWL regulates, among other things, the payment of minimum wage and overtime wages by employers, subject to limited exceptions not applicable herein, and provide or have provided for during part or all of the applicable limitations

period for a higher minimum wage than that provided for under federal law. R.S.Mo. §§ 290.500(3) & (4); R.S.Mo. § 290.505.1.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff has accurately characterized Missouri law. Denied as to any and all remaining allegations.

59. The MMWL should be construed in accordance with its provisions and those of the FLSA. Specifically, the Missouri Department of Labor has promulgated regulations providing that except as otherwise provided by Missouri law, the interpretation and enforcement of the MMWL follows the FLSA and its companion regulations. *See* 8 C.S.R. § 30-4.010(1).

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff has accurately characterized Missouri law. Denied as to any and all remaining allegations.

60. During all times relevant to this action, SLHS and/or SLN were the “employers” of Plaintiff and the class members within the meaning of the MMWL. R.S.Mo. §§ 290.500(3), (4).

ANSWER: Admitted Plaintiff was an employee of SLN during the period pleading in paragraph 9. Denied as to any and all remaining allegations.

61. During all times relevant to this action, Plaintiff and the class members were SLHS’ and/or SLN’s “employees” within the meaning of the MMWL. R.S.Mo. §§ 290.500(3).

ANSWER: Admitted Plaintiff was an employee of SLN during the period pleading in paragraph 9. Denied as to any and all remaining allegations.

62. Plaintiff and the class members are covered, non-exempt employees within the meaning of the MMWL. Accordingly, employees are entitled to be paid at least minimum wage for all hours worked in each workweek. R.S.Mo. § 290.502.1.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff has accurately characterized Missouri law. Denied as to any and all remaining allegations.

63. Pursuant to the MMWL, employees are also entitled to be compensated at a rate of not less than one and one-half times the regular rate at which such employees are employed for all work performed in excess of 40 hours in a workweek. R.S.Mo. § 290.505.1.

ANSWER: Denied as the statement of a legal conclusion, not a factual allegation that requires an ANSWER. If an ANSWER is required, admitted Plaintiff has accurately characterized Missouri law. Denied as to any and all remaining allegations.

64. Although the MMWL contains some exceptions (or exemptions) from the minimum wage and overtime pay obligations, none of those exceptions (or exemptions) applies here. R.S.Mo. § 290.500(3).

ANSWER: Denied.

65. Plaintiff and the class members are victims of uniform and employer-based compensation policies. Upon information and belief, SLHS and/or SLN are applying the same unlawful compensation policies to Plaintiff and the class members in their hospitals and healthcare facilities in the State of Missouri.

ANSWER: Denied.

66. Plaintiff and the Class are entitled to damages equal to all unpaid regular and overtime wages due within two (2) years preceding the filing of this Complaint, plus periods of equitable tolling, along with an additional equal amount as liquidated damages, less any amount actually paid to the employees by Defendants. R.S.Mo. § 290.527.

ANSWER: Denied.

67. Plaintiff and the Class are also entitled to an award of pre-judgment and post-judgment interest at the applicable legal rate.

ANSWER: Denied.

68. SLHS and/or SLN are also liable to Plaintiff and the Class for costs and reasonable attorney fees incurred in this action. R.S.Mo. § 290.527.

ANSWER: Denied.

COUNT I - FLSA (Unpaid Overtime)

**Arising Out of SLHS' and/or SLN's Unlawful Rounding Policy
(Brought Against SLHS and/or SLN by Plaintiff Individually and
On Behalf of All Other Similarly Situated)**

69. Plaintiff re-alleges the allegations set forth above.

ANSWER: Defendants incorporate all of their preceding ANSWERS as if fully restated here.

70. SLHS and/or SLN violated the FLSA by failing to pay Plaintiff and all other similarly situated employees for all compensable hours worked at the legal and applicable wage rates for all hours worked in a workweek.

ANSWER: Denied.

71. Specifically, as discussed above, SLHS and/or SLN utilize an unlawful rounding policy that forces employees to work off-the-clock without being paid at the legal and applicable wage rates for both straight and overtime hours.

ANSWER: Denied.

72. SLHS' and/or SLN's practice was to unlawfully and willfully fail to properly pay their hourly employees for all hours worked.

ANSWER: Denied.

