

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

JENNIFER SCHLAMP, on behalf of
herself and all others similarly situated,

Plaintiffs,

v.

AMERICAN HOME PATIENT, INC.;
LINCARE, INC.; and JOHN DOES 1-10,
individually,

Defendants.

C/A: _____

COMPLAINT

Plaintiff, Jennifer Schlamp (“Schlamp”), on behalf of herself and all others similarly situated, (all jointly “Plaintiffs”), complaining of the acts of Defendants American Home Patient, Inc. (“AHP”); Lincare, Inc. (“Lincare”); and John Does 1-10 (“Does”), individually (AHP, Lincare, and Does collectively “Defendants”) allege as follows:

NATURE OF CLAIM

1. This action is brought individually and as a collective action for actual damages, liquidated damages, attorneys’ fees and costs, and for other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. (“FLSA”). The collective action provisions under the FLSA, § 216(b), provide for opt-in class participation.

2. This action is also brought individually and as a class action for payment of wages and for other relief under the South Carolina Payment of Wages Act, South Carolina Code Ann. § 41-10-10, et. seq. (“SCPWA”). These claims are proposed as opt-out class claims under Rule 23 of the Federal Rules of Civil Procedure.

INTRODUCTION

3. Plaintiffs reallege each and every allegation contained in the above paragraphs as if repeated here verbatim.

4. Schlamp is a citizen and resident of the State of South Carolina, County of Greenville.

5. AHP is a foreign corporation maintaining offices and agents in, among others, the County of Greenville, State of South Carolina. AHP is an employer of individuals and operates as a home healthcare provider.

6. Lincare is a foreign corporation maintaining offices and agents in, among others, the County of Greenville, State of South Carolina. Lincare is an employer of individuals and operates as a home healthcare provider.

7. Upon information and belief, Does are citizens and residents of South Carolina, and owners and / or officers of AHP and / or Lincare, or otherwise individuals who had the authority and who exercised sufficient operational control of Plaintiffs' working conditions and compensation at AHP and / or Lincare.

8. Schlamp was employed by Defendants in the County of Greenville, State of South Carolina. A substantial part of the events giving rise to these claims occurred in Greenville County.

9. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331 based upon Plaintiffs' claims under the FLSA.

10. Plaintiff brings this action, as an opt-in Collective Action pursuant to 29 U.S.C. § 216(b), on behalf of a class of individuals who were employed by Defendants at any time within the three (3) years prior to joining this lawsuit, who were nonexempt employees and were not paid the proper amount for all hours worked over forty (40) hours in a workweek.

11. Plaintiff also brings this action as an opt-out class action under Rule 23 of the Federal

Rules of Civil Procedure, on behalf of a class of individuals, who were employed by Defendants, as outlined above, within the three (3) years prior to the filing of this lawsuit and were non-exempt employees who were not paid for all hours worked.

12. Upon information and belief, this action satisfies the requirements of Fed. R. Civ. P. 23(a), as alleged in the following particulars:

a. The proposed Plaintiff class is so numerous that joinder of all individual members in this action is impracticable;

b. There are questions of law and/or fact common to the members of the proposed Plaintiff class;

c. The claims of Plaintiff are typical of the claims of the proposed Plaintiff class; and

d. Plaintiff will fairly and adequately protect the interests of the class.

13. In addition, upon information and belief, this action satisfies one or more of the requirements of Fed. R. Civ. P. 23(b), because the questions of law and/or fact common to the members of the proposed Plaintiff class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

14. Venue in this District and in this Division is appropriate pursuant to 28 U.S.C. 1391(b)(2) and 1391(c), as a substantial part of the events giving rise to the claims herein occurred in this Division, the Defendants have extensive and deliberate contacts in this Division, and one of the individual Defendants is a resident of this Division.

15. Based upon the above, jurisdiction and venue are proper in this court and division.

16. The work and pay records of Schlamp and the members of the putative class are in the possession, custody, and/or control of Defendants, and Defendants are under a duty, pursuant to

section 11(c) of the FLSA, 29 U.S.C. § 211(c), and the regulations of the United States Department of Labor, to maintain and preserve such payroll and other employment records from which the amount of Defendants' liability can be ascertained.

FACTS

17. Plaintiffs reallege each and every allegation contained in the above paragraphs as if repeated here verbatim.

18. Does exercise operational control over AHP and or Lincare. On information and belief, Doe was involved in the decisions to set the wages and pay for Plaintiffs, or hired the individuals to whom this authority was delegated, therefore, Does are individually liable to Plaintiffs.

