

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**MAYRA CRUZ and RAUL HERRERA,
individually and on behalf of all other similarly
situated persons,**

Plaintiffs,

v.

ULTIMATE CARE, INC.,

Defendant.

Case No. 1:22-CV-07520-AMD-PK

JURY TRIAL DEMANDED

**SECOND AMENDED CLASS AND
COLLECTIVE ACTION
COMPLAINT**

Plaintiffs Mayra Cruz and Raul Herrera, individually and on behalf of all other similarly situated current and former employees of Defendant Ultimate Care, Inc. (“Ultimate Care”), bring this Collective and Class Action against Defendant and allege as follows:

OVERVIEW

1. Ms. Cruz and Mr. Herrera (“Named Plaintiffs”) are home care aides who were regularly assigned by Ultimate Care to work 24-hour shifts and were not paid for all of their work time, among other violations. They bring claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, to recover unpaid overtime compensation. They bring these claims as a collective action on behalf of themselves and all current and former home care aides employed by Ultimate Care within the three years preceding the filing of a consent to sue.
2. Named Plaintiffs also bring claims under New York’s wage-and-hour laws, including New York Labor Law (“NYLL”) Articles 6 and 19 and their implementing regulations, both individually and as a class action pursuant to Fed. R. Civ. P. 23 (“New York Class”) for Ultimate Care’s failure to pay overtime wages for all hours worked, failure to pay wages

for all hours worked under 40 in a workweek, failure to pay spread of hours, and failure to provide accurate wage statements.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States. Specifically, this collective action is brought under 29 U.S.C. § 216(b) of the FLSA.
4. This Court has subject matter jurisdiction under 28 U.S.C. § 1337 because the claims arise under federal laws regulating commerce.
5. This Court has supplemental jurisdiction over the state law claims by virtue of 28 U.S.C. § 1367, including § 1367(a).
6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Named Plaintiffs worked for Ultimate Care in this District, the causes of action arose in this District, many Plaintiffs reside in this District, and Ultimate Care resides in this District.

PARTIES

Plaintiffs

7. Mayra Cruz worked for Ultimate Care as a home care aide from approximately September 2016 until April 2020. Her title was Home Health Aide.
8. She worked for Ultimate Care in New York, including in Brooklyn, Queens, and Westchester.
9. Ms. Cruz filed her consent to sue with the original complaint. *See* Dkt. 1-3, re-filed at Dkt. 5.
10. Ms. Cruz is a resident of New York and during her employment with Ultimate Care, she was a resident of New York.

11. Raul Herrera worked for Ultimate Care as a home care aide from approximately December 2016 until approximately December 2021. His title was Home Health Aide.
12. Mr. Herrera worked for Ultimate Care in New York, including in Manhattan.
13. Mr. Herrera filed his consent to sue on April 21, 2023. *See* Dkt. 14-1.
14. Mr. Herrera is a resident of New York and, at all times during his employment with Ultimate Care, was a resident of New York.
15. The term “Plaintiffs” as used in this complaint refers to the Named Plaintiffs and any and all putative FLSA Class or New York Class Member, as defined below.

Defendant

16. Ultimate Care is a licensed home care services agency, authorized and credentialed by the New York Department of Health to operate and provide home care services to elderly, ill, and disabled individuals.
17. Ultimate Care provides home care services throughout New York City, Westchester, Nassau, and Suffolk Counties.
18. Ultimate Care is a corporation organized under the laws of New York State.
19. Ultimate Care is headquartered at 1000 Gates Avenue, 4th Floor, Brooklyn, New York, 11221, and also has offices in the Bronx and Hempstead, New York.

FLSA COVERAGE

20. At all times hereinafter mentioned, Ultimate Care has been an employer within the meaning of 29 U.S.C. § 203(d).
21. At all times hereinafter mentioned, Ultimate Care has been an enterprise within the meaning of 29 U.S.C. § 203(r).

22. At all times hereinafter mentioned, Ultimate Care 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), in that it has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000.
23. At all times hereinafter mentioned, Plaintiffs, who were employed in domestic service in households, were individual employees engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. § 207 and as defined by 29 U.S.C. § 202(a).