73. WHEREFORE, on Count I of this Complaint, Plaintiff and all similarly situated employees demand judgment against SLHS and/or SLN and pray this Court:

- a. Issue notice to all similarly situated employees of SLHS and/or SLN informing them of their right to file consents to join the FLSA portion of this action;
- b. Award Plaintiff and all similarly situated employees damages for unpaid minimum wages and unpaid overtime wages under 29 U.S.C. § 216(b);
- c. Award Plaintiff and all similarly situated employees liquidated damages under 29 U.S.C. § 216(b);
- d. Award Plaintiff and all similarly situated employees pre-judgment and post-judgment interest as provided by law;
- e. Award Plaintiff and all similarly situated employees attorneys' fees and costs under 29 U.S.C. § 216(b);
- f. Award Plaintiff and all similarly situated employees such other relief as the Court deems fair and equitable.

ANSWER: Denied Plaintiff is entitled to any of the relief requested in the preceding WHEREFORE provision.

COUNT II - MMWL (Unpaid Overtime)

**Arising Out of SLHS' and/or SLN's Unlawful Rounding Policy
(Brought Against SLHS and/or SLN by Plaintiff Individually and
On Behalf of All Others Similarly Situated)**

74. Plaintiff re-alleges the allegations as set forth above.

ANSWER: Defendants incorporate all of their preceding ANSWERS as if fully restated here.

75. SLHS and/or SLN violated the MMWL by failing to pay Plaintiff and all other similarly situated employees for all compensable hours worked at the legal and applicable wage rates for all hours worked in a workweek.

ANSWER: Denied.

76. Specifically, as discussed above, SLHS and/or SLN utilize an unlawful rounding policy that, when combined with their disciplinary policies, forces employees to work off-the-clock without being paid at the legal and applicable wage rates for both straight and overtime hours.

ANSWER: Denied.

77. SLHS' and/or SLN's practice was to unlawfully and willfully fail to properly pay their hourly employees for all hours worked.

ANSWER: Denied.

78. WHEREFORE, on Count II of this Complaint, Plaintiff and the Class demand judgment against SLHS and/or SLN and pray this Court:

- a. Certify the state law claim set forth in Count II above as a class action pursuant to Fed. R. Civ. P. 23;
- b. Award Plaintiff and the Class damages for unpaid minimum wages and unpaid overtime wages under R.S.Mo. § 290.527;
- c. Award Plaintiff and the Class liquidated damages under R.S.Mo. § 290.527;
- d. Award Plaintiff and the Class pre-judgment and post-judgment interest as provided by law;
- e. Award Plaintiff and the Class attorneys' fees and costs as allowed by R.S.Mo. § 290.527; and
- f. Award Plaintiff and the Class such other relief as the Court deems fair and equitable.

ANSWER: Denied Plaintiff is entitled to any of the relief requested in the preceding WHEREFORE provision.

COUNT III

**Unjust Enrichment / Quantum Meruit
(Brought Against SLHS and/or SLN by Plaintiff Individually and
On Behalf of All Other Similarly Situated)**

79. Plaintiff re-alleges the allegations set forth above.

ANSWER: Defendants incorporate all of their preceding ANSWERS as if fully restated here.

80. SLHS and/or SLN benefited from the unpaid work performed by Plaintiff and the Class prior to the start of their shifts and after their shifts. Additionally, SLHS and/or SLN benefited by failing to pay their employees at the legal and applicable

wage rates set by state and/or federal law, thereby failing to pay all minimum wages and overtime wages in compliance with the law.

ANSWER: Denied.

81. SLHS and/or SLN were aware or should have been aware that they were receiving the benefit of this unpaid work at the time the work was being performed and accepted and retained that benefit without paying fair compensation for the same.

ANSWER: Denied.

82. SLHS' and/or SLN's acceptance and retention of the benefit of Plaintiff and the Class's unpaid labor was inequitable and resulted in SLHS and/or SLN being unjustly enriched.

ANSWER: Denied.

83. WHEREFORE, on Count III of this Complaint, Plaintiff and the Class demand judgment against SLHS and/or SLN and pray this Court:

- a. Certify the state law claim set forth in Count III above as a class action pursuant to Fed. R. Civ. P. 23;
- b. Order SLHS and/or SLN to disgorge the value of their ill-gained benefits to Plaintiff and the Class;
- c. Award Plaintiff and the Class pre-judgment and post-judgment interest as provided by law; and
- d. Award Plaintiff and the Class such other relief as the Court deems fair and equitable.

