IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Gretchen Smith, individually and on behalf of all others similarly situated, Plaintiffs, v. American Health Associates, Inc. Defendant.	6:16-cv-03480-TMC-KFM **COMPLAINT** **Class/Collective Action** (JURY TRIAL DEMANDED)

NOW COMES the Plaintiff, by and through her undersigned counsel, and alleges as follows:

INTRODUCTION

1. Plaintiff individually and on behalf of all similarly situated employees ("Plaintiffs"), brings this Class/Collective action lawsuit against American Health Associates, Inc. ("Defendant") seeking to recover for Defendant's violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq*., the South Carolina Wages Act, S.C. Code Ann. §§ 41-10-10 to 110, and various other state wage payment acts.

2. In addition to her Class/Collective claims, Plaintiff brings several individual claims seeking to recover for Defendant's violations of the Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* and the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.*

PARTIES AND JURISDICTION

3. Plaintiff is a resident of the State of South Carolina, County of Greenville.

4. Pursuant to 29 U.S.C. § 216(b), Plaintiff has consented in writing to be a party to the FLSA claims asserted in this action, and Plaintiff's signed consent form is attached. (See Exhibit A – Plaintiff's Consent to Become a Party Form).

5. That, upon information and belief, Defendant American Health Associates, Inc. ("AHA") d/b/a American Health Associates is a corporation organized and existing under the laws of Florida with its principal office located at 15712 SW 41 Street, Ste 16-20, Davie, FL 33331.

6. AHA maintains offices and agents and is otherwise doing business in the County of Greenville, State of South Carolina.

7. AHA is a privately held family owned company that is the Nation's largest clinical reference laboratory offering a wide array of diagnostic testing to their customers. AHA offers laboratory services in Florida, Ohio, Maryland, Michigan, Kentucky, Indiana, Illinois, Missouri, North Carolina, and South Carolina. According to the company handbook, AHA provides services to over 130 facilities and employs over 100 phlebotomists.

8. During the relevant time period, Defendant employed individuals who handled, sold, or otherwise worked on goods or materials that have been moved in, or produced for, commerce.

9. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 215(a)(3), 29 U.S.C. § 216(b), and 29 U.S.C. § 2617(a)(2).

10. In addition to her FLSA collective action claims, Plaintiff also asserts class claims pursuant to Fed.R.Civ.P. 23 for a state law cause of action pursuant to the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.* ("PWA") and various other similar state wage payment acts.

11. In addition to her Class/Collective claims, Plaintiff brings claims under the PWA and the Family Medical Leave Act in her individual capacity and not on behalf of the class.

12. This Court has supplemental jurisdiction over Plaintiff's class state law claims and Plaintiff's individual claims pursuant to 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative facts.

13. In addition to the Court having supplemental jurisdiction over Plaintiff's class state law claims, this Court has original subject matter jurisdiction over that claim under the Class Action Fairness Act, 28 USC § 1332(d) ("CAFA"). This is a putative state law class action whereby: (i) the proposed Rule 23 class consists of over 100 members; (ii) at least some of the members of the proposed class have different citizenship from Defendant; and (iii) the claims of the Rule 23 class exceeds $5,000,000.00 in the aggregate.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because a substantial part of the acts or omissions giving rise to these Plaintiff's claims occurred within Greenville County and because this Court has personal jurisdiction over one or more corporate Defendants.

SUMMARY OF CLAIMS

15. Plaintiff brings this action as a collective action to recover unpaid wages, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 *et seq.* ("FLSA").

16. In particular, Plaintiff brings this suit on behalf of the following similarly situated persons:

> All current and former employees who have worked for the Defendant in the capacity of a Phlebotomist within the statutory period covered by this Complaint, and who elect to opt-in to this action pursuant to FLSA, 29 U.S.C. § 216(b) ("Collective Class").

17. In addition, Plaintiff also brings this action as a state class action to recover unpaid wages pursuant to the PWA and various other state wage payment acts.

18. Defendant has willfully committed widespread violations of the FLSA, the PWA, and various other state wage payment acts by engaging in a pattern, practice, and policy of failing to pay employees minimum wage and overtime wages and making deductions from their employees' wages that violate state and federal law.