FACTS

24. Plaintiffs were employed by Ultimate Care as home care aides¹ who provided home care services for Ultimate Care's elderly, ill, or disabled clients.
25. Many of Ultimate Care's patients are particularly vulnerable due to their age or illness. For example, many patients suffer from symptoms of dementia or cognitive decline, lack full mobility, or are bedbound.
26. As a result, many of Ultimate Care's patients require assistance with activities of daily living, including walking, preparing meals, feeding and bathing themselves, using the bathroom, and taking medication.
27. As a result of their age and health conditions, many of Ultimate Care's clients require round-the-clock care 24 hours per day and seven days per week.

¹ The term "home care aide" as set forth in this Second Amended Complaint encompasses workers with the title Home Health Aides and Personal Care Aides (also called Personal Care Attendants).

28. Upon information and belief, Ultimate Care maintained a plan of care for each of its patients, which defines the services required to be provided by Ultimate Care to each patient.
29. Upon information and belief, Ultimate Care shared with Plaintiffs the patients' plans of care and directed Plaintiffs to follow their requirements.
30. Ultimate Care required Plaintiffs to report the tasks they completed during their shifts, via a Home Health Aide Duty Sheet ("duty sheet") and/or a telephone reporting system. Upon information and belief, the tasks Plaintiffs were required to perform were consistent with patients' plans of care.
31. Upon information and belief, the patients' plans of care and/or duty sheets were printed out and posted on patients' refrigerator or in an otherwise visible area of the home.

Defendant's Payroll Policies and Practices Pertaining to 24-hour ("Live-in") Shifts

32. Throughout their employment, Ultimate Care assigned Plaintiffs to care for patients for 24-hour long shifts, often referred to as "live-in" shifts.
33. Plaintiffs maintained their own home while employed by Ultimate Care, and did not reside in their patients' homes.
34. Ultimate Care regularly scheduled, and home care aides worked, 24-hour "live-in" shifts during a workweek.
35. Upon information and belief, it was Ultimate Care's policy and practice to pay Plaintiffs the New York minimum wage for thirteen hours of each 24-hour "live-in" shift worked.
36. Ultimate Care regularly scheduled Ms. Cruz, and Ms. Cruz worked, four 24-hour "live in" shifts in a workweek.

37. Ultimate Care paid Ms. Cruz the New York minimum wage for thirteen hours of each 24-hour live-in shift worked.
38. Upon information and belief, Ultimate Care did not always pay Ms. Cruz Spread of Hours pay for shifts worked longer than ten hours.
39. Ultimate Care regularly scheduled Mr. Herrera, and Mr. Herrera worked, four 24-hour “live-in” shifts in a workweek.
40. Upon information and belief, Ultimate Care did not always pay Mr. Herrera Spread of Hours pay for shifts worked longer than ten hours.
41. Upon information and belief, Plaintiffs were not compensated as required by the FLSA or the NYLL because they were not paid for all hours worked in a 24-hour shift and they were not paid overtime wages for all hours worked in excess of forty hours a week.
42. Upon information or belief, the plans of care that Ultimate Care required Plaintiffs to follow did not include an eight-hour sleep period for Plaintiffs.
43. Upon information and belief, Ultimate Care did not provide or facilitate a regularly scheduled sleep period for Plaintiffs. Instead, Plaintiffs were forced to sleep when able, at different times each shift, depending upon the circumstances that existed each shift.
44. Upon information and belief, where Plaintiffs did take sleep periods, those sleep periods were regularly interrupted by their need to attend to their patients.

Ms. Cruz’s Interrupted Sleep Periods During 24-Hour “Live-in” Shifts

45. Ultimate Care did not provide Ms. Cruz with, and she did not have, a regularly scheduled sleep period of eight hours during 24-hour “live-in” shifts.
46. Ms. Cruz was required to turn her patient every two hours according to the plan of care she was required to follow.

