

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION

Barbara Penarouque,
On behalf of herself and others similarly
situated
Plaintiffs,

v.

Century Park Associates, LLC

Defendant.

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CASE NO.:

JURY REQUESTED

COLLECTIVE ACTION COMPLAINT

Barbara Penarouque (“Plaintiff”), by counsel, on behalf of herself and others similarly situated, states the following as her Collective Action Complaint against Century Park Associates, LLC, (“Defendant”):

PARTIES AND SERVICE

1. Plaintiff is a citizen of the United States of America and the State of Florida and resides in Orange County, Florida. Defendant is Plaintiff’s former employer. Her written consent opting in to this collective action is attached as Exhibit A.

2. Defendant is a Tennessee corporation with its principal office located in Cleveland, Tennessee. Century Park Associates, LLC can be served with process through its registered agent for service of process, Forrest L. Preston, 3570 Keith St. NW, Cleveland, TN 37312-4309, USA, in any manner the Federal Rules of Civil Procedure permit.

3. The Collective Members are hourly office workers employed and/or jointly employed by Defendant within the last three years who were paid an hourly rate with no overtime pay. These employees are responsible for bookkeeping, collections, and various other office duties.

JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 29 U.S.C. § 216(b) (Fair Labor Standards Act of 1938 collective action).

5. Defendant is subject to personal jurisdiction in the Eastern District of Tennessee. Defendant made itself subject to this Court's jurisdiction by maintaining its principle office, a physical presence and business operations in this District.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) & (c) because Defendant resides in this District.

NATURE OF THE ACTION

7. This is a private civil action brought against Defendant pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the "FLSA"). Defendant did not pay its hourly office workers overtime as required by FLSA. Instead, Defendant only paid them at an hourly rate with no overtime pay for hours worked over forty (40) in a week in violation of FLSA §207(a)(1). This collective action seeks to recover the unpaid overtime wages and other damages owed to these employees.

FACTS

8. Defendant owns, manages, and operates assisted and independent living facilities across the country.

9. Upon information and belief, Defendant employs and/or jointly employs hourly office workers across the country whose primary duties are bookkeeping, collections and various other office duties.

10. Plaintiff brought it to Defendant's attention that it has and continues to violate FLSA.

11. Plaintiff and the Collective Members are and were Defendant's hourly office workers and are and were paid on an hourly basis during their employment with Defendant.

12. Defendant is a covered enterprise because it is a business engaging in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaging in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce for any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated) for at least each of the last three years.

13. Defendant's employees routinely use or handle goods or materials, including vehicles, tools, equipment, telephones, computers, and fax machines that are produced for interstate commerce or actually travel in interstate commerce. Defendant also used the United States Postal system to send mail across state lines and interstate banking systems to pay Defendant's employees.

14. Defendant determined the hours Plaintiff and the Collective Members worked.

15. Defendant determined Plaintiff's and the Collective Members' duties as well as work locations.

16. Defendant made personnel and payroll decisions, including Plaintiff's and the Collective Members' pay rates, their job assignments and the decision to not pay them overtime.

17. Defendant owns or controls the equipment and supplies Plaintiff and the Collective Members use to perform their work.

18. Defendant has the power to hire and fire Plaintiff and the Collective Members.

19. Defendant determined the rate and method of payment for Plaintiff and Collective Members.

20. Plaintiff and the Collective Members are and were paid straight time only, or at the same hourly rate for every hour worked over forty (40) per workweek as it did for every hour worked under forty (40).

21. Defendant's policy of only paying straight time applied to all hourly office workers employed by Defendant.

22. Defendant's policy of paying only straight time applied to all hourly-paid staff employed by Defendant.

23. Plaintiff and the Collective Members work or worked from approximately 7 a.m. to 7 p.m., Monday through Friday and occasionally Saturdays and Sundays during a workweek. Accordingly, Plaintiff and the Collective Members regularly worked more than fifty (50) hours per week.

24. Plaintiff and the Collective Members regularly worked more than forty (40) hours in a workweek. Defendant did not pay them the extra one-half-time required by the FLSA. Instead, Defendant paid Plaintiff and the Collective Members straight time only.

25. Defendant keeps personnel records for Plaintiff and the Collective Members.

26. Defendant knew Plaintiff and the Collective Members worked over forty (40) hours per week and that they did not receive overtime pay.

27. Defendant knowingly, willfully, and/or with reckless disregard carried out its illegal pattern and/or practice of failing to pay overtime compensation with respect to Plaintiff and the Class Members.

COLLECTIVE ACTION ALLEGATIONS

28. In addition to Plaintiff, Defendant employs many other hourly office workers who have the exact same job description as Plaintiff or a similar job description to Plaintiff's and are paid in the same manner as Plaintiff: straight time and no overtime pay for hours worked over forty (40). All of Defendant's hourly office employees have primary duties the same or similar to Plaintiff's.

29. These non-exempt employees are entitled to overtime pay for the same reasons as Plaintiff, and are, therefore, similarly situated to Plaintiff. These employees are collectively referred to as the "Collective Members."

