

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ISABELLA BRISTOW, on behalf of herself
and others similarly situated,

Plaintiff,

v.

AMERIHEALTH CARITAS,

Defendant.

Civil Action No.

NOTICE OF REMOVAL FROM STATE COURT

Defendant AmeriHealth Caritas (“Defendant”), by and through its undersigned attorneys, hereby gives notice that, pursuant to 28 U.S.C. §§ 1331, 1441, 1446, and 1453, this action is removed from the Philadelphia County Court of Common Pleas to the United States District Court for the Eastern District of Pennsylvania. As grounds for removal, Defendant states as follows:

I. THE STATE COURT ACTION

1. On September 24, 2021, Plaintiff Isabella Bristow (“Plaintiff”) commenced a putative class action by Complaint against Defendant titled *Bristow v. AmeriHealth Caritas*, Case No. 210901884, in the Philadelphia County Court of Common Pleas (the “State Court Action”). A true and correct copy of the Complaint is attached as Exhibit A.

2. In her Complaint, Plaintiff alleged that Defendant failed to comply with the requirements of the Pennsylvania Minimum Wage Act (“PMWA”), 43 Pa. Stat. § 333.104(c), by failing to pay overtime premium compensation to Plaintiff. *See* Exhibit A (Complaint), ¶ 27. Plaintiff also asserted claims on behalf of a putative class of other individuals who (i) reside in

Pennsylvania and (ii) have been employed by Defendant in Pennsylvania as a CHC Service Coordinator within the past three years.¹ *Id.* at ¶ 19.

3. On October 27, 2021, Defendant’s counsel agreed to accept service of the Complaint on behalf of Defendant and certified that they were authorized to do so. This agreement was memorialized in a stipulation which also permitted Defendant to answer, plead, or otherwise respond to Plaintiff’s Complaint by December 3, 2021. A true and correct copy of the Stipulation is attached as Exhibit B.

4. On December 3, 2021, Defendant filed an Answer to Plaintiff’s Complaint. A true and correct copy of Defendant’s Answer is attached as Exhibit C.

5. On December 23, 2021, Plaintiff filed an Amended Complaint in the State Court Action. A true and correct copy of the Amended Complaint is attached as Exhibit D.

6. In her Amended Complaint, Plaintiff for the first time asserted a claim under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201(a)(1). *See* Exhibit D (Amended Complaint) ¶ 27 (“Defendant has violated the FLSA by failing to pay overtime premium compensation to Plaintiff and other class members and, in so doing, has acted with reckless disregard of clearly applicable FLSA provisions.”).

7. The Complaint, Stipulation, Answer, and Amended Complaint constitute all pleadings in this action.

¹ Defendant does not concede and reserves the right to contest Plaintiff’s allegation that this lawsuit properly can proceed as a class or collective action.

II. REMOVAL IS TIMELY

8. This Notice of Removal is timely filed, pursuant to 28 U.S.C. § 1446(b)(3), as it is being filed within thirty (30) days after December 23, 2021, the date upon which Plaintiff filed the Amended Complaint first asserting the FLSA claim that creates grounds for removal.

9. Additionally, this Notice is timely because it is filed within one year after commencement of the State Court Action. *See* 28 U.S.C. § 1446(c).

10. No previous Notice of Removal has been filed with this Court for the relief sought herein.

III. GROUND FOR REMOVAL

11. 28 U.S.C. § 1441 establishes when an action is removable. 28 U.S.C. § 1441(a) provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the Defendant to the district court of the United States for the district and division embracing the place where such action is pending.”

12. This Court’s subject matter jurisdiction, and the basis for removal, is founded upon 28 U.S.C. §§ 1331 and 1441.

IV. ORIGINAL SUBJECT MATTER JURISDICTION

13. This Court has original jurisdiction over this action under 28 U.S.C. § 1331 and this action may be removed pursuant to 28 U.S.C. § 1441.

14. Federal question jurisdiction exists under Section 1331 where a Complaint asserts a claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

15. Here, on the face of the Amended Complaint, Plaintiff explicitly alleged violations of, and seek remedies related to, the FLSA. *See* Amended Complaint ¶¶ 26-27. Defendant therefore may remove this action pursuant to 28 U.S.C. § 1441. *See Breuer v. Jim’s Concrete of Brevard, Inc.*, 538 U.S. 691, 693-94 (2003) (holding that there is “no question” that

the FLSA provides a basis for removal jurisdiction); *Minielly v. Acme Cryogenics, Inc.*, No. CV 15-6164, 2016 WL 1221640, at *3 (E.D. Pa. Mar. 28, 2016) (holding that plaintiff's FLSA claim "clearly provides a basis for federal question jurisdiction and removal").

