

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANDREA ARRINGTON and)	
TERRY SCOTT, individually and)	
on behalf of all others similarly situated,)	Civil Action No.
)	
Plaintiffs,)	
)	
v.)	
)	
OPTIMUM HEALTHCARE IT, LLC,)	
)	
Defendant.)	
_____)	

COLLECTIVE AND CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiffs Andrea Arrington (“Arrington”) and Terry Scott (“Scott”) (collectively “Plaintiffs”) through their undersigned counsel, individually and on behalf of all others similarly situated, file this Collective and Class Action Complaint against Defendant Optimum Healthcare IT, LLC (“Defendant” or “Optimum”), seeking all available relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”) and Pennsylvania, New York, and Massachusetts state law. Plaintiffs allege that they and other similarly situated consultants did not receive overtime pay for hours worked in excess of forty (40) in a workweek. The following allegations are based on personal knowledge as to Plaintiffs’ own conduct and are made on information and belief as to the acts of others.

JURISDICTION AND VENUE

1. Jurisdiction over Plaintiffs’ FLSA claims is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. This Court also has supplemental jurisdiction over Plaintiffs’ Pennsylvania, New York, and Massachusetts state law claims pursuant 28 U.S.C. § 1367(a), because these claims are so related to the federal claims that they form part of the same case and controversy.

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391, since a substantial part of the events giving rise to Plaintiffs' claims occurred within this District, and Optimum conducts business in this judicial district. Specifically, both Plaintiff Arrington and Plaintiff Scott performed work for Optimum at Thomas Jefferson University Hospital in Philadelphia, Pennsylvania.

PARTIES

3. Plaintiff Andrea Arrington is an individual residing in South Euclid, Ohio. Arrington worked for Defendant as a consultant providing support and training in using a new recordkeeping system for Defendant's clients in Massachusetts, Oregon, Washington, Illinois, South Carolina, Oklahoma, New York, Connecticut, and Pennsylvania between May 2014 and December 2016. Pursuant to 29 U.S.C. § 216(b), Arrington has consented in writing to participate in this action. *See* Exhibit A.

4. Plaintiff Terry Scott is an individual residing in Cleveland, Ohio. Scott worked for Defendant as a Consultant providing support and training in using a new recordkeeping system for Defendant's clients in Texas, North Carolina, New York, Oklahoma, Massachusetts, Rhode Island, Connecticut and Pennsylvania between December 2012 and December 2016. Pursuant to 29 U.S.C. § 216(b), Scott has consented in writing to participate in this action. *See* Exhibit B.

5. Defendant Optimum Healthcare IT, LLC ("Defendant" or "Optimum") is a Florida corporation providing information technology educational services for the healthcare industry across the country. Optimum maintains its corporate headquarters in Jacksonville, Florida.

6. Optimum employs individuals engaged in commerce or in the production of goods for commerce and/or handling, selling or otherwise working on goods or materials that

have been moved in or produced in commerce by any person, as required by 29 U.S.C. §§ 206-207.

7. Optimum's annual gross volume of sales made or business done exceeds \$500,000.

COLLECTIVE AND CLASS DEFINITIONS

8. Plaintiffs bring Count I of this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of themselves and the following class of potential FLSA opt-in litigants:

All individuals who performed consulting work for Optimum Healthcare IT, LLC ("Defendant" or "Optimum") in the United States, from September 1, 2014 to the present ("FLSA Class").

9. Plaintiffs bring Count II of this lawsuit as a class action pursuant to Fed. R. Civ. P. 23, on behalf of themselves and the following class:

All individuals who performed consulting work for Optimum Healthcare IT, LLC ("Defendant" or "Optimum") in the state of Pennsylvania from September 1, 2014 to the present ("Pennsylvania Class").

10. Plaintiffs bring Count III of this lawsuit as a class action pursuant to Fed. R. Civ. P. 23, on behalf of themselves and the following class:

All individuals who performed consulting work for Optimum Healthcare IT, LLC ("Defendant" or "Optimum") in the state of New York from September 1, 2011 to the present (New York Class).

