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9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 Trina Ray and Sasha Walker,  
13 individually, and on behalf of others  
14 similarly situated,

15 Plaintiffs,

16 v.

17 California Department of Social  
18 Services, and Los Angeles County  
19 Department of Public Social Services,

20 Defendants.  
21

**Case No. 2:17-cv-04239-PA-SK**

**FIRST AMENDED COLLECTIVE  
ACTION COMPLAINT FOR  
DAMAGES AND RESTITUTION**

**(1) Failure to Pay Overtime  
Compensation in Violation of the  
Fair Labor Standards Act (29 U.S.C.  
§ 201, et seq.)**

1 **PRELIMINARY STATEMENT**

2 1. This is a collective action brought by Individual Plaintiffs Trina Ray  
3 and Sasha Walker (“Plaintiffs”) on their own behalf and on behalf of the proposed  
4 FLSA Collective. Plaintiffs and the putative collective are or were employed by the  
5 Los Angeles County Department of Public Social Services (“DPSS” or  
6 “Defendant”), as homecare workers, home care providers, or in other similar job  
7 titles through the In-Home Supportive Services program (collectively, “IHSS  
8 Homecare Providers”) and were denied proper compensation as required by federal  
9 wage and hour laws. These employees are similarly situated under the Fair Labor  
10 Standards Act (“FLSA”), 29 U.S.C. § 216(b).

11 2. The FLSA Collective is made up of all persons who have been  
12 employed by Defendant as IHSS Homecare Providers in the County of Los Angeles,  
13 and who were paid for hours in excess of forty (40) per week at a rate of less than  
14 1.5 times their regular rate at any time from January 1, 2015 to February 1, 2016  
15 (the “Collective Period”).

16 3. During the Collective Period, Defendant failed to pay overtime  
17 compensation to Plaintiffs and each member of the FLSA Collective as required by  
18 federal law. Plaintiffs seek relief for themselves and for the FLSA Collective under  
19 the FLSA requiring Defendant to pay appropriate overtime compensation.

20 **THE PARTIES**

21 4. Plaintiff Trina Ray (“Plaintiff Ray”) is an individual residing in Los  
22 Angeles, California (Los Angeles County).

23 5. Plaintiff Ray is currently employed by Defendant as an IHSS  
24 Homecare Provider. She worked the first of two stints of employment for  
25 Defendants from approximately 2010 or 2011 until approximately October 2015.  
26 Defendant then re-hired Plaintiff in approximately September or October 2016 and  
27 have employed her since. Throughout her employment with Defendant, Plaintiff  
28 Ray has reported to the IHSS office located in Rancho Dominguez, California (Los

1 Angeles County).

2 6. Plaintiff Sasha Walker (“Plaintiff Walker”) is an individual residing in  
3 Los Angeles, California (Los Angeles County).

4 7. Plaintiff Walker is currently employed by Defendant as an IHSS  
5 Homecare Provider, and has been so employed since 2006. Throughout her  
6 employment with Defendant, Plaintiff Walker has provided services in Los Angeles  
7 County.

8 8. The In-Home Supportive Services (“IHSS”) program provides in-  
9 home assistance to eligible aged, blind, and disabled individuals as an alternative to  
10 out-of-home care. IHSS currently serves over 550,000 recipients through over  
11 460,000 homecare workers (providers). Services covered by the IHSS program  
12 include domestic services (e.g. housework, meal preparation, laundry, running  
13 errands), non-medical care services (such as bathing, dressing, bladder care);  
14 transportation services (to medical appointments), and paramedical services  
15 (necessary health care activities that recipients would normally perform for  
16 themselves were it not for their functional limitations).

17 9. According to its website, the Los Angeles Department of Public  
18 Social Services (DPSS) is the second largest department in Los Angeles County and  
19 is the largest social service agency in the United States. DPSS is responsible for the  
20 administration and oversight of the IHSS program at the county level.

21 10. Defendant’s gross annual sales made or business done has been  
22 \$500,000.00 or greater at all times relevant herein. Defendant operates in interstate  
23 commerce by, among other things, receiving federal funding for the programs they  
24 administer.

25 **JURISDICTION AND VENUE**

26 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331  
27 as this case is brought under the FLSA, 29 U.S.C. §§ 201 *et seq.* Plaintiffs Ray and  
28 Walker have signed consent forms to join this lawsuit, which have previously been

1 filed with the Court. Other individuals have filed consent forms to join this action,  
2 and as this case proceeds, it is likely that still other individuals will file consent  
3 forms and join as opt-in plaintiffs.