ANSWER: Denied Plaintiff is entitled to any of the relief requested in the preceding WHEREFORE provision.

COUNT IV

**Breach of Contract
(Brought Against SLHS and/or SLN by Plaintiff Individually and
On Behalf of All Others Similarly Situated)**

84. Plaintiff re-alleges the allegations set forth above.

ANSWER: Defendants incorporate all of their preceding ANSWERS as if fully restated here.

85. SLHS and/or SLN entered into a contract with Plaintiff and all similarly situated employees through which they agreed that employees would get paid an agreed-upon hourly rate for every hour worked during their employment.

ANSWER: Denied.

86. SLHS and/or SLN breached this contract by failing to pay Plaintiff and all others similarly situated their agreed-upon hourly rate for every hour worked during their employment.

ANSWER: Denied.

87. Because of SLHS' and/or SLN's breach, Plaintiff and all others similarly situated have been damaged.

ANSWER: Denied.

88. WHEREFORE, on Count IV of this Complaint, Plaintiff and the Class demand judgment against SLHS and/or SLN and pray this Court:

- a. Certify the state law claim set forth in Count IV above as a class action pursuant to Fed. R. Civ. P. 23;

- b. Order SLHS and/or SLN to pay Plaintiff and the Class for the improperly withheld wages in violation of their contract;
- c. Award Plaintiff and the Class pre-judgment and post-judgment interest as provided by law; and
- d. Award Plaintiff and the Class such other relief as the Court deems fair and equitable.

ANSWER: Denied Plaintiff is entitled to any of the relief requested in the preceding WHEREFORE provision.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury of all issues so triable.

ANSWER: Admitted Plaintiff so requests.

ANSWER TO ALL ALLEGATIONS

Defendants deny any and all allegations that they did not specifically admit in their ANSWERS to paragraphs 1-88 above.

AFFIRMATIVE AND OTHER DEFENSES

Defendants incorporate herein by reference their ANSWERS to paragraphs 1-88, *supra*, to support their affirmative defenses. In addition, Defendants set forth the following affirmative and other defenses. For their affirmative defenses (i.e., those defenses for which it will have the burden of proof), as well as its other defenses, Defendants provide facts where appropriate based on their investigation to date and upon information and belief. As Defendants' investigation is ongoing, they reserve the right to seek leave to amend this Answer to the extent appropriate and just, in accordance with the Federal Rules of Civil Procedure.

1. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted, or for which the damages sought may be awarded.

2. Plaintiff's claims are barred to the extent that she failed to plead a prima facie case arising under the FLSA or the Missouri Minimum Wage Law, or for breach of contract or unjust enrichment. Plaintiff cannot set forth facts to establish any of the above-referenced claims and Defendants complied with applicable law in compensating Plaintiff and any other non-exempt, hourly employees.

3. Defendants deny Plaintiff was employed by SLHS or that SLHS controlled employment decisions or practices at SLN, which is a separate legal entity with its own management and operational system.

4. The Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, because Defendants acted reasonably and in good faith, based upon all facts and circumstances known by Defendants when they acted.

5. Any unpaid wage claims are barred, in whole or in part, by the provisions of Section 4 of the Portal-to-Portal Act, 29 U.S.C. § 254 and/or the applicable provisions of state law, as to all hours during which Plaintiff, putative class/collective members, and or any alleged "aggrieved employees" were engaged in activities which were preliminary, postliminary or incidental to their principal duties or activities.

6. Any unpaid wage claims are barred, in whole or in part, because the rounding policy lawfully/equally benefits the employer and employee.

7. The Complaint fails, in whole or in part, because Plaintiff and the putative collective class members, class members, or alleged aggrieved employees whom

Plaintiff seeks to represent have suffered no injury from any alleged failure by either of the Defendants.

8. Plaintiff is not similarly situated to those she seeks to represent.

9. Plaintiff is not an appropriate class representative.

10. Plaintiff's claims, and the claims of the putative collective class members, class members, and/or alleged aggrieved employees Plaintiff seeks to represent, are barred, because their alleged losses are *de minimis* and therefore not compensable.

