

COMMONWEALTH OF MASSACHUSETTS

9/12/2019

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT

MICH KAREN PIERRE LOUIS,
Individually and on behalf of all others
similarly situated,

Plaintiff,

v.

BAYADA HOME HEALTH CARE, INC.,
DAVID BAIADA, and J. MARK BAIADA,

Defendants.

Civil Action No. 19-1957

DEFENDANTS' ANSWER TO CLASS ACTION COMPLAINT

NOW COME Defendants, Bayada Home Health Care, Inc. (hereinafter, "Bayada"), David Baiada and J. Mark Baiada (collectively with Bayada, hereinafter the "Defendants"), by and through their attorneys, Buchanan Ingersoll & Rooney PC, and file the within Answer to the Class Action Complaint filed by Plaintiff, Mich Karen Pierre Louis (hereinafter, "Pierre Louis" or "Plaintiff"), individually, and on behalf of a putative Class of Home Care Employees alleged to be similarly situated to Plaintiff (hereinafter, the "Complaint"). The numbered paragraphs of this Answer correspond to the like-numbered paragraphs of the Complaint, and unless specifically admitted herein, each factual allegation in the Complaint is hereby denied. Defendants specifically deny the legal conclusions set forth within the Complaint pertaining to Defendants' purported liability for additional compensation pursuant to G.L., c. 149 §§ 148, 150.

I. INTRODUCTION¹

1. Denied. Plaintiff's Complaint is a document which speaks for itself and Defendants deny Plaintiff's characterizations with respect to the same. To the extent that any further response is deemed required, the averments relative to Defendants' purported violations of G.L., c. 149 § 148, constitute conclusions of law to which no responsive pleading is required and, accordingly, are denied on this basis. By way of further response, Defendants specifically deny making unlawful deductions in violation of G.L., c. 149 §§ 148, 150.

2. After reasonable investigation, Defendants lack information or belief as to Plaintiff's knowledge in relation to the averments set forth in her Complaint and the averments of this paragraph are, accordingly, denied on this basis.

II. PARTIES

3. Admitted based upon information received.

4. Admitted.

5. Admitted with clarification. The stated address is for a Bayada corporate office.

6. Denied. J. Mark Baiada currently serves as the Chairman of Bayada's Board of Directors. By way of further response, the stated address is for a Bayada corporate office.

III. JURISDICTION AND VENUE

7. Admitted in part; denied in part. Defendants admit only that Bayada conducts business and is registered to do business in the Commonwealth of Massachusetts. The remaining averments of this paragraph are denied as conclusions of law requiring no responsive pleading.

8. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. Defendants specifically deny that Plaintiff or any of Bayada's

¹ For clarity and ease of reference, Defendants incorporate verbatim the subheadings utilized in the Complaint. Defendants' incorporation of such subheadings shall not be deemed admissions by Defendants, nor the adoption of any facts, allegations, or arguments contained in, or implied by, the subheadings set forth in the Complaint.

Massachusetts' based employees are entitled to any damages pursuant to G.L., c. 149 §§ 148, 150.

9. Admitted in part; denied in part. Defendants admit only that Bayada conducts business in Middlesex County and that Plaintiff has alleged that she resides in Middlesex County, Massachusetts. The remaining averments of this paragraph are denied as conclusions of law requiring no responsive pleading. By way of further response, Defendants specifically deny making unlawful deductions in violation of G.L., c. 149 §§ 148, 150.

IV. FACTUAL ALLEGATIONS

10. Admitted.

11. Admitted in part; denied in part. Defendants admit only that Bayada's website states that it has 28,000 employees. By way of further response, Bayada's website is a writing that speaks for itself and Defendants deny Plaintiff's characterizations with respect to same. Defendants additionally lack sufficient knowledge, information or belief, after reasonable investigation, to respond to Plaintiff's averments with respect to the information known to Plaintiff, or with respect to Plaintiff's estimations, and, accordingly, deny the same. As to Plaintiff's estimation as to the total number of Bayada employees working in the Commonwealth of Massachusetts, Defendants are unable to respond given that the averment contains no specific date range and Bayada's employee count in Massachusetts has fluctuated over time.

