

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
KANSAS CITY DIVISION**

Yolanda Deleon and Sirena Stell, individually and on behalf of all others similarly situated;)	Civil Action No:
)	
)	Complaint – Collective Action
)	
Plaintiffs,)	
)	Jury Trial Demanded
v.)	
)	
Medicalodges, Inc.;)	
)	
Defendant.)	

FLSA COLLECTIVE ACTION COMPLAINT

Plaintiffs Yolanda Deleon and Sirena Stell (collectively, “Plaintiffs”), on their own behalf and on behalf of all others similarly situated, allege that, to the best of their knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTION AND NATURE OF THIS ACTION

1. This is a misclassification case which resulted in the failure to pay overtime for all hours worked brought under federal law. Named Plaintiffs are adults residing and working within the District of Kansas judicial district, and during the relevant time period worked as certified nursing assistants (or “CNAs”) for Defendant Medicalodges, Inc (hereinafter “Medicalodges”).

2. During the relevant period, Plaintiffs were victimized by Medicalodges’ failure to pay for all time worked.

3. Medicalodges also does not pay Plaintiffs or the other similarly situated CNAs an overtime premium for those weeks in which they worked more than 40 hours. In so doing, Medicalodges willfully ignores the rule set forth in *Hughes v. Family Life Care, Inc.*, 117 F. Supp.3d 1365 (N.D. Fla. 2015) that CNAs with materially identical work conditions are, by law,

employees and entitled to employee statutory protections, including those provided by the Fair Labor Standards Act.

4. Plaintiffs bring this matter as a collective action under the Fair Labor Standards Act to recover wages improperly withheld.

JURISDICTION AND VENUE

5. The FLSA, 29 U.S.C. §§ 201, *et seq.*, authorizes court actions by private parties to recover damages for violations of the FLSA wage and hour provisions. This Court has jurisdiction over Plaintiffs' FLSA claims under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

6. Venue is proper in this district because a substantial part of the events giving rise to the claims occurred within this judicial district.

7. The United States District Court has personal jurisdiction over Medicalodges, Inc. because it conducts business within this judicial district.

PARTIES

8. Yolanda Deleon resides full-time in Kansas City, Kansas, within this judicial district. From 2019 through December 2022, Deleon has worked as a CNA for Medicalodges, primarily at its Greenley Avenue facility in Kansas City. Her average rate of pay was approximately \$31.00 per hour. Deleon was paid hourly and at a straight time rate for hours worked over forty in a workweek. Deleon's Consent To Become A Party Plaintiff is attached to this Complaint as **Exhibit A**.

9. Sirena Stell resides full-time in Kansas City, Kansas, within this judicial district. Plaintiff Stell worked for Medicalodges as a direct hire CNA for one year beginning in 2001, and for six months beginning in May 2019 at its facility on Greenly Avenue in Kansas City. Two years later, from May 16, 2021 through March 2022, Stell again worked as a direct hire CNA for the

same Medicalodges facility, but was hired through Shiftkey. Plaintiff Stell's Consent To Become A Party Plaintiff is attached to this Complaint as **Exhibit B**.

10. Defendant Medicalodges, Inc. is a Kansas for-profit corporation with its principal place of business located at 201 West 8th Street, Coffeyville, Kansas 67337. Medicalodges is in the business of owning, operating and managing nursing home facilities located throughout the states of Kansas, Missouri and Oklahoma.

11. In this Complaint, Medicalodges refers to the named Defendant and to all successors, predecessors, subsidiaries, parent and related entities to which these allegations pertain.

12. Medicalodges exerts complete control over all aspects of Plaintiffs', and its CNAs', workday. It allows potential CNAs to pick-up shifts from a list of available shifts on the Shiftkey App, disciplines, hires, fires, and defines all job responsibilities. The work performed by plaintiffs is integral to Medicalodge's business; indeed, it cannot function without the work performed by Plaintiffs and its CNAs.

FACTS

13. Medicalodges hires most of its CNAs through Shiftkey, an online recruiting company, which acts as a clearinghouse for jobs in the medical industry.

