

DISTRICT COURT, LARIMER COUNTY, COLORADO
201 Laporte Ave
Fort Collins, CO 80521

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CASE NUMBER: 2015CV31052

Cheryl Fazzini, individually and on behalf of the
Proposed Colorado Rule 23 Class,

Plaintiff,

v.

COURT USE ONLY

Maguire Senior Services, Inc.
d/b/a Home Instead Senior
Care #365

Defendant.

Case No:

Div:

Ctrm:

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Counsel for Plaintiffs

**CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

Plaintiff, Cheryl Fazzini, individually and on behalf of the Proposed Colorado Rule 23 Class (“Rule 23 Class”), by and through undersigned counsel, brings this Class Action Complaint against Defendant Maguire Senior Services, Inc. d/b/a Home Instead Senior Care

#365 (“Defendant”), for unpaid wages under the Colorado Wage Act (the “CWA”), C.R.S. §§ 8-4-101, *et seq.*, and the Colorado Minimum Wage Order Number 31 (the “MWO”), 7 CCR 1103-

1. Plaintiff states the following as claims against Defendants:

PARTIES

Plaintiff

1. Plaintiff Cheryl Fazzini is an adult resident of the city of Loveland, Larimer County, Colorado.

2. From approximately February 2010 to approximately February 2015, Plaintiff was directly employed by Defendants as an hourly paid Caregiver in and around the city of Fort Collins, Larimer County, Colorado.

Defendant

3. Defendant is a Colorado corporation with its principal place of business located at 251E Boardwalk Drive, Fort Collins, CO 80525.

4. Defendant is a healthcare services company that employs home health care workers to provide its customers with in-home personal care and management and/or treatment of a variety of medical and nonmedical conditions.

JURISDICTION AND VENUE

6. This Court has jurisdiction to hear this Class Action Complaint and to adjudicate these claims because this action is brought under Colorado state law, the CWA and the MWO.

7. Venue is proper in District Court, Larimer County, because Defendant operates facilities in this District and because a substantial part of the events giving rise to the claims occurred in this District.

GENERAL FACTUAL ALLEGATIONS

8. Plaintiff and members of the Rule 23 Class are current and former hourly paid home health care workers, or other job titles performing similar job duties, directly employed by Defendant in Colorado. These other job titles may include but are not limited to: Caregiver; Caregiver-Personal Care Assistant; Certified Home Health Aide; Certified Nursing Assistant; Certified/Registered Nursing Assistant; Certified Nursing Assistant – Homecare; Companion; Companion Caregiver; Daily Living; Direct Care Worker; Direct Support Worker; Home Health Aide; In-Home Respite Worker Companion; Nursing Assistant; Nursing Assistant Registered; Personal Care Assistant; Homemaker; Personal Care Provider; and Respite Worker.

9. Plaintiff and the Rule 23 Class were or are Defendant's employees within the meaning of the CWA, C.R.S. § 8-4-101(5), and the MWO, 7 CCR 1103-1 § 2.

10. Defendant is, or was, the employer of Plaintiff and the Rule 23 Class within the meaning of the CWA, C.R.S. § 8-4-101(6), and the MWO, 7 CCR 1103-1 § 2.

11. The MWO covers employers such as Defendant who operate any business or enterprise engaged in medical, dental, surgical, or other health services including but not limited to home health care. 7 CCR 1103-1 §§ 1, 2(D).

12. The MWO requires covered employers such as Defendant to compensate all non-exempt employees, at a rate of not less than one and one-half times their regular rate of pay, for work performed in excess of forty (40) hours per workweek or 12 hours per workday. 7 CCR 1103-1 § 4; *See also, Kennett v. Bayada Home Health Care, Inc.*, -- F.Supp.3d --, No. 14-cv-2005-CMA-MJW, 2015 WL 5608132 (D. Colo. Sep. 24, 2015).

13. Plaintiff and the Rule 23 Class regularly worked more than forty (40) hours per workweek or 10 to 12 hours per workday in the homes of Defendant's clients, providing clients with domestic services which included but were not limited to: meal preparation and service;

cleaning rooms; shopping for groceries and other items; making beds; washing clothes; washing dishes; mopping/vacuuming floors; dusting; taking out trash; doing errands outside of the home; attending medical and other appointments; maintaining personal hygiene; and conducting mobility exercises.

14. Defendant paid Plaintiff and the Rule 23 Class their regular hourly rates (i.e., “straight time”) for the overtime hours they worked, rather than the legally required rate of one and one-half times their regular rate of pay.

19. As a home health care company operating in Colorado, Defendant was or should have been aware that Plaintiff and the Rule 23 Class performed work that required proper payment of overtime at a rate of not less than one and one-half times their regular rate of pay.