30. Dozens of these employees have worked for Defendant over the last few years. Defendant's failure to pay overtime compensation at the rates required by the FLSA is a result of generally applicable pay policies or practices and does not depend on the personal circumstances of the Collective Members. Thus, Plaintiff's experience is typical of the experience of the Collective Members. Accordingly, Defendant's payroll scheme extends well beyond Plaintiff.

31. The specific job titles, precise job requirements or job locations of the various Collective Members do not prevent collective treatment. All Collective Members, regardless of their work location, precise job requirements or rates of pay, are entitled to be paid overtime

compensation for hours worked in excess of 40 hours per week. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts. The questions of law and fact are common to Plaintiff and the Collective Members.

32. These Collective Members should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b). Therefore, the collective members are properly defined as: **“All hourly office workers employed by Defendants in the past 3 years and who worked in excess of 40 hours in one or more workweeks and were not paid at one and one-half times their regular rate of pay for all hours worked in excess of 40 in one or more workweeks.”**

CAUSE OF ACTION- FLSA VIOLATION

33. Plaintiff and Collective Members hereby incorporate by reference paragraphs 1 through 32 of this Complaint.

34. By failing to pay Plaintiff and the Collective Members overtime at one-and-one-half times their regular rates, Defendant violated the FLSA's overtime provisions.

35. During the relevant period, Defendant violated the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA, without compensating such employees for their work in excess of forty hours per week at rates no less than one-and-a-half times the regular rates for which they were employed.

36. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and the Collective Members. Defendant was aware that overtime pay was required for hourly employees but ignored the FLSA.

37. Defendant owes Plaintiff and the Collective Members the difference between the hourly rate earnings and the proper overtime rate. Because Defendant knew, or showed reckless disregard for whether their pay practices violated the FLSA, Defendant owes these wages for at least the past three years.

38. Defendant is liable to Plaintiff and the Collective Members for an amount equal to all unpaid overtime wages and liquidated damages.

39. Plaintiff and the Collective Members are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

JURY REQUEST

40. Plaintiff hereby requests a trial by jury.

RELIEF REQUESTED

Plaintiff respectfully requests relief as follows:

1. An Order allowing this action to proceed as a collective action under the FLSA and directing notice to the Collective Members;
2. Judgment awarding Plaintiff and the Collective Members all unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;
3. An award of post-judgment interest on all amounts awarded at the highest rate allowable by law; and
4. All such other and further relief to which Plaintiff and the Collective Members are justly entitled.

Respectfully Submitted,

Barbara Penarouque, for herself and others similarly situated

By Counsel

s/ James M. Johnson

No. 026147

James M. Johnson, Attorney at Law

620 Lindsay Street

Suite 210

Chattanooga, TN 37403

(423) 648 4093

(423) 648 4094

jj@jamesmjohnsonatty.com

Derrick A. Reed

Texas Bar No. 24053780

Smith Reed & Armstrong, PLLC

1920 Country Place Pkwy, Suite 350

Pearland, TX 77584

(281)519-7606

derrick@sraplhc.com

Pro Hac Vice Motion for Admission to be
submitted

Counsel for Plaintiff and others similarly situated



IN RE: FLSA CLAIMS AGAINST
CENTURY PARK ASSOCIATES, LLC

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COLLECTIVE ACTION
NOTICE OF CONSENT

I consent to be a party plaintiff in an action to collect unpaid wages. I agree to be bound by the Engagement Agreement.

Barbara Penarogue
Signature

Barbara Penarogue
Full Legal Name (print)

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.)

I. (a) PLAINTIFFS

Barbara Penarouque and others similarly situated

DEFENDANTS

Century Park Associates, LLC

(b) County of Residence of First Listed Plaintiff Orange County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

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.

(c) Attorneys (Firm Name, Address, and Telephone Number)
James M. Johnson, Attorney at Law, 620 Lindsay St., Suite 210,
Chattanooga, TN 37403 (423) 648 4093; Derrick A. Reed, Smith Reed &
Armstrong, 1920 Country Place Pkwy, Pearland, TX 77584(281)489 3934

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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 | | 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 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<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	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <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"/> 850 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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 29 U.S.C. Section 201, et seq., the Fair Labor Standards Act

Brief description of cause:
 failure to pay overtime in violation of Fair Labor Standards Act

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: 06/07/2018

SIGNATURE OF ATTORNEY OF RECORD: s/ James M. Johnson 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee

Barbara Penarouque,
on behalf of herself and others similarly situated

Plaintiff(s)

v.

Century Park Associates, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Century Park Associates, LLC
Registered Agent Forrest L. Preston
3570 Keith Street, NW
Cleveland, TN 37312-4309

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

James M Johnson Attorney at Law 620 Lindsay Street Suite 210 Chattanooga, TN 37403
Derrick A. Reed Smith Reed & Armstrong, PLLC 1920 Country Place Pkwy Suite 350 Pearland, TX 77584

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Century Park Associates Failed to Pay Office Workers Overtime, Lawsuit Alleges](#)
