

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT – DIVISION 3
CIVIL ACTION No. 10-CI-5512

VELMA HISLE, KELLY GOFF,
ELIZABETH GULLEY, DANA JOHNSON,
CRYSTAL YORK, KATHRYN BURCHETT,
MARY DEAN, DAWN LOWE, MELISSA GRATE

PLAINTIFFS

vs. **FIRST AMENDED CLASS ACTION COMPLAINT**

CORRECTCARE - INTEGRATED HEALTH, INC.,
a Kentucky Corporation

DEFENDANT

* * * * *

Plaintiffs Velma Hisle, Kelly Goff, Elizabeth Gulley, Dana Johnson, Crystal York, Kathryn Burchett, Mary Dean, Dawn Lowe and Melissa Grate individually (hereinafter collectively described as the “Named Plaintiffs”) and on behalf of all other similarly situated current and former employees of defendant CorrectCare – Integrated Health, Inc. state as follows:

I

Nature of the Action

1. This is an action brought by the Named Plaintiffs individually and for all other similarly situated current and former employees of the defendant seeking payment of earned wages and overtime compensation pursuant to KRS Chapter 337 that the defendant-employer has failed and refused to pay. The plaintiffs seek, in addition to their earned and owed wages and overtime compensation, injunctive relief, liquidated damages, prejudgment interest, attorney’s fees, costs and litigation expenses as provided by KRS Chapter 337 and CR 54.

Jurisdiction and Venue

2. The Fayette Circuit Court has jurisdiction over this case on two grounds: (1) pursuant to KRS 23A.010 because the amount in controversy exceeds the court's jurisdictional minimum; and, (2) pursuant to KRS 337.385(1), which grants circuit court jurisdiction to cases seeking recovery of unpaid wages and/or overtime compensation under KRS Chapter 337. Venue is proper in Fayette Circuit Court because the defendant maintains its principal place of business in Fayette County, Kentucky.

III

Parties

3. Named Plaintiff Velma Hisle is a resident of Fayette County, Kentucky and was formerly employed by defendant as a certified medication aide at Blackburn Correctional Complex in Fayette County, Kentucky.

4. Named Plaintiff Kelly Goff is a resident of Clark County, Kentucky and was formerly employed by defendant as a nurse at Blackburn Correctional Complex in Fayette County, Kentucky.

5. Named Plaintiff Elizabeth Gulley is a resident of Fayette County, Kentucky and was formerly employed by defendant as a nurse at Blackburn Correctional Complex in Fayette County, Kentucky.

6. Named Plaintiff Dana Johnson is a resident of Boyle County, Kentucky and was formerly employed by defendant as a nurse at Northpoint Training Center in Boyle County, Kentucky.

7. Named Plaintiff Crystal York is a resident of Boyle County, Kentucky and was formerly employed by defendant as a nurse at Northpoint Training Center in Boyle County, Kentucky.

8. Named Plaintiff Kathryn Burchett is a resident of Boyle County, Kentucky and is presently employed by defendant as a nurse at Northpoint Training Center in Boyle County, Kentucky.

9. Named Plaintiff Mary Dean is a resident of Lincoln County, Kentucky and is presently employed by defendant as a nurse at Northpoint Training Center in Boyle County, Kentucky.

10. Named Plaintiff Dawn Lowe is a resident of Boyle County, Kentucky and was formerly employed by defendant as a nurse at Northpoint Training Center in Boyle County, Kentucky.

11. Named Plaintiff Melissa Grate is a resident of Boyle County, Kentucky and was formerly employed by defendant as a nurse at Northpoint Training Center in Boyle County, Kentucky.

12. CorrectCare – Integrated Health, Inc. (CorrectCare), is a corporation organized under the laws of the Commonwealth of Kentucky. It maintains its principal office in Fayette County, Kentucky and its agent for service of process is Arthur A. Hellebusch, II, who may be served at 366 South Broadway, Lexington, KY 40508, according to the records maintained by the Kentucky Secretary of State.

IV

Facts Giving Rise to the Lawsuit

13. Correctcare is, and at all times relevant to this action has been, an “employer” within the meaning of KRS Chapter 337 and, more specifically, KRS 337.010(1)(d).

14. Correctcare employs nurses and other medical personnel for which it contracts with the Kentucky Department of Corrections to provide medical services and personnel including at least the following KDOC facilities: Blackburn Correctional Complex in Fayette County (Blackburn); Northpoint Training Center in Boyle County (Northpoint); Kentucky State Penitentiary in Lyon County; Roederer and Luther Luckett Correctional Complexes and Kentucky State Reformatory in Oldham County; Eastern Kentucky Correctional Complex in Morgan County; Little Sandy Correctional Complex in Elliott County; and Green River Correctional Complex in Muhlenberg County.