11. To the extent Plaintiff or the putative collective class members, class members, or alleged aggrieved employees whom Plaintiff seeks to represent are entitled to any unpaid wages, Defendants are entitled to a credit or setoff, including but not limited to amounts erroneously overpaid to them.

12. Plaintiff's claims are unreasonable, were filed in bad faith, and/or are frivolous and, for such reasons, justify an award of attorneys' fees and costs against Plaintiff and/or Plaintiff's attorneys.

13. Any recovery by Plaintiff, or any other person on whose behalf Plaintiff seeks to assert a claim, should be limited to the extent that they have failed to mitigate any of the damages alleged in the Complaint.

14. Plaintiff cannot establish the requirements of Rule 23 of the Federal Rules of Civil Procedure for a class action for their claims under the Missouri Minimum Wage Law.

15. Plaintiff cannot maintain this action as a class action to the extent that joinder of all members of the potential class is impracticable.

16. Plaintiff cannot maintain this action as a class action to the extent that there are no questions of fact or law common to the proposed class that predominate over any questions affecting only individual members.

17. Plaintiff cannot maintain this action as a class action to the extent that the purported representative party will not fairly and adequately protect the interests of the proposed class.

18. Plaintiff cannot maintain this action as a class action to the extent that the class action is not an appropriate method for the fair and efficient adjudication of this controversy.

19. Plaintiff cannot maintain this action as a class action to the extent that Defendant SLN did not maintain common, uniform policies or practices applicable to the proposed class.

20. Plaintiff's claims under the FLSA and Missouri Minimum Wage Law for overtime are barred to the extent that Plaintiff, or any other person Plaintiff seeks to include in this case, worked less than 40 hours per week, but received payments in excess of what they would have been paid had they worked 40 hours per week at minimum wage.

21. Plaintiff's claims, and those claims of any other person on whose behalf Plaintiff seeks to assert a claim under the FLSA or the Missouri Minimum Wage Law, are barred to the extent that they are duplicative of claims for which Plaintiff or any potential opt-in or opt-out class members have already recovered.

22. Defendants assert a lack of willfulness or intent to violate the FLSA as a defense to any claim by Plaintiff or the putative collective class members or alleged aggrieved employees whom Plaintiff seek to represent, for liquidated damages.

23. The liquidated damages provision of Mo. Rev. Stat. § 290.527, on its face or as applied, is penal or punitive in nature, such that liquidated damages may only be awarded upon the requisite level of proof.

24. The FLSA preempts Plaintiff's state law claims in whole or in part.

25. There must be excluded from the calculation of any overtime rate of pay used to calculate any amounts which may be found to be due to Plaintiff, and those whom Plaintiff seeks to represent, those aspects of the employees' compensation that are excluded from the regular rate of pay.

26. Plaintiff's claims are barred to the extent Plaintiff failed to exhaust applicable administrative remedies and other conditions precedent to the filing of her claim.

27. Certification of a collective class or class, as applied to the facts and circumstances of this case, would constitute a denial of Defendants' due process rights, both substantive and procedural, in violation of the Fourteenth Amendment to the United States Constitution and the Missouri Constitution.

28. The Complaint fails, in whole or in part, to the extent Plaintiff failed to institute this action within the time required under the applicable statutes of limitation.

29. At no time did Plaintiff's employer, Defendant SLN, pay Plaintiff in a manner known or believed to violate any applicable legal requirement, nor did

Defendant compensate Plaintiff in willful disregard for any applicable FLSA requirement.

30. Plaintiff's employer, Defendant SLN, did not engage in a willful violation of FLSA and, accordingly, the statute of limitations for that claim is not extended to three years.

31. The Complaint and each cause of action set forth therein, or some of them, are barred by the equitable doctrines of waiver, laches, unclean hands, estoppel and/or judicial estoppel.

32. Defendants respectfully reserve the right to amend their Answer to assert additional defenses or claims as warranted by the information gained during discovery.

WHEREFORE, having fully answered the Complaint, Defendants respectfully request that the Court dismiss Plaintiff's Complaint and order such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Curtis R. Summers

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2018, a true and correct copy of the foregoing document was filed electronically through the Court's CM/ECF system, and therefore, will be transmitted to all counsel of record by operation of the Court's CM/ECF system.

/s/ Curtis R. Summers

ATTORNEY FOR DEFENDANTS