

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

KAREN TURNMIRE and ERIN
TURNMIRE, on behalf of themselves and
all other similarly situated individuals,

Civ. Action No.: _____

Plaintiffs,

v.

CustomCARE, LLC,

Defendant.

PLAINTIFFS' COLLECTIVE AND CLASS ACTION COMPLAINT

Karen Turnmire and Erin Turnmire (“Plaintiffs”), on behalf of themselves and all other similarly situated current and former workers for CustomCare, LLC (“Defendant”), and on behalf of the members of the putative Minnesota Rule 23 Class, bring this action against Defendant for damages and other relief relating to violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) and/or the Minnesota Fair Labor Standards Act, Minn. Stat. § 177.21 *et seq.* (“MFLSA”).

I.

OVERVIEW

1. Plaintiffs bring claims to recover unpaid overtime compensation under § 216(b) of the FLSA. They bring these claims as a putative collective action on behalf of themselves and all current or former hourly-paid health care workers Defendant employed within three years back from the date this Complaint was filed.

2. Plaintiffs also bring claims to recover unpaid overtime wages under the MFLSA, Minn. Stat. § 177.25. Plaintiffs bring these claims as a putative class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

II.

THE PARTIES

Plaintiffs

1. Plaintiff Karen Turnmire is a citizen of the United States domiciled Burnsville, Minnesota. Defendant employs Plaintiff Karen Turnmire as an hourly-paid health care worker, specifically a Personal Care Attendant (“PCA”) and has done so since approximately March of 2021.

2. Plaintiff Erin Turnmire is a citizen of the United States domiciled in Burnsville, Minnesota. Defendant employs Plaintiff Erin Turnmire as an hourly-paid health care worker, specifically a Personal Care Attendant (“PCA”) and has done so since approximately June 2021.

3. Pursuant to 29 U.S.C. § 216(b), Plaintiffs consent in writing to be a party to the FLSA claims asserted. Their consent forms are attached as Exhibit A. As this case proceeds, it is likely other individuals will file consent forms and join as opt-in plaintiffs.

4. Plaintiffs, those similarly situated, and the putative Minnesota Rule 23 Class are or were Defendant’s employees within the meaning of the FLSA, 29 U.S.C. § 203(e)(1) and/or the MFLSA, Minn. Stat. §§ 177.23 and 177.24.

5. This action is brought as a putative collective action under the FLSA for failure to pay federally mandated overtime compensation for hours worked over 40 in a workweek.

6. This action is also brought as a putative class action pursuant to Fed. R. Civ. P. 23 to remedy violations of the MFLSA, for failure to pay state mandated overtime compensation for hours worked over 48 in a workweek.

7. Defendant has willfully engaged in a pattern, policy, and practice of unlawful conduct for the actions alleged in this Complaint, in violation of the federal and state rights of Plaintiff, those similarly situated, and members of the putative Minnesota Rule 23 Class.

Defendant

8. Defendant is a Minnesota corporation with its principal place of business in Edina, Minnesota.

9. Defendant is an agency that provides health care staffing services to individuals with illnesses and disabilities.

10. Defendant is or has been an enterprise engaged in commerce or in the production of goods or services for commerce within the meaning of 29 U.S.C. § 203(s)(1), and, upon information and belief, Defendant has had an annual gross volume of sales made or business done of not less than \$500,000 at all relevant times.

11. Plaintiffs, and those similarly situated, are or were individual employees engaged in commerce or in the production of goods or services for commerce as required by 29 U.S.C. § 207.

12. At all relevevant times, Defendant is, and has been, the “employer” of Plaintiffs, those similarly situated, and the proposed Minnesota Rule 23 Class within the meaning of the FLSA, 29 U.S.C. § 203(d) and the MFLSA, Minn. Stat. §§ 177.23 and 177.24.

III.

JURISDICTION

13. This Court has subject matter jurisdiction under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. Plaintiffs’ claims arise under § 207(a) of the FLSA. Additionally, this Court has personal jurisdiction over Defendant, since Defendant conducts business in the District of Minnesota.

14. The Court also has supplemental jurisdiction, pursuant to 29 U.S.C. § 1367, over the state law claims asserted, as the state and federal claims derive from a common nucleus of operative fact.

IV.

VENUE

15. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) as Defendant is domiciled within this District and under 28 U.S.C. § 1391(b)(2), as a substantial part of the events giving rise to the claims occurred in this District.

V.

COLLECTIVE AND CLASS ACTION DEFINITIONS

16. The group of similarly situated employees sought to be certified under the FLSA, 29 U.S.C. § 216(b), as a collective action is defined as:

All current or former hourly-paid health care workers who worked for Defendant at any time from three years prior to the filing of this Complaint through the present and beyond (the “FLSA Collective”).