15. The Named Plaintiffs and all other similarly situated current and former Correctcare employees are and at all times relevant to this action have been nonexempt “employees” entitled to the protection of KRS Chapter 337.

16. Correctcare is and at all times relevant to this action has been subject to the requirement that full-time employees must receive a bona fide meal period during which they are not to be on duty or required to perform any active or inactive work duties as set out in KRS 337.355, KRS 337.365, 803 KAR 1:065 § 4 (1), (2).

17. Correctcare is and at all times relevant to this action has been subject to the requirement that full-time employees must receive bona fide rest periods of at least ten (10) minutes for every four (4) hours worked, which shall be in addition to the employees' statutory meal periods and which are not compensable work time as set out in KRS 337.365 and 803 KAR 1:065 §4 (1).

18. Correctcare is and at all times relevant to this action has been subject to the requirement that it pay its employees for all the time its employees perform compensable work as set out in KRS 337.385.

19. Correctcare is and all times relevant to this action has been subject to the requirement that it maintain accurate records of all the time that its employees perform work as set out in KRS 337.320 and 803 KAR 1:066 § 2.

20. Correctcare presently and at all times relevant to this action has maintained a policy of automatically deducting 30 minutes from an employee's compensable time worked per shift. *Memorandum In Opposition to Motion to Certify Class Action* at p. 2.

21. Correctcare presently and at all times relevant to this action has maintained a policy of requiring an employee to correct Correctcare's records of what Correctcare believes is the compensable time the employee has worked. *Memorandum In Opposition to Motion to Certify Class Action* at p. 2.

22. Correctcare does presently and at all times relevant to this action has followed a policy of requiring the Named Plaintiffs who were or are employed as nurses by Correctcare to carry with them and monitor at all times a radio including during what Correctcare considers to be the nurse's meal and/or rest breaks.

23. Correctcare does presently and at all times relevant to this action has followed a policy of subjecting a nurse to disciplinary action who fails to carry with her and monitor at all times a radio including during what Correctcare considers to be the nurse's meal and/or rest breaks.

24. Correctcare does presently and at all times relevant to this action required the nurses it has employed or does employ at KDOC facilities to carry and monitor a radio at all times including during meal and/or rest breaks for the purpose of serving and fulfilling Correctcare's contractual obligation to provide medical services to inmates at KDOC facilities.

25. At all times relevant to this action, Correctcare has required nurses it employs at KDOC facilities to carry and monitor a radio as part of their regular and ordinary duties for the purpose of serving and fulfilling Correctcare's contractual obligation to provide medical services to inmates at KDOC facilities.

26. Correctcare followed a policy of requiring Hisle, while she was employed by it, to sit at her work station during her meal and/or rest breaks and to watch over the medication supply, be available to answer questions

from other Correctcare and/or KDOC personnel or inmates and to answer the telephone.

27. By letter dated June 2, 2008, Named Plaintiff Elizabeth Gulley reported to Correctcare that its wage and hour policies violated federal and Kentucky state law. A true copy of Gulley's letter, which was produced by Correctcare in discovery in this case, is attached hereto and marked Ex. 1 to this complaint.

28. The Named Plaintiffs file this complaint on behalf of themselves and on behalf of a Class of all persons who were, are or will be who have earned or will earn but have not and will not receive compensation for time worked including overtime pay, who did not or will not receive adequate and lawful meal and/or rest breaks.

29. The size of the proposed Class is so numerous, surely more than 100 persons based on a reasonable estimate of the total number of medical personnel and other employees Correctcare has employed or does employ at KDOC facilities.

30. The Named Plaintiffs are adequate class representatives because they have been or are directly impacted by the above-described Correctcare policies and practices. The interests of the Named Plaintiffs are not antagonistic to or in conflict with the interests of the other Class members or with the Class as a whole.

31. Counsel for the Named Plaintiffs will provide adequate representation for the Named Plaintiffs and the proposed Class.

32. Common questions of law and fact predominate among the Class members. These common questions include the following: the right of Class members to be compensated for the compensable work they have performed or will perform during supposed meal breaks for which Correctcare unlawfully deducts 30 minutes each shift; whether Correctcare's automatic 30 minute meal break deduction is lawful; whether Correctcare's policy of delegating responsibility to its employees of assuring the accuracy of Correctcare's records of the time its employees work is lawful; the right of the Class members to recover the wages and/or overtime compensation owed them and liquidated damages due to Correctcare's violations of KRS Chapter 337.

33. The claims of the Named Plaintiffs are typical of the claims of the Class because all Class members are current or former Correctcare employees who have been harmed by Correctcare's violations of KRS Chapter 337.

34. The Named Plaintiffs are similarly situated to Class members in terms of their job responsibilities and because the Named Plaintiffs and all Class members have been or are subject to the same policies and practices of Correctcare that violate KRS Chapter 337.