47. Ms. Cruz understood it was her responsibility to follow the plan of care for each patient.
48. Her patient's plan of care was posted on the refrigerator in her patient's home.
49. Ms. Cruz's sleep was regularly interrupted during 24-hour "live-in shifts" because she had to provide care for her assigned patient at all hours of the night. For example, Ms. Cruz's patient routinely called out to her in the middle of the night because the patient needed assistance to go to the bathroom or did not feel well and needed their vital signs checked.
50. These sleep period interruptions occurred during each week Ms. Cruz worked.
51. Because Ms. Cruz's sleep period was interrupted to work throughout her employment with Ultimate Care, as described above, she did not receive eight hours of sleep time that was free from work during live-in shifts.
52. Because Ms. Cruz's sleep period was interrupted to work throughout her employment with Ultimate Care, as described above, she did not receive five consecutive hours of uninterrupted sleep during live-in shifts.
53. Ms. Cruz's supervisors knew or should have known that Ms. Cruz's sleep time was regularly interrupted to care for her assigned patients and that her sleep time was not regularly scheduled.
54. In Ms. Cruz's experience it was common knowledge among Ultimate Care employees that home care aides did not sleep through the night, and that this was a basic part of the job.
55. Ms. Cruz's co-workers would talk to her about the working conditions and about not sleeping through the night.
56. Even though Ultimate Care knew or should have known that she worked during her sleep period, Ultimate Care did not pay Ms. Cruz for all or any portion of her interrupted sleep period.

Mr. Herrera's Interrupted Sleep Periods During 24-Hour "Live-in" Shifts

57. Mr. Herrera was told during an orientation session that Ultimate Care would pay only 13 hours for 24-hour "live in" shifts, because eight hours were unpaid for sleep time, and three hours were unpaid time for eating meals.
58. Ultimate Care did not provide Mr. Herrera with, and he did not have, a regularly scheduled sleep period of eight hours during 24-hour "live-in" shifts. Mr. Herrera's sleep was regularly interrupted during 24-hour "live-in" shifts because his patient would wake up in the middle of the night, needing assistance.
59. These sleep period interruptions occurred during each week Mr. Herrera worked.
60. Upon information and belief, at some point Ultimate Care required home care aides to download the HHA Exchange telephone application (the "App"), to indicate the tasks that the home care aide performed to take care of the patient.
61. Mr. Herrera used the App to report the tasks he completed when caring for his patients.
62. Mr. Herrera was not provided a code for entering sleep breaks in the App.
63. Because Mr. Herrera's sleep period was interrupted to work throughout his employment with Ultimate Care, as described above, he did not receive eight hours of sleep time that was free from work during 24-hour "live-in" shifts.
64. Because Mr. Herrera's sleep period was interrupted to work throughout his employment with Ultimate Care, as described above, he did not receive five hours of uninterrupted sleep during 24-hour "live-in" shifts.
65. Mr. Herrera complained several times to the nursing staff and to his patient's family about working through sleep periods. When he complained, the nurse told him that it was his job to attend to his patient during the night.

66. Mr. Herrera's supervisors knew or should have known that Mr. Herrera's sleep time was regularly interrupted to care for his assigned patient and that his sleep time was not regularly scheduled.
67. Even though Mr. Herrera's sleep period was interrupted to work, he complained about the interruptions, and Ultimate Care knew that he worked during his sleep period, Ultimate Care did not pay Mr. Herrera for all or any portion of his interrupted sleep period.

Plaintiffs' Work Through Sleep Periods During 24-Hour "Live-in" Shifts

68. Upon information and belief, many patients' plans of care required Plaintiffs to provide care to their patients throughout the night for reasons similar and in addition to those experienced by Ms. Cruz and Mr. Herrera. For example:
 - a. Some patients' plans of care required Plaintiffs to monitor their patients' safety because patients might be at risk of falling if they got out of bed in the middle of the night and became disoriented or confused;
 - b. Some patients were bedbound, and their plans of care required Plaintiffs to turn them every two hours; Plaintiffs also were required to help them use the bathroom during the night, or change those patients' diapers and change their clothes and bedding;
 - c. Some patients called out during the night, and Plaintiffs' sleep was interrupted when they attended to patients to reassure them or otherwise tend to their needs, such as bringing them water.
69. Despite the plans of care requiring work throughout Plaintiffs' sleep period, Ultimate Care failed to pay them for this time.

