

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

X

Index No.

ELAINE J. PECK,, ROSE ANN BENDER-
LOW, JIM ROBLES, LINDA QUINLAN,
MARGARET PAWLOWSKI, JOY MINKOFF,
BARBARA LAPEMMA, RITA SOREGA,
ELLEN SULLIVAN, DAVID CONROY,
PAMELA KAVANAUGH-SMITH,
individually and on behalf of all others
similarly situated,

Plaintiffs,

- vs. -

VERIFIED CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

LONG BEACH MEDICAL CENTER, a New
York Corporation (D.B.A, LONG BEACH
MEDICAL CENTER HOSPITAL, LONG
BEACH MEDICAL CENTER HOME CARE
AGENCY, AND THE KOMANOFF CENTER
FOR GERIATRIC & REHABILITATIVE
MEDICINE), DOUGLAS MELZER,
individually, and JOHN AND JANE DOES 1-10,

Defendants.

X

Plaintiffs Elaine J. Peck, Rose Ann Bender-Low, Jim Robles, Linda Quinlan, Margaret Pawlowski, Joy Minkoff, Barbara Lapemma, Rita Sorega, Ellen Sullivan, David Conroy, and Pamela Kavanaugh-Smith, by their undersigned attorneys, allege upon personal information as to themselves and upon information and belief as to all other allegations, for their Class Action Complaint against defendants Long Beach Medical Center (d.b.a., Long Beach Medical Center Hospital, Long Beach Medical Center Home Care Agency, and The Komanoff Center for Geriatric & Rehabilitative

Medicine) (hereinafter, “LBMC”), Douglas Melzer, and John and Jane Does 1-10 (collectively, “Defendants”), as follows:

NATURE OF THE ACTION

1. This is a class action related to the illegal misconduct and wage-theft in the State of New York by Defendants LBMC, Douglas Melzer (CEO of LBMC), and John and Jane Does 1-10 (collectively, “Defendants”), which constitute breach of contract, grounds for promissory estoppel, and unjust enrichment, and which violate New York Labor Law Article 6 § 198-c¹ (“Section 198-c”) and New York General Business Law §349 (“§349”), and other applicable law.

2. Plaintiffs bring this action on behalf of themselves and a class comprised of all persons who were previously employed and/or have been laid off by LBMC and who, as of December 8, 2012 and continuing to the present (the “Class Period”), are and have been entitled (per Defendants’ Employee Handbook and/or the

¹ New York Labor Law Article 6 has been termed the “*Wage Theft Statute*” and reads:

PAYMENT OF WAGES

198-C - Benefits or wage supplements.

§ 198-c. Benefits or wage supplements. 1. In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to an agreement to pay or provide benefits or wage supplements to employees or to a third party or fund for the benefit of employees and who fails, neglects or refuses to pay the amount or amounts necessary to provide such benefits or furnish such supplements within thirty days after such payments are required to be made, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section one hundred ninety-eight-a of this article. Where such employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of a misdemeanor.

2. As used in this section, the term "benefits or wage supplements" includes, but is not limited to, reimbursement for expenses; health, welfare and retirement benefits; and vacation, separation or holiday pay.

3. This section shall not apply to any person in a bona fide executive, administrative, or professional capacity whose earnings are in excess of nine hundred dollars a week.

customary and usual practices and procedures in place) to receive at their date of separation from LBMC certain benefits and/or wages, including wages for accrued vacation time, holidays, overtime, and personal days (“Accrued Benefits”) and wages for unused, current vacation time, holidays, overtime, personal days, and longevity bonuses (“Current Benefits”), but who have not received such benefits and/or wages due them.²

3. Plaintiffs also bring this action on behalf of themselves and a Sub Class comprised of all persons who are currently employed by the LBMC and who, as of the start of the Class Period and continuing to the present, are and have been entitled (per Defendants’ Employee Handbook and/or the customary and usual practices and procedures in place) to receive Current Benefits, but who have not received such benefits and/or wages due them.

4. As an additional incentive in consideration of their decision to accept employment with LBMC, Defendants offered to Plaintiffs and the Class Members the Accrued Benefits and the Current Benefits as part of their employment.