11. Plaintiff Arrington brings Count IV of this lawsuit as a class action pursuant to Fed. R. Civ. P. 23, on behalf of herself and the following class:

All individuals who performed consulting work for Optimum Healthcare IT, LLC ("Defendant" or "Optimum") in the state of Massachusetts from September 1, 2014 to the present ("Massachusetts Class").

12. The FLSA Class, Pennsylvania Class, New York Class, and Massachusetts Class are together referred to as the “Classes.”

13. Plaintiffs reserve the right to re-define any of the Classes prior to notice or class certification, and thereafter, as necessary.

FACTS

14. As a leading healthcare information technology firm, Optimum provides training and support to medical facilities in connection with the implementation of new electronic recordkeeping systems. Optimum employs consultants, such as Plaintiffs, who perform such training and support services throughout the United States.

15. Optimum’s financial results are significantly driven by the number of consultants providing training and support services for Optimum’s customers and the fees that Optimum charges the customers for these services.

16. Between approximately May 2014 and December 2016, Arrington worked as a consultant for Optimum and was assigned to work at Thomas Jefferson University Hospital in Philadelphia, Pennsylvania, which is located within this judicial district, as well as in Massachusetts, Oregon, Washington, Illinois, South Carolina, Oklahoma, Connecticut, and New York.

17. Between December 2012 and December 2016, Scott worked as a consultant for Optimum and was assigned to work at Thomas Jefferson University Hospital in Philadelphia, Pennsylvania, located within this judicial district, as well as in New York, Texas, North Carolina, Oklahoma, Massachusetts, Connecticut and Rhode Island.

18. Plaintiffs were paid solely on an hourly basis and were paid only straight time for the hours they worked.

Plaintiffs Routinely Worked in Excess of 40 Hours a Week

19. Plaintiffs and Members of the Classes routinely worked in excess of forty (40) hours per workweek, but were not paid overtime compensation as required by the FLSA.

20. Plaintiffs and Members of the Classes were often required to work twelve (12) hours a day, seven (7) days a week.

21. For example, while working at Montefiore Medical Center in Bronx, New York in June 2016, Arrington worked 12 hours a day, 7 days a week. Approximately 200-250 other Optimum consultants were assigned to this project, and followed a similar schedule. Arrington was paid only a straight hourly rate during this time.

22. Although Plaintiffs and Members of the Classes frequently were required, permitted, or encouraged to work more than forty (40) hours per week, Optimum failed to pay them one and one-half (1 ½) times their regular pay rate for hours worked in excess of forty (40) hours per week, as required by the FLSA and Pennsylvania, New York and Massachusetts law.

23. Instead, Plaintiffs and Members of the Classes were paid a straight hourly rate for hours that they worked, regardless of whether they worked more than forty (40) hours in a week. Plaintiffs and Members of the Classes were not paid on a salary basis.

Plaintiffs are not Exempt as “Computer Employees” under the FLSA

24. Plaintiffs and Class Members provide support and training to hospital staff in connection with electronic recordkeeping systems. Plaintiffs have no specialized training or certification in computer programming, software documentation and analysis, or testing of computer systems or programs. For example, Plaintiff Arrington has a background as a hemodialysis practitioner. Plaintiffs and Class Members were not working as, nor were they

similarly skilled as, computer systems analysts, computer programmers or software engineers, as defined in 29 C.F.R. § 541.400(a).

25. Plaintiffs' and Class Members' primary duties consisted of training and aiding healthcare staff with using new electronic recordkeeping software. This support is also known as "at the elbow". Plaintiffs' and Class Members' primary duties did not include the higher skills of "application of systems analysis techniques and procedures" pursuant to 29 C.F.R. § 541.400(b)(1). Plaintiffs and Class Members did not analyze, consult or determine hardware, software programs or any system functional specifications for Optimum's clients. *See id.*

26. Plaintiffs and Class Members did not consult with Optimum customers to determine or recommend hardware specifications. Plaintiffs and Class Members did not design, develop, document, analyze, create, test or modify a computer system or program as defined in 29 C.F.R. § 541.400(b)(2).

