

**ARBITRATION**

Neffertiti Robinson, individually and  
on behalf of all those similarly situated

Claimant,

v.

J & K Administrative Management  
Services, Inc. and Kimberly M. Meyers

Respondents

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Case number: \_\_\_\_\_

Specification of Claims

Claimant Neffertiti Robinson, individually and on behalf of all others similarly situated (“Claimant” and “Class Members” herein) brings this Fair Labor Standards Act (“FLSA”) arbitration against the above-named Respondents and shows as follows:

**A. Nature of Suit.**

1. The FLSA was passed by Congress in 1938 as remedial legislation intended to benefit and protect workers. *See Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728,739 (1981); *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727 (1947). One of the primary purposes of the FLSA is to protect workers from “substandard wages and oppressive working hours.” *Barrentine*, 450 U.S. at 739; *see* 29 U.S.C. § 202(a), (b) (stating Congress’ intent to eliminate substandard labor conditions). “[T]he FLSA was designed to give specific minimum protections to *individual* workers and to ensure that *each* employee covered by the Act would receive ‘[a] fair day’s pay for a fair day’s work’ and would be protected from the evil of ‘overwork’ as well as ‘underpay.’” *Barrentine*, 450 U.S. at 739 (quoting *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 578 (1942) (quoting 81 Cong. Rec. 4983 (1937) (message of President Roosevelt))). To achieve its humanitarian goals, the FLSA “limits to 40 a week the number of hours that an employer may employ any of his employees subject to the Act, unless the employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed.” *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944) (discussing the requirements of 29 U.S.C. § 207 (a)).

**B. Parties.**

2. In the three-year period preceding the filing of this action, Claimant was employed by Respondents within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq. At all times hereinafter mentioned, Claimant was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207. Claimant's written consent to become a party plaintiff is attached as Exhibit "A."
3. The "**Class Members**" are other caregivers that were employed by Respondents in the three-year period preceding the filing of this action and who performed services outside a private home in any of the workweeks.
4. Respondent J & K Administrative Management Services, Inc. ("Respondent J & K") is a Texas corporation engaged in commerce or the production of goods for commerce within the meaning of the FLSA and is obligated to ensure that all employees are paid in accordance with the FLSA.
5. Respondent Kimberly N. Meyers ("Respondent Meyers") is an individual and President of Respondent J & K.

### **C. Coverage.**

6. At all material times, Respondents have acted, directly or indirectly, in the interest of an employer with respect to Claimant.
7. At all times hereinafter mentioned, Respondents have been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
8. At all times hereinafter mentioned, Respondents have been an enterprise with the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
9. At all times hereinafter mentioned, Respondents have been an enterprise engaged in commerce in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaging 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 for 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 (exclusive of excise taxes at the retail level which are separately stated).

10. Respondent Meyers had authority to set corporate policy, participate in decisions regarding the classification of employees and the payment of minimum wage and overtime as well as participate in decisions regarding whether or not to pay Claimant minimum wage and/or overtime. In addition, Respondent Meyers had operational control of significant aspects of the Respondent J & K's day-to-day functions and independently exercised control over the work situation. She had direct involvement in the day-to-day operation of Respondent J & K and had some direct responsibility for the supervision of the employees.
11. Respondent Meyers acted, directly or indirectly, in the interests of an employer in relation to Claimant.
12. At all times hereinafter mentioned, Claimant was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.
13. Claimant was employed by Respondents within the applicable statute of limitations.

**D. Factual Allegations.**

14. Claimant worked for Respondents J&K and Meyers at their North Richland Hills, Texas facility as a caregiver. Claimant provided caretaking services for Respondent's elderly and infirm clients.
15. Upon information and belief J&K and Meyers sold their franchise to in November of 2013.
16. During the time period, Claimant's job responsibilities consisted of providing caretaking services to clients of Respondents. At times and on many occasions, Claimant provided the services in hospitals, assisted living facilities, nursing homes or group homes (collectively facilities that are not considered "private homes").
17. Because Claimant worked outside a private home the companion exemption of the FLSA available to caregivers working in private homes does not apply to her.

18. In a March 30, 1999 Opinion Letter (a copy of which is attached as Exhibit B) specifically on point, the United States Department of Labor wrote:

**The companionship exemption will not apply to time spent by a home care worker who renders services to a person who resides in a group home, nursing home or hospital. Services performed outside of a private home would not be within the term "domestic service."**

19. When Claimant and the Class Members worked an "overnight," usually consisting of more than 12 hours, Claimant and the Class Members were paid a single fixed-fee which was at a rate lower than the minimum wage.
20. Claimant and the Class Members regularly worked in excess of 40 hours a week and during many if not all of those weeks worked at facilities not considered a private home.
21. Respondents did not pay Claimant and the Class Members time-and-one-half their regular rate of pay for the hours that Claimant and the Class Members worked over 40 hours a week.
22. Respondents did not pay Claimant and the Class Members the minimum wage required by the FLSA.
23. Respondents knowingly, willfully, and/or with reckless disregard carried out its illegal pattern and/or practice of failing to pay the minimum wage and/or overtime compensation with respect to Claimant and the Class Members.
24. The FLSA requires employers to keep accurate time records of hours worked by nonexempt employees. 29 U.S.C. § 211 (c).
25. In addition to the pay violations of the FLSA identified above, Respondents also failed to keep proper time records as required by the FLSA.
26. Claimant has retained the Law Office of Chris R. Miltenberger, PLLC to represent her in this litigation and has agreed to pay a reasonable fee of its services.