5. Plaintiff and the Class Members accepted employment with LBMC, and continued their employment with LBMC, with the knowledge and understanding that both the Employee Handbook and the customary and usual practices and procedures in place at LBMC dictated that employees would receive compensation for the value of their Accrued and Current Benefits upon separation from LBMC (and that current employees would receive and/or get compensated for Current Benefits).

² As detailed herein, *see infra*, per the Employee Handbook and the usual and customary practices in place, at their date of separation from LBMC, employees’ have the per se right to receive wages for their Accrued Benefits and Current Benefits where (i) employees have been laid off due to lack of work or economic conditions; (ii) employees decide to resign their employment; and/or (iii) for any other termination reason, other than a termination for “due cause.” Exhibit 1 at 12, 30-34.

6. As detailed herein, since the beginning of the Class Period in December 2012, Defendants have unilaterally and intentionally withheld from Plaintiffs and Class the wages for the Accrued Benefits and/or Current Benefits due them - unjustly enriching themselves to the detriment of Plaintiffs and the Class.³

7. As a result of Defendants' illegal and intentional refusal to pay Class members wages for their benefits rightfully earned and due them, Plaintiffs and other Class Members are and have been harmed by not obtaining the value of the agreed-to terms of employment between Class Members and LBMC, or the value of their agreed-to wages and/or benefits.

8. By this action, Plaintiffs seek to remedy the harm caused by Defendants' illegal and unconscionable misconduct, detailed herein.

JURISDICTION AND VENUE

9. This Court has jurisdiction under CPLR § 302, because Defendants regularly transact business within the State of New York.

10. Venue is appropriate in this Court under CPLR § 503, because Defendants operate(d) the LBMC and related facilities in this district, and Defendants are physically located here.

THE PARTIES

11. Plaintiff Rose Ann Bender-Low is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is

³ Upon information and belief, Defendant Douglas Melzer, the CEO of LBMC, is still currently drawing full salary and benefits from LBMC and its entities in excess of \$400,000 per year. Similarly, upon information and belief, other high-paid officials (including *LBMC's director of admissions*) are also drawing full salary from the supposedly dormant LBMC.

subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

12. Plaintiff Elaine J. Peck is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

13. Plaintiff Jim Robles is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

14. Plaintiff Margaret Pawlowski is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

15. Plaintiff Linda Quinlan is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of

16. Plaintiff Joy Minkoff is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

17. Plaintiff Barbara Lapemma is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

18. Plaintiff Rita Sorega is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

19. Plaintiff Ellen Sullivan is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

20. Plaintiff David Conroy is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

21. Plaintiff Pamela Kavanaugh-Smith is a resident of Nassau County, New York, was a former LBMC employee at the start of the Class Period, and therefore is subject to Defendants' unlawful, unconscionable, and inequitable conduct complained of herein.

22. Defendant Long Beach Medical Center ("LBMC") is a corporation organized under the laws of the state of New York. LBMC is the primary health care provider for Long Beach, Lido Beach, Point Lookout, Atlantic Beach and Island Park in Nassau County. It is a comprehensive health care organization doing business in New York that includes a 162-bed acute care hospital (The Long Beach Hospital); a 200-bed skilled nursing facility specializing in rehabilitation medicine (The Komanoff Center for Geriatric & Rehabilitative Medicine); a certified home health care agency (The Long Beach Medical Center Home Care Agency); and numerous outpatient programs.

23. Defendant Douglas Melzer, upon information and belief, is the CEO of LBMC and its related entities. Defendant Melzer, upon information and belief, is a resident of Westchester County, New York.

24. Defendants John and Jane Does 1-10 will be identified through reasonable discovery means.

CLASS ACTION ALLEGATIONS

25. Plaintiffs bring this action as a class action, pursuant to Article 9 of the CPLR, on behalf of the Class consisting of:

all persons who were previously employed and/or have been laid off by LBMC and who, as of December 8, 2012 and continuing to the present (the “Class Period”), are and have been entitled (per Defendants’ Employee Handbook and/or the customary and usual practices and procedures in place) to receive at their date of separation from LBMC certain benefits and/or wages, including wages for accrued vacation time, holidays, overtime, and personal days (“Accrued Benefits”) and wages for unused, current vacation time, holidays, overtime, personal days, and longevity bonuses (“Current Benefits”), but who have not received such benefits and/or wages due them.

