

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

ANNETTE SPERANEO, individually, and)
as representative of a class of similarly)
situated persons,)
)
Plaintiff,)

v.)

BJC HEALTH SYSTEM INC.,)
d/b/a BJC HEALTHCARE,)

Serve at:)

Registered Agent:)
Angela Standish)
4901 Forest Park Avenue)
Suite 1140)
St. Louis, MO 63131)

Defendant.)

Cause No.

Div. No.

JURY TRIAL REQUESTED
ON ALL CLAIMS TRIABLE
BY JURY

PETITION

COMES NOW Plaintiff Annette Speraneo (hereinafter “Speraneo”), by and through undersigned counsel, on behalf of herself and all others similarly situated, and for her Petition directed against Defendant BJC Health System, Inc. d/b/a BJC HealthCare (hereinafter “Defendant” or “BJC”), states as follows:

PLAINTIFF AND THOSE SIMILARLY SITUATED

1. Plaintiff and Class Representative Annette Speraneo (hereinafter “Speraneo”) is an adult citizen who resides in St. Peters, Missouri and is a former employee of Defendant. Plaintiff began working for Defendant as a nurse in or around January 2011 at Defendant’s Barnes Hospital location in the City of St. Louis. Speraneo was later permitted to transfer to work at Defendant’s Barnes-Jewish West County Hospital.

2. Plaintiff files this Petition individually and on behalf of a class of similarly situated individuals for declaratory relief and monetary damages to redress Defendant's violations of the Missouri Wage and Hour Law (hereinafter "MWHL") and Missouri common law.

3. Speraneo and all those similarly situated were non-exempt employees under MO. REV. STAT. § 290.500(3) and §290.505.

4. Venue is proper in this Court. Defendant is a resident of the City of St. Louis where its registered office and/or agent are maintained. MO. REV. STAT. § 508.010.2(1).

5. This claim relates to the internal affairs or governance of Defendant under local Missouri law, specifically Defendant's wage and hour practices.

6. Based on information and belief, more than two-thirds of the members of the putative class reside in Missouri.

**DEFENDANT BJC ACTING DIRECTLY OR INDIRECTLY AS EMPLOYER
OF PLAINTIFF AND THOSE SIMILARLY SITUATED**

A. Defendant's Corporate Structure

7. Defendant BJC Health System, is a Missouri corporation and hospital network with facilities located in and around the State of Missouri with its principal place of business in the City of St. Louis. Defendant is a Missouri employer of Plaintiff and those similarly situated as described herein under MO. REV. STAT. § 290.500(4). Defendant is the parent corporation for a network of healthcare organizations, including hospitals, with facilities located in and around Missouri and Illinois, including, but not limited to, Barnes-Jewish Hospital, Barnes-Jewish St. Peters Hospital, Barnes-Jewish West County Hospital, Boone Hospital Center, Christian Hospital, Clay County Hospital, Missouri Baptist Medical Center, Missouri Baptist Sullivan Hospital, Northwest HealthCare, Parkland Health Center, Progress West HealthCare Center, Rehabilitation Institute of St. Louis, St. Louis Children's Hospital, and Siteman Cancer Center amongst others.

Defendant serves patients and their families through its thirteen hospitals and other health-service organizations.

8. Defendant is among the nation's largest health care organizations, comprised of related organizations through common membership, governing bodies, trustees, officers and benefit plans.

B. Defendant's Central Control Over Its Subsidiaries

9. Defendant maintains common management and ownership, including oversight and management by a senior executive team and board of directors, and maintains an integrated planning and budgeting processes.

10. Defendant has a Shared Services unit that provides centralized policy assistance and guidance to its entities to maintain clear and consistent process and control of policies, work standards, practices, legal compliance, employee relations, best practices, and vision across those entities. These policies specifically apply to all of Defendant's healthcare organizations.

C. Defendant's Control of Human Relations Policies

11. Defendant's Human Resources establishes all policies and procedures and continues to develop, change and implement uniform policies across BJC Healthcare. Defendant prohibits its entities from establishing any separate wage and hour policies. Defendant overturns decisions of its entities, and possesses detailed and overarching control as employer of Speraneo and those similarly situated.

12. Defendant reviews and implements umbrella policies that apply to its wage and hour practices and policies, overtime compensation, discipline, and termination and applies these policies uniformly across all entities.

