

1.5 For most of her employment, Rich was paid on an hourly basis.

1.6 Even though she consistently worked more than forty hours in a week, Rich was not paid overtime premiums for all such hours.

1.7 Rich, on behalf of herself and all other similarly situated hourly nurses employed by Defendants, brings this collective action to recover overtime compensation, liquidated damages, attorney's fees, litigation costs, costs of court, and pre-judgment and post-judgment interest under the provisions of the FLSA.

1.8 For at least three years prior to the filing of this Complaint, Defendants willfully committed violations of the FLSA by failing to pay overtime premiums to their hourly nurses for all hours worked in excess of forty hours per week.

II. JURISDICTION AND VENUE

2.1 This Court has subject-matter jurisdiction under 28 U.S.C. § 1331, because this civil action arises under the laws of the United States, specifically the FLSA, 29 U.S.C. § 216(b).

2.2 This Court has personal jurisdiction over Defendants, National Healthcare Corporation and NHC Healthcare/Franklin, LLC. Defendants conduct business in Tennessee, entered relationships with Plaintiff in Tennessee, and committed actions in Tennessee that give rise to this lawsuit.

2.3 Venue is proper in the Middle District of Tennessee, Nashville Division, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

III. PARTIES

3.1 Rich is an individual residing in Franklin, Tennessee. Her notice of consent is attached to this Complaint as Exhibit A.

3.2 Defendant National Healthcare Corporation (“NHC”) is a foreign corporation formed and existing under the laws of the State of Delaware. NHC maintains and operates its principal office in Tennessee.

3.3 NHC employed Rich and those similarly situated, as defined by 29 U.S.C. § 203(d).

3.4 NHC can be served with process through its registered agent, National Registered Agents, Inc., at 160 Greentree Dr., Suite 101, Dover, Delaware 19904.

3.5 Defendant NHC Healthcare/Franklin, LLC (“NHC Franklin”) is a domestic limited liability company formed and existing under the laws of the State of Tennessee. NHC Franklin maintains and operates its principal office in Franklin, Tennessee.

3.6 NHC Franklin employed Rich and those similarly situated, as defined by 29 U.S.C. § 203(d).

3.7 NHC Franklin can be served with process through its registered agent, National Registered Agents, Inc., at 300 Montvue Road, Knoxville Tennessee, 37919.

3.8 Defendants have been and are currently operating as a joint and integrated enterprise with respect to their employment of Plaintiff and the class members.

IV. FLSA COVERAGE

4.1 For purposes of this action, “all relevant times” or the “relevant period” refers to the period beginning three years prior to the filing of this Complaint and continuing thereafter.

4.2 At all relevant times, Defendants each had gross operating revenue in excess of \$500,000.

4.3 At all relevant times, Defendants have been, and continue to be, an “employer” engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.

4.4 At all relevant times, Defendants employed “employees,” including Rich and those similarly situated, within the meaning of the FLSA, 29 U.S.C. § 203.

4.5 At all relevant times, Defendants employed two or more persons in interstate commerce.

4.6 At all relevant times, Defendants have each been an “enterprise” engaged in commerce, as defined in 29 U.S.C. § 203.

4.7 At all relevant times, Plaintiff and those similarly situated were individually engaged in interstate commerce or in the production of goods for commerce while performing their job duties for Defendants.

4.8 At all relevant times, Defendants have been subject to the requirements of the FLSA, 29 U.S.C. §§ 201, *et seq.*

V. FACTUAL ALLEGATIONS

5.1 Defendants provide home health services.

5.2 Defendants employed Rich during the three-year period preceding the filing of this Complaint.

5.3 Rich and all those similarly situated had the same primary duty, which was to provide nursing care to Defendants’ patients at the patients’ residences.

- 5.4 Rich and all those similarly situated were paid on an hourly basis.
- 5.5 Rich and all those similarly situated consistently worked over forty hours per week.
- 5.6 Rich and all those similarly situated were non-exempt employees.
- 5.7 Defendants failed to pay Rich and all those similarly situated overtime premiums for all hours worked over forty per week.
- 5.8 Defendants maintained control, oversight, and direction over their operations, including employment practices.
- 5.9 Defendants maintained and exercised the power to hire, fire, and discipline Rich and those similarly situated during their employment.
- 5.10 Rich and those similarly situated were required to comply with Defendants' policies and procedures in performing their work during their employment.
- 5.11 At all times relevant hereto, Defendants knew of, approved of, and benefited from the regular and overtime work of Rich and those similarly situated.
- 5.12 Defendants did not make a good-faith effort to comply with the FLSA's overtime provisions.
- 5.13 Defendants' actions were willful and in blatant disregard for the federally protected rights of Rich and those similarly situated.

VI. COLLECTIVE ACTION ALLEGATIONS

- 6.1 Defendants' pattern, practice, and policy that violates the FLSA has victimized other employees. Rich is aware that the illegal practices and policies of Defendants have been imposed on other workers.