70. Upon information and belief, Plaintiffs reported in the App that they turned their patients every two hours during the night.
71. Upon information and belief, Ultimate Care did not investigate the work Plaintiffs performed during the night, even when Plaintiffs reported turning patients throughout the night.
72. Because of the patients' health conditions and need for supervision and assistance 24 hours a day, Ultimate Care knew or should have known that Plaintiffs worked during their eight-hour sleep period to care for their assigned patients.
73. Although Ultimate Care had direct or constructive knowledge of the work during Plaintiffs' sleep periods, Ultimate Care did not pay Plaintiffs for work during their sleep periods.

Ms. Cruz's Interrupted Meal Breaks During 24-Hour "Live-in" Shifts

74. Ultimate Care did not pay Ms. Cruz for three hours of each 24-hour "live-in" shift.
75. Ms. Cruz regularly worked during her three one-hour meal breaks to care for her patients because she was consumed with patient care and household chores, and there was no time for her to take a meal break.
76. Ms. Cruz ate her meals quickly, usually at the same time that she was preparing meals for her patients.
77. Each week, Ms. Cruz worked during part or all of her meal breaks.

Mr. Herrera's Interrupted Meal Breaks During 24-Hour "Live-in" Shifts

78. Ultimate Care did not pay Mr. Herrera for three hours of each 24-hour "live-in" shift because that time was meant for three one-hour meal breaks.
79. Mr. Herrera regularly worked during his three one-hour meal breaks to care for his patient, because his patient regularly requested his assistance and continuous supervision.

80. Each week, Mr. Herrera worked during part or all of his meal breaks.

81. Mr. Herrera was not provided a code for entering meal breaks in the App.

Plaintiffs' Interrupted Meal Periods During 24-Hour "Live-in" Shifts

82. Upon information and belief, Plaintiffs worked during their meal breaks and were not paid for the time spent working. For example:

- a. Plaintiffs fed patients and had to eat at the same time as the patients;
- b. Some patients required constant supervision, and thus Plaintiffs did not receive a full one-hour meal period free from work;
- c. Patients needed help going to the bathroom during Plaintiffs' meal breaks; and
- d. Patients expected Plaintiffs to be continuously available to them, and thus Plaintiffs were not permitted their uninterrupted meal period.

83. Ultimate Care knew or should have known that Plaintiffs worked during their meal breaks.

84. Upon information and belief, Plaintiffs were not provided a code for entering meal breaks in the App.

85. Ultimate Care knew or should have known that Plaintiffs worked during their meal breaks because Plaintiffs complained to supervisors about not receiving the time to eat free of work, and because the plans of care and the patients' health conditions required Plaintiffs to care for patients during meal periods.

Ms. Cruz's Unpaid Overtime Hours Worked

86. Ms. Cruz was regularly scheduled for and worked more than forty hours per week.

87. Upon information and belief, even when she was not scheduled to work over forty hours per week, Ms. Cruz regularly worked over forty hours when her meal and sleep breaks

were interrupted. She was not paid overtime wages for hours worked over forty due to meal and sleep break interruptions.

Mr. Herrera's Unpaid Overtime Hours Worked

88. Mr. Herrera was regularly scheduled for and worked more than forty hours per week.

89. Even when he was not scheduled to work over forty hours per week, Mr. Herrera regularly worked over forty hours when his meal and sleep breaks were interrupted. He was not paid overtime wages for hours worked over forty due to meal and sleep break interruptions.

Plaintiffs' Unpaid Overtime Hours Worked

90. Plaintiffs were regularly scheduled for and worked more than forty hours per week.

91. Ultimate Care did not schedule Plaintiffs' sleep periods.

92. Upon information and belief, Ultimate Care did not have an explicit agreement with Plaintiffs to exclude three one-hour bona fide meal periods and an eight-hour sleep period from work.