12. Admitted. By way of further response and clarification, not all of the services referenced in this paragraph are offered in all offices or in all states in which Bayada operates. Additionally, Bayada's website is a writing that speaks for itself and Defendants deny Plaintiff's characterizations with respect to the same.

13. Admitted. By way of further response and clarification, not all of the services referenced in this paragraph are offered in all offices or in all states in which Bayada operates.

Additionally, Bayada's website is a writing that speaks for itself and Defendants deny Plaintiff's characterizations with respect to the same.

14. Admitted. By way of further response and clarification, not all of the services referenced in this paragraph are offered in all offices or in all states in which Bayada operates. Additionally, Bayada's website is a writing that speaks for itself and Defendants deny Plaintiff's characterizations with respect to the same.

15. Admitted. By way of further response and clarification, not all of the services referenced in this paragraph are offered in all offices or in all states in which Bayada operates. Additionally, Bayada's website is a writing that speaks for itself and Defendants deny Plaintiff's characterizations with respect to the same.

16. No factual response is required to the definitional averments contained within this paragraph. To the extent that further response is deemed required, Defendants deny the factual averments and legal conclusions contained within this paragraph.

17. Admitted.

18. Admitted.

19. Admitted.

20. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. Defendants specifically deny the averments that Plaintiff "was not paid her full wages earned" and that Bayada "took unlawful deductions from her earnings ...". By way of further response, the Earnings Statement attached to Plaintiff's Complaint at Exhibit A is a writing that speaks for itself and Defendants deny Plaintiff's characterizations with respect to the same.

21. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. Defendants specifically deny the averment that Plaintiff was

subjected to any “unlawful deduction.” By way of further response, the Earnings Statement attached to Plaintiff’s Complaint at Exhibit A is a writing that speaks for itself and Defendants deny Plaintiff’s characterizations with respect to the same.

22. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. By way of further response, Defendants specifically deny any failure to pay full wages earned or making any unlawful deductions in violation of G.L., c. 149 § 148.

23. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. Additionally, the Earnings Statement attached to Plaintiff’s Complaint at Exhibit A is a writing that speaks for itself and Defendants deny Plaintiffs’ characterizations with respect to the same.

24. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. Defendants further specifically deny that Plaintiff received “less than her full wages earned ...” at any time during her tenure with Bayada.

25. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading.

26. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading.

27. Admitted in part; denied in part. Defendants admit only that David Baiada currently serves as Bayada’s CEO. The remaining averments of this paragraph are denied as conclusions of law requiring no responsive pleading. Defendants specifically deny any violation of G.L., c. 149 §§ 148, 150 by David Baiada or any liability thereunder premised upon his position with Bayada.

28. Admitted in part; denied in part. Defendants admit only that J. Mark Baiada currently serves as the Chair of Bayada's Board of Directors. The remaining averments of this paragraph are denied as conclusions of law requiring no responsive pleading. Defendants specifically deny any violation of G.L., c. 149 §§ 148, 150 by J. Mark Baiada or any liability thereunder premised upon his position with Bayada.

V. CLASS ACTION ALLEGATIONS

29. Denied. Plaintiff's Complaint is a document which speaks for itself and Defendants deny Plaintiff's characterizations with respect to the same. To the extent that any further response is deemed required, the averments in this paragraph constitute conclusions of law to which no responsive pleading is required and, accordingly, are denied on this basis. By way of further response, Defendants specifically deny that Bayada's Massachusetts' based employees were not paid "their full wages earned" in violation of G.L., c. 149 §§ 148, 150.

30. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants deny the factual averments and legal conclusions contained within this paragraph.

31. Admitted in part; denied in part. Defendants admit only that Bayada maintains contact information pertaining to its employees working in Massachusetts. The remaining averments of this paragraph are denied as conclusions of law requiring no responsive pleading.

32. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants deny that any of Bayada's Massachusetts' based employees failed to receive their full wages earned. Defendants further specifically deny taking unlawful deductions in violation of G.L., c. 149 §§ 148, 150.

33. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants specifically deny taking unlawful deductions in violation of G.L., c. 149 § 148, and incorporate herein by reference their response in Paragraph 32 above.

34. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants incorporate herein by reference their response in Paragraph 32 above.

35. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants deny the factual averments and legal conclusions contained within this paragraph.

36. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants incorporate herein by reference their response in Paragraph 32 above.

37. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants deny the factual averments and legal conclusions contained within this paragraph.

VI. CAUSES OF ACTION

COUNT ONE VIOLATIONS OF THE MASSACHUSETTS WAGE ACT G.L., c. 149, § 148

38. Defendants incorporate by reference their responses to Paragraphs 1 through 37 above as though the same were fully stated herein.

39. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants deny that any of Bayada's Massachusetts' based employees failed to receive their

full wages earned. Defendants further specifically deny taking any unlawful deductions in violation of G.L., c. 149 § 148.

40. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants incorporate herein by reference their responses in Paragraphs 27 and 28 above.

41. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants deny the factual averments and legal conclusions contained within this paragraph.

42. Denied. The averments of this paragraph are denied as conclusions of law requiring no responsive pleading. To the extent that further response is deemed required, Defendants deny the factual averments and legal conclusions contained within this paragraph.

43. After reasonable investigation, Defendants lack sufficient knowledge, information or belief as to the averments contained in this paragraph and the same are, accordingly, denied on this basis. By way of further response, the correspondence attached to Plaintiff's Complaint at Exhibit B is a document which speaks for itself and Defendants deny Plaintiff's characterizations with respect to the same.

COUNT TWO
QUANTUM MERUIT

44. Defendants incorporate by reference their responses to Paragraphs 1 through 43 above as though the same were fully stated herein.

45. Admitted in part; denied in part. Defendants admit only that Plaintiff and others were employed by Bayada in the Commonwealth of Massachusetts. Plaintiff and the putative Class members were fully compensated for any services rendered. The remaining averments of this paragraph are denied as conclusions of law requiring no responsive pleading.

46. Admitted in part; denied in part. Defendants admit only that Plaintiff and others were employed by Bayada in the Commonwealth of Massachusetts. Plaintiff and the putative Class members were fully compensated for any services rendered. The remaining averments of this paragraph are denied as conclusions of law requiring no responsive pleading.

47. Admitted in part; denied in part. Defendants admit only that Plaintiff and others were employed by Bayada in the Commonwealth of Massachusetts. Plaintiff and the putative Class members were fully compensated for any services rendered. The remaining averments of this paragraph are denied as conclusions of law requiring no responsive pleading. Defendants specifically deny that Plaintiff and the putative Class members are entitled to any additional compensation.

VII. PRAYER FOR RELIEF

The various requests for relief in the WHEREFORE clause following Paragraph 47 of the Complaint contain conclusions of law with respect to Defendants' purported liability to Plaintiff and the putative Class and, on this basis, Defendants deny each and every item of relief requested and demand judgment in their favor and against Plaintiff and the putative Class.

VIII. JURY DEMAND

The averments immediately following this heading are denied as conclusions of law requiring no responsive pleading.

AFFIRMATIVE DEFENSES

48. Defendants hereby incorporate by reference their responses to Paragraphs 1 through 47 above, and reallege the same as a defense.

FIRST AFFIRMATIVE DEFENSE

49. The allegations of the Complaint fail to state a claim upon which relief can be granted under G.L., c. 149 §§ 148, 150.

SECOND AFFIRMATIVE DEFENSE

50. The allegations of the Complaint fail to state a claim for Quantum Meruit upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

51. Bayada's Massachusetts' based employees have received their full wages earned and have not suffered any unlawful deductions or monetary harm.

