

1 Mike Arias, Esq. (CSB #115385)  
2 Mark A. Ozzello, Esq. (CSB #116595)  
3 Mikael H. Stahle, Esq. (CSB #182599)  
4 **ARIAS, OZZELLO & GIGNAC, LLP**  
5 6701 Center Drive West, Suite 1400  
6 Los Angeles, California 90045  
7 (310) 670-1600  
8 (310) 670-1231 (Fax)

9 Peter I. Bersin, Esq. (CSB #65202)  
10 **LAW OFFICES OF PETER I. BERSIN**  
11 9454 Wilshire Boulevard, Ste. 500  
12 Beverly Hills, CA 90212  
13 (310) 858-6935  
14 (310) 275-6647 (Fax)

15 Attorneys for Class Plaintiffs

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF LOS ANGELES**

18 ANN MARIE COSTA, an individual;  
19 MARIA DEL CARMEN RUTEAGA, an  
20 individual; GRACETTA B. WILSON, an  
21 individual; and ANA MARGARITA  
22 JIMENEZ, an individual; DEBORAH GILL,  
23 an individual; on their own behalf and on  
24 behalf of all others similarly situated, and as  
25 private attorney generals on behalf of the  
26 general public,

27 Plaintiffs,

28 vs.

VITAS HEALTHCARE CORPORATION  
OF CALIFORNIA, a Delaware corporation;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. BC313552

Honorable Charles W. McCoy

**CLASS ACTION**

**SECOND AMENDED COMPLAINT  
FOR:**

1. **FAILURE TO PAY OVERTIME  
COMPENSATION IN  
VIOLATION OF CAL. LABOR  
CODE §§ 1194 AND 1198;**
2. **FAILURE TO PROVIDE MEAL  
AND REST BREAK PERIODS;  
AND,**
3. **UNFAIR COMPETITION (IN  
VIOLATION OF CAL. BUS. &  
PROF. CODE §17200 ET SEQ.)**

**DEMAND FOR JURY TRIAL**

Complaint Filed: April 8, 2004

**ORIGINAL FILED**  
**APR 18 2005**  
**LOS ANGELES**  
**SUPERIOR COURT**

1 All allegations in this Second Amended Complaint are based upon information and belief  
2 except for those allegations which pertain to the Plaintiffs named herein and their counsel.  
3 Plaintiffs' information and belief are based upon, *inter alia*, the investigation conducted to date by  
4 Plaintiffs and their counsel. Each allegation in this Second Amended Complaint either has  
5 evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further  
6 investigation and discovery.  
7

### 8 JURISDICTION AND VENUE

9 1. This Court has jurisdiction over this action pursuant to C.C.P. §410.10. The action  
10 is brought pursuant to C.C.P. §382, C.C.P. §1781 et seq., the procedural provisions of Federal Rules  
11 of Civil Procedure Rule 23 and C.C.P. §§17200 et seq. Plaintiffs bring this action on their own  
12 behalf, on behalf of all persons within the class defined herein, and as private attorneys general on  
13 behalf of the general public.  
14

15 2. Venue is proper in this court pursuant to C.C.P. §§ 395 and 395.5 because the injuries  
16 to the persons complained of herein occurred in the county of Los Angeles and because the  
17 Defendant owned and operated VITAS HEALTHCARE CORPORATION OF CALIFORNIA  
18 ("VITAS"), in the County of Los Angeles.

### 19 CLASS DEFINITION

20 3. The PLAINTIFF CLASS ("the CLASS") consists of the following persons:

#### 21 Subclass No. I:

22 (a) "All current and/or former nurses employed by VITAS who worked more than  
23 eight (8) hours in any given day during the period April 8, 2000, to the present and who were not  
24 paid overtime compensation pursuant to applicable *California Labor Code* requirements."