93. Upon information and belief, Ultimate Care did not have an implicit agreement with Plaintiffs to exclude three one-hour bona fide meal periods and an eight-hour sleep period from work.

94. Even when they were not scheduled to work over forty hours per week, Plaintiffs regularly worked over forty hours when their meal and sleep breaks were interrupted. They were not paid overtime wages for hours worked over forty due to meal and sleep break interruptions.

95. Plaintiffs were regularly scheduled to work four to seven 24-hour "live-in" shifts in a work week. Despite having their sleep and meal breaks routinely interrupted by work, they were only paid for 52 to 91 hours of their work.

96. As a result of Ultimate Care's failure to pay Plaintiffs for time spent working during meal breaks and sleep periods, Plaintiffs were not paid for all of the hours they worked, including overtime wages.

Defendant's Willful Failure to Track Hours Worked or Pay Plaintiffs for All Hours Worked

97. Ultimate Care required Plaintiffs to clock in and out at the beginning and end of 24-hour "live-in" shifts, using a telephone reporting system, and later the App, that required Plaintiffs to input or select the applicable codes associated with each task they completed during their shift.

98. Ultimate Care failed to accurately track all the hours Plaintiffs worked during their 24-hour shifts.

99. Upon information and belief, Ultimate Care did not provide a code for home care aides to enter sleep or meal breaks.

100. Ultimate Care failed to track whether Plaintiffs received bona fide sleep time and meal breaks.

101. When Plaintiffs complained about working through meal breaks and sleep periods, Ultimate Care did not investigate to make sure that it accurately tracked and recorded the hours Plaintiffs worked.

102. Upon information and belief, even when Plaintiffs reported that they worked 24 hours in a shift on the Home Care Duty Sheets, Ultimate Care only paid them for 13 hours.

Ultimate Care's Failure to Pay Spread of Hours Pay for Shifts Worked Longer than Ten Hours

103. Ultimate Care regularly scheduled Plaintiffs, and Plaintiffs regularly worked, shifts longer than ten hours in one day.

104. Ultimate Care did not always pay Plaintiffs an additional one hour's pay at the New York minimum hourly rate when they worked more than ten hours in a day.

105. Upon information and belief, at some point during Plaintiffs' employment, Ultimate Care did eventually start paying Plaintiffs an additional one hour's pay at the New York minimum hourly rate when they worked more than ten hours in a day.

Ultimate Care's Failure to Provide Accurate Wage Statements

106. Upon information and belief, Ultimate Care was subject to the New York State Home Care Worker Wage Parity Law ("Wage Parity Law"), N.Y. Public Health Law § 3614-c, which requires certain home care agencies to pay home care aides both a base wage and a supplemental benefit to satisfy a minimum rate of total compensation.

107. Upon information and belief, the wage statements Ultimate Care provided to Plaintiffs failed to include a notice detailing each wage parity supplemental benefit provided, and the hourly rate for each, as required by the Wage Parity Law.

108. The wage statements that Ultimate Care provided to Plaintiffs also did not list the accurate number of hours worked or wages earned, as required by law.

109. Upon information and belief, because of Ultimate Care's failure to provide accurate wage statement notices, Plaintiffs were unaware of their rights pursuant to the Wage Parity Law, including how to access supplemental benefits available to them under that law.

Ultimate Care's Willful Violations of the FLSA

110. Ultimate Care willfully violated the FLSA based on the facts above, including because:

- a. Ultimate Care knew that Plaintiffs were scheduled to work 24-hours;
- b. Plaintiffs complained about work during meal and sleep periods to supervisors;

- c. Plaintiffs complained that patients needed constant care and attention during their 24-hour shift, including during the meal and sleep periods;
- d. Ultimate Care supervisors told Plaintiffs that Ultimate Care only paid for 13 of the 24 hours;
- e. Ultimate Care knew or should have known that Plaintiffs' patients' plans of care required work during meal and sleep periods;
- f. Ultimate Care knew that patients needed constant care and attention during the 24-hour shift, including during meal breaks and sleep periods;
- g. Upon information and belief, Ultimate Care knew that it did not schedule Plaintiffs' meal or sleep periods; and
- h. Upon information and belief, Ultimate Care knew that work during meal and sleep periods was not recorded in its timekeeping system and thus the work was unpaid.

