

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

AMBER BOYKIN )  
6306 Maplewood Road )  
Mayfield Heights, Ohio, 44124 )

Plaintiff, )

vs. )

NIGHTINGALE HOME SUPPORT & )  
CARE, INC. )  
89 Chester Street )  
Painesville, OH 44077 )

-and- )

'S' GENERATION CENTER, INC. )  
460 Chardon Street )  
Painesville, OH 44077 )

-and- )

STELLA NSONG )  
5 Charleston Square )  
Euclid, Ohio, 44143 )

Defendants.

CASE NO:

JUDGE:

**COMPLAINT FOR DAMAGES**

(Jury Demand Endorsed)

Plaintiff, Amber Boykin, by and through undersigned counsel, as her Complaint against Defendants, states and avers the following:

**PARTIES, VENUE, AND JURISDICTION**

1. Boykin is a resident of the city of Mayfield Heights, county of Cuyahoga, state of Ohio.
2. At all times relevant herein, Boykin was an “employee” of Defendants within the meaning of 29 U.S.C. 203(e) and R.C. 4111.03(D)(3).
3. Nightingale Home Support and Care Inc. (“Nightingale”) is an Ohio corporation with its principal place of business located in Mentor, Ohio.



4. 'S' Generation Center, Inc. ("SGC") is an Ohio corporation with its principal place of business located in Mentor, Ohio.
5. At all times relevant herein, Nightingale and SGC were a joint employer and/or single enterprise within the meaning of 29 U.S.C. §§ 203(r) and 207(b), as they have an interrelation of operations, common business purpose and activities, common management, common control of labor relations, and common ownership and financial control.
6. Nightingale and SGC are hereinafter referred to collectively as the "Nightingale Defendants."
7. At all times relevant herein, Nightingale Defendants were enterprises engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. 206-207.
8. As owner, president, and CEO of Nightingale Defendants, Nsong supervised and/or controlled Boykin's employment with the Nightingale Defendants; acted directly or indirectly in the interest of the Nightingale Defendants in relation to their employees; controlled Nightingale Defendants day to day operations, employment policies, and compensation practices; and was an employer within the meaning of section 3(d) of the FLSA
9. During all times material to this Complaint, Nightingale Defendants and Nsong were Boykin's "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
10. This Court has federal question jurisdiction over this action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
11. This Court has supplemental subject matter jurisdiction over Boykin's state law claims pursuant to 28 U.S.C § 1367 as such state law claims arise from the same case or controversy as Boykin's federal claims: Defendants' failure to pay Boykin for hours worked and/or overtime.
12. This Court has personal jurisdiction to render judgment against Nightingale Defendants pursuant to Federal Rules of Civil Procedure rule 4(k)(1)(a) as both Nightingale and SGC are organized



under Ohio law; both have their principal places of business in Ohio; and both are therefore subject to general jurisdiction in the State of Ohio.

13. This Court has personal jurisdiction Nsong because at all times referenced in the complaint she was a resident of Ohio and/or was domiciled in Ohio; and because Nsong maintained control, oversight, and direction over the operation of the Nightingale Defendants, including their employment practices.
14. All conduct at issue herein occurred in the county of Lake, state of Ohio.
15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.
16. Venue is properly placed in the United States District Court for the Northern District of Ohio, Eastern Division, because it is the district court for the district, division, and county within which Defendants operate and conduct business.

### **FACTS**

17. Nightingale Defendants provide service to their clients by offering home health care services and through the operation of an adult day care center located at 7827 Reynolds Road, Mentor, Ohio, 44060.
18. Defendants hired Boykin on or around April of 2016 as a Home Health Aide.
19. While working for Defendants, Boykin worked in the homes of Defendant's clients as well as at Defendant's adult day care center.
20. At the time Boykin was hired, Defendants told her she was considered an independent contractor.
21. Boykin's work was integral to Defendant's business.
22. Boykin's employment was not temporary and had no fixed end-date.
23. Boykin was not required to use managerial skills to realize a profit or a loss.
24. Boykin was economically dependent on Defendants and did not invest her own money, equipment, or supplies into Defendant's business.