V. SUPPLEMENTAL JURISDICTION EXISTS OVER THE STATE LAW CLAIMS

16. Plaintiff's remaining cause of action is a claim over which this Court may properly exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a), because it forms part of the same case or controversy as the claim over which this Court would have original jurisdiction. 28 U.S.C. § 1367(a) ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article II of the United States Constitution."). A district court may exercise supplemental jurisdiction over a state law claim where the state claim shares a common nucleus of operative fact with the claim that supports the court's original jurisdiction. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966).

17. Although Defendant disputes that Plaintiff's claims present common questions of fact for herself and hundreds of individualized claims of others with varying circumstances of employment, Plaintiff's FLSA and PMWA claims both derive from defendant's alleged failure to pay Plaintiff overtime premium compensation (Amended Complaint ¶¶ 26-27). Thus, this Court has supplemental jurisdiction over Plaintiff's PMWA claim. *De Asencio v. Tyson Foods, Inc.*, 342 F.3d 301, 308 (3d Cir. 2003) ("Where the same acts violate parallel federal and state laws, the common nucleus of operative facts is obvious.").

V. OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED

18. Venue is proper in this District pursuant to 28 U.S.C. § 1446(a) because the Philadelphia County Court of Common Pleas, where this action was filed and had been pending prior to removal, is a state court within this federal district and division.

19. Defendant will promptly file a copy of this Notice of Removal with the Prothonotary for the Philadelphia County Court of Common Pleas in accordance with 28 U.S.C. § 1446(d).

20. Written notice of the filing of this Notice of Removal has been or will be given to Plaintiff in accordance with 28 U.S.C. § 1446(d).

21. A completed Federal Civil Cover Sheet accompanies this Notice of Removal.

22. If any question arises as to the propriety of the removal of this action, Defendant requests the opportunity to present both a brief and oral argument in support of its position that this case is removable.

WHEREFORE, Defendant respectfully requests that all further proceedings in the Philadelphia County Court of Common Pleas be discontinued and that this suit be removed to the United States District Court for the Eastern District of Pennsylvania.

Date: January 19, 2022

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

/s/ Michael J. Puma

Michael J. Puma
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jeffrey.becker@morganlewis.com

Lauren E. Marzullo (*pro hac vice forthcoming*)
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Pittsburgh, PA 15219
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lauren.marzullo@morganlewis.com

CERTIFICATE OF SERVICE

I, Michael J. Puma, hereby certify that a true and correct copy of Defendant's Notice of Removal was filed with the clerk of the Eastern District of Pennsylvania and was served via email this 19th day of January 2022 upon:

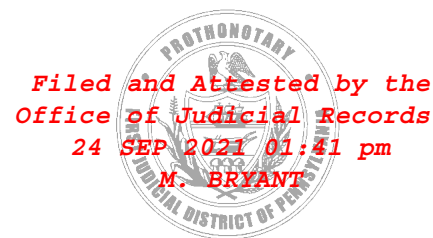
Peter Winebrake
R. Andrews Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Counsel for Plaintiff

/s/ Michael J. Puma

Michael J. Puma

EXHIBIT A

Peter Winebrake (80496)
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491



Additional Counsel Listed on Signature Page

	:	
ISABELLA BRISTOW, on behalf of herself and others similarly situated,	:	
Plaintiff,	:	PHILADELPHIA COUNTY
v.	:	COURT OF COMMON PLEAS
	:	
AMERIHEALTH CARITAS,	:	CLASS ACTION
Defendant.	:	
	:	JURY TRIAL DEMANDED
	:	

COMPLAINT -- CLASS ACTION
10 — Contract: Other

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATA-MENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASSOCIACION DE LICENCIADOS DE
FILADELFA
Servicio De Referencia E Informacion Legal
1101 Market Street, 11th Floor
Filadelfia, Pennsylvania 19107
(215) 238-1701

