

## United States District Court

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Rselyn Isigi

Plaintiff-Appellee,

Docket: 18-1343

Vs.

Harry Dorvilier, Harry's Nurses Registry,

Defendants-Appellants

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Harry Dorviller, the pro se appellant/defendants herein states the following to be true under the penalties of perjury:

1. I am the defendant-appellant herein and as such, I am fully familiar with the facts and circumstances of this case.
2. Defendant-Appellant Harry Dorviler ("Appellant", "defendant" or "Dorvilier") and Defendant-Appellant Harry's Nurses Registry (Collectively "Appellant" or "Harry's Nurses") appeal from the order of the United States District Court, Eastern District of New York dated April 2,2018, that confirmed the Report and Recommendation of the Report and Recommendation ("R&R", R595) of Steven M. Gold, United States Magistrate judge dated March 14,2018 that granted plaintiff's motion for summary judgment and order Mr. Dorvilier to pay \$322,227.28 in compensation and liquidated damages for alleged unpaid overtime work in violation of the Fair Labor Standards Act ("FLSA"). This appeal ensued.

These cases below:

### **Case: 07 CV 4672**

Plaintiff Claudia Gayle, individually, on behalf of all others similarity 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 Standard 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 Wages Act N.Y Lab. Law § § 650 et seq.
3. Plaintiff also complains on behalf herself and other current and former employees of defendants that defendants deduct 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,

### **Case: 16 CV 2218**

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

### **Preliminary Statement**

1. Plaintiff, a nurses 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 Nurces 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 there under 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. § 13679(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.

The federal Court has no jurisdiction and venue over Mr. Harry Dorvilier and Harry's Nurses Registry.

1. This court out of jurisdictions for this court mentioned above
2. Only the U.S Department of Labor, the Internal Revenue service's and The Department of Justice can apply this code.
3. The District Court has no Federal and no State jurisdictions over this venue enforcement Fair Labor Standards Act, 29 U.S.C.201 et 219.
4. Only the U.S Department of Labor employment wage and hour division. Division 585 Stewart ave Rm 714 Garden City, NY11530
5. After the audit the compliance office identify violation of the overtime wage provision of FLSA set forth in 28 U.S.C § 206 and § 207.
6. Identify that the defendant failed and refused pay the plaintiffs overtime wages for all hours those Plaintiffs worked for each excess of 40 hours.
7. Investigation of US Department of Labor compliance Officer identified that the defendants were intentional and knowing violation of the Law.
8. Investigator identified violation and portable act of the FLSA defendant refused and failed to pay Plaintiff overtime wages.
9. Defendant violations 29 U.S.C §207 were deliberate and willful.
10. U.S Department of Labor Investigator identified that defendant improperly classified Plaintiff as independent contractor as a result to pay their employer's share of Federal Insurance Contribution act F.I.C.A. Taxes on plaintiff gross wages and Plaintiff were required to pay the same wages and hours.
11. The US Department of Labor Investigation identified that the defendant failure and refusal to pay their employer's share of F.I.C.A on behalf of plaintiffs and failure and refusal to pay the hours and the excesses dominion over and appropriated such funds for their own use and benefits, thereby depriving the rights and benefits thereto. Accordingly to defendants are guilty of conversion. As a proximate result as of defendants' conduct, as alleged herein, plaintiffs suffered damages and are entitled to an award of compensatory consequential damages.

12. The US Department of Labor investigator identified that the defendant's conversion, as alleged herein was intentional, willful, oppressive reckless and calculated to cause plaintiffs to suffer injuries or accomplished with deliberate indifference to injuries that plaintiffs would suffer, and accordingly, plaintiffs are entitled to an award of punitive damages in order to deter defendant from repeating said conduct.
13. Plaintiffs are aware of other similarly situated employees and/or former employees of defendants who have been improperly compensated in violation of the FLSA and who would benefit from the insurance of court-supervised notice of the present lawsuit and the opportunity to join the lawsuit by filing a consent pursuant to Section 216(B) of the FLSA.

Specifically, plaintiffs are aware of other employees if defendants who worked as licensed practical nurses who were not paid overtime wages at a rate of one and one-half times their regular rate of pay for all hours worked over 40 during each work week. All other licensed practical nurces that have worked for defendants within the last three years and have not been paid overtime wages for all hours worked over 40 during each work week are similarly situated to plaintiffs and should be given notice of this lawsuit and the opportunity to join.

US Department of Labor Enforcement of Violations of 29 U.S.C § 206 and §207.

Wherefore, plaintiffs, individually and on behalf of all other similarly situated persons, pursuant to Section § 216(B) of the FLSA and for other stated related causes of action, pray for the following relief:

- a) They be allowed to give notice to all other potential plaintiffs who may be similarly situated, or that the court issue such notice;
- b) Other similarly situated former and present employees be given to opportunity to join this lawsuit as party plaintiffs by filing written consent pursuant to 29 U.S.C § 216(b);
- c) Plaintiffs be awarded damages in the amount of their respective uncompensated overtime wages, plus an equal amount of liquidated damages pursuant to 29 U.S.C § 216(b);

- d) Plaintiffs are awarded punitive damages in the amount of \$ 500,000 and other compensatory and consequential damages;
- e) Plaintiffs are awarded reasonable attorney's fees;
- f) Plaintiffs are awarded costs and expenses of this action;
- g) Plaintiffs are awarded prejudgment interest;
- h) Each plaintiff is awarded an amount equal to 7.65% of his or her gross wages for defendants' failure to pay their employer's share of F.I.C.A;
- i) Plaintiffs are granted such other and further general and /or special legal and/or equitable relief to which they may be entitled or Court deems proper.
- j) Please see the copy of the audit and the judge decision. Attached, William E Broock, Secretary of labor , United States Department of Labor. Plaintiff VS Superior Care (Case Number CV 83-5569), Inc, National Nursing Services, Inc : Ann T . Mittasch, individually and as president; Robert M. Rubin, Individually and as Treasurer, defendants.

