



FILED  
ALAMEDA COUNTY

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CLERK OF THE COURT  
BY *[Signature]*  
DEPUTY

1 WILLIAM D. NAEVE (SBN 92270)  
2 ELLEN M. TIPPING (SBN 155985)  
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6 Attorneys for Defendants UHS OF DELAWARE, INC., and ELMIRA NPS, LLC

8 SUPERIOR COURT OF CALIFORNIA  
9 IN THE COUNTY OF ALAMEDA

10

11 JESSICA NEU-HELMS, VALEEN  
12 HAUPT, KATHERINE  
13 WOOLSTENCROFT and ON BEHALF  
14 OF ALL OTHERS SIMILARLY  
15 SITUATED,

14 Plaintiffs,

15 vs.

16 UHS OF DELAWARE, INC. WHICH  
17 WILL TRANSACT BUSINESS IN  
18 CALIF. AS UNIVERSAL HEALTH  
19 SERVICES OF DELAWARE, INC.;  
20 ELMIRA NPS, LLC and DOES 1-100,

19 Defendants.

Case No. RG 08425516  
HON. STEVEN A. BRICK  
DEPT. 17

ANSWER OF DEFENDANTS  
UHS OF DELAWARE, INC., AND  
ELMIRA NPS, LLC TO  
PLAINTIFFS' UNVERIFIED  
AMENDED COMPLAINT

[Cal. Code Civ. P. § 431:30(d)]

Complaint Filed: December 15, 2008  
Trial Date: Not set

21 TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO ALL  
22 PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

23 COMES NOW, defendants UHS OF DELAWARE, INC., and ELMIRA NPS,  
24 LLC, and in answering plaintiffs' unverified complaint, for themselves and themselves  
25 alone, admit, deny and allege as follows:

26 Pursuant to the provisions of *California Code of Civil Procedure* § 431.30(d),  
27 these answering defendants deny, both generally and specifically, each and every  
28 allegation contained within plaintiffs' unverified amended complaint and each and

ANSWER OF DEFENDANTS UHS OF DELAWARE, INC., AND ELMIRA NPS, LLC  
TO PLAINTIFFS' UNVERIFIED AMENDED COMPLAINT

AXED

1 every cause of action contained within plaintiffs' amended complaint and the whole  
2 thereof. These answering defendants further specifically deny that plaintiffs were  
3 damaged in the sum or sums alleged, or to be alleged, or in any sums whatsoever, or at  
4 all, and further specifically denies that plaintiffs are entitled to the relief sought within  
5 their complaint or to any other relief of whatever character, or at all.

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**AFFIRMATIVE DEFENSES**

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9 **COMES NOW**, defendants UHS OF DELAWARE, INC., and ELMIRA NPS,  
10 LLC, and respectfully submit the following Affirmative Defenses to each and every  
11 cause of action contained within plaintiffs' unverified amended complaint.

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**FIRST AFFIRMATIVE DEFENSE**

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15 1. As and for a first, separate and distinct affirmative defense to each and  
16 every purported cause of action contained within plaintiffs' unverified amended  
17 complaint, these answering defendants allege that plaintiffs have failed to state facts  
18 sufficient to constitute any cause of action against these answering defendants which  
19 therefore bars said plaintiffs from recovering the relief sought therein.

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**SECOND AFFIRMATIVE DEFENSE**

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23 2. As and for a second, separate and distinct affirmative defense to each and  
24 every purported cause of action contained within plaintiffs' unverified amended  
25 complaint, these answering defendants allege that plaintiffs have failed to mitigate their  
26 damages, if any, which therefore bars said plaintiffs from recovering the relief sought  
27 therein.

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**THIRD AFFIRMATIVE DEFENSE**

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3. As and for a third, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein by reason of the doctrine of estoppel.

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**FOURTH AFFIRMATIVE DEFENSE**

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4. As and for a fourth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein by reason of the doctrine of waiver.

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**FIFTH AFFIRMATIVE DEFENSE**

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5. As and for a fifth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein by reason of the doctrine of unclean hands.

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**SIXTH AFFIRMATIVE DEFENSE**

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6. As and for a sixth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from any recovery by the doctrine of laches.