#### 25 Subclass No. II:

26 (b) "All current and former Home Health Aides employed by VITAS who worked  
27 more than eight (8) hours in any given day during the period April 8, 2000 to the present and who  
28 were not paid overtime compensation pursuant to applicable *California Labor Code* requirements."

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Subclass No. III:

(c) "All current and former Licensed Clinical Social Workers employed by VITAS who worked more than eight (8) hours in any given day during the period April 8, 2000 to the present and who were not paid overtime compensation pursuant to applicable *California Labor Code* requirements."

4. Plaintiff Ann Marie Costa ("Costa") was, at all time mentioned herein:

- (a) An individual who resides in Dana Point, County of Orange, California;
- (b) A Registered Nurse ("RN") who was employed by VITAS;
- (c) As an RN, employed by VITAS, worked more than eight (8) hours in any

given day; and,

(d) Is a member of Subclass No. I, described in Paragraph 3(a) of this Second Amended Complaint.

5. Plaintiff Maria Del Carmen Ruteaga ("Ruteaga") was, at all time mentioned herein:

- (a) An individual who resides in Anaheim, County of Orange, California;
- (b) A Home Health Aide ("HHA") who was employed by VITAS;
- (c) As an HHA, employed by VITAS, worked more than eight (8) hours in any

given day; and,

(d) Is a member of Subclass No. II, described in Paragraph 3(b) of this Second Amended Complaint.

6. Plaintiff Gracetta B. Wilson ("Wilson") was, at all time mentioned herein:

- (a) An individual who resides in Lake Forest, California;
- (b) An HHA who was employed by VITAS;
- (c) As an HHA employed by VITAS, worked more than eight (8) hours in any

given day; and,

(d) Is a member of Subclass No. II, described in Paragraph 3(b) of this Second Amended Complaint.

7. Plaintiff Ana Margarita Jimenez ("Jimenez") was, at all time mentioned herein:

- 1 (a) An individual who resides in Garden Grove, California;
- 2 (b) An HHA who was employed by VITAS;
- 3 (c) As an HHA employed by VITAS, worked more than eight (8) hours in any
- 4 given day; and,
- 5
- 6 (d) Is a member of Subclass No. II, described in Paragraph 3(b) of this Second
- 7 Amended Complaint.

8 8. Plaintiff Deborah Gill ("Gill") was, at all time mentioned herein:

- 9 (a) An individual who resides in Santa Ana, California;
- 10 (b) A Licensed Clinical Social Worker (LCSW) who was employed by VITAS;
- 11 (c) As an LCSW employed by VITAS, worked more than eight (8) hours in any
- 12 given day; and,
- 13
- 14 (d) Is a member of Subclass No. III, described in Paragraph 3(c) of this Second
- 15 Amended Complaint.

16 9. Representative Plaintiff, Costa was employed by VITAS as an RN and was paid an

17 hourly rate of \$25.34 per hour. Representative Plaintiffs Ruteaga, Wilson and Jimenez were

18 employed by VITAS as HHA's and were paid an hourly rate of \$22.80 per hour. Representative

19 Plaintiff Gill was employed by Vitas as a LCSW and was paid an hourly rate of \$26.41 per hour.

20 10. The persons who comprise the subclasses are so numerous that joinder of all such

21 persons is impracticable and the disposition of their claims will benefit the parties and the Court.

22 The claims of the Plaintiffs are typical of the claims of the subclasses which Plaintiffs seek to

23 represent. The Plaintiffs will fairly and adequately protect the interests of the subclasses which they

24 seek to represent. The Plaintiffs do not have any interests which are antagonistic to the subclasses

25 which they seek to represent. Counsel for the Plaintiffs are experienced, qualified and generally able

26 to conduct complex class action litigation.

