

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

Beth Degrassi, individually and on	§	
behalf of all others similarly situated,	§	
	§	
Plaintiff,	§	CA No.: _____
v.	§	
	§	Collective Action
Nicka & Associates, Inc.,	§	Jury Demanded
	§	
Defendant.	§	

**PLAINTIFF’S COLLECTIVE ACTION COMPLAINT**

Beth Degrassi (“**Plaintiff**”), individually and on behalf of all other non-exempt “**Medical Coders**” currently and formerly employed by Nicka & Associates, Inc. (“**Defendant**”), each of whom are similarly situated, brings this Fair Labor Standards Act (“**FLSA**”) suit against Defendant 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)).

2. Defendant failed to pay Plaintiff and the Class Members in accordance with the Fair Labor Standards Act. Specifically, Plaintiff and the Class Members were paid a production rate that did not take into account the hours worked. As a result Defendant failed to pay Plaintiff and the Class Members at the minimum wage or at time and one half their regular rate of pay for hours worked in a workweek in excess of forty hours.

#### **B. Parties.**

3. Beth Degrassi is an individual who was employed by Defendant within the meaning of the FLSA within the three year period preceding the filing of this Complaint. Beth Degrassi’s consent to be a party plaintiff is being filed with the Court.

4. Defendant is a corporation existing under the laws of Texas, whose corporate headquarters is located at 5501 Independence Pkwy # 316, Plano, TX 75023. Defendant maintains an office in this district. Defendant can be served by serving its registered agent Lawrence B. Mandala, 12770 Coit Road, Suite 600, Dallas, TX 75251.

5. Defendant has Medical Coders working throughout the United States.

6. The “**Class Members**” are Defendant’s current and former employees who, within the actionable time period, were employed to perform data entry with medical billing data for Defendant at any location in the United States. The Class Members were known as

“Medical Coders” but this collective action is intended to cover all employees who performed billing data entry and who were paid on a production basis, regardless of actual job title. The Medical Coders were and are paid based on production and not compensated at the minimum wage or at the statutory rate of one and one-half times their regular rate of pay for all hours worked more than forty (40) in a workweek.

**C. Jurisdiction and Venue.**

7. Venue of this action is proper in this district because the events giving rise to the cause of action alleged herein occurred in this judicial district and Defendant maintains one or more regional offices in this District and Division. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.

8. Defendant carries on substantial business in the Eastern District of Texas, has a regional office in this Division and has sufficient minimum contacts with this state to be subject to this Court’s jurisdiction.

9. Further, the acts and omissions that form the basis of the lawsuit (i.e., Defendant’s failure to pay overtime compensation) occurred within this District.

10. This Court has jurisdiction over this case pursuant to the district court’s federal question jurisdiction as set forth in 28 U.S.C. § 1331. Specifically, this case is brought pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, as amended.

11. This Court has the authority to grant declaratory relief pursuant to the FLSA and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-02.

**D. Coverage.**

12. At all material times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to Plaintiff.

13. At all material times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to the Class Members.

14. At all material times, Defendant has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

15. At all material times, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

16. At all material times, Defendant has been an enterprise engaged in commerce or 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 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 (exclusive of excise taxes at the retail level which are separately stated). The Medical Coders log in through the internet to Defendant's information technology system and code medical records for billing purposes. The information is transmitted on an interstate basis. The Medical Coders use the instrumentalities of interstate commerce in the performance of their duties.

17. At all times hereinafter mentioned, Plaintiff was an employee who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206 - 07.

**E. Factual Allegations**

18. Defendant medical coding and billing services for medical facilities throughout the United States.

19. Plaintiff worked for Defendant as a Medical Coder within the three years preceding this lawsuit.

20. As a Medical Coder Plaintiff entered data into a computer to help process medical billing information.

21. The Putative Class Members are Medical Coders and they also performed computer data entry.

22. Many of the Medical Coders performed their job duties at a home location while working remotely.

23. For the work Plaintiff and the Class Members performed as Medical Coders, Plaintiff and the Class Members were/are paid on a production basis. Plaintiff and the Class Members were paid based on the number of “files” or “cases” they entered into Defendant’s information technology system.