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**SEVENTH AFFIRMATIVE DEFENSE**

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7. As and for a seventh, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein inasmuch as the equities do not preponderate in their favor but, rather, preponderate in favor of these answering defendants.

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**EIGHTH AFFIRMATIVE DEFENSE**

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8. As and for an eighth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein by reason of the doctrine of excuse.

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**NINTH AFFIRMATIVE DEFENSE**

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9. As and for a ninth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein by reason of the doctrine of consent.

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**TENTH AFFIRMATIVE DEFENSE**

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10. As and for a tenth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended  
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1 complaint, these answering defendants alleges that plaintiffs are barred from recovering  
2 the relief sought therein by reason of the doctrine of privilege.

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4 **ELEVENTH AFFIRMATIVE DEFENSE**  
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6 11. As and for an eleventh, separate and distinct affirmative defense to each  
7 and every purported cause of action contained within plaintiffs' unverified amended  
8 complaint, these answering defendants allege that plaintiffs are barred from recovering  
9 the relief sought therein by reason of the doctrine of justification.

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11 **TWELFTH AFFIRMATIVE DEFENSE**  
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13 12. As and for a twelfth, separate and distinct affirmative defense to each and  
14 every purported cause of action contained within plaintiffs' unverified amended  
15 complaint, these answering defendants allege that plaintiffs are barred from recovering  
16 the relief sought within their unverified amended complaint by the doctrine of  
17 preemption.

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19 **THIRTEENTH AFFIRMATIVE DEFENSE**  
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21 13. As and for a thirteenth, separate and distinct affirmative defense to each  
22 and every purported cause of action contained within plaintiffs' unverified amended  
23 complaint, these answering defendants allege that plaintiffs are barred from recovering  
24 the relief sought therein by reason of the failure of a condition precedent and/or a  
25 condition subsequent.

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**FOURTEENTH AFFIRMATIVE DEFENSE**

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14. As and for a fourteenth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that it has no liability for consequential damages.

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**FIFTEENTH AFFIRMATIVE DEFENSE**

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15. As and for a fifteenth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that any liability imposed which these answering defendants specifically deny to exist, has been contractually assumed by third parties.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

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16. As and for a sixteenth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein by virtue of their failure to exhaust administrative remedies.

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**SEVENTEENTH AFFIRMATIVE DEFENSE**

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17. As and for a seventeenth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs' action is barred by the

1 applicable statute(s) of limitations including, but not limited to, *California Code of*  
2 *Civil Procedure* §§ 337, 338, 339 and/or 343, and/or *Business and Professions Code*  
3 § 17200.

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4 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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6 18. As and for an eighteenth, separate and distinct affirmative defense to each  
7 and every purported cause of action contained within plaintiffs' unverified amended  
8 complaint, these answering defendants allege that plaintiffs are barred from recovering  
9 the relief sought therein by reason of the fact that payment of all sums due and owing  
10 has been made to plaintiffs.

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12 **NINETEENTH AFFIRMATIVE DEFENSE**

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14 19. As and for a nineteenth, separate and distinct affirmative defense to each  
15 and every cause of action contained within plaintiffs' unverified amended complaint on  
16 file herein, these answering defendants allege that plaintiffs are barred from recovering  
17 the relief sought therein insofar as the employer exercised reasonable care and that  
18 plaintiffs failed to avail themselves of preventive or corrective measures. (*Burlington*  
19 *Indus. v. Ellerth* (1998) 524 U.S. 742, 765.)

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22 **TWENTIETH AFFIRMATIVE DEFENSE**

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23 20. As and for a twentieth, separate and distinct affirmative defense to each  
24 and every purported cause of action contained within plaintiffs' unverified amended  
25 complaint, these answering defendants allege that plaintiffs are barred from recovering  
26 the relief sought therein insofar as defendant UHS OF DELAWARE, INC., did not  
27 employ plaintiffs and/or any of the purported class members.

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**TWENTY-FIRST AFFIRMATIVE DEFENSE**

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21. As and for a twenty-first, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that any damages sustained by plaintiffs, which damages are specifically denied to exist, were the result of the active or affirmative negligent acts and/or omissions to act of independent third parties and/or independent contractors or entities whose active and affirmative negligence and/or omissions to act were the proximate cause of plaintiffs' alleged injuries and damages. Accordingly, any damages suffered by plaintiffs, which damages are specifically denied to exist, must be therefore reduced in proportion to that amount of negligence attributable to third parties or entities.

