

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

JANET PALMER,)
KANDACE BRITT,)
MISTY BUTTER,)
GINGER BADEN,)
LORRETTA SMITH.)
Individually and on behalf)
of similarly situated persons,)

Case No. 1:15-cv-2221

JURY TRIAL DEMANDED

Plaintiffs,)

v.)

CENTRAL LOUISIANA HOME)
HEALTH CARE, LLC, a Louisiana)
Limited Liability Company (active but)
not in good standing), **HOSPICE CARE**)
OF AVOYELLES PARISH, LLC, a)
Louisiana Limited Liability Company)
(active but not in good standing),)
THOMAS E. CUPPLES II, and)
ANA M. CUPPLES,)
individually,)

Defendants)

COMPLAINT

Plaintiffs Janet Palmer, *et al.*, individually and behalf of all other similarly situated registered or licensed practical nurses, for their Collective Action Complaint against Defendants, Central Louisiana Home Health Care, LLC (“CLHHC”), Hospice Care of Avoyelles Parish, LLC (“HCAP”), Thomas Cupples II, and Ana Cupples (collectively, “Defendants”) allege as follows:

INTRODUCTION

1. This is collective action brought for violations of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”).

2. Defendants employed Plaintiffs Janet Palmer, Kandace Britt, Misty Butter, Ginger Baden, and Lorretta Smith (collectively, "Plaintiffs") as non-salaried Registered Nurses ("RNs") or non-salaried Licensed Practical Nurses ("LPNs") but failed to pay them proper overtime wages under the FLSA.

3. The individuals Plaintiffs seek to represent in this action are current and former non-salaried RNs and LPNs who are similarly situated to themselves in terms of their job duties and Defendant's failure to properly compensate them as required under the FLSA.

4. RNs and LPNs paid on an hourly basis and are not exempt professionals under the FLSA. The U. S. Department of Labor, Wage and Hour Division, Fact Sheet #17N addressed this issue. The DOL determined that "[RNs] who are paid on an hourly basis should receive overtime pay." More specifically, Plaintiffs are not exempt because Defendants do not pay them on a fee or salary basis as required under 29 C.F.R. §§ 541.300(a)(1) & 541.605.

5. Additionally, the Fact Sheet #17N provides, "[LPNs] and other similar health care employees, however, generally do not qualify as exempt learned professionals *** and are entitled to overtime pay."

6. As a sophisticated employer, Defendants knew or should have known of its obligations to pay its RNs and LPNs premium pay at one and one-half times their regular rate of pay for hours worked in excess of 40 hours per workweek. However, Defendants willfully violated the FLSA by failing to do this. Instead, Defendants paid its RNs at straight-time rates for all hours worked. Additionally, Defendants required Plaintiffs to work off-the-clock when completing or entering patient charts.

7. Plaintiffs seek a declaration that their rights, and the rights of the putative collective class, were violated, an award of unpaid overtime wages, an award of liquidated damages, injunctive

and declaratory relief, and award of attorneys' fees and costs to make them whole for damages the suffered, and to ensure that they and future workers will not be subjected to Defendants' illegal conduct in the future.

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction over Plaintiffs' FLSA claim pursuant to 29 U.S.C. §216(b), which provides that suit under the FLSA "may be maintained against any employer ... in any Federal or State court of competent jurisdiction."

9. This Court has jurisdiction over Plaintiffs' FLSA claim pursuant to 28 U.S.C. §1331 because Plaintiffs' claims arise under the FLSA.

10. This Court has personal jurisdiction over Defendants because Defendants reside, are incorporated, and conduct business in the State of Louisiana.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiffs and the putative collective class worked and were paid in this District and the obligations, liabilities, and breaches complained of herein arose or occurred in the District. Defendants reside in this District and the corporate Defendants own, operate, and/or maintain offices, and transact business within the District. Defendants are within the jurisdiction of this Court for purpose of service of process.

PARTIES

12. Plaintiff, Janet Palmer, is an individual who resides in Alexandria, Louisiana. She worked for Defendants, at its Alexandria location, as an RN from November 2013 through January 2015. She has executed her consent form, attached as Exhibit 1.

13. Plaintiff, Kandace Britt, is an individual who resides in Pineville, Louisiana. She worked for Defendants, at its Alexandria location, as an RN from May 2014 through present. She has executed her consent form, attached as Exhibit 2.