24. Plaintiff and the Class Members were not paid on an hourly basis or on a salary basis.

25. Plaintiff and the Class Members were not guaranteed any minimum amount or work or compensation each week.

26. On many occasions Plaintiff and the Class Members worked more than 8 hours a day and at least five days a week. Upon information and belief at times their production rate pay did not equal minimum wage.

27. Specifically, Plaintiff worked more than 40 hours in some of the work weeks covered by this lawsuit.

28. Plaintiff and the Class Members routinely worked 40+ hours a week.

29. Defendant was aware that Plaintiff and the Class Members worked 40+ hours per week yet did not pay Plaintiff and the Class Members overtime. Defendant was aware that Plaintiff and the Class Members were working more than 40 hours a week because it would not be possible to complete the volume of files or cases completed by Plaintiff and the Class Members in just a 40-hour week.

30. Because Plaintiff and the Class Members were paid on a production basis Defendant did not keep track of or record the number of hours worked by Plaintiff and the Class Members.

31. During their employment, Plaintiff and the Class Members worked in excess of forty (40) hours per week for which they were not compensated at the statutory rate of one and one-half times their regular rate of pay for overtime.

32. Plaintiff and the Class Members routinely worked in excess of forty (40) hours per week as part of their regular job duties.

33. Despite the fact that Plaintiff and the Class Members worked more than (40) hours per week, Defendant failed to pay Plaintiff and the Class Members overtime compensation at a rate of one and one-half times their regular rates of pay for hours worked over forty (40) in a workweek.

34. Defendant has employed and continues to employ numerous other individuals who performed and continue to perform the same or similar duties under the same or similar pay policies as Plaintiff. These other individuals are the Class Members.

35. Defendant has violated Title 29 U.S.C. § 206 and § 207 in that:

a. Plaintiff and the Class Members are/were not paid the minimum wage;

b. Plaintiff and the Class Members worked in excess of forty (40) hours per week during one or more weeks of employment;

c. No payments, or insufficient payments and/or provisions for payment, have been made by Defendant to properly compensate Plaintiff and the Class Members at the statutory rate of one and one-half times the regular rate for those hours worked in excess of forty (40) hours per work week as provided by the FLSA; and

d. Defendant has failed to maintain proper time records as mandated by the FLSA.

**F. Collective Action Allegations.**

36. Plaintiff and the Class Members are/were all non-exempt employees of Defendant and performed the same or similar job duties as one another in that they all performed manual labor repairing wheels.

37. All of these individuals are/were and are paid in the same manner, i.e., a production basis. The individuals were not paid proper minimum wage or overtime compensation.

38. All of these individuals are/were deprived of overtime pay even though they routinely worked in excess of forty (40) hours in a workweek.

39. Further, Plaintiff and the Class Members are/were subjected to the same pay provisions in that they are/were all paid on a production basis but were not compensated at

minimum wage or a rate one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

40. Thus, the Class Members are owed minimum wage and overtime wages for the same reasons as Plaintiff.

41. Defendant's failure to compensate Plaintiff and the Class Members at a minimum wage or at a rate one and one-half times their regular rate of pay for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice applicable to Plaintiff and the Class Members.

42. Application of this policy or practice does/did not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of minimum wage and overtime to Plaintiff applied and continues to apply to all Class Members.

43. Accordingly, the putative Class Members of similarly situated plaintiffs is properly defined as:

- a. **All medical coders (regardless of specific title) who worked for Defendant within the last three years who entered medical billing data for Defendant and were paid based on production and not compensated at the minimum wage or at the statutory rate of one and one-half times their regular rate of pay for all hours worked more than forty (40) in a workweek.**

44. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay minimum wage and overtime compensation with respect to Plaintiff and the Class Members.

