

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

PAULA CRANE and LINDA BREWSTER, On Behalf of Themselves and All Others Similarly Situated)	
)	
Plaintiffs,)	
)	
vs.)	CAUSE NO. 1:05-cv-1883-JDT-TAB
)	
RESIDENTIAL CRF, INC. and CRF FIRST CHOICE, INC.,)	<u>CLASS ACTION</u>
)	
)	
Defendants.)	

AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Come now the Plaintiffs, Paula Crane and Linda Brewster, and file an Amended Complaint for Damages and Demand for Jury Trial against the Defendants, Residential CRF, Inc. and CRF First Choice, Inc. (hereinafter “Defendants” or “CRF”). In support of this Complaint, Plaintiffs state as follows:

I. STATEMENT OF CASE

1. Plaintiffs bring this action against Defendants for unpaid overtime pursuant to the Fair Labor Standards Act (hereinafter “FLSA”), 29 U.S.C. § 207(o) and 213, unpaid wages under Indiana Code §§ 22-2-5-2, 22-2-2-4, 34-4-30, 22-2-9-2 and for conversion, breach of implied contract and unjust enrichment under Indiana common law. Plaintiffs’ consents were submitted with the original Complaint.

II. FACTUAL ALLEGATIONS

2. Defendants conduct business in the State of Indiana.
3. Plaintiffs began employment with CRF in 1989.

4. Plaintiffs work for CRF as Direct Care Staff in residential facilities and group homes, owned and managed by CRF, for individuals with physical and mental handicaps.

5. Plaintiffs are paid a salary for working a regular 24/7 schedule.

6. In 2003, 2004, and 2005, Plaintiffs were on the job site for 168 hours each pay period. However, CRF only compensated them for 112 hours each pay period.

7. Plaintiffs were not paid time and a half their regular pay rate for all hours they worked over 40 per week.

8. Plaintiffs filed a complaint with the Indiana Department of Labor prior to filing their original Complaint.

9. Defendants' intentional, knowing and willful violation of Indiana and federal law caused Plaintiffs to suffer economic damages.

III. CLASS ACTION ALLEGATIONS

10. Class Definition: Plaintiffs bring this action on behalf of themselves and a class that includes all Direct Care Staff currently and previously employed by the Defendant, excluding the Fort Wayne group homes, working throughout the state of Indiana.

11. Class Too Numerous for Joinder: Defendant employs, and has employed, hundreds of Direct Care Staff throughout the state of Indiana. These employees are not exempt from the federal and state overtime laws, yet Defendant does not pay them overtime as mandated by the FLSA and Indiana state laws.

12. Common Questions of Fact: The Defendant does not pay employees time and half for hours worked over 40 in one week and also does not pay "straight time" pay for all hours worked, which raises questions of fact common to the class.

13. Common Questions of Law: The same question of law is presented for all class members: Does Defendants' policy and practice violate the FLSA and the Indiana state law?

14. Typicality of Plaintiffs' Claims: The Plaintiffs' claims encompass the challenged policy and practice of Defendant described above.

15. Protection of Class Interests: Plaintiffs will fairly and adequately protect the interests of the class and do not have any conflict of interest with same.

16. Action Maintainable as a Class Action: This action is maintainable as an "opt-in" collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b), for FLSA claims and as a conventional class action for state law claims under Fed. R. Civ. P. 23(a) and (b) (1), (2) and (3).

17. The prosecution of separate actions by or against individual members of the class would create a risk of:

Inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the parties opposing the class (Fed.R.Civ.P. 23 (b) (1) (A)); and,

Adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests (Fed.R.Civ.P. 23 (b) (1) (B)).

18. Defendants have acted and refused to act on grounds generally applicable to class members, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to class members as a whole (Fed.R.Civ.P. 23 (b) (2)).

19. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

20. Class members have little or no interest in individually controlling the prosecution of separate actions.

21. This action is manageable as a collective action for FLSA claims and as a class action for state law claims because compared with any other method, such as individual interventions or the consolidation of individual actions, a class action is fairer and more efficient.

IV. LEGAL THEORIES
COUNT I:
UNPAID WAGES

22. Plaintiffs hereby incorporate by reference paragraphs 1- 19 of Plaintiffs' Amended Complaint.

23. Pursuant to Indiana Code § 22-2-5, et seq. and § 22-2-9-2, the wages, benefits, and costs and expenses owed Plaintiffs by Defendants as its employees are all "wages" within the meaning of the statute, which are to be made at regular intervals according to a predetermined schedule, independent of any other factor of employment.

COUNT II:
CONVERSION

24. Plaintiffs hereby incorporate by reference paragraphs 1-20 of Plaintiffs' Amended Complaint.

25. Pursuant to Indiana Code § 34-4-30 et seq., Indiana's civil conversion statute, the amounts owed Plaintiffs by Defendants are not just a simple debt, but constitute a specific chattel, determined by the precise amounts agreed to by Plaintiffs and Defendants for wages. As such, the deliberate and intentional non-payment of wages to Plaintiffs by Defendants constitutes a wrongful taking of money.

26. Pursuant to the parties' agreement on wages, Defendants were obligated to pay Plaintiffs' wages for work. By their course of dealing, Defendants knew that Plaintiffs continued to work in exchange for payment of the agreed upon wages.

27. Because the civil conversion statute applies to the amounts owed Plaintiffs by Defendants, Plaintiffs are entitled to an award under the civil conversion statute not to exceed three times actual losses, the costs of this action and a reasonable attorney's fee.

**COUNT III:
EQUITY/UNJUST ENRICHMENT**

28. Plaintiffs hereby incorporate by reference paragraphs 1-24 of Plaintiffs' Amended Complaint.

29. Defendants received the benefit of Plaintiffs' work, without compensating the Plaintiffs. As a matter of equity, Defendants should not be allowed to prosper at Plaintiffs' expense.

30. The money Defendants owe Plaintiffs as wages, all inured directly to Defendants' benefit by its nonpayment to Plaintiffs for work done. Plaintiffs should receive compensation to which Plaintiffs are entitled in equity and Defendants should not be unjustly enriched by its nonpayment of wages to Plaintiffs for the work they did.

**COUNT IV:
FAIR LABOR STANDARDS ACT**

31. Plaintiffs hereby incorporate paragraphs 1-27 of Plaintiffs' Amended Complaint.

32. Defendants failed to pay Plaintiffs overtime wages at a rate of one and one half times the normal hourly pay rate, for hours worked in excess of forty (40) hours per week.

33. Plaintiffs were not supervisors or bