

LEVY DAVIS & MAHER, LLP
Jonathan A. Bernstein (JB 4053)
Attorneys for Plaintiff
880 Third Avenue
New York, New York 10022
(212) 371-0033

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
Claudia Gayle, Individually, On Behalf
of All Others Similarly Situated and as Class
Representative,

Plaintiff,

- against -

Harry's Nurses Registry, Inc., and
Harry Dorvilien,

Defendants.
-----X

CV 07 4672

SIFTON J.
MATSUMOTO, M.J.

07 Civ.

COMPLAINT

FILED  
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ NOV 07 2007 ★

BROOKLYN OFFICE

Plaintiff Claudia Gayle, individually, on behalf of all others similarly situated, and as class representative, by her attorneys, Levy Davis & Maher, LLP, complains of defendants, Harry's Nurses Registry, Inc. (hereinafter "Harry's") and Harry Dorvilien (hereinafter "Dorvilien"), as follows:

PRELIMINARY STATEMENT

1. Plaintiff complains on behalf of herself and other current and former employees of defendants who elect to opt into this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 216(b) ("FLSA"), that she is owed back wages from defendants for overtime work for which she did not receive any overtime premium pay pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.

2. Plaintiff complains on behalf of herself and other current and former employees of defendants that she is owed wages and overtime premium pay under the New York Minimum Wage Act, N.Y. Lab. Law §§ 650 et seq.

3. Plaintiff also complains on behalf of herself and other current and former employees of defendants that defendants deducted Workers' Compensation insurance premiums from her paycheck in violation of N.Y. Labor Law §193.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and 28 U.S.C. § 1367(a), in that the state and federal claims arise from a common nucleus of operative fact such that they are so related that they form part of the same case or controversy under Article III of the United States Constitution.

5. The venue of this action is proper because the decisions not to pay plaintiff overtime premium pay and to make unauthorized deductions were made at defendants' offices, which offices are located within the Eastern District of New York and because plaintiff performed labor and services at premises maintained by the defendants and/or their clients in the Eastern District of New York.

PARTIES

6. At all relevant times, defendant Harry's Nurses Registry, Inc. was and is in the business of providing nurses, nurses aides and housekeepers to patients contracting for such services. Upon information and belief, defendant Harry's Nurses Registry, Inc. is a domestic

corporation organized under the laws of the State of New York. It has its principal place of business at 169-14 Hillside Avenue in the County of Queens, City and State of New York.

7. At all relevant times, Dorvilien was and is the principal of Harry's. At all relevant times, Dorvilien directed plaintiff's work for defendants.

8. Defendants were, at all relevant times, and are, in an industry affecting commerce within the meaning of 29 U.S.C. § 203(b).

9. Gayle is a natural person, currently residing in Baldwin, Town of Hempstead, County of Nassau, State of New York. Ms. Gayle has been employed by defendants as a nurse since February 2007.

10. Plaintiff brings this action on behalf of herself and all others similarly situated, pursuant to 29 U.S.C. § 216(b). Persons similarly situated are those who are and/or were employed by defendants at any time between February 23, 2003 and the present (the "Collective Action Period") within the meaning of 29 U.S.C. § 203(e)(1).

ALLEGATIONS RELATED TO THE COLLECTIVE ACTION

11. Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 10 of this Complaint as though the same were fully set forth herein.

12. The named plaintiff brings this action on behalf of herself and all others similarly situated, pursuant to 29 U.S.C. § 216(b). Persons similarly situated are those who are and/or were employed by defendant at any time between November 15, 2004 and the present (the "Collective Action Period").

CLASS ALLEGATIONS

13. Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 12 of this Complaint as though the same were fully set forth herein.

14. Plaintiff sues on her own behalf and on behalf of a class of persons under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

15. The named plaintiff brings this case on behalf of all persons employed by defendants who were not paid wages for hours worked, and/or premium pay for all hours worked in excess of forty per workweek and/or the value of wages and salaries unlawfully withheld by defendants at any time from November 15, 2001 to the present (the "Class Period").

16. The employees in the Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such employees is unknown, and facts on which the calculation of that number are presently within the sole control of defendant, upon information and belief, there are approximately 500 members of the Class. There are questions of law and fact common to the Class which predominate over any questions affecting only individual members. The claims of the representative party are typical of the claims of the Class. The representative party will fairly and adequately protect the interests of the Class. Defendants acted and refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate defendants.

17. There are questions of law and fact common to this Class which predominate over any questions solely affecting individual members of the Class, including:

- a. whether the plaintiffs were misclassified as independent contractors;
- b. whether the defendants failed and/or refused to pay the plaintiffs premium pay for hours worked in excess of forty per workweek within the meaning of the FLSA, and whether that failure and/or refusal was willful;
- c. whether the defendants failed and/or refused to pay the plaintiffs premium pay for hours worked in excess of forty per workweek within the meaning of the New York Labor Law, and whether that failure and/or refusal was willful;
- d. whether the defendants deducted monies from plaintiffs' wages for Workers' Compensation insurance premiums in violation of the New York Labor Law, and whether that violation was willful;
- e. whether the members of the class are entitled to affirmative relief; and
- f. whether the members of the class are entitled to liquidated damages under the FLSA.

FACTS COMMON TO ALL CAUSES OF ACTION

18. Plaintiff was engaged in commerce within the meaning of 29 U.S.C. § 203(b), in that plaintiff worked for defendants as a licensed practical nurse.

19. Plaintiff and her similarly situated co-workers regularly work and/or worked in excess of 40 hours in the workweek. However, plaintiff and her co-workers were and/or are not paid overtime premium pay for all work hours in excess of 40 hours in the workweek.