27

28 11. This Court should permit this action to be maintained as a class action pursuant to

1 Cal. Civ. Proc. Code §382 because:

2 (a) The questions of law and fact common to the Subclasses predominate over  
3 any question affecting only individual members;

4 (b) A class action is superior to any other available method for the fair and  
5 efficient adjudication of the claims of the members of the Subclasses;

6 (c) The members of the Subclasses are so numerous that it is impractical to bring  
7 all members of the Subclasses before the Court;

8 (d) Plaintiffs, and the other members of the subclasses, will not be able to obtain  
9 effective and economic legal redress unless the action is maintained as a class action;

10 (e) There is a community of interest in obtaining appropriate legal and equitable  
11 relief for the common law and statutory violations and other improprieties, and in obtaining adequate  
12 compensation for the damages and injuries which VITAS is sufficient to adequately compensate the  
13 members of the Subclasses for the injuries sustained;

14 (f) Without class certification, the prosecution of separate actions by individual  
15 members of the Subclasses would create a risk of:

16 (i) Inconsistent or varying adjudications with  
17 respect to individual members of the  
18 Subclasses which would establish  
19 incompatible standards of conduct for  
20 Defendant VITAS; and/or

21 (ii) Adjudications with respect to the individual  
22 members which would, as a practical matter,  
23 be dispositive of the interests of other  
24 members not parties to the adjudications, or  
25 would substantially impair or impede their  
26 ability to protect their interests, including but  
27 not limited to the potential for exhausting the  
28 funds available from those parties who are, or  
may be, responsible Defendants; and,

(g) VITAS has acted or refused to act on grounds generally applicable to the  
Subclasses, thereby making final injunctive relief appropriate with respect to the CLASS as a whole.

1 DEFENDANTS

2 12. Representative PLAINTIFFS are informed and believe, and based upon that  
3 information and belief allege that DEFENDANT VITAS CORPORATION ("VITAS") is, and at all  
4 times herein mentioned was:

5 (a) A California corporation with its principal place of business in the County of  
6 Los Angeles, State of California;

7 (b) The current employer of the Representative Plaintiffs and the current and/or  
8 former employer of the putative Subclass members;

9 (c) Paid the Subclass RN's, the Subclass HHA's, and the Subclass LCSW's an  
10 hourly rate; and,

11 (d) Failed to pay overtime compensation during the class period.

12 13. The true names and capacities, whether individual, corporate, partnership, associate  
13 or otherwise of Defendant Does 1 through 100, inclusive, are unknown to the Plaintiff Subclasses  
14 who therefore sue these DEFENDANTS by such fictitious names pursuant to California Code of  
15 Civil Procedure §474. The Plaintiff Subclasses will seek leave to amend this Second Amended  
16 Complaint to allege the true names and capacities of Does 1 through 100, inclusive, when they are  
17 ascertained.

18 14. The Plaintiff Subclasses are informed and believe, and based upon that information  
19 and belief allege, that the DEFENDANTS named in this Second Amended Complaint, including  
20 Does 1 through 100, inclusive, are responsible in some manner for one or more of the events and  
21 happenings that proximately caused the injuries and damages hereinafter alleged.

22 15. The Plaintiff Subclasses are informed and believe, and based upon that information  
23 and belief allege, that each of the DEFENDANTS, including Does 1 through 100, inclusive, in  
24 performing or omitting to perform the acts alleged hereinafter, was, at various times, acting within  
25 the course and scope of his or her employment, authority, or apparent authority as an employee,

1 agent and/or representative of the other DEFENDANTS. The Plaintiff Subclasses are further  
 2 informed and believe, and based upon that information and belief allege that, at various other times  
 3 said DEFENDANTS, in performing or omitting to perform the acts alleged hereinafter, acted outside  
 4 the course and scope of said employment, authority, or apparent authority, did not utilize or operate  
 5 through any corporations or businesses, and were not engaged in any business activities whatsoever,  
 6 but rather, were acting outside the realm of any business individually liable for all damages alleged  
 7 herein, jointly and severally.  
 8

