

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

LaTonya Stephenson-Neal, individually and on behalf
of the Proposed Colorado Rule 23 Class,

Plaintiff,

v.

**CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

Human Touch Home Health Care Agency, Inc.

Defendant.

Case No. _____

Plaintiff LaTonya Stephenson-Neal (“Plaintiff”), individually and on behalf of all others similarly situated (“The FLSA Collective”) and the Proposed Colorado Rule 23 Class (“Rule 23 Class”), by her attorney Nichols Kaster PLLP, brings the following action against Human Touch Home Health Care Agency, Inc. (“Defendant”), for failing to pay its hourly paid home health care workers all of their overtime pay as required by the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.*, the Colorado Wage Act (the “CWA”), C.R.S. §§ 8-4-101, *et seq.*, and the Colorado Minimum Wage Order Numbers 30 through 32 (the “MWO”), 7 CCR 1103-1. Plaintiff states the following as her claims against Defendant:

JURISDICTION AND VENUE

1. This action arises under the FLSA, 29 U.S.C. § 201, *et seq.*, and Colorado state law. The Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein pursuant to 28 U.S.C. § 1331.

2. This Court also has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the state law claims asserted, as the state and federal claims derive from a common nucleus of operative fact.

3. Venue in the District of Colorado is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

4. From approximately September 2014 to August 2015, Plaintiff LaTonya Stephenson-Neal (“Plaintiff”) was employed as a home health care worker by Defendant.

5. Plaintiff is an adult resident of Denver County, Colorado.

6. Defendant Human Touch Home Health Care Agency, Inc., (“Defendant”) is a Colorado corporation with its principal place of business in Denver, Colorado.

7. Defendant is a home health care company, providing in home nursing, rehabilitative, therapeutic, and assistive care services to adults and seniors.

8. Defendant directly employs registered nurses, licensed practical nurses, certified nursing assistants, home health aides, therapists, medical social workers, and other health care professionals (collectively “home health care workers”).

9. Defendant has offices in Colorado Springs, Denver, Pueblo, Grand Junction, and Montrose, Colorado.

10. Defendant’s gross annual sales made or business done has been \$500,000 or greater per year at all relevant times.

GENERAL FACTUAL ALLEGATIONS

11. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully

set forth herein.

12. Plaintiff was paid on an hourly basis, earning \$12.00 per hour for services Defendant classified as “non-medical”/“unskilled” services, and \$17.00 per hour for services Defendant classified as “medical”/“skilled” services, during her employment with Defendant.

13. Plaintiff, the FLSA Collective, and members of the Rule 23 Class are current and former hourly paid home health care workers directly employed by Defendant, and not by Defendant’s clients.

14. Plaintiff, the FLSA Collective, and the Rule 23 Class were or are Defendant’s employees as defined by the FLSA, 29 U.S.C. § 203(d), (g), and C.R.S. § 8-4-101(4); 7 CCR1103-1.

15. Defendant is, or was, Plaintiff’s and the Rule 23 Class’s employer within the meaning of C.R.S. § 8-4-101(5); 7 CCR1103-1.

16. Plaintiff, the FLSA Collective, and the Rule 23 Class worked and/or work in excess of forty (40) hours during workweeks within the statutory period.

17. The FLSA requires covered employers to pay non-exempt employees no less than one and-one-half times their regular rate of pay for all hours worked in excess of forty (40) in a workweek.

18. The MWO covers employers such as Defendant who operate any business or enterprise engaged in medical, dental, surgical, or other health services including but not limited to home health care. The MWO requires covered employers such as Defendant to compensate all non-exempt employees, at a rate of not less than one and one-half times their regular rate of pay, for work performed in excess of forty (40) hours per workweek or 12 hours per workday.

19. Defendant had a common policy of not paying Plaintiff, the FLSA Collective, and the Rule 23 Class at a rate of one and one-half times their regular rate of pay for their overtime hours worked as required by the FLSA and MWO.

20. Defendant paid Plaintiff, the FLSA Collective, and the Rule 23 Class their regular hourly rates (i.e., “straight time”) for their overtime hours, rather than the legally required one and one-half times their regular rate of pay.

21. For example, during the pay period ending July 12, 2015, Plaintiff worked 106.98 hours. Defendant paid Plaintiff for 89.98 hours of work at a rate of \$12 per hour, and 17 hours of work at a rate of \$17 per hour, but failed to pay her an overtime premium of one and one-half times her regular hourly rate for the overtime hours she worked during this period. *See Exhibit B.*

22. Defendant willfully operated under a common scheme to deprive Plaintiff, the FLSA Collective, and the Rule 23 Class of proper overtime compensation by paying them less than what is required under federal and state law.

