

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DEC 07 2016

JAMES W. McCORMACK, CLERK
By: [Signature] DEP CLERK

**FELECIA KILPATRICK and
MARY EASON, Individually and
on behalf of All Others Similarly
Situating,**

Plaintiffs,

vs.

Civil Action No. 4:16-cv- 885-SWW

HOMEALITY, LLC,

Defendant.

This case assigned to District Judge Wright
and to Magistrate Judge Harris

**PLAINTIFFS' COLLECTIVE ACTION COMPLAINT
AND CLASS ACTION COMPLAINT**

COME NOW Plaintiffs Felecia Kilpatrick and Mary Eason, individually and on behalf of all other similarly situated current and former employees of Defendant Homeality, LLC, by and through their attorneys Steve Rauls and Josh Sanford, and they bring this putative collective action, and in support thereof they do hereby state and allege as follows:

I.

OVERVIEW

1. Plaintiffs bring claims under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* to recover unpaid overtime compensation under § 216(b) of the FLSA. They bring these claims as a collective action on behalf of themselves and all current or former home healthcare workers employed by Defendant from January 1, 2015 to the present.

2. The proposed Rule 23 class will seek recovery of monetary damages for all overtime worked by Plaintiff and the putative class members.

3. Plaintiffs, in addition the federal claims identified above, bring this action under the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201, *et seq.* (“AMWA”), for declaratory judgment, monetary damages, liquidated damages, prejudgment interest, civil penalties and costs, including reasonable attorneys’ fees as a result of Defendant’s commonly applied policy and practice of failing to pay Plaintiff and all others similarly situated overtime compensation for the hours in excess of forty hours in a single week that they were/are made to work.

II.

THE PARTIES

A. Plaintiffs

4. Plaintiff Felecia Kilpatrick is a citizen of the United States, domiciled in the City of Little Rock, State of Arkansas, and was employed by Defendant in Arkansas for approximately from August of 2014 through approximately June of 2016 as a home healthcare worker who provided companionship services.

5. Plaintiff Kilpatrick’s hours varied from week to week but she regularly worked more than 40 hours a week, including some weeks in which she worked in excess of 100 hours.

6. Despite her overtime work, she was not properly compensated for all overtime hours worked in excess of 40 hours per week. Plaintiff Kilpatrick’s consent to sue is attached hereto as Exhibit “A”.

7. Plaintiff Mary Eason is a citizen of the United States, domiciled in the City of Little Rock, State of Arkansas, and was employed by Defendant in Arkansas for approximately from January of 2015 through approximately December of 2015 as a home healthcare worker who provided companionship services.

8. Plaintiff Eason's hours varied from week to week but she regularly worked more than 40 hours a week, including some weeks in which she worked in excess of 90 hours.

9. Despite her overtime work, she was not properly compensated for all overtime hours worked in excess of 40 hours per week. Plaintiff Eason's consent to sue is attached hereto as Exhibit "B".

10. Plaintiffs bring this action on behalf of herself and all other similarly situated individuals pursuant to 29 U.S.C. § 216(b). Plaintiffs and the similarly situated individuals were, or are, employed by Defendant as home healthcare workers since January 1, 2015. As this case proceeds, it is likely that more individuals will join this action as opt-in plaintiffs.

11. The precise size of the FLSA Collective and the identity of the putative plaintiffs will be ascertainable from the business records of Defendant and its related and affiliated entities.

B. Defendant

12. Defendant Homeality, LLC ("Defendant"), is an Arkansas limited liability company with its principal place of business located in Little Rock, Arkansas.

13. Defendant is, and has been, an enterprise engaged in commerce or in the production of goods or services for commerce within the meaning of 29 U.S.C. § 203(s)(1), and, upon information and belief, Defendant has had an annual gross volume of sales made or business done of not less than \$500,000.00 at all relevant times.

14. Plaintiffs, and all those similarly situated, are "employees" of Defendant engaged in commerce or in the production of goods or services for commerce as defined by 29 U.S.C. § 206(a) and 207(a)(1).

15. At all relevevant times, Defendant is, and has been, an "employer" of Plaintiffs and the similarly situated individuals within the meaning of the FLSA, 29 U.S.C. § 203(d).

16. This claim is brought pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* and is a collective action pursuant to 29 U.S.C. § 216(b). Plaintiffs' claims arise under § 207(a) of the FLSA.

III.

VENUE

17. Venue is proper in this Court as a substantial part of the events giving rise the claims occurred in the Western Division of this District.

IV.