27. While Plaintiffs' and Class Members' "work was highly dependent upon, or facilitated by, the use of computers and computer software programs;" they were not "primarily engaged in computer systems analysis and programming." U.S. Dept. of Labor, Wage & Hour Div., Fact Sheet #17E: Exemption for Employees in Computer-Related Occupations under the Fair Labor Standards Act (FLSA). Plaintiffs and Class Members provided support and training to Optimum's clients in using electronic recordkeeping systems.

Optimum Willfully Violated the FLSA

28. Optimum and its senior management had no reasonable basis to believe that Plaintiffs and the members of the FLSA Class were exempt from the requirements of the FLSA. Rather, Optimum either knew or acted with reckless disregard of clearly applicable FLSA provisions in failing to pay overtime to Plaintiffs and the FLSA Class. Such willfulness is

demonstrated by, or may be reasonably inferred from, Optimum's actions and/or failures to act, including the following:

- a. At all times relevant hereto, Optimum maintained payroll records which reflected the fact that Plaintiffs and the FLSA Class did, in fact, regularly work in excess of 40 hours per week, and thus, Optimum had actual knowledge that Plaintiffs and the FLSA Class worked overtime;
- b. At all times relevant hereto, Optimum knew that it did not pay Plaintiffs and the FLSA Class one and one-half (1 ½) times their regular pay rate for hours worked in excess of forty (40) hours per week;
- c. As evidenced by its own job offer letters, independent contractor agreements, employment agreements, and training materials for consultants, at all times relevant hereto, Optimum was aware of the nature of the work performed by its consultants, and, in particular, that these individuals worked exclusively at-the-elbow of healthcare workers employed by Optimum's clients, providing basic training and support;
- d. As evidenced by its own job offer letters, employment agreements, and training materials for consultants, Optimum knew and understood that it was subject to the wage requirements of the FLSA as an "employer" under 29 U.S.C. § 203(d).
- e. At all times relevant hereto, Optimum was aware that its consultants did not engage in: (i) computer systems analysis, computer programming, or software engineering, as defined in 29 C.F.R. § 541.400(a); (ii) the application of systems analysis techniques and procedures, as defined in 29 C.F.R. § 541.400(b)(1); or (iii) the design, development, analysis, creation, testing or modification of a

computer system or program, as defined in 29 C.F.R. § 541.400(b)(2);

- f. Optimum lacked any reasonable or good faith basis to believe that its consultants fell within any exemption from the overtime requirements of the FLSA. Rather, Optimum deliberately misclassified its consultants as independent contractors in order to avoid paying them overtime compensation to which they were entitled;
- g. At all times relevant hereto, Optimum was aware that it would (and, in fact did) benefit financially by failing to pay Plaintiffs and the FLSA Class one and one-half (1 ½) times their regular pay rate for hours worked in excess of forty (40) hours per week; and
- h. Thus, Optimum had (and has) a strong financial motive to violate the requirements of the FLSA by misclassifying its consultants as independent contractors.

29. Based upon the foregoing, Optimum was cognizant that, or recklessly disregarded whether, its conduct violated the FLSA.

COLLECTIVE ACTION ALLEGATIONS

30. Plaintiffs bring this Count I of this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the class defined above.

31. Plaintiffs desire to pursue their FLSA claims on behalf of all individuals who opt-in to this action pursuant to 29 U.S.C. § 216(b).

32. Plaintiffs and the FLSA Class Members are “similarly situated” as that term is used in 29 U.S.C. § 216(b) because, *inter alia*, all such individuals currently work or worked pursuant to Optimum’s previously described common business and compensation practices as described herein, and, as a result of such practices, have not been paid the full and legally

mandated overtime premium for hours worked over forty (40) during the workweek. Resolution of this action requires inquiry into common facts, including, *inter alia*, Optimum's common misclassification, compensation and payroll practices.