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**TWENTY-SECOND AFFIRMATIVE DEFENSE**

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22. As and for a twenty-second, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs are barred from recovering the relief sought within their unverified amended complaint by virtue of the fact plaintiffs have suffered no damage.

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**TWENTY-THIRD AFFIRMATIVE DEFENSE**

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23. As and for a twenty-third, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs' claim for equitable relief is prohibited under California law.

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**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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24. As and for a twenty-fourth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that equitable claims of the plaintiffs and/or the purported class are barred insofar as they have adequate remedies at law.

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**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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25. As and for a twenty-fifth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs' claims for injunctive relief are barred as impermissibly and unconstitutionally vague and unmanageable.

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**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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26. As and for a twenty-sixth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs' claims under *California Business and Professions Code § 17200, et seq.*, are barred because they create insurmountable case management problems.

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**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

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27. As and for a twenty-seventh, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended

1 complaint on file herein, these answering defendants allege that plaintiffs have failed to  
2 allege, and/or have no facts to prove, under the clear and convincing evidence standard,  
3 the oppression, fraud, or malice required for an award of punitive damages pursuant to  
4 *California Civil Code* § 3294.

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6 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

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8 28. As and for a twenty-eighth, separate and distinct affirmative defense to  
9 each and every cause of action contained within plaintiffs' unverified amended  
10 complaint on file herein, these answering defendants allege that should plaintiffs  
11 produce clear and convincing evidence against these answering defendants sufficient to  
12 satisfy the requirements for punitive damages under *California Civil Code* § 3294, any  
13 punitive damages awarded must be reasonable in terms of the following guideposts set  
14 forth by the United States Supreme Court in *BMW of North America, Inc. v. Ira Gore, Jr.*,  
15 116 S. Ct. 1589, 1345L.Ed.2d 809 (1996); and *State Farm Mutual Auto Ins. Co. v. Campbell*  
16 (2003) 123 S.Ct. 1513.

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18 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

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20 29. As and for a twenty-ninth, separate and distinct affirmative defense to  
21 each and every cause of action contained within plaintiffs' unverified amended  
22 complaint on file herein, these answering defendants allege that *California Civil Code*  
23 § 3294, *et seq.*, constitutes a criminal and/or penal sanction which therefore entitles  
24 these answering defendants to rights given defendants in criminal proceedings under  
25 the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution  
26 and Article I, Sections 7, 15 and 17 and Article IV, Section 16 of the California  
27 Constitution. *California Civil Code* § 3294, *et seq.*, is therefore unconstitutional in that  
28 it deprives these answering defendants of due process because plaintiffs need only

1 establish an entitlement to punitive or exemplary damages by clear and convincing  
2 evidence rather than beyond a reasonable doubt and can be awarded punitive and/or  
3 exemplary damages by less than a unanimous jury verdict.

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5 **THIRTIETH AFFIRMATIVE DEFENSE**

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7 30. As and for a thirtieth, separate and distinct affirmative defense to each and  
8 every cause of action contained within plaintiffs' unverified amended complaint on file  
9 herein, these answering defendants allege that *California Civil Code § 3294, et seq.*, is  
10 unconstitutional, and violates these answering defendants's rights under the Fifth,  
11 Eighth and Fourteenth Amendments to the United States Constitution and under  
12 Article I, Sections 7, 15 and 17 of the California Constitution in that it does not limit  
13 the discretion of the trier of fact as to the amount of punitive or exemplary damages to  
14 be awarded and constitutes an unlawful delegation of legislative power and denial of  
15 substantive and/or procedural due process.

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17 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

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19 31. As and for a thirty-first, separate and distinct affirmative defense to each  
20 and every cause of action contained within plaintiffs' unverified amended complaint on  
21 file herein, these answering defendants allege that *California Civil Code § 3294, et seq.*,  
22 is unconstitutional and violates these answering defendants's rights guaranteed under  
23 the Fifth and Fourteenth Amendments to the United States Constitution and under  
24 Article I, Section 7 of the California Constitution inasmuch as the statute is  
25 impermissibly vague and imprecise and fails to impart sufficient notice of prohibited  
26 conduct.