19. In addition to the Collective Class, Plaintiff brings this suit on behalf of a class of similarly situated persons composed of:

> All current and former Phlebotomists who have worked for Defendant and who received deductions from their wages for mileage reimbursements during the statutory period covered by this Complaint and whereby said deduction was a violation of the wage payment act laws of the states in which the employees lived to include but not limited to South Carolina, Florida, Ohio, Maryland, Michigan, Kentucky, Indiana, Illinois, Missouri, and North Carolina ("Wage Payment Class").

20. Plaintiff alleges on behalf of the Collective Class and Wage Payment Class that Defendant violated Federal and various state laws by, *inter alia*:

(i) Failing to pay at least minimum wage for all hours worked;

(ii) Failing to pay all overtime wages for all hours worked in excess of forty (40) hours in a workweek; and

(iii) improperly denying to pay all wages that have become due and owed.

21. Members of the Collective Class and Wage Payment Class are so numerous that joinder of all members individually, in one action or otherwise, is impractical. Upon information and belief, the size of the Collective Class and Wage Payment Class are over 100 individuals. Although the precise number of such employees is currently unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendant.

FACTUAL ALLEGATIONS

22. Plaintiff Gretchen Smith was hired by Defendant as a Mobile Phlebotomist on December 22, 2014 and was assigned duties within the company's Greenville A district of Greenville County, South Carolina.

23. Plaintiff's primary duties of employment included traveling to Defendant's client base of approximately fifteen (15) skilled nursing and assisted living facilities within the Greenville's A district to obtain blood samples from mostly Geriatric patients. Plaintiff would then transport these specimens to a courier who would transport the specimens to Defendant's lab for analysis or transport these specimens to the lab herself.

24. Plaintiff worked for Defendant completing the aforementioned duties as a phlebotomist from December 22, 2014 up until her termination on May 3, 2016.

25. A typical day for Plaintiff would begin on or before 4:00 a.m. when Plaintiff would arrive at her first nursing home. After obtaining the designated blood samples at this location, Plaintiff would then travel to three more nursing homes to obtain samples.

26. After retrieving and properly labeling the samples from the four homes, Plaintiff would travel to give her samples to Defendant's courier at a location near Interstate 85 in Greenville County so that the samples could be transported to the lab in neighboring Spartanburg County. Plaintiff was required to meet Defendant's courier no later than 8:15 a.m.

27. The aforementioned practice of retrieving and labeling samples from the four nursing homes and drop off to the courier was referred to by Defendant as a "Morning Run."

28. In addition to Plaintiff's Morning Runs, Defendant would on most days also schedule Plaintiff for on-call duties referred to by Defendant as a "Stat."

29. Plaintiff would either be scheduled for an "A.M. Stat" or "P.M. Stat." The A.M. Stat would run between 7:00 a.m. until 2:45 p.m. thereby lasting 7 hours and 45 minutes. The P.M. Stat would run between 2:45 p.m. until 10:45 p.m. thereby lasting 8 hours.

30. From Monday through Friday Plaintiff would complete her morning runs and stat duties as assigned. Typically, Plaintiff would also be assigned either a Morning Run or Stat on every other Saturday or Sunday during a two-week pay period. Below is a sample of the amount of hours Plaintiff worked during the workweek of Monday, November 30, 2015 through Friday, December 4, 2015:

Monday 11/30	Tuesday 12/1	Wednesday 12/2	Thursday 12/3	Friday 12/4
Morning Runs 3:30 a.m. – 7:50 a.m.	Moring Runs 4:15 a.m. – 7:25 a.m.	Morning Runs 4:00 a.m. – 7:10 a.m.	Morning Runs 3:45 a.m. – 7:45 a.m.	Morning Runs 4:30 a.m. – 8:15 a.m.
A.M. Stat 7:00 a.m. – 2:45 p.m. plus final specimen drop off at 3:30 p.m.	A.M. Stat 7:00 a.m. – 2:45 p.m. plus final specimen drop at 4:00 p.m.	A.M. Stat 7:00 a.m. – 2:45 p.m.	A.M. Stat 7:00 a.m. – 2:45 p.m. plus final specimen drop at 4:00 p.m.	No Stat
12 hours	11.75 hours	10.75 hours	12.25 hours	3.75 hours

(See Exhibit B – Time Log for this Week).

Total Hours Worked For Above Workweek = 50.5 hours

31. As displayed by the above chart and aforementioned allegations, Plaintiff's first principal activity of her employment was when she arrived at the first nursing home on her morning run in that such was an integral and indispensable part of employment and not simply preliminary to the work performed.