33. Specifically, Optimum did not compensate Plaintiffs and the FLSA Class one-and-a-half (1 ½) times the regular rate for hours worked over forty (40) in a workweek.

34. The similarly situated employees are known to Optimum, are readily identifiable, and can easily be located through Optimum's business and human resources records.

35. Optimum employs many FLSA Class Members throughout the United States. These similarly situated employees may be readily notified of this action through U.S. Mail and/or other means, and allowed to opt in to this action pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages (or, alternatively, interest) and attorneys' fees and costs under the FLSA.

PENNSYLVANIA CLASS ACTION ALLEGATIONS

36. Plaintiffs bring Count II of this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of themselves and the Pennsylvania Class defined above.

37. The members of the Pennsylvania Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are more than forty (40) members of the Pennsylvania Class.

38. Plaintiffs will fairly and adequately represent and protect the interests of the Pennsylvania Class because there is no conflict between the claims of Plaintiffs and those of the Pennsylvania Class, and Plaintiffs' claims are typical of the claims of the Pennsylvania Class. Plaintiffs' counsel are competent and experienced in litigating class actions and other complex litigation matters, including wage and hour cases like this one.

39. There are questions of law and fact common to the proposed Pennsylvania Class, which predominate over any questions affecting only individual Class Members, including, without limitation, whether Optimum has violated and continues to violate Pennsylvania law through its policy or practice of not paying its hourly workers overtime compensation.

40. Plaintiffs' claims are typical of the claims of the Pennsylvania Class Members in the following ways, without limitation: (a) Plaintiffs are members of the Pennsylvania Class; (b) Plaintiffs' claims arise out of the same policies, practices and course of conduct that form the basis of the claims of the Pennsylvania Class; (c) Plaintiffs' claims are based on the same legal and remedial theories as those of the Pennsylvania Class and involve similar factual circumstances; (d) there are no conflicts between the interests of Plaintiffs and the Pennsylvania Class Members; and (e) the injuries suffered by Plaintiffs are similar to the injuries suffered by the Pennsylvania Class Members.

41. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Pennsylvania Class predominate over any questions affecting only individual Class Members.

42. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Pennsylvania Class Members are readily identifiable from Optimum's own records. Prosecution of separate actions by individual

members of the Pennsylvania Class would create the risk of inconsistent or varying adjudications with respect to individual Pennsylvania Class Members that would establish incompatible standards of conduct for Optimum.

43. A class action is superior to other available methods for adjudication of this controversy because joinder of all members is impractical. Further, the amounts at stake for many of the Pennsylvania Class Members, while substantial, are not great enough to enable them to maintain separate suits against Optimum.

44. Without a class action, Optimum will retain the benefit of its wrongdoing, which will result in further damages to Plaintiffs and the Pennsylvania Class. Plaintiffs envision no difficulty in the management of this action as a class action.

NEW YORK CLASS ACTION ALLEGATIONS

45. Plaintiffs bring Count III of this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of themselves and the New York Class, as defined above.

46. The members of the New York Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are more than forty (40) members of the New York Class.

47. Plaintiffs will fairly and adequately represent and protect the interests of the New York Class because there is no conflict between the claims of Plaintiffs and those of the New York Class, and Plaintiffs' claims are typical of the claims of the New York Class. Plaintiffs' counsel are competent and experienced in litigating class actions and other complex litigation matters, including wage and hour cases like this one.

48. There are questions of law and fact common to the proposed New York Class, which predominate over any questions affecting only individual Class Members, including,

without limitation: whether Optimum has violated and continues to violate New York law through its policy or practice of not paying its hourly workers overtime compensation.

49. Plaintiffs' claims are typical of the claims of the New York Class in the following ways: (1) Plaintiffs are members of the New York Class; (2) Plaintiffs' claims arise out of the same policies, practices and course of conduct that form the basis of the claims of the New York Class; (3) Plaintiffs' claims are based on the same legal and remedial theories as those of the New York Class and involve similar factual circumstances; (4) there are no conflicts between the interests of Plaintiffs and the New York Class Members; and (5) the injuries suffered by Plaintiffs are similar to the injuries suffered by the New York Class Members.

50. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the New York Class predominate over any questions affecting only individual Class members.

51. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The New York Class is readily identifiable from Optimum's own records. Prosecution of separate actions by individual members of the New York Class would create the risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendant.

52. A class action is superior to other available methods for adjudication of this controversy because joinder of all members is impractical. Furthermore, the amounts at stake for many of the New York Class members, while substantial, are not great enough to enable them to maintain separate suits against Optimum. Without a class action, Optimum will retain the benefit of its wrongdoing, which will result in further damages to Plaintiffs and the New York Class. Plaintiffs envision no difficulty in the management of this action as a class action.

MASSACHUSETTS CLASS ACTION ALLEGATIONS

53. Plaintiff Arrington brings Count IV of this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of herself and the Massachusetts Class defined above.

54. The members of the Massachusetts Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are more than forty (40) members of the Massachusetts Class.

55. Plaintiff Arrington will fairly and adequately represent and protect the interests of the Massachusetts Class because there is no conflict between the claims of Plaintiff Arrington and those of the Massachusetts Class, and Plaintiff Arrington's claims are typical of the claims of the Massachusetts Class. Plaintiff's counsel are competent and experienced in litigating class actions and other complex litigation matters, including wage and hour cases like this one.

56. There are questions of law and fact common to the proposed Massachusetts Class, which predominate over any questions affecting only individual Class Members, including, without limitation, whether Optimum has violated and continues to violate Massachusetts law through its policy or practice of not paying its hourly workers overtime compensation.

57. Plaintiff Arrington's claims are typical of the claims of the Massachusetts Class Members in the following ways, without limitation: (a) Plaintiff Arrington is a member of the

Massachusetts Class; (b) Plaintiff Arrington's claims arise out of the same policies, practices and course of conduct that form the basis of the claims of the Massachusetts Class; (c) Plaintiff Arrington's claims are based on the same legal and remedial theories as those of the Massachusetts Class and involve similar factual circumstances; (d) there are no conflicts between the interests of Plaintiff Arrington and the Massachusetts Class Members; and (e) the injuries suffered by Plaintiff Arrington are similar to the injuries suffered by the Massachusetts Class Members.

58. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Massachusetts Class predominate over any questions affecting only individual Class Members.

59. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Massachusetts Class Members are readily identifiable from Optimum's own records. Prosecution of separate actions by individual members of the Massachusetts Class would create the risk of inconsistent or varying adjudications with respect to individual Massachusetts Class Members that would establish incompatible standards of conduct for Optimum.

60. A class action is superior to other available methods for adjudication of this controversy because joinder of all members is impractical. Further, the amounts at stake for

many of the Massachusetts Class Members, while substantial, are not great enough to enable them to maintain separate suits against Optimum.

61. Without a class action, Optimum will retain the benefit of its wrongdoing, which will result in further damages to Plaintiff Arrington and the Massachusetts Class. Plaintiff Arrington envisions no difficulty in the management of this action as a class action.

COUNT I
Violation of the FLSA
(On Behalf of Plaintiffs and the FLSA Class Members)

62. All previous paragraphs are incorporated as though fully set forth herein.

63. The FLSA defines “employer” broadly to include “any person acting directly or indirectly in the interest of an employer in relation to an employee...” 29 U.S.C. § 203(d).

64. Optimum is subject to the wage requirements of the FLSA because Optimum is an employer under 29 U.S.C. § 203(d).

65. During all relevant times, Optimum has been an “employer” engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.

66. During all relevant times, Plaintiffs and the FLSA Class Members have been covered employees entitled to the above-described FLSA’s protections. *See* 29 U.S.C. § 203(e).

67. Plaintiffs and the FLSA Class Members are not exempt from the requirements of the FLSA.

68. Plaintiffs and the FLSA Class Members are entitled to be paid overtime compensation for all hours worked over forty (40) in a workweek pursuant to 29 U.S.C. § 207(a)(1).