4 12. Venue is proper in the United States District Court, Central District of  
5 California pursuant to 28 U.S.C. § 1391, because Defendant operates in this district  
6 and because a substantial part of the events giving rise to the claims occurred in this  
7 district.

8 **FACTUAL ALLEGATIONS**

9 13. Plaintiffs re-allege and incorporate by reference the above paragraphs  
10 as if fully set forth herein.

11 14. Plaintiffs and those similarly situated are individuals who were or are  
12 employed by Defendant as homecare providers through the In-Home Supportive  
13 Services program in Los Angeles County at any time between January 1, 2015 and  
14 February 1, 2016 (the “Collective Period”). As IHSS Homecare Providers, Plaintiffs  
15 and the similarly situated individuals were responsible for providing in-home  
16 assistance for IHSS recipients.

17 15. At all relevevant times, Defendant is, or has been, Plaintiffs’ and the  
18 similarly situated individuals’ “employers” within the meaning of the FLSA, 29  
19 U.S.C. § 203(d).

20 16. For example, Defendant DPSS exercises significant control over IHSS  
21 Homecare Providers’ work. DPSS is responsible for hiring and orientation for IHSS  
22 Homecare Providers in Los Angeles County. DPSS maintains several offices within  
23 Los Angeles County, which serve as the employment touchpoints for IHSS  
24 Homecare Providers. DPSS is responsible for reviewing requests by IHSS  
25 Homecare Providers to work more than the pre-approved maximum weekly hours.  
26 IHSS Homecare Providers regularly interact with DPSS employees regarding  
27 changes in recipients’ health and/or condition. IHSS Homecare Providers also  
28 interact with DPSS employees regarding inquiries related to their pay.

1           17. DPSS is responsible for setting IHSS Homecare Providers' rates of  
2 pay. In June 2015, the Los Angeles County board of supervisors voted to raise the  
3 wage for county IHSS workers. See [http://www.latimes.com/local/lanow/la-me-ln-](http://www.latimes.com/local/lanow/la-me-ln-county-home-care-worker-raise-20150616-story.html)  
4 [county-home-care-worker-raise-20150616-story.html](http://www.latimes.com/local/lanow/la-me-ln-county-home-care-worker-raise-20150616-story.html).

5           18. Although IHSS Homecare Providers receive paychecks from the State  
6 of California, DPSS is responsible for payment of a share of IHSS Homecare  
7 Providers' wages. The raises for IHSS Homecare Providers approved in 2015 were  
8 expected to cost the County of Los Angeles over \$42 million in 2015-16 and 2016-  
9 17.

10           19. DPSS is responsible for setting IHSS Homecare Providers' hours of  
11 work, in that DPSS determines the hours for which IHSS Homecare recipients are  
12 eligible. DPSS also exercises control over IHSS Homecare Providers' hours of work  
13 by reviewing requests to exceed the approved number of services hours, and by  
14 communicating with IHSS Homecare Providers regarding unauthorized overtime  
15 work.

16           20. DPSS has the right to discipline and fire IHSS Homecare Providers.  
17 For example, DPSS is responsible for monitoring IHSS Homecare Providers' hours,  
18 following progressive discipline if IHSS Homecare Providers exceed their approved  
19 hours, and terminating / suspending IHSS Homecare Providers for repeated  
20 instances of exceeding the approved number of hours.

21           21. DPSS is responsible for inputting employment records, such as  
22 Providers' contact information, into a statewide database that maintains employment  
23 records for IHSS Homecare Providers.

24           22. During the Collective Period, Defendant suffered and permitted  
25 Plaintiffs to regularly work more than forty (40) hours in certain workweeks without  
26 providing appropriate overtime compensation. Upon information and belief,  
27 Defendants also suffered and permitted the members of the FLSA Collective to  
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1 regularly work more than forty (40) hours in certain workweeks during the  
2 Collective Period.

3 23. For example, Plaintiff Ray worked approximately 271 hours each  
4 month from January through June 2015, approximately 280 hours in July 2015, and  
5 approximately 283 hours in August and September 2015. As a result, she worked  
6 over 40 hours the vast majority (if not all) of the weeks between January 2015 and  
7 September 2015. Indeed, 271 monthly hours equates to an average of over 9 hours  
8 per day over 30 calendar days in a month, which leads to an average of  
9 approximately 63 hours per week. Thus, from January 2015 through September  
10 2015 Plaintiff Ray worked an average of at least 63 hours per week. It is  
11 mathematically impossible to work 271 hours in a month without working over 40  
12 hours in at least one week.

