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9 Attorneys for Plaintiffs

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF ARIZONA**

12 **Gina Bell**, Individually and on Behalf of
13 All Others Similarly Situated,

14 Plaintiffs,

15 v.

16 **Fountain Hills Assisted Living, LLC**, an
17 Arizona limited liability company; **Skyline**
18 **Estate Assisted Living, LLC**; an Arizona
19 limited liability company; **Tucson Medical**
20 **Supply, LLC**; an Arizona limited liability
21 company; **Parkers Adult Care, LLC**; an
22 Arizona limited liability company; **Ayse's**
23 **Specialized Care, LLC**; an Arizona
24 limited liability company; **Andre**
25 **Lampkins**; and **Ayse Lampkins**, Arizona
26 residents,

27 Defendants.

28 **Case No.**

**COLLECTIVE ACTION COMPLAINT
FOR COMPENSATION UNDER 29
U.S.C. § 201, ET SEQ.**

29 Plaintiff Gina Bell, individually, and on behalf of all other persons similarly
30 situated, allege as follows:

31 **PRELIMINARY STATEMENT**

32 1. Plaintiff and the Collective Members are current and former domestic-
33 service workers employed by Defendants and bring this action on behalf of themselves and

1 all similarly-situated current and former caregiver and/or home care aid employees who
2 were compensated on an hourly basis, and who were not paid one-and-one-half times their
3 regular rates of pay for all time worked in excess of 40 hours in a given workweek.

4
5 2. Plaintiff and the Collective Members bring this action against Defendants for
6 their unlawful failure to pay overtime and minimum wage in violation of the Fair Labor
7 Standards Act, 29 U.S.C. § 201-219 (hereinafter “FLSA”).

8
9 3. This is an action for equitable relief, minimum wages, overtime wages,
10 unpaid wages, liquidated damages, interest, attorneys’ fees, and costs under the FLSA.

11 4. The FLSA was enacted “to protect all covered workers from substandard
12 wages and oppressive working hours.” Under the FLSA, employers must pay all non-
13 exempt employees one-and-one-half times their regular rates of pay for all time spent
14 working in excess of 40 hours per workweek. *See* 29 U.S.C. § 207(a).

15
16 **JURISDICTION AND VENUE**

17 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
18 29 U.S.C. § 201, *et seq.*

19
20 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c)
21 because acts giving rise to the claims of Plaintiff and the Collective Members occurred
22 within the District of Arizona, and Defendants regularly conduct business in and have
23 engaged in the wrongful conduct alleged herein – and, thus, are subject to personal
24 jurisdiction in – this judicial district.

25
26 **PARTIES**

27 7. At all relevant times to the matters alleged herein, Plaintiff Gina Bell resided
28 in the State of Arizona in Pima County.

1 8. At all material times, Bell was a full-time, non-exempt employee of
2 Defendants from on or around September 2015 until on or around March 2017.

3 9. At all relevant times during her employment, Bell was employed to perform
4 various tasks, such as household work related to the care of the aged or infirm person such
5 as meal preparation, bed making, washing of clothes, and other similar service in her
6 capacity as a caregiver and/or home care aid.
7

8 10. At all relevant times, Bell was an employee of Defendants as defined by 29
9 U.S.C. § 203(e)(1) and was a non-exempt employee.
10

11 11. Defendant Fountain Hills Assisted Living, LLC, is an Arizona limited
12 liability company, authorized to do business in the State of Arizona and was at all relevant
13 times Plaintiff's and the Collective Members' employer as defined by 29 U.S.C. § 203(d).
14

15 12. Defendant Fountain Hills Assisted Living, LLC is a third-party employer of
16 home health care workers such as Plaintiff and the Collective Members.

17 13. Defendant Skyline Estate Assisted Living, LLC, is an Arizona limited
18 liability company, authorized to do business in the State of Arizona and was at all relevant
19 times Plaintiff's and the Collective Members' employer as defined by 29 U.S.C. § 203(d).
20

21 14. Defendant Skyline Estate Assisted Living, LLC is a third-party employer of
22 home health care workers such as Plaintiff and the Collective Members.