69. Optimum, pursuant to its policies and practices, failed and refused to pay overtime premiums to Plaintiffs and the FLSA Class Members for all their overtime hours worked by misclassifying Plaintiffs and the FLSA Class as independent contractors, thereby exempting them from the requirements of the FLSA.

70. Optimum knowingly failed to compensate Plaintiffs and the FLSA Class Members at a rate of one and one-half (1 ½) times their regular hourly wage for hours worked in excess of forty (40) hours per week, in violation of 29 U.S.C. § 207(a)(1).

71. In violating the FLSA, Optimum acted willfully and with reckless disregard of clearly applicable FLSA provisions.

72. In violating the FLSA, on information and belief, Optimum did not have any good faith basis to rely on any legal opinion or advice to the contrary.

COUNT II
Violation of the Pennsylvania Minimum Wage Act
(Brought on Behalf of Plaintiffs and the Pennsylvania Class)

73. All previous paragraphs are incorporated as though fully set forth herein.

74. The Pennsylvania Minimum Wage Act of 1968 (“PMWA”) requires that covered employees be compensated for all hours worked in excess of forty (40) hours per week at a rate not less than one and one-half (1 ½) times the regular rate at which he is employed. *See* 43 P.S. § 333.104(c) and 34 Pa. Code § 231.41.

75. Optimum is subject to the overtime requirements of the PMWA because Optimum is an employer under 43 P.S. § 333.103(g).

76. During all relevant times, Plaintiffs and the Pennsylvania Class members were covered employees entitled to the above-described PMWA’s protections. *See* 43 P.S. § 333.103(h).

77. Optimum's compensation scheme that is applicable to Plaintiffs and Pennsylvania Class members failed to comply with either 43 P.S. § 333.104(c) or 34 Pa. Code § 231.41.

78. The PMWA does not contain an exemption from overtime pay for any type of computer employees. *See* 43 P.S. § 333.105.

79. Optimum failed to compensate Plaintiffs and Pennsylvania Class Members at a rate of one and one-half (1 ½) times their regular hourly wage for hours worked in excess of forty (40) hours per week, in violation of 43 P.S. § 333.104(c) and 34 Pa. Code § 231.41.

80. Pursuant to 43 P.S. § 333.113, employers, such as Optimum, who fail to pay an employee wages in conformance with the PMWA shall be liable to the employee for the wages or expenses that were not paid, court costs and attorneys' fees incurred in recovering the unpaid wages.

COUNT III
Violation of New York Minimum Wage Act
(On Behalf of Plaintiffs and the New York Class)

81. All previous paragraphs are incorporated as though fully set forth herein.

82. Overtime compensation due to New York workers is governed by New York Labor Law ("NYLL"), N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.2.

83. NYLL requires that non-resident employees be compensated for all hours worked in excess of forty (40) hours per week at a rate not less than one and one-half (1 ½) times the regular rate at which he is employed. *See* N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.2.

84. NYLL requires that resident employees be compensated for all hours worked in excess of forty-four (44) hours per week at a rate not less than one and one-half (1 ½) times the regular rate at which he is employed. *See* N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.2.

85. Optimum is subject to the wage requirements of the NYLL because Optimum is an “employer” under N.Y. LAB. LAW § 651(6).

86. During all relevant times, Plaintiffs and the New York Class are covered employees entitled to the above-described NYLL’s protections. *See* N.Y. LAB. LAW § 651(5) and N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.14.

87. Plaintiffs and the New York Class are not exempt from the requirements of the NYLL.

88. Optimum is required by NYLL to pay Plaintiffs and the New York Class time and one-half (1 ½) the regular rate of pay for any work in excess of forty (40) hours for non-residents and forty-four (44) hours for residents pursuant to N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.2.