K) See Audit by the Superior Care 776 employees and consent from the auditor.

See the Case Number 3-07-0541 by Judge Nixon

Couch Vs. Guardian Angel Nursing, Inc (Nov 4, 2009) determining that LPNs are employees of staffing agency because they relied on the company for job placement and scheduling, had no significant investment on equipment or material, and had their daily activities monitored company for quality assurance; court entered judgment for \$2.2 million for overtime and liquidate damages.

See Summons and complaints Wilson V. Guardian Angel Nursing, Inc ( July 31, 2008) Determining that LPNs were employees because among other things, the company maintained a significant degree of control over the LPNs and thus controlled the manner and means in which they performed their job duties; court entered judgment for \$3.2 million for overtime back pay and liquidate damages.

The defendant Harry Dorvilier and Harry's Nurses Registry, Harry Home Care never violated the fair labor standard act provision and minimum wages and overtime provision set forth in Section 29 U.S.C §206 and § 207.

1. Harry's Nurses Registry and Harry Dorvilier have been audited by the Department of Labor and Maura MCCANN did not go to department of justice to enforce it under the section 29U.S.C §201.

State Court has no Jurisdiction over Harry's Nurces Registry and Harry Dorvilier.

Case # 07 cv.4672 (CPS) (MDG) and Case # 12-4764-cv was not selected for publication on Federal Jurisdiction

He attached my answer to re-argue judge Sifton and Merlyn Go decision to inform them that Harry's Home Care is license age ncy in the public health law article 36. Harry's Nurses Registry is a third Party Registry assisting in the placement of nurses who provide home care services in private homes which is registry license of home care 99% Medicaid reimbursement.

Harry' Nurses Registry is a licenses home-care agency and it provides 200%medicaid and home care services in the private homes. Also, all of patients are from medicaid programs and the registry aims to provide health coverage if someone has a very low income.Since 1991 the license number 9245L001 before the Long Island Home Care Ltd V. Coke (551 U.S. 158 (2007) were, until January 1, 2015 covered by FLSA Amendments of 1974 that exempted from its minimum wage and maximum hours persons "s"employed in domestic service employment to provide companionship services for individuals.. unable to care for themselves. "29 U.S.C § 213(a)(15). As a result Mr. Dorvilier believed in good faith that it was proper to classify the nurses he placed as independent contractors and not as employees by FLSA.

Furthermore, the New York State Unemployment Insurance Appeal Board in Two decisions 1999 and 2013 ruled that Harry's Nurses Registry is an employment agency which contracts with hospitals, nursing homes, and private individuals for the placement

of registered nurses, licensed practical nurses and nursing assistant ..The employer provides no supervision of the individuals who provide their own transportation and supplies and are no reimbursed for any expenses.The nurses provide their own liability insurance and are given no instruction or training by the employer. Each are free to work with various agencies at the same time that she is working for the employer.”(R 591).As a result, the Unemployment Board found that the nurses placed by Mr.Dorvilier are in fact not employees but independent contractors and are not subject to assessment of unemployment Insurance premiums, overruling a decision by the New York State Department of Labor that had imposed an assessment against Harry’s Nurses. It is Mr.Dorvilier’s honest belief that because this matter was not litigated in the Gayle case there remains an uncertainty as to jurisdiction over the classification of the individuals who are placed by his agency. The investigation by the department of labor LS03 2010015248 By:

Maura MCCANN.

Department of Labor

W. Averell Harriman State Office Campus

Building 12, Room 532, Albany, NY 12240

[www.labor.ny.gov](http://www.labor.ny.gov)

Harry Drvilier and Harry’s Nurces registry never violated the Fair Labor Standard Act. And both Harry’s Nurses Registry and Harry Doevilier is acting in good faith to Roselyn Isigi.

See our 1099 from Harry’s Nurses Registry, Inc and Harry Dorvilier  
Year 1 2009 wages \$60564.00

Year 2 2010 wages \$104,823.25

Year 3 2011 wages \$105,129.50

Year 4 2012 wages \$117,624.00



Year 5 2013 wages \$71737.00

Year 5 2013 wages \$31280.00, Social Security \$1939.36, Medicare \$31280.00, Medicare withheld \$453.56.

Year 6 2014 wages \$97,608.00

Year 6 2014 wages \$7728.00, Social security \$7728.00, Social Security withheld \$479.14, Medicare \$112.06, Medicare wages \$7728.00.

Year 7 2015 Wages \$103501.00, social Security \$103501.92, Social Security Withheld \$6417.12, Medicare \$103501.92, Medicare withheld \$1500.00

Year 8 2016 Wages \$403.24.32, Social Security Wages \$40324.32, Social Security Tax Withheld \$2500.11, Medicare \$40324.32, Medicare Tax withheld \$584.70

1. The State Department of Labor Investigations Willie Evans see Case Number 03-06-0774 vs. Harry's Nurses Registry.
2. The State Department of Labor in case of #LS032010015248 investigation findings and Underpayment total Due \$7061005.21 and never find Harry Dorvilier and Harry Nurse's Registry in violation in federal and state minimum wage and overtime payments and liquidate damage.

#### Conclusion

1. All judgments entered by the Judge Sifton and Merlyn go and Judge s/Nicholas G. Garaufis for the case 07-cv04672 should be reversed.
2. All judgments entered by the Judge Steven M. Gold for the case 16 CV 2218 for the amount of \$322,227.28 should be reversed.