COLLECTIVE ACTION DEFINITION

- 111. Upon information and belief, other current and former home care aides employed by Ultimate Care were subject to the same payroll practices as Plaintiffs, described above.
- 112. The Named Plaintiffs bring this case as a collective action under 29 U.S.C. § 216(b), comprised of:

All current or former Home Health Aides or Personal Care Aides employed by Ultimate Care, Inc. who worked two or more 24-hour shifts in one or more weeks at any time within the three years preceding the filing of a consent to sue, and worked through meal and/or sleep periods but were not paid for the time ("FLSA Class Members").

- 113. Ultimate Care is liable under the FLSA for failing to pay overtime wages for all hours Plaintiffs worked over forty in one week.

114. The Named Plaintiffs and the FLSA Class Members work or have worked for Ultimate Care and have been subjected to Ultimate Care’s policy and pattern or practice of failing to pay for all overtime wages for all hours worked in excess of forty hours per week.
115. Plaintiffs’ claim for overtime pay is similar to the claim of other FLSA Class Members and their claims depend on similar factual and legal questions including, but not limited to, whether Ultimate Care knew or should have known that Plaintiffs’ and the FLSA Class Members’ sleep periods were not regularly scheduled; whether Plaintiffs and the FLSA Class Members worked during meal and sleep periods; whether Ultimate Care failed and/or refused to pay Plaintiffs and the FLSA Class Members overtime wages for all hours worked during the 24-hour shift; and whether Ultimate Care’s violations were willful.
116. There are numerous similarly situated employees who have been underpaid and injured in violation of the FLSA who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join it. Those similarly situated employees are known to Ultimate Care, are readily identifiable, and can be located through Ultimate Care’s records. Notice should be sent to the FLSA Class pursuant to 29 U.S.C. § 216(b).

RULE 23 NEW YORK CLASS ACTION DEFINITION

117. The Named Plaintiffs seek to certify a New York Class of similarly situated employees under Fed. R. Civ. P. 23. The New York Class is defined as:
- All current or former Home Health Aides or Personal Care Aides employed in New York by Ultimate Care, Inc. who worked two or more 24-hour “live-in” shifts in a workweek within six years prior to filing of complaint and worked through meal and/or sleep periods but were not paid for the time (“New York Class Members”).
118. Upon information and belief, the New York Class is composed of more than forty individuals.

119. The Named Plaintiffs and the New York Class Members work or have worked for Ultimate Care as home care aides and have been subjected to Ultimate Care's policy and pattern or practice of: failing to pay for all overtime wages for hours worked in excess of forty hours per week; failing to pay all straight time wages for hours worked up to forty in workweek; failing to pay spread of hours pay; and failing to provide accurate wage statements.
120. Ultimate Care acted and refused to act on grounds generally applicable to the New York Class Members, thereby making declaratory relief with respect to the New York Class appropriate.
121. There are questions of law and fact common to the New York Class including but not limited to:
 - a. whether the NYLL requires Ultimate Care to pay the New York Class Members overtime wages;
 - b. whether Ultimate Care failed and/or refused to pay the New York Class Members overtime pay for all hours worked in excess of forty hours per workweek;
 - c. whether Ultimate Care correctly calculated and compensated the New York Class Members for hours worked in excess of forty per workweek;
 - d. whether Ultimate Care must pay the New York Class Members for all hours of their 24-hour shifts;
 - e. whether Ultimate Care failed to pay the New York Class Members all of their wages due in each pay period;
 - f. whether Ultimate Care failed to keep true and accurate time records for all hours worked by the New York Class Members;
 - g. the nature and extent of New York Class-wide injury and the appropriate

measure of damages for the New York Class Members;

