

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

NIDIA GARCIA-PENA, Individually and on Behalf of All
Those Similarly Situated,

Plaintiff,

v.

THE ROYAL CARE, INC.,

Defendant.

Case No. _____

COLLECTIVE ACTION COMPLAINT
(Jury Trial Demanded)

Comes Now, Plaintiff, by and through undersigned counsel, Brandon A. Thomas, files this Collective Action Complaint. Upon information and belief, Plaintiff alleges as follows:

NATURE OF THE ACTION

1. Defendant The Royal Care, Inc. (hereinafter, "TRC"), operates a third-party home health care agency, that assigns home health workers to provide live-in home care to persons who are in need of services. Plaintiff generally worked 24 hour shifts pursuant to caring for the persons for whom she was assigned to provide services.
2. Plaintiff was employed as a home health care worker, which entailed tasks such as: bathing patients, providing medication, administering medicine, feeding, and other duties necessary for the client's daily functioning.
3. Throughout Plaintiff's employment, Plaintiff received no overtime wages despite working excess of 40 hours each week. Additionally, throughout Plaintiff's employment, Plaintiff was not paid the applicable minimum wage under New York law for all hours worked.
4. Plaintiff brings this action on behalf of herself, and all other similarly situated employees

of Defendants, that have not received minimum wages, overtime wages, and spread of hours pay, pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq, the New York Labor Law (NYLL), §§ 190 et seq., N.Y. Comp. Codes R. & Regs. tit. 12, § 142–2.2, and supporting regulations.

5. Plaintiff seeks to bring these claims as a collective action pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337, 1343. In addition, the Court has jurisdiction over Plaintiff claims under the FLSA pursuant to 29 U.S.C. § 216(b).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as TRC’s principal place of business is located at 6323 14th Avenue, Brooklyn, New York 11219, which is in Kings County. Therefore, venue is proper in this district.

8. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

Plaintiff:

9. Nidia Garcia-Pena, was at all relevant times, an adult individual residing at 159-14 Harlem River Drive, New York, New York 10039, which is in New York County.

Defendant:

10. TRC is an active New York corporation. Its principal place of business is: 6323 14th Avenue, Brooklyn, New York 11219, which is in Kings County.

11. TRC and acted intentionally and maliciously. TRC issued checks that were issued to Plaintiff during her employment. TRC is considered an “employer” pursuant to the FLSA, 29

U.S.C. § 203(d), the regulations promulgated under 29 C.F.R. § 791.2.

12. At all relevant times, Defendant has been an employer of Plaintiff, within the meaning of the FLSA and the NYLL.

13. Upon information and belief, TRC has grossed more than \$500,000 in each of the past six years.

14. At all relevant times, TRC has been an enterprise within the meaning of 29 U.S.C. § 203(r).

15. At all relevant times, TRC 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).

STATEMENT OF FACTS

16. At all relevant times, TRC has been in the home health care industry, providing services to aged, sick, and disabled persons throughout the greater New York City area.

17. Plaintiff was employed by Defendants as a home health aid from approximately 2010 to August 23, 2022.

18. As a home health aid, Plaintiff's job duties included: providing live-in care to patients, bathing patients, providing medication, feeding patients, clothing patients, and helping patients use the bathroom.

19. Plaintiff was paid a daily rate of \$152 per day.

20. Plaintiff typically worked four days a week, Monday through Thursday. However, there were several weeks where Plaintiff would work up to 11 days straight with no day off, such as during the COVID pandemic where there was a shortage of home health aids.

21. Plaintiff typically worked 96 hours each week.

22. Defendant failed to pay plaintiff the applicable minimum wage set by New York law, in violation of the NYLL.

23. Plaintiff had no scheduled work break, and would have to try to eat whenever she had a free moment. Plaintiff generally was not able to have a full 20 minutes of uninterrupted meal time, without having to still attend to her patients.

24. Throughout Plaintiff's employment, Plaintiff was paid straight-time for all hours worked and received no overtime wages whatsoever, despite working in excess of 40 hours each week.

25. Defendants were required by law to pay Plaintiff time-and-a-half her regular wages for all hours in excess of 40 hours, but purposely chose to not to pay her overtime wages.

26. Plaintiff generally worked in excess of 10 hours each day. However, Plaintiff did not receive any spread of hours pay, as one additional hour's pay at the basic minimum wage rate before allowances, for each day Plaintiffs' workday exceeded ten hours.

27. This failure to pay overtime premium wages and pay spread of hours pay, can only be considered a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a), and the NYLL § 663.

FLSA COLLECTIVE ACTION ALLEGATIONS

28. Pursuant to 29 U.S.C. §§ 207 & 216(b), Plaintiff brings his First Cause of Action as a collective action under the FLSA, on behalf of herself and the following collective:

All persons employed by Defendants, at any time from December 31, 2021 to December 31, 2022, through the entry of judgment in this case (the "Collective Action Period"), who worked as home health aids (the "Collective Action Members").

29. A collective action is appropriate in this circumstance because Plaintiff and the Collective Action Members are similarly situated, in that they were all subjected to Defendants' illegal policy of failing to pay an overtime premium for work performed in excess of 40 hours per week. As a result of this policy, Plaintiff and the Collective Action Members did not receive the legally-

required overtime premium payments for all hours worked in excess of 40 hours per week.