32. As displayed by the above chart and aforementioned allegations, Plaintiff's last principal activity of her employment was when she dropped off her last sample to the courier or

hospital in that such was an integral and indispensable part of employment and not simply postliminary to the work performed.

33. Since Plaintiff's first principal activity of her employment began when she arrived at her first nursing home and her last principal activity was when she dropped off her samples, all the hours during this time frame, including travel between locations, were hours worked pursuant to 29 C.F.R. § 735.28, *Travel that all in a day's work*, and therefore cannot be exempted from compensable time under the Portal-to-Portal Act of 1947, 29 U.S.C. 251 *et seq*.

34. The time spent by Plaintiff on-call, i.e., a Stat, were hours worked within the meaning of 29 C.F.R. § 785.17, *On-Call Time*, because of the high volume of stat calls, the urgency in which she had to report to her designated assignment, and her geographic limitations requiring her to remain in Defendant's Greenville A District, the eastern part of the County.

35. The urgency in which Plaintiff had to respond to the stat calls is documented in Defendant's Phlebotomy Manual which states that Defendant "requires that phlebotomists maintain functional cell phone service to respond to AHA's STAT call dispatches immediately, or with 15 minutes of the time that the AHA STAT dispatcher's call." (See Exhibit C – Excerpt from AHA's Phlebotomy Manual).

36. In addition to the on-call time being hours worked within the meaning of the FLSA, Plaintiff often worked beyond her scheduled A.M. Stat because Defendant would schedule her with stats at the end of her shift and she had to travel to drop off the last specimen.

37. Despite Plaintiff continuously working over her scheduled A.M. Stat (7:00 a.m. – 2:45 p.m.), she was not compensated at a rate of at least minimum wage ($7.25 per hour) for this time.

38. Defendant paid Plaintiff for the work she performed by a hybrid compensation model comprised of piece rates and flat rates. Plaintiff was paid a piece rate, usually between Fifteen Dollars ($15.00) and Thirty Dollars ($30.00), per nursing home she visited during her Morning Runs. For stat duties performed during the week (Monday – Friday), Plaintiff was paid a flat rate of Fifty Dollars ($50.00) for either an A.M. Stat or P.M. Stat plus an additional Ten Dollars ($10.00) per stat call after the first stat call.

39. Upon information and belief, Defendant has since changed their policy of paying the additional Ten Dollars ($10.00) per stat call after the first and now only pays the flat rate of Fifty Dollars ($50.00) for each stat shift. This change in policy renders an hourly wage of Six Dollars and Forty-Five Cents ($6.45) per A.M. Stat and Six Dollars and Six Cents ($6.06) per P.M Stat.

40. For work performed during the weekend, (Saturday – Sunday), Plaintiff was paid a flat rate of Seventy-Five Dollars ($75.00) for a Morning Run rather than her typical piece rate method but was paid her usual pay structure for stat duties. Plaintiff was typically scheduled to work every other weekend.

41. At the end of the two week pay period, Plaintiff would submit her recorded Morning Runs and Stats to Defendant for payment.

42. Defendant would further allocate Seventy-Five Percent (75%) of Plaintiff's wages to taxable direct wages and the remaining Twenty-Five Percent (25%) of Plaintiff's wages to nontaxed mileage reimbursement. (See Exhibit D – AHA's Mileage Agreement).

43. Allocating Twenty-Five Percent (25%) of Plaintiff's wages to "mileage" does not constitute a reasonably approximate expense of such; therefore, these monies should be added to Plaintiff's regular rate for the purposes of overtime compensation. 29 C.F.R. § 778.216.

44. At all relevant times, Plaintiff and the other members of the Collective Class have been similarly situated and have had substantially similar job requirements and job duties. Moreover, they have been subject to Defendant's common decisions, policies, practices, procedures and rules that willfully violate the FLSA.

45. At no time did Plaintiff or the Collective Class ever perform any executive, administrative, or professional duties that would weigh in favor of an exempt salaried employee.

46. Even if Defendant were to claim that Plaintiff or the Collective Class were exempt, Defendant failed to meet the salary test because Plaintiff and the Collective Class were not paid on a salary basis, and they were not paid at least $23,600 per year ($455 per week).