26. Plaintiffs also bring this action on behalf of themselves and a Subclass comprised of:

persons who are currently employed by the LBMC and who, since the beginning of the Class Period, are and have been entitled (per Defendants’ Employee Handbook and/or the customary and usual practices and procedures in place) to receive Current Benefits, but who have not received such benefits and/or wages due them.

27. The Class and Sub Class (collectively, “the Class”) satisfy the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of CPLR § 901.

28. The members of the Class are so numerous that joinder of all members is impracticable. Although the precise number of Class members is unknown to Plaintiffs at this time and can be determined by appropriate discovery, it is reasonably estimated that the class consists of over twelve hundred members who are geographically dispersed throughout Nassau and other New York Counties.

29. Because Plaintiffs and members of the Class are each former employees of Defendant LBMC and are each entitled (per Defendants' Employee Handbook and/or the customary and usual practices and procedures in place) to receive wages for their Accrued Benefits and Current Benefits - but who have not received such benefits and/or wages - Plaintiffs are members of the Class whose claims are typical of the claims of the members of the Class.

30. Because Plaintiffs in the Sub Class are each current employees of Defendant LBMC and are each entitled (per Defendants' Employee Handbook and/or the customary and usual practices and procedures in place) to receive their Current Benefits - but who have not received such benefits and/or wages - Plaintiffs are members of the Sub Class whose claims are typical of the claims of the other members of the Class.

31. The harm suffered by Plaintiffs and all other Class members was and is caused by the same misconduct by Defendants, i.e., Defendants' unilateral and intentional refusal to pay to Plaintiffs and the Class Members their Accrued Benefits and/or Current Benefits due them.

32. Plaintiffs will fairly and adequately represent and protect the interests of the Class, in that Plaintiffs have no interests antagonistic to, nor in conflict with, the Class. Plaintiffs have retained competent counsel, experienced in consumer and

commercial class action litigation, to further ensure such protection and who intend to prosecute this action vigorously.

33. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the monetary damages suffered by individual Class members are relatively small, the expense and burden of individual litigation make it virtually impossible for individual Class members to seek redress for the wrongful conduct alleged herein. If Class treatment of these claims was not available, Defendants would likely continue their wrongful conduct, and also would unfairly receive many hundreds of thousands or millions of dollars in unlawfully withheld wages due to Plaintiffs and the Class, or would otherwise escape liability altogether for their wrongdoing, as alleged herein.

34. Common questions of law and fact exist as to all members of the Class which predominate over any questions that may affect individual Class members. Among the questions of law and fact common to the Class include the following:

- a. whether Class members are entitled to the Accrued Benefits due them;
- b. whether Class members are entitled to the Current Benefits due them;
- c. whether Sub Class members are entitled to the Current Benefits due them;
- d. whether Defendants' unilateral refusal to withhold the Accrued Benefits and Current Benefits from Plaintiffs and the Class violates contract law;

e. whether Defendants' unilateral refusal to withhold the Accrued Benefits and Current Benefits from Plaintiffs and the Class is unconscionable;

f. whether Defendants' unilateral refusal to withhold the Accrued Benefits and Current Benefits from Plaintiffs and the Class is a breach of the implied covenant of good faith and fair dealing imposed under the agreements (and course of dealings) between Defendants and Plaintiffs and the Class;

g. whether Defendants' unilateral refusal to withhold the Accrued Benefits and Current Benefits from Plaintiffs and the Class violates GBL § 349 and/or Section 198-c;

h. whether Plaintiffs are entitled to recover against Defendants under principles of promissory estoppel; and

i. the appropriate measure of damages, restitution, pre- and post-judgment interest, and/or other relief deemed proper by the Court.

35. The Class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Information concerning Defendants' employees and former employees is readily available from Defendants' books and records. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a Class Action.

