

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS – EASTERN DIVISION

KIMBERLY WHITAKER, on behalf of herself)	Case No: _____
and all others similarly situated,)	
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	
)	
KEYSTROKES TRANSCRIPTION SERVICE,)	
INC., and LEE TKACHUK,)	
)	
Defendants.)	

COMPLAINT

COMES NOW plaintiff Kimberly Whitaker, on behalf of herself and all others similarly situated, by and through the undersigned counsel, and in support of her causes of action against defendants in the above styled case, states as follows:

NATURE OF THE CLAIM

1. Plaintiff seeks declaratory relief and monetary damages for defendants’ willful violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et. seq.* (“FLSA”) by failing to pay proper overtime compensation.

JURISDICTION AND VENUE

2. This Court has original jurisdiction under 28 U.S.C. § 1331, this action being brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*

3. Venue is proper in this district because the defendants violated the statute at issue in this district and the defendants maintain their principal place of business in this district.

PARTIES

4. Plaintiff Kimberly Whitaker (“Whitaker”), an individual, is a resident and citizen of the state of Indiana, who worked for defendants as a medical transcriptionist from

approximately April 2008 until February 2011.

5. Whitaker has consented to join this action (*see* Exhibit A hereto).

6. Defendant Keystrokes Transcription Service, Inc. (“Keystrokes”) is a corporation that maintains its principal place of business in Yorkville, Illinois and is a citizen and resident of the State of Illinois.

7. Keystrokes regularly conducts business in this district, including from an office located at 220 Garden Street, Yorkville, IL 605.

8. Keystrokes provides medical transcription services for clients across the country.

9. Keystrokes has over \$500,000 in annual revenues.

10. Keystrokes is an “enterprise engaged in commerce” under the FLSA.

11. Keystrokes is an “employer” under the FLSA.

12. At all relevant times, plaintiff was an employee of Keystrokes as defined by the FLSA.

13. During the three years prior to the filing of this complaint, Keystrokes employed other employees as medical transcriptionists.

14. Defendant Lee Tkachuk (“Tkachuk”), upon information and belief, is the principal owner of Keystrokes.

15. Tkachuk, upon information and belief, is a citizen and resident of the State of Illinois.

16. Tkachuk is responsible for setting the policies that resulted in Whitaker and other similarly situated employees not receiving proper overtime compensation.

17. Tkachuk is an employer as defined by the FLSA.

18. At all relevant times, Whitaker was an employee of Tkachuk as defined by the

FLSA.

19. The putative class is comprised of plaintiff and all other employees whom defendants employ or employed as medical transcriptionists or other similar positions in the United States but failed to properly compensate for hours worked above 40 hours in a workweek.

FACTS

20. Plaintiff and Class Members were employed by defendants as medical transcriptionists.

21. Whitaker's primary duty consisted of transcribing doctor's notes, i.e., listening to dictated notes and then typing them.

22. All transcriptionists share the same primary duty.

23. Whitaker generally worked approximately 48 hours per week, but also worked weeks of approximately 80 hours.

24. Plaintiff worked on several different accounts during her tenure.

25. Plaintiff was paid differently for different accounts. Some accounts pay based on time, others based on the number of lines typed, and still others based on the number of reports typed.

26. Despite the fact that plaintiff worked overtime in most weeks, upon information and belief, she was paid overtime compensation for only four weeks.

27. Tkachuk was aware that Whitaker was working overtime without proper compensation.

28. Upon information and belief, other transcriptionists also worked on average more than forty (40) hours per week without proper overtime compensation.

29. Defendants' failure to pay proper overtime was willful.

FLSA COLLECTIVE ACTION ALLEGATIONS

30. Claims for violation of the FLSA are brought as a collective action pursuant to 29 U.S.C. § 216(b), on behalf of plaintiff and all other persons who are or have been employed by defendants as a medical transcriptionist or similar position at any time between three years prior to the filing, and the final disposition of this action (the “Class period”).

31. The members of the proposed Class are similarly situated because they all perform the same basic duties and assignments, and all are subject to defendants’ common policy and practice of failing to pay overtime.

32. The duties and responsibilities of the members of the Class were essentially the same as the duties and activities of plaintiff described above.

33. At all times during the Class Period, all of the members of the Class were paid in the same manner and under the same standard employment procedures and practices as was plaintiff.

34. The members of the Class, like plaintiff, were all subject to the same unlawful policy or plan to not pay overtime.

35. While the exact number of members of the Class is unknown to plaintiff at the present time, plaintiff believes that during the Class Period there were numerous, geographically dispersed medical transcriptionists, similarly situated to plaintiff, who are or have been employed by defendants. Furthermore, inasmuch as the damages suffered by individual Class Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as a collective action. Thus, a collective action is the most efficient mechanism for resolution of the FLSA claims of

the Class.

FIRST CAUSE OF ACTION

Violation of the FLSA
Failure to Pay Overtime

36. Plaintiff realleges the above paragraphs as if fully restated herein.

37. The FLSA requires each covered employer to compensate all nonexempt employees at a rate of not less than one and one-half times their regular rate of pay for work performed in excess of 40 hours per workweek.

38. During the applicable statute of limitations, plaintiff and Class Members routinely performed work in excess of 40 hours per week without receiving overtime compensation.

39. Defendants' failure to pay proper overtime for all hours worked over forty in a workweek violates the FLSA.

40. Defendants knew or showed reckless disregard for the fact that they failed to pay Plaintiff and Class Members the requisite overtime compensation, in violation of the FLSA.

41. Defendants willfully violated the FLSA.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment as follows:

(a) An order preliminarily and permanently enjoining defendants from engaging in the aforementioned wrongful conduct;

(b) An order designating this action as a collective action on behalf of the Class and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals;

(c) Judgment against defendants for compensatory damages in the amount equal to Plaintiff's and the Class' unpaid back wages at the applicable overtime rates, including applicable fringe benefits;

- (d) An equal amount in liquidated damages;
- (e) Reasonable attorneys' fees and costs;
- (f) Pre-judgment interest; and
- (g) Such other and further legal and/or equitable relief as this Court deems just and

proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial.

Dated: June 2, 2011

Respectfully submitted,

/s Peter S. Faraci

One of the Attorneys for Plaintiff

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Pro Hac Vice application to be filed