17. The class of similarly situated employees sought to be certified under Fed.

R. Civ. P. 23(a) and 23(b) as a class action under the MFLSA is defined as:

All current or former hourly-paid health care workers who worked for Defendant at any time from three years prior to the filing of this Complaint through the present and beyond (the “Minnesota Rule 23 Class”).

VI.

FACTS

18. Plaintiffs re-allege and incorporate by reference all allegations in the preceding paragraphs.

19. Plaintiffs and the members of the putative FLSA Collective and Minnesota Rule 23 Class are or were employed by Defendant as hourly-paid health care workers to provide home health care services for the elderly, ill, or disabled.

20. Defendant suffered and permitted Plaintiffs to regularly work more than 40 and/or 48 hours in certain workweeks. Upon information and belief, Defendant also suffered and permitted the members of the putative FLSA Collective and members of the putative Minnesota Rule 23 Class to regularly work more than 40 and/or 48 hours in certain workweeks.

21. Plaintiffs and those similarly situated were not compensated in accordance with the FLSA and/or the MFLSA because they were not paid proper overtime wages for all hours worked in 40 and/or 48 in a workweek. Specifically, rather than paying them 1.5

times their regular rate of pay for their overtime hours worked, Defendant paid them straight time.

22. Defendant is aware, or should have been aware, that Plaintiffs, the putative FLSA Collective, and members of the putative Minnesota Rule 23 Class worked overtime hours because Defendant routinely permitted them to work overtime hours and overtime hours appeared on their timesheets.

23. Defendant was also aware that Plaintiffs, the putative FLSA Collective and members of the putative Minnesota Rule 23 Class worked overtime hours for which Defendant did not compensate them properly because it received complaints about the practice.

24. For instance, when Defendant hired Plaintiff Erin Turnmire, she questioned Defendant's owner about Defendant's overtime policies. Defendant's owner explained he did not pay an overtime premium because he did not receive enough compensation from Defendant's clients to pay it. In addition, Plaintiff Erin Turnmire complained to one of Defendant's schedulers about not receiving an overtime premium for overtime hours worked, who simply referred her to Defendant's policy that Defendant did not pay time-and-a-half for overtime.

25. During Plaintiff Karen Turnmire's employment with Defendant, she has routinely worked overtime hours for which she was not paid an overtime premium. For example, in the workweek ending September 26, 2021, Plaintiff Karen Turnmire worked 58 hours. Defendant did not compensate her with an overtime premium of 1.5 times her hourly rate for any of the overtime hours she worked that week.

26. During Plaintiff Erin Turnmire's employment with Defendant, she has routinely worked overtime hours for which she was not paid an overtime premium. For example, in the workweek ending November 7, 2021, she worked 60 hours. Defendant did not compensate her with an overtime premium of 1.5 times her hourly rate for any of the overtime hours she worked that week.

VII.

COLLECTIVE ACTION ALLEGATIONS

27. Plaintiffs re-allege and incorporate by reference all allegations in the preceding paragraphs.

28. Plaintiffs bring Count I on behalf of themselves and the putative FLSA Collective.

29. Pursuant to the FLSA, 29 U.S.C. § 207, employers are generally required to pay overtime compensation at an hourly rate of 1.5 times an employee's regular rate of pay for hours worked over 40 in a workweek.

30. Defendant violated, and is violating, the FLSA by not paying hourly health care workers, like Plaintiffs and the putative FLSA Collective, overtime as required by law.

31. Defendant is aware that it was not compensating Plaintiffs, the putative FLSA Collective, and the members of the putative Minnesota Rule 23 Class properly for overtime, because Plaintiff Erin Turnmire complained to Defendant about not receiving 1.5 times her regular rate for overtime hours worked.

32. Defendant knowingly, willfully, or in reckless disregard of the law, maintained an illegal practice of failing to pay Plaintiffs and the putative FLSA Collective proper overtime compensation.

VIII.

MINNESOTA RULE 23 CLASS ACTION ALLEGATIONS

33. Plaintiffs re-allege and incorporate by reference all allegations in the preceding paragraphs.

34. Pursuant to Fed. R. Civ. P. 23(a) and 23(b), Plaintiffs bring Count II on behalf of themselves and the putative Minnesota Rule 23 Class.

35. The persons in the putative Minnesota Rule 23 Class are so numerous that joinder of all members is impracticable. While the precise number has not been determined, Defendant, on information and belief, has employed at least one hundred (100) individuals as hourly-paid health care workers during the applicable statute of limitations period. Plaintiffs and the putative Minnesota Rule 23 Class have been equally affected by Defendant's violations of law.

36. There are questions of law and fact common to the putative Minnesota Rule 23 Class that predominate over any questions solely affecting individual members, including but not limited to the following:

- a. Whether Defendant violated Minnesota law for failure to pay overtime wages;
- b. The proper measure and calculation of damages; and
- c. Whether Defendant's actions were willful or in good faith.

