

Vertava Health, LLC is similarly liable to Mr. Maschino and Mr. Schwaber for creating an environment that was so intolerable that they had no choice but to tender their resignation to avoid exposing themselves and others to the dangers of COVID-19.

Vertava Health, LLC is also liable to the plaintiffs, as well as to other similarly situated individuals, for unlawfully withholding one hour of pay for each shift that they worked for a period of time, from the start of their employment until approximately March 2020, despite the fact that they did not take one hour breaks.

PARTIES

1. The plaintiff, Ada Langford, resides in Greenfield, Massachusetts.
2. The plaintiff, Christopher Maschino, resides in Springfield, Massachusetts.
3. The plaintiff, Alyssa Phillips, resides in West Springfield, Massachusetts.
4. The plaintiff, Mark Schwaber, resides in Greenfield, Massachusetts.
5. The plaintiff, Stephen Seward, resides in Great Barrington, Massachusetts.
6. Vertava Health, LLC (“Vertava”) is a company domiciled in Tennessee with a principal place of business at 205 Reidhurst Avenue, Nashville, TN 37203. Vertava operates two health care facilities in Massachusetts, one that is based in Cummington (which includes buildings in the neighboring town of Plainfield) and another that is based in Pittsfield. Vertava’s Registered Agent in Massachusetts is Corporation Service Company, 84 State Street, Boston, MA 02109.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the plaintiffs’ claims pursuant to G.L. c. 149, § 150, which authorizes private individuals to bring civil actions for violations of Massachusetts wage and hour laws; G.L. c. 149, § 187(d), which authorizes medical providers to bring

whistleblower claims; and G.L. c. 212, § 3, as revised by the Order of the Supreme Judicial Court, dated January 1, 2020, which requires the amount in controversy to exceed \$50,000.

8. This Court is the proper venue under G.L. c. 223, § 1 because violations alleged by the plaintiffs primarily occurred at the defendant's place of business in Cummington and Plainfield, Massachusetts, which are towns located in Hampshire County.

FACTUAL BACKGROUND

a. Background Regarding the Parties

9. Vertava provides patients with inpatient and outpatient mental health and substance abuse care at health care facilities located at 151 South Street, Cummington, Massachusetts 01026 (which includes dormitories and other buildings, several of which are located in the neighboring town of Plainfield, Massachusetts), and at 2 South Street, Pittsfield, Massachusetts 01201. Vertava qualifies as a "health care facility" under G.L. c. 149, § 187. Vertava's Vice President of Operations, Shawn Daugherty, is responsible for overseeing the Vertava's operations in Massachusetts.

10. Vertava hired Mark Schwaber in June 2017 to work at the Cummington campus as a counselor and eventually promoted him to the position of Lead Counselor. Mr. Schwaber's job duties as Lead Counselor included counseling patients and supervising other counselors. Mr. Schwaber's work for Vertava qualified him as a "health care provider" for purposes of G.L. c. 149, § 187. Mr. Schwaber performed his job in a satisfactory fashion. His ending annual salary was approximately \$62,000. Mr. Schwaber is married to and resides with the plaintiff, Ada Langford.

11. Vertava hired Christopher Maschino in June 2017 to work at the Cummington campus as a Recovery Specialist and eventually promoted him to the position of Lead Counselor.

Mr. Maschino's job duties included counseling patients and supervising other counselors. Mr. Maschino's work for Vertava qualified him as a "health care provider" for purposes of G.L. c. 149, § 187. Mr. Maschino performed his job in a satisfactory fashion. His ending annual salary was approximately \$62,000.

12. Vertava hired Ada Langford in January 2018 to work at the Cummington campus as a Recovery Coach. Ms. Langford's job duties included mental health and recovery treatment through yoga, art therapy, and tracking of patient behavior and movement. Ms. Langford's work for Vertava qualified her as a "health care provider" for purposes of G.L. c. 149, § 187. Ms. Langford performed her job in a satisfactory fashion. Her ending annual salary was approximately \$41,000. Ms. Langford is married to and resides with the plaintiff, Mark Schwaber.

13. Vertava hired Alyssa Phillips in October 2018 to work as a Recovery Coach. Ms. Phillips' job duties included providing mental health and recovery treatment to patients. Ms. Phillips' work for Vertava qualified her as a "health care provider" for purposes of G.L. c. 149, § 187. Ms. Phillips performed her job in a satisfactory fashion. Her ending annual salary was approximately \$41,000.