14. Plaintiff, Misty Butter, is an individual who resides in Marksville, Louisiana. She worked for Defendants, at its Alexandria and Marksville locations, as an RN from September 2012 through February 2015. She has executed her consent form, attached as Exhibit 3.

15. Plaintiff, Ginger Baden, is an individual who resides in Libuse, Louisiana. She worked for Defendants, at its Alexandria location, as an RN from January 2014 through April 2014. She has executed her consent form, attached as Exhibit 4.

16. Plaintiff, Lorretta Smith, is an individual who resides in Pollack, Louisiana. She worked for Defendants, at its Alexandria location, as an LPN from August 2011 through July 2015. She has executed her consent form, attached as Exhibit 5.

17. Defendant, CLHHC, is an active, but in good standing, Louisiana limited liability company with locations in Alexandria, Marksville, and Opelousas, Louisiana. CLHHC provides in-home nursing services to nine parishes throughout Louisiana.

18. Defendant, HCAP, is an active, but not in good standing, Louisiana limited liability company with locations in Alexandria, Marksville, and Opelousas. HCAP provide both in-home and facility based nursing services to nine parishes throughout Louisiana.

19. Defendant, Thomas Cupples II, is a managing member of both CLHHC and HCAP. He is responsible the companies' day-to-day operation and supervises its employees, including RNs and LPNs.

20. Defendant, Ana Cupples, is a managing member of CLHHC.

GENERAL ALLEGATIONS

21. CLHHC and HCAP provide RN and LPN services to its customers or patients. Based upon the patient's needs, these services are provided either at the patient's home or at one of the facilities where CLHHC and HCAP provide services.

22. At all times relevant, Defendants paid Plaintiffs by the hour on a bi-weekly basis.

23. Defendants required Plaintiffs to submit logs detailing a patient's name and type, mileage, times, and other RN and LPN services information.

24. Defendants scheduled Plaintiffs to work between 45 and 60 hours per week. Their job duties consisted of checking on the patient, schedule visits for blood pressure, check vital signs, order and deliver medications, handling matters when a patient passes away, and electronically chart patient notes. In addition to their regular schedule, Plaintiffs had to call on patients while "on-call" for Defendants. Despite scheduling Plaintiffs to work more than 40 hours per week and having make patient visits while "on-call," Defendants failed to pay Plaintiffs at the rate of one and one-half times their regular hourly rate for hours work in excess of their 40 hours worked per week.

25. For example, Plaintiff Britt's paystub for June 19, 2015 (Exhibit 6), shows she was paid \$26 dollars per hour for the 117 and 19/60 hours she worked ($\$26 \times 117 \frac{19}{60} = \$3,050.23$) for the pay period of May 31, 2015 through June 13, 2015. Under the FLSA, she should have been paid \$3,535.35 ($(\$26 \times 80) + (39 \times 37 \frac{19}{60})$) for that pay period. Thus, Defendants shorted her \$485.12 for that bi-weekly pay period.¹

¹ This calculation assumes Britt's overtime hours were equally spread over the two-week pay period. Defendants' records may show she worked more hours in one week versus the next week, meaning she could have been shorted more one week and less the next week. The total should still be same.

26. The above example generally applies to Plaintiffs because Defendants' pay policy treated each RN and LPN the same in that they were all paid their regular hourly rate of pay for the hours they worked.

27. Additionally, Defendants failed to compensate Plaintiffs' for the hours worked entering patient charts on the computer. For example, Plaintiff Britt reported on her timesheet that she stayed 4-5 hours late to complete charting. Defendants' refused to pay her for this reported time, resulting in a shortage of \$195 for that pay period. The other RNs were subjected Defendants' same illegal off-the-clock charting policy.

28. CLHHH, HCAP, and Thomas Cupples II directed Plaintiffs to work in excess of 40 hours per week. Defendants equally controlled Plaintiffs' schedule, rate of pay, and hiring or firing of them.

29. CLHHH and HCAP perform similar activities of providing RN and LPN services to patients in the same parishes. Ana and Thomas Cupples manage and control the companies whose common purpose is to provide RN services.

30. As a sophisticated and experienced health care provider, Defendants were fully aware of the working conditions, professional obligations, and common practices of its RNs and LPNs.

31. In willful and reckless disregard of that knowledge, and the FLSA's protections, Defendants adopted and adhered to a policy and plan of refusing to pay overtime wages. Defendants' conduct was not in good faith.