37. Plaintiffs' claims are typical of those members of the putative Minnesota Rule 23 Class. Plaintiffs, like other members of the putative Minnesota Rule 23 Class, were subject to Defendant's practices and policies described in this Complaint. Further, Plaintiffs' job duties are typical of the putative Minnesota Rule 23 Class, as all class members are or were hourly-paid health care workers who were performing similar duties.

38. Plaintiffs will fairly and adequately protect the interest of the putative Minnesota Rule 23 Class and have retained counsel experienced in complex wage and hour class and collective action litigation.

39. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because questions of law or fact predominate over any questions affecting individual class members, and a class action is superior to other methods in order to ensure a fair and efficient adjudication of this controversy because, in the context of wage and hour litigation, individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against large corporate defendants. Class litigation is also superior because it will preclude the need for unduly duplicative litigation resulting in inconsistent judgments pertaining to Defendant's policies and practices. There do not appear to be any difficulties in managing this class action.

40. Plaintiffs intend to send notice to all members of the putative Minnesota Rule 23 Class to the extent required by Fed. R. Civ. P. 23.

IX.

CAUSES OF ACTION

COUNT I – OVERTIME WAGES

**FAIR LABOR STANDARDS ACT – 29 U.S.C. § 201 *et seq.*
*On Behalf of Plaintiffs and the Putative FLSA Collective***

41. Plaintiffs re-allege and incorporate by reference all allegations in the preceding paragraphs.

42. The FLSA, 29 U.S.C. § 207, requires employers to pay non-exempt employees 1.5 times the regular rate of pay for all hours worked over 40 per workweek.

43. Defendant suffered and permitted Plaintiffs and the putative FLSA Collective to work more than 40 hours in a workweek without proper overtime compensation as required by the FLSA, 29 U.S.C. § 201 *et seq.* and its implementing regulations.

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

45. Defendant's failure to comply with the FLSA overtime protections caused Plaintiffs and the putative FLSA Collective to suffer loss of wages and interest thereon.

46. Plaintiffs and the putative FLSA Collective are entitled to unpaid overtime, liquidated damages, and attorneys' fees and costs.

COUNT II – OVERTIME WAGES

VIOLATION OF THE MINNESOTA

**FAIR LABOR STANDARDS ACT – Minn. Stat. § 177.21 *et seq.*
*On Behalf of Plaintiffs and the Putative Minnesota Rule 23 Class***

47. Plaintiffs re-allege and incorporate by reference all allegations in the preceding paragraphs.

48. Plaintiffs and the putative Minnesota Rule 23 Class were or are employees of Defendant and Defendant was their employer within the meaning of the MFLSA, Minn. Stat. §§ 177.23 and 177.24.

49. The MFLSA requires employers to pay their employees for hours worked in excess of 48 in an individual work week at a rate no less than 1.5 times their regular hourly rate of pay.

50. When Defendant paid Plaintiffs and the putative Minnesota Rule 23 Class straight time, rather than the required 1.5 times their regular hourly rate for hours worked over 48 in a workweek, it violated the MFLSA.

51. The foregoing conduct constitutes a willful violation of the MFLSA within the meaning of Minn. Stat. § 541.07.

52. As a direct and proximate result of Defendant's unlawful conduct, Plaintiffs and the putative Minnesota Rule 23 Class have suffered damages in an amount to be determined at trial.

RELIEF SOUGHT

WHEREFORE, Plaintiffs, on behalf of themselves and the putative FLSA Collective, pray for relief as follows:

1. Permitting this case to proceed as a collective action under § 216(b) of the FLSA and ordering notice to the putative FLSA Collective at the earliest opportunity to ensure their claims are not lost to the FLSA statute of limitations;
2. Judgment against Defendant for violation of the overtime provisions of the FLSA;

3. Judgment that Defendant's violations of the FLSA were willful;
4. An award to Plaintiffs and the putative FLSA Collective for unpaid overtime wages and liquidated damages;
5. An award of any pre- and post-judgment interest;
6. An award of reasonable attorneys' fees and costs;
7. Leave to add additional plaintiffs, defendants, and/or state law claims by motion, the filing of written consent forms, or any other method approved by the Court; and
8. Such further relief as the Court deems just and reasonable.

WHEREFORE, Plaintiffs, on behalf of themselves and the putative Minnesota Rule 23 Class, pray for relief as follows:

1. Certification of this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the putative Minnesota Rule 23 Class, and the appointment of Plaintiffs as Class Representatives and their counsel as class counsel;
2. Judgment against Defendant for violation of the overtime provisions of the MFLSA;
3. Judgement that Defendant's violations of the MFLSA were willful;
4. An award to Plaintiffs and the putative Minnesota Rule 23 class for unpaid overtime wages and liquidated damages;
5. An award of any pre- and post-judgment interest;
6. An award of reasonable attorneys' fees and costs;

7. Leave to amend to add additional plaintiffs, defendants, and/or state law claims by motion or any other method approved by the Court; and
8. Such further relief as the Court deems just and equitable.

Dated: December 23, 2021

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