14. Vertava hired Stephen Seward in October 2018 to work at the Pittsfield campus as a counselor and eventually promoted him to the position of Lead Counselor. Mr. Seward's ending annual salary was approximately \$65,500.

b. Facts Underlying Wrongful Termination Claims

15. Beginning in February 2020, the United States government and the Commonwealth of Massachusetts began promulgating guidance relating to the virus commonly referred to as COVID-19.

16. The federal government promulgated guidelines to protect against the spread of COVID-19 in congregate care facilities (like Vertava’s Cummington campus), including that such facilities take, among others, the following precautions:

- Develop and implement “emergency operations plans.”
- “Encourage social distancing by asking staff and residents to stay at least 6 feet (2 meters) apart from others and wear masks in any shared spaces, including spaces restricted to staff only.”
- “Ensure that social distancing can be maintained in shared rooms, such as television, game, or exercise rooms.”
- “Make sure that shared rooms in the facility have good air flow from an air conditioner or an opened window.”
- “Clean and disinfect shared areas (laundry facilities, elevators, shared kitchens, exercise rooms, dining rooms) and frequently touched surfaces using products from EPA’s List N: Disinfectants for Coronavirus (COVID-19) more than once a day if possible.”
- “Develop flexible sick leave policies. Require staff to stay home when sick, even without documentation from doctors Make sure that employees are aware of and understand these policies.”
- “At check-in, provide any new or potential resident with a clean mask and keep them isolated from others.”

17. In Massachusetts, the Executive Office of Health and Human Services (“EOHHS”) provided the following guidance to “Residential and Congregate Care Programs” to protect staff and patients to protect against the spread of COVID-19, including that such facilities take, among others, the following precautions:

- Follow federal COVID-19 guidelines.
- Direct staff to wear facemasks while working.
- Direct residents to wear facemasks, particularly if any residents at the facility tested positive for COVID-19.
- Quarantine residents presumed or confirmed to have contracted COVID-19.

- Quarantine residents who, even if not exhibiting symptoms, came in close contact with a person who tested positive for COVID-19.
- If a resident tests positive for COVID-19, immediately contact (1) a healthcare provider; (2) the local board of health; and (3) if applicable, the program's EOHHS funding agency.
- Monitor staff's emotional health.

18. Prior to February 2021, Vertava had not established clear protocols with regard to how to prevent or manage a COVID-19 outbreak.

- a. Vertava did not issue detailed written guidelines to staff or patients with regard to COVID-19 protocols that were tailored to either the Pittsfield or Cummington campuses.
- b. The plaintiffs did not receive detailed training or guidelines from Vertava with regard to how to handle a COVID-19 outbreak were it to occur at Vertava's Cummington campus.
- c. Vertava encouraged, but did not require, staff to wear face masks. In practice, most, but not all, staff wore face masks on a regular basis while at work at the Cummington campus.
- d. Vertava did not require patients to wear face masks. In practice, patients did not wear face masks on a regular basis at the Cummington campus.
- e. Vertava represented to the public on its website that "every patient must be tested for COVID-19 and return a negative result prior to admission." See <https://vertavahealth.com/covid-19-ongoing-health-and-safety-precautions/> (last visited on March 3, 2021). However, in practice, Vertava did not require new patients to provide proof of a negative COVID-19 test result prior to admission to the Cummington campus. Instead, new patients were tested for COVID-19 after they were already admitted to Vertava.
- f. Vertava represented to the public that if a patient tested positive for COVID-19, the patient would be discharged to an appropriate level of care or to outpatient care. See <https://vertavahealth.com/covid-19-ongoing-health-and-safety-precautions/> (last visited on March 3, 2021). In practice, Vertava did not discharge patients who tested positive for COVID-19 in the manner indicated on its website.
- g. Vertava did not have clear protocols in place with regard to whether and for how long staff should quarantine if they were exposed to COVID-19.

