

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

Linda Manigault, On Behalf of Herself and
Others Similarly Situated,

Plaintiffs,

v.

Utopia Home Care, Inc., and Susan Lutes,
individually,

Defendants.

CIVIL ACTION NO.: 2:16-cv-1036-RMG

COLLECTIVE ACTION COMPLAINT
(Jury Trial Requested)

Plaintiff Linda Manigault, individually and on behalf of all others similarly situated, by way of his Complaint in the above-captioned matter, alleges and shows unto this Honorable Court the following:

NATURE OF CLAIM

1. Plaintiff bring this lawsuit seeking recovery against Defendants for Defendants' violation of the Fair Labor Standards Act, as amended (the "FLSA" or the "Act"), 29 U.S.C. §201 et. seq.

2. The Plaintiff bring this action as a collective action pursuant to 29 U.S.C. §216(b) on behalf of herself other similarly situated employees of the Defendants who worked as certified nursing assistants who suffered damages as a result of Defendants' violations of the FLSA.

3. Plaintiffs also bring individual claims for unpaid wages under the South Carolina Payment of Wages Act, S.C. Code Ann § 41-10-10, *et seq.* (SCPWA).

4. Plaintiff also brings this action for unlawful retaliation pursuant to Fair Labor Standards Act, 29 U.S.C. § 215(a)(3) *et seq.*

PARTIES, JURISDICTION AND VENUE

5. Plaintiff Manigault is a citizen and a resident of Charleston County, South Carolina.

6. Defendant, Utopia Home Care, Inc, is a for-profit corporation, registered with the South Carolina Secretary of State.

7. Defendant, Susan Lutes, owns and/or operates Utopia Home Care, Inc. for profit and employs persons such as Plaintiff and other similarly situated employees to work on her behalf in providing labor for her practice. Defendant is within the personal jurisdiction and venue of this Court.

8. Venue is proper in this District because the Defendants have conducted substantial, continuous and systematic commercial activities in South Carolina. Additionally, the unlawful labor practices and policies giving rise to Plaintiff's claims were committed in the Charleston Division of this Court.

9. Plaintiff brings this action, individually and as an opt-in collective action pursuant to 29 U.S.C. § 216(b), on behalf of a class of all similarly situated employees who worked in excess of forty (40) hours during certain workweeks without receiving overtime compensation during the last three years.

10. This Court has jurisdiction of the Plaintiff's claims brought under the FLSA pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216 (b).

FACTS

11. Defendant, Utopia Home Care Inc., is a full service home care agency servicing the Charleston and Tri-County area with Home Health Aides (HHA), Certified Nursing Assistants (CNA), Licensed Practical Nurses (LPN) and Registered Nurses (RN).

12. Utopia Home Care Inc. regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees, and control the finances and operations of such business. By virtue of such control and authority Utopia Home Care Inc was an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 et seq.

13. At all times material hereto, Defendant Susan Lutes, managed, owned and/or operated Utopia Home Care Inc, and regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees, and control the finances and operations of such business. By virtue of such control and authority Susan Lutes was an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 et seq.

14. The Defendants employed Plaintiff from approximately July 2012 until approximately July 9, 2015.

15. Plaintiff was a certified nursing assistant whose primary duties consisted of assisting clients and/or their family's with housekeeping and laundry services, meal preparation, personal hygiene, such as toileting, bathing, dressing, and feeding as well as assistance with walking, standing, and sitting.

16. Plaintiff was paid an hourly rate. Plaintiff and other similarly situated employees had an employment agreement with the Defendants, whereby the Defendants agreed to pay her an hourly rate for all hours worked.

17. Defendants misclassified Plaintiff and those similarly situated to them as exempt pursuant to 29 U.S.C § 213 (a) (15).

18. An employee who performs companionship services in or about the private home is exempt from the FLSA's minimum wage and overtime requirements if all criteria of the exemption are met. General household work is also included, as long as it does not exceed 20 percent of the total weekly hours worked by the companion. Where this 20 percent limitation is exceeded, the employee must be paid for all hours in compliance with the minimum wage and overtime requirements of the FLSA.

19. Plaintiff spent significantly more than 20% of her time performing general housework and other work unrelated to patient treatment, therefore she fell outside the exemption 29 U.S.C § 213 (a) (15) and should have been paid be time and half of her hourly rate for all hours over forty (40) in a workweek.

20. Plaintiff and similarity situated employees were responsible for many household tasks including but not limited to the following: making and changing the beds, cleaning the bedrooms, cleaning the bathrooms, cleaning the kitchen, vacuuming, sweeping, mopping, washing dishes, emptying the trash, emptying ash trays, dusting weekly, laundry for the household; daily cooking for the household; as well as grocery shopping for the household and caring for household pets.