23 15. Defendant Tucson Medical Supply, LLC, is an Arizona limited liability
24 company, authorized to do business in the State of Arizona and was at all relevant times
25 Plaintiff's and the Collective Members' employer as defined by 29 U.S.C. § 203(d).
26

27 16. Defendant Tucson Medical Supply, LLC is a third-party employer of home
28 health care workers such as Plaintiff and the Collective Members.

1 17. Defendant Parkers Adult Care, LLC, is an Arizona limited liability company,
2 authorized to do business in the State of Arizona and was at all relevant times Plaintiff’s
3 and the Collective Members’ employer as defined by 29 U.S.C. § 203(d).

4 18. Defendant Parkers Adult Care, LLC is a third-party employer of home health
5 care workers such as Plaintiff and the Collective Members.

6 19. Defendant Ayse’s Specialized Care, LLC, is an Arizona limited liability
7 company, authorized to do business in the State of Arizona and was at all relevant times
8 Plaintiff’s and the Collective Members’ employer as defined by 29 U.S.C. § 203(d).

9 20. Defendant Ayse’s Specialized Care, LLC is a third-party employer of home
10 health care workers such as Plaintiff and the Collective Members.

11 21. Defendants Andre Lampkins and Ayse Lampkins are, upon information and
12 belief, husband and wife. They have caused events to take place giving rise to this action
13 as to which their marital community is fully liable.

14 22. Andre Lampkins is an owner of the previously identified corporate entities
15 and was at all relevant times Plaintiff’s and the Collective Members’ employer as defined
16 by 29 U.S.C. § 203(d).

17 23. Ayse Lampkins is an owner of the previously identified corporate entities
18 and was at all relevant times Plaintiff’s and the Collective Members’ employer as defined
19 by 29 U.S.C. § 203(d).

20 24. Defendants Andre Lampkins and Ayse Lampkins had the authority to hire
21 and fire employees, supervised and controlled work schedules or the conditions of
22 employment, determined the rate and method of payment, and maintained employment
23 records in connection with Plaintiff’s and the Collective Members’ employment with
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1 Defendants. As persons who acted in the interest of Defendants’ corporate entities in
2 relation to their employees, Andre Lampkins and Ayse Lampkins are subject to individual
3 liability under the FLSA.
4

5 25. Further, at all material times, Defendants have operated as a “single
6 enterprise” within the meaning of Section 203(r)(1) of the FLSA. 29 U.S.C. § 203(r)(1).
7 That is, Defendants perform related activities through unified operation and common
8 control for a common business purpose.
9

10 26. Defendants operate a chain of assisted living facilities that provide services
11 to elderly people or people with illnesses, injuries, or disabilities. Defendants operate each
12 location almost identically and their customers can expect the same kind of service
13 regardless of the location. Defendants share employees, have common management, pool
14 their resources, operate from the same headquarters, and have common ownership.
15 Defendants provide the same services to its customers by using a set formula when
16 conducting its business. Part of that set formula is the wage violation alleged in this
17 Complaint. These facts represent a classic example of “corporate fragmentation.”
18

19
20 27. Plaintiff is further informed, believes, and thereon alleges that each of the
21 Defendants herein gave consent to, ratified, and authorized the acts of all other Defendants,
22 as alleged herein.
23

24 28. Defendants, and each of them, are sued in both the individual and corporate
25 capacities.
26

27 29. Defendants are jointly and severally liable for the injuries and damages
28 sustained by Plaintiff and the Collective Members.