- h. Vertava did, however, inform staff that they would be permitted to take COVID-19-related leave as necessary, even if such leave was in excess of leave that was otherwise available to an employee.
- 19. In 2020, a number of patients at Vertava's Pittsfield campus contracted COVID-19. Staff members from the Pittsfield campus were frustrated that Vertava did not have protocols in place to assist with handling the COVID-19 outbreak.
- 20. Vertava's management was aware of the COVID-19 outbreak at the Pittsfield campus. However, following the COVID-19 outbreak at Vertava's Pittsfield campus, Vertava still did not provide detailed training or guidance to staff or patients at Vertava's Cummington campus with regard to how to prevent or manage a COVID-19 outbreak were it to occur at the Cummington campus.
- 21. In or around January 2021, Vertava admitted a patient to the Cummington campus without requiring the patient to present a negative COVID-19 test in advance of admission. That patient was tested for COVID-19 onsite after admission. The patient's COVID-19 test results came back positive, thereby confirming the patient had contracted COVID-19. Vertava did not discharge the patient but instead placed the patient into quarantine on campus. Vertava did not send out a staff-wide email or convene staff at that time to specifically address how to prevent the spread of COVID-19 from that patient to other patients or staff at the Cummington campus.
- 22. Vertava's Medical Director at the Cummington campus was Dr. Alan Weiner. By the end of January 2021, Dr. Weiner had, on multiple occasions, expressed his concerns to Vice President of Operations Daugherty about how Vertava was managing COVID-19 protocols. In early February 2021, after Dr. Weiner stated his concerns about Vertava's COVID-19 protocols to Mr. Daugherty, Vertava terminated Dr. Weiner's employment. Vertava's termination of Dr. Weiner's employment was motivated, at least in part, by Dr. Weiner's communications with Mr. Daugherty and others regarding his concerns about Vertava's COVID-19 protocols.

23. Mr. Schwaber was aware of the fact that Dr. Weiner had made complaints about Vertava's lack of adequate COVID-19 protocols to Vice President Daugherty prior to Vertava's termination of Dr. Weiner's employment. Mr. Schwaber was further aware of the fact that Vertava had elected not to adopt a number of Dr. Weiner's recommendations about COVID-19 protocols. Mr. Schwaber reasonably believed that Vertava terminated Dr. Weiner's employment due to the fact that Dr. Weiner had complained about Vertava's COVID-19 protocols.

24. During the first week of February 2021, Vertava tested a number of patients for COVID-19 at the Cummington Campus after they had exhibited COVID-19-related symptoms.

25. On the evening of February 8, 2021, a second Vertava patient at the Cummington campus tested positive for COVID-19. Like the first patient who had tested positive for COVID-19 (referred to above in ¶ 21), Vertava had not required this patient to present confirmation of a negative COVID-19 test prior to admission. By the time the patient received the positive COVID-19 test results on February 8, 2021, the patient had been living at the Cummington campus for almost two weeks, during which time the patient had been in close proximity to staff and other patients while not wearing a mask. Vertava did not communicate news of this patient's positive COVID-19 test to the general staff or other patients until the following day.

26. The following occurred on Tuesday, February 9, 2021:

- a. Ms. Langford, Ms. Phillips, and Mr. Schwaber arrived at work for their 7:00 a.m. shift, which lasted until 7:00 p.m. that evening. Mr. Maschino had the day off.
- b. By approximately 7:15 a.m., Mr. Schwaber received a message from Vertava's Clinical Director, Mareike Muszynski, informing him that all programming would be halted until further notice.
- c. Vertava's Program Director, Scott Piersanti, subsequently called Mr. Schwaber and informed him that a Vertava patient (referred to in ¶ 25 above) had tested positive for COVID-19 the previous evening.
- d. By approximately 8:00 a.m., Vertava's Lead Recovery Coach, Meghan Ribeiro, informed Mr. Schwaber that two additional patients had tested positive for

COVID-19. Ms. Ribeiro also informed Mr. Schwaber that the three patients who tested positive for COVID-19 were being transferred to isolation rooms, the remaining patients who had not tested positive would be quarantined, and all patient programming would be suspended until further notice.