FACTUAL ALLEGATIONS

36. Defendant LBMC's new-employee orientation boasts that the hospital environment and culture at LBMC "*is one big family.*" LBMC adds under the employment section on its website, "*Join Us. . . Our Core Values . . . are Care, Competence, Compassion.*"

37. But, as demonstrated below, when it finally came time to show to its dedicated staff the true “family culture” at LBMC, Defendants did *not* offer care and compassion as promised but, instead, acted more like the Manson family to its own employees (some who had dedicated themselves to LBMC for over 40 years) - leaving them jobless, unable to obtain any information, and without the benefits they so desperately needed.

38. Specifically, on or around December 8, 2012, Defendants announced that LBMC was currently non-operational;⁴ there would be no work for most employees to engage in; that employees would neither receive paychecks nor their health insurance coverage going forward; and that employees should immediately look for other employment and apply for COBRA health insurance coverage (the “December 2012 Announcement”).⁵

39. Upon information and belief, in an effort to “clear its books” of employees of record (in an apparent attempt to curtail any *current* benefits owed these employees), after the December 2012 Announcement, LBMC issued another informal policy wherein, if an employee received another job offer (even temporary employment) while the hospital continued to be non-operational, that employee was asked to immediately resign from LBMC.

⁴ A CBS News-New York investigative report recently uncovered that even before the 2012 Announcement: “Long Beach Medical Center had financial problems. It had been bleeding cash for years . . .” See <http://newyork.cbslocal.com/2013/08/16/long-beach-residents-demand-sandy-damaged-medical-center-be-reopened/>

⁵ “Layoff” is the “*temporary suspension or permanent termination of employment of an employee (or more commonly) a group of employees for business reasons, such as when certain positions are no longer necessary or when a business slow-down occurs.*” See <http://en.wikipedia.org/wiki/Layoff>. In addition, the LBMC Handbook defines an employee being “laid off” as: lack of work due to economic or other conditions. Exhibit 1 at 12. Accordingly, at the start of the Class Period, Plaintiffs and the Class Members were laid off by Defendants.

40. Since the December Announcement over one year ago, LBMC has provided its former employees with virtually no information whatsoever concerning the status of LBMC or why the LBMC never reopened. In fact, as of the date of the filing of this Complaint, the *LBMC Employee Information Hotline* still plays the exact same recording on it as it did in December 2012; *no new information at all has been provided to employees or the public.*⁶

41. Since the beginning of the Class Period and as recent as several weeks ago, Plaintiffs and Class Members have continued to demand from Defendants that LBMC comply with Defendants' Employee Handbook and the customary and usual practices and procedures in place - and that Plaintiffs and the Class be compensated for their Accrued and Current Benefits. *See, e.g., Exhibit 2, Letter to Douglas Melzer dated Nov. 24, 2013.*

42. Despite these repeated demands on Defendants' by Plaintiffs and the Class for wages and/or benefits due them, Defendants have not paid its employees the Accrued Benefits and Current Benefits, or even had the decency to respond to these repeated demands by Plaintiffs and the Class.⁷

43. Defendants' refusal to answer Plaintiffs and the Class' demands for payment of their wages due them, detailed herein, is also in direct conflict with the terms of the Employee Handbook which purports: "*Reports of improper deductions will be promptly investigated [by LBMC]. If it is determined that an improper deduction [in*

⁶ Unbelievably, the December 2012 Announcement was the last communication of any kind between Defendants and Plaintiffs and the Class concerning their employment or the status of the LBMC.

⁷ This is particularly despicable conduct by Defendants, given that many of these former employees have families to care for and have not had a salary for over a year.

your wages] has occurred, you will be reimbursed promptly for an improper deduction made.” Exhibit 1 at 48-49.

44. In addition, although current LBMC employees have earned Current Benefits per Defendants’ Employee Handbook and/or the customary and usual practices and procedures in place, upon information and belief, these employees have been instructed by LBMC that they cannot use or be compensated for their Current Benefits due them.

