

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|---------------------------|---|---------------------|
| VICTORIA HOLSEY, |) | |
| |) | Civil Action No. |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| |) | JURY TRIAL DEMANDED |
| AGAPE HOSPICE CARE, INC., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Victoria Holsey (hereinafter “Plaintiff”), and files this lawsuit against Defendant Agape Hospice Care, Inc. (hereinafter “Defendant”), and shows the following:

I. Nature of Complaint

1.

Plaintiff brings this action to obtain full and complete relief and to redress the unlawful employment practices described herein.

2.

This action seeks declaratory relief, liquidated, and actual damages for Defendant’s failure to pay federally mandated overtime wages to Plaintiff in

violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 *et seq.* (hereinafter “FLSA”) during Plaintiff’s employment with Defendant (hereinafter referred to as the “relevant time period”).

II. Jurisdiction and Venue

3.

The jurisdiction of this Court is invoked pursuant to 29 U.S.C. §216(b), and 28 U.S.C. §1343(a)(4).

4.

Defendant Agape Hospice Care, Inc. is a Georgia corporation, and the unlawful employment practices described herein occurred at 5825 Glenridge Dr. Bldg. 4, Suite 200, Atlanta, GA, 30328. Accordingly, venue in this Court is proper pursuant to 29 U.S.C. §216(b); LR 3.1(B)(3), Northern District of Georgia.

III. Parties

5.

Plaintiff is a resident of the State of Georgia.

6.

Plaintiff worked for Defendant from approximately April 25, 2011, through April 22, 2013, as a Medical Records Manager.

7.

Plaintiff was an “employee” (as defined under FLSA §3(e), 29 U.S.C. §203(e)) for Defendant.

8.

Plaintiff performed non-exempt labor for Defendant within the last three years and was paid on an hourly basis. Throughout her employment with Defendant, Plaintiff was entitled to overtime compensation for all hours worked in excess of forty (40) hours in a workweek.

9.

Defendant employed the named Plaintiff during the relevant time period.

10.

During the relevant time period, Plaintiff worked an amount of time that was more than forty (40) hours per workweek and was not paid the overtime wage differential for all hours worked over forty (40) in such weeks.

11.

Defendant is a private employer engaged in interstate commerce, and its gross revenues exceed \$500,000 per year.

12.

Defendant has employees engaged in commerce or in the production of goods for commerce, or has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

13.

Defendant is an “employer” within the definition of FLSA §3(d), 29 U.S.C. §203(d).

14.

Defendant is an “enterprise engaged in commerce or in the production of goods for commerce” within the definition of 29 U.S.C. §§ 203(r) and (s).

15.

Defendant is governed by and subject to FLSA §7, 29 U.S.C. §207.

IV. Facts

16.

Defendant is in the business of providing hospice care services to customers.

17.

Plaintiff worked for Defendant within the past three years as a Medical Records Manager. During this period, Plaintiff’s duties included, *inter alia*, filing medical records, communicating with doctors and hospitals regarding medical

paperwork related to hospice care, creating and closing charts, and coordinating customer admissions to hospice care.

18.

During the last three years, Defendant maintained a policy of denying its employees pay for hours worked in excess of forty (40) hours in a workweek. Plaintiff's duties necessitated that she work before and after Defendant's usual office hours in order to, *inter alia*, timely secure paperwork and signatures from doctors and hospitals to coordinate the admission of customers into hospice care, prepare for bi-weekly internal meetings, and manage the filing of customer medical records. Defendant either directed Plaintiff to perform this off-the-clock work or possessed actual or constructive knowledge of such work and permitted the work to be performed.

19.

Because of the before- and after-hours work described above, Plaintiff regularly worked substantially in excess of forty (40) hours per week.

20.

During the last three years, while employed by Defendant as a non-exempt Medical Records Manager, Plaintiff regularly worked in excess of forty (40) hours in given workweeks and was not paid the overtime wage differential required by

FLSA §7, 29 U.S.C. §207 for all hours worked in excess of forty (40) hours in such weeks.

21.

Defendant terminated Plaintiff's employment on or about April 22, 2013. Defendant denied Plaintiff her last paycheck due for work she performed prior to her termination date.

**V. Violation of the Overtime Wage Requirement of
the Fair Labor Standards Act.**

22.

Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint with the same force and effect as if set forth herein.

23.

Defendant has violated FLSA §7, 29 U.S.C. §207, by failing to pay overtime wages for time that Plaintiff worked in excess of forty (40) hours in a workweek.

24.

Defendant suffered and permitted Plaintiff to routinely work more than forty (40) hours per week without overtime compensation.

25.

Defendant's actions, policies and/or practices violate the FLSA's overtime requirement by regularly and repeatedly failing to compensate Plaintiff at the required overtime rate.

26.

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

27.

Defendant failed to accurately report, record and/or preserve records of hours worked by Plaintiff, and thus has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of the FLSA.

28.

Defendant refused to compensate Plaintiff for any of the hours she worked during the last two weeks of her employment in violation of the FLSA.

29.

Defendant's conduct was willful and in bad faith.

30.

Pursuant to FLSA §16, 29 U.S.C. §216, Plaintiff brings this lawsuit to recover overtime wage differential, liquidated damages in an equal amount, attorneys' fees, and the costs of this litigation.

VII. Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- (A) Grant Plaintiff a trial by jury as to all triable issues of fact;
- (B) Enter judgment awarding Plaintiff unpaid wages pursuant to the FLSA §7, 29 U.S.C. §207, liquidated damages as provided by 29 U.S.C. §216, court costs, expert witness fees and reasonable attorneys' fees as provided under 29 U.S.C. §216, pre-judgment interest and all other remedies allowed under the FLSA;
- (C) Grant declaratory judgment declaring that Plaintiff's rights have been violated; and
- (D) Award Plaintiff such further and additional relief as may be just and appropriate.

[Signature on the following page.]

Respectfully submitted the 30th day of September, 2013.

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