COLLECTIVE ACTION DEFINITION

18. The class of similarly situated employees sought to be certified under 29 U.S.C. § 216(b) as a collective action is defined as:

All home healthcare workers employed by Defendant and/or any of its affiliated entities since January 1, 2015 (the "FLSA Collective").

V.

CLASS ACTION ALLEGATIONS

19. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

20. Plaintiff, individually and on behalf of all others similarly situated who were employed by Defendant within the State of Arkansas, brings this claim for relief for violation of the AMWA as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

21. Plaintiff proposes to represent a class of individuals defined as all persons who:

All home healthcare workers employed by Defendant and/or any of its affiliated entities since January 1, 2015 (the "AMWA Class").

22. The proposed class encompasses all home healthcare workers for Defendant.

23. Upon information and belief, there are between thirty (30) and one hundred (100) persons in the proposed class. Therefore, the proposed class is so numerous that joinder of all members is impracticable.

24. Common questions of law and fact relate to all of the proposed class members, such as these:

- A. Whether Plaintiffs and the class members were properly paid for their work;
- B. Whether Plaintiffs and the members of the class worked in excess of forty hours in any workweek;
- C. Whether Defendant has failed to pay Plaintiffs and members of the Class overtime compensation for all of the hours worked over forty (40) each week; and
- D. Whether Defendant is liable to Plaintiffs and members of the Class for violations of the AMWA.

25. The above common questions of law and fact predominate over any questions affecting only the individual named Plaintiffs, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

26. The class members have no interest in individually controlling the prosecution of separate actions because the policy of the AMWA provides a bright-line rule for protecting all non-exempt employees as a class. To wit: "It is declared to be the public policy of the State of Arkansas to establish minimum wages for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency, and well-being." Ark. Code Ann. § 11-4-202. To that end, all non-exempted employees must be paid for

time worked over forty (40) hours per week at a rate of one and one-half times their regular rate.

Ark. Code Ann. § 11-4-211.

27. At the time of the filing of this Complaint, neither Plaintiffs nor Plaintiffs' counsel knows of litigation that bears on the claims asserted herein.

28. No difficulties are likely to be encountered in the management of this class action.

29. The claims of Plaintiffs are typical of the claims of the proposed class in that Plaintiffs and all others in the proposed class will claim that they were not paid for all hours worked in violation of the AMWA.

30. Plaintiffs and their counsel will fairly and adequately protect the interests of the class.

31. Plaintiffs' counsel are competent to litigate Rule 23 class actions and other complex litigation matters, including wage and hour cases like this one.

VI.

FACTS

32. Defendant employed Plaintiffs and the FLSA Collective as home healthcare workers who provided companionship services for the elderly, ill or disabled.

33. Plaintiffs' hours varied from week to week, but Defendant suffered and permitted them to regularly work more than 40 hours a week, including some weeks in which they worked up to and including 70 or more hours in a workweek.

34. For example, for the two-week pay period ending on February 15, 2015, Plaintiff Eason was paid straight pay of \$10.00 for one hundred ninety-four hours (194), for a total compensation of \$1,940.00.

35. Plaintiff Kilpatrick was paid \$1,496.00 for one hundred thirty-six (136) hours for the two-week pay period ending on May 31, 2015.

36. Upon information and belief, Defendant suffered and permitted the members of the FLSA Collective to work more than 40 hours in a week, and members of the FLSA Collective worked more than 40 hours in certain workweeks.

37. Neither Plaintiffs nor the members of the FLSA Collective were compensated in accordance with the FLSA because they were not paid proper overtime wages for all hours worked in excess of forty hours a week for all weeks worked. Rather than paying them 1.5 times their regular rate of pay for all hours worked over 40 in a workweek, Defendant paid them straight time.

38. Plaintiffs are aware of other current and former employees of Defendant who were subject to the same payroll practice.

VII.

COLLECTIVE ACTION ALLEGATIONS

39. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

40. Plaintiffs file this action on behalf of themselves and all similarly situated individuals. As mentioned above, the proposed FLSA Collective is defined as follows:

**All home healthcare workers employed by Defendant
and/or any of its affiliated entities since January 1, 2015.**

41. Pursuant to the FLSA, 29 U.S.C. § 207, employers are generally required to pay overtime compensation at an hourly rate of 1.5 times an employee's regular rate of pay for hours worked over 40 in a workweek.

42. The FLSA contains an exemption from overtime for "domestic workers" who provide companionship and other services to individuals who were unable to care for themselves

and also contains an exemption for live in domestic service workers. 29 U.S.C. §§ 213(b)(21) and 213(a)(15).