25. Boykin's job duties did not require special skills.
26. At all times material to the complaint, Defendants controlled Boykin's employment, including her hours of work.
27. Boykin was not conducting her own business while in the employ of Defendants.
28. Boykin was treated by Defendants as an at-will employee.
29. Despite being labeled by Defendants as an independent contractor, Boykin was in reality a non-exempt employee under the FLSA.
30. Defendants told Boykin that she was an independent contractor so they could avoid making overtime payments to Boykin.
31. Boykin worked for Defendants until approximately June of 2016.
32. During her employment with Defendants, Boykin regularly worked in excess of 40 hours per week.
33. Pursuant to Defendants' instructions, Boykin submitted weekly "invoices" in which she reported her hours of work.<sup>1</sup>
34. During the week of April 10, 2016, Boykin worked sixty hours.
35. Boykin reported to Defendants that she had worked sixty hours during the week of April 10, 2016.
36. Defendants failed to pay Boykin at a rate of pay equal to or exceeding the minimum wage for any hours she worked during the week of April 10, 2016.
37. Defendants failed to pay Boykin overtime at a rate of time-and-one-half her regular rate of pay for all the twenty hours of overtime Boykin worked during the week of April 10, 2016.
38. Defendants never paid Boykin any wages at all for the work she performed during the week of April 10, 2016.
39. During the week of April 17, 2016, Boykin worked sixty hours.

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<sup>1</sup> True and accurate copies of Boykin's "invoices" are attached hereto as Exhibit A.



40. Boykin reported to Defendants that she had worked sixty hours during the week of April 17, 2016.<sup>2</sup>
41. Defendants failed to pay Boykin at a rate of pay equal to or exceeding the minimum wage for any hours she worked during the week of April 17, 2016.
42. Defendants failed to pay Boykin overtime at a rate of time-and-one-half her regular rate of pay for all the twenty hours of overtime Boykin worked during the week of April 17, 2016.
43. Defendants never paid Boykin any wages at all for the work she performed during the week of April 17, 2016.
44. During the week of April 24, 2016, Boykin worked sixty hours.
45. Boykin reported to Defendants that she had worked sixty hours during the week of April 24, 2016.<sup>3</sup>
46. Defendants failed to pay Boykin at a rate of pay equal to or exceeding the minimum wage for any hours she worked during the week of April 24, 2016.
47. Defendants failed to pay Boykin overtime at a rate of time-and-one-half her regular rate of pay for all the twenty hours of overtime Boykin worked during the week of April 24, 2016.
48. Defendants never paid Boykin any wages at all for the work she performed during the week of April 24, 2016.
49. During the week of May 1, 2016, Boykin worked fifty-four hours.
50. Boykin reported to Defendants that she had worked fifty-four hours during the week of May 1, 2016.<sup>4</sup>
51. Defendants failed to pay Boykin at a rate of pay equal to or exceeding the minimum wage for any hours she worked during the week of May 1, 2016.
52. Defendants failed to pay Boykin overtime at a rate of time-and-one-half her regular rate of pay for all the fourteen hours of overtime Boykin worked during the week of May 1, 2016.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*



53. Defendants never paid Boykin any wages at all for the work she performed during the week of May 1, 2016.
54. During the week of May 8, 2016, Boykin worked sixty-three hours.
55. Boykin reported to Defendants that she had worked sixty-three hours during the week of May 8, 2016.<sup>5</sup>
56. Defendants failed to pay Boykin at a rate of pay equal to or exceeding the minimum wage for any hours she worked during the week of May 8, 2016.
57. Defendants failed to pay Boykin overtime at a rate of time-and-one-half her regular rate of pay for all the twenty-three hours of overtime Boykin worked during the week of May 8, 2016.
58. Defendants never paid Boykin any wages at all for the work she performed during the week of May 8, 2016.
59. During the week of May 15, 2016, Boykin worked seventy hours.
60. Boykin reported to Defendants that she had worked seventy hours during the week of May 15, 2016.<sup>6</sup>
61. Defendants failed to pay Boykin at a rate of pay equal to or exceeding the minimum wage for any hours she worked during the week of May 15, 2016.
62. Defendants failed to pay Boykin overtime at a rate of time-and-one-half her regular rate of pay for all the thirty hours of overtime Boykin worked during the week of May 15, 2016.
63. Defendants never paid Boykin any wages at all for the work she performed during the week of May 15, 2016.
64. During the week of May 22, 2016, Boykin worked eighty-four hours.
65. Boykin reported to Defendants that she had worked eighty-four hours during the week of May 22, 2016.<sup>7</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Exhibit A.



