

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DISTRICT**

TIMOTHY CARR, on behalf of himself and others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO. 2:20-cv-6292
	:	
EVOLUTION HEALTH, LLC,	:	JUDGE
	:	
	:	
CARE CONNECTION OF CINCINNATI, LLC,	:	MAGISTRATE JUDGE
	:	
OHERBST, INC. DBA GUARDIAN HEALTHCARE,	:	
	:	
AND	:	
	:	
GEM CITY HOME CARE, LLC,	:	
	:	
Defendants.	:	

**PLAINTIFF’S COLLECTIVE AND CLASS ACTION COMPLAINT FOR VIOLATIONS
OF THE FAIR LABOR STANDARDS ACT AND OHIO LAW**

Plaintiff Timothy Carr (“Named Plaintiff” or “Plaintiff Carr”), individually and on behalf of others similarly situated, files his Complaint against Evolution Health, LLC (“Evolution”), Care Connection of Cincinnati, LLC (“Care Connection”), OHERBST, Inc dba Guardian Healthcare, LLC (“Guardian”), and Gem City Home Care, LLC (“Gem City”) (hereinafter collectively referred to as “Defendants”) for Defendants’ failure to pay employees overtime wages, seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.*; the Ohio Minimum Fair Wage Standards Act, O.R.C. 4111.03 and 4111.08 (“the Ohio Wage Act”); and the Ohio Prompt Pay Act (“OPPA”), Ohio Rev. Code § 4113.15 (the Ohio Wage Act and the OPPA will be referred to collectively as “the Ohio Acts”). The FLSA claim is brought as a collective

action pursuant to 29 U.S.C. § 216(b). The Ohio Acts claims are brought as a class action pursuant to Rule 23. The following allegations are based on personal knowledge as to the Named Plaintiff's own conduct and are made on information and belief as to the acts of others. Named Plaintiff, individually and on behalf of others similarly situated, hereby states as follows:

I. JURISDICTION AND VENUE

1. This action is brought pursuant to the FLSA, the Ohio Acts, and 28 U.S.C. § 1331.

2. This Court's jurisdiction in this matter is also predicated upon 28 U.S.C. § 1367, as this Complaint raises additional claims pursuant to the laws of Ohio, over which this Court maintains supplemental subject matter jurisdiction because they form a part of the same case or controversy.

3. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because Defendants employed Named Plaintiff and others similarly situated in the Southern District of Ohio, a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of Ohio, and Defendants conduct substantial business in the Southern District of Ohio.

II. PARTIES

A. Named Plaintiff

4. Plaintiff Carr is an individual, United States citizen and a resident of the State of Ohio, living in the Southern District of Ohio.

5. Plaintiff Carr was employed by Defendants beginning in or around December 2013 until approximately October 2019.

6. Plaintiff Carr was employed as an hourly, non-exempt employee of Defendants as defined in the FLSA and the Ohio Acts. Specifically, Plaintiff Carr was employed as an hourly occupational therapist, and Plaintiff Carr provided home health therapy services to Defendants'

clients. During his employment, Plaintiff Carr worked at least forty (40) or more hours in given workweeks.

7. Named Plaintiff brings this action on behalf of himself and those similarly situated and has given his written consent to bring this action to collect unpaid overtime compensation under the FLSA. Named Plaintiff's consent is being filed along with this Complaint pursuant to 29 U.S.C. § 216(b). (*Consent to be Party Plaintiff*, attached hereto as **Exhibit A**).

B. Defendant

8. Defendants are foreign limited liability companies that operate and conduct business activities throughout the United States. Defendants provide quality home health care, hospice, and infusion therapy services through various brands throughout the nation.¹ Defendants employ occupational therapists ("OTs"), physical therapists ("PTs"), physical therapy assistants ("PTAs"), speech therapists ("STs"), registered nurses ("RNs"), state tested nursing assistants ("STNAs"), licensed practical nurses ("LPNs"), home health aides ("HHAs"), and other direct care providers (collectively, OTs, PTS, PTAs, STs, RNs, STNAs, LPNs, HHAs, and other in-home direct care providers will be referred to as "home health employees") to provide home health care and therapy services to their clients.