9 16. The Plaintiff Subclasses are informed and believe, and based upon that information  
 10 and belief allege, that each Defendant named in this Second Amended Complaint, including Does  
 11 1 through 100, inclusive, knowingly and willfully acted on concert, conspired and agreed together  
 12 among themselves and entered into a combination and systemized campaign of activity to *inter alia*  
 13 damage the Plaintiff Subclasses and to otherwise consciously and/or recklessly act in derogation of  
 14 the Plaintiff Subclasses' rights, and the trust reposed by the Plaintiff Subclasses in each of said  
 15 DEFENDANTS, said acts being negligently and/or intentionally inflicted. Said conspiracy, and  
 16 DEFENDANT concerted actions, were such that, to the Plaintiff Subclasses information and belief,  
 17 and to all appearances, DEFENDANTS, and each of them, represented a unified body so that the  
 18 actions of one DEFENDANT were accomplished in concert with, and with knowledge, ratification,  
 19 authorization and approval of each of the other DEFENDANTS.  
 20

21 17. The Plaintiff Subclasses are informed and believe, and based upon that information  
 22 and belief allege, that each of the DEFENDANTS named in this Second Amended Complaint,  
 23 including Does 1 through 100, inclusive, are, and at all times mentioned herein was, the agent,  
 24 servant and/or employee of each of the other DEFENDANTS and that each DEFENDANT was  
 25 acting within the course of scope of his, her or its authority as the agent, servant and/or employee  
 26 of each of the other DEFENDANTS. Consequently, all of the DEFENDANTS are jointly and  
 27 severally liable to the PLAINTIFF Subclasses for the damages sustained as a proximate result of  
 28

1 their conduct.

2 **THE CONDUCT**

3 18. Plaintiffs, entered into oral agreements of employment with Defendant VITAS  
4 wherein they would receive an hourly salary, which was determined by the position and/or  
5 experience of each Plaintiff. In addition, Plaintiffs were told they would be provided meal and rest  
6 break periods each workday. On occasions too numerous to list here, Plaintiffs' work required them  
7 to work in excess of 8 hours in a workday without receiving any overtime compensation.  
8

9 19. Plaintiffs were forced, via threats of termination, to check, and return, all voicemail  
10 messages *before* the actual start of each workday. Plaintiffs were further required to log in their  
11 work schedule on a daily basis in the computer system, and complete voluminous paperwork on their  
12 days off and the weekends. During the workday, as defined by VITAS, Plaintiffs were required to  
13 visit a pre-set number of patients, which entailed driving long distances to each patients' residence.  
14 In addition to the job responsibilities articulated above, Plaintiffs were obviously required to actually  
15 care for their patients. VITAS required that all of their job duties be concluded in an 8-hour period.  
16

17 20. Overtime was frowned upon by management. Memos were sent to employees  
18 indicating that Plaintiffs could not claim overtime unless it was pre-approved by management. Pay  
19 raises however were dependent on "productive" time, and as such Plaintiffs were reluctant to apply  
20 for overtime compensation although Defendant VITAS was well aware that the members of the  
21 Subclasses were working in excess of 8 hours in a day. On many occasions Plaintiffs would contact  
22 VITAS during the work-day and indicate that they were requesting overtime compensation because  
23 of the long hours associated with their work. Vitas would simply deny Plaintiffs request for  
24 overtime compensation, yet apprise the members of the subclasses that VITAS fully expected all  
25 patients to be visited, all telephone calls returned, and all daily reports submitted in a timely fashion.  
26

27 21. In addition, and throughout their employment, including from April 8, 2000 to the  
28 present, Plaintiffs were deprived of statutory meal and rest break periods during the workday. In

1 fact, VITAS would inform Plaintiffs, and other Subclass members, that they should eat their lunch  
2 and other meals in their cars while en route to visiting patients.