- h. whether Ultimate Care knew or should have known that the New York Class Members worked through their meal and/or sleep periods;
 - i. whether Ultimate Care failed to pay Spread of Hours pay;
 - j. whether Ultimate Care failed to provide accurate wage statements that reflected the accurate number of hours that the New York Class Members worked; and
 - k. whether Ultimate Care failed to provide accurate wage statements that reflected the accurate pay the New York Class Members earned.
122. The claims of the Named Plaintiffs are typical of the claims of the New York Class they seek to represent.
123. The Named Plaintiffs and the New York Class Members work or have worked for Ultimate Care as home care aides and have been subjected to its policy and pattern or practice of failing to pay for all hours worked and overtime wages for hours worked in excess of forty hours per week. Ultimate Care acted and refused to act on grounds generally applicable to the New York Class Members, thereby making declaratory relief with respect to the New York Class Members appropriate.
124. The Named Plaintiffs will fairly and adequately represent and protect the interests of the New York Class Members.
- a. The Named Plaintiffs understand that, as class representatives, they assume a fiduciary responsibility to the New York Class Members to represent their interests fairly and adequately.
 - b. The Named Plaintiffs recognize that, as class representatives, they must represent and consider the interests of the New York Class Members just as they would

represent and consider their own interests.

- c. The Named Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the New York Class Members.
 - d. The Named Plaintiffs recognize that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the New York Class Members.
 - e. The Named Plaintiffs understand that in order to provide adequate representation, they must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and at trial.
125. The Named Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.
126. A class action is superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The New York Class Members have been damaged and are entitled to recovery as a result of Ultimate Care's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of each class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

**FIRST CAUSE OF ACTION
(FAIR LABOR STANDARDS ACT: UNPAID OVERTIME WAGES)**

127. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.
128. Ultimate Care failed to pay overtime wages to the Named Plaintiffs and the FLSA Class Members for all hours worked over forty in a workweek as required by the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* and its implementing regulations.
129. Ultimate Care's failure to pay proper overtime wages for each hour worked over forty per week was willful within the meaning of the FLSA.
130. Ultimate Care's failure to comply with the FLSA overtime protections caused the Named Plaintiffs and the FLSA Class Members to suffer loss of wages and interest thereon, and they are entitled to recovery of unpaid overtime wages, liquidated damages, prejudgment interest, attorneys' fees, costs, and any other compensation pursuant to 29 U.S.C. § 201, *et seq.*

**SECOND CAUSE OF ACTION
(NEW YORK LABOR LAW: UNPAID OVERTIME WAGES)**

131. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.
132. Ultimate Care failed to pay the Named Plaintiffs and New York Class Members wages for all the hours they worked and overtime wages for hours worked over forty in a workweek as required by NYLL § 650, *et seq.*, and 12 NYCRR § 142-2.2.
133. Ultimate Care's failure to comply with New York wage-and-hour protections caused the Named Plaintiffs and New York Class Members to suffer loss of wages and interest thereon, and they are entitled to recovery of unpaid overtime wages, liquidated damages, prejudgment interest, attorneys' fees, and costs pursuant to NYLL § 198.

THIRD CAUSE OF ACTION

**(NEW YORK LABOR LAW: FAILURE TO PAY WAGES FOR ALL HOURS WORKED,
ON BEHALF OF THE NAMED PLAINTIFFS AND THE NEW YORK CLASS)**

134. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.
135. Ultimate Care failed to pay the Named Plaintiffs and New York Class Members wages for all the hours they worked up to forty in a workweek as required by NYLL, Articles 6 and 19, § 650, *et seq.*
136. Ultimate Care's failure to comply with New York wage-and-hour protections caused the Named Plaintiffs and New York Class Members to suffer loss of wages and interest thereon, and they are entitled to recovery of unpaid wages, liquidated damages, prejudgment interest, attorneys' fees, and costs pursuant to NYLL § 198.