20. Defendant’s conduct as alleged was willful and not in a good faith effort to comply with the CWA and the MWO.

COLORADO CLASS ACTION ALLEGATIONS

21. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

22. Plaintiff brings this action individually and as a class action pursuant to Rule 23 of the Colorado Rules of Civil Procedure. The Rule 23 Class is defined as follows:

Rule 23 Class: All individuals who are or have been employed by Defendant as hourly paid home health care workers, or other job titles performing similar job duties, to provide in-home domestic services in Colorado and were not paid at one and one-half times their regular rate of pay for all hours worked in excess of forty (40) in a workweek or 12 hours per workday from three years prior to December 14, 2015 and until the final judgment in this matter.

23. The individuals in the Rule 23 Class are so numerous that joinder of all members is impracticable. Although the precise number of such individuals is currently unknown,

Plaintiff believes that the class as defined includes over 300 members and is readily identifiable from Defendant's payroll records. Plaintiff and members of the Rule 23 Class have been equally affected by Defendant's violations of Colorado law.

24. There are questions of law and fact common to the Rule 23 Class that predominate over any questions solely affecting individual members, including but not limited to whether Defendant unlawfully failed to pay proper overtime premiums, whether Defendant willfully violated Colorado law, the proper measure of damages sustained by class members, and whether Defendant should be enjoined from such violations in the future.

25. Plaintiff's claims are typical of those of the Rule 23 Class. Plaintiff, like the Rule 23 Class, has suffered harm due to Defendant's common and systematic failure to pay proper overtime premiums for all hours worked in excess of forty (40) hours per workweek in violation of Colorado law.

26. Plaintiff will fully and adequately protect the interests of the Class. Plaintiff has retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Neither Plaintiff nor counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 Class.

27. This action is maintainable as a class action because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the Rule 23 Class which would establish incompatible standards of conduct for Defendant.

28. This action is maintainable as a class action because questions of law and fact common to the Rule 23 Class predominate over any questions affecting only individual members of the Rule 23 Class and because a class action is superior to other methods for the fair and

efficient adjudication of this action.

29. Plaintiff intends to send notice to all members of the Rule 23 Class to the extent required by Rule 23 of the Colorado Rules of Civil Procedure.

CAUSE OF ACTION

(Violation of CWA, § 8-4-101 *et seq.*, and MWO, 7 CCR 1103-1)

30. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

31. The CWA, C.R.S. § 8-4-103(1) (a), requires employers to pay all wages or compensation earned by an employee in any employment, for regular pay periods of no greater duration than one calendar month or thirty days, whichever one is longer, or on regular paydays no later than ten days following the close of each pay period unless the employer and the employee mutually agree on any other alternative period of wage or salary payments.

32. The MWO, 7 CCR1103-1 § 4, requires employers to pay overtime compensation to all non-exempt employees at a rate of one and one-half times their regular rate of pay for all hours worked over forty (40) hours per workweek or 12 hours per workday.

33. Defendant routinely suffered and permitted Plaintiff and the Rule 23 Class to work more than forty (40) hours per workweek or 12 hours per workday without receiving the legally mandated overtime premiums at a rate of not less than one and one-half times their regular rate of pay.

34. Defendant's actions, policies, and practices as described herein violate the CWA and MWO by failing to compensate Plaintiff and the Rule 23 Class for all of their overtime hours worked at the proper overtime rate.

35. As the direct and proximate result of Defendant's unlawful and willful conduct, Plaintiff and the Rule 23 Class have suffered and will continue to suffer a loss of income and other damages.

36. Plaintiff and the Rule 23 Class seek damages in the amount of their unpaid overtime wages as a result of Defendant's failure to pay lawful overtime wages and such other legal and equitable relief the Court deems proper.

37. Plaintiff and the Rule 23 Class also seek to recover reasonable attorneys' fees, costs and expenses incurred in prosecuting this action, to be paid by Defendant, as provided by the CWA § 8-6-118 and MWO, 7 CCR 1103-1 § 18, and other applicable state laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Rule 23 Class, prays for the following relief:

- a. Certification of this action as a class action pursuant to Rule 23 of the Colorado Rules of Civil Procedure;
- b. Designation of Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Judgment that Defendant's conduct violates the CWA and MWO;
- d. Judgment that Defendant acted willfully in violating the CWA and MWO;
- e. Judgment that Plaintiff and the Rule 23 Class are non-exempt employees entitled to protection under the CWA and MWO;
- f. Judgment against Defendant for an amount equal to Plaintiff's and the Rule 23 Class' unpaid overtime wages owed at the applicable overtime rate calculated at the rate of one and one-half times their regular rate of pay;

- h. For an award of liquidated damages and prejudgment interest;
- i. For an award of reasonable attorneys' fees and costs incurred in prosecuting this action;
- j. For an order enjoining Defendant from continuing its unlawful pay practices; and
- k. Such further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a jury trial on all claims so triable in this action.

DATED: December 14, 2015

Respectfully Submitted,

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