23. As a home health care company operating in Colorado, Defendant was or should have been aware that Plaintiff, the FLSA Collective, and the Rule 23 Class performed work that required proper payment of overtime compensation.

24. While the FLSA and MWO contain certain exemptions from its overtime pay requirements, none of these exemptions apply to Plaintiff, the FLSA Collective, or the Rule 23 Class.

25. Defendant knew that Plaintiff, the FLSA Collective, and the Rule 23 Class worked overtime hours because Defendant required Plaintiff, the FLSA Collective, and the Rule

23 Class to record and submit records of their work hours.

26. Defendant's conduct as alleged in this Complaint was willful and in bad faith.

FLSA COLLECTIVE ACTION ALLEGATIONS

27. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

28. Plaintiff brings Count I below individually and on behalf of all individuals similarly situated, specifically:

FLSA Collective: All hourly paid home health care workers who have been employed by Defendant at any time since three years prior to the filing of this Complaint until the date of final judgment in this matter.

29. Plaintiff consents in writing to assert her claims for unpaid wages under the FLSA pursuant to 29 U.S.C. § 216(b). Plaintiff's signed consent form is attached as **Exhibit A**. As this case proceeds, it is likely other individuals will file consent forms and join as opt-in plaintiffs.

30. Members of the proposed FLSA Collective are known to Defendant and are readily identifiable through Defendant's records.

31. Plaintiff and the FLSA Collective are all victims of Defendant's widespread, repeated, systematic, and consistent illegal policies that have resulted in violations of their rights under the FLSA, 29 U.S.C. § 201, et seq., and that have caused significant damage to Plaintiff and the FLSA Collective.

32. These individuals would benefit from the issuance of court-supervised notice of this lawsuit and the opportunity to join by filing their written consent.

COLORADO CLASS ACTION ALLEGATIONS

33. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully

set forth herein.

34. Plaintiff brings this action individually and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Rule 23 Class is defined as follows:

Rule 23 Class: All hourly paid home health care workers who have been employed by Defendant in Colorado at any time since two years prior to the filing of this Complaint until the date of final judgment in this matter.

35. The individuals in the Rule 23 Class as defined above are so numerous that joinder of all members is impracticable. Although the precise number of such individuals is currently unknown, Plaintiff believes that the class as defined above includes over 100 members. Plaintiff and Rule 23 Class members have been equally affected by Defendant's violations of state law.

36. There are questions of law and fact common to the Rule 23 Class that predominate over any questions solely affecting individual members, including, but not limited to whether Defendant unlawfully failed to pay the proper overtime premiums, whether Defendant's willfully violated state law, the proper measure of damages sustained by the class members, and whether Defendant should be enjoined from such violations in the future.

37. Plaintiff's claims are typical of those of the Rule 23 Class. Plaintiff, like other members of the Rule 23 Class, have suffered harm due to Defendant's failure to pay them their overtime premiums for the hours they worked in excess of forty (40) hours per workweek in violation of Colorado law.

38. Given Plaintiff's losses, Plaintiff has the incentive and is committed to the prosecution of this action. Plaintiff will fairly and adequately protect the interests of the Rule 23 Class and has retained as counsel a law firm that numerous courts have found sufficiently

experienced in wage and hour litigation to be appointed as class counsel. There are no conflicts between Plaintiff and the class she seeks to represent.

39. This action is maintainable as a class action because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the Rule 23 Class which would establish incompatible standards of conduct for Defendant.

40. This action is maintainable as a class action because questions of law and fact common to the Rule 23 Class predominate over any questions affecting only individual members of the Rule 23 Class and because a class action is superior to other methods for the fair and efficient adjudication of this action.

41. Plaintiff intends to send notice to all members of the Rule 23 Class to the extent required by Rule 23 of the Federal Rules of Civil Procedure.

COUNT I
FEDERAL OVERTIME
(Fair Labor Standards Act, 29 U.S.C. § 201, et seq.)
On Behalf of Plaintiff and the FLSA Collective

42. Plaintiff, individually and on behalf of the FLSA Collective, re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

43. The FLSA requires covered employers to pay non-exempt employees no less than one and-one-half times their regular rate of pay for all hours worked in excess of forty (40) in a workweek. 29 U.S.C. § 207.

44. Defendant is an “enterprise” as defined by the FLSA, 29 U.S.C. § 2063(r)(1), and are engaged in commerce within the meaning of the FLSA, § 203(b), (s)(1).