- e. Ms. Ribeiro was both Ms. Langford and Ms. Phillips' supervisor.
 - f. Ms. Ribeiro directed Ms. Langford to report to one of Vertava's dormitories, the Wilson Building, where approximately half of the male patients reside (the Wilson Building is part of the Cummington campus but is situated in Plainfield). No Vertava employee or representative directed Ms. Langford as to what protocols she should follow in light of the fact that several patients had tested positive for COVID-19. Upon arriving at the Wilson building, Ms. Langford found that most of the patients were not quarantining and none of them were wearing face masks or any other personal protective equipment. The patients had not been provided with clear instructions from any Vertava employee with regard to COVID-19 protocols, and no staff had come to clean the Wilson building or to provide the patients with personal protective equipment.
 - g. Ms. Phillips worked in the Main building that day. As was the case in the Wilson building, Ms. Phillips discovered that Vertava had no detailed plan as to how to handle the situation. Cleaning of the building was inadequate and no clear quarantining instructions or guidelines were in place. Ms. Phillips expressed these concerns to Program Director Piersanti and the interim Program Director, Stephanie Boudreau, who was preparing to take over Mr. Piersanti's duties following his planned resignation.
 - h. At some point later that day, the Director of Nursing, Marylin Jackson, stated to Vice President Daugherty something to the effect of, "We have no plan for this, what are we doing?" Program Director Piersanti similarly stated to Vice President Daugherty something to the effect of, "We don't know what we're doing right now. There isn't a plan."
 - i. At approximately 12:00 p.m., Vertava offered staff voluntary COVID-19 tests.
 - j. Around 12:00 p.m., Vice President Daugherty sent out an email to staff stating that a patient had tested positive for COVID-19, without any indication of what protocols were being taken to contain the virus. To the plaintiffs' knowledge, this was the only staff-wide email that Vice President Daugherty sent concerning COVID-19 until Monday, February 15, 2021.
27. On Wednesday, February 10, 2021, the following occurred:
- a. Ms. Langford, Ms. Phillips, and Mr. Schwaber returned to work for another shift. Mr. Maschino was not assigned to work that day.
 - b. Ms. Langford was again assigned to work in the Wilson Building for her 12-hour shift. Ms. Langford was provided with an N95 mask, but not with any other

protective equipment or direction regarding COVID-19 protocols. At the Wilson Building, Ms. Langford again observed that patients were not wearing face masks or quarantining. Ms. Langford worked much of her shift in close proximity to unmasked patients, in groups of four or five (or more) at a time, in relatively small rooms that lacked adequate ventilation. Ms. Langford reported her concerns about these conditions to Program Director Piersanti and her supervisor, Ms. Ribeiro.

- c. During his shift, Mr. Schwaber spoke with a residential counselor who he supervised, Joshua Iwanicki. Mr. Iwanicki expressed his concerns to Mr. Schwaber about how Vertava had been responding to the COVID-19 outbreak, specifically about the fact that Vertava did not appear to be taking quarantining very seriously. Following Mr. Iwanicki's conversation with Mr. Schwaber, Mr. Iwanicki went and spoke about his concerns regarding how Vertava was handling the COVID-19 outbreak with Vice President Daugherty. Mr. Daugherty was dismissive of Mr. Iwanicki's concerns and told Mr. Iwanicki that Vertava could not take more restrictive quarantine measures because restricting patients to their rooms would, according to Mr. Daugherty, be illegal. Mr. Daugherty further informed Mr. Iwanicki that he planned to subject all patients to rapid testing and anyone who tested negative would not be required to quarantine. Mr. Iwanicki told Mr. Daugherty that he did not believe that such rapid testing and quarantine measures were adequate, but Mr. Daugherty dismissed Mr. Iwanicki's concerns. Mr. Iwanicki informed Mr. Schwaber about the substance of his conversation with Mr. Daugherty.
- d. Later in the day, a nurse at Vertava informed Mr. Schwaber that two additional patients had tested positive for COVID-19, but that the patients had yet to be informed of the test results or isolated from others. Mr. Schwaber consulted with Ms. Ribeiro about the two patients who were newly diagnosed with COVID-19, but neither Mr. Schwaber nor Ms. Ribeiro had been provided with training or directives regarding how to notify patients of their COVID-19 results, isolate patients who had tested positive for COVID-19, or implement cautionary measures to prevent the further spread of COVID-19 by others who had been previously exposed to patients that tested positive. Mr. Schwaber therefore went to the Administrative Conference Room of the main administrative building to look for someone who could provide guidance and assistance. Mr. Schwaber encountered several Vertava administrators who were attending a celebration for one of the administrators who was resigning. One administrator invited Mr. Schwaber to join them for pizza. Mr. Schwaber declined and explained that another two patients had tested positive for COVID-19 and that staff needed assistance in order to inform the patients of their positive test results and take appropriate remedial action. No one offered assistance. Mr. Schwaber and Ms. Ribeiro therefore informed the patients of their COVID-19 test results. They were unaware of any available rooms where the patients could be quarantined so the patients remained with the general population for the time being.

- e. Ms. Phillips worked her shift that day in the Oasis building. Ms. Phillips again observed conditions that concerned her, and she again expressed these concerns to Program Director Piersanti and Interim Program Director Boudreau. Specifically, Ms. Phillips informed them that, among other issues, she and other staff needed guidance as to what they should be telling quarantined patients, who was responsible for informing patients who tested positive for COVID-19 of their results, and why Vertava had not established clear quarantining protocols.
- f. By the end of Ms. Langford, Ms. Phillips, and Mr. Schwaber's shifts, a total of five patients had tested positive for COVID-19 over the course of the previous three days, and it still did not appear that Vertava had a clear plan as to how to contain the further spread of the virus.