#### **E. Collective Action Allegations.**

27. Other employees have been subject to Respondents' compensation policy which is in willful violation of the FLSA. Some of these employees have worked with Claimant and have reported that they were paid in the same manner as Claimant, i.e., less than the minimum wage and with no overtime pay for hours worked in excess of 40 per workweek. Thus, from discussion with these employees, Claimant is aware that the illegal practices or policies of Respondents have been uniformly imposed on the Class Members.
28. The Class Members performed job duties the same as Claimant. Those duties are typically associated with non-exempt employees. Moreover, the Class Members regularly worked more than 40 hours in a workweek and were not paid the minimum wage and/or one-half their regular rate of pay for hours worked in excess of 40 hours in a work week.
29. Accordingly, the Class Members are similarly situated to Claimant in terms of job duties and pay provisions.
30. Respondents' failure to pay the minimum wage and/or overtime compensation at the rates required by the FLSA arises from generally applicable policies or practices of Respondents and does not depend on the personal circumstances of the Class Members. Thus, Claimant's experience is typical of the experience of the Class Members.
31. Respondent J&K and Meyers operated three facilities in the Dallas/ Fort Worth/ Wichita Falls area (the "Locations") each of which operated under the same policies and practices of failing to pay the minimum wage and/or overtime compensation as required by the FLSA.
32. Claimant brings this action on behalf of the Class Members employed at any of the Locations.
33. As a collective action, Claimant seeks this Court's appointment and/or designation as representative of a group of similarly situated individuals as defined herein.

**F. Cause of Action: Failure to Pay Wages in Accordance  
with the Fair Labor Standards Act.**

34. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.
35. During the relevant period and continuing until the time of trial, Respondents have violated and are violating the provisions of Sections 6 and/or 7 of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, without compensating such employees for their work at the minimum wage and for their work in excess of forty hours per week at rates no less than one-and-a-half times the regular rates for which they were employed.
36. Respondents knowingly, willfully, and/or with reckless disregard carried out their illegal pattern or practice of failing to pay the minimum wage and/or overtime compensation with respect to Claimant and the Class Members.
37. Respondents did not act in good faith and/or have reasonable grounds for a belief that their actions did not violate the FLSA nor did they act in reliance upon any of the following in formulating their pay practices: (a) case law; (b) the FLSA, 29 U.S.C. § 201, et seq.; (c) Department of Labor Wage & Hour Opinion Letters; or (d) the Code of Federal Regulations.
38. Upon information and belief Respondents' willfulness is exhibited by the fact that J&K and Meyers were informed by representatives of the Department of Labor that Respondents' policies violated the FLSA, yet Respondents refused to correct such violations.

#### **G. Relief Sought.**

39. WHEREFORE, PREMISES CONSIDERED, Claimant prays that beginning with the date three years before this action was initiated and continuing until the time of trial and judgment, she and all those who consent to be opt-in Claimants in this collective action recover jointly and severally from Respondents, the following:
  - a. An Order recognizing this proceeding as a collective action pursuant to Section 216(b) of the FLSA and appointing Claimant and her counsel to represent the Class Members;

- b. An Order requiring Respondents to provide the names, physical addresses, email addresses and telephone numbers of all potential Class Members;
- c. An Order approving the form and content of a notice to be sent to all potential Class Members advising them of the pendency of this litigation and of their rights with respect thereto;
- d. Compensation for all hours worked at a rate not less than the applicable minimum wage for the relevant time period up to and including the date of judgment;
- e. Overtime compensation for all unpaid hours worked in excess of forty hours in any workweek at the rate of one-and-one-half times their regular rates for the relevant time period up to and including the date of judgment;
- f. All unpaid wages and overtime compensation for the relevant time period up to and including the date of judgment;
- g. An award of liquidated damages pursuant to 29 U.S.C § 216 as a result of the Respondents' lack of good faith in failing to pay wages and overtime compensation pursuant to the FLSA;
- h. Reasonable attorney's fees, expert fees, costs, and expenses of this action as provided by the FLSA;
- i. Pre-judgment and post-judgment interest at the highest rates allowed by law; and
- j. Such other relief as to which Claimant may be entitled.

Respectfully submitted:

The Law Office of Chris R. Miltenberger, PLLC

By:           /s/ Chris R. Miltenberger            
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