A. The LBMC Handbook

45. When a new employee is hired by LBMC, he or she is given by Defendants the Long Beach Medical Center Employee Handbook to serve as a guide, as the Handbook instructs employees that the provisions therein, and any interpretation thereof, should mimic the customary and usual practices and procedures in place at LBMC. See Exhibit 1 at 1 (“This handbook is intended . . . as a guide to our *general policies, procedures, compensation and benefits program.*”).⁸

46. The Handbook explicitly states that: “**All accrued, vested benefits that are due and payable at termination [including resignation] will be paid.**” Exhibit 1 at 30 (emphasis added).

47. Similarly, the customary and usual practices and procedures in place at LBMC at all times up to the start of the Class Period dictated that upon an employee’s separation from LMBC for any reason (except for termination for “due cause”),

⁸ Upon information and belief, the employee Handbook that was given to each Plaintiff and every member of the Class contains these same provisions referenced herein. In addition, the Employee Handbook currently available to employees on LBMC’s website on the date of this Complaint also contains these same provisions referenced herein. Furthermore, at all times prior to the start of the Class Period, the policies and procedures in place at LBMC also mimic these same Handbook provisions referenced herein.

employees would be paid wages for the value of their Accrued Benefits and Current Benefits.⁹

48. The Handbook likewise explains that, under the customary and usual practices and procedures in place at LBMC, there are two types of “*Vacation Benefits*” due employees:

Vacations. a. The Medical Center provides paid vacations for regular full-time and eligible part-time employees, pro rata. Pay is at your regular rate of pay. . . b. Legacy Bank Vacation is all unused vacation you have earned as of December 31, 2004, including all vacation carried over from prior years. In accordance with the Medical Centers policy, **Legacy Bank Vacation . . . will be paid to you at its then current value when you retire or resign.** c. Current Vacation is the regular vacation you earn each year . . . which can be used as earned. . . . Should you not use [all of your current vacation], you will be permitted to carry over any remaining time into the next [] year.

Exhibit 1 at 33 (emphasis added).

49. The Handbook further clarifies that, under the customary and usual practices and procedures in place at LBMC, employees will be compensated for all accrued, unused vacation time upon their separation from LBMC:

If you resign your employment at the Medical Center and have been employed for one (1) year or more, you will be entitled to terminal vacation pay for unused vacation time accrued up to the date of your last anniversary. . . . New employees may take one-half (1/2) of their Current Vacation entitlement after six months of employment.

Exhibit 1 at 34 (emphasis added).

⁹ Prior to the December 2012 Announcement, current LBMC employees were also entitled to their Current Benefits. Exhibit 1 at 33-34. Upon information and belief, since the December 2102 Announcement, LBMC employees and members of the Sub Class herein have been instructed that they are barred from using or collecting wages for Current Benefits, in contrast to the prior policies and procedures at LBMC and also in contrast to the terms of the Handbook.

50. Moreover, the Handbook specifically states (and the customary and usual practices and procedures in place at LBMC dictate) that, in a situation where an employee is laid off “due to lack of work or economic conditions” – as in the instant case:

Employees affected will receive two (2) weeks’ notice or pay in lieu thereof. **Employees also will be paid, in addition to time worked, for all earned but unused holidays, vacation, and personal days.**

Exhibit 1 at 12 (emphasis added).¹⁰

51. These provisions in the preceding paragraphs each conform to the customary and usual practices and procedures in place at LBMC at all times prior to the December 2012 Announcement.

B. Plaintiffs and the Class’ Reliance On Defendants’ Handbook And The Customary and Usual Practices and Procedure In Place

52. As an additional incentive in consideration of their decision to accept employment with LBMC, Defendants offered to Plaintiffs and the Class Members the Accrued Benefits and the Current Benefits as part of their employment.

53. Plaintiffs and the Class Members received the Handbook from Defendants which stated (and were also separately informed of the customary and usual practices and procedures in place at LBMC which similarly dictated) that upon any employee’s separation from LBMC (resignation or lay off), the employee will receive payment for their Accrued Benefits and unused Current Benefits (and that current employees will receive and/or receive compensation for Current Benefits).