1 30. Plaintiff and the Collective Members, in their work for Defendants, were
2 employed by an enterprise engaged in commerce that had annual gross sales made or
3 business done of at least \$500,000.
4

5 COLLECTIVE ACTION ALLEGATIONS

6 31. Plaintiff Bell brings this action on behalf of herself and all other similarly
7 situated individuals pursuant to 29 U.S.C. § 216(b). Plaintiff and the similarly situated
8 individuals worked as caregivers and/or home care aids (or in a position with similar job
9 titles or job duties) for Defendants. The proposed collective class for the FLSA claim is
10 defined as follows:
11

12 **All persons who worked as caregivers and/or home care aides (or in other**
13 **positions with similar job titles or job duties) for Defendants at any time from**
14 **three years prior to the filing of this Complaint through the entry of judgment**
15 **(the “Collective Members”).**

16 32. Plaintiff has given her written consent to be a party Plaintiff in this action
17 pursuant to U.S.C. § 216(b). Plaintiff’s signed consent form is attached as “**Exhibit 1**”.
18 As this case proceeds, it is likely that other individuals will file consent forms and join as
19 “opt-in” plaintiffs.

20 33. At all relevant times, Plaintiff and the Collective Members are and have been
21 similarly situated, have had substantially similar job requirements and pay provisions, and
22 are and have been subject to Defendants’ decision, policy, plan, and common programs,
23 practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay
24 and one-and-one-half times Plaintiff’s and the Collective Members’ regular rates of pay
25 for all time in excess of forty (40) hours per workweek that Defendants suffered or
26 permitted them to work. Plaintiff’s claims stated herein are essentially the same as those of
27
28

1 the Collective Members. This action is properly maintained as a collective action because
2 in all pertinent aspects the employment relationship of individuals similarly situated to
3 Plaintiff are identical or substantially similar.

4
5 34. Defendants paid Plaintiff a salary or fixed amount and classified her as an
6 exempt employee.

7
8 35. Defendants improperly classified Plaintiff and the Collective Members as
9 exempt from the FLSA's overtime pay requirements.

10
11 36. Plaintiff and the Collective Members routinely worked over forty (40) hours
12 in a workweek and were not compensated by Defendants with overtime pay for the hours
13 they worked over forty in a workweek.

14
15 37. For example, Plaintiff regularly worked at least two 24-hour shifts per week,
16 in addition to a separate 12-hour shift, and was not paid an overtime premium for the hours
17 she worked over forty in the workweek.

18
19 38. Defendants are aware that Plaintiff and, upon information and belief, those
20 similarly situated work(ed) under these conditions, and yet Defendants still denied them
21 overtime compensation.

22
23 39. The Collective Members perform or have performed the same or similar work
24 as the Plaintiff.

25
26 40. The Collective Members regularly work or have worked in excess of forty
27 (40) hours during a given workweek.

28
29 41. The Collective Members are not exempt from receiving overtime pay.

30
31 42. As such, the Collective Members are similar, if not identical, to Plaintiff in
32 terms of job duties, pay structure, and/or the denial of overtime pay.

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1 43. Defendants' failure to pay overtime compensation required by the FLSA
2 results from generally applicable policies or practices, and does not depend on the personal
3 circumstances of the Collective Members.
4

5 44. The experiences of Plaintiff, with respect to her pay, are typical of the
6 experiences of the Collective Members.
7

8 45. All class members, irrespective of their particular job requirements and job
9 titles, are entitled to compensation for hours worked in excess of forty (40) during a given
10 workweek.
11

12 46. Although the exact amount of damages may vary among the Collective
13 Members, the damages for the Collective Members can be easily calculated by a simple
14 formula. The claims of all Collective Members arise from a common nucleus of facts.
15 Liability is based on a systematic course of wrongful conduct by the Defendants that caused
16 harm to all of the Collective Members.
17

18 47. Defendants uniformly misrepresented to Plaintiff and other caregivers and/or
19 home care aides that they were exempt employees and therefore ineligible to receive
20 overtime pay. In reality, Plaintiff and other similarly situated employees are, and were,
21 non-exempt employees who are, and were, entitled to overtime pay.
22