47. Further, the special overtime provisions available for hospital and residential care establishments under FLSA section 7(j) are inapplicable because the Plaintiff and the Collective Class were not employed by the facilities they serviced.

48. Nor could Plaintiff or the Collective Class be classified as independent contractors; and therefore, not subject to the FLSA's minimum wage and overtime requirements.

49. The Plaintiff and the Collective Class worked for Defendant on a full time and continuing basis and did not sell or advertise their services to the general public or work as contractors for anyone other than the above-named Defendant.

50. Plaintiff and Collective Class had no control over the manner and method by which they were paid.

51. Defendant retained the right to discharge Plaintiff and Collective Class without cause.

52. Plaintiff and Collective Class had no opportunity for profit and no risk of loss.

53. Plaintiff and Collective Class are clearly not exempt from the FLSA's minimum wage and overtime requirements.

54. Defendant's actions were not in good faith or based upon a reasonable belief that they were not violating applicable laws.

55. Aside from failing to pay Plaintiff minimum wage and overtime wages pursuant to the FLSA, Defendant also failed to pay her all the piece rate wages she incurred.

56. Upon hiring, Plaintiff and Defendant had a clear and mutual understanding that she would be paid on a piece rate basis for each skilled nursing unit or assisted living unit she completed.

57. The piece rate amounts were given to Plaintiff on a document entitled "CLIENT LIST" which provides the name, account number, and district of all of Defendant's clients and the amount of each piece rate that Plaintiff was to charge for her services at the particular facility.

58. One retirement home that Plaintiff serviced, Rolling Green Village, housed four different facilities: two facilities were skilled nursing facilities and two facilities were assisted living facilities. These different facilities and associated piece rate were noted to Plaintiff on the client list document.

59. Plaintiff was to receive Ten Dollars ($10.00) per skilled nursing unit and Ten Dollars ($10.00) per assisted living unit at Rolling Green Village.

60. Despite Plaintiff servicing all four units at Rolling Green Village, she was only paid her piece rate for the skilled nursing facilities and not the assisted living facilities.

61. In April of 2016, the month preceding Plaintiff's termination, Plaintiff applied for leave under the Family Medical Leave Act of 1993 ("FMLA") for a scheduled surgery on May 31, 2016.

62. On April 8, 2016, Plaintiff contacted Defendant's office in Spartanburg, South Carolina for the necessary leave request form to take time off work for her surgery. Defendant's employees at this location promised to fax this form to Plaintiff but never did. Plaintiff made at least four phone calls to this location inquiring about the leave requests form but was ultimately unsuccessful in acquiring such form.

63. On April 12, 2016, Plaintiff contacted her immediate supervisor via text message to acquire a leave request form. Plaintiff's supervisor promised to send her the leave request form later that evening but also failed at doing so.

64. After Plaintiff was unsuccessful in acquiring such forms from the office employees at the Spartanburg, South Carolina location and her immediate supervisor, she contacted Defendant's home office in Davie, Florida to acquire such form.

65. After receiving the leave request form from the home office employee, Plaintiff asked her supervisor via text where to send the completed documents. The supervisor indicated that all leave requests must be approved by her and she also mentioned that such leave may be covered by FMLA but that she would follow up with Defendant's Human Resource Department on this topic.

66. Plaintiff filled out the leave request form on April 14, 2016 indicating that she would be "out for surgery" and a need for "FMLA" leave. Plaintiff also indicated on this document that she placed it in her supervisor's mail receptacle. (See Exhibit E – Leave Request Form).

67. On April 16, 2016, Plaintiff sent her supervisor a text message to make sure her supervisor received the leave request form. Plaintiff's supervisor responded the next day and indicated that she received Plaintiff's mileage sheets but did not have the leave request form and told Plaintiff to refax the leave request form to her. (See Exhibit F – Text Messages between Plaintiff and Supervisor discussing Plaintiff's leave).

68. On April 19, 2016, Plaintiff received her FMLA certification form, OMB control number 1235-0003, from Defendant's H.R. Manager at Defendant's headquarters in Davie, Florida and was instructed to have her supervisor sign said form. On this same day, Plaintiff contacted her supervisor via text message to alert her that she needed to sign the FMLA certification form.

69. On April 25, 2016, Plaintiff asked again via text message about the FMLA paper work and what was needed for approval of such. Plaintiff's supervisor responded that she would let Plaintiff know.