66. Defendants failed to pay Boykin at a rate of pay equal to or exceeding the minimum wage for any hours she worked during the week of May 22, 2016.
67. Defendants failed to pay Boykin overtime at a rate of time-and-one-half her regular rate of pay for all the forty-four hours of overtime Boykin worked during the week of May 22, 2016.
68. Defendants never paid Boykin any wages at all for the work she performed during the week of May 22, 2016.
69. During the week of May 29, 2016, Boykin worked seventy-two hours.
70. Boykin reported to Defendants that she had worked seventy-two hours during the week of May 29, 2016.<sup>8</sup>
71. Defendants failed to pay Boykin at a rate of pay equal to or exceeding the minimum wage for any hours she worked during the week of May 29, 2016.
72. Defendants failed to pay Boykin overtime at a rate of time-and-one-half her regular rate of pay for all the thirty-two hours of overtime Boykin worked during the week of May 29, 2016.
73. Defendants never paid Boykin any wages at all for the work she performed during the week of May 29, 2016.
74. Defendants have a history of improperly labelling employees as independent contractors.
75. Defendants have a history of violating the FLSA.
76. In or around 2013, Defendants were sued for violations of the FLSA by the Department of Labor in *Perez v. Nightingale Home Support & Care, Inc. et al*, United States District Court for the Northern District of Ohio, No. 1:13-cv-02563.
77. In *Perez*, the DOL specifically alleged that Defendants had misclassified employees and failed to pay them overtime.
78. *Perez* was resolved in a settlement with the DOL.

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<sup>8</sup> *Id.*



79. Defendants were again sued in 2017 for violations of the FLSA in the matter of *Glenn, et al v. Nightingale Home Support & Care, Inc. et al*, United States District Court for the Northern District of Ohio, No. 17cv00006.
80. In *Glenn*, two former home health care aides alleged that Defendant had misclassified them as independent contractors and had failed to pay them overtime.
81. Defendants ultimately entered into a settlement to resolve *Glenn*.
82. Defendants' pattern of deliberately misclassifying its employees and failing to properly pay all wages due, including overtime, demonstrates that Defendants' violations of the FLSA with respect to Boykin were willful and reckless.
83. Defendants' violations of the FLSA with respect to Boykin were committed without good faith and were unreasonable.
84. As a result of Defendants' violations of the FLSA and the Ohio Wage Act, Boykin suffered damages.

**COUNT I: VIOLATION OF THE FAIR LABOR STANDARDS ACT**

85. Boykin restates each and every prior paragraph of this Complaint, as if it were fully restated herein.
86. During all times material to this complaint, Boykin was not exempt from receiving overtime wages under the FLSA because, *inter alia*, she was not an "executive," "computer," "administrative," or "professional" employee, as those terms are defined under the FLSA. See 29 C.F.R. §§ 541.0, et seq.
87. On October 1, 2013, the U.S. Department of Labor issued the Home Care Final Rule ("Final Rule")<sup>9</sup> to extend minimum wage and overtime protections to almost 2 million home care workers. The Final Rule was challenged in federal court, but on August 21, 2015, the District of

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<sup>9</sup> Application of the Fair Labor Standards Act to Domestic Service, Fed. Reg. 60453, 60557 (Oct. 1, 2013) (amending 29 C.F.R. Part 552).