23 48. Defendants failed to make, keep, and preserve records of hours worked by
24 Plaintiff and other caregivers and/or home care aides.
25

26 49. Defendants are liable under the FLSA for failing to properly compensate
27 Plaintiff and all other caregivers and/or home care aides.
28

50. Notice of this action should be sent to all similarly situated caregivers and/or
home care aides.

1 51. There are numerous similarly situated current and former employees of
2 Defendants who have been denied appropriate compensation in violation of the FLSA, who
3 would benefit from a Court supervised notice of the lawsuit and the opportunity to join the
4 case. Those similarly stated employees are known to Defendants and are readily
5 identifiable through Defendants' records.

7 **FACTUAL ALLEGATIONS RELATING TO PLAINTIFF BELL**

8 52. On or around September 2015, Bell began employment with Defendants as a
9 caregiver and/or home care aide, performing various tasks, such as household work related
10 to the care of the aged or infirm person, including but not limited to, meal preparation, bed
11 making, washing of clothes, and other similar service.

13 53. Plaintiff did not have supervisory authority over any employees.

14 54. Plaintiff did not possess the authority to hire or fire employees.

15 55. Plaintiff did not possess the authority to make critical job decisions with
16 respect to any of Defendants' employees.

18 56. Plaintiff did not direct the work of two or more employees.

19 57. Plaintiff did not exercise discretion and independent judgment with respect to
20 matter of significance.

22 58. Plaintiff was not a manager.

23 59. Plaintiff's primary duty was not the management of the enterprise in which
24 she was employed or any recognized department of the enterprise.

25 60. Plaintiff routinely worked with knowledge of Defendants, and often at
26 Defendants' request, in excess of 40 hours per week.
27
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1 61. Specifically, during her employment, Plaintiff routinely worked in excess of
2 40 hours per week and was not paid the premium one-and-one-half times her regular rate
3 as required under the FLSA for hours worked over 40 in a workweek. For example, Plaintiff
4 regularly worked at least two 24-hour shifts per week, in addition to a separate 12-hour
5 shift, and was not paid an overtime premium for the hours she worked over forty in the
6 workweek.
7

8 62. Defendants uniformly misrepresented to Plaintiff that she was an exempt
9 employee and therefore ineligible to receive overtime pay.
10

11 63. For example, during workweek of August 8, 2016, Plaintiff Bell worked
12 approximately 96 hours without being compensated the FLSA required one-and-one-half
13 times premium for all hours worked in excess of forty in a workweek.
14

15 **COUNT ONE: FAIR LABOR STANDARDS ACT**
16 **FAILURE AND/OR REFUSAL TO PAY OVERTIME**

17 64. Plaintiff, on behalf of herself and the Collective Members, realleges and
18 incorporate by reference all allegations in all preceding paragraphs.

19 65. Plaintiff and the Collective Members were non-exempt employees entitled to
20 the statutorily mandated overtime wages.
21

22 66. While employed by Defendants, Plaintiff and the Collective Members worked
23 tens of hours of overtime per week each and every workweek for which they worked for
24 Defendants, and Defendants did not pay to Plaintiff and the Collective Members one-and-
25 one-half times their regular rate of pay for such time.
26

27 67. As a result, Defendants have intentionally failed and/or refused to pay
28 Plaintiff and the Collective Members overtime according to the provisions of the FLSA.

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1 68. Defendants further have engaged in a widespread pattern and practice of
2 violating the provisions of the FLSA by failing and/or refusing to pay Plaintiff and the
3 Collective Members in accordance with 29 U.S.C. § 207.
4

5 69. As a result, Defendants have intentionally failed and/or refused to pay
6 Plaintiff and the Collective Members overtime according to the provisions of the FLSA.
7

8 70. Defendants further have engaged in a widespread pattern and practice of
9 violating the provisions of the FLSA by failing to pay Plaintiff and the Collective Members
10 in accordance with 29 U.S.C. § 207.