70. On April 27, 2016, Plaintiff's supervisor asked, via text message, to meet with Plaintiff at the lab with the lab manager the following day. Plaintiff informed her supervisor that she could not meet the following day because she was working and had a doctor's appointment. To accommodate everyone's schedules, a meeting was set for Plaintiff, her supervisor, and lab manager on Tuesday, May 3, 2016.

71. During the April 27, 2016 text message exchange, Plaintiff asked again about the FMLA paperwork and received no reply. Plaintiff attempted to call her supervisor three times to inquire about the meeting and the FMLA paperwork but her supervisor ignored her calls.

72. On April 28, 2016, when it became clear to Plaintiff that her supervisor was ignoring her and was not going to respond to her inquiries about her FMLA leave, Plaintiff

pointedly asked her supervisor via text message; "Are you trying to fire me before my leave?" Plaintiff's supervisor never responded.

73. On April 29, 2016, since a new month was approaching, Plaintiff asked her supervisor for the May calendar so she would be aware when she was on Stat duty. Plaintiff's supervisor told Plaintiff that she was not finished making the May calendar. From April 29, 2016 to May 2, 2016 Plaintiff asked her supervisor via text message for the May calendar eight times. During this time Plaintiff had to be verbally told when she was working Stat duty.

74. On May 2, 2016, Plaintiff's was working an A.M. Stat (7:00 a.m. – 2:45 p.m.) and was contacted by her supervisor via telephone at approximately 2:43 p.m. and was told to make a stat call. At the time she received the phone call, Plaintiff was on Pelham Road, the eastside of town, and was on her way to drop off a time sensitive sample to St. Francis Hospital in downtown Greenville.

75. Since the sample was time sensitive, i.e., had to be tested within thirty (30) minutes, Plaintiff could not divert from her destination and make the stat call. Plaintiff informed her supervisor of such and to contact the individual on P.M. Stat (2:45 p.m. – 10:45 p.m.).

76. The following day, May 3, 2016, Plaintiff had her meeting with her supervisor and the lab manager and was informed that she was being terminated for her actions the previous day when she failed to respond to the Stat call she received just prior to her shift ending.

77. Prior to her termination, Plaintiff's last write-up for deficient performance was on December 29, 2015 for having a late turnaround time on her stats and for "Phlebotomy Error Recollects" whereby Plaintiff was accused of holding on to specimens too long before dropping them off at the hospital for testing.

78. Had Plaintiff diverted from dropping off the specimen at the hospital on May 2, 2016, she would have violated either of the items she was written up for on December 29, 2015.

79. The decision to terminate Plaintiff was clearly made prior to the May 2, 2016 incident for several reasons; First, the May 3, 2016 termination meeting was set the previous week and prior to the May 2, 2016 incident; Second, Plaintiff's supervisor avoided and ignored all calls and inquiries about the impending meeting; Third, Plaintiff's supervisor refused to give Plaintiff the May Stat calendar knowing that she would not need such because of her impending termination on May 3, 2016.

80. The decision to terminate Plaintiff was made around the middle part of April 2016, proximate to her request and exercise of her FMLA rights which was the reason she was terminated and any allegation of deficient work performance was merely a pretext to such cause.

81. In fact, Plaintiff's FMLA leave was approved by her doctor on May 4, 2016, the day after she was terminated. (See Exhibit G – FMLA approval).

FIRST CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT MINIMUM WAGE VIOLATIONS
(29 U.S.C. § 206 et al)
Collective Class

82. Plaintiff, on behalf of herself and the Collective Class, re-alleges and incorporates by reference the paragraphs above as if they were set forth herein.

83. At all relevant times, Defendant has had gross revenues in excess of $500,000.00.

84. At all relevant times, Defendant has been, and continues to be, an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

85. At all relevant times, Defendant has employed, and/or continues to employ, each of the Collective Class members within the meaning of FLSA.

86. By maintaining a policy that Plaintiff and the Collective Class must work beyond the scheduled A.M. Stat (7:00 a.m. – 2:45 p.m.) and paying a flat rate plus piece rate for this specific time but no wages for task attendant to the on call rotation stat, e.g., the last on call rotation stat and travel time to drop off last specimen, Defendant violated the FLSA, 29 U.S.C. §§ 201 *et seq*.