Columbia Circuit Court of Appeals in *Home Care Association of America v. Weil*, 78 F.Supp. 3d 123 (D.C.Cir. 2015), issued a unanimous opinion affirming the validity of the Final Rule. This opinion upholding the Home Care Final Rule became effective on October 13, 2015, when the Court of Appeals issued its mandate. The Home Care Final Rule had an effective date of January 1, 2015.<sup>10</sup>

88. During all times material to this Complaint, Defendants violated the FLSA with respect to the Boykin by, *inter alia*, failing to pay her at least the minimum wage for all hours worked and by failing to compensate Boykin at time-and-one-half her regular rate of pay for any hours worked in excess of forty (40) hours per workweek.
89. During all times material to this complaint, Defendants knew that Boykin was not exempt from the minimum wage and overtime obligations imposed by the FLSA. Defendants also knew that they were required to pay Boykin at least the applicable minimum wage, plus overtime compensation at a rate of one and one-half her regular rate for hours worked in excess of forty (40) hours per workweek. Despite such knowledge, Defendants willfully withheld and failed to pay overtime compensation to which Boykin was entitled.
90. In violating the FLSA, Defendants acted intentionally and willfully.
91. In violating the FLSA, Defendants acted without a good faith or reasonable basis in refusing to compensate Freeman for hours she spent logged onto scheduling software at her home.
92. In violating the FLSA, Defendants acted in reckless disregard of clearly applicable FLSA provisions.
93. Boykin suffered damages as a direct and proximate result of Defendants' failure to pay overtime.

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<sup>10</sup> <http://www.dol.gov/whd/homecare/litigation.htm>.



94. Further, Defendants are liable to Boykin for liquidated damages equal to the amount of unpaid overtime pay in addition to payment of damages, plus attorney fees and court costs.<sup>11</sup>

**COUNT II: BREACH OF IMPLIED CONTRACT**

95. Boykin restates each and every prior paragraph of this Complaint, as if it were fully restated herein.

96. Defendants orally promised to pay Boykin \$11.00 per hour for each hour of work she performed for Defendants.

97. Boykin accepted Defendants offer of \$11.00 per hour and began working for Defendants in around April of 2016, creating an implied contract (“Contract”).

98. Boykin substantially performed her obligations under the Contract by working for Defendants.

99. Defendants breached the Contract by failing to pay Boykin.

100. Boykin is entitled to recover his expectation interest in the Contract, i.e. her unpaid wages of \$11.00 per hour, plus any consequential damages known to the Parties at the time of contracting.

**COUNT III: UNJUST ENRICHMENT**

101. Boykin restates each and every prior paragraph of this Complaint, as if it were fully restated herein.

102. Boykin conferred a benefit upon Defendants by performing work for Defendants

103. Defendants were aware of the benefit conferred upon them by Boykin.

104. Defendants retains the benefit conferred upon it by Boykin under circumstances where it would be unjust to do so without payment to Boykin.

105. Boykin is entitled to restitution from Wipro for the benefit conferred upon Wipro.

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<sup>11</sup> § 216(b).



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Amber Boykin requests judgment against Defendant and for an order:

- a) Awarding of compensatory and statutory damages to compensate Boykin for unpaid wages, and other consequential and/or liquidated damages in an amount in excess of \$42,592.00 to be proven at trial, along with pre- and post-judgment interest to the extent permitted by law;
- b) Awarding Boykin restitution for the benefit unjustly retained by Defendants;
- c) Awarding of costs and disbursements and reasonable allowances for fees of counsel and experts, and reimbursement of expenses for Boykin's claims to the extent permitted by law;
- d) Awarding of taxable costs of this action; and
- e) Awarding all other legal and equitable relief this Court deems proper.

Respectfully submitted,

/s/ Chris P. Wido  
Chris P. Wido (0090441)  
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*Attorney For Plaintiff Amber Boykin*



**JURY DEMAND**

Plaintiff Amber Boykin demands a trial by jury by the maximum number of jurors permitted.

/s/ Chris P. Wido  
Chris P. Wido (0090441)  
**THE SPITZ LAW FIRM, LLC**