3 22. When Plaintiffs complained about these conditions, and other unlawful conduct to  
4 VITAS, they were met with inaction and refusals of VITAS to "change the system."  
5

6 23. Put simply, VITAS operates to maximize profits at the expense of its employees and  
7 through multiple schemes which:

8 (a) deprive its employees of mandated meal and rest breaks; and,

9 (b) require its employees to provide a myriad of work-related duties from home  
10 and "after-hours."

11 24. Plaintiffs and other similarly situated employees, are entitled to their unpaid overtime  
12 compensation and meal and rest break periods, plus penalties and interest. In addition, treble  
13 damages are appropriate under *Cal. Bus. & Prof. Code* §17082.  
14

15 **FIRST CAUSE OF ACTION IN VIOLATION OF CAL. LABOR CODE**

16 **§§1194 AND 1198 FAILURE TO PAY OVERTIME COMPENSATION**

17 **(By Subclasses I, II and III and Against All Defendants)**

18 Plaintiffs and other similarly situated employees, are entitled to their unpaid

19 25. The Plaintiff Subclasses reallege and incorporate by reference, as though fully set  
20 forth herein, paragraphs 1 through 24, inclusive, of this Second Amended Complaint.

21 26. *Cal.Labor Code* §§1194 and 1198 provide that employees in California shall not be  
22 employed more than eight hours in any workday unless they receive additional compensation beyond  
23 their regular wages in amounts specified by law.

24 27. *Cal.Labor Code* §1194 provides that an employee who has not been paid overtime  
25 compensation as required by Section 1198 may recover the unpaid balance of the full amount of such  
26 overtime compensation, together with costs of suit, and interest thereon, in a civil action.  
27

28 28. At all times relevant hereto, Plaintiffs, and the member of the Subclasses, have

1 worked more than eight hours in a workday, as employees of VITAS. Further, at all times relevant  
2 hereto, Plaintiffs, and the members of the Subclasses, have been paid on an hourly basis.

3 29. At all times relevant hereto, VITAS, failed to pay to the Plaintiff Subclasses overtime  
4 compensation for the hours they have worked in excess of the maximum hours permissible by law  
5 as required by Cal. Labor Code §§1194 and 1198.

6 30. By virtue of the DEFENDANTS' unlawful failure to pay additional compensation  
7 to the Plaintiff Subclasses for their overtime hours, the Plaintiff Subclasses have suffered, and will  
8 continue to suffer, damages in amounts which are presently unknown to the Plaintiff Subclasses but  
9 which exceed the jurisdictional limits of this Court and which will be ascertained according to proof  
10 at trial.

11 31. The Plaintiff Subclasses are also entitled to seek, and recover, reasonable attorneys'  
12 fees and costs pursuant to Cal. Labor Code §§ 218.5 and 1194.

13 **SECOND CAUSE OF ACTION FOR**  
14 **FAILURE TO PROVIDE MEAL BREAKS AND REST PERIODS**

15 (By Subclasses I, II and III and Against All Defendants)

16 32. The Plaintiff Subclasses reallege and incorporate by reference, as though fully set  
17 forth herein, paragraphs 1 through 31, inclusive, of this Second Amended Complaint.

18 33. California law, as set forth in Cal. Labor Code §§226.7 and as refined by the IWC  
19 Wage Orders of the Industrial Welfare Commission, provide:

20 “(a) No employer shall require any employee to work during any  
21 meal or rest period mandated by an applicable order of the Industrial  
22 Welfare Commission.

23 (b) If an employer fails to provide an employee a meal period or rest  
24 period in accordance with an applicable order of the Industrial  
25 Welfare Commission, the employer shall pay the employee one  
26 additional hour of pay at the employee's regular rate of compensation  
27 for each workday that the meal or rest period is not provided.”  
28

1 See also, IWC Orders 4-1999, 4-2000, 4-2001, 4-2002, and 4-2003.<sup>1</sup>

2 34. Plaintiffs and members of the Subclasses were never allowed to take meal and rest  
3 break periods during their shifts. As far as VITAS was concerned, the meal and rest break periods  
4 were to be taken while Plaintiffs were driving to the residences of patients, or when completing  
5 paperwork for VITAS. Each of those alternatives violate the applicable IWC Wage Order.  
6

7 35. During their employment with VITAS, and within the applicable statute of  
8 limitations, VITAS failed and refused to authorize, permit an provide Plaintiffs with meal and rest  
9 break periods as required by law. By virtue of the DEFENDANTS' unlawful failure to authorize,  
10 permit and provide Plaintiffs with meal and rest break periods as required by law, the Plaintiff  
11 Subclasses have suffered, and will continue to suffer, damages in amounts which are presently  
12 unknown to the Plaintiff Subclasses but which exceed the jurisdictional limits of this Court and  
13 which will be ascertained according o proof at trial.  
14

15 **THIRD CAUSE OF ACTION FOR VIOLATION OF**  
16 **CAL. BUS. & PROF. CODE §17200 ET SEQ.**

17 **(By Subclasses I, II and III and Against All Defendants)**

18 36. The Plaintiff Subclasses reallege and incorporate by reference, as though fully set  
19 forth herein, paragraphs 1 through 35, inclusive, of this Second Amended Complaint.

20 37. This claim is brought by the Plaintiffs, on behalf of themselves, all persons similarly  
21 situated, and the general public.

22 38. VITAS, is a "person" as that term is defined under Cal. Bus. & Prof. Code §17021.

23 39. Since April 8, 2000, and at all times relevant hereto, by and through the conduct  
24 described herein, VITAS has engaged in unfair and unlawful practices, in violation of Cal. Bus. &  
25 Prof. Code §§17200 *et seq.*, and has thereby deprived the Plaintiff Subclasses and all persons  
26 similarly situated, of fundamental rights and privileges guaranteed to all employees under the *Cal.*  
27

28  
1 <sup>1</sup> See also, DLSE Opinion letter 2-14-02 regarding Meal Period Requirements.

1 *Labor Code.*

2 40. By and through their unfair and unlawful business practices described herein, VITAS  
3 has obtained a valuable property, money and services from the Plaintiffs, and all persons similarly  
4 situated, and have deprived the Plaintiffs, and all persons similarly situated, of valuable rights and  
5 benefits guaranteed by the law, all to their detriment.

6  
7 41. All of the acts described herein as violations of, among other things, the *California*  
8 *Labor Code* and *Industrial Welfare Commission Wage Orders*, are unlawful and in violation of  
9 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby  
10 constitute unfair and unlawful business practices in violation of *Cal. Bus. & Prof. Code* §17200 *et*  
11 *seq.*

12 42. The Plaintiffs, and all persons similarly situated, are entitled to, and do, seek such  
13 relief as may be necessary to restore to them the money and property which Defendant VITAS has  
14 acquired, or of which the Plaintiffs have been deprived, by means of the above-described unfair and  
15 unlawful business practices.

16  
17 43. The Plaintiffs, and all persons similarly situated, are further entitled to, and do, seek  
18 a declaration that the above-described business practices are unfair and unlawful and that injunctive  
19 relief should issue restraining VITAS, from engaging in any of the above-described unfair and  
20 unlawful business practices in the future.

21 44. The Plaintiffs, and all persons similarly situated, have no plan, speedy, and/or  
22 adequate remedy at law to redress the injuries which they have suffered as a consequence of the  
23 unfair and unlawful business practices of VITAS. As a result of the unfair and unlawful business  
24 practices described above, the Plaintiffs, and all persons similarly situated, have suffered and will  
25 continue to suffer irreparable harm unless VITAS, is restrained from continuing to engage in these  
26 unfair and unlawful business practices. In addition, Defendant VITAS should be required to  
27 disgorge the unpaid moneys to Plaintiffs, and all persons similarly situated.  
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PRAYER

WHEREFORE, Class Plaintiffs pray for judgment as follows:

1. On the First Cause of Action:
  - a. For compensatory damages, including lost wages, bonuses, and other losses, according to proof;
  - b. For general damages, according to proof;
  - c. For waiting time penalties;
  - d. For an award of interest, including prejudgment interest at the legal rate; and,
  - e. For other applicable statutory damages and penalties, including reasonable attorneys' fees and costs of suit.
  