11 71. Defendants knew that – or acted with reckless disregard as to whether – their
12 refusal or failure to properly compensate Plaintiff and the Collective Members over the
13 course of their employment would violate federal and state law, and Defendants were aware
14 of the FLSA minimum wage requirements during Plaintiff’s and the Collective Members’
15 employment. As such, Defendants’ conduct constitutes a willful violation of the FLSA.
16

17 72. As a result of Defendants failure or refusal to pay Plaintiff and the Collective
18 Members a wage equal to one and one half times Plaintiff’s and the Collective Members’
19 regular rates of pay for work they performed for Defendants in excess of their regular 40-
20 hour workweek, Defendants violated 29 U.S.C. § 207(a). Plaintiff and the Collective
21 Members are therefore entitled to compensation of one-and-one-half times their regular
22 rates of pay, to be proven at trial, plus an additional equal amount as liquidated damages,
23 together with interest, reasonable attorney’s fees, and costs.
24
25

26 **WHEREFORE**, Plaintiff, individually, and on behalf of all other similarly situated
27 persons, respectfully requests that this Court grant the following relief in Plaintiff’s and the
28 Collective Members’ favor, and against Defendants:

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- A. Designation of this action as a collective action on behalf of the FLSA Collective Members (asserting FLSA claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to timely assert FLSA claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);
- B. For the Court to declare and find that the Defendants committed one or more of the following acts:
 - i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by failing to pay overtime wages;
 - ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;
- C. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- D. For the Court to award prejudgment and post-judgment interest;
- E. For the Court to award Plaintiff’s reasonable attorneys’ fees and costs of the action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth herein;
- F. For the Court to provide reasonable incentive awards for each named Plaintiff to compensate them for the time they spent attempting to recover wages for the Collective Members and for the risks they took in doing so; and
- G. Such other relief as this Court shall deem just and proper.

JURY TRIAL DEMAND

1
2 Plaintiff and the Collective Members hereby demand a trial by jury on all issues so
3 triable.
4

5 RESPECTFULLY SUBMITTED May 11, 2017.

6 **ZOLDAN LAW GROUP, PLLC**

7 By: /s/ Michael Zoldan
8 14500 N. Northsight Blvd., Suite 213
9 Scottsdale, AZ 85260
10 Attorneys for Plaintiffs

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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF ARIZONA**

12 **Gina Bell**, Individually and on Behalf of
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16 **Fountain Hills Assisted Living, LLC**, an
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22 Arizona limited liability company; **Ayse's**
23 **Specialized Care, LLC**; an Arizona
24 limited liability company; **Andre**
25 **Lampkins**; and **Ayse Lampkins**, Arizona
26 residents,

27 Defendants.

Case No.

**PLAINTIFF GINA BELL'S CONSENT TO
JOIN COLLECTIVE ACTION AS NAMED
PLAINTIFF**

28 I, Gina Bell, do hereby consent to be a party plaintiff to the above-entitled action. I have
read the complaint to be filed in the United States District Court for the District of Arizona, Phoenix
Division, and authorize my attorneys, Zoldan Law Group PLLC to file the complaint on my behalf
and for other employees similarly situated.



Gina Bell

Date 5/8/2017

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Gina Bell**

Defendant(s): **Fountain Hills Assisted Living, LLC
; Skyline Estate Assisted Living,
LLC ; Tucson Medical Supply, LLC
; Parkers Adult Care, LLC ; Ayse's
Specialized Care, LLC ; Andre
Lampkins ; Ayse Lampkins**

County of Residence: Pima

County of Residence: Pima

County Where Claim For Relief Arose: Pima

Plaintiff's Atty(s):

Defendant's Atty(s):

**Michael Zoldan (Gina Bell)
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II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

710 Fair Labor Standards Act

VI. Cause of Action: 29 U.S.C. § 201-219

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: Michael Zoldan

Date: 05/11/2017

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Assisted Living, Adult Care Companies Hit with Unpaid Overtime Lawsuit](#)