87. The time spent on the last stat on call rotation and travel to the specimen drop off was compensable time pursuant to 29 C.F.R. § 735.28, *Travel that all in a day's work*, and 29 C.F.R. § 785.17, *On-Call Time*. Despite such, Plaintiff was not compensated at a rate equal to $7.25 per hour for this time.

88. Defendant violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq*. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

89. Due to Defendant's FLSA violations, Plaintiff, on behalf of herself and the members of the Collective Class, are entitled to recover from the Defendant compensation for unpaid wages, an additional equal amount as liquidated damages, and reasonable attorneys' fees and costs of this action pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT OVERTIME WAGE VIOLATIONS
(29 U.S.C. § 207 et al)
Collective Class

90. Plaintiff, on behalf of herself and the Collective Class, re-alleges and incorporates by reference the paragraphs above as if they were set forth herein.

91. At all relevant times, Defendant has had gross revenues in excess of $500,000.00.

92. At all relevant times, Defendant has been, and continues to be, an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

93. At all relevant times, Defendant has employed, and/or continues to employ each of the Collective Class members within the meaning of FLSA.

94. At all relevant times in the period encompassed by this Complaint, Defendant has and maintains a willful policy and practice of refusing to pay the proper overtime compensation for all hours worked in excess of forty (40) hours per workweek.

95. Further, Plaintiff was not provided any bona fide meal breaks of thirty (30) minutes or longer during her employment; therefore, no time for such breaks could be excluded from Plaintiff's working hours under 29 C.F.R. §785.19, *Bona fide meal periods*.

96. Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.* The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

97. Due to Defendant's FLSA violations, Plaintiff, on behalf of herself and the members of the Collective Class, are entitled to recover from the Defendant compensation for unpaid wages, an additional equal amount as liquidated damages, and reasonable attorneys' fees and costs of this action pursuant to 29 U.S.C. § 216(b).

THIRD CLAIM FOR RELIEF
VIOLATIONS OF MULTI-STATE WAGE PAYMENT LAWS
Wage Payment Class

98. Plaintiff, on behalf of herself and the members of the Wage Payment Class, re-alleges and incorporates by reference the paragraphs above as if they were set forth again herein.

99. During the time period relevant to this complaint, Defendant employed mobile phlebotomists in the United States including, but not limited to employees in the states; South Carolina, Florida, Ohio, Maryland, Michigan, Kentucky, Indiana, Illinois, Missouri, and North Carolina

100. At all relevant times, Defendant has employed, and/or continue to employ, Plaintiff and each of the Wage Payment Class members within the meaning of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 ("PWA") and various other wage payment acts. Plaintiff and the Wage Payment Class members are "employees" and are not free from the control and direction of Defendant.

101. Plaintiff and the Wage Payment Class worked for Defendant with the clear understanding and agreement by Defendant that their compensation would be consistent with all applicable laws, including federal and state wage and hour laws.

102. Pursuant to the PWA, "[a]n employer shall not withhold or divert any portion of the employee's wages unless the employer is required or permitted to do so by state or federal law. . . ." S.C. Code Ann. § 41-10-40(C).

103. In addition to the PWA forbidding employers from diverting wages unless permissible under state and federal law, other states wage payments acts forbid this practice as well. These states include but are not limited to, the following: Ohio (Ohio Rev. Code Ann. § 4113.15 *et seq.*), Maryland (Md. Lab. & Emp. Code Ann. § 3-505 *et seq.*), Michigan (Mich. Comp. Laws §§ 408.474, 408.475 *et seq.*), Kentucky (Ky. Rev. Stat. Ann. § 337.055 *et seq.*), Indiana (Ind. Code § 22-2-9-1 *et seq.*), Illinois (820 Ill. Comp. Stat. 115/2 *et seq.*), Missouri (Mo. Ann. Stat. § 290.110 *et seq.*), and North Carolina (N.C. Gen. Stat. § 95.25.7 *et seq.*).

104. By way of diverting approximately twenty-five (25%) of the Plaintiff's and the Wage Payment Class' wages to mileage, Defendant clearly violated the FLSA's 29 C.F.R. § 778.216 concerning reasonable travel expenses.

105. The practice of unlawfully diverting and depressing the Plaintiff's and the Wage Payment Class's wages in violation of federal law also constitutes a violation the PWA and the wage payment acts mentioned above.