21. When the Plaintiff was assigned to provide services in private homes, she regularly provided work for the benefit of the entire household rather than for the sole care of the patient.

22. Additionally, for the companionship services exception to apply, the services rendered must be performed in a “private home,” however Plaintiff was regularly assigned to assist patients in senior living facilities, assisted living, and nursing homes.

23. At all times relevant to this Complaint, Plaintiff and similarly situated employees regularly worked in excess of forty (40) hours per week, and Defendants failed to compensate them at a rate of one and one-half times their regular hourly wage.

24. Plaintiff regularly worked between fifty (50) and sixty (60) hours a week and did not receive overtime compensation at time and half of her regular rate of pay.

25. In October of 2013 the United States Department of Labor (DOL) issued rule requiring third-party employers such as Defendant to pay minimum wage and overtime to all care workers who provide home care services, such as certified nursing assistants, home health aides, personal care aides, caregivers, and companions regardless of whether they spend less than 20% of their time performing general household work.

26. The DOL required that effective January 1, 2015 all third-party employers such as Defendant are required to pay at least the federal minimum wage and overtime pay to any direct care worker they jointly or solely employ, regardless of the worker’s duties.

27. In approximately February of 2015, Plaintiff as well as other similarly situated employees received letters from Defendants promising to pay them back wages for the overtime hours that they worked and were not properly compensated for.

28. Defendants did not pay Plaintiff or the others any back pay that they agreed to pay in the letter.

29. The Defendants engaged in the practice of “time shaving” whereby they reduced their labor costs by deleting some of the time Plaintiff worked in violation of the FLSA and SCWPA. These reductions resulted in Plaintiff being shorted on straight time pay and overtime pay.

30. During some workweeks Plaintiff’s time was shaved by as much as eight (8) hours.

31. Plaintiff was regularly scheduled to assist between two to four patients during the work day. This required her to spend a significant amount of time traveling from one patient’s location to another patient’s location. Plaintiff and similarly situated employees were not compensated for the time they spent traveling to care for patients during the work day.

32. Traveling from one patient assignment to another patient assignment was integral and indispensable to Plaintiff’s principle job activities.

33. Plaintiff travel between one (1) to three (3) hours a day, depending upon her patient assignments and was not compensated for this time.

34. Plaintiff complained to her supervisors on several occasions about not being compensated for overtime hours worked, travel time and the time shaving that was occurring.

35. On or about June 29, 2014 Plaintiff complained to her supervisor Stacey Sykes about not being paid overtime compensation and about the time shaving that occurred in her last pay check.

36. Shortly after complaining about wage theft, Plaintiff began to receive written warnings. Prior to making these complaints Plaintiff had not received any written warnings.

37. On July 3, 2016 Plaintiff received her First Written Warning for “tardiness”; however, Plaintiff had previously notified as per their policies and procedures Defendant’s that she would be late to work because she had an important doctor’s appointment.

38. On July 6, 2015 Plaintiff received her Second Written Warning for insubordination regarding her June 29th complaints to supervisor Stacey Sykes.

39. On July 9, 2015 Plaintiff was terminated for insubordination.

40. Plaintiff’s complaint to the Defendants was sufficiently clear and detailed for the Defendants to understand the nature of the complaint and that it constituted protected activity under the FLSA’s anti-retaliation provision.

41. The Defendants had fair notice that Plaintiff’s complaint were protected activity.

42. Plaintiff was discriminated against and discharged because she complained to the Defendants about the wage theft that they were engaging in against her and other similarly situated employees.

43. Plaintiff is entitled to lost wages and an additional equal amount as liquidated damages. The Plaintiffs is also entitled to recover her reasonable attorney's fees and costs of this action.

FOR A FIRST CAUSE OF ACTION

(Fair Labor Standards Act–Failure to Pay Overtime Wages)
(Individual and Collective Action)

44. Plaintiff, on behalf of herself and all similarly situated employees, realleges and incorporates by reference all preceding paragraphs as if they were set forth herein verbatim.

45. At all times pertinent to this Complaint, each of the Defendants was an “enterprise engaged in commerce or in the production of goods for commerce” as that term is defined by 29 U.S.C. § 203(s).

46. At all times pertinent to this Complaint, Plaintiff and similarly situated laborers were “engaged in commerce or in the production of goods for commerce” as that term is defined within 29 U.S.C. §207.