20. At all relevant times, defendants maintained a policy of deducting \$1.00 per hour,

purportedly representing the cost of Workers' Compensation insurance, from the wages of the plaintiff and her similarly situated co-workers.

AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION

21. Plaintiff repeats and realleges each and every allegation made in paragraphs 1 through 20 of this Complaint.

22. Plaintiff and her similarly situated co-workers frequently work, and worked, over forty hours in a workweek.

23. Although plaintiff and her similarly situated co-workers work, and worked, over forty hours in a workweek, they were not paid overtime premium pay for all of the hours worked in excess of forty hours in a workweek.

24. Plaintiff and her similarly situated co-workers are entitled to one and one-half of their regular rates of pay for all hours worked in excess of forty hours in a workweek under the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 et seq.

AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION

25. Plaintiff repeats and realleges each and every allegation made in paragraphs 1 through 24 of this Complaint.

26. The failure of defendants to properly compensate plaintiff and her similarly situated co-workers for overtime work as required by the Fair Labor Standards Act was willful.

AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION

27. Plaintiff repeats and realleges each and every allegation made in paragraphs 1 through 26 of this Complaint.

28. Plaintiff and the members of the class have not been paid overtime premium pay for all compensable work hours under the New York Minimum Wage Act, as amended, N.Y. Labor Law §§ 650 et seq. and N.Y. Labor Law §§ 190 et seq.

AS AND FOR PLAINTIFF'S FOURTH CAUSE OF ACTION

29. Plaintiff repeats and realleges each and every allegation made in paragraphs 1 through 28 of this Complaint.

30. Plaintiff and the members of the class did not authorize the deduction of Workers' Compensation insurance premiums from their paychecks.

31. At all relevant times, defendants were and are required by N.Y. Workers' Comp. Law § 2 to provide workers' compensation insurance coverage, at defendants' cost, to their covered employees, including plaintiff and the class members.

32. Upon information and belief, the \$1.00 per hour deducted from plaintiff's and the class members' wages, which was purported to reflect cost of the workers' compensation insurance coverage procured by defendants, in fact exceeds the cost of said coverage.

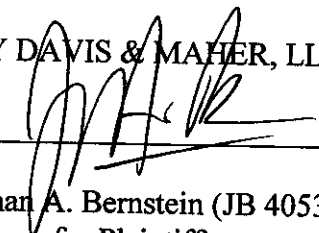
33. The deduction of the cost of workers' compensation insurance coverage and/or the deduction of the excess over such costs violates N.Y. Labor Law § 193, which prohibits deduction from wages save for certain specified reasons, no one of which is applicable to plaintiff and the members of the class.

WHEREFORE, plaintiff respectfully requests that this Court enter a judgment:

1. Certifying this action as a class action pursuant to Fed. R. Civ. Pro. 23 on behalf of the members of the Class, and appointing Plaintiff and her counsel to represent the Class;
2. Authorizing notice of this action pursuant to 29 U.S.C. § 216(b);
3. Directing defendants to pay overtime premium pay to plaintiff, such persons as may opt in to this action and members of the class;
4. Directing defendants to pay liquidated damages under the FLSA to plaintiff and such persons as may opt in to this action;
5. Directing defendants to reimburse plaintiff and the members of the class for amounts withheld from their pay and purported to reflect the cost of Workers' Compensation insurance premiums;
6. Directing defendants to pay pre-judgment interest, to members of the class and such persons as may opt in to this action;
7. Granting a permanent injunction enjoining defendants and their owners, officers, management personnel, employees, agents, attorneys, successors and assigns and those acting in concert therewith from any conduct violating the rights of the plaintiff, members of the class and such persons as may opt in to this action as secured by the New York Labor Law;
8. Awarding plaintiff the costs of this action together with reasonable attorneys' fees; and
9. Granting such other and further relief as this Court deems necessary and proper.

Dated: New York, New York
November 1, 2007

LEVY DAVIS & MAHER, LLP

By:  _____

Jonathan A. Bernstein (JB 4053)
Attorneys for Plaintiff
880 Third Avenue
New York, New York 10022
Tel: (212) 371-0033

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1993, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Claudia Gayle, Individually, o/bo All Others Similarly Situated and as Class Representative

(b) County of Residence of First Listed Plaintiff Nassau
(EXCEPT IN U.S. PLAINTIFF CASES)

SIFTON

MATSUMOTO, M.J.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jonathan Bernstein/Levy Davis & Maher, LLP/880 Third Avenue, 9th Fl./
New York, NY 10022/ (212) 371-0033

DEFENDANTS

Harry's Nurses Registry, Inc. and Harry Dorvilien

County of Residence of First Listed Defendant Queens
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) U.S. DISTRICT COURT E.D.N.Y.
unknown

★ NOV 07 2007 ★

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g))	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	LABOR ☒ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Fair Labor Standards Act, 29 USC 201 et seq.

Brief description of cause:

failure to pay overtime pay; unlawful deductions from wages

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/5/07

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____

APPLYING IFP _____

JUDGE

CPS

MAG. JUDGE

KAM

07cv4672

ARBITRATION CERTIFICATION

I, Jonathan A. Bernstein, counsel for Plaintiff do hereby
certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages
recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.
✓ Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:
n/a

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located
in Nassau or Suffolk County? No

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau
or Suffolk County? No

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the
Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than
one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the
claimants, if there is more than one) reside in Nassau or Suffolk County? n/a

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the
bar of this court.

Yes ✓

No _____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes _____ (If yes, please explain)

No ✓

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last
name and the last four digits of your social security number or any other four digit number registered by the attorney
with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: JB 4053

E-MAIL Address: jbernstein@levydavis.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re
Electronic Filing Procedures (EFP)" and consent to the electronic service of all papers.

Signature: _____