89. Optimum violated Plaintiffs’ and New York Class Members’ rights by failing to pay them the legally required amount of overtime compensation at rates not less than one and one-half (1 ½) times the regular rate of pay their regular rate of pay to which they are entitled under N.Y. COMP. CODES R. & REGS. tit. 12, § 142-2.2.

90. In violating the NYLL, Optimum acted willfully and with reckless disregard of clearly applicable NYLL provisions.

COUNT IV
Violation of Massachusetts Wage Laws
(Brought on Behalf of Plaintiff Arrington and the Massachusetts Class)

91. All previous paragraphs are incorporated as though fully set forth herein.

92. The Massachusetts Overtime Law does not contain an exemption from overtime pay for any type of computer employees. *See* Mass. Gen. L. c. 151 § 1A.

93. Defendant’s conduct, as set forth above, in failing to pay Plaintiff Arrington and

class members overtime wages which they earned as a result of their employment violates the Massachusetts overtime law, Mass. Gen. L. c. 151 §§ 1, 1A. This claim is brought pursuant to Mass. Gen. L. c. 151 § 1B.

94. Pursuant to the requirements of Mass. Gen. L. c. 149, § 150, Plaintiff Arrington has filed an administrative complaint with the office of the Massachusetts Attorney General. The Attorney General's office issued a right to sue letter on August 22, 2017.

JURY DEMAND

Plaintiffs request a trial by jury on all of their claims.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs seek the following relief on behalf of themselves and the Classes:

- a. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. §216(b);
- b. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all potential FLSA Class Members;
- c. An order permitting this litigation to proceed as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the Pennsylvania Class;
- d. An order permitting this litigation to proceed as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the New York Class;
- e. An order permitting this litigation to proceed as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the Massachusetts Class;
- f. Back pay damages for unpaid overtime compensation and prejudgment interest to the fullest extent permitted under the law;
- g. Liquidated and exemplary damages to the fullest extent permitted under the law;

- h. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the law; and
- i. Such other and further relief as this Court deems just and proper.

Dated: September 1, 2017

Respectfully submitted,



Eric Lechtzin

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*Attorneys for Plaintiff
and the Proposed Classes*

* *Pro Hac Vice* anticipated

Exhibit A

OPT-IN CONSENT FORM

Unpaid Wages and Overtime Litigation – Optimum Healthcare IT, LLC


Complete And Mail (or Email) To:

OPTIMUM HEALTHCARE IT, LLC OVERTIME LITIGATION
 ATTN: STACY SAVETT
 BERGER & MONTAGUE, P.C.
 1622 LOCUST STREET
 PHILADELPHIA, PA 19103
 Email: stasavett@bm.net
 Phone: (215) 875-3033
 Fax: (215) 875-4604

Name: <u>Andrea Arrington</u> (Please Print)	Date of Birth: Redacted Redacted
Address: Redacted Redacted Redacted Redacted Redacted Redacted Redacted	Phone No.: Redacted Redacted Email: Redacted Redacted Redacted Redacted

CONSENT TO JOIN COLLECTIVE ACTION**Pursuant to Fair Labor Standards Act, 29 U.S.C. § 216(b)**

- I consent and agree to pursue my claims arising out of alleged violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* in connection with the above-referenced lawsuit.
- I have worked for Optimum Healthcare IT, LLC (“Defendant”) in **(state(s))** WI, OR, PA, SC, NY, IL, WA, CT, NC from on or about **(dates(s))** Dec. 2016 to on or about **(dates(s))** Aug 2014.
- I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* I hereby agree and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.
- I specifically authorize the Named Plaintiff and his attorneys, Berger & Montague, P.C. and Lichten & Liss-Riordan, P.C., as my agents to prosecute this lawsuit on my behalf and to negotiate a settlement of any and all claims I have against the Defendant in this case.

7/18/2017 (Date Signed)	 (Signature)
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****IMPORTANT NOTE****

Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.