14. When CNAs register for a Shiftkey account, they receive a document that, among other things, asserts that CNA applicants will be placed as independent contractors, *without regard to the actual work conditions encountered by the CNAs* despite the fact that federal and state laws decide the question of whether certain requirements of wage and hour laws, such as the payment of overtime compensation, based on the relationship between the worker and employer, including factoring in the working conditions they are subjected to.

15. There are no significant differences in the relationship between Medicalodges and its CNAs hired through Shiftkey and the relationship between Medicalodges and its other CNAs.

16. Neither Plaintiffs nor other CNAs have the opportunity to profit or lose money based on Medicalodges' earnings or performance.

17. Neither Plaintiffs nor other CNAs have any opportunity to invest in the Medicalodges business.

18. The characteristics of Plaintiffs' and the CNAs' work duties are due to the intrinsic nature of their work as CNAs rather than any decision they made.

19. There are no significant differences between the job duties and working conditions of CNAs employed directly by Medicalodges and those working at Medicalodges but hired through Shiftkey.

20. Medicalodges is the employer of Plaintiffs and the CNAs it hired through Shiftkey.

21. Plaintiffs and the Medicalodges CNAs are paid by the hour. Plaintiffs and the Medicalodges CNAs hired through Shiftkey are required to keep accurate records of time worked. Failure to submit those records can result in their pay being held or forfeited.

22. Plaintiffs and Medicalodges' CNAs are subject to persistent oversight, which includes scheduled and unscheduled supervisory visits, visit reports and incident reports.

23. Medicalodges has the absolute right, at its sole discretion and without warning, to change any or all of its employer policies and rules.

24. Medicalodges has the right to terminate the employment of Plaintiffs and all other CNAs at any time, for any reason, without notice.

25. Medicalodges prohibits a variety of types of conduct, on work premises and off work premises and those rules are enforced by Supervisors and other Medicalodges staff.

26. Medicalodges requires its CNAs conform to a dress code, and, if they do not comply, would be sent home to change, or told that their shift was over.

27. Medicalodges pays Plaintiffs and similarly situated employees for shift work.

28. Medicalodges controls the number of hours it compensated and the number of hours worked by Plaintiffs and similarly situated employees in a number of ways, including, but not limited to: setting the start and end times of all shifts, requiring they arrive to a shift on time or risk that it be cancelled, requiring they continue working past their shift end-time until replaced by another CNA, directing when they can or cannot take a break, and regularly deducting time for lunch breaks even when they were not taken.

29. Medicalodges regularly asks CNAs hired through Shiftkey to pick-up additional shifts.

30. Medicalodges controls the schedule of duties required to be performed by its CNAs during a shift. For example, CNAs hired through Shiftkey are assigned to a particular Hall, are told what time to take residents to the dining room, when they can and cannot give residents showers, and what time to take residents' vitals. Supervisors check in with CNAs throughout a shift and tell them what to do and when to do it.

31. Plaintiffs and all other CNAs are not required to provide any work equipment.

32. These job conditions make CNAs common law employees of Medicalodges. As a result, the Medicalodges CNAs are entitled to all the statutory and common law protections afforded employees, which include the right to be paid for all hours worked and the right to be paid an overtime premium for all hours worked beyond 40 hours in a week.

33. Plaintiffs and similarly situated CNAs regularly work more than 40 hours in a given week. Medicalodges does not, however, pay overtime premiums to those CNAs when they work more than 40 hours in a week.

34. Both Deleon and Stell, during the relevant time periods, worked more than 40 hours in a week without receiving any overtime compensation.

COLLECTIVE ACTION ALLEGATIONS

35. Plaintiffs bring Count 1 as an opt-in action via 29 U.S.C. § 216(b) on their own behalf and on behalf of the following persons:

All Certified Nursing Assistants NA nurses who worked in Medicalodges facilities at any time beginning three years before the commencement of this action who worked more than 40 hours in a work week.

36. Count 1 may be pursued by those who opt-in to this case, under 29 U.S.C. § 216(b).

37. Plaintiffs seek relief on a collective basis that challenges Medicalodges's uniform misclassification of its CNAs hired through Shiftkey as independent contractors and its failure to pay the premium overtime rate for hours worked over 40.