9. At all relevant times, Defendants have had direct or indirect control and authority over Named Plaintiff's and other similarly situated home health employees' working conditions. At all relevant times, Defendants exercised that authority and control over Named Plaintiff and other similarly situated home health employees.

¹ See <https://www.evolution.net/> (last visited Nov. 20, 2020).

10. At all relevant times, Defendants have had direct or indirect control and authority over matters governing the essential terms and conditions of employment for Named Plaintiff and other similarly situated home health employees at the facilities where Defendants operated and Named Plaintiff and other similarly situated home health employees worked. At all relevant times, Defendants exercised that authority and control over Named Plaintiff and other similarly situated home health employees.

11. At all relevant times, Defendants have had the authority to hire and fire employees, supervise and control the work schedules and work conditions of home health employees, determine the rate and method of pay, and/or maintain employee records.

12. Upon information and belief, Defendants apply or cause to be applied substantially the same employment policies, practices, and procedures to all home health employees at all of their locations, including policies, practices and procedures relating to the payment of wages, overtime, and timekeeping.

13. At all relevant times, Defendants suffered or permitted Named Plaintiff and other similarly situated home health employees to work. The work that Named Plaintiff and other similarly situated home health employees performed was for Defendants' benefit.

14. Although Defendants consist of registered numerous other "entities,"² these entities collectively constitute an enterprise or single employer (hereinafter referred to as "single integrated enterprise") and are generally referred individually as an "Evolution Health Company." Defendants qualify as a single integrated enterprise because they engaged in related activities

² The entities operate under the following names: "Guardian Health Care," "Gem City Home Care," "Care Connection of Cincinnati," "Valley Health Home Care," and "Ascension at Home." See <https://www.evolution.net/> (last visited Nov. 20, 2020).

performed through unified operations or common control for a common business purpose. Evidence of such enterprise status can be found directly on Evolution's website, which singles out each of the previously named entities as being the names under which Evolution operates locally.³ Additionally, the Evolution website does not even differentiate amongst entities when advertising job opportunities across the several states in which it operates.⁴

15. Alternatively, Defendants qualify as joint employers of one another because they maintain interrelated operations, centralized control of labor relations, common management and common ownership, and financial control over these entities. Evidence of such joint-employer status can be found on Evolution's website⁵ and on individual entity websites that recognize Evolution as both a parent company and an affiliated company.⁶

16. Defendants each operate as an "employer" for the purposes of the FLSA and the Ohio Acts. Defendants are a single integrated enterprise and/or joint employers of Named Plaintiff and all other similarly situated home health employees.

17. At all times relevant, Defendants were employers of Named Plaintiff and other similarly situated home health employees as defined in the FLSA and the Ohio Acts.

³ See EVOLUTION HEALTH, "About Evolution Health," <https://www.evolution.net/about-us> (last visited Nov. 20, 2020) ("We operate under the names of our respected local agencies including Ascension at Home, Guardian Healthcare, Gem City, Care Connection of Cincinnati and The Valley Home Health Care.").

⁴ See EVOLUTION HEALTH, "Available Opportunities," <https://recruiting2.ultipro.com/EVO1001EVH/JobBoard/d34f41e8-349c-4bec-805e-999a371a5788/?q=&o=postedDateDesc&w=&wc=&we=&wpst=> (last visited Nov. 20, 2020) (listing job category, position, and location, but providing no information about particular entity associated with such location). When beginning from an individual entity's website, such as Guardian Healthcare's website, clicking on the "Apply Here" or "Online Job Application" links will redirect the user to the Evolution website as well. See GUARDIAN HEALTHCARE, <https://www.guardmyhealth.com/Home.aspx> (last visited Nov. 20, 2020).

⁵ See *supra* note 3 and accompanying text.

⁶ See, e.g., GEM CITY HOME CARE, "Who We Are," https://gemcityhc.com/who_we_are.php (last visited Nov. 20, 2020). Named Plaintiff notes that this website is shared with Care Connection. *Id.* Additionally, Guardian recognizes both Gem City and Care Connection as affiliated entities on its website. GUARDIAN HEALTHCARE, "Company Profile," <https://www.guardmyhealth.com/Profile.aspx> (last visited Nov. 20, 2020).

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