

IN THE BOONE COUNTY CIRCUIT COURT, STATE OF MISSOURI  
CIRCUIT DIVISION

MYKHAELE LITTLE, individually, and on behalf of a class of others similarly situated,

Plaintiff,

v.

ADVANTAGE NURSING SERVICES, INC.

ATTN: Brandon Schneider  
2127 Innerbelt Bus. Center Dr.  
Suite 100  
St. Louis, MO 63114

and

BOOTHEEL IN-HOME CARE SERVICES, LLC

ATTN: Kathey Verbeck  
311 Main Street  
New Madrid, MO 63869

Defendants.

Case No.

CLASS ACTION

PETITION

Plaintiff Mykhaele Little, individually and on behalf of others similarly situated, by and through her undersigned counsel, for her complaint against Defendants Advantage Nursing Services, Inc. (“Advantage Nursing”) and Bootheel In-Home Care Services, LLC (“Bootheel In-Home Care”) (collectively “Defendants”), hereby states as follows:

1. Plaintiff worked as a home health nurse for Advantage Nursing from July 2011 to July 2019 in Columbia, Missouri.

2. Advantage Nursing failed to pay Plaintiff and employees similarly situated to her (the "Class") overtime for work performed beyond 40 hours in a week, denying them their earned wages in violation of the Missouri Minimum Wage Law ("MMWL"). Specifically, Plaintiff and the Class were paid for hours worked beyond 40 in a week through one or more affiliated company to Advantage Nursing as part of a scheme to obscure that Advantage Nursing was failing to pay its employees their earned overtime premium as required by Missouri law. Additionally, Plaintiff and the Class were eligible to receive non-discretionary bonuses or additional pay under defined circumstances. Defendants should have taken these non-discretionary bonuses and additional pay into account in the calculation of the regular rate used to determine the overtime premium pay due, but failed to do so, resulting in Plaintiff and the Class receiving less than their fully earned compensation.

3. This lawsuit is also brought as a Sup. Ct. Rule 52.08 class action under the MMWL to recover the overtime compensation owed to Plaintiff and other similarly situated workers employed by Defendants in the State of Missouri.

#### JURISDICTION AND VENUE

4. Plaintiff is a resident of Boone County, Missouri.

5. Defendant Advantage Nursing Services, Inc. is a corporation organized under the laws of the State of Illinois with its principal place of business in Missouri. At all relevant times, Advantage Nursing was authorized to conduct business in and was conducting business in the State of Missouri.

6. Defendant Bootheel In-Home Care Services, LLC is a corporation organized under the laws of the State of Missouri with its principal place of business in Missouri. At all

relevant times, Bootheel In-Home Care was authorized to conduct business in and was conducting business in the State of Missouri.

7. This Court has subject matter jurisdiction under R.S.Mo. § 478.070.

8. This Court has personal jurisdiction over Defendants as corporations doing business in the State of Missouri.

9. Venue is proper in this Court under R.S.Mo. § 508.010 as the wrongful acts committed by Defendants took place in Boone County, Missouri.

#### GENERAL ALLEGATIONS

10. Since approximately 2016, Plaintiff was employed by Advantage Nursing as a home health nurse for a minor, disabled patient located in Columbia, Missouri.

11. In that role, Plaintiff would visit with this patient four to six times a week and provide a full spectrum of care.

12. Plaintiff's duties included: hourly monitoring of the patient's vital signs, hourly recording of observations of bodily activities and the patient's condition, provision of bathing assistance, provision of feeding assistance, recording of respiratory activity, and management of medical devices used by the patient.

13. Beginning in January 2019, Plaintiff's wage was set at \$21.50 per hour.

14. Plaintiff worked more than forty hours per week in 25 out of 30 weeks from December 31, 2018 until July 26, 2019.

15. Plaintiff was instructed to log her hours worked on a form called a "24-Hour Nursing Flow" provided by Advantage Nursing.

16. The 24-Hour Nursing Flow form was also used to log regular observations and notes about the patient being cared for Plaintiff.

17. Plaintiff's hours were verified by an adult member of the household in which she was providing services at the beginning and end of each shift. Any significant breaks in care in which Plaintiff was providing care also required verification.

18. Plaintiff was instructed to fill out an additional, separate time sheet during weeks in which she worked in excess of forty hours. Plaintiff was instructed to only include her hours worked in excess of forty on this separate form.

19. Plaintiff was also instructed to start a new "24-Hour Nursing Flow" form in the middle of shifts in which she was scheduled to exceed forty hours of work for the week.

20. Plaintiff's duties to care for her patient remained the same regardless of the form she filled out.

21. Prior to January 14, 2019, whenever Plaintiff worked in excess of forty hours per week, all the hours she worked—including overtime hours—would be reflected on a weekly "Earnings Statement" and "Timecard" provided to her by Advantage Nursing. Her wages, including overtime wages, were distributed through direct deposit by Advantage Nursing.

22. During that time, Advantage Nursing paid Plaintiff an overtime premium, calculated at 1.5 times her base hourly rate. But Advantage Nursing failed to include bonus pay or other additional pay earned by Plaintiff when calculating her overtime rate, thus depriving her of earned compensation.

23. Beginning the week of January 14, 2019, the Earnings Statements and Timecards provided to Plaintiff by Advantage Nursing no longer contained any overtime pay at all. Nor did it reflect the total number of hours she worked.

24. After that date, all payment documents provided by Advantage Nursing only showed that Plaintiff worked forty hours for any week, even if she worked more hours.