Isabella Bristow (“Plaintiff”) brings this class action lawsuit against AmeriHealth Caritas (“Defendant”), seeking all available relief under the Pennsylvania Minimum Wage Act of 1968 (“PMWA”), 43 P.S. §§333.101, *et seq.*

PARTIES

1. Plaintiff maintains a permanent residence at 1132 Anchor Street, Philadelphia, PA 19124.
2. Plaintiff is an employee covered by the PMWA and entitled to its protections.
3. Defendant is a corporation headquartered at 200 Stevens Drive, Philadelphia, PA 19113.
4. Defendant is an employer covered by the PMWA and required to comply with its wage and hour mandates.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendant.
6. Venue in this Court is proper under Pennsylvania Rule of Civil Procedure 2179 because Defendant regularly conducts business in Philadelphia County.

FACTS

7. Defendant purportedly “is a national leader in health care solutions for people who are at a low income level and/or are chronically ill.”¹
8. Defendant employs individuals in the position of CHC Service Coordinator. According to Defendant’s standardized job description, CHC Service Coordinators “assist[]

¹ <https://www.amerihealthcaritas.com/our-story/index.aspx> (last visited 9/23/21)

participants who need LTSS² in obtaining the services they need as required by CHC³.”

9. The CHC Service Coordinator position does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study.

10. CHC Service Coordinators are paid salaries.

11. CHC Service Coordinators regularly work over 40 hours per week.

12. CHC Service Coordinators do not receive any overtime premium compensation for hours worked over 40 per week.

13. CHC Service Coordinators do not perform work related to the management or general business operations of Defendant or its customers.

14. In performing their work, CHC Service Coordinators are required to follow standardized and highly-detailed guidelines, checklists, and protocols that leave them with little opportunity to exercise discretion and independent judgment.

15. CHC Service Coordinators do not supervise other employees.

16. Plaintiff is employed by Defendant as a CHC Service Coordinator and is paid an

² “LTSS” is an acronym for “Long-Term Services and Supports” and “refers to the assistance many people need with common activities in their everyday lives. These activities can include basic functions such as bathing, eating, or dressing, or more involved tasks like cleaning, cooking, and taking medications. LTSS recipients include not only the elderly, but also non-elderly people with physical disabilities, intellectual and developmental disabilities, mental illness, traumatic brain injury, and other complex issues. LTSS can be temporary, lasting several weeks or months, or, for more chronic conditions, years. . . . While LTSS programs are partially paid for with private funds, public insurance benefit plans like Medicaid pick up the majority of the payments.” <https://www.amerihhealthcaritas.com/health-care-solutions/long-term-services-and-supports.aspx> (last visited 9/23/21).

³ “CHC” is an acronym for “Community HealthChoices,” which is Pennsylvania’s mandatory managed care program for adults who “have both Medicare and Medicaid, or receive long-term supports through Medicaid because [they] need help with everyday personal tasks.” <https://www.dhs.pa.gov/HealthChoices/HC-Services/Pages/CHC-Main.aspx> (last visited 9/23/21).

annual salary of around \$51,000.

17. Plaintiff, like other CHC Service Coordinators, regularly works over 40 hours per week. Specifically, Plaintiff estimates that she currently works 50-60 hours during a typical week.

18. Plaintiff, like other CHC Service Coordinators, does not receive any overtime premium compensation for hours worked over 40 per week.

CLASS ACTION ALLEGATIONS

19. Plaintiff sues on behalf of herself and every other individual who (i) resides in Pennsylvania and (ii) has been employed by Defendant in Pennsylvania as a CHC Service Coordinator within the past three years. These individuals are called “class members.”

20. This action may be properly maintained as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709.

21. The class is so numerous that joinder of all individual class members is impracticable.

22. Defendant’s challenged conduct – namely its standardized practice of failing to pay overtime premium compensation to CHC Service Coordinators – raises questions of law and fact that are common to the entire class.

23. Plaintiff’s claims and Defendant’s anticipated defenses are typical of the claims and defenses applicable to the entire class.

24. Plaintiff will fairly and adequately assert and protect the interests of the class because, *inter alia*, she is represented by experienced and well-funded lawyers who are prepared to vigorously litigate this action on behalf of the class and she is free of any conflicts of interest that prevent her from pursuing this action on behalf of the class.