28. By the time she returned home on the evening of February 10, 2021, Ms.

Langford reasonably believed that (1) Vertava was in violation of state, federal, and professional standards of practice relating to containment of COVID-19 in congregate care settings, (2) those violations were known to one or more managers at Vertava, and (3) the circumstances constituted a health emergency. That evening, Ms. Langford stated her concerns about how Vertava was handling the COVID-19 outbreak in an email to her direct supervisor, Ms. Ribeiro, and to Vertava's Clinical Supervisor, Anastasia Popanconstantineau.

29. The following occurred on February 11, 2021:

- a. Ms. Langford, Ms. Phillips, and Mr. Schwaber had the day off.
- b. When Mr. Maschino arrived to work, he learned that patients were still quarantining and that patients were taking rapid tests in order to gauge whether additional patients had contracted COVID-19. Mr. Maschino began setting up virtual programming to enable rehabilitation services to be provided to patients remotely during the quarantine.
- c. Shortly after 8:00 a.m., Mr. Maschino learned that all patients who had negative COVID-19 rapid test results were being released from quarantine and would be attending morning group meetings in person at the Oasis building. Mr. Maschino therefore stopped preparing for virtual meetings and began setting up the common area for in person group meetings.
- d. After setting up the meeting space, Mr. Maschino spoke with Clinical Director Muszynski. Mr. Maschino asked Ms. Muszynski why Vertava was releasing all of the patients who had received negative rapid test results from quarantine. Ms. Muszynski explained that, up until that moment, she had not been aware of the

fact that the patients were being released from quarantine. Mr. Maschino explained that he thought releasing patients from quarantine was a terrible idea since all of the patients had been living in the same space without wearing masks and there were patients who had tested positive for COVID-19 on the previous day, which would render test results for anyone who had been exposed to those patients unreliable given the incubation period of the virus. Ms. Muszynski told Mr. Maschino that she would set up a meeting between the two of them and someone from Vertava's medical team.

- e. Around 12:00 p.m., Ms. Muszynski convened a meeting with Mr. Maschino and Vice President Daugherty, but without anyone from Vertava's medical team. During that meeting, Mr. Daugherty discussed federal guidelines related to COVID-19, and, similar to his representations to Mr. Iwanicki (described in ¶ 27(c) above), Mr. Daugherty, without citing any legal authority, told Mr. Maschino that it would be illegal for Vertava to keep patients in "seclusion" (i.e., quarantined in their rooms away from others) without evidence that they have been infected. Mr. Maschino expressed his concerns about how COVID-19 protocols were being handled and told Mr. Daugherty that there were alternatives to his approach, but Mr. Daugherty dismissed his concerns and suggestions.
 - f. Later that day, two additional patients had tested positive for COVID-19, which meant that a total of seven patients had tested positive for COVID-19 over the course of four days.
 - g. Mr. Maschino contacted Mr. Schwaber, who had the day off, and informed him that two additional patients had tested positive for COVID-19. Mr. Maschino also informed Mr. Schwaber that Vice President Daugherty refused to quarantine patients who had not received a positive COVID-19 test result and that any patients who had tested negative were being released from quarantine.
 - h. Ms. Langford had worked in close proximity with both of the patients who tested positive for COVID-19 that day, neither of whom had worn masks or engaged in social distancing while Ms. Langford was in their company.
 - i. Later that day, Ms. Langford and Ms. Phillips expressed their displeasure with how Vertava was handling the COVID-19 outbreak to their supervisor, Ms. Ribeiro. Ms. Ribeiro was also clearly upset about the situation and stated that she had spoken directly with Vice President Daugherty the previous evening and informed him of the inappropriate workplace conditions.
 - j. Despite the COVID-19 outbreak, Vertava admitted two new patients to the Cummington campus on February 11, 2021.
30. On February 12, 2021, the following occurred:
- a. Ms. Langford, Ms. Phillips, and Mr. Schwaber had the day off. Mr. Maschino worked his regular shift.

