

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

Kim Baker, individually and on behalf
of all others similarly situated,

Civil Action No. _____

Plaintiff,

v.

Kare Management Solutions, LLC

Defendant.

PLAINTIFF’S COLLECTIVE ACTION COMPLAINT

Plaintiff Kim Baker (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Kare Management Solutions, LLC (“Defendant”), for damages and other relief relating to violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”). Plaintiff states the following as her claims against Defendant:

OVERVIEW

1. Plaintiff brings claims to recover unpaid overtime compensation under the Fair Labor Standards Act. She brings these claims on her own behalf, and as a collective action on behalf of all current or former similarly situated home health aides, who may choose to opt in to this action under 29 U.S.C. § 216(b).

2. As described below, Defendant failed to pay Plaintiff and those similarly situated 1.5 times their regular rate of pay for all hours worked over forty (40) in a workweek. By doing so, Defendant has violated the FLSA.

THE PARTIES

Plaintiff

3. Plaintiff Kim Baker is an adult resident of the state of Virginia. Plaintiff worked for Defendant as a Home Health Aide (“HHA”), specifically a Certified Nursing Assistant (“CNA”), from approximately September 2015 to January 2018.

4. Pursuant to 29 U.S.C. § 216(b), Plaintiff Baker consents in writing to be a party to the FLSA claims asserted. Her consent form is attached as **Exhibit A**. As this case proceeds, it is likely other individuals will file consent forms and join as opt-in plaintiffs.

5. Plaintiff and those similarly situated are or were employees of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

Defendant

6. Defendant Kare Management Solutions, LLC is a Virginia corporation with its principal place of business in Alexandria, Virginia. Defendant is a home health care agency that provides in-home health care services, including skilled nursing, home health aide services, speech therapy, medical social services, occupational therapy, and physical therapy services for children and adults.

7. Defendant is or 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)(1), and, upon information and belief, has had an annual gross volume of sales made or business done of not less than \$500,000 at all relevant times.

8. Upon information and belief, Defendant has a practice of unlawfully and improperly paying its HHAs “straight time” (their regular hourly rate) for their overtime hours, rather than the legally required rate of 1.5 times their hourly rate of pay.

9. At all relevevant times, Defendant is, and has been, an “employer” of Plaintiff and those similarly situated within the meaning of the FLSA, 29 U.S.C. § 203(d).

10. Plaintiff, and all those similarly situated, are or were individual employees engaged in commerce or in the production of goods or services for commerce. 29 U.S.C. § 207.

JURISDICTION & VENUE

11. This Court has subject matter jurisdiction under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331, because Plaintiff’s claims arise under the Fair Labor Standards Act. This Court has personal jurisdiction over Defendant because Defendant regularly conducts business in the Eastern District of Virginia.

12. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Defendant resides within this District, and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this District.

FACTUAL ALLEGATIONS

13. Plaintiff and those similarly situated worked for Defendant as HHAs to provide companionship and related in-home care services for Defendant’s clients.

14. Defendant classified Plaintiff and those similarly situated as its employees.

15. Defendant has suffered and permitted Plaintiff and those similarly situated to regularly work more than forty (40) hours in certain workweeks. During her employment with Defendant, Plaintiff often worked between approximately fifty (50) and seventy (70) (or more) hours per week. Upon information and belief, Defendant has also suffered and permitted other similarly situated HHAs to regularly work more than forty (40) hours in certain workweeks.

16. Plaintiff and those similarly situated were not compensated in accordance with the FLSA because they were not paid proper overtime wages for all hours worked in excess of forty

(40) per workweek. Specifically, rather than paying them 1.5 times their regular rate of pay for all hours worked over forty (40) in a workweek, which is required by the FLSA, Defendant paid them only “straight time” for overtime hours. *See* 29 U.S.C. § 207.

17. Defendant was aware that Plaintiff and those similarly situated worked overtime hours. Defendant coordinated Plaintiff’s work schedule and required Plaintiff and those similarly situated to report their work hours via weekly timesheets, which routinely reflected overtime hours. As set forth above, Defendant improperly paid only straight time, not time and-a-half, for overtime hours worked.

COLLECTIVE ACTION ALLEGATIONS

18. Plaintiff brings Count I of this action individually and on behalf and all similarly situated individuals. Plaintiff seeks certification of the following FLSA collective:

All current or former Home Health Aides, or other similar job titles, who have worked for Defendant at any time during the three years prior to the filing of this Complaint through the entry of judgment (the “FLSA Collective”).

19. Pursuant to the FLSA, 29 U.S.C. § 207, employers are generally required to pay overtime compensation at a rate of 1.5 times an employee’s regular rate of pay for hours worked over forty (40) in a workweek.

20. The FLSA contains an exemption from overtime for “domestic workers” who provide companionship and other services to individuals who were unable to care for themselves, and also contains an exemption for live in domestic service workers. *See* 29 U.S.C. §§ 213(b)(21) and 213(a)(15). In October 2013, the United States Department of Labor determined that these exemptions do not apply to domestic-service workers employed by third-party agencies or employers.

