IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:21-cv-03033-WJM-KLM

JAMES BOWLING, individually and on behalf of all others similarly situated.

Plaintiff,

v.

DaVita, INC.

Defendant.

FLSA COLLECTIVE ACTION

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT

I. INTRODUCTION AND NATURE OF ACTION

1. Plaintiff James Bowling ("Bowling" or "Plaintiff") brings this suit as a collective action under the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and the Portal-to-Portal Act, 29 U.S.C. §§ 251-262 (collectively, the "FLSA") , on his individual behalf and on behalf of the members of the proposed FLSA collective action defined below. Plaintiff and class members worked as hourly paid nurses and technicians at DaVita, Inc. ("DaVita" or "Defendant"), a nationwide healthcare provider who is headquartered in Denver, Colorado. Plaintiff and class members did not receive bona fide meal break periods. Instead, they were required and permitted to work through or subject to interruption for Defendant during their meal break periods and were not paid for such time.

2. An employer is not required to pay an employee for meal periods if the

period. However, Defendant required nurses and technicians at DaVita to remain responsible for patient care throughout their shifts, including during meal periods. Nurses and technicians frequently went without meals, and even when they did attempt to eat, their meal periods were regularly interrupted by work demands. In short, Defendant used the nurses' and technicians' meal periods for the predominant benefit of DaVita. Notwithstanding Defendant's practice of requiring nurses and technicians to be available for work and to in fact work throughout their meal periods, Defendant deducted thirty (30) minutes from the total time worked by nurses and technicians each shift so as to account for these hypothetical meal periods, thereby enabling Defendant to receive the benefit of an additional thirty minutes of unpaid work for each shift worked by class members.

3. Defendant's practice of failing to relieve nurses and technicians of their duties during meal periods, while simultaneously deducting thirty minutes from the total time paid per shift (on the pretext of accounting for meal periods which nurses and technicians were not in fact free to take without constant interruption), had the effect of depriving nurses and technicians of overtime compensation due to them under the FLSA in the weeks in which they worked more than forty (40) hours in a week. On information and belief, all of DaVitas' non-exempt, hourly paid direct patient care nurses and technicians were subjected to this illegal pay practice.

4. Plaintiff brings this suit under the collective action provisions of the FLSA because he and the putative collective action members are similarly situated under the FLSA in the following particulars: (a) they are or were hourly-paid direct patient care nurses and technicians subject to Defendant's company-wide policy of pay deductions for meal periods; (b) they are and were required and permitted to be available to perform uncompensated work during those meal periods, and in fact did perform uncompensated

work during those periods; (c) the meal periods are and were predominantly for the benefit of Defendant; and (d) Plaintiff and class members suffered overtime wage losses as a result of Defendant's failure to pay wages at the federally required overtime rate for these thirty minutes meal periods in the weeks in which the nurses and technicians worked more than forty hours in a week.

5. Accordingly, Plaintiff is similarly situated to the following classes of employees:

FLSA Collective Action:

> **All current and former hourly paid nurses and technicians employed at all DaVita locations to provide direct patient care at any time during the three years before this Complaint was filed up to the present who, as a result of Defendant's practice of deducting 30 minutes from each shift worked and not paying for same, did not receive all of the overtime pay to which they were entitled under the FLSA in the weeks of their employment in which said nurses and technicians worked more than forty (40) hours per week.**

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over the FLSA claims under 29 U S.C. § 216 et seq. and 28 U.S.C. § 1331.

7. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b) & (c)(2) because Defendant operates its headquarters in the District of Colorado, and because the events giving rise to these claims occurred in this judicial district.

III. PARTIES

A. Plaintiff James Bowling and Collective Action Members

8. Plaintiff James Bowling is an individual residing in Galveston County, Texas. Plaintiff has standing to file this lawsuit.

9. Plaintiff worked for Defendant from on or about August 2016 through on or about May 2021. Plaintiff was an employee of Defendant and paid on an hourly-rate basis. Plaintiff's written consent to become a party plaintiff to this action was attached to his Original Complaint as Exhibit 1. (See ECF No. 1-1).

10. Collective Action Members are all of Defendant's current and former hourly-paid, direct patient care nurses and technicians who work or worked at all DaVita locations three years prior to the filing of Plaintiff's Original Complaint (ECF No. 1) to the present, and who are due unpaid overtime wages for compensable work performed during unpaid "meal breaks" as a result of Defendant deducting thirty minutes of time from each shift worked by class members.

B. Defendant DaVita, Inc.

11. Defendant DaVita Spohn Health System Corporation is a foreign corporation organized under the laws of the state of Delaware.

12. Defendant has been served and has made an appearance.

IV. FLSA COVERAGE

13. At all material times, Defendant has been an employer within the meaning of Section 203(d) of the FLSA because the medical facility employed personnel such as Plaintiff and Collective Action Members to operate DaVita. Plaintiff and Collective Action Members worked exclusively for and under the sole direction and control of Defendant and for Defendant's financial gain. Plaintiff and Collective Action Members are nurses and technicians whose services are integral to the medical care business which Defendant operates. Plaintiff and Collective Action Members are economically dependent on Defendant's business: Defendant cannot operate DaVita without nurses and technicians; and without a medical facility like DaVita, Plaintiff and Class Members do not

have access to medical equipment, facilities and patients to earn a living as nurses and technicians. Furthermore, Plaintiff and Collective Action Members are classified as W-2 employees of Defendant.

14. At all material times, Defendant has been a "single enterprise" within the meaning of Section 203(r) of the FLSA because it acted through unified operation and common control to further its common purpose of operating DaVita.

15. At all material times, Defendant has been an enterprise in commerce within the meaning of Section 203(s)(1)(A) of the FLSA ("Traditional Enterprise Coverage") because:

i) Defendant had and continues to have employees engaged in commerce or in the production of goods for commerce, or have had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person. By way of example and not by limitation, as a part of their work, Plaintiff and/or Defendant's employees (1) used computers and telecommunications equipment that were manufactured and shipped across state lines; (2) used medical supplies and equipment, including but not limited to, latex gloves, masks, medications, thermometers, stethoscopes, wheelchairs, ambulatory devices, incontinency and personal care products, gowns, linens, and cleaning products; and (3) utilized third-party medical services for various diagnostics testing and reports/recommendations and lab work test (*e.g.*, dialysis, blood work, basic metabolic panel, complete metabolic panel, urinalysis, C-Doff, etc.).

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