V

Causes of Action

Count 1 – For Unpaid Wages, Overtime Compensation and Liquidated Damages Pursuant to KRS 337.385 (1)

35. The Named Plaintiffs repeat and incorporate by reference each allegation set forth above as if fully set forth herein.

36. A bona fide meal break under Kentucky law requires that the employee be completely relieved from duty during the supposed meal break time. KRS 337.355 and 803 KAR 1:065 § 4(2).

37. An employee is not completely relieved from duty for purposes of a meal break where if he is required to perform any duties, whether active or inactive, while eating. 803 KAR 1:065 § 4(2).

38. A nurse employed by Correctcare at a KDOC facility that is required to carry and monitor a radio at all times including during meal and/or rest breaks is performing compensable work at all times including during those supposed meal and/or rest breaks.

39. An employee of Correctcare required to sit at her work station during her meal and/or rest breaks in order to watch the medication supply, be available to answer questions from other Correctcare employees and/or KDOC personnel or inmates and to answer the phone is not receiving a bona fide meal and/or rest break and is performing compensable work.

40. Correctcare has willfully, deliberately, and intentionally violated KRS Chapter 337 through the following policies and practices:

(1) requiring employees to perform compensable work during their meal breaks while automatically deducting 30 minutes from the employees' compensable time worked each shift;

(2) failing to provide employees with bona-fide rest breaks by requiring them to perform compensable work during those supposed rest breaks;

(3) failing to accurately record the compensable time its employees' work during their shifts;

(4) delegating to its employees responsibility for maintaining the accuracy of Correctcare's records of the time the employee performs work for Correctcare;

(5) failing to pay its employees wages and/or overtime compensation for the compensable work the employees have performed.

41. As a result of Correctcare's violations of KRS Chapter 337, the Named Plaintiffs and all other similarly-situated current and former Correctcare employees have suffered and continue to suffer damages in the form of earned but unpaid wages and/or overtime pay as well as liquidated damages in a total amount to be determined at trial.

Count 2 – Permanent Injunctive Relief

42. The Named Plaintiffs repeat and incorporate by reference each allegation set forth above as if fully set forth herein.

43. Through the actions and inactions described in this pleading, Correctcare has deprived and continues to deprive the Named Plaintiffs and

all other similarly situated current and former Correctcare employees of their concrete, personal rights under KRS Chapter 337 and to violate the public policy of this Commonwealth.

44. Pursuant to CR 65.01 the Named Plaintiffs request, on behalf of themselves and on behalf of all other similarly situated current and former Correctcare employees, the issuance of a permanent injunction against the following practices, policies and procedures of Correctcare:

(1) requiring employees to work shifts of eight (8) hours or more without providing the meal and rest breaks required by law;

(2) imposing an automatic 30 minute meal break deduction while delegating to its employees responsibility to accurately record the time the employee works;

(3) failing and refusing to pay employees the wages and/or overtime compensation the employees have earned;

(4) requiring employees to perform compensable work during their supposed meal and/or rest breaks while deducting 30 minutes each shift from the employee's paid time.

Count 3 – Certification of the Class

45. The Named Plaintiffs repeat and incorporate by reference each allegation set forth above as if fully set forth herein. For the reasons set out in the motion to certify class action, defendant's response thereto and the plaintiffs' supporting reply memorandum, the Named Plaintiffs respectfully request that the Court certify a Class under CR 23 of all persons who were,

are, or will be Correctcare employees subjected to the unlawful practices described herein including being required to work during a supposed meal break but not being paid for that work.

VI

Demand for Relief

WHEREFORE, the Named Plaintiffs on behalf of themselves and on behalf of all similarly-situated past and current Correctcare employees respectfully request:

(1) the certification of a Class pursuant to CR 23 described and to include as follows: all persons who were, are, or will be Correctcare employees who have earned but who did not receive compensation for work performed during what were supposed to be meal and/or rest breaks;

(2) entry of a judgment in their favor and against defendant requiring defendant to pay each of them and each class member the wages and/or overtime compensation due and owing each of them along with an additional equal amount as liquidated damages as shown by the evidence at trial;

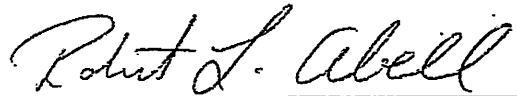
(3) entry of a judgment awarding each of them prejudgment interest on their unpaid wages and/or overtime compensation along with the costs, litigation expenses and reasonable attorneys fees pursuant to KRS 337.385 and CR 54; and,

(4) the grant of all other relief to which each of them is shown to be entitled.

Demand for Trial by Jury

Each of the plaintiffs respectfully demands trial by jury on all claims herein so triable.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert L. Abell". The signature is written in black ink and is positioned above a horizontal line.

Robert L. Abell
120 N. Upper Street
PO Box 983
Lexington, KY 40588 – 0983
859-254-7076
859-281-6541 fax
COUNSEL FOR PLAINTIFFS