

FILED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

2011 NOV 17 AM 11:28
CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FL
OCALA FLORIDA

**LASHANDRA HARLEY, on behalf
of herself and others similarly
situated,**

CASE NO.:

Plaintiff,

5:11-cv-628-oc-32TBS

vs.

**CARLTON PALMS
EDUCATIONAL CENTER, INC., a
Florida Corporation,**

Defendant.

_____ /

COMPLAINT & DEMAND FOR JURY TRIAL
(Collective Action Complaint)

COMES NOW the Plaintiff, LASHANDRA HARLEY, on behalf of herself and others similarly situated, (hereinafter referred to as "Plaintiff"), and sues Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., a Florida for profit corporation (hereinafter referred to as "Defendant"), and alleges as follows:

INTRODUCTION

1. This is an action by the Plaintiff against her former employer for unpaid overtime pursuant to the Fair Labor Standards Act ("FLSA"). Plaintiff seeks overtime damages, liquidated damages, attorney's fees and costs, declaratory relief, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. §216(b) (the "FLSA"). Additionally, Plaintiff seeks a declaration of rights pursuant to Rule 57, Fed.R.Civ.P., and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. § 2201.

2. Plaintiff also seeks an Order conditionally certifying this case as a collective action to include all similarly situated “mental health therapists” who did not receive proper overtime wages within the last three years.

JURISDICTION

3. This action arises under the Fair Labor Standards Act, 29 U.S.C. §210, *et. seq.* The Court has jurisdiction over the FLSA claim pursuant to 29 U.S.C. §216(b).

VENUE

4. The venue of this Court over this controversy is proper based on the claim arising in Lake County, Florida.

COVERAGE

5. Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., is a Florida corporation that operates and conducts business in, among others, Lake County, Florida; and is therefore, within the jurisdiction of this Court.

6. At all material times relevant to this action (2009-2011), Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s).

7. At all material times relevant to this action (2009-2011), Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., made gross earnings of at least \$500,000 annually.

8. At all material times relevant to this action (2009-2011), Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., accepted payments from customers based on

credit cards issued by out of state banks. Defendant has programs located in Florida, Delaware and New Jersey.

9. At all material times relevant to this action (2009-2011), Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., routinely ordered and received materials or supplies from out of state. (i.e. medical products, interactive video communication systems, psychopharmacology drugs).

10. At all material times relevant to this action (2009-2011), Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., have workers engaged in interstate commerce, handling or otherwise working on materials that have been moved in or produced for interstate commerce. (i.e. medical products, interactive video communication systems, psychopharmacology drugs). Defendant provides treatments and therapeutic services in residential settings located in Florida, Delaware and New Jersey.

11. At all material times relevant to this action (2009-2011), Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., used U.S. mail to send and receive letters to and from other states. Defendant accepts referrals from all regions within and outside of the United States.

12. Upon information and belief, the records, to the extent that any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession, custody and control of Defendant.

FACTUAL ALLEGATIONS

13. Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., is a private company categorized under Schools With Special Academic Education.

14. Plaintiff was employed by Defendant as a “mental health therapist.”

15. Plaintiff was employed in this capacity from March 3, 2009 through January 29, 2011 and performed related activities for Defendant, CARLTON PALMS EDUCATIONAL CENTER, INC., in Lake County, Florida.

16. At all times relevant to this action, Defendant failed to comply with 29 U.S.C. §§ 201-209, because Plaintiff performed services for Defendant for which no provisions were made by Defendant to properly pay Plaintiff for those hours worked in excess of forty (40) within a work week.

17. During her employment with Defendant, Plaintiff was not paid time and one-half her regular rate of pay for all hours worked in excess of forty (40) per work week during one or more work weeks.

18. Defendant paid Plaintiff at her regular rate of pay (“straight time pay”) for some or all of the hours worked in excess of forty (40) within a workweek.

19. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession and custody of Defendants.

20. All mental health therapists were entitled to be paid for all hours worked for Defendant.

21. Although Plaintiff and other similarly situated therapists worked overtime hours, Defendant failed and/or refused to pay them at a rate of time and a half their regular rate of pay for their overtime hours.

22. As a result of this compensation practice, Plaintiff, and all mental health therapists similarly situated, did not receive full and proper payment of time and one half their regular rate of pay for all hours worked in excess of forty (40) within a work week in one or more weeks.

23. Defendant has programs locations in Delaware, New Jersey and Florida.

24. Defendant currently employs a staff of approximately 249 employees.

25. Defendant employed and is employing other individuals who perform(ed) the same or similar job duties under the same pay provisions as Plaintiff.

COLELCTIVE ACTION ALLEGATIONS

26. Defendant has employed in excess of 100 mental health therapists within the last three years.

27. Defendant has employed in excess of 150 mental health therapists within the last three years.

28. Mental health therapists perform similar job duties as Plaintiff.

29. Defendant has employed in excess of 150 mental health therapists who were considered "fulltime employees" within the last three years.

30. Defendant has employed in excess of 150 mental health therapists who worked more than forty (40) hours per week within the last three years.

31. Defendant has employed in excess of 150 mental health therapists who worked more than forty (40) hours per week without being paid time and a half their regular rate of pay within the last three years.

32. Plaintiff and the other mental health therapists (“the class members”) performed the same or similar job duties as one another in that they provided assistance with activities in daily living for Defendant’s clients.

33. Defendant’s policy or practice was applicable to Plaintiff and the class members. Application of this policy or practice does 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 overtime wages to Plaintiff applies to all class members.