13 24. By way of further example, Plaintiff Walker worked approximately  
14 283 in each month from July through December of 2015, and approximately 263  
15 hours from January through June of 2015. As a result, she worked over 40 hours the  
16 vast majority (if not all) of the weeks in 2015. Indeed, 283 monthly hours equates to  
17 an average of over 9.4 hours per day over 30 calendar days in a month, which leads  
18 to an average of approximately 66 hours per week. Thus, from July 2015 through  
19 December 2015 Plaintiff Walker worked an average of at least 66 hours per week. It  
20 is mathematically impossible to work 283 hours in a month without working over  
21 40 hours in at least one week.

22 25. During the Collective Period, Plaintiffs and those similarly situated  
23 were not compensated in accordance with the FLSA because they were not paid  
24 proper overtime wages for all hours worked in excess of forty (40) per workweek.  
25 Specifically, rather than paying them 1.5 times their regular rate of pay for all hours  
26 worked over forty (40) in a workweek, which is required by the FLSA (29 U.S.C. §  
27 207), Defendant paid them “straight time” for all of their overtime hours worked.  
28 This was true for all IHSS Homecare Providers throughout the Collective Period

1 and specifically in the example weeks and months outlined in paragraphs 23 and 24  
2 above. Defendant's failure to pay the additional half-time for overtime hours  
3 violated the FLSA.

4 26. Plaintiffs and those similarly situated have been eligible for overtime  
5 since at least January 1, 2015, when the Department of Labor implemented new  
6 regulations regarding overtime pay for home health care workers. Defendant was  
7 aware of the new regulations but did not begin paying overtime to IHSS Homecare  
8 Providers until February 1, 2016.

9 27. Defendant was aware, or should have been aware, that Plaintiffs and  
10 the FLSA Collective performed work that required them to work overtime. For  
11 example, Defendant informed Plaintiffs of the total number of service hours their  
12 clients (the recipient enrolled in the IHSS program) were approved to receive each  
13 month. In addition, Defendant required Plaintiff and those similarly situated to  
14 report their work hours via weekly timesheets, which routinely reflected overtime  
15 hours.

16 **COLLECTIVE ACTION ALLEGATIONS**

17 28. Plaintiffs bring this action on behalf of themselves and other similarly  
18 situated employees as authorized under the FLSA, 29 U.S.C. § 216(b). Plaintiff's  
19 consent forms have previously been filed with the Court.

20 29. The proposed FLSA Collective class is defined as follows:

21 All people employed by Defendant as homecare workers, home  
22 care providers, or in other similar job titles, through the In-  
23 Home Supportive Services program and in Los Angeles County,  
24 and who were paid for hours in excess of forty (40) per week at  
25 a rate of less than 1.5 times their regular rate at any time from  
January 1, 2015 to February 1, 2016.

26 30. Pursuant to the FLSA, 29 U.S.C. § 207, employers are generally  
27 required to pay overtime compensation at a rate of 1.5 times an employees' regular  
28 rate of pay for hours worked over forty (40) in a workweek.

1 31. The FLSA contains an exemption from overtime for “domestic  
2 service” workers who provide companionship and other services to individuals who  
3 are unable to care for themselves and also contains an exemption for live-in  
4 domestic service workers. 29 U.S.C. §§ 213(a)(15) and 213(b)(21).

5 32. In October 2013, the United States Department of Labor determined  
6 that these exemptions do not apply to domestic-service workers employed by third-  
7 party agencies or employers.

8 33. Since January 1, 2015, federal regulations have provided that  
9 domestic-service workers employed by third-party agencies or employers are not  
10 exempt from the FLSA’s minimum wage and overtime requirements. 29 C.F.R. §  
11 552.109(a).

12 34. As of January 1, 2015, all domestic-service workers employed by  
13 third-party agencies or employers are entitled to overtime compensation at an hourly  
14 rate of 1.5 times the employee’s regular rate of pay for hours worked over forty (40)  
15 in a work week.

16 35. During the Collective Period, Plaintiffs and the FLSA Collective  
17 routinely worked in excess of forty (40) hours per workweek without receiving  
18 proper overtime compensation for their overtime hours worked.