COLLECTIVE ACTION ALLEGATIONS

32. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) of the FLSA on their behalf and on behalf of all similarly situated current and former employees of Defendants who are or

were employed to provide RN services to its patients during the last three years. Plaintiffs propose the following collective class definition:

All non-salaried Registered and Licensed Practical Nurses employed by Central Louisiana Home Health Care, LLC and/or Hospice Care of Avoyelles Parish, LLC who worked over 40 hours per week during the three years prior to filing of this Complaint and through the entry of final judgment.

33. Plaintiffs do not bring this action on behalf of any executive, administrative, or professional employees exempt from FLSA coverage.

34. Under 29 U.S.C. § 216(b) of the FLSA, a collective action is proper because the RNs and LPNs are similarly situated to Plaintiffs. The collective class of employees on behalf whom Plaintiffs bring this action are similarly situated because (a) they have been or are employed in the same or similar nursing positions performing the same or similar job duties; (b) they were all subjected to Defendants' pay policy of refusing to pay overtime at the rate of one and one-half their regular rate of pay; (c) Defendants subjected them to off-the-clock work; and (d) their claims are based upon the same FLSA violations.

35. Plaintiffs share the same interests as the putative conditional class and will be entitled to unpaid overtime compensation, interest, attorneys' fees and costs owed under the FLSA.

COUNT I

VIOLATION OF THE FLSA – FAILURE TO PAY OVERTIME WAGES

36. Plaintiffs re-allege and incorporate all previous paragraphs herein.

37. At all relevant times, Defendants were an "employer" under 29 U.S.C. § 201, *et seq.*

38. Defendants are engaged interstate commerce or in the production of goods for commerce as defined by the FLSA.

39. At all relevant times, Plaintiffs and the putative collective class members were Defendants' "employees" as defined by the FLSA.

40. Plaintiffs and the putative collective class members either (1) engaged in commercial activities or (2) engaged in the production of goods for commerce; or (3) employed in an enterprise engaged in commerce or in the production of goods for commerce.

41. Defendants are an “enterprise” or “joint employers” as defined by the FLSA.

42. Non-salaried RNs and LPNs are not exempt under the FLSA.

43. At all relevant times, Defendants “suffered or permitted” Plaintiffs and the putative collective class members to work and thus “employed” them within the meaning of the FLSA.

44. The FLSA requires an employer to pay employees the federally mandated overtime premium rate of one and one-half times their regular rate of pay for every hour worked in excess of 40 hours per workweek.

45. Defendants violated the FLSA by failing to pay Plaintiffs the federally mandated overtime premium for all hours worked in excess of 40 hours per workweek.

46. Plaintiffs worked a minimum of 45 hours in a workweek for each week they worked for Defendants.

47. Defendants have a corporate policy of evading overtime pay for its hourly workers.

48. By failing to compensate its hourly workers at a rate not less than one and one-half times their regular rate of pay for work performed in excess of forty hours in a workweek, Defendants have violated the FLSA, 29 U.S.C. § 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a). All similarly situated employees are victims of a uniform and company-wide enterprise which operates to compensate employees at a rate less than the federally mandated overtime wage rate. This uniform policy, in violation of the FLSA, has been, and continues to be, applied to all employees who have worked or are working for Defendant in the same or similar position as Plaintiffs.

49. The FLSA, 29 U.S.C. 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid overtime wages plus an additional equal amount in liquidated damages, pre-and post-judgment interest, costs, and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on their own behalf and on the behalf of the putative collective class members, pray for judgment at follows:

- a) Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth above;
- b) Ordering Defendants to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all those individuals who are similarly situated, and permitting Plaintiffs to send notice of this action to all those similarly situated individuals in a manner that is reasonably calculated to apprise the potential class members of their rights under the FLSA;
- c) Declaring that Defendants willfully violated the Fair Labor Standards Act and its attendant regulations as set forth above;
- d) Declaring that Defendants violated its obligations under the FLSA;
- e) Granting judgment in favor of Plaintiffs and against Defendants and awarding the amount of unpaid overtime wages calculated at the rate of one and one-half (1.5) of Plaintiffs' regular rate multiplied by all hours that Plaintiffs worked in excess of forty (40) hours per week for the past three years;

JURY DEMAND

NOW COMES Plaintiffs by and through their attorneys, and hereby demands a trial by jury pursuant to the court rules and statutes made and provided with respect to the above-entitled cause.

Respectfully Submitted,

Dated: August 20, 2015

Pendley, Baudin & Coffin, L.L.P.

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