34. Defendant knowingly, willingly, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime wages with respect to Plaintiff and the class members.

35. Defendant did not act in good faith or reliance upon any of the following in formulating its 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.

36. Defendant acted willfully in failing to pay Plaintiff and the class members in accordance with the law. In fact, Defendant has been made aware of this issue previously in the case of *Douglas Johnson v. Carlton Palms Educational Center, Inc.*, Case No. 5:10-CV-00641-OC-34TEM.

37. Yet still Defendant has not changed its pay practices, nor has it paid any back pay to the putative class members.

38. Defendant was aware of the time and record keeping requirements of the Fair Labor Standards Act, but willfully or recklessly failed to keep accurate pay and time records as required.

COUNT ONE - RECOVERY OF OVERTIME COMPENSATION

39. Plaintiff, and other similarly situated mental health therapists, reasserts and incorporates by reference all allegations contained within previous paragraphs.

40. During her employment with Defendant, Plaintiff, and other similarly situated mental health therapists worked more than forty (40) hours in one or more workweeks while employed by Defendant.

41. Defendant failed to properly compensate Plaintiff, and other similarly situated mental health therapists, for overtime hours that she worked, in violation of the FLSA.

42. Defendant acted willfully, intentionally, and/or recklessly in failing to pay Plaintiff, and other similarly situated mental health therapists, at least time and one half her regular hourly rate of pay for each hour worked over forty (40) hours in one or more workweeks while employed by Defendant, in violation of the FLSA.

43. Defendant did not act in good faith or reliance upon any of the following in formulating its 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.

COUNT TWO - DECLARATORY RELIEF

44. Plaintiff reasserts and incorporates by reference all allegations contained within paragraphs 1-38.
45. Plaintiff and Defendant have a Fair Labor Standards Act dispute pending, which the Court has jurisdiction to hear pursuant to 28 U.S.C. § 1331, as a federal question exists.
46. The Court, also, has jurisdiction to hear Plaintiff's request for declaratory relief pursuant to the Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-2202.
47. Plaintiff, and other similarly situated mental health therapists, may obtain declaratory relief.
48. Defendant employed Plaintiff and other similarly situated mental health therapists.
49. Defendant is an enterprise.
50. Plaintiff, and other similarly situated mental health therapists, was individually covered by the FLSA.
51. Defendant failed to pay Plaintiff, and other similarly situated mental health therapists, for all hours worked.
52. Plaintiff, and other similarly situated mental health therapists, is entitled to overtime pursuant to 29 U.S.C. § 207(a)(1).
53. Plaintiff, and other similarly situated mental health therapists who worked for Defendant within the last two (2) years, were not exempt from overtime under the FLSA.

54. Plaintiff, and other similarly situated mental health therapists who worked for Defendant within the last three (3) years, were not exempt from overtime under the FLSA.

55. Defendant did not keep accurate time records pursuant to 29 U.S.C. § 211(c) and 29 C.F.R. Part 516.

56. Defendant does/did not have a good faith belief that its nonpayment of overtime to mental health therapists who worked more than forty (40) hours within a workweek were not entitled to overtime pay prior to the filing of this case.

57. Plaintiff, and other similarly situated mental health therapists who worked for Defendant within the last three years, are entitled to an equal amount of liquidated damages.

58. It is in the public interest to have these declarations of rights recorded.

59. Plaintiff's declaratory judgment action serves the useful purpose of clarifying and settling the legal relations in issue.

60. The declaratory judgment action terminates and affords relief from uncertainty, insecurity, and controversy giving rise to the proceeding.

DAMAGES AND RELIEF SOUGHT FOR MEMBERS OF THE CLASS

61. This action is brought by Plaintiff, for herself and on behalf of all others similarly situated employees, under the provisions of the FLSA for: (i) monetary damages to be paid by the Defendant associated with the above claims; (ii) liquidated damages; and (iii) relief incident and subordinate thereto, including the costs and expenses of this action and an award of attorneys' fees and reimbursement of expenses to Plaintiff's counsel.

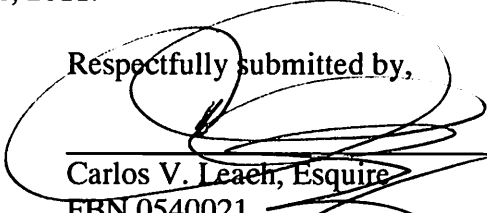
WHEREFORE, Plaintiff demands an Order awarding:

- a. Payment of Plaintiff's, and all class members, overtime wages at the correct rate of time and one half of Plaintiff's hourly rate pursuant to the FLSA;
- b. An equal amount of liquidated damages, or in the alternative, pre-judgment and post-judgment interest at the highest rate allowed by law;
- c. Declaratory relief pursuant to the DJA and FLSA finding that all hours worked over forty in a workweek should be paid time and one-half of an employee's regular rate of pay as long as an employee is not exempt from the FLSA;
- d. Pre-judgment and Post-judgment interest where applicable;
- e. Reasonable attorneys' fees and costs for all time worked by the attorneys for Plaintiff in prosecuting this case; and
- f. All other relief that the Court deems just and proper.

Plaintiff also demands a trial by jury.

Dated this 15th day of November, 2011.

Respectfully submitted by,



Carlos V. Leach, Esquire
FBN 0540021
Morgan & Morgan, P.A.
20 N. Orange Ave., 14th Floor
Orlando, FL 32802-4979
Telephone: (407) 420-1414
Facsimile: (407) 420-5956
Email: CLEach@forthepeople.com
Attorneys for Plaintiff