

IN THE COURT OF COMMON PLEAS
OF WASHINGTON COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED

FEB 28 2017

J.S. RANKO
PROTHONOTARY

TAMMY COOK,

No. 2015-7144

Plaintiff,

TYPE OF PLEADING:

vs.

ANSWER AND NEW MATTER

SUNNY DAYS IN HOME CARE
LLC,

FILED ON BEHALF OF:

Defendants.

DEFENDANT

COUNSEL OF RECORD:

Susan T. Roberts, Esquire
Pa I.D. 66758

Thomas A. Steele, Esquire
Pa I.D. 318541

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Firm I.D. 807

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

CIVIL DIVISION

TAMMY COOK,

Plaintiff,

vs.

SUNNY DAYS IN HOME CARE
LLC,

Defendants.

No. 2015-7144

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, Sunny Days In-Home Care LLC, by and through its attorneys, Peacock Keller & Ecker, LLP, and file the within Answer and New Matter:

CLASS ACTION COMPLAINT

Defendant admits that the named Plaintiff purports to bring a class action lawsuit under the Pennsylvania Minimum Wage Act, but denies that the claims are suitable for class treatment.

PARTIES

1. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 1. They are denied and strict proof is demanded.

2. It is admitted that the Defendant, Sunny Days In-Home Care LLC, is a Pennsylvania registered limited liability company. Defendant's current principal place of business is 88 Center Church Road Suite B, McMurray, Pennsylvania, 15317.

JURISDICTION AND VENUE

3. The averments of paragraph 3 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

4. Admitted in part and denied in part. It is admitted that Defendant regularly conducts business in Washington County. It is further admitted that the named Plaintiff worked for the Defendant in Washington County. The remaining averments of paragraph 4 contain conclusions of law to which no response is required. To the extent that a response is required, those averments are denied.

FACTS

5. Admitted.

6. Admitted.

7. Admitted in part and denied in part. It is admitted that the named Plaintiff was employed by Sunny Days as a Caregiver. It is denied that the named Plaintiff was employed from approximately July 2013 until approximately November 2013. On the contrary, the Plaintiff was employed from approximately July 2014 until approximately December 2014.

8. The averments of Paragraph 8 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

9. Defendant does not know what meaning the named Plaintiff attributes to the word "much," as contained in this allegation and therefore it is denied that the Defendant, during "much" of the three-year time period relevant to this lawsuit, failed to pay the Plaintiff and other Caregivers overtime premium compensation for hours worked over 40 per week. On the contrary, during the three-year time period relevant to this lawsuit, the Defendant paid premium overtime compensation to the Caregivers, and for a limited time period the Defendant paid only

straight time wages for hours worked by the named Plaintiff and other Caregivers. The remaining averments of paragraph 9 contain conclusions of law to which no response is required. To the extent that a response is required, those averments are denied.

10. Admitted in part and denied part. Defendant does not know what meaning the named Plaintiff attributes to the word "often," therefore, it is denied that the named Plaintiff "often" worked up to 50 hours per week. It is admitted that on occasion, the named Plaintiff worked up to 50 hours per week. It is further admitted that the Defendant paid only straight time wages to the named Plaintiff from approximately July 18, 2014, through December 19, 2014.

CLASS ACTION ALLEGATIONS

11. The averments of paragraph 11 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

12. The averments of paragraph 12 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

13. The averments of paragraph 13 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

14. The averments of paragraph 14 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

15. The averments of paragraph 15 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

16. The averments of paragraph 16 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

17. The averments of paragraph 17 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

18. The averments of paragraph 18 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

COUNT I

19. The averments of paragraphs 1 through 18 are incorporated as if though fully set forth herein.

20. The averments of paragraph 20 contain conclusions of law to which no response is required. To the extent the response is required, the averments are denied.

21. The averments of paragraph 21 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

22. The averments of paragraph 22 contain conclusions of law to which no response is required. To the extent that a response is required, the averments are denied.

WHEREFORE, the Defendant, Sunny Days In-Home Care LLC, demands judgment in its favor together with all costs of suit.

NEW MATTER

23. The averments of paragraphs 1 through 22 are incorporated as if fully set forth herein.

24. Plaintiff's claims are barred by the applicable statute of limitations.

25. Plaintiff's claims are barred by the doctrines of accord and satisfaction.

26. Plaintiff's claims are barred by the doctrine of laches.

27. Plaintiff has failed to state a claim for relief.

28. Plaintiff has failed to mitigate her damages.

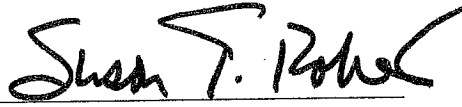
29. Plaintiff has failed to exhaust her administrative remedies.

30. Plaintiff has failed to allege class action facts in support of the prerequisites of Pennsylvania Rule of Civil Procedure 702 and the criteria specified in Rules 1708 and 1709, as required by Pa.R.Civ.P. 1704.

31. The putative class is not so numerous that joinder of all members is impracticable.

32. Plaintiff fails to identify a class capable of certification pursuant to the requirements in Pa. R.Civ.P. 1701 *et seq.*

Peacock Keller & Ecker, LLP

By: 

Susan T. Roberts, Esquire
Thomas A. Steel, Esquire
Attorneys for Defendant
Sunny Days In-Home Care LLC

VERIFICATION

I, Susan T. Roberts, counsel for Defendant, Sunny Days In-Home Care LLC, depose and say that I am counsel for Defendant in this matter and that I am authorized to make this Verification on behalf of Defendant pursuant to Pa. R.C.P. 1024(c); that the information set forth in the foregoing Defendant's Answer and New Matter is true and correct, not of my own knowledge but from information and belief based on information supplied to me by Sunny Days In-Home Care LLC, and verified by them; that the purpose of this Verification is to expedite the litigation; and that a Verification by Defendant will be furnished when possible.

This statement is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

2-28-17
Date

Susan T. Roberts
Susan T. Roberts, Esquire

CERTIFICATE OF SERVICE

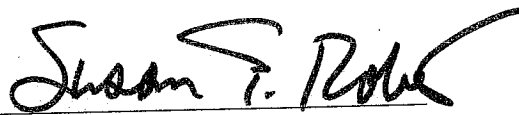
I, Susan T. Roberts, Esquire, do hereby certify that a true and correct copy of the foregoing Answer and New Matter is being served upon the following individuals by First-Class Mail, postage pre-paid, this 28th day of February, 2017.

Mark J. Gottesfeld, Esquire
Winebrake & Santillo, LLC
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Dresher PA 19025

Timothy Conboy, Esquire
Conboy Law, LLC
733 Washington Road, Suite 201
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Peacock Keller & Ecker, LLP

By:



Susan T. Roberts, Esquire