25. A class action provides a fair and efficient method for adjudication of the controversy because, *inter alia*:

(a) Common questions of law and fact predominate over any questions affecting Plaintiff or any individual class member;

(b) All class members are easily identifiable through Defendant's personnel records and no foreseeable difficulties in the management of this lawsuit as a class action exist;

(c) Maintenance of this lawsuit as a class action protects against the risks of inconsistent or varying adjudications that might result if individual class members were to commence independent actions in various Pennsylvania courthouses;

(d) Because Defendant is headquartered in Philadelphia, this Court is an appropriate forum for the litigation;

(e) Because the damages sustained by individual class members are relatively small compared to the resources of Defendant and the costs of individual litigation, it is impracticable and unrealistic for individual class members to independently pursue litigation against Defendant in order to vindicate their rights.

COUNT I

26. The PMWA entitles employees to overtime premium compensation of "not less than one and one-half times" the employee's regular rate of pay for all hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

27. Defendant has violated the PMWA by failing to pay overtime premium

compensation to Plaintiff and other class members.

JURY DEMAND

Plaintiff demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the class, seeks the following relief:

- A. Unpaid overtime wages;
- B. Prejudgment interest;
- C. Litigation costs, expenses, and attorney's fees; and
- D. Such other and further relief as this Court deems just and proper.

Date: September 24, 2021

/s/ Peter Winebrake
Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Michelle L. Tolodziecki
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

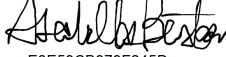
Plaintiff's Lawyers

VERIFICATION

I, Isabella Bristow, hereby state:

1. I am a plaintiff in this action;
2. I verify that the statements made in the accompanying complaint are true and correct to the best of my knowledge information and belief; and
3. I understand that the statements in the complaint are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

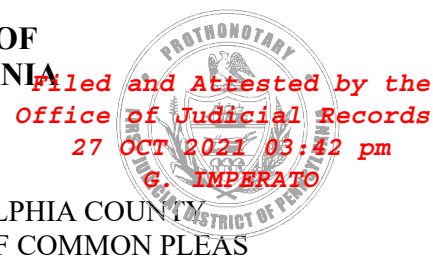
Dated: 9/24/2021

DocuSigned by:

E3E59CB979F245D...

Isabella Bristow

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA



ISABELLA BRISTOW, on behalf of herself and others similarly situated,	:	
	:	PHILADELPHIA COUNTY
Plaintiff,	:	COURT OF COMMON PLEAS
	:	
v.	:	CLASS ACTION
	:	
AMERIHEALTH CARITAS,	:	Case No. 210901884
Defendant.	:	
	:	

STIPULATION FOR ACCEPTANCE OF SERVICE AND DEADLINE TO ANSWER

IT IS HEREBY STIPULATED AND AGREED by and between counsel for Plaintiff Isabella Bristow (“Plaintiff”) and Defendant AmeriHealth Caritas (“Defendant”) as follows:

1. On September 24, 2021, Plaintiff filed a Complaint against Defendant in the above-captioned matter.
2. In lieu of service pursuant to Pennsylvania Rule of Civil Procedure 402(a), counsel for Defendant agrees to accept service of the Complaint on behalf of Defendant and certifies that they are authorized to do so.
3. The parties further agree and stipulate that, pursuant to Pennsylvania Rule of Civil Procedure 1003, Defendant shall have until December 3, 2021 to answer, plead, or otherwise respond to Plaintiff’s Complaint.
4. By submitting this Stipulation, Defendant expressly retains and does not waive any and all defenses to this action other than as to service of process.

Dated: October 27, 2021

Respectfully submitted,

/s/ Mark J. Gottesfeld

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R. Andrew Santillo
Mark J. Gottesfeld
Michelle Tolodziecki
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Dresher, PA 19025
(215) 884-2491
mgottesfeld@winebrakelaw.com

Attorneys for Plaintiff

/s/ Michael J. Puma

Michael J. Puma
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Philadelphia, PA 19103-2921
(215) 963-5000
michael.puma@morganlewis.com

Attorney for Defendant

**IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA**

ISABELLA BRISTOW, on behalf of herself and others similarly situated,	:	
	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	
v.	:	CLASS ACTION
	:	
AMERIHEALTH CARITAS,	:	Case No. 210901884
Defendant.	:	

ORDER

AND NOW on this _____ day of _____ 2021, it is hereby ORDERED that the Stipulation is GRANTED, and Defendant shall have until December 3, 2021 to answer, plead, or otherwise respond to Plaintiff's Complaint.

