LEVY DAVIS & MAHER, LLP
Jonathan A. Bernstein
Attorneys for Plaintiff
39 Broadway, Suite 1620
New York, New York 10022
(212) 371-0033

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROSELYN ISIGI,	:	
	:	16 Civ. 2218
Plaintiff,	:	
	:	
- against -	:	**COMPLAINT**
	:	
HARRY'S NURSES REGISTRY, INC., and HARRY DORVILIER,	:	
	:	
Defendants.	:	

Plaintiff Roselyn Isigi (hereinafter "Isigi"), by her attorneys, Levy Davis & Maher, LLP, complains of defendants, Harry's Nurses Registry, Inc. (hereinafter "Harry's") and Harry Dorvilier (hereinafter "Dorvilier"), as follows:

PRELIMINARY STATEMENT

1. Plaintiff, a nurse employed by defendants since 2008, complains pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq*. that she is owed back wages from defendants for overtime work for which she did not receive any overtime premium pay pursuant to the

2. In an earlier action against these defendants, *Gayle v. Harry's Nurses Registry, Inc.*, 07 Civ. 4672, Judge Sifton of this Court determined in 2009 that plaintiff therein, whose employment was substantially identical to Ms. Isigi's, was entitled to overtime premium pay. In 2012, Judge Garaufis of this Court awarded summary judgment to all persons similarly situated

to that plaintiff. However, defendants did not bring their pay practices into compliance with the FLSA until 2015.

3. In the earlier action, Judge Sifton directed defendants to produce a list of the names and last known addresses of all similarly situated employees since 2004. Although Ms. Isigi was, at that time, an employee of defendants, her name did not appear on the list that was produced. Ms. Isigi accordingly seeks equitable tolling with respect to so much of her claim as would otherwise be subject to dismissal as time-barred.

4. Plaintiff also seeks relief under the New York Minimum Wage Act, N.Y. Labor Law § 651 *et seq.*, and regulations promulgated thereunder providing for payment of overtime premium pay to employees.

JURISDICTION AND VENUE

5. 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.

6. The venue of this action is proper because the decision not to pay plaintiff overtime premium pay was 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

7. 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.

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

9. Isigi is a natural person, currently residing in the County of Bronx, City and State of New York. Ms. Isigi has been employed by defendants as a nurse since 2008.

FACTUAL ALLEGATIONS

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

11. Upon information and belief, defendants, in combination with persons performing related activities for a common business purpose, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000, exclusive of sales taxes.

12. Harry's Nurses refers temporary health care personnel, including Registered Nurses ("RNs") and Licensed Practical Nurses ("LPNs") (collectively, "field nurses") to patients in their private homes in and around New York City. This is Harry's Nurses' only business. Harry's Nurses maintains a referral list or "registry"of field nurses.

The *Gayle* Action

13. In 2007, Claudia Gayle, a licensed practical nurse employed by defendants herein, brought an action in this court on behalf of all persons similarly situated. 07 Civ. 4672. On March 31, 2009, the late Judge Sifton of this Court awarded Ms. Gayle partial summary judgment on liability and directed defendants to disclose the names, last known addresses, dates of employment, and telephone numbers for all persons employed as field or per diem nurses from November 7, 2004 to the present. *Id.* Dkt. No. 53 (the "Order").

14. Defendants produced, on or about March 25, 2009, a document purporting to be a list of the names, last known addresses, dates of employment, and telephone numbers for all persons employed as field or per diem nurses from November 7, 2004 to the present (the "Nurses List").

15. Judge Garaufis of this Court awarded summary judgment on liability and damages to the nurses who opted into the action pursuant to 29 U.S.C. § 216(b). 07 Civ. 4672 Dkt. No. 162, 179. This Court's orders were affirmed by the Second Circuit Court of Appeals. *Id.* Dkt. No. 217 (mandate). On May 4, 2015, the U.S. Supreme Court denied certiorari.

Ms. Isigi's Overtime Work

16. Ms. Isigi has been employed by defendants as a field or per diem nurse since 2008.

17. However, Ms. Isigi's name did not appear on the Nurses List disclosed by defendants pursuant to the Order of March 31, 2009.

18. Between 2008 and the time defendants brought their pay practices into

compliance with the Fair Labor Standards Act, Ms. Isigi regularly worked in excess of 40 hours in the workweek. For example, plaintiff worked 84 hours (12 hours per day, seven days per week) during each of the following workweeks:

a. The weeks ending July 24 and July 31, 2009;

b. The weeks ending January 8, 2010, January 15, January 29, February 12, February 26, March 5, and March 20, 2010;

c. The weeks ending April 22 and May 6, 2011;

d. The weeks ending March 23 and March 30, 2012;

e. The weeks ending February 22, April 12, April 26, May 24, May 31, June 7 and June 14, 2013;

f. The weeks ending January 3, January 10, January 31, February 21, February 28, August 27 and October 22, 2014.

19. However, plaintiff has not been paid overtime premium pay for all work hours in excess of 40 hours in the workweek. Until mid-2015, defendants classified plaintiff as an independent contractor unprotected by the FLSA and the New York Labor Law and accordingly compensated her at straight-time rates for all hours worked.

AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION

20. Plaintiff repeats and realleges each and every allegation made in paragraphs 1 through 19 of this Complaint.

21. Plaintiff regularly worked over forty hours in a workweek.

22. Although plaintiff worked over forty hours in a workweek, she was not paid

overtime premium pay for all hours worked in excess of forty in a workweek.

23. Plaintiff is entitled to one and one-half of her 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

24. Plaintiff repeats and realleges each and every allegation made in paragraphs 1 through 23 of this Complaint.

25. The failure of defendants to properly compensate plaintiff for overtime work as required by the Fair Labor Standards Act was willful.

AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION

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

27. Plaintiff has 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.*

AS AND FOR PLAINTIFF'S FOURTH CAUSE OF ACTION

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

29. Defendants assign plaintiff to provide nursing services to patients in the patients' homes. Plaintiff has little contact with other field or per diem nurses, who are likewise assigned

to perform work in patient homes.

30. On March 31, 2009, Judge Sifton of this Court directed defendants to disclose the names and addresses of all field or per diem nurses for the purpose of facilitating notice to such persons of their right to opt into an action seeking overtime pay pursuant to 29 U.S.C. § 216(b). However, plaintiff's name did not appear on the Nurses List.

31. Defendants having failed and refused to comply with the Order, the FLSA statute of limitations should be equitably tolled from March 25, 2009.

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

1. Directing defendants to pay overtime premium pay to plaintiff;

2. Directing defendants to pay liquidated damages under the FLSA to plaintiff;

3. Tolling the FLSA statute of limitations from March 25, 2009 to the present;

4. Directing defendants to pay pre-judgment interest;

5. 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 as secured by the New York Labor Law;

6. Awarding plaintiff the costs of this action together with reasonable attorneys' fees; and

7. Granting such other and further relief as this Court deems necessary and proper.

Dated: New York, New York
May 3, 2016

LEVY DAVIS & MAHER, LLP

By:_____/s/_____

Jonathan A. Bernstein
Attorneys for Plaintiff
39 Broadway, Suite 1620
New York, New York 10006
Tel: (212) 371-0033