54. Plaintiff and the Class Members accepted employment with LBMC, and continued their employment with LBMC, with the knowledge and understanding that

¹⁰ The Handbook also states the customary and usual practices and procedures in place at LBMC wherein long-service employees starting at 5 years of service would receive annual longevity bonuses based on their net credited service date, ranging from \$250 to \$750 per employee per year. Exhibit 1 at 45.

both the Handbook and the customary and usual practices and procedures in place at LBMC dictated that employees would receive compensation for the value of their Accrued and Current Benefits upon separation from LBMC (and that current employees would receive and/or receive compensation for Current Benefits).

55. At the time of their employment, Plaintiffs and all class members were asked to acknowledge their awareness of the Accrued and Current Benefits program at LBMC, and their entitlement thereof, in addition to the Handbook.

56. Up to the December 2012 Announcement, Defendants had continually and consistently, as a matter of firm written policy (and also as a matter of firm practice and procedure), provided the aforementioned Accrued and Current Benefits to all other LBMC employees who were previously employed there.

57. Plaintiffs and the Class Members have been denied by Defendants the aforementioned Accrued and Current Benefits.

58. Plaintiffs and the Class Members reasonably relied on these written policies, practices and procedures regarding payment to LBMC employees of Accrued and Current Benefits due them.

59. Plaintiffs and the Class Members also reasonably relied on the customary and usual practices and procedures in place at LBMC, which was additionally communicated to them and which at all times prior to the December 2012 Announcement dictated that employees would be paid wages for the value of their Accrued Benefits and Current Benefits due them at the time of their separation from LMBC for any reason (except for termination for “due cause”).

60. The benefit to receive and be compensated by Defendants for Accrued and Current Benefits at the separation date was a material part of the agreement for employment between Defendants and Plaintiffs and the Class.

61. Had Defendants not offered Accrued and Current Benefits to Defendants, Plaintiffs and the Class would have either asked for more “straight” salary as consideration, or would not accepted employment with LBMC at all.

62. As a result of Defendants’ illegal and intentional refusal to pay Class members wages for their benefits rightfully earned and due them, Plaintiffs and other Class Members are and have been harmed by not obtaining the value of the agreed-to terms of employment between Class Members and LBMC, or the value of their agreed-to wages and/or benefits.

63. Defendants misconduct complained of herein constitutes breach of contract and unjust enrichment; and violates New York Labor Law Article 6, Section 198-c and GBL §349.

64. Plaintiffs and those similarly situated have suffered (and will continue to suffer) an ascertainable loss, in an amount to be determined at trial, as a result of the misconduct by Defendants complained of herein.

FIRST CAUSE OF ACTION

(Breach of Contract)

65. Plaintiffs reallege and reincorporate herein each and every allegation set forth in the preceding paragraphs of this Complaint as if set forth verbatim.

66. Valid and binding agreements for employment exist between Defendants and Plaintiffs and the Class.

67. Valid and binding agreements for the payment of benefits to employees and former employees exist between Defendants and Plaintiffs and the Class.

68. Defendants' misconduct complained of herein constitutes breaches of contract because they have withheld payment for Accrued and Current Benefits due Plaintiffs and the Class, per the Employee Handbook in place.

69. Additionally or alternatively, Defendants' misconduct complained of herein constitutes breaches of contract because Defendants have departed from the customary and usual practices and procedures in place at LBMC, which dictated that employees would receive compensation for the value of their Accrued and Current Benefits upon separation from LBMC (and that current employees would receive and/or get compensated for Current Benefits).

70. Additionally or alternatively, Defendants' misconduct complained of herein constitutes breaches of contract because defendants have breached the implied covenant of good faith and fair dealing imposed under every contract.

71. Additionally or alternatively, Defendants' misconduct complained of herein constitutes constitute breaches of contract because it violates GBL §349.

72. Plaintiffs and the Class have been damaged by Defendants' deceptive and misleading course of conduct, in violation of governing contract law.

73. Defendants are liable to Plaintiffs and the Class for damages sustained as a result of Defendants' breaches of contract relating to their refusal to pay Plaintiffs and Class Members wages for the Accrued Benefits and/or Current Benefits due them, in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Violations of GBL § 349)

74. Plaintiffs reallege and reincorporate herein each and every allegation set forth in the preceding paragraphs of this Complaint as if set forth verbatim.