- b. Ms. Ribeiro set up a teleconference call so that she, Ms. Langford, and Ms. Phillips could meet remotely with Vice President Daugherty and the Director of Nursing, Marilyn Jackson. During the call, Ms. Langford and Ms. Phillips clearly explained the conditions that they experienced at work, as described above. Ms. Langford also shared that she had been in close quarters with patients who tested positive for COVID-19 as well as with others who were exposed to patients who had tested positive. Ms. Phillips emphasized that she did not feel comfortable continuing to enter patients' rooms, particularly since the personal protective equipment that was available at various stations often only included surgical masks, not N95 masks. Ms. Langford and Ms. Phillips stated that they did not feel that the conditions were acceptable or that it was safe for them to return to work given their exposure to COVID-19. During the call, Ms. Ribeiro told Ms. Langford and Ms. Phillips that they could take three days of leave since, as Ms. Ribeiro stated, they had been re-exposed to COVID-19.
- c. In the early afternoon of February 12, 2021, Mr. Schwaber contacted the Cummington Board of Health and shared some of his concerns about how Vertava was handling the COVID-19 outbreak at its Cummington site.
- d. Mr. Schwaber realized that he no longer felt safe working at Vertava due to Vertava's handling of the COVID-19 outbreak and failure to adequately consider the reasonable concerns that staff had expressed. Mr. Schwaber was reasonably concerned that, if he continued to work at Vertava, he would not only put his own health at risk, but he could expose himself to legal liability. Mr. Schwaber also believed that, based on Vertava's response to other employees who had expressed concerns about how the COVID-19 protocols were being handled, his complaints to Vertava would be futile.
- e. Mr. Schwaber called Clinical Director Muszynski and informed her that he planned to resign. During the call, he explained that he and Ms. Langford had contacted the local Board of Health. Ms. Muszynski did not provide Ms. Schwaber with any credible assurances that the circumstances would improve. Mr. Schwaber followed up by emailing Ms. Muszynski, stating: "I, effective as of this moment, resign from this organization - citing substantial work-induced stresses that have appeared now both physically and psychologically, and more immediately citing a hazardous and unsafe work environment both regarding COVID protocol and other systemic abuses and failures of action."
- f. After Mr. Schwaber tendered his resignation, Clinical Director Muszynski called Mr. Maschino out of concern that he and other staff would also resign due to their shared concerns about how Vertava was handling the COVID-19 outbreak. Mr. Maschino expressed his own concerns to Ms. Muszynski about how Vertava was handling the COVID-19 outbreak, but he nonetheless confirmed that he was willing to work as needed over the course of the upcoming long weekend.

31. On February 13, 2021, Ms. Langford emailed the Cummington Board of Health and Plainfield Board of Health to notify them of her concerns about COVID-19-related health and safety conditions at Vertava's Cummington campus (which included buildings in Plainfield).

32. As a result of Ms. Langford's communications with the Plainfield and Cummington Boards of Health, a member of the Cummington Board of Health performed a partial site visit of Vertava's Cummington campus on Saturday, February 13, 2021.

33. On February 14, 2021, Mr. Maschino again communicated his concerns to Clinical Director Muszynski about how Vertava was handling the COVID-19 outbreak at the Cummington campus.

34. On Monday, February 15, 2021, Vertava held a staff meeting, which was attended by a number of people in person, as well as a number of people who joined remotely. The following occurred during that meeting:

- a. Mr. Maschino expressed his concerns about the adequacy of Vertava's quarantine protocols, but Vice President Daugherty essentially repeated what he had previously stated to Mr. Maschino and Mr. Iwanicki by stating that he believed requiring patients to quarantine in their rooms would amount to illegal "seclusion."
- b. A therapist expressed concerns about the ability of Vertava's social distancing measures to adequately prevent the further spread of COVID-19. The therapist explained that her entire group of patients were in close proximity to one another for over an hour without masks and she was concerned about them continuing to congregate in closed spaces together without masks. Vice President Daugherty dismissed this concern.
- c. Mr. Iwanicki asked Vice President Daugherty why Vertava had not previously adopted COVID-19 protocols at the Cummington campus, particularly in light of the fact that there had been a COVID-19 outbreak at Vertava's Pittsfield campus months earlier.
- d. Other staff expressed similar concerns during this meeting.

35. The following day, Tuesday, February 16, 2021, Mr. Iwanicki, who had objected to Vertava's handling of the COVID-19 outbreak on the previous day, discovered that he had

been locked out of his email account. Later that day, without explanation, Mr. Iwanicki learned that Vertava had terminated his employment.

36. On February 16 or 17, 2021, two patients were accidentally let out of quarantine and directed to quarantine again. One of the two tested positive for COVID-19 and became sick.

