

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

MARTIN J. WALSH, Secretary of Labor,	)	
United States Department of Labor,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 22 CV 1868
	)	
GETCH, INC., a Minnesota corporation, and	)	
GREGORY B. GETCHELL, an individual,	)	
	)	
Defendants	)	
	)	

**COMPLAINT**

1. Pursuant to Section 217 of the Fair Labor Standards Act, of 1938, as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Secretary”), brings this action to enjoin and restrain the defendants Getch, Inc. (“Getch”) and Gregory B. Getchell (collectively, “Defendants”) from violating Sections 207, 211, 215(a)(2) and 215(a)(5) of the FLSA and to recover unpaid overtime compensation, plus an equal amount in liquidated damages, pursuant to Section 216(c) of the Act (29 U.S.C. § 216(c)) for Defendants’ employees.

2. The Secretary, through the Wage and Hour Division, conducted an investigation of Defendants for compliance with the FLSA. The Secretary’s investigation reviewed Defendants’ employment and pay practices from October 9, 2019, through October 6, 2021 (the “Investigation Period”). Unless stated otherwise, all allegations and conditions described herein pertain to the Investigation Period.<sup>1</sup>

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<sup>1</sup> If Defendants continued to violate the FLSA after the Investigation Period, then the allegations and conditions of pay and employment disclosed are incorporated herein by reference and Defendants may owe additional back wages and liquidated damages to employees.

### **Jurisdiction and Venue**

3. This Court has jurisdiction of this case. 29 U.S.C. §§ 216(c), 217 and 28 U.S.C. § 1345.

4. This Court is the proper venue because all or a substantial part of the events or omissions giving rise to these allegations occurred in this judicial district.

### **Defendants**

3. Defendant Getch is a Minnesota corporation within this Court's jurisdiction headquartered at 1043 North Shore Drive, Forest Lake, MN 55025, and with an office at 1405 Lilac Drive North, Suite 121, Golden Valley, MN 55422, where it conducts business.

4. Getch does business under the name Amada Senior Care as a franchisee of a national chain of senior care providers operating under that name.

5. During the Investigative Period, Getch employed certified nursing assistants and patient care assistants, who provided non-medical home care for seniors, primarily assisting clients with activities of daily living, including cooking, light housekeeping, dressing, bathing, shopping, and similar tasks.

6. Defendant Getchell is a resident of Minnesota and the 100 percent owner of Getch.

7. Defendant Getchell actively managed and supervised Getch's operations and its employees during the Investigation Period. Getchell hired and fired employees, set work schedules, set pay rates, and established Getch's policies and practices, including the pay practices giving rise to the FLSA violations alleged herein.

8. Getchell has acted directly or indirectly in Getch's interests with respect to its

employees and is therefore an “employer” under the FLSA. 29 U.S.C. § 203(d).

9. During the Investigation Period, Defendants engaged in business within Hennepin County, within this Court’s jurisdiction.

### **The FLSA Applies to Defendants**

10. Getch is an “enterprise” under the FLSA due to its related activities performed through unified operation or common control and for a common business purpose. 29 U.S.C. § 203(r).

11. Getch is an “enterprise engaged in commerce” under the FLSA, because it had (i) two or more employees who are engaged in or produced goods for commerce; and (ii) an annual gross volume of sales or business done greater than \$500,000 during the Investigation Period. 29 U.S.C. § 203(s)(1)(A).

### **FLSA Violations**

12. Defendants repeatedly violated Sections 207 and 215(a)(2) of the FLSA when they failed to pay their employees one-and-one-half times their regular rates for hours worked in excess of 40 in a workweek. 29 U.S.C. §§ 207(a)(1), 215(a)(2).

13. Getch employees worked both day shifts and live-in shifts at clients’ homes. For live-in shifts, employees would be compensated for 16 hours a day, excluding an eight-hour sleep period.

14. Defendants paid employees working live-in shifts different hourly rates depending upon the number of hours worked in a workweek. The more hours an employee worked over 40 in a workweek, the lower the hourly rate the employee received.

15. Defendants told employees that they would be paid only a flat daily rate for live-

in shifts, with no overtime premium.

16. On pay records, Defendants modified employees' hourly rates to match that flat daily rate while creating the appearance of paying an overtime premium.

17. Defendants maintained internal documents specifying the hourly rate an employee would be paid based on a sliding scale of how many hours that employee worked in a week. Defendants backed into these rates by first deciding the hourly rate of pay that the employee should receive, equivalent to the flat daily rate employees were promised. Defendants then reduced the employee's putative rate of pay as the employee worked more overtime hours so that, once a half-time premium was added, the employee would receive only the targeted hourly rate of pay.

18. Through the use of these sliding scale pay rates, Defendants failed to pay employees the half-time premium for overtime hours.

19. Additionally, Defendants classified a salaried administrative employee as exempt from the FLSA's overtime provisions.

a. The administrative employee was not exempt from overtime pay under any applicable exemption under the FLSA.

b. Defendants paid the administrative employee a flat salary for all hours worked, including those hours worked over 40 in a workweek.

20. Defendants repeatedly violated Sections 211 and 215(a)(5) of the FLSA when they failed to keep complete and accurate records. 29 U.S.C. §§ 211, 215(a)(5), 29 C.F.R. Part 516.

a. Defendants maintained inaccurate pay records showing employees were paid one-

and-one-half times their regular rate of pay for hours over 40 in a workweek.

b. Defendants failed to document on pay records all hours worked by the misclassified administrative employee.

21. Defendants repeatedly and willfully violated Sections 207, 211, 215(a)(2), and 215(a)(5) of the FLSA, because Defendants knew or showed reckless disregard for whether the FLSA prohibited their conduct.

22. Specifically, Defendants implemented sliding scale pay rates that created the false appearance of compliance with the FLSA's overtime provisions while in fact paying employees only their regular rates for all hours worked. Defendants reviewed legal guidance and Department of Labor guidance on wage and hour compliance, including the FLSA's overtime requirement for home care workers and the FLSA's prohibition on the use of sliding pay scales to reduce overtime pay.

### **Remedies Sought**

23. As a result of their FLSA violations, Defendants owe the employees listed in Exhibit A back wages and liquidated damages under 29 U.S.C. §§ 216(c) and 217. If Defendants continued to violate the FLSA after the Investigation Period, then Defendants may owe additional back wages and liquidated damages to employees.

24. Defendants may also owe additional back wages and liquidated damages, during or after the Investigation Period, to employees whose identities are currently unknown to the Secretary.

25. Because Defendants repeatedly and willfully violated the FLSA, the Secretary is entitled to recover back wages and liquidated damages for a three-year period.

29 U.S.C. § 255(a).

### **Prayer for Relief**

As a result of Defendants' repeated and willful FLSA violations, the Secretary respectfully requests this Court enter an Order:

A. Permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those in active concert or participation with them, from violating Sections 207, 211, 215(a)(2), and 215(a)(5) of the FLSA. 29 U.S.C. § 217(a).

B. Finding Defendants liable for unpaid overtime wages, plus an equal amount in liquidated damages, owing to the employees listed in Exhibit A, as well as to other of Defendants' employees not yet known to the Secretary. 29 U.S.C. § 216(c).

C. If the Court declines to award liquidated damages, then enjoining and restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding unpaid compensation found owing to Defendants' employees, plus prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury under 26 U.S.C. § 6621.

D. Awarding costs.

E. Granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

**SEEMA NANDA**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

s/Benjamin R. Salk

**BENJAMIN R. SALK**

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