25. Beginning the week of January 14, 2019, overtime hours worked by Plaintiff were no longer paid through Advantage Nursing. Plaintiff continued to receive weekly direct deposits from Advantage Nursing, but only for the first forty hours she worked each week. When Plaintiff worked in excess of forty hours per week, she would receive a direct deposit from Bootheel In-Home Care for the hours worked beyond 40 in a week.

26. Bootheel In-Home Care only paid Plaintiff her base hourly rate for the overtime hours she worked, instead of the statutorily prescribed overtime rate of 1.5 times the regular rate under R.S.Mo. § 290.505.

27. Between January 14, 2019 and July 26, 2019, Plaintiff received 24 direct deposits from Bootheel In-Home Care, none of which included her required overtime pay.

28. Advantage Nursing and Bootheel In-Home Care used this payment scheme to avoid paying earned overtime wages to Plaintiff and similarly situated employees.

29. By participating in this payment scheme, Bootheel In-Home Care acted directly or indirectly in the interests of Advantage Nursing with respect to Plaintiff.

30. Advantage Nursing and Bootheel In-Home care were not completely disassociated with respect to the employment of Plaintiff and, directly or indirectly, shared control over Plaintiff by reason of the fact that the Defendants are under common control.

31. Advantage Nursing and Bootheel In-Home Care both list the same person, Kathey Verbeck, as the chief executive officer.

32. Defendants were each an “employer” of Plaintiff and the Class under the MMWL.

33. Plaintiff and the Class were or are all employees under the MMWL.

34. Plaintiff and the Class were subjected to the same policies and practices of Defendants as described above.

35. The net effect of Defendants’ policies and practices, instituted and approved by Defendants’ managers and supervisors, is that Defendants fail to pay earned overtime premium pay to their employees. Further, Defendants fail to keep accurate time records in order to save payroll costs. Defendants enjoy ill-gained profits at the expense of their employees.

36. Defendants’ officials, management-level employees, and supervisors knew or, through the exercise of reasonable care, should have known that that time-keeping practices were inadequate under the MMWL.

## CLASS ACTION ALLEGATIONS

37. Plaintiff brings this case as a class action pursuant to Mo. Sup. Ct. R. 52.08 on her own behalf and as the Class Representatives on behalf of the following:

Persons who (1) are currently working or previously worked for Advantage Nursing; and (2) worked more than 40 hours in at least one workweek during the period of time within three years of the date of the filing of this Petition (plus any time allowed by the court for tolling of the statute of limitations); and (3) received overtime pay that was calculated via regular rate that did not account for bonuses or additional pay; or (4) were not paid overtime premium for hours worked over 40 in a week because such hours were reported through a different entity than Advantage Nursing.

38. Plaintiff's claims satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action pursuant to Mo. Sup. Ct. R. 52.08.

39. This class is believed to number in the hundreds of persons. As a result, joinder of all class members in a single action is impracticable. Class members may be informed of the pendency of this class action through direct mail, email, or other practical methods.

40. There are questions of fact and law common to the class that, under Missouri state law, predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from Defendants' actions include, without limitation, the following:

- a. Whether Defendants violated Missouri law when they failed to pay overtime premium pay to its non-exempt workers when they worked more than 40 hours in a week;
- b. Whether Defendants are required to consider its non-discretionary bonuses or additional pay when calculating the regular rate for overtime premium pay purposes.

41. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

42. Plaintiff's claims under Missouri state law are typical of those of the class in that class members have been employed in the same or similar positions as Plaintiff and were subject to the same or similar practices as Plaintiff.

43. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendants have acted or refused to act on grounds generally applicable to the Class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants, and substantially impair or impede the ability of class members to protect their interests.

44. Plaintiff is an adequate representative of the Missouri class because she is a member of the class and her interests do not conflict with the interests of the members of the class she seeks to represent. The interests of the members of the class will be fairly and adequately protected by Plaintiff and her undersigned counsel. Plaintiff's counsel are

experienced in the litigation of civil matters, including the prosecution of complex wage and hour, employment, and class action cases.

45. Maintenance of this action as a class action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each member of the class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

## COUNT I

### VIOLATION OF THE MISSOURI MINIMUM WAGE LAW

#### BROUGHT AGAINST DEFENDANTS BY PLAINTIFF INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

46. Plaintiff re-alleges the allegations set forth above.

47. Defendants violated Missouri law, in relevant part, by failing to pay all earned overtime premium to Plaintiff and similarly situated employees as required by Mo. Rev. Stat. § 290.502 and § 290.505.

48. Further, Plaintiff and the Class are entitled to recover an additional amount of liquidated damages equal to twice their compensatory damages, as well as their attorneys' fees and costs, pursuant to Mo. Rev. Stat. § 290.527.

WHEREFORE, Plaintiff on behalf of herself and the Class demands judgment against Defendants and prays this Court:

a. Certify the state law claim set forth in Count I above as a class action pursuant to Mo. Sup. Ct. R. 52.08;

- b. Declare Defendants' policy of not paying all owed overtime premium pay to Plaintiff and other similarly situated employees is illegal under the MMWL;
- c. Award Plaintiff and the Class compensatory and liquidated damages under Mo. Rev. Stat. § 290.527;
- e. Award Plaintiff and the Class pre-judgment and post-judgment interest as provided by law;
- f. Award Plaintiff and the Class attorneys' fees and costs as allowed by Mo. Rev. Stat. § 290.527; and
- g. Award Plaintiff and the Class other relief as the Court deems fair and equitable.

Respectfully submitted,

LEAR WERTS LLP

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