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**THIRTY-SECOND AFFIRMATIVE DEFENSE**

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32. As and for a thirty-second, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs' claim under *California Business and Professions Code* § 17200 is barred since the cause of action is not properly sought on behalf of the general public.

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**THIRTY-THIRD AFFIRMATIVE DEFENSE**

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33. As and for a thirty-third, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs' claim under *California Business and Professions Code* § 17200 is barred since plaintiffs are not the real parties in interest as to the third party claims.

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**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

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34. As and for a thirty-fourth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs' claim under *California Business and Professions Code* § 17200 is barred since plaintiffs are seeking damages which is not an available form of relief.

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**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

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35. As and for a thirty-fifth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants reserve the right to assert additional defenses based on information gathered in the course of additional investigation and discovery.

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**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

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36. As and for a thirty-sixth, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs' amended complaint cannot properly be maintained as a class action because there is no ascertainable class and/or well-defined community of interest in the questions of law and fact involved. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809.)

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**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

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37. As and for a thirty-seventh, separate and distinct affirmative defense to each and every purported cause of action contained within plaintiffs' unverified amended complaint, these answering defendants allege that plaintiffs' amended complaint cannot properly be maintained as a class action because common questions of fact or law do not predominate.

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**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

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38. As and for a thirty-eighth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs' amended complaint cannot properly be maintained as a class action because there would be no substantial prejudice from separate actions.

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**THIRTY-NINTH AFFIRMATIVE DEFENSE**

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39. As and for a thirty-ninth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs' amended complaint cannot properly be maintained as a class action because a class action would not be a superior method for adjudicating the controversy.

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**FORTIETH AFFIRMATIVE DEFENSE**

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40. As and for a fortieth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs' amended complaint cannot properly be maintained as a class action against UHS OF DELAWARE, INC., as plaintiffs are not an adequate representative of the purported class because, *inter alia*, they are not employees of that answering defendant.

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**FORTY-FIRST AFFIRMATIVE DEFENSE**

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41. As and for a forty-first, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein by reason of the doctrine of former adjudication including *res judicata* or *collateral estoppel*.

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**FORTY-SECOND AFFIRMATIVE DEFENSE**

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42. As and for a forty-second, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs' action is barred by the pendency of another action.

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**FORTY-THIRD AFFIRMATIVE DEFENSE**

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43. As and for a forty-third, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein insofar as there was consent, as expressed within valid written on-duty meal period agreements, in compliance with IWC Wage Orders No. 4-2001 section 11(A) and Division of Labor Standards Enforcement Policies and Interpretations Manual section 45.2.3.1, section 2.

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**FORTY-FOURTH AFFIRMATIVE DEFENSE**

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44. As and for a forty-fourth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein pursuant to *Labor Code* § 554.

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**FORTY-FIFTH AFFIRMATIVE DEFENSE**

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45. As and for a forty-fifth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs and the putative class members have not suffered any actual injury, as that phrase is contemplated by *California Labor Code* section 226(e) which bars plaintiffs from recovering the relief sought herein.

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**FORTY-SIXTH AFFIRMATIVE DEFENSE**

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46. As and for a forty-sixth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs were authorized and permitted to take rest breaks as contemplated by IWC Wage Order 4-2001, section 12(A) and Division of Labor Standards Enforcement Policies and Interpretations Manual, section 4.5.3, et seq., which therefore bars plaintiffs from recovering the relief sought herein.

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**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

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47. As and for a forty-seventh, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein insofar as these answering defendants complied with all applicable provisions of the *Labor Code* and all applicable Industrial Wage Commission Wage Orders.

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**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

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48. As and for a forty-eighth and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein as against defendants UHS OF DELAWARE, INC., and ELMIRA NPS, LLC, insofar as plaintiffs have not provided sufficient pre-suit notification as required by *Labor Code* § 2699.3(a) and/or because difference between the pre-suit notification and plaintiff's unverified amended complaint on file herein are material.

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**FORTY-NINTH AFFIRMATIVE DEFENSE**

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49. As and for a forty-ninth, separate and distinct affirmative defense to each and every cause of action contained within plaintiffs' unverified amended complaint on file herein, these answering defendants allege that plaintiffs are barred from recovering the relief sought therein as against defendants UHS OF DELAWARE, INC., and ELMIRA NPS, LLC insofar as any violations alleged therein, which said violations are

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1 generally and specifically denied, have been cured within the meaning of *Labor*  
2 *Code* § 2699.3(c).