30. The exact number of employees who have suffered the same unpaid overtime wage injury as Plaintiff is unknown at this time but believed to be at least 40 employees.

FIRST CAUSE OF ACTION
FAIR LABOR STANDARDS ACT – UNPAID OVERTIME

31. Plaintiff and the Collective Action Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

32. As a result of Defendants' failure to compensate its employees, including Plaintiff and the Collective Action Members, at a rate of not less than one and one-half times their regular rate of pay for work performed in excess of 40 hours per week, Defendants have violated the FLSA, 29 U.S.C. § 201 *et seq.*, including 29 U.S.C. § 207(a)(1) and 215(a), for which Plaintiff and the Collective Action Members are entitled to relief pursuant to 29 U.S.C. § 216(b).

33. Defendants' failure to pay overtime wages to these hourly employees constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

34. The failure to pay overtime has caused Plaintiff and the Collective Action Members to suffer lost wages and interest thereon. As a result, they are entitled to recover from Defendants their unpaid overtime compensation, liquidated damages, attorney's fees, and costs and disbursements of the action pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
NEW YORK LABOR LAW – UNPAID OVERTIME

35. Plaintiff and the Collective Action Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

36. As a result of Defendants' failure to compensate its employees, including Plaintiff and the Collective Action Members at a rate of not less than one and one-half times their regular rate of

pay for work performed in excess of 40 hours per week, Defendants have violated the NYLL, N.Y. Comp. Codes R. & Regs. tit. 12, § 142–2.2, for which Plaintiff and the Collective Action Members are entitled to relief pursuant the NYLL, § 190 et seq.

37. Defendants’ failure to pay overtime wages to these hourly employees constitutes a willful violation of the FLSA within the meaning of NYLL § 663.

38. The failure to pay overtime has caused Plaintiff to suffer lost wages and interest thereon. Plaintiff and Collective Action Members are entitled to recover from Defendants their unpaid overtime compensation, liquidated damages, attorney's fees, and costs and disbursements of the action.

THIRD CAUSE OF ACTION
NEW YORK LABOR LAW - FAILURE TO PAY MINIMUM WAGES

39. Plaintiff and the Collective Action Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

40. Defendants have failed to pay the applicable New York minimum wage for each week of employment for Plaintiff and the Collective Action Members, in violation of NYLL§ 652. As a result, Plaintiff and the Collective Action Members are owed is owed minimum wages, liquidated damages, and interest.

FOURTH CAUSE OF ACTION
VIOLATION OF THE SPREAD OF HOURS WAGE LAWS

41. Plaintiff and the Collective Action Members, repeat and reallege all paragraphs above as though fully set forth herein.

42. Defendants failed to pay Plaintiff and the Collective Action Members, one additional hour’s pay at the basic minimum wage rate before allowances, for each day Plaintiffs’ spread of hours exceeded ten hours, in violation of NYLL §§ 650 *et seq.* and 12 N.Y.C.R.R. §§ 146-1.6.

43. Defendants' failure to pay an additional hour's pay for each day Plaintiff's spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

PRAYER FOR RELIEF

Therefore, Plaintiff requests that this Court grant the following relief, on behalf of herself and the Collective Action Members:

- a. An order tolling the relevant statutes of limitations;
- b. An order declaring that Defendants violated the FLSA and the NYLL;
- c. An injunction prohibiting Defendants from violating the FLSA and NYLL as specified in this complaint;
- d. An award of unpaid overtime wages due under the FLSA and the NYLL;
- e. An award of unpaid minimum wages due under the NYLL;
- f. An award of liquidated damages as a result of Defendants' willful failure to pay overtime wages under the FLSA and NYLL;
- g. An award of spread of hours pay under the NYLL;
- h. An award of wages and liquidated damages for failure to make timely payments as required by the NYLL;
- i. An award of prejudgment and post-judgment interest;
- j. An award of costs and expenses of this action together with attorney's fees;
- k. An order awarding an increase of the total amount of judgment by 15%, for any amounts that remain unpaid upon the expiration of 90 days of the issuance of judgment, in accordance with the NYLL, § 198(4);
- l. Such other and further relief and this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: December 31, 2024

s/Brandon A. Thomas

BRANDON A. THOMAS

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CONSENT TO SERVE AS A
PLAINTIFF REPRESENTATIVE UNDER THE
FAIR LABOR STANDARDS ACT (29 U.S.C. §201, ET SEQ.)

I, Nidia Garcia-Pena, a current or former employee of The Royal Care, Inc., consent to serve as a Plaintiff and Class Representative in the above-referenced action¹ and to represent the interests of the class members with respect to all cognizable claims for minimum wage and overtime compensation and any other benefits available under the Fair Labor Standards Act and other applicable laws, in accordance with the Fee Agreement executed by the undersigned for such purpose.

Executed on 12/12/2024
(date)

Nidia Garcia-Pena
Signature

¹ In the event that this case is dismissed without prejudice, my claim is dismissed without prejudice or any class in this case is decertified, I consent to serve as a Plaintiff, Class Representative and/or Opt-In Plaintiff in any subsequent action brought against Defendants and any other defendants to recover under the FLSA. I reserve the right to revoke this Consent in part or in its entirety.