43. In October of 2013, the United States Department of Labor explained that these exemptions do not apply to domestic-service workers employed by third-party agencies or employers.

44. Beginning on January 1, 2015, the regulations provide that domestic workers employed by third-party agencies or employers are not exempt from the FLSA's minimum wage and overtime requirements. 29 C.F.R. § 552.109(a).

45. As of January 1, 2015, all domestic workers employed by third-party agencies or employers are entitled to overtime compensation at an hourly rate of 1.5 times the employee's regular rate of pay for hours worked over 40 in a work week.

46. Since January 1, 2015, Plaintiffs and the FLSA Collective have routinely worked in excess of 40 hours per workweek without receiving proper overtime compensation for their overtime hours worked.

47. For example, for the two-week pay period ending on February 15, 2015, Plaintiff Eason was paid straight pay of \$10.00 for one hundred ninety-four hours (194), for a total compensation of \$1,940.00. Plaintiff Kilpatrick was paid \$1,496.00 for one hundred thirty-six (136) hours for the two-week pay period ending on May 31, 2015. No overtime wages were paid during these periods.

48. Defendant has violated, and is violating, the provisions of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), by not paying domestic workers, like Plaintiffs and the FLSA Collective, overtime as required by law.

49. Despite the Department of Labor's position that domestic workers employed by third-party agencies or employers are not exempt from the FLSA's minimum wage and overtime requirements, Defendant maintained its practice of failing to pay the proper overtime compensation to Plaintiffs and the FLSA Collective.

50. Defendant knowingly, willfully, or in reckless disregard of the law, maintained an illegal practice of failing to pay Plaintiffs and the FLSA Collective proper overtime compensation for all hours worked over 40.

VIII.

COUNT ONE: FAIR LABOR STANDARDS ACT—OVERTIME WAGES

51. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

52. The FLSA, 29 U.S.C. § 207, requires employers to pay non-exempt employees 1.5 times the regular rate of pay for all hours worked over 40 hours per workweek.

53. Defendant suffered and permitted Plaintiffs and the FLSA Collective to routinely work more than 40 hours in a workweek without proper overtime compensation as required by the FLSA, 29 U.S.C. § 201 *et seq.* and its implementing regulations.

54. Defendant knew, or showed reckless disregard for the fact, that it failed to pay these individuals proper overtime compensation in violation of the FLSA.

55. Defendant's failure to comply with the FLSA overtime protections caused Plaintiffs and the FLSA Collective to suffer loss of wages and interest thereon.

56. Plaintiffs and the FLSA Collective are entitled to unpaid overtime, liquidated damages, and attorney's fees and costs under the FLSA.

IX.

**COUNT TWO:
ARKANSAS MINIMUM WAGE ACT—OVERTIME WAGES**

42. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

43. Plaintiffs, individually and on behalf of the members of the proposed class, asserts this claim for damages and declaratory relief pursuant to the AMWA, Arkansas Code Annotated §§ 11-4-201 *et seq.*

44. At all relevant times, Defendant has been, and continues to be, an “employer” of Plaintiffs and the members of the proposed class within the meaning of the AMWA, Arkansas Code Annotated § 11-4-203(4).

45. Defendant, at all times relevant hereto, classified Plaintiffs and the members of the proposed class as exempt from the overtime requirements of the AMWA.

46. Defendant required Plaintiffs to work in excess of forty (40) hours each week but failed to pay Plaintiffs overtime compensation for the hours in excess for forty (40) worked each week.

47. Defendant deprived Plaintiffs of overtime compensation for all of the hours over forty (40) per week, in violation of the AMWA.

48. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiffs and all members of the proposed class for monetary damages, liquidated damages, and costs, including reasonable attorneys’ fees, for all violations that occurred within the three (3) years prior to the filing of this Complaint.

RELIEF SOUGHT

WHEREFORE, premises considered, Plaintiffs pray that Defendant be summoned to appear and answer herein and for judgment against Defendant as follows:

1. Permitting this case to proceed as a collective action under § 216(b) of the FLSA and ordering notice to the putative plaintiffs at the earliest opportunity to ensure their claims are not lost to the FLSA statute of limitations;

2. Judgment that Plaintiffs and those similarly situated are entitled to the overtime protections under the FLSA;

3. Judgment against Defendant for violation of the overtime provisions of the FLSA;

4. Judgment that Defendant's violations of the FLSA were willful;

5. An award to Plaintiffs and those similarly situated in the amount of unpaid overtime wages and liquidated damages;

6. An award of prejudgment interest (to the extent liquidated damages are not awarded);

7. An award of reasonable attorneys' fees and costs;

8. Leave to add additional plaintiffs and/or state law claims by motion, the filing of written consent forms, or any other method approved by the Court;

9. Certification of a class of AMWA claimants pursuant to Rule 23 of the FRCP;

10. Judgment for unpaid wages, all as set forth above, for damages accrued under the AMWA; and

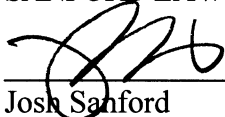
11. For such further relief as may be necessary and appropriate.