J.

EXHIBIT C

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY, PENNSYLVANIA

Filed and Attested by the
Office of Judicial Records
03 DEC 2021 11:51 am
G. IMPERATO



ISABELLA BRISTOW, on behalf of herself
and others similarly situated,

Plaintiff,

v.

AMERIHEALTH CARITAS,

Defendant.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

CLASS ACTION

Case No. 210901884

**DEFENDANT AMERIHEALTH CARITAS' VERIFIED ANSWER WITH NEW
MATTER TO PLAINTIFF'S CLASS ACTION COMPLAINT**

Defendant AmeriHealth Caritas Services, LLC (“AmeriHealth Caritas”), by and through its attorneys, hereby submits its Answer and New Matter to the Class Action Complaint (“Complaint”) of Plaintiff Isabella Bristow (“Plaintiff”) in accordance with the numbered paragraphs thereof as follows:

PARTIES¹

1. AmeriHealth Caritas admits only that its records reflect Plaintiff’s last known address to be 1132 Anchor Street, Philadelphia, PA 19124. AmeriHealth Caritas denies the remaining allegations contained in Paragraph 1 of the Complaint.

2. AmeriHealth Caritas admits only that it employs Plaintiff. The remaining allegations in Paragraph 2 are conclusions of law to which no response is required.

3. AmeriHealth Caritas admits only that it is a limited liability company headquartered at 100 Stevens Drive, Philadelphia, Pennsylvania 19113. AmeriHealth Caritas denies the remaining allegations contained in Paragraph 3 of the Complaint.

¹ AmeriHealth Caritas restates herein the headings from Plaintiff’s Complaint for the Court’s convenience, but it does not admit the content of any of the headings.

4. The allegations in Paragraph 4 are conclusions of law to which no response is required.

JURISDICTION AND VENUE

5. The allegations in Paragraph 5 are conclusions of law to which no response is required.

6. The allegations in Paragraph 6 are conclusions of law to which no response is required.

FACTS

7. The allegations in Paragraph 7 purport to quote a written document, the terms of which speak for themselves. AmeriHealth Caritas denies the allegations in Paragraph 7 to the extent they are inconsistent with the terms of any such written document and/or do not accurately reflect any such written document in part or in entirety.

8. AmeriHealth Caritas admits only that it employs Plaintiff in the position of CHC (Community HealthChoices) Service Coordinator. The remaining allegations in Paragraph 8 purport to quote written documents, the terms of which speak for themselves. AmeriHealth Caritas denies the allegations in Paragraph 8 to the extent they are inconsistent with the terms of any such written document, do not accurately reflect any such written document in part or in entirety and/or assume that such document captures all duties of all CHC Service Coordinators.

9. The allegations in Paragraph 9 are conclusions of law to which no response is required. To the extent a response is required, AmeriHealth Caritas denies the allegations in Paragraph 9 of the Complaint.

10. AmeriHealth Caritas admits the allegations in Paragraph 10 of the Complaint.

11. AmeriHealth Caritas denies the allegations in Paragraph 11 of the Complaint.

12. AmeriHealth Caritas admits only that it compensates Plaintiff on a salary basis according to applicable law. AmeriHealth Caritas denies the remaining allegations in Paragraph 12 of the Complaint and specifically denies Plaintiff or any putative class member was improperly classified and entitled to receive overtime pay.

13. AmeriHealth Caritas denies the allegations in Paragraph 13 of the Complaint.

14. AmeriHealth Caritas denies the allegations in Paragraph 14 of the Complaint.

15. AmeriHealth Caritas admits only that the Service Coordinator position does not have any direct reports. AmeriHealth Caritas denies the remaining allegations in Paragraph 15 of the Complaint.

16. AmeriHealth Caritas admits the allegations in Paragraph 16 of the Complaint.

17. AmeriHealth Caritas denies the allegations in Paragraph 17 of the Complaint.

18. AmeriHealth Caritas admits only that it compensates Plaintiff on a salary basis according to applicable law. AmeriHealth Caritas denies the remaining allegations in Paragraph 18 of the Complaint and specifically denies that Plaintiff or any putative class member was improperly classified and entitled to receive overtime pay.

