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5 Other Counsel on Signature Page

9
10 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
11 IN AND FOR THE COUNTY OF KING

12 Joseph J. Hesketh III,
13 *on his behalf and on behalf of other similarly
14 situated persons*

14 Plaintiff,

15 v.

16 Total Renal Care, Inc, on its own behalf and on
17 behalf of other similarly situated persons,

17 Defendants.

Case No:

CLASS ACTION COMPLAINT

(JURY DEMAND)

18 Plaintiff, Joseph J. Hesketh III, individually, and on behalf of all other similarly situated,
19 sues Defendant, Total Renal Care, Inc. (“Total”) individually, and on behalf of all others
20 similarly situated and alleges:

21
22 **I. OVERVIEW**

23 1. An employee has the right to be paid for the time the employee does work for
24 an employer at the rates the parties have agreed. This action is filed because the Defendants and
25 others failed to pay the Plaintiff and the other class members the amounts they were due to be
26 paid for the work they performed and which the Defendants agreed to pay.

1 2. Total is an integral part of DaVita, Inc. (DaVita) (formerly known as Total Renal
2 Care Holdings, Inc.) DaVita is a nationwide entity that employs 77,000 people to operate its
3 profit driven business model through a number of entities controlled and operated by DaVita.
4 Employees of Total and the other entities are led to believe that they all part of a single
5 “village” down to including the registered trademark of DaVita on their paychecks. DaVita
6 describes itself as entity that “...we provided dialysis and administrative services and related
7 laboratory services throughout the U.S. via a network of 2,753 outpatient dialysis centers
8 in 46 states and the District of Columbia,¹

9
10 3. As of December 31, 2019, DaVita operated or provided administrative services
11 through a network of 2,753 outpatient dialysis centers in the U.S.² This includes 53 locations in
12 Washington State.

13 4. Plaintiff is an employee of Total and a member of the DaVita village and began
14 working Total over thirteen (13) years ago.

15 5. DaVita maintains and publishes an employee handbook titled “Teammate
16 Policies” which contains certain conditions of employment; the handbook states what is expected
17 of DaVita employees and, inter alia, how DaVita will compensate its employees for their loyalty
18 and work, under certain situations.
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24 ¹ See DaVita, Inc.’s 2019 10k available at
25 <https://www.sec.gov/ix?doc=/Archives/edgar/data/927066/000092706620000014/dva-12311910k.htm#s967C77CBE804541FAE5B78B764C16026>

26 ² Id.

1 6. The Teammate Policies handbook, under the Compensation section, included a
2 “Disaster Relief Policy” that sets out DaVita’s pay practices for non-exempt employees who miss
3 work during a declared emergency, in whole or in part, and those non-exempt employees who
4 can and do work during a declared emergency.

5 7. The Disaster Relief Policy provides for pay continuance during an emergency
6 time frame when a declared emergency or natural disaster prevents teammates from performing
7 their regular duties and state that: “[a] declared emergency or natural disaster shall be proclaimed
8 by either the President of the United States, a state Governor or other elected official, or if local
9 leadership (DVP/Palmer) deems it appropriate. In the event of a state or federally declared natural
10 disaster, this policy provides information relative to pay practices, work schedules and facility or
11 business office coverage.”

12 8. Under the section titled “Pay Practices For Non-Exempt Teammates” DaVita
13 establishes the pay practices for three emergency or natural disaster scenarios:
14

15 a. if non-exempt employees are unable to work because “a facility or
16 business office is closed during a declared emergency or natural disaster,” those
17 non-exempt employees will be paid for their regularly scheduled hours at regular
18 pay;
19

20 b. if “a facility or business office opens late or closes early a declared
21 emergency or natural disaster,” non-exempt employees will be paid for their
22 regularly scheduled hours at regular pay, even if the employees are unable to work
23 their full schedules because of the emergency or natural disaster; and
24

25 c. if “a facility or business office is open during the designated time frame”
26 employees who work their regularly scheduled hours will be paid premium pay.

1 9. “Premium pay” is defined as one and one half times regular pay, unless state
2 law dictates otherwise.

3 10. The clear import of the “Pay Practices For Non-Exempt Teammates” is that
4 every non-exempt DaVita employee who works his or her regularly scheduled hours during a
5 declared emergency will be paid premium pay.

6 11. The “Pay Practices For Non-Exempt Teammates” is a method of attracting and
7 retaining employees whose knowledge and skills are valuable to the business profit model
8 developed by DaVita. It is not altruism.