FOURTH AFFIRMATIVE DEFENSE

52. Defendants have not taken unlawful deductions in violation of G.L., c. 149 §§ 148, 150.

FIFTH AFFIRMATIVE DEFENSE

53. David Baiada did not exercise sufficient direct control or oversight in regard to Bayada's compensation of its Massachusetts' based employees to warrant the imposition of personal liability pursuant to G.L., c. 149 §§ 148, 150.

SIXTH AFFIRMATIVE DEFENSE

54. J. Mark Baiada did not exercise sufficient direct control or oversight in regard to Bayada's compensation of its Massachusetts' based employees to warrant the imposition of personal liability pursuant to G.L., c. 149 §§ 148, 150.

SEVENTH AFFIRMATIVE DEFENSE

55. David Baiada resides in the State of New Jersey and lacks the requisite minimum contacts with the Commonwealth of Massachusetts to subject him to the personal jurisdiction of this Honorable Court.

EIGHTH AFFIRMATIVE DEFENSE

56. J. Mark Baiada resides in the State of New Jersey and lacks the requisite minimum contacts with the Commonwealth of Massachusetts to subject him to the personal jurisdiction of this Honorable Court.

NINTH AFFIRMATIVE DEFENSE

57. Plaintiff, working as a home health aide, is not sufficiently similarly situated to Bayada's nursing and therapy employees to allow her to bring a class action on their behalf. On these facts, Plaintiff cannot establish the elements of commonality or typicality for purposes of class certification pursuant to Massachusetts Rule of Civil Procedure 23.

TENTH AFFIRMATIVE DEFENSE

58. Plaintiff seeks to represent home health aides, nursing and therapy employees working at different office locations of Bayada with different supervisors who provide care to a wide variety of patients with different needs and care plans. On these facts, Plaintiff cannot establish the elements of commonality or typicality for purposes of class certification pursuant to Massachusetts Rule of Civil Procedure 23.

ELEVENTH AFFIRMATIVE DEFENSE

59. Plaintiff seeks to represent home health aides, nursing and therapy employees with authorized deductions which are different from her own. On these facts, Plaintiff cannot establish the elements of commonality or typicality for purposes of class certification pursuant to Massachusetts' Rule of Civil Procedure 23.

TWELFTH AFFIRMATIVE DEFENSE

60. For the reasons stated in Paragraphs 57, 58 and 59 above, Plaintiff is not similarly situated with the members of the putative Class and is not in a position to fairly or adequately represent the putative Class for purposes of Massachusetts Rule of Civil Procedure 23.

THIRTEENTH AFFIRMATIVE DEFENSE

61. The individuals in the putative Class are not so numerous that joinder of all members is impractical for purposes of Massachusetts Rule of Civil Procedure 23.

FOURTEENTH AFFIRMATIVE DEFENSE

62. Plaintiff and the members of the putative Class have not been equally affected by Bayada's payment practices such that class certification is appropriate for purposes of Massachusetts Rule of Civil Procedure 23.

FIFTEENTH AFFIRMATIVE DEFENSE

63. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

SIXTEENTH AFFIRMATIVE DEFENSE

64. Plaintiffs' action against Defendant is barred by the doctrine of waiver.

SEVENTEENTH AFFIRMATIVE DEFENSE

65. Plaintiffs' action against Defendant is barred by the doctrine of estoppel.

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WHEREFORE, having fully answered the Complaint, Defendants pray for judgment on the Complaint as follows:

1. That Plaintiff and the members of the putative Class take nothing by reason of their Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. That Plaintiff and the members of the putative Class be denied any relief whatsoever against Defendants;
4. That Defendants recover their costs, disbursements, and reasonable attorneys' fees in this action; and
5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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*Counsel for Defendants Bayada Home Health Care, Inc.,
David Baiada, and J. Mark Baiada*

Date: September 12, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document was served via email upon the following counsel of record on September 12, 2019:

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