45. Defendant's willful violation is evidence in part by that fact that medical coders are traditionally paid on an hourly basis and are non-exempt employees. Defendant is



aware of this traditional pay method. On information and belief Defendant's choose to ignore that medical coders are non-exempt employees because it would be costly and difficult to track the employees' time when such employees are working remotely.

46. Defendant did not act in good faith and/or have reasonable grounds for a belief that its actions did not violate the FLSA nor did it 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.

47. Defendant has failed to maintain accurate records of Plaintiff's and the Class Members' work hours in accordance with the law.

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

48. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

49. Plaintiff and the Class Members were, and are, entitled to be paid at the statutory rate of minimum wage and at one and one-half times their regular rate of pay for those hours worked in excess of forty (40) hours in a workweek.

50. During the relevant period, Defendant violated § 206 and § 207 of the FLSA 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, for one or more workweeks without compensating such employees for their work at minimum wage or at a rate of at least one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

51. At all times material hereto, Defendant failed, and continues to fail, to maintain proper time records as mandated by the FLSA.

52. To date, Defendant continues to fail to pay Plaintiff and the Class Members their FLSA mandated minimum wage or overtime pay.

53. Defendant's actions in this regard were/are willful and/or showed/show reckless disregard for the provisions of the FLSA as evidenced by their continued failure to compensate Plaintiff and the Class Members at the statutory rate of minimum wage or one and one-half times their regular rate of pay for the hours worked in excess of forty (40) hours in a workweek when it knew, or should have known, such was, and is due.

54. Defendant has failed to properly disclose or apprise Plaintiff and the Class Members of their rights under the FLSA.

55. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiff and the Class Members suffered and continue to suffer damages and lost compensation for minimum wage and time worked over forty (40) hours in a workweek, plus liquidated damages.

56. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

#### **H. Jury Demand.**

57. Plaintiff demands a trial by jury herein.

**I. Relief Sought.**

58. Wherefore, Plaintiff, individually and on behalf of the Class Members, respectfully requests that this Court grant the following relief for the time period beginning three years prior to the date of the filing of this suit and continuing to the date of trial:

a. Designation of this action as a collective action on behalf of the Plaintiff and Class Members and promptly issue a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals, appraising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consents to participate in the suit pursuant to 29 U.S.C. §216(b);

b. An order requiring Defendant to turn over to Plaintiff, at Defendant's expense, a detailed investigative accounting for the number of overtime-eligible hours actually worked by the Plaintiff and all the putative Class Members;

c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

d. An order for injunctive relief ordering the Defendant to end all of the illegal wage practices alleged herein pursuant to the FLSA and related laws and regulations;

e. An order imposing a Federal Monitor to be put in place for 5 years at Defendant's expense with the power to subpoena, observe and report and ensure Defendant's compliance with the FLSA.

f. A finding that Defendant's actions are willful under the FLSA;

g. An award of unpaid wages for minimum wage and overtime compensation due under the FLSA and continuing until the time of trial;

- h. An award of liquidated damages as a result of the Defendant's failure to pay minimum wages and overtime compensation pursuant to the FLSA and continuing until the time of trial;
- i. An award of prejudgment and post judgment interest;
- j. An award of costs and expenses of this action together with reasonable attorneys' and expert fees;
- k. Incentive awards for the lead Plaintiff(s);
- l. Leave to add additional plaintiffs by motion, the filing of written consents, or any other method approved by the Court;
- m. Equitably tolling of the statute of limitations for the Class Members effective the date of the filing of this Complaint; and
- n. Such other and further relief as this Court deems just and proper.

Respectfully submitted:

By: /s/ Chris R. Miltenberger

Chris R. Miltenberger

Texas State Bar Number 14171200

Designated as Lead Attorney

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