

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GENAIA MOJER, on behalf of herself and similarly situated employees, Plaintiff,	:	CIVIL ACTION	3:18-CV-470
v.	:	ELECTRONICALLY FILED	
	:	ON FEBRUARY 26, 2018	
AMERICARE HOME SOLUTIONS LLC,	:	CLASS/COLLECTIVE ACTION	
Defendant.	:		

COMPLAINT - CLASS/COLLECTIVE ACTION

Genaia Mojer (“Plaintiff”) brings this class/collective action lawsuit against Americare Home Solutions LLC (“Defendant”), seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.* Plaintiff’s FLSA claim is asserted as a collective action under 29 U.S.C. § 216(b), while her PMWA claim is asserted as a class action under Federal Rule of Civil Procedure 23. See Knepper v. Rite Aid Corp., 675 F.3d 249 (3d Cir. 2012) (collective and class claims may proceed together in same action).

JURISDICTION AND VENUE

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Jurisdiction over the PMWA claim is proper under 28 U.S.C. § 1367.

3. Venue in this Court is proper under 28 U.S.C. § 1391.

PARTIES

4. Plaintiff resides in Scranton, PA (Lackawanna County).
5. Plaintiff is an employee covered by the FLSA and the PMWA.
6. Defendant is a corporation headquartered in Avoca, PA (Lackawanna County).
7. Defendant is covered by the FLSA because it is an enterprise engaged in commerce and has annual gross sales (much of which are received from federal programs such as Medicare and Medicaid) of over \$500,000.

FACTS

8. Defendant is in the business of providing home care services to the elderly, the disabled, and other clients in need of such services.
9. Defendant currently employs over 80 individuals who are paid, in-whole or in-part, on an hourly basis and hold positions such as, for example, Caregiver or Home Health Aid. These individuals will be referred to as “hourly employees.”
10. Plaintiff works for Defendant as an hourly employee.
11. Plaintiff’s paycheck is issued by “AMERICARE HOME SOLUTIONS LLC.”
12. Plaintiff and other hourly employees often work over 40 hours per

week. For example, during the two-week period ending on January 14, 2018, Defendant credited Plaintiff with working 115.25 hours.

13. The FLSA and PMWA require that employers pay employees overtime premium compensation for hours worked over 40 per week. In particular, employees must be paid an overtime premium equaling 150% of their “regular rate.” See 29 U.S.C. § 207(a)(1); 43 P.S. § 333.104(c). Seeking to avoid the financial consequences of this mandate, Defendant maintains a policy of reducing the hourly employees’ pay rates during weeks in which they work over 40 hours. For example, during weeks in which Plaintiff does not work overtime, Defendant pays her \$10.00/hour. But, during weeks in which Plaintiff works over 40 hours, Defendant pays her only \$9.00/hour. As alleged in Counts I and II below, this policy demonstrates a willful and reckless disregard of clearly applicable FLSA and PMWA provisions.

CLASS/COLLECTIVE ACTION ALLEGATIONS

14. Plaintiff brings her FLSA claim as a collective action pursuant to 29 U.S.C. § 216(b) and brings her PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals who, during the past three years, have been employed by Defendant, paid (in-whole or in-part) an hourly wage, and credited with working over 40 hours during any week.

15. Plaintiff’s FLSA claim should proceed as a collective action because

Plaintiff and other putative collective members, having worked pursuant to the common policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

16. Class action treatment of Plaintiff’s PMWA claim is appropriate because, as alleged below, all of Rule 23’s class action requisites are satisfied.

17. The class is readily ascertainable based on Defendant’s standard payroll records and is so numerous that joinder of all class members is impracticable.

18. Plaintiff is a class member, her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other class members.

19. Plaintiff will fairly and adequately represent the class members and their interests, and she has retained competent and experienced counsel who will effectively represent the class members’ interests.

20. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant’s companywide pay policies, as described herein. The legality of these policies will be determined through the application of generally applicable legal principles to a common set of facts.

21. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over

questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Alleging FLSA Violations)

22. All previous paragraphs are incorporated as though fully set forth herein.

23. Plaintiff and the collective are employees entitled to the FLSA's protections.

24. Defendant is an employer covered by the FLSA.

25. The FLSA entitles employees to overtime compensation of "not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1). "While the words 'regular rate' are not defined in the [FLSA], they obviously mean the hourly rate actually paid *for the normal, non-overtime workweek.*" Walling v. Helmerich & Payne, Inc., 323 U.S. 37 (1944) (emphasis supplied); accord 29 C.F.R. § 778.108; Walling v. Youngerman-Reynolds Hardwood Co., Inc., 325 U.S. 419, 424 (1945); United States v. Rosenwasser, 323 U.S. 360, 363-64 (1945).

26. Defendant has violated the FLSA by reducing the hourly rate paid to Plaintiff and the collective during weeks in which they are credited with working over 40 hours.

27. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions and, thus, has committed a willful violation of the FLSA.

COUNT II
(Alleging PMWA Violations)

28. All previous paragraphs are incorporated as though fully set forth herein.

29. Plaintiff and the class are employees entitled to the PMWA's protections.

29. Defendant is an employer covered by the PMWA.

30. The PMWA requires that employees receive overtime premium compensation "not less than one and one-half times" the employee's regular pay rate for hours worked over 40 per week. *See* 43 P.S. § 333.104(c). Under the PMWA, the term "regular rate" should be construed consistently with FLSA principles to mean the hourly rate actually paid *for the normal, non-overtime workweek*.

31. Defendant has violated the FLSA by reducing the hourly rate paid to Plaintiff and the collective during weeks in which they are credited with working over 40 hours.


PRAAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and other members of the proposed class and collective, seeks the following relief:

- A. Unpaid overtime wages (including overtime wages) and prejudgment interest;
- B. Liquidated damages;
- C. Litigation costs, expenses, and attorneys' fees; and
- D. Such other and further relief as this Court deems just and proper.

Date: February 26, 2018

Respectfully,



Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Phone: (215) 884-2491
pwinebrake@winebrakelaw.com

Attorneys for Plaintiff

CONSENT TO BECOME PARTY PLAINTIFF

I hereby consent, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to become a party plaintiff in the accompanying FLSA action. I understand that I will be bound by the judgment of the Court on all issues in this case.


GENIA MOJER

3:18-cv-470

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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.)

<p>I. (a) PLAINTIFFS Genalia Mojer 1327 Amherst Street Scranton, PA 18504</p> <p>(b) County of Residence of First Listed Plaintiff <u>Lackawanna</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19075; Phone: (215) 884-2491.</p>	<p>DEFENDANTS Americare Home Solutions LLC 709 Main Street Avoca, PA 18641</p> <p>County of Residence of First Listed Defendant <u>Lackawanna</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 830 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
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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):
Fair Labor Standards Act, 29 U.S.C. sec. 201, et seq.
 Brief description of cause:
Failure to pay proper overtime under federal and state law.

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 2/26/18 SIGNATURE OF ATTORNEY OF RECORD Peter Winebrake PETER W WINEBRAKE

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: [Lawsuit Accuses Americare Home Solutions of Paying Employees Reduced Overtime Wages](#)