21. Beginning on January 1, 2015, the regulations provide that domestic-service workers employed by third-party agencies or employers are not exempt from the FLSA's minimum wage and overtime requirements. 29 C.F.R. § 552.109(a). Accordingly, as of January 1, 2015, all domestic-service workers employed by third-party agencies or employers are entitled to overtime compensation at an hourly rate of 1.5 times the employee's regular rate of pay for hours worked over forty (40) in a work week.

22. Since January 1, 2015, Plaintiff and those similarly situated have worked in excess of forty (40) hours per workweek for Defendant without receiving proper overtime compensation for their overtime hours worked.

23. As an example, for the two-week pay period ending on September 3, 2017, Defendant paid Plaintiff a regular rate of \$10.50 per hour for the 174 hours she worked. No overtime wages were paid.

24. As a result of its failure to pay Plaintiff and those similarly situated the overtime compensation required by law, Defendant has violated the provisions of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2).

25. Upon information and belief, Defendant is and was aware of its improper failure to pay overtime to Plaintiff and those similarly situated. Defendant knowingly, willfully, or in reckless disregard of the law, maintained an illegal practice of failing to pay Plaintiff and the FLSA Collective proper overtime compensation for all hours worked over forty (40).

CAUSES OF ACTION

COUNT I – OVERTIME WAGES
FAIR LABOR STANDARDS ACT – 29 U.S.C. § 201, *et seq.*
On Behalf of Plaintiff and the FLSA Collective

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

27. The FLSA, 29 U.S.C. § 207, requires employers to pay non-exempt employees 1.5 times the regular rate of pay for all hours worked over forty (40) hours per workweek.

28. Defendant suffered and permitted Plaintiff and those similarly situated to routinely work more than forty (40) hours in a workweek without proper overtime compensation as required by the FLSA, 29 U.S.C. § 201 *et seq.* and its implementing regulations.

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

30. Defendant's failure to comply with the FLSA overtime protections caused Plaintiff and those similarly situated to suffer loss of wages and interest thereon.

31. Plaintiff and those similarly situated are entitled to unpaid overtime, liquidated damages, and attorney's fees and costs under the FLSA.

RELIEF SOUGHT

WHEREFORE, Plaintiff, individually and on behalf of those similarly situated, prays for relief as follows:

- A. Permitting this case to proceed as a collective action under § 216(b) of the FLSA and ordering notice to the putative plaintiffs at the earliest opportunity to ensure their claims are not lost to the FLSA statute of limitations;
- B. Judgment that Plaintiff and those similarly situated are employees and are entitled to the overtime protections under the FLSA;
- C. Judgment against Defendant for violation of the overtime provisions of the FLSA;
- D. Judgment that Defendant's violations of the FLSA were willful;
- E. An award to Plaintiff and those similarly situated in the amount of unpaid overtime wages and liquidated damages;
- F. An award of any pre- and post-judgment interest;
- G. An award of reasonable attorneys' fees and costs;

- H. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and
- I. Such further relief as may be necessary and appropriate.

Dated: April 20, 2018

Respectfully Submitted:

/s/ Gregg C. Greenberg
Gregg C. Greenberg, VA Bar No. 79610
ggreenberg@zagfirm.com
ZIPIN, AMSTER & GREENBERG
8757 Georgia Ave., Suite 400
Silver Spring, MD 20910
Telephone: (301) 587-9373
Facsimile: (240) 839-9142

and

Robert L. Schug*
schug@nka.com
Jason D. Friedman*
jfriedman@nka.com
NICHOLS KASTER, PLLP
4600 IDS Center, 80 S. 8th Street
Minneapolis, Minnesota 55402
Telephone: (612) 256-3200
Facsimile: (612) 215-6870

*To be admitted *pro hac vice*


ATTORNEYS FOR PLAINTIFF AND
THOSE SIMILARLY SITUATED

EXHIBIT A

**KARE MANAGEMENT SOLUTIONS, LLC
PLAINTIFF CONSENT FORM**

1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* against my current/former employer(s), Kare Management Solutions, LLC and any other related entities or affiliates, to recover overtime pay.
2. During the past three years, there were occasions when I worked over 40 hours per week for Kare Management Solutions, LLC as a home care worker, or similar job title, and did not receive proper compensation for my overtime hours worked.
3. If this case does not proceed collectively, then I also consent to join any subsequent action to assert these claims against Kare Management Solutions, LLC and any other related entities or affiliates.

Date: 4/20/2018



Signature

Kim Baker

Print Name

Redacted

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

Kim BAKER, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Gregg C. Greenberg, Zipin Amster & Greenberg 8757 Georgia Avenue, Suite 400, Silver Spring, MD 20910 (301) 587-9373

DEFENDANTS

Kare Management Solutions, LLC

County of Residence of First Listed Defendant Stafford (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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. § 201. Brief description of cause: Failure to pay overtime wages.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ > 75,000.00. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/20/2018 SIGNATURE OF ATTORNEY OF RECORD /s/Gregg C. Greenberg

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kare Management Solutions Owes Unpaid Overtime, Fmr. Home Health Aide Claims](#)