106. As a result of Defendant's unlawful policies and practices as set forth above Plaintiff and the members of the Wage Payment Class have been deprived of "wages" due and owing which Defendant promised to pay in its commitment to abide by applicable wage and hour laws and in violation of the PWA and various other wage payment act's mandate that no wages be withheld or diverted unless required or permitted under applicable law.

107. As a direct and proximate result of Defendant's conduct, Plaintiff and the Wage Payment Class have suffered substantial losses and have been deprived of compensation to which they are entitled, including monetary damages in the amount of three (3) times the unpaid wages as well as costs and reasonable attorneys' fees.

FOURTH CLAIM FOR RELIEF
PLAINTIFF SMITH'S INDIVIDUAL CLAIM FOR FMLA INTERFERENCE
(29 U.S.C. § 2615(a)(1) et al)

108. Plaintiff re-alleges and incorporates by reference all prior paragraphs in this Complaint as though repeated herein.

109. Defendant is a covered "employer" under the FMLA because it engages in commerce, or in an industry affecting commerce, who employs fifty (50) or more employees for each working day during each of twenty (20) or more twelve (12) calendar work weeks in the current or preceding calendar year. 29 U.S.C. § 2611(4)(A); 29 C.F.R. 13 § 825.104(d).

110. The Plaintiff is an "employee" for the purposes of FMLA because she was employed by the Defendant for at least twelve (12) months. 29 U.S.C. § 2611(2)(A).

111. "It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under [FMLA]." 29 U.S.C. § 2615(a)(1).

112. Interference includes "not only refusing to authorize FMLA leave, but discouraging an employee from using such leave." 29 C.F.R. § 825.220(b)

113. The Plaintiff asserts Defendant unlawfully interfered with her FMLA leave by failing to give her the proper leave request form and FMLA paperwork despite repeated attempts and by further ignoring her repeated inquiries about the FMLA paperwork.

114. The Plaintiff, therefore, is informed and believes she is entitled to judgment against the Defendant for full costs which would have otherwise been reimbursed by Defendant for employment, to include wages and employee benefits, together with Plaintiff's costs and attorneys' fees necessary in the bringing of this action and for such other liquidated or equitable damages as may be allowed by the statute.

FIFTH CLAIM FOR RELIEF
PLAINTIFF SMITH'S INDIVIDUAL CLAIM FOR FMLA RETALIATION/DISCRIMINATION
(29 U.S.C. § 2615(a)(2) et al)

115. Plaintiff re-alleges and incorporates by reference all prior paragraphs in this Complaint as though repeated herein.

116. The FMLA's prohibition against "discrimination" prohibits employers from "using or taking FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions." 29 U.S.C. § 2615(a)(1); 29 C.F.R. § 825.220(c).

117. As mentioned above, Plaintiff was lawfully entitled to exercise her rights under FMLA, and Plaintiff chose to take FMLA leave.

118. Additionally, Plaintiff was terminated from her employment the day before her FMLA leave was approved.

119. Based upon Plaintiff's repeated attempts to acquire the leave request form and FMLA paperwork and the proximity of the termination to her purported leave proves there is causal connection between the invocation of the rights under FMLA and her termination.

120. The Plaintiff, therefore, is informed and believes she is entitled to judgment against the Defendant for full costs which would have otherwise been reimbursed by Defendant for employment, to include wages and employee benefits, together with Plaintiff's costs and attorneys' fees necessary in the bringing of this action and for such other liquidated or equitable damages as may be allowed by the statute.

SIXTH CLAIM FOR RELIEF
PLAINTIFF SMITH'S INDIVIDUAL CLAIM FOR SOUTH CAROLINA PAYMENT OF WAGES ACT
(S.C. Code Ann. §§ 41-10-10 to 110.)

121. Plaintiff re-alleges and incorporates by reference all prior paragraphs in this Complaint as though repeated herein.

122. At all relevant times, Defendant employed Plaintiff within the meaning of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 ("PWA").

123. Plaintiff worked for Defendant with the clear understanding and agreement by Defendant that her compensation would be consistent with all applicable laws, including federal and state wage and hour laws.

124. The South Carolina Payment of Wages Act defines "wages" to mean "all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time,

task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract." S.C. Code Ann. § 41-10-40(2).

125. As alleged above, Plaintiff was paid certain piece rate amounts per the facility she serviced while on her Morning Runs.