Exhibit B

OPT-IN CONSENT FORM

Unpaid Wages and Overtime Litigation – Optimum Healthcare IT, LLC

Complete And Mail (or Email) To:

OPTIMUM HEALTHCARE IT, LLC OVERTIME LITIGATION
ATTN: STACY SAVETT
BERGER & MONTAGUE, P.C.
1622 LOCUST STREET
PHILADELPHIA, PA 19103
Email: stasavett@bm.net
Phone: (215) 875-3033
Fax: (215) 875-4604

Name: <u>Terry Scott</u> <small>(Please Print)</small>	Date of Birth: Redacted
Address: Redacted Redacted Redacted Redacted Redacted Redacted Redacted	Phone No.: Redacted Redacted Email: Redacted Redacted Redacted

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to Fair Labor Standards Act, 29 U.S.C. § 216(b)

- I consent and agree to pursue my claims arising out of alleged violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* in connection with the above-referenced lawsuit.
- I have worked for Optimum Healthcare IT, LLC (“Defendant”) in **(state(s))** Multiple States from on or about **(dates(s))** 8/2012 to on or about **(dates(s))** 12/2016.
- I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* I hereby agree and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.
- I specifically authorize the Named Plaintiff and his attorneys, Berger & Montague, P.C. and Lichten & Liss-Riordan, P.C., as my agents to prosecute this lawsuit on my behalf and to negotiate a settlement of any and all claims I have against the Defendant in this case.

<u>7/18/2017</u> <small>(Date Signed)</small>	<u>Terry Scott</u> <small>(Signature)</small>
--------------------------------------------------	--------------------------------------------------

****IMPORTANT NOTE****

Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.

JS 44 (Rev. 06/17)

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
 ANDREA ARRINGTON and TERRY SCOTT,
 individually and on behalf of all others similar situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Eric Lechtzin, Sarah R. Schalman-Bergen, Camille Fundora,
 Berger & Montague, P.C., 1622 Locust Street, Philadelphia PA
 19103, 215-875-3000

DEFENDANTS
 OPTIMUM HEALTHCARE IT, LLC

County of Residence of First Listed Defendant Duval County, FL
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

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

Click here for: [Nature of Suit Code Descriptions](#)

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	<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"/> 835 Patent - Abbreviated New Drug Application <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))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 700 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	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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 - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

Brief description of cause:
 Denial of wages and overtime compensation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMANDS CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER SEP - 1 2017

DATE 9/1/2017 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

RBS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

ANDREA ARRINGTON and TERRY SCOTT,
individually & on behalf of all others similarly situated

v.

OPTIMUM HEALTHCARE IT, LLC,

CIVIL ACTION

17 3950

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
- (f) Standard Management – Cases that do not fall into any one of the other tracks.

September 1, 2017

Plaintiff

Date

Attorney-at-law

Attorney for

215-875-3000

215-875-4604

elechtzin@bm.net

Telephone

FAX Number

E-Mail Address

(Civ. 660) 10/02

SEP - 1 2017

17 3950

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Andrea Arrington, 4060 Princeton Blvd., South Euclid, OH 44121; Terry Scott, 1045 Hereford Rd., Cleveland Heights, OH 44112

Address of Defendant: 1300 Marsh Landing Pkwy #105, Jacksonville Beach, FL 32250

Place of Accident, Incident or Transaction: Philadelphia, PA (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [] No [X]

Does this case involve multidistrict litigation possibilities? Yes [] No [X]

RELATED CASE, IF ANY: Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No [X]

CIVIL: (Place [X] IN ONE CATEGORY ONLY)

- A. Federal Question Cases:
1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [X] All other Federal Question Cases (Please specify) Fair Labor Standards Act

- B. Diversity Jurisdiction Cases:
1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability — Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Eric Bechtzin, counsel of record do hereby certify:
[X] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
[] Relief other than monetary damages is sought.

DATE: 9/1/2017 Attorney-at-Law Eric Bechtzin Attorney I.D.# 62096

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 9/1/2017 Attorney-at-Law Eric Bechtzin Attorney I.D.# 62096

SEP - 1 2017

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Two Consultants Claim Optimum Healthcare IT Owes Unpaid Overtime](#)