19 36. Despite the Department of Labor’s position that domestic-service  
20 workers employed by third-party agencies or employers are not exempt from the  
21 FLSA’s minimum wage and overtime requirements, Defendant maintained its  
22 practice of failing to pay the proper overtime compensation to Plaintiffs and the  
23 FLSA Collective from January 1, 2015 to February 1, 2016. In so doing, Defendant  
24 violated the provisions of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2).

25 37. Defendant was aware that it was not compensating Plaintiffs and the  
26 FLSA Collective for overtime between January 1, 2015 and February 1, 2016, and  
27 was aware of the new Department of Labor regulations.

28 38. Defendant knowingly, willfully, or in reckless disregard of the law,



1 maintained an illegal practice of failing to pay Plaintiff and the FLSA Collective  
2 proper overtime compensation for all hours worked over forty (40).

3 39. Defendant was liable under the FLSA for failing to properly  
4 compensate Plaintiffs and the FLSA Collective, and as such, notice should be sent  
5 to the Collective. There are numerous similarly situated current and former  
6 employees of Defendant who have been denied overtime pay in violation of the  
7 FLSA who would benefit from the issuance of Court-supervised notice of this  
8 lawsuit and the opportunity to join. Those similarly situated employees are known  
9 to Defendant and are readily identifiable through Defendant's records.

10 **CLAIM FOR RELIEF**

11 **FAIR LABOR STANDARDS ACT**

12 29 U.S.C. §§ 201 et seq.

13 (On Behalf of Plaintiff and the FLSA Collective)

14 40. Plaintiffs and the FLSA Collective allege and incorporate by reference  
15 the allegations in the preceding paragraphs.

16 41. The FLSA requires covered employers, such as Defendant, to  
17 compensate all non-exempt employees at a rate of not less than one and one-half  
18 times the regular rate of pay for work performed in excess of forty hours per work  
19 week.

20 42. Plaintiffs and the FLSA Collective are entitled to be paid overtime  
21 compensation for all hours worked over forty (40) per workweek. By failing to pay  
22 Plaintiffs and the FLSA Collective overtime compensation of one and one-half  
23 times their hourly rate of pay for the overtime hours they worked, Defendant  
24 violated the FLSA, 29 U.S.C. §§ 201 *et seq.*

25 43. Defendant knew, or showed reckless disregard for the fact, that it  
26 failed to pay these individuals overtime compensation in violation of the FLSA.

27 44. The foregoing conduct, as alleged, constitutes a willful violation of the  
28 FLSA, within the meaning of 29 U.S.C. § 255(a).

1 45. Plaintiffs, on behalf of themselves and the FLSA Collective, seek  
2 damages in the amount of all unpaid overtime compensation owed to themselves  
3 and the FLSA Collective, liquidated damages as provided by the FLSA, 29 U.S.C. §  
4 216(b), interest, and such other legal and equitable relief as the Court deems just and  
5 proper.

6 46. Plaintiffs, on behalf of themselves and the FLSA Collective, seek  
7 recovery of attorneys' fees and costs to be paid by Defendant, as provided by the  
8 FLSA, 29 U.S.C. § 216(b).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, on behalf of themselves and all members of the  
11 FLSA Collective, pray for relief as follows:

- 12 A. Designation of this action as a collective action on behalf  
13 of Plaintiffs and those similarly situated and prompt  
14 issuance of notice pursuant to 29 U.S.C. § 216(b) to all  
15 those similarly situated apprising them of the pendency of  
16 this action, and permitting them to assert timely FLSA  
17 claims in this action by filing individual consent forms  
18 pursuant to 29 U.S.C. § 216(b);
- 19 B. Judgment that Plaintiffs and those similarly situated are  
20 non-exempt employees entitled to protection under the  
21 FLSA;
- 22 C. Judgment against Defendant for violation of the overtime  
23 provisions of the FLSA;
- 24 D. Judgment that Defendant's violations as described above  
25 were willful;
- 26 E. An award in an amount equal to Plaintiff's and the FLSA  
27 Collective's unpaid back wages at the applicable overtime  
28 rate;

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- F. An award to Plaintiffs and those similarly situated for the amount of unpaid wages owed, liquidated damages and penalties where provided by law, and interest thereon;
- G. An award of reasonable attorneys’ fees and costs pursuant to 29 U.S.C. § 216 and/or other applicable laws;
- H. An award of prejudgment interest to the extent liquidated damages are not awarded;
- I. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
- J. Leave to amend to add additional defendants, if necessary; and
- K. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

Dated: July 21, 2017

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