37. Ms. Langford and Ms. Phillips returned to work on Thursday, February 18, 2021.

38. At the end of Ms. Langford's shift on February 18, 2021, Interim Program Director Boudreau directed Ms. Langford to remove the indication on Vertava's online attendance system that her recent time off had been approved by Ms. Langford's supervisor, Ms. Ribeiro. Ms. Boudreau explained to Ms. Langford that, after Ms. Langford removed the indication that Ms. Ribeiro had approved her leave from the system, Ms. Boudreau would enter her own approval of Ms. Langford's leave into the system. Ms. Langford therefore removed the indication that her leave had been approved from the online portal as Ms. Boudreau had directed. However, after doing so, Ms. Langford did not see any indication that Ms. Boudreau had entered her approval of the leave into the system, as Ms. Boudreau had said she would. After Ms. Langford inquired with Ms. Boudreau about this, Ms. Boudreau told Ms. Langford that she had entered the approval into the system and was able to see it on her screen. Ms. Boudreau assured Ms. Langford that she was "all set."

39. Ms. Langford returned to work on Friday, February 19, 2021, for her 7:00 a.m. to 7:00 p.m. shift. Ms. Langford performed her normal duties until shortly after 5:00 p.m., when the Interim Program Director, Ms. Boudreau, directed Ms. Langford to meet with her and Vertava's Employee Relations Manager, DaMichael McLean. Ms. Langford met with Ms. Boudreau and Mr. McLean around 5:15 p.m. During that meeting, Mr. McLean informed Ms.

Langford that Vertava was terminating her employment, effective immediately. The following took place:

- a. Ms. Langford, who was shocked to learn she was being fired, asked why she was being terminated and whether Mr. McLean and Ms. Boudreau could put their explanation in writing for her.
- b. Mr. McLean told Ms. Langford that he was not required to explain why Vertava was terminating her employment or to put it into writing.
- c. Ms. Langford again asked for an explanation as to why she was being fired and indicated that she was going to take notes about their conversation on her phone.
- d. Mr. McLean stated that Ms. Langford had behaved in ways that no longer “align” with Vertava’s “values.”
- e. Ms. Langford responded by asking whether Mr. McLean meant she was being fired because she took time off pending her COVID-19 test results and because of her reports to Vertava’s management and to the local Boards of Health regarding Vertava’s handling of the COVID-19 outbreak at the Cummington campus.
- f. Mr. McLean responded by simply stating, “Yes.”
- g. Ms. Langford explained that her days off were approved by her supervisor due to her exposure to COVID-19, but her employment was nonetheless terminated.
- h. Immediately after the meeting ended, Ms. Phillips encountered Ms. Langford, who was still with Ms. Boudreau. Ms. Phillips asked Ms. Langford if she could assist her with a work-related task. Ms. Langford responded by stating to Ms. Phillips that Vertava had just terminated her employment because of the three days of leave she had taken off and because of the reports she had filed relating to her concerns about COVID-19.

40. After learning of the termination of Ms. Langford’s employment, Mr. Maschino realized that any further constructive or reasonable efforts that he might recommend about Vertava’s COVID-19 protocols would be futile and would jeopardize his employment. Because Mr. Maschino did not wish to further jeopardize his own health or be a part of jeopardizing the health of others, and because he was confident that any further objections he would make would result in the termination of his employment, on February 20, 2021, Mr. Maschino notified Vertava that he planned to resign as of March 6, 2021.

41. Ms. Phillips continued to work for Vertava and perform her job in a satisfactory fashion.

42. On the early morning Monday, March 1, 2021, Ms. Phillips fell ill. Her symptoms included sleeplessness, vomiting, and hot and cold flashes. Ms. Phillips informed her supervisors, Ms. Boudreau and Ms. Ribeiro, that she would be unable to work that day due to illness.

43. Ms. Phillips was not scheduled to work on either March 2 or 3, 2021.

44. Ms. Phillips returned to work on Thursday, March 4, 2021, and worked her full shift in a satisfactory manner.

45. On Friday, March 5, 2021, Ms. Phillips returned to work and worked the majority of her shift. As of that time, no one had indicated to Ms. Phillips that she had taken an excessive amount of leave or that her employment was in jeopardy. Around 3:30 p.m., Ms. Boudreau directed Ms. Phillips to meet with her and Mr. McLean and Program Director Shannon Gallagher. Mr. McLean, who attended the meeting remotely by video conference, informed Ms. Phillips that Vertava was terminating her employment, effective immediately. Mr. McLean explained that the reason Vertava was terminating Ms. Phillips' employment was because she had missed three days of work in February 2021 (which was due to the fact that she had been exposed to COVID-19) and then missed another day on March 1, 2021 (which was due to the fact that she was very ill with flu-like symptoms). Mr. McLean further stated that Vertava deemed her to be "unreliable."