6.2 Rich brings her claim for relief on behalf of all persons who worked for Defendants as an hourly nurse at any time three years prior to the filing of this lawsuit, to the entry of judgment in this lawsuit (Collective Class).

6.3 Defendants paid Rich and the Collective Class on an hourly basis and suffered and permitted them to work more than forty hours per week. Defendants did not pay Rich or the Collective Class overtime compensation for any hours worked beyond forty per week.

6.4 Though their job titles may vary, the members of the Collective Class were all hourly nurses.

6.5 Rich's experiences are typical of the experiences of other similarly situated employees.

6.6 Defendants' operations with respect to wages paid to Rich and the Collective Class are substantially similar, if not identical.

6.7 Defendants' pattern of failing to pay overtime compensation, as required by the FLSA, results from Defendants' general application of policies and practices. That pattern does not depend on the personal circumstances of Rich and the Collective Class.

6.8 Although the damages suffered by Rich and the Collective Class may be individual in character, this fact does not detract from the common nucleus of liability facts.

6.9 Rich files this case as an "opt-in" collective action, on her behalf and on behalf of those similarly situated who have not been fully compensated for all work performed, time spent, and activities conducted for the benefit of Defendants, pursuant to the FLSA, 29 U.S.C. § 216(b).

6.10 Rich requests that Defendants identify all prospective members of the Collective Class in order that proper notice of their right to consent to participation in this collective action may be distributed, including their names, dates of employment, job titles, last known addresses, and telephone numbers.

6.11 Rich seeks to represent those members of the above-described group who, after appropriate notice of their ability to opt into this action, have provided consent in writing to be represented by Rich's counsel, as required by 29 U.S.C. § 216(b).

6.12 Those individuals who choose to opt in will be listed on subsequent pleadings and copies of the written consents will be incorporated by reference.

6.13 Rich will fairly and adequately represent and protect the interests of those similarly situated who opt into this action.

VII. CAUSE OF ACTION: VIOLATION OF THE FLSA

Failure to Pay Overtime Wages

7.1 Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully set forth herein.

7.2 Rich and all others similarly situated are non-exempt employees.

7.3 As non-exempt employees under the FLSA, if Rich and all others similarly situated worked over forty hours in a workweek, they were entitled to overtime pay.

7.4 Over the course of the relevant period, Rich and all others similarly situated routinely worked in excess of forty hours per week.

7.5 Even though Rich and all others similarly situated worked in excess of forty hours per week, Defendants failed to pay them an overtime premium for all hours worked in excess of forty per week.

7.6 Defendants have violated 29 U.S.C. § 207 by failing to pay Rich and all others similarly situated overtime premiums for all hours worked over forty per workweek.

7.7 In further violation of the FLSA, Defendants have failed to maintain accurate employee pay records, including the true number of hours worked per workweek by Rich and all others similarly situated.

7.8 No excuse, legal justification, or exemption excuses Defendants' failure to pay Rich and all others similarly situated overtime compensation for all hours worked over forty in a workweek.

7.9 Defendants have failed to make a good-faith effort to comply with the FLSA. Instead, Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice regarding overtime compensation.

7.10 Rich and the Collective Class seek all unpaid overtime compensation and an additional equal amount as liquidated damages, as well as reasonable attorney's fees, costs, and litigation expenses, including expert witness fees, as provided by 29 U.S.C. § 216(b), along with pre- and post-judgment interest at the highest rate allowed by law.

PRAYER FOR RELIEF

Rich and all others similarly situated respectfully pray that Defendants, NHC and NHC Franklin, be cited to appear, and that, upon trial of this matter, Rich and the Collective Class recover the following against Defendants, jointly and severally:

- a. Actual damages for the full amount of their unpaid overtime compensation;
 - b. Liquidated damages in an amount equal to their unpaid overtime compensation;
 - c. Reasonable attorney's fees, costs, and expenses of this action, including expert witness costs, as provided by the FLSA;
 - d. Pre-judgment and post-judgment interest at the highest rates allowed by law;
 - e. Such other and further relief, at law or in equity, as this Honorable Court may find proper; and,
- F. That a jury be impaneled to hear this cause of action at trial.

Dated: December 21, 2018

Respectfully submitted,

/s/ Douglas B. Welmaker
Douglas B. Welmaker

State Bar No. 00788641
WELMAKER LAW PLLC
7310 Manchaca Rd., #150728
Austin, Texas 78715
Phone: (512) 799-2048
Fax: (512) 253-2969
Email: doug@welmakerlaw.com

/s/ Charles P. Yezbak, III
Charles P. Yezbak, III (TN Bar 18965)
N. Chase Teeples (TN Bar 032400)
Yezbak Law Offices PLLC
2002 Richard Jones Road, Suite B-200
Nashville, TN 37215
Phone: (615) 250-2000
Fax: (615) 250-2020
Email: Yezbak@yezbaklaw.com
Teeples@yezbaklaw.com

ATTORNEYS FOR PLAINTIFF