Dated: December 7, 2016

Respectfully submitted,


SANFORD LAW FIRM, PLLC

By:



Josh Sanford
Ark. Bar No. 2001037
josh@sanfordlawfirm.com

and



Steve Rauls
Ark. Bar No. 2011170
steve@sanfordlawfirm.com

One Financial Center
650 South Shackleford, Suite 411
Little Rock, Arkansas 72211
Telephone: (501) 221-0088
Facsimile: (888) 787-2040
josh@sanfordlawfirm.com

and

Philip Bohrer (Lead Counsel)
(to be admitted *pro hac vice*)
phil@bohrerbrady.com
Scott E. Brady
(to be admitted *pro hac vice*)
scott@bohrerbrady.com
BOHRER BRADY, LLC
8712 Jefferson Highway, Suite B
Baton Rouge, Louisiana 70809
Telephone: (225) 925-5297
Facsimile: (225) 231-7000

**ATTORNEYS FOR PLAINTIFFS
and THE PUTATIVE CLASSES**

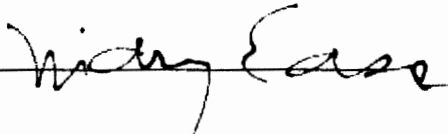
CONSENT TO JOIN WAGE CLAIM

Name: _____

1. I hereby consent to participate in a collective action lawsuit against **Homeality LLC** to pursue my claims of unpaid overtime during the time that I worked with the company.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act, and consent to be bound by the Court's decision.

I designate the law firms and attorneys at BOHRER BRADY, LLC, CRUMLEY ROBERTS, LLP AND SANFORD LAW FIRM as my attorneys to prosecute my wage claims.

3. I authorize the law firm and attorneys at BOHRER BRADY, LLC, CRUMLEY ROBERTS, LLP AND SANFORD LAW FIRM to use this consent to file my claim in a separate lawsuit, class/collective action, or arbitration against the company.

Signature:  Date Signed: 11-29-2016

Printed Name _____ Telephone No. _____

Address _____ Cell Phone No. _____

City, State, Zip _____ Email Address _____

_____ Date of Birth _____

_____ Social Security No. _____

CONSENT TO JOIN WAGE CLAIM

Name: _____

1. I hereby consent to participate in a collective action lawsuit against **Homeality LLC** to pursue my claims of unpaid overtime during the time that I worked with the company.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act, and consent to be bound by the Court's decision.

I designate the law firms and attorneys at BOHRER BRADY, LLC, CRUMLEY ROBERTS, LLP AND SANFORD LAW FIRM as my attorneys to prosecute my wage claims.

3. I authorize the law firm and attorneys at BOHRER BRADY, LLC, CRUMLEY ROBERTS, LLP AND SANFORD LAW FIRM to use this consent to file my claim in a separate lawsuit, class/collective action, or arbitration against the company.

Signature: *[Handwritten Signature]*

Date Signed: 11/28/2016

Printed Name _____

Telephone No. _____

Address _____

Cell Phone No. _____

City, State, Zip _____

Email Address _____

Date of Birth _____

Social Security No. _____

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. PLAINTIFFS and HOW RELATED TO MARY EASON, Individually and on behalf of All Others Similarly Situated (b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) Josh Sanford, Sanford Law Firm, PLLC, One Financial Center, 650 South Shackleford, Suite 411, Little Rock, Arkansas 72211; 501-221-0088; josh@sanfordlawfirm.com

HOW RELATED TO County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) PTF DEF Citizen of This State 1 1 Incorporated or Principal Place of Business In This State Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State Citizen or Subject of a Foreign Country 3 3 Foreign Nation 4 4 5 5 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property TORTS PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability FORFEITURE/PENALTY 625 Drug Related Seizure of Property 21 USC 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions BANKRUPTCY 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609 OTHER STATUTES 375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 USC 201 ff Brief description of cause: Non-payment of overtime premiums

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE December 7, 2016 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Home Healthcare Worker Files Unpaid OT Suit in Arkansas](#)