38. The number and identity of other Plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from Medicalodges's records, and potential opt-ins may easily and quickly be notified of the pendency of this action.

39. Plaintiffs are similarly situated to all Medicalodges CNAs who were hired through Shiftkey because, on information and belief, they all have the same job description, duties and requirements, were all improperly misclassified as independent contractors, and were not paid overtime premiums due to uniform Medicalodges internal policies.

40. Plaintiffs will fairly and adequately protect the interests of the opt-ins and they have retained counsel who are experienced and competent in wage and hour law and class action litigation. Plaintiffs have no interest contrary to or conflicting with other Medicalodges CNAs.

LEGAL CLAIMS

**COUNT 1
VIOLATION OF THE FLSA**

41. Plaintiffs Deleon and Stell, on behalf of themselves and opt-in CNAs, reallege the above paragraphs as if fully set forth.

42. Count 1 is for violation of the Fair Labor Standards Act. This is an opt-in claim brought via 29 U.S.C. § 216(b).

43. The FLSA regulates, among other things, the payment of minimum wage and overtime by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

44. At all relevant times, Medicalodges has been, and continues to be, subject to the minimum wage and overtime provisions of the FLSA because its employees are engaged in commerce, and it has annual revenues exceeding \$500,000.

45. At all relevant times, Plaintiffs and all Medicalodges CNAs have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

46. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories of employees from overtime pay obligations. None of the FLSA exemptions apply to Plaintiffs or any Medicalodges CNAs.

47. Medicalodges willfully violated the FLSA by failing to pay Plaintiffs and all its CNAs hired through Shiftkey all wages due including overtime premiums for hours accrued beyond forty in a workweek.

48. Medicalodges has acted neither in good faith nor with reasonable grounds to believe that its actions complied with the provisions of the Fair Labor Standards Act.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury for all issues so triable pursuant to Federal Rule of Civil Procedure 38(b).

WHEREFORE, Plaintiffs Yolanda Deleon and Sirena Stell demand the following:

- A.** Certify the claim set forth in Count I above as a collective action pursuant to Section 216(b) of the FLSA and issue notice to all similarly-situated current and former CNAs informing them of their right to file consents to join this action;
- B.** Designate Plaintiffs Yolanda Deleon and Sirena Stell as the Representative Plaintiffs of the Proposed Collective, and the undersigned attorneys representing the Medicalodges CNA Collective Members;
- C.** Award Plaintiffs and all similarly situated employees compensatory and liquidated damages under 29 U.S.C. § 216(b);
- D.** Award plaintiffs and all similarly situated employees attorneys' fees and costs as allowed by Section 216(b) of the FLSA, including an order that Medicalodges is financially responsible for notifying the Collective Action Members of Medicalodges' alleged wage and hour violations;
- E.** Award Plaintiffs and all similarly situated CNAs prejudgment and post-judgment interest as provided by law; and
- F.** All other relief this Court deems fair and equitable.

DESIGNATION OF PLACE OF TRIAL

Plaintiffs hereby designate the United States District Court of the District of Kansas at Kansas City as the place of trial.

Respectfully submitted,

/s/ Rowdy B. Meeks

Rowdy B. Meeks, KS# 16068
ROWDY MEEKS LEGAL GROUP LLC
8201 Mission Rd., Suite 250
Prairie Village, Kansas 66208
Tel: (913) 766-5585
Fax: (816) 875-5069
Rowdy.Meeks@rmlegalgroup.com
www.rmlegalgroup.com

Ryan Allen Hancock*
WILLIG, WILLIAMS & DAVIDSON
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
Tel: 215.656.3600
rhancock@wwdlaw.com

Jordan Lewis*
JORDAN LEWIS, P.A.
4473 N.E. 11th Avenue
Fort Lauderdale, FL 33334
Telephone: (954) 616-8995
jordan@jml-lawfirm.com

* *pro hac vice* motion forthcoming

COUNSEL FOR PLAINTIFF