46. Immediately after her meeting ended, Ms. Phillips sent a text message to Mr. Maschino, informing him that she had just been "fired." In response to Mr. Maschino's question, "For What???", Ms. Phillips responded, "Deemed me unreliable for not showing [up]

that weekend during the outbreak and Monday.” Mr. Maschino responded, “Jesus I’m sorry Aly.” Ms. Phillips, who was immediately concerned with whether she would be able to pay her bills, responded, “I’ll make it work. I always do.”

47. The following day, March 6, 2021, was Mr. Maschino’s last day of work at Vertava.

48. As a result of Vertava’s actions, the plaintiffs suffered a loss of income and emotional distress.

c. Class Allegations (Wage Theft)

49. From the beginning of each of the plaintiffs’ employment with Vertava until mid-March 2020, for each shift that each of the plaintiffs worked, Vertava automatically withheld a full hour from each of the plaintiffs’ pay, ostensibly to account for employee breaks.

50. In practice, however, the plaintiffs, as well as other employees, did not take breaks that exceeded 30 minutes, and, more often than not, they took breaks that lasted less than 30 minutes.

51. Therefore, Vertava was withholding pay from employee paychecks for time that the employees spent working for the company.

52. Beginning in or around mid-March 2020, Vertava ceased automatically withholding a full hour from each of the plaintiffs’ pay for each shift they worked.

53. From mid-March 2020 through the termination of the plaintiffs’ employment, Vertava automatically withheld 30 minutes of pay for each shift that the plaintiffs worked.

54. The plaintiffs have each filed a complaint with the Fair Labor Division of the Office of the Attorney General for the Commonwealth of Massachusetts, and they have each received authorization from the Office of the Attorney General to pursue a private right of action.

COUNT I
ADA LANGFORD & ALYSSA PHILLIPS
Wage & Hour Violations
(G.L. c. 149, §§ 148A, 148C, and 150)

55. The foregoing is incorporated as if repeated here.

56. Vertava Health, LLC unlawfully terminated Ms. Langford and Ms. Phillips' employment in retaliation against them because they took leave following their exposure to COVID-19, which was in violation of G.L. c. 149, §§ 148A, 148C, and 150.

57. Ms. Langford and Ms. Phillips seek recovery for their lost wages (which are automatically trebled under G.L. c. 149, § 150), emotional distress, attorney fees, interest, and costs.

COUNT II
ADA LANGFORD, CHRISTOPHER MASCHINO,
ALYSSA PHILLIPS, & MARK SCHWABER
Medical Whistleblower Statute
(G.L. c. 149, § 187)

58. The foregoing is incorporated as if repeated here.

59. Vertava Health, LLC unlawfully terminated and/or constructively terminated Ada Langford, Christopher Maschino, Alyssa Phillips, and Mark Schwaber's employment in violation of G.L. c. 149, § 187.

60. The plaintiffs seek recovery for their lost wages, emotional distress, attorney fees, interest, and costs.

COUNT III
ADA LANGFORD, CHRISTOPHER MASCHINO,
ALYSSA PHILLIPS, & MARK SCHWABER
(Wrongful Discharge In Violation Of Public Policy)

61. The foregoing is incorporated as if repeated here.

62. Vertava's termination and/or constructive termination of Ada Langford, Christopher Maschino, Alyssa Phillips, and Mark Schwaber's employment was in violation of public policy.

63. The plaintiffs seek recovery to the maximum extent allowable by law.

COUNT IV
ALL PLAINTIFFS
& ALL OTHERS SIMILARLY SITUATED
(G.L. c. 149, § 148 and 150)

64. The foregoing is incorporated as if repeated here.

65. Vertava Health, LLC unlawfully withheld pay from Ada Langford, Christopher Maschino, Alyssa Phillips, Mark Schwaber, Stephen Seward, and other Vertava employees' paychecks for time that they performed work for the company, which was in violation of G.L. c. 149, §§ 148 and 150.

66. The plaintiffs seek recovery for themselves and, pursuant to Mass. R. Civ. P. 23, all other similarly situated individuals, for their lost wages (which are automatically trebled under G.L. c. 149, § 150), attorney fees, interest, and costs.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs request that the Court award them the maximum relief allowable under the law.

JURY TRIAL DEMANDED

The plaintiffs demand a trial by jury.

Respectfully submitted,
The plaintiffs,
By their attorney,



Date: April 28, 2021

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