CLASS ACTION ALLEGATIONS

19. AmeriHealth Caritas admits only that Plaintiff purports to assert a claim on behalf of herself and every other individual who (i) resides in Pennsylvania and (ii) has been employed by Defendant in Pennsylvania as a CHC Service Coordinator within the past three years. AmeriHealth Caritas denies the remaining allegations in Paragraph 19 and specifically denies that Plaintiff or any putative class member is entitled to any relief and that Plaintiff's claims are suitable for class adjudication.

20. AmeriHealth Caritas denies the allegations in Paragraph 20 of the Complaint.

21. AmeriHealth Caritas denies the allegations in Paragraph 21 of the Complaint.

22. AmeriHealth Caritas denies the allegations in Paragraph 22 of the Complaint.

23. AmeriHealth Caritas denies the allegations in Paragraph 23 of the Complaint.

24. AmeriHealth Caritas denies the allegations in Paragraph 24 of the Complaint.

25. AmeriHealth Caritas denies the allegations in Paragraph 25 of the Complaint and its subparts (a)-(e).

COUNT I

26. The allegations in Paragraph 26 are conclusions of law to which no response is required.

27. AmeriHealth Caritas denies the allegations in Paragraph 27 of the Complaint.

JURY DEMAND

AmeriHealth Caritas admits only that Plaintiff purports to request a jury demand.

PRAYER FOR RELIEF

AmeriHealth Caritas denies the allegations in the unnumbered “Wherefore” paragraph of the Complaint and its subparts A-D.

GENERAL DENIAL

AmeriHealth Caritas denies each and every allegation contained in the Complaint that is not specifically admitted herein.

NEW MATTER

1. Plaintiff and/or some or all of the members of the purported class who were employed as Service Coordinators at AmeriHealth Caritas were exempt from overtime requirements under the PMWA under one or more exemptions, including but not limited to, the administrative exemption.

2. The Complaint fails, in whole or in part, to state specific facts sufficient to certify a class pursuant to the Pennsylvania Rules of Civil Procedure.

3. Some or all of the claims of Plaintiff and/or of some or all of the putative class members are barred, in whole or in part, by the limitations period applicable to their claims.

4. Some or all of the claims of Plaintiff and/or of some or all of the putative class members are barred, in whole or in part, to the extent such claims have been released, waived, discharged, and/or abandoned.

5. Some or all of the claims of Plaintiff and/or of some or all of the putative class members are barred, in whole or in part, by the doctrines of laches and/or estoppel.

6. Plaintiff is not entitled to certification of this action as a class action because the purported class is not ascertainable and also joinder is not impracticable, Plaintiff cannot satisfy the requirement of superiority, questions of law or fact are not common to the class and individual issues predominate, Plaintiff's claims are not typical of the claims or defenses of the purported class, Plaintiff will not fairly and adequately protect the interests of the class, Plaintiff's interests conflict with those of putative class members, and/or the requirements of the Pennsylvania Rules of Civil Procedure otherwise are not met in this case.

7. Plaintiff's claims and/or those of some or all of the putative class members are barred to the extent they concern hours during which they were engaged in activities that were preliminary or postliminary to their principal job activities or otherwise not compensable (e.g., when they were engaged in personal activities).

8. Some or all of the claims of Plaintiff and/or of some or all of the putative class members are offset, in whole or in part, by any amounts owed to AmeriHealth Caritas, including but not limited to overpayments.

9. To the extent that a class is certified, which it should not be, it should be certified only as an opt-in class action as permitted under Pennsylvania law. Plaintiff and those she seeks

to represent could pursue the same claims and remedies in an opt-in class action as in an opt-out class action. Plaintiff has no evidence or information to suggest that any of the class members wish to participate in this action.

RESERVATION OF RIGHTS

AmeriHealth Caritas reserves the right to amend its Answer and New Matter to the Complaint and to assert such additional defenses that may appear and prove applicable during the course of discovery and its continuing fact investigation.

WHEREFORE, AmeriHealth Caritas respectfully requests that the Complaint be dismissed in its entirety, with prejudice, and that the Court award AmeriHealth Caritas other relief as the Court deems appropriate.