**FOURTH CAUSE OF ACTION
(NEW YORK LABOR LAW: UNPAID SPREAD OF HOURS PAY, ON BEHALF OF
THE NAMED PLAINTIFFS AND THE NEW YORK CLASS)**

137. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.
138. The Named Plaintiffs and the New York Class Members were required to work in excess of ten hours a day without being compensated for the legally mandated spread of hours pay. This practice is in violation of 12 N.Y.C.R.R. § 142-2.4.
139. Ultimate Care's failure to pay spread of hours pay was willful.
140. By reason of the foregoing Ultimate Care is liable to the Named Plaintiffs and the New York Class Members in an amount to be determined at trial, plus costs and attorneys' fees, pursuant to NYLL § 198.

**FIFTH CAUSE OF ACTION
(NEW YORK LABOR LAW: NEW YORK WAGE STATEMENT VIOLATION, ON
BEHALF OF THE NAMED PLAINTIFFS AND THE NEW YORK CLASS)**

141. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

142. New York Labor Law § 195(3) requires that employers furnish non-exempt employees such as the Named Plaintiffs and the New York Class Members with a statement with every payment of wages listing their regular hourly rate or rates of pay; their overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked.
143. Effective October 1, 2020, the wage statements must also contain information explaining “the benefit portion of the minimum rate of home care aide total compensation” as defined by the Wage Parity Law, N.Y. Public Health Law § 3614-c, and each type of “home care aide benefits” provided.
144. Ultimate Care failed to furnish Plaintiffs accurate wage statements, as detailed in this Class and Collective Action Complaint.
145. Ultimate Care’s failure to comply with NYLL § 195(3) was willful.
146. By reason of the foregoing, Ultimate Care is liable to the Named Plaintiffs and the New York Class Members, \$250 for each workday that the violations occurred, up to a total of \$5,000 per Plaintiff, together with costs and reasonable attorneys’ fees pursuant to NYLL § 198(1-d).

RELIEF SOUGHT

WHEREFORE, the Named Plaintiffs pray for judgment against Ultimate Care as follows:

1. For an Order recognizing this proceeding as a collective action under § 216(b) of the FLSA and ordering notice to the FLSA Class Members at the earliest opportunity to ensure class their claims are not lost to the FLSA statute of limitations;
2. For an Order finding Ultimate Care liable for unpaid back wages due to the Named Plaintiffs and the FLSA Class Members and for liquidated damages equal in amount to the unpaid compensation found due Plaintiffs under the FLSA;

3. For an Order awarding the Named Plaintiffs and the FLSA Class Members the costs of this action as provided under the FLSA;
4. For an Order awarding the Named Plaintiffs and the FLSA Class Members their attorneys' fees as provided under the FLSA;
5. For an Order awarding the Named Plaintiffs and the FLSA Class Members pre-judgment and post-judgment interest at the highest rates allowed by law; and
6. With respect to the New York Class:
 - a. Certifying this action as a class action;
 - b. Designating the Named Plaintiffs as the Class Representatives;
 - c. Declaring that the practices complained of herein are unlawful under New York state law;
 - d. Appointing the undersigned as class counsel;
 - e. Ordering appropriate equitable and injunctive relief to remedy Ultimate Care's violations of state law, including but not necessarily limited to an order enjoining Ultimate Care from continuing its unlawful practices;
 - f. Awarding damages, liquidated damages, appropriate statutory penalties, and restitution to be paid by Ultimate Care according to proof;
 - g. Awarding pre-judgment and post-judgment interest, as provided by law;
 - h. Ordering such other injunctive and equitable relief as the Court may deem just and proper; and
 - i. Awarding the Named Plaintiffs and the New York Class Members their attorneys' fees and costs of suit, including expert fees and costs.
7. For an Order granting such other and further relief as may be necessary and appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

New York Business Corporation Law § 630 NOTICE

Please take notice that that by and through their counsel, the Plaintiffs in the above-referenced matter intend to hold the ten largest shareholders of Ultimate Care, Inc. – to the extent applicable – jointly and severally, and personally liable under BCL § 630(a) for the wages due and owing to them from said corporation.

Dated: July 18, 2024

Respectfully Submitted,

/s/ Anamaria Segura

Anamaria Segura

Victoria Morrell

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