45. Plaintiff and the FLSA Collective qualified as non-exempt covered employees during the relevant time period. 29 U.S.C. § 203(e)(1).

46. Plaintiff and the FLSA Collective regularly worked more than forty (40) hours per week for Defendant, but Defendant did not properly compensate Plaintiff and the FLSA Collective for all of their overtime hours as required by the FLSA.

47. Defendant did not and has not made a good-faith effort to comply with the FLSA as it relates to compensating Plaintiff and the FLSA Collective.

48. Defendant knew Plaintiff and the FLSA Collective worked overtime without proper compensation, and it willfully failed and refused to pay Plaintiff and the FLSA Collective wages at the required overtime rates. *See* 29 U.S.C. § 255.

49. Defendant's willful failure and refusal to pay Plaintiff and the FLSA Collective overtime wages for time worked violates the FLSA. 29 U.S.C. § 207.

50. As a direct and proximate result of these unlawful practices, Plaintiff and the FLSA Collective suffered and continue to suffer wage loss and are therefore entitled to recover unpaid overtime wages for up to three years prior to the filing of their claims, liquidated damages or prejudgment interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

COUNT II
COLORADO OVERTIME
(Violation of CWA, §§ 8-4-101 *et seq.* and MWO, 7 CCR 1103-1)
On Behalf of Plaintiff and the Rule 23 Class

51. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

52. The CWA, C.R.S. § 8-4-103, requires employers to pay all wages or compensation earned by an employee in any employment, for regular pay periods of no greater duration than one calendar month or thirty days, whichever one is longer, or on regular paydays no later than ten days following the close of each pay period unless the employer and the employee mutually agree on any other alternative period of wage or salary payments.

53. The MWO, 7 CCR1103-1, requires employers to pay overtime compensation to all non-exempt employees, at a rate of one and one-half times their regular rate of pay for all hours worked over forty (40) hours per workweek; 12 hours per workday; or 12 consecutive hours without regard to the starting and ending time of the workday.

54. Defendant routinely suffered and permitted Plaintiff and the Rule 23 Class to work more than forty (40) hours per week without receiving the legally mandated overtime premiums.

55. Defendant's actions, policies, and practices as described above violate the CWA and MWO by failing to compensate Plaintiff and the Rule 23 Class for all of their overtime pay at the proper overtime rate.

56. As the direct and proximate result of Defendant's unlawful conduct, Plaintiff and the Rule 23 Class have suffered and will continue to suffer a loss of income and other damages.

57. Plaintiff and the Rule 23 Class seek to recover attorneys' fees, costs, and expenses of this action, to be paid by Defendant, as provided by the CWA § 8-6-118 and MWO, 7 CCR 1103-1, and other applicable state laws.

58. Plaintiff and the Rule 23 Class seek damages in the amount of their underpayments based on Defendant's failure to pay lawful wages due and such other legal and equitable relief as the Court deems proper.

PRAYER FOR RELIEF

59. **WHEREFORE**, Plaintiff, on behalf of herself and the proposed FLSA Collective, prays for relief as follows:

1. A finding that Plaintiff and the FLSA Collective are similarly situated;
2. Certification of this case as a collective action pursuant to 29 U.S.C. § 216(b);
3. Authorization for the prompt issuance of notice to all those similarly situated, apprising them of the pendency of this action and providing them with the opportunity to assert timely FLSA claims by filing individual consent forms;
4. Judgment against Defendant for an amount equal to Plaintiff's and the FLSA Collective's unpaid back wages at the applicable overtime rates;
5. A finding that Defendant's violations of the FLSA are willful;
6. An amount equal to Plaintiff's and the FLSA Collective's damages as liquidated damages;
7. All costs and attorneys' fees incurred prosecuting this claim;
8. An award of any pre- and post-judgment interest;
9. Leave to add additional plaintiffs or claims by motion, the filing of written consent forms, or any other method approved by the Court; and
10. All further relief as the Court deems just and equitable.

59. **WHEREFORE**, Plaintiff, on behalf of herself and the Rule 23 Class, prays for judgment against Defendant as follows:

1. Certify this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the Rule 23 Class;
2. Appoint Plaintiff as Class Representative and appoint her counsel as Class

Counsel;

3. Judgment that Defendant's practices violate the CWA and MWO;
4. Award Plaintiff and the Rule 23 Class all damages, civil penalties, and prejudgment interest available;
5. Award Plaintiff and the Rule 23 Class all costs and attorneys' fees incurred prosecuting this claim; and
6. Such further relief as the Court deems just and equitable.

Dated: June 29, 2016

NICHOLS KASTER, PLLP

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