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For Immediate Release

Home Care Workers Win \$1 Million in Class Action Settlement

First case in New York State to reach class settlement for home care workers, in industry rife with wage-and-hour violations

NEW YORK, NY, JULY 9, 2012—As many as one thousand women who care for New York City’s elderly and infirm will share a \$1,090,000 settlement in a groundbreaking class action lawsuit against McMillan’s Home Care Agency. Originally filed in April 2010, the suit charged that the for-profit company consistently underpaid its workers and never paid overtime, despite frequently working more than 60 hours per week.

The lawsuit is the first against a New York home care agency to successfully reach classwide settlement over violations of state wage-and-hour laws. Judge Paul Wooten of the New York State Supreme Court, New York County, approved the settlement, which will give each worker a pro-rata share based on overtime hours worked and not paid. The settlement also prohibits McMillan’s from retaliating against employees who complain about wages and hours and requires the company to appoint an administrator to handle complaints about payment of wages or reimbursement of expenses.

There are approximately 250,000 home care workers in New York State, and a [projected](#) need for another 100,000 over the next decade. In New York City, one in seven low-wage workers is employed in the home care industry.

Harlem resident Josefina A. Toledo Montero, the lead plaintiff, settled the lawsuit on behalf of herself and all current and former home care workers employed by McMillan’s from April 12, 2004 through December 2, 2011—a group estimated to number around 1,500. Working in one of the nation’s fastest-growing occupations, Ms Montero and her co-workers provide crucial care for elderly, infirm, and homebound patients in and around New York City.

“Employers must get the message that flouting the law by cheating workers out of their wages will not be tolerated. Often, the only meaningful remedy available to these workers is a class action lawsuit, especially where the workers are afraid to come forward individually for fear of retaliation,” said Judith Spanier, an attorney for the plaintiff.

Failure to comply with state overtime laws is pervasive in the home care industry in New York. A 2010 study, [*Working Without Laws*](#), by the National Employment Law Project, found rampant wage theft in New York City's home care industry, with 8 out of 10 workers experiencing overtime violations and working "off the clock." Low pay drives many workers from the industry, making it difficult for seniors and people with disabilities to find stable, reliable care.

"One out of seven low-wage workers in New York City is a home care worker," said NELP attorney Sarah Leberstein. "We cannot afford to turn a blind eye to violations of basic workplace protections."

Lindsay Schoenfelder, counsel for the plaintiff and a staff attorney at MFY Legal Services, added that "This suit is about basic justice for women who do the difficult and essential work of caring for our sick and elderly. When agencies cheat workers out of the wages they've earned, both the workers and the people they care for suffer."

MFY Legal Services, Inc. (www.mfy.org) is a non-profit legal services organization that assists low-income New Yorkers in the areas of employment, housing, consumer, public benefits, civil and disability rights, and family law matters. The National Employment Law Project (www.nelp.org) is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers. Abbey Spanier Rodd & Abrams LLP is a law firm that specializes in unfair employment practices, securities fraud, consumer fraud, mergers and acquisitions, antitrust and class action litigation.