Date: December 3, 2021

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

/s/ Michael J. Puma

Michael J. Puma

Jeffrey Becker

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Philadelphia, PA 19103

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Lauren E. Marzullo

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Pittsburgh, PA 15219

Tel: (412) 560-7407

Lauren.marzullo@morganlewis.com

VERIFICATION

I, Melissa R. Weakland, hereby verify on behalf of AmeriHealth Caritas, LLC that the factual statements contained in the foregoing Verified Answer and New Matter Of Defendant AmeriHealth Caritas, LLC to Plaintiff's Complaint are true and correct to the best of my knowledge, information, and belief, including based on information provided to me by others and on my review of documents. I understand that false statements contained herein are subject to the penalties set forth in 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.



Dated: December 3, 2021

CERTIFICATE OF SERVICE

On December 3, 2021, I hereby certify that I served a true and correct copy of the foregoing document on the individuals listed below via electronic filing:

Peter Winebrake
R. Andrews Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Counsel for Plaintiff

/s/ Michael J. Puma

Michael J. Puma

EXHIBIT D

Peter Winebrake (80496)
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491



Additional Counsel Listed on Signature Page

	:	
ISABELLA BRISTOW, on behalf of herself and others similarly situated,	:	
Plaintiff,	:	PHILADELPHIA COUNTY
v.	:	COURT OF COMMON PLEAS
	:	
AMERIHEALTH CARITAS,	:	No. 210901884
Defendant.	:	
	:	JURY TRIAL DEMANDED
	:	

FIRST AMENDED COMPLAINT -- CLASS ACTION
10 — Contract: Other

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATA-MENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASSOCIACION DE LICENCIADOS DE
FILADELFA
Servicio De Referencia E Informacion Legal
1101 Market Street, 11th Floor
Filadelfia, Pennsylvania 19107
(215) 238-1701

Isabella Bristow (“Plaintiff”) brings this class action lawsuit against AmeriHealth Caritas (“Defendant”), seeking all available relief under the Pennsylvania Minimum Wage Act of 1968 (“PMWA”), 43 P.S. §§333.101, *et seq.*, and the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).¹

PARTIES

1. Plaintiff maintains a permanent residence at 1132 Anchor Street, Philadelphia, PA 19124.
2. Plaintiff is an employee covered by the PMWA and entitled to its protections.
3. Defendant is a corporation headquartered at 200 Stevens Drive, Philadelphia, PA 19113.
4. Defendant is an employer covered by the PMWA and required to comply with its wage and hour mandates.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendant.
6. Venue in this Court is proper under Pennsylvania Rule of Civil Procedure 2179 because Defendant regularly conducts business in Philadelphia County.

FACTS

7. Defendant purportedly “is a national leader in health care solutions for people who are at a low income level and/or are chronically ill.”²
8. Defendant employs individuals in the position of CHC Service Coordinator. According to Defendant’s standardized job description, CHC Service Coordinators “assist[]

¹ As stated during the December 16, 2021 Case Management Conference, Plaintiff amends this complaint in order to add an FLSA claim.

² <https://www.amerihealthcaritas.com/our-story/index.aspx> (last visited 9/23/21)

participants who need LTSS³ in obtaining the services they need as required by CHC⁴.”

9. The CHC Service Coordinator position does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study.

10. CHC Service Coordinators are paid salaries.

11. CHC Service Coordinators regularly work over 40 hours per week.

12. CHC Service Coordinators do not receive any overtime premium compensation for hours worked over 40 per week.

13. CHC Service Coordinators do not perform work related to the management or general business operations of Defendant or its customers.

14. In performing their work, CHC Service Coordinators are required to follow standardized and highly-detailed guidelines, checklists, and protocols that leave them with little opportunity to exercise discretion and independent judgment.

15. CHC Service Coordinators do not supervise other employees.

16. Plaintiff is employed by Defendant as a CHC Service Coordinator and is paid an

³ “LTSS” is an acronym for “Long-Term Services and Supports” and “refers to the assistance many people need with common activities in their everyday lives. These activities can include basic functions such as bathing, eating, or dressing, or more involved tasks like cleaning, cooking, and taking medications. LTSS recipients include not only the elderly, but also non-elderly people with physical disabilities, intellectual and developmental disabilities, mental illness, traumatic brain injury, and other complex issues. LTSS can be temporary, lasting several weeks or months, or, for more chronic conditions, years. . . . While LTSS programs are partially paid for with private funds, public insurance benefit plans like Medicaid pick up the majority of the payments.” <https://www.amerihhealthcaritas.com/health-care-solutions/long-term-services-and-supports.aspx> (last visited 9/23/21).