2. On the Second Cause of Action:
  - a. For one hour of pay at the correct hourly wage rate, for each day Plaintiffs were not provided an appropriate meal break period;
  - b. For one hour of pay at the correct hourly rate, for each day Plaintiffs were not provided an appropriate rest break period;
  - c. For waiting time penalties and interest according to proof; and,
  - d. For other applicable statutory damages and penalties including reasonable attorneys' fees and costs of suit.
  
3. On the Third Cause of Action:
  - a. For restitution and disgorgement;
  - b. For injunctive relief ordering the continuing unfair business acts and practices to cease, or as the Court otherwise deems just and proper; and,
  - c. For other injunctive relief order vitas to notify its RN's and HHA 's that they have no been paid the proper amounts required in accordance with the *California Labor Code*.


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4. On All Causes of Action:

- a. For reasonable attorneys' fees;
- b. For costs of suit;
- c. For prejudgment interests; and
- d. For such other and further relief as this Court may deem just and proper.

Date: April 4, 2005

ARIAS, OZZELLO & GIGNAC, LLP

By:   
MIKE ARIAS  
MARK A. OZZELLO  
ERIK J. EKBLAD  
Attorneys for Class Plaintiffs

*Law Offices of Peter I. Bersin*  
PETER I. BERSIN

ARIAS, OZZELLO & GIGNAC, LLP

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**DEMAND FOR JURY TRIAL**

Class Plaintiffs hereby demand a trial by jury.

Date: April 4, 2005

ARIAS, OZZELLO & GIGNAC, LLP

By:

  
\_\_\_\_\_

MIKE ARIAS  
MARK A. OZZELLO  
ERIK J. EKBLAD  
Attorneys for Class Plaintiffs

*Law Offices of Peter I. Bersin*  
PETER I. BERSIN

ARIAS, OZZELLO & GIGNAC, LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of eighteen and am not a party to the within action; my business address is 6701 Center Drive West, Suite 1400, Los Angeles, California 90045.

On April 14, 2005, I served the foregoing documents described as: SECOND AMENDED COMPLAINT on the interested parties in this action by transmitting [ ] the original [✓] a true copy thereof as follows:

Judy M. Iriye, Esq.  
Curiale Dellaverson Hirschfeld & Kraemer, LLP  
2425 Olympic Boulevard, Suite 550 East Tower  
Santa Monica, California 90404  
(310) 255-0705  
(310) 255-0986 (Fax)  
jiriye@cdhklaw.com  
Attorneys for Defendant Vitas Healthcare

Peter I. Bersin, Esq.  
Law Offices of Peter I. Bersin  
9454 Wilshire Boulevard, Fifth Floor  
Beverly Hills, California 90212  
(310) 858-6935  
(310) 275-6647 (Fax)  
Co-Counsel for Plaintiffs

[ ] BY E-MAIL: I hereby certify that this document was served by e-mail delivery on the parties listed herein at their most recent e-mail of record in this action on April 14, 2005, from Los Angeles, California.

[ ] (BY FAX) I hereby certify that this document was served by facsimile delivery on the parties listed herein at their most recent fax number of record in this action on April 14, 2005 from Los Angeles, California.

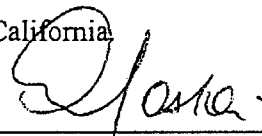
[ ] (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee named herein.

[✓] (BY MAIL), as follows: I deposited the envelopes for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, the sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this April 14, 2005 at Los Angeles, California

Rosario Mostorino  
Type or Print Name

  
Signature