75. Defendants' have engaged in a deceptive and misleading course of conduct to mislead and deceive LBMC employees, which constitutes materially deceptive acts or practices in the conduct of a business, trade or commerce or in the furnishing of services in this State which affect the public interest under and violate GBL §349.

76. Plaintiff and the Class have been injured by Defendants' conduct.

77. The wrongful conduct by Defendants affected thousands of employees and was also consumer oriented.

78. Plaintiffs and the other Class members have been, are and will in the future continue to be damaged by the unlawful acts of defendants unless the putative class is awarded the relief sought herein.

79. Defendants are liable for actual damages sustained by Plaintiffs and the Class as allowable under GBL §349, in an amount to be determined at trial.

80. Additionally, Defendants should be enjoined from continuing to engage in its wrongful violations of GBL §349 with respect to any employees still employed by LBMC .

THIRD CAUSE OF ACTION

(Promissory Estoppel)

81. Plaintiffs reallege and reincorporate herein each and every allegation set forth in the preceding paragraphs of this Complaint as if set forth verbatim.

82. Defendants made a clear and unambiguous promise to Plaintiffs and the Class concerning LBMC-employees' absolute right to receive Accrued Benefits and unused Current Benefits at their date of separation with LBMC. Defendants also made a clear and unambiguous promise to Plaintiffs and the Class concerning their absolute right to receive Current Benefits while employed with LBMC.

83. It was reasonable and foreseeable that Plaintiffs and the Class would rely on Defendants' promises concerning Accrued and Current Benefits.

84. Plaintiffs and the other Class Members have suffered unconscionable injury as a result of their reasonable, foreseeable and detrimental reliance on Defendants' promises.

85. As a result, Defendants should be equitable estopped by the Court from withholding from Plaintiffs and the Class the Accrued and Current Benefits due them.

FOURTH CAUSE OF ACTION

(unjust enrichment)

86. Plaintiffs reallege and reincorporate herein each and every allegation set forth in the preceding paragraphs of this Complaint as if set forth verbatim.

87. Defendants have been unjustly enriched at the expense of and to the detriment of Plaintiffs and the Class by wrongfully withholding and retaining the value of the Accrued and Current Benefits due to Plaintiffs and the Class. Defendants' retention

of the monies wrongfully held from Plaintiffs and the Class violates the fundamental principles of justice, equity and good conscience.

88. Plaintiffs and the Class are entitled to recover from Defendants all amounts as unjust enrichment that have been wrongfully and improperly collected and retained by Defendants, and Defendants should be required to disgorge the monies which they have unjustly withheld.

89. Plaintiffs and the Class demand a trial by jury on all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for relief, an order and judgment against Defendants as follows:

A. Certifying this case as a class action on behalf of the proposed Class, plaintiffs as representatives of the Class, and plaintiffs' counsel as counsel for the Class;

B. Awarding Plaintiff and the other Class members the following relief against Defendants:

- i. compensatory and/or actual damages, and/or disgorgement and/or restitution in favor of Plaintiffs and the Class, in an amount to be determined at trial;
- ii. reimbursement for all amounts deducted in breach of the contract and/or promissory estoppel in an amount to be proven at trial;
- iii. reimbursement for all amounts deducted which constitute unjust enrichment to Defendants in an amount to be proven at trial;
- iv. reimbursement for amounts deducted in violation of GBL §349 in an amount to be proven at trial;
- v. a declaration that the acts of Defendants were and continue to be unlawful;
- vi. a declaration that the acts of Defendants were and continue to constitute breaches of contract and unjust enrichment;

- vii. a declaration that the acts of Defendants were and continue to violate the covenant of good faith and fair dealing implied under the agreement between Defendants and Plaintiffs and the Class;
- viii. an injunction enjoining and restraining Defendants from further applying and implementing the misleading and unlawful policies and acts complained of herein;
- ix. punitive damages to the extent permitted by law but not less than \$1,000,000;
- x. treble damages;
- xi. pre- and post-judgment interest;
- xii. attorneys' fees; and costs and disbursements of this action; and
- xiii. such other and further relief as the Court deems proper and just.

Dated: Long Beach, New York
December 9, 2013

Michael E. Berman, P.C.

By: _____
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