19. Schlamp was employed by Defendants as a certified respiratory therapist from October of 2014 through July of 2017.

20. Defendants agreed to pay Schlamp, and on information and belief all Plaintiffs, for all work performed. Schlamp, and on information and believe all Plaintiffs, accepted this agreement and did work for Defendants.

21. Schlamp, and on information and belief all Plaintiffs, regularly worked more than forty (40) hours a week but was not paid time and one-half her regular rate of pay for all hours worked in excess of forty (40) per work week during one or more work weeks.

22. Schlamp, and on information and belief all Plaintiffs, routinely had their timecards modified by her supervisor in order to deny her overtime compensation.

23. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession and custody of Defendants.

24. During the course of her employment, Lincare merged and/or acquired AHP, and

continued its management, personnel, business activities, timekeeping and pay practices, and physical location.

FOR A FIRST CAUSE OF ACTION
Violation of Fair Labor Standards Act
29 U.S.C. § 207
(Failure to Pay Proper Overtime Wage)

25. Plaintiffs reallege each and every allegation contained in the above paragraphs as if repeated here verbatim.

26. Pursuant to the terms of the FLSA, 29 U.S.C. § 207, an employer must pay a nonexempt employee time and a half for all hours worked over forty (40) hours in a workweek.

27. Plaintiffs routinely worked more than forty (40) hours per week.

28. Defendants failed to pay Plaintiffs the proper amount for all hours worked over forty (40) hours in a workweek or overtime hours worked.

29. Defendants have violated the FLSA, 29 U.S.C. § 207, in reckless disregard of the rights of Plaintiffs.

30. As such, Plaintiffs seeks to recover from Defendants the following damages:

- a. actual damages;
- b. liquidated damages of an equal amount; and
- c. reasonable attorneys' fees and the costs and disbursements of this action.

FOR A SECOND CAUSE OF ACTION
(South Carolina Payment of Wages Act)
(Individual and Class Action)

31. Plaintiffs reallege each and every allegation contained in the above paragraphs as if repeated here verbatim.

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

33. Defendants employed Plaintiffs.

34. Plaintiffs worked for Defendants with the clear understanding and agreement with Defendants that their compensation would be consistent with all applicable laws, including state wage laws.

35. Plaintiffs worked for Defendants with the clear understanding and agreement that they would be paid wages for all hours worked.

36. SCPWA § 41-10-10(2) defines wages as “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.”

37. Defendants required Plaintiffs and the members of the Plaintiffs’ class to work “off the clock” by not paying them for service rendered for the benefit of Defendants by adjusting their time cards.

38. Defendants have failed to pay Plaintiffs all wages due, which exceed the minimum wage and overtime wage required by the FLSA, as required by §§ 41-10-40 and -50 of the Act.

39. Defendants have no bona fide dispute of why they took this action.

40. Pursuant to S.C. Code § 41-10-80(C), Plaintiffs and the members of the Plaintiffs’ class are entitled to recover in this action an amount equal to three times the full amount of their deducted wages, as outlined above, plus costs and reasonable attorneys’ fees.

WHEREFORE, having fully set forth their allegations against Defendants, Plaintiffs respectfully request that the Court enter judgment for the following relief:

a. Injunctive relief ordering Defendants to amend their wage and hour policies to comply with applicable federal and state laws;

b. An order authorizing the sending of appropriate notice to current and former employees of Defendants who are putative members of the collective action, but have yet “opted-in,” under the FLSA;

c. An order prohibiting Defendants from violating the FLSA in the future;

d. For Plaintiffs, under the first and second causes of actions:

i. actual damages in an amount to be determined;

ii. liquidated damages of an equal amount;

e. An order certifying a class action under Rule 23 of the Federal Rules of Civil Procedure to remedy the class-wide violations of the South Carolina Payment of Wages Act;

f. Actual damages in the amount of wages due under SCPWA;

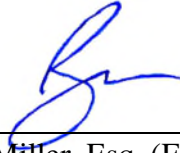
g. Treble damages pursuant to SCPWA;

h. Reasonable attorneys’ fees and costs; and

i. Such further relief as the Court deems just and proper.

Plaintiffs request a trial by jury.

[SIGNATURE PAGE TO FOLLOW]



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CHARLESTON, SC

July 11, 2018