126. One particular facility on her Morning Runs was Rolling Green Village which housed two skilled nursing facilities and two assisted living facilities. Per her agreement with Defendant, Plaintiff was to receive Ten Dollars ($10.00) per skilled nursing facility and Ten Dollars ($10.00) per assisted living facility at Rolling Green Village.

127. Since February of 2015, Plaintiff serviced all four facilities at Rolling Green Village. Despite servicing all four facilities, Plaintiff was only paid for the two skilled nursing units and not the two assisted living units. As a result, Plaintiff was only paid Twenty Dollars ($20.00) total when she should have been paid Forty Dollars ($40.00).

128. Pursuant to the PWA, "[a]n employer shall not withhold or divert any portion of the employee's wages unless the employer is required or permitted to do so by state or federal law. . . ." S.C. Code Ann. § 41-10-40(C).

129. Further, "any changes [to] the terms [of wages] must be made in writing at least seven calendar days before they become effective." S.C. Code Ann. § 41-10-30(A).

130. Accordingly, Plaintiff is entitled to receive all compensation due and owing to her.

131. Plaintiff has made a formal demand for these monies and has filed a complaint with the South Carolina Department of Labor, Licensing, and Regulation who investigated her

claim found that Defendant had violated S.C. Code Ann. § 41-10-40(C) for failing to pay all wages due and owed. (See Exhibit H – Letter from SCLLR).

132. Further, since Plaintiff's termination, Defendant failed to pay Plaintiff all of her accrued vacation and sick leave which are a form of "wages" as discussed above.

133. Section 405 of Defendant's handbook entitled "Termination of Employment" explicitly states that "Accrued vacation is paid except if you are terminated for cause."

134. Plaintiff has alleged that she was terminated in violation of federal law, i.e., the FMLA; therefore, the "for cause" limitation does not limit Defendant's contractual obligation to pay Plaintiff her accrued vacation time.

135. As a result of Defendant's unlawful policies and practices as set forth above Plaintiff has been deprived of compensation due and owing which Defendant promised to pay in its commitment to abide by applicable wage laws and in violation of the PWA's mandate that no wages be withheld or diverted unless required or permitted under applicable law.

136. Defendant has withheld wages of the Plaintiff without providing advance notice of such amounts and absent any lawfully sufficient reason for such conduct.

137. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered substantial losses and has been deprived of compensation to which she is entitled, including monetary damages in the amount of three (3) times the unpaid wages as well as costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays judgment against the Defendant herein for relief specified above in this complaint together with:

a. Designation of this action as a collective action on behalf of the Collective Class, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b), apprising class members of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b);

b. Designation of the action as a class action under Fed. R. Civ. P. 23 on behalf of the Wage Payment Class;

c. Appointment of the undersigned as Class Counsel;

d. Find that Defendant's FLSA violations were willful;

e. An injunction against Defendant and its officers, agents, successors, employees, representative and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein in the future;

f. For *disgorgement* of revenues, profits and money unjustly earned from the unlawful practices;

g. An award of unpaid minimum wages to Plaintiff and the members of the Classes;

h. An award of unpaid overtime wages to Plaintiff and the members of the Classes;

i. Restitution of wages improperly retained by Defendant;

j. An award of liquidated damages to Plaintiff and members of the Classes;

k. An award of treble damages to Plaintiff and members of the Classes to the extent permitted by S.C. Code Ann. § 41-10-80(C) and various other state wage payment acts;

l. For all damages and equitable relief allowed to Plaintiff in her individual FMLA and SC PWA claims as the Court may deem just and proper to include back pay, compensatory damages, liquidated damages, and prejudgment interest;

m. For reasonable attorneys' fees and costs under federal and/or state law; and

n. For further relief as this Court may deem just and proper to include any sanctions or equitable relief within the discretion of the Court.

Respectfully Submitted,

S/John G. Reckenbeil
John G. Reckenbeil, Fed ID No. 7671
Lawrence E. McNair, III, Fed ID No. 11723
LAW OFFICE OF JOHN G. RECKENBEIL, LLC
215 Magnolia Street (29306)
P.O. Box 1633
Spartanburg, SC 29304
Telephone: (864) 582-5472
Fax: (864) 582-7280
Email: john@johnreckenbeillaw.com

Dated: October 25, 2016
Spartanburg, South Carolina