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4 **FIFTIETH AFFIRMATIVE DEFENSE**

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6 50. As and for a fiftieth, separate and distinct affirmative defense to each and  
7 every cause of action contained within plaintiffs' unverified amended complaint on file  
8 herein, these answering defendants contend that civil penalties should not be awarded,  
9 or should be reduced in the court's discretion, because to award the maximum civil  
10 penalty would result in an award that is unjust, arbitrary and confiscatory within the  
11 meaning of *Labor Code* § 2699(e)(2).

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13 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

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15 51. As and for a fifty-first, separate and distinct affirmative defense to each  
16 and every cause of action contained within plaintiffs' unverified amended complaint on  
17 file herein, these answering defendants contend that any violations alleged in plaintiffs'  
18 unverified amended complaint on file herein, which said violations are generally and  
19 specifically denied, were minor within the meaning of *Labor Code* § 2699(g) and thus  
20 not actionable.

22 **WHEREFORE**, these answering defendants respectfully pray judgment be  
23 taken against plaintiffs, as follows:

24 1. That plaintiffs take nothing by virtue of their unverified amended  
25 complaint on file herein from these answering defendants;

26 2. That plaintiffs' unverified amended complaint be dismissed, with  
27 prejudice, as to these answering defendants;

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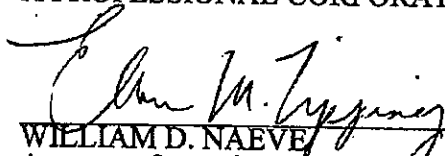
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3. That these answering defendants be awarded its costs of suit including reasonable attorneys' fees; and

4. For such other and further relief as the court may deem just and proper.

DATED: March 12, 2009

COTKIN & COLLINS  
A PROFESSIONAL CORPORATION

By:   
WILLIAM D. NAEVE  
Attorneys for Defendants,  
UHS OF DELAWARE, INC.,  
and ELMIRA NPS, LLC

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I, Debra Fields, am employed in the aforesaid County, State of California; I am  
4 over the age of 18 years and not a party to the within action; my business address is  
200 West Santa Ana Blvd., Suite 800, Santa Ana, California 92701.

5 On March 12, 2009, I served the foregoing **ANSWER OF DEFENDANTS**  
6 **UHS OF DELAWARE, INC., AND ELMIRA NPS, LLC, TO PLAINTIFFS'**  
7 **UNVERIFIED AMENDED COMPLAINT** on the interested parties in this action by  
placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

8 Richard A. Hoyer, Esq.  
9 LAW OFFICES OF RICHARD A.  
HOYER & ASSOCIATES  
10 Michael S. Sorgen, Esq  
11 LAW OFFICES OF MICHAEL S.  
SORGEN  
12 240 Stockton Street, 9th Floor  
13 San Francisco, CA 94108

*Attorneys for Plaintiffs,*  
14 JESSICA NEU-HELMS, VALEEN  
15 HAUPT, KATHERINE  
16 WOOLSTENCROFT and on behalf of all  
others similarly situated  
17 Tel: (415) 956-1360  
18 Fax: (415) 956-6342

X	<b>BY FIRST CLASS MAIL:</b> I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with first-class postage thereon fully prepaid. I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.
	<b>BY FACSIMILE:</b> I caused the document to be transmitted by a facsimile machine compliant with Rule 2.306 of the California Rules of Court to the offices of the addressees at the telephone numbers shown on the service list.
	<b>BY HAND DELIVERY:</b> I caused such envelope to be delivered by hand to the offices of the addressees.
	<b>BY FEDERAL EXPRESS:</b> I am readily familiar with my employer's practice for the collection and processing of FedEx packages. Under that practice, packages would be deposited with FedEx that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
	<b>(Federal Courts Only)</b> I declare that I am employed in the office of a member of the court at whose direction this service was made.

24 I declare under penalty of perjury under the laws of the State of California that  
25 the foregoing is true and correct and that this document was executed on March 12,  
26 2009, at Santa Ana, California.

27   
28 DEBRA FIELDS