⁴ “CHC” is an acronym for “Community HealthChoices,” which is Pennsylvania’s mandatory managed care program for adults who “have both Medicare and Medicaid, or receive long-term supports through Medicaid because [they] need help with everyday personal tasks.” <https://www.dhs.pa.gov/HealthChoices/HC-Services/Pages/CHC-Main.aspx> (last visited 9/23/21).

annual salary of around \$51,000.

17. Plaintiff, like other CHC Service Coordinators, regularly works over 40 hours per week. Specifically, Plaintiff estimates that she currently works 50-60 hours during a typical week.

18. Plaintiff, like other CHC Service Coordinators, does not receive any overtime premium compensation for hours worked over 40 per week.

CLASS/COLLECTIVE ACTION ALLEGATIONS

19. Plaintiff sues on behalf of herself and every other individual who (i) resides in Pennsylvania and (ii) has been employed by Defendant in Pennsylvania as a CHC Service Coordinator since September 24, 2018 (with respect to the PMWA claim) and December 23, 2018 (with respect to the FLSA claim). These individuals are called “class members.”

20. This action may be properly maintained as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709 and as a collective action pursuant to 29 U.S.C. § 216(b).

21. The class is so numerous that joinder of all individual class members is impracticable.

22. Defendant’s challenged conduct – namely its standardized practice of failing to pay overtime premium compensation to CHC Service Coordinators – raises questions of law and fact that are common to the entire class.

23. Plaintiff’s claims and Defendant’s anticipated defenses are typical of the claims and defenses applicable to the entire class.

24. Plaintiff will fairly and adequately assert and protect the interests of the class because, *inter alia*, she is represented by experienced and well-funded lawyers who are prepared

to vigorously litigate this action on behalf of the class and she is free of any conflicts of interest that prevent her from pursuing this action on behalf of the class.

25. A class action provides a fair and efficient method for adjudication of the controversy because, *inter alia*:

(a) Common questions of law and fact predominate over any questions affecting Plaintiff or any individual class member;

(b) All class members are easily identifiable through Defendant's personnel records and no foreseeable difficulties in the management of this lawsuit as a class action exist;

(c) Maintenance of this lawsuit as a class action protects against the risks of inconsistent or varying adjudications that might result if individual class members were to commence independent actions in various Pennsylvania courthouses;

(d) Because Defendant is headquartered in Philadelphia, this Court is an appropriate forum for the litigation;

(e) Because the damages sustained by individual class members are relatively small compared to the resources of Defendant and the costs of individual litigation, it is impracticable and unrealistic for individual class members to independently pursue litigation against Defendant in order to vindicate their rights.

COUNT I

26. The PMWA entitles employees to overtime premium compensation of "not less than one and one-half times" the employee's regular rate of pay for all hours worked over 40 per

week. *See* 43 P.S. § 333.104(c).

27. Defendant has violated the PMWA by failing to pay overtime premium compensation to Plaintiff and other class members.

COUNT II

26. The FLSA entitles employees to overtime premium compensation of “not less than one and one-half times” the employee’s regular rate of pay for all hours worked over 40 per week. *See* 29 U.S.C. § 201(a)(1).

27. Defendant has violated the FLSA by failing to pay overtime premium compensation to Plaintiff and other class members and, in so doing, has acted with reckless disregard of clearly applicable FLSA provisions.

JURY DEMAND

Plaintiff demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the class, seeks the following relief:

- A. Unpaid overtime wages;
- B. Liquidated damages (under the FLSA only) and prejudgment interest;
- C. Litigation costs, expenses, and attorney’s fees; and
- D. Such other and further relief as this Court deems just and proper.

Date: December 23, 2021

/s/ Peter Winebrake
Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Michelle L. Tolodziecki
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Plaintiff’s Lawyers

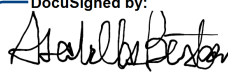
VERIFICATION

I, Isabella Bristow hereby state:

1. I am a plaintiff in this action;
2. I verify that the statements made in the accompanying amended complaint are true and correct to the best of my knowledge information and belief;

and
3. I understand that the statements in the complaint are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 12/23/2021

DocuSigned by:

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Signature