13. All health care workers employed by Defendant are or were subject to the uniform policies created and approved by Defendant. Defendant approved employment-related actions related to Speraneo and those similarly situated.

14. Defendant determined wage scales and job descriptions for all positions, the rate and method of payment, as well as policy, benefits, corrective action and other employment decisions related to Speraneo and those similarly situated to maintain continuity across its corporate structure. This information can be accessed through the Defendant's web network for employees.

15. Speraneo was subject to the control and conditions of BJC's human resources department which regularly regulated Speraneo's terms and conditions of employment, including her work schedule, conditions of employment, and requests for changes to the terms and conditions of her employment when she worked at Defendant's locations at both Barnes-Jewish Hospital in the City of St. Louis and at Defendant's Barnes-Jewish West County Hospital in St. Louis County.

16. BJC set corporate policy that affected Speraneo and those similarly situated during her employment.

D. Defendant's Timekeeping, Shift, and Wage Payment Policies

17. Speraneo and all members of the putative class are or were subject to Defendant's uniform timekeeping policy, under which health care employees were required to record their time worked through the Kronos software program, also referred to as My Time, maintained by Defendant. Kronos is used by Defendant's entities, and Defendant pays its employees exclusively through this system. Defendant is and was also responsible for training Speraneo and those similarly situated how to access the system to input the appropriate time and codes into the system. All of the codes utilized within the Kronos system were configured and instituted across all entities

by Defendant. Defendant's entire corporate system of entities are all on the same pay cycles, pay periods and pay days.

18. Defendant's central management was responsible for approving time worked by health care employees and entering the appropriate wage and time codes into the Kronos system. It was also responsible for overseeing overtime rates to ensure compliance with the MWHL.

19. Defendant was the employer of Plaintiff and those similarly situated as it was a person acting directly as or indirectly in the interest of an employer in relation to an employee.

E. Workday of Plaintiff and Those Similarly Situated

20. Speraneo was not paid for all time worked as recorded by Defendant's timekeeping system pursuant to proper calculation of time worked.

21. Defendant impermissibly rounds the amount of time Plaintiff and those similarly situated worked.

22. Defendant consistently rounded Speraneo's time worked down to the nearest quarter hour, even if the nearest quarter hour would have required her time worked to be rounded up. As a result, Speraneo was consistently underpaid for time she worked.

23. Defendant improperly rounded Speraneo's hours on fifty-two (52) separate occasions in 2012.

24. Defendant's rounding practice benefited Defendant while depriving Speraneo of the benefits of her actual time worked.

25. In 2012, Defendant's rounding practices resulted in Speraneo's paid time being under-reported by at least eleven (11) hours from the time recorded in Defendant's timekeeping system.

26. Speraneo and other similarly situated employees' time was automatically deducted thirty minutes for claimed meal breaks. Speraneo and other similarly situated employees were not permitted to clock-out during that thirty-minute period. Hourly employees working at Defendant's facilities and centers, including, but not limited to, its nurses, licensed practical nurses, aides and other health care workers, perform compensable work during the time deducted, resulting in a lack of accounting of all time worked during a shift by health care workers.

27. Although Defendant had a policy in place for reporting instances in which nurses worked through meal breaks, it was and remains the established practice and expectation that nurses work through meal breaks or cut meal breaks short.

28. It was known by Defendant's management that nurses were required to work through meal breaks and eat while working. Defendant requires that patient care take priority over employees taking meal breaks, requiring employees to continue working during the allotted meal break. BJC's expectations of its employees in this regard is consistent with its employees' dedication to providing quality health care service, even when it requires they perform work during meal breaks.

29. Defendant knows that its facilities are constantly short-staffed and it was well known to Defendant that proper staffing was not possible if all health care workers took the automatically deducted thirty-minute meal break.

30. Defendant failed to provide employees with a bona fide meal break and failed to compensate employees for the lack of the meal break.

31. Defendant's failure to properly calculate time actually worked caused Defendant to not pay Speraneo and those similarly situated premium rates for time worked over forty hours per workweek and not pay for all time worked.

32. Defendant agreed to pay Speraneo and members of the proposed class for all time worked.

33. Defendant failed to include all hours and minutes worked and all applicable remuneration in the calculation of the regular rate of pay for purposes of calculation of overtime pay.

34. Defendant failed to pay Speraneo all proper shift differential pay, including, but not limited to, all on-call differential pay due and owing to her. Defendant defines shift differential pay as “additional pay when you work weekday evenings or nights or on weekends.”

35. Defendant failed to include shift differential pay in calculating the premium rate for those employees compensated at a regular rate including shift differentials.

36. Through the paystubs and payroll information provided to employees, Defendant deliberately concealed from its employees that they did not receive compensation for all the work they performed and misled them into believing they were properly paid.

37. Further, by maintaining and propagating the illegal policies and practices, Defendant deliberately misrepresented to Plaintiff and those similarly situated that they were being properly paid for time worked, even though they were not receiving pay for all time worked.

38. Defendant failed to make, keep and preserve adequate and accurate records of the employment of Class Members concerning their wages, hours and other conditions of employment. More specifically, the records kept by defendant failed to adequately and accurately disclose, among other things, hours worked each work day, the total hours worked each work week or the total overtime compensation for each work week.

CLASS DEFINITION

39. Plaintiff seeks certification of a Class under Missouri Supreme Court Rule 52.08, on behalf of herself and all similarly situated current and former employees of Defendant who are or were suffered or permitted to work by Defendant and not paid their straight-time or statutorily required rate of pay for all hours worked. Plaintiff proposes the following class and subclasses related to failure to pay all straight-time or statutorily required pay as follows:

- a. Class: All current and former employees who work in the State of Missouri that suffered a loss of benefit due to Defendant's time-keeping policies and practices and Defendant's payroll Practices. Plaintiff proposes this group be subdivided into the following subclasses:
 - i. All current and former employees whose hours were rounded down from the actual amount of hours worked.
 - ii. All current and former employees whose pay was automatically deducted for meal breaks.
 - iii. All current and former employees whose overtime rate was not properly calculated based on the regular rate.
 - iv. All current and former employees that were not paid at a premium rate for hours worked over forty per work week.
 - v. All current and former employees who were not properly paid shift differential payments.

CERTIFICATION OF THE ABOVE DEFINED CLASS IS PROPER UNDER RULE 52.08(A) BECAUSE ALL PREREQUISITES ARE SATISFIED

40. All of the requirements for class certification are satisfied as follows:
- a. **Numerosity.** The members of the Class are so numerous that joinder of all members is impracticable. Although Plaintiff does not know the exact number of class members as of the date of filing, based upon information and belief there are well in excess of forty (40) current and former employees who were subject to the pay practices stated herein.

- b. **Commonality.** Common issues of fact and law predominate over any issues unique to individual class members specific to the wage and hour practices of Defendant as stated above.
 - c. **Typicality.** The claims brought by Speraneo are typical of those of the absent class members because: Defendant owed the same duty to pay every member of the Class pursuant to the common and uniform policies of Defendant.
 - d. **Adequacy of Representation.** Speraneo is an adequate representative of the absent class members and will protect such absent class members' interests in this litigation. Plaintiff has no interests antagonistic to the other class members nor does she have any unique claims or defenses that might undermine efficient resolution of the claims of the Class. Plaintiff has retained competent counsel, knowledgeable in wage and hour law, class and collective actions, FLSA, labor and employment law, and complex litigation.
41. Additionally, the Class meets the requirements of Rule 52.08(b) in that:
- a. Absent certification as a Class, there is a risk of inconsistent adjudication with respect to individual class members;
 - b. Defendant, through the common policies and plans stated herein, have acted on grounds generally applicable to the Class as a whole; and
 - c. Common issues of fact and law predominate over any purely individual issues and a class action is the superior vehicle over any other method for adjudicating these claims.
42. The predominant issue is whether Defendant failed to properly pay Speraneo and putative class members as required by Missouri law.

43. Speraneo and the members of the putative class have valid claims for unpaid overtime wages and other common law damages. Failure to certify the Class would render separate claimant's damages too small to justify litigating them individually.

44. Defendant has acted and/or refused to act on grounds generally applicable to the Class, thereby making appropriate final relief with regard to the class as a whole.

45. Speraneo understands the nature of the claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

46. Based on the complexity of the above-stated matters, special and unusual circumstances exist and warrant the imposition of attorneys' fees specific to Plaintiff's common law claims for damages.

COUNT I
VIOLATION OF MISSOURI'S WAGE AND HOUR LAWS

47. Plaintiff incorporates all preceding paragraphs by reference as if fully stated herein.

48. At all relevant times herein, Plaintiff and those similarly situated have been entitled to the rights, protections, and benefits provided under Missouri's wage and hour laws, R.S. Mo. 290.500 *et seq.*

49. Defendant is a person who is acting directly or indirectly in the interest of an employer in relation to an employee, making Defendant an "employer" within the meaning of MO. REV. STAT. § 290.500(4).

50. Plaintiff and the Class are or were "employees" of the Defendant within the meaning of MO. REV. STAT. § 290.500(3).

51. Defendant is required to pay overtime in accordance with MO. REV. STAT. § 290.505, which provides in pertinent part:

Overtime compensation [. . .] No employer shall employ any of his employees for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

52. Missouri's wage and hour laws exempt certain categories of employees from Missouri's overtime wage and other obligations, none of which apply to Plaintiff or members of the Class. MO. REV. STAT. § 290.500(3).

53. Defendant had knowledge that Plaintiff and those similarly situated were classified as non-exempt employees and such knowledge forms the basis for a willful violation of the MWHL.

54. Plaintiff and members of the Class worked more than forty (40) hours in a workweek without being compensated at a rate of at least one and one-half times their regular rate of pay at which they were employed for all time worked because of Defendant's wage and hour practices as stated herein.

55. Defendant, pursuant to its policies and practices, violated Missouri wage and hour laws by refusing and failing to pay Plaintiff and members of the Class overtime wages required under Missouri law. MO. REV. STAT. § 290.505.1.

56. There is no exemption under Missouri law that excuses Defendant from meeting its overtime obligations to pay Plaintiff and the Class pursuant to MO. REV. STAT. § 290.505.

57. In the course of perpetrating these unlawful practices, Defendant also failed to keep accurate records of the hours worked each day and each workweek by their employees as required under Missouri law. MO. REV. STAT. § 290.520.

58. Plaintiff and members of the Class are victims of a uniform and employer-based compensation policy. This uniform policy, in violation of Missouri's Wage and Hour laws, has been applied to all Class members.

59. Plaintiff and members of the Class are entitled to damages equal to all unpaid overtime wages due within two (2) years preceding the filing of this Complaint plus periods of equitable tolling along with an additional equal amount as liquidated damages. MO. REV. STAT. § 290.527.

60. Plaintiff and members of the Class are entitled to an award of pre-judgment and post-judgment interest at the applicable legal rate.

61. Defendant is liable pursuant to MO. REV. STAT. § 290.527 for Plaintiff's and the Class members' costs and reasonable attorneys' fees incurred in this action.

WHEREFORE, on Count I of this Petition, Plaintiff and the members of the Class demand judgment against Defendant and pray for: (1) certification of this case as a class action; (2) unpaid overtime compensation; (3) liquidated damages; (4) attorney's fees and costs as allowed by MO. REV. STAT. § 290.527; (5) pre-judgment and post-judgment interest as provided by law; and (6) such other relief as the Court deems fair and equitable.

COUNT II
BREACH OF CONTRACT

62. Plaintiff and all those similarly situated incorporate all preceding paragraphs by reference as if fully stated herein.

63. Defendant entered into an agreement with Plaintiff and those similarly situated in which Defendant agreed to fully compensate Plaintiff and all those similarly situated for all time worked and in the correct amount of compensation.

64. Plaintiff and those similarly situated performed pursuant to the contract by carrying out their duties as instructed by BJC.

65. Defendant breached the agreement through their practices by failing to compensate Plaintiff and those similarly situated for all time worked and at the correct rate of pay.

66. This count does not apply to Defendant's failure to properly pay Plaintiff and those similarly situated at the premium rate for hours worked over forty per week and any claims available under the Missouri Wage and Hour laws.

67. The claims for unpaid work time and wages in weeks in which employees work less than 40 hours in a workweek is commonly referred to as a gap time claim for unpaid straight-time wages.

68. As a result of Defendant's breach of agreement, Plaintiff and those similarly situated have suffered damages.

WHEREFORE, on Count II of this Petition, Plaintiff and the members of the Class demand judgment against Defendant and pray for: (1) certification of this case as a class action; (2) compensatory damages for unpaid work time and wages; (3) liquidated damages; (4) attorney's fees and costs as allowed; (5) pre-judgment and post-judgment interest as provided by law; and (6) such other relief as the Court deems fair and equitable.

COUNT III
UNJUST ENRICHMENT

69. Plaintiff incorporates all preceding paragraphs by reference as if fully stated herein.

70. Plaintiff and others similarly situated conferred benefits on Defendant by providing health care services in Defendant's facilities and Defendant received such benefits conferred upon it by Plaintiff and those similarly situated.

71. Defendant appreciated the fact of the benefits by retaining the benefits of the labor provided by the Plaintiff and those similarly situated while failing to compensate them for that work time and at the proper rate of pay as described herein.

72. Defendant accepted and retained the benefits in circumstances that render such retention inequitable as they failed to pay the Plaintiff and those similarly situated for hours they have worked and at the appropriate rates of pay.

73. Defendant has thereby been unjustly enriched and/or Plaintiff and others similarly situated have been damaged.

74. Plaintiff and all similarly situated employees are entitled to damages equal to all unpaid wages and work time due.

75. This count does not apply to Defendant's failure to properly pay Plaintiff and those similarly situated at the premium rate for hours worked over forty per week and any claims available under Missouri Wage and Hour laws and is limited to claims for unpaid straight-time wages.

76. Plaintiff and the Class are entitled to an award of pre-judgment and post-judgment interest at the applicable legal rate.

WHEREFORE, on Count III of this Petition, Plaintiff and the members of the Class demand judgment against Defendant and pray for: (1) certification of this case as a class action; (2) compensatory damages for unpaid work time and wages; (3) liquidated damages; (4) attorney's fees and costs as allowed; (5) pre-judgment and post-judgment interest as provided by law; and (6) such other relief as the Court deems fair and equitable.

COUNT IV
INJUNCTIVE RELIEF

77. Plaintiff incorporates by reference all preceding paragraphs as if fully stated herein.

78. Defendant's practice and policy of not paying Plaintiff and the Class at a premium rate for overtime hours is in violation of Missouri Wage and Hour laws, specifically MO. REV. STAT. § 290.505.

79. Defendant's policy and practice of not paying Plaintiff and the similarly situated is a breach of its contractual obligations to Plaintiff and those similarly situated.

80. Defendant's employees face ongoing harm as a result of Defendant's improper wage and hour practices.

81. Specifically, Defendant's current employees are being currently and continually harmed by not being compensated in a lawful manner because Defendant refuses to compensate its employees in a manner consistent with Missouri Wage and Hour laws or pursuant to Defendant's obligations under Missouri common law for all time worked and at the proper amount and rate of pay.

82. Plaintiff and members of the Class seek a declaration of Defendant's legal rights and responsibilities with respect to its illegal pay practices so that Defendant's current employers will no longer suffer the immediate and ongoing harm of not getting paid in accordance with Missouri law and obligations under Missouri common law.

83. Specifically, Plaintiff and members of the Class seek review of Defendant's pay practices and a determination from the Court that Defendant's pay practices, with respect to current and future employees of Defendant, is in contravention of established Missouri law and Defendant's Missouri common law obligations to the Class.

84. Defendant's current employees, who are members of the Class, face constant, ongoing, and irreparable harm without adequate remedy at law should Defendant be permitted to continue to act in a manner inconsistent with Missouri Wage and Hour law and Missouri common law.

85. By reason of the foregoing, a preliminary and permanent injunction, and Declaratory Judgment are both necessary and proper in order to determine the rights, obligations, and liabilities that exist among the parties.

86. Plaintiff and those similarly situated seek to permanently enjoin Defendant from engaging in its policy and practice of violating Missouri's Wage and Hour laws and Missouri common law obligations as stated herein.

WHEREFORE, on Count IV of this Petition, Plaintiff seeks preliminary and permanent injunctive relief restraining Defendant from maintain its wage and hour practices as stated herein. In addition to injunctive relief, Plaintiff seeks reasonable attorneys' fees and costs incurred and for such other and further relief as this Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiff and the putative class demand a jury to hear and decide all issues triable by right to jury trial.