47. At all times relevant herein, each Defendants was an “employer” of Plaintiff and similarly situated employees as that term is defined by 29 U.S.C. § 203(d) of the Fair Labor Standards Act.

48. Defendants required Plaintiff and similarly situated employees to work “off the clock” by failing to compensate them for all hours during a workweek for which they were “employed” as that term is defined under 29 U.S.C. § 203(g) of the Fair Labor Standards Act.

49. Defendants employed Plaintiff and similarly situated employees for workweeks longer than forty (40) hours without compensating Plaintiff and similarly

situated employees at a rate of one and on-half times their regular rate of pay as required by 29 U.S.C. § 207(a).

50. Plaintiff and similarly situated employees are entitled to unpaid overtime compensation at the rate of one-and-a-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek, liquidated damages in an equal amount, and their reasonable attorneys' fees and costs incurred in bringing this action pursuant to 29 U.S.C. § 216(b).

FOR A THIRD CAUSE OF ACTION

(SCPWA)

(Individual and Class Action)

51. Plaintiff, on behalf of herself and all similarly situated employees, realleges and incorporate by reference all preceding paragraphs as if they were set forth herein verbatim.

52. Each Defendant is an "employer" as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1).

53. Defendants employed Plaintiff and the members of the Plaintiff's class within the State of South Carolina.

54. Defendants owe Plaintiff and the members of the Plaintiff's class "wages" as defined in Section 41-10-10(2) of the Act, to compensate them for labor rendered to Defendants, as promised to Plaintiffs and the members of the Plaintiffs' class and as required by law.

55. Defendants required Plaintiff and the members of the Plaintiff's class to work "off the clock," and did not pay them for all hours worked for the benefit of Defendants.

56. Defendants have failed to pay Plaintiff and the members of the Plaintiff's class all wages due, as required by Sections 41-10-40 and -50 of the Act.

57. Pursuant to S.C. Code § 41-10-80(C), Plaintiff and the members of the Plaintiff's class are entitled to recover in this action an amount equal to three times the full amount of their unpaid wages, or their wrongfully deducted wages, plus costs and reasonable attorney's fees.

FOR A FOURTH CAUSE OF ACTION

(FLSA-Retaliation)

(Individual Action)

58. Plaintiff re-allege and incorporate by reference all allegations in all preceding paragraphs.

59. Plaintiff complained about pay practices of Defendants that were unlawful under the FLSA.

60. Plaintiff engaged in "protected conduct" by complaining about the FLSA violations alleged herein and by attempting to secure documentary evidence of Defendants' illegal conduct.

61. Defendants initially responded by giving Plaintiff written warnings when she had not violated any employer policy or practice.

62. Defendants knew that Plaintiff was being retaliated against because she spoke up concerning wage hour violations.

63. Defendants did nothing to rectify the wage and hour violations that Plaintiff complained about.

64. In fact, a few weeks after making a complaint, Defendants wrongfully terminated Plaintiff in direct response to her complaints regarding their wage and hour violations.

65. Defendants willfully, intentionally, and unlawfully retaliated against Plaintiff based on her lawful complaints of wage-hour violations.

66. Defendants are liable for the acts of individual supervisors, managerial employees, and/or the acts of their agents.

67. Defendants are subject to individual liability pursuant to 29 U.S. C. §§203(e)(1) and 215(a)(3) for the retaliatory conduct.

68. Defendants terminated Plaintiff and otherwise discriminated against her as a result of her protected conduct.

69. Defendants have willfully violated the anti-retaliation provisions of the FLSA, which prohibit "any person" from "discharging or in any other manner discriminating against an employee because that employee has engaged in protected conduct." 29 U.S.C. § 215(a)(3).

70. As a result of Defendants' willful violations of the FLSA, Plaintiff is entitled to recover from Defendants for front-pay, back-pay, reasonable attorneys' fees and costs/disbursements of prosecuting this case, plus liquidated damages, and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all other similarly situated employees, seeks judgment against the Defendants as follows:

- a. Designation of this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216 (b);
- b. Judgment against Defendants for all overtime worked at one and one half times the regular rate of pay;
- c. Judgment against the Defendants for front-pay, back-pay, for Plaintiff;
- d. Judgment against Defendants that their violation of the FLSA and its implementing regulations were willful;
- e. Liquidated damages in an amount equivalent to the overtime damages, and unpaid minimum wages owed to Plaintiffs;
- f. Attorneys' fees and costs; and
- g. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff Manigault on her behalf and on behalf of all other similarly situated employees hereby demands a trial by jury.

Respectfully submitted,

s/ Marybeth Mullaney
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April 4, 2016
Mount Pleasant, South Carolina.