9 12. DaVita’s policy and practice is to provide actual notice to its employees before
10 any changes to its pay policies take effect.

11 13. A national emergency was declared on January 31, 2020.

12 14. The Plaintiff, who is a non-exempt employee, continued to work his regularly
13 scheduled hours for Defendants after the state of emergency was declared.

14 15. Defendants did not pay Plaintiff premium pay for the regularly scheduled hours
15 he worked during the time of the state of emergency. Instead, DaVita attempted to later change
16 the terms of the Teammate Policies handbook to now exclude the present emergency from those
17 emergencies covered by the Disaster Relief Policy by a notice sent out in September, 2020.

18 16. Whether or not DaVita’s effort to unilaterally change the pay agreement with
19 its non-exempt employees is effective, there is a period of time before the attempted effort was
20 made in which the Disaster Relief Policy applied and the premium pay was due to Plaintiff and
21 all other non-exempt employees.

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II. PARTIES

17. Plaintiff, Joseph J. Hesketh, III, is an individual who is a citizen of and resides in, the State of Washington.

18. Defendant Total appears to be a California corporation although court disclosure filings made on its behalf are conflicting as to its state of incorporation. DaVita is a Delaware Corporation. Both list their principal place of business at the same address in Denver, Colorado. Its agent for service of process is Corporation Service Company, 1900 W. Littleton CO 80210.

III. JURISDICTION AND VENUE

19. This Court has jurisdiction over Total and the Defendant Class Members who regularly conduct business in Kings County, Washington.

20. Venue is proper in in King County Superior Court because Total and the Defendant Class Members transact business, in King County, Washington.

IV. ALLEGATIONS COMMON TO PLAINTIFF AND THE CLASS AGAINST THE DEFENDANT AND THE CLASS OF DEFENDANTS.

21. Plaintiff and class members (hereinafter collectively “Plaintiff Class Members”) are employed by Total and the Defendant Class Members.

22. Plaintiff Class Members provided services to the Defendant Class Members after the national emergency declared on January 31, 2020.

23. The Defendant Class Members failed to pay the Plaintiff Class Members premium time as promised in the Teammates Policy handbook.

1 24. The Plaintiff Class Members are entitled to the premium pay for the hours they
2 worked as they were promised.

3 25. The amounts owed to the Plaintiff Class Members are liquidated amounts.

4 **V. CLASS ALLEGATIONS AS TO PLAINTIFF CLASS**

5
6 26. Plaintiff brings this complaint individually and on behalf of a class of all other
7 persons similarly situated.

8 27. The class is comprised of all non-exempt employees of the Defendant Class
9 Members who:

10 a. Worked for the Defendant Class Members on and after January 31,
11 2020;

12 b. Were not paid the premium pay equal to ½ times their base rate, for any
13 work performed after the declaration of emergency.
14

15 28. Based on the number of clinics operated by the Defendant Class Members in
16 the United States, upon information and belief, the class is so numerous as to make it
17 impracticable to join all members of the class of plaintiffs. On information and belief, the class is
18 comprised of hundreds, if not thousands of individuals.
19

20 29. There are questions of law and fact which are common to all members of the
21 Plaintiff Class, which questions predominate over any question affecting only individual class
22 members, the principal common issues are:

23 a. whether Plaintiff Class Members are entitled to be paid the premium pay for the
24 hours they worked for the Defendant Class Members since the declaration of an
25 emergency; and
26

1 b. Whether the Plaintiff Class Members are entitled to prejudgment interest on any
2 amounts they are owed by the Defendant Class Members.

3 30. The only individual questions concern the identification of class members and
4 the computation of the relief to be afforded each class member and can be determined by a
5 ministerial examination of the Defendant Class Members' records.

6 31. Plaintiff's claims are typical of the claims of the Plaintiff Class Members. Upon
7 information and belief, the Defendant Class Members treated all of the Plaintiff Class Members
8 the same by failing to pay premium time since the declaration of an emergency.

9 32. Plaintiff will fairly and adequately protect the interests of all class members in
10 the prosecution of this action. He is similarly situated with, and has suffered similar injuries as,
11 the members of the class he seeks to represent. He feels he has been wronged and wishes to obtain
12 redress of the wrong. To that end, plaintiff has retained counsel experienced in handling class
13 action suits involving claims as set forth in this complaint. Neither the named plaintiff nor his
14 counsel have any interest which might cause them not to vigorously pursue this action.

15 33. The Defendant Class Members have and are acting in a uniform manner with
16 respect to the entire class and on grounds uniformly applicable to the class.

17 34. A class action is superior to other available methods for the fair and efficient
18 adjudication of the controversy.

19 35. The amounts involved on an individual basis make pursuit of individual actions
20 unlikely.

21 36. The concentration of the litigation concerning this matter in this Court is
22 desirable if the court.

23 37. A failure of justice will result from the absence of a class action.

1 38. Plaintiff Class Members were damaged by the conduct complained of, in that
2 they were not paid the amounts owed to them and that the Defendant Class Members promised to
3 pay them.

4 **VI. CLASS ALLEGATIONS AS TO THE DEFENDANTS CLASS.**

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6 39. Plaintiff brings this complaint against the Defendant Total individually and on
7 behalf of a class of all others similarly situated. DaVita operates as a single unit (or what it calls
8 a village) for purposes of promises made to employees notwithstanding the creation of separate
9 entities. To the extent there are separate entities operating different locations, each have the same
10 interest as Total and DaVita and ultimately DaVita as the owner of any separate entities is affected
11 by the claims made in this action.
12

13 40. The Defendant Class is comprised of all entities which are owned or controlled
14 by the DaVita who:

- 15 a. Has employees who are covered by the Teammates Policies Handbook
16 published by DaVita, Inc.
17
18 b. The employees worked for the Defendant Class Members on and after
19 January 31, 2020;
20
21 c. The Defendant Class Members did not pay premium pay, defined as 1.5
22 times their base rate, for any work performed since the declaration of the
23 emergency.

24 41. Based on the number of clinics operated by the Defendant Class Members in
25 the United States, upon information and belief, the class is so numerous as to make it
26 impracticable to join all members of the class of plaintiffs. On information and belief, the class is
comprised of tens if not hundreds of entities.

1 42. There are questions of law and fact which are common to all members of the
2 Defendant Class, which questions predominate over any question affecting only individual
3 Defendant Class Members, the principal common issues are:

4 a. whether Plaintiff Class Members are entitled to be paid premium time for the
5 hours they worked for the Defendant Class Members since the declaration of an
6 emergency.

7 b. Whether the Plaintiff Class Members are entitled to prejudgment interest on any
8 amounts they are owed by the Defendant Class Members.
9

10 43. The only individual questions concern the identification of Defendant Class
11 Members and the computation of the relief that the defendant class members may be liable for
12 and can be determined by a ministerial examination of the Defendant Class Members'
13 electronically stored information.

14 44. Total's position or defenses to the claims are typical of the position or defenses
15 of the Defendant Class Members. Upon information and belief, the Defendant Class Members
16 treated all of the Plaintiff Class Members the same by failing to pay premium time since the
17 declaration of an emergency as directed by DaVita.
18

19 45. Defendant Total will fairly and adequately protect the interests of all class
20 members in the defense of this action. It is similarly situated to and provides its employees
21 DaVita's company policies as set forth in the Teammates Policies Handbook and all of the
22 Defendant Class Members treat its employees in accordance with its provisions. To that end,
23 Defendant Total is likely to retain counsel experienced in handling class action suits involving
24 claims as set forth in this complaint. Neither Total nor its counsel will have any interest which
25
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1 might cause them not to vigorously defend this action and the interests of the Defendant Class
2 Members.

3 46. The Defendant Class Members have and are acting in a uniform manner with
4 respect to the entire class and on grounds uniformly applicable to the class.

5 47. A class action is superior to other available methods for the fair and efficient
6 adjudication of the controversy.

7 48. The Defendant Class Members can more economically defend the claims rather
8 than defend tens if not hundreds of individual actions.

9 49. The concentration of the litigation concerning this matter in this Court is
10 desirable if the court.

11 50. A failure of justice will result from the absence of a class action.

12
13
14 **COUNT I – BREACH OF CONTRACT**

15 51. The Plaintiff incorporates the foregoing paragraphs.

16 52. The Plaintiff Class Members entered into a contract with the Defendant Class
17 Members for the wages to be paid for their services.

18 53. The contract set forth the rate of pay for the Plaintiff Class Members if there
19 was an emergency declared.

20 54. The Defendant Class Members have breached their agreements with the
21 Plaintiff Class Members by failing to pay them premium time for their work since the declaration
22 of an emergency.

23 55. The Plaintiff Class Members have fully performed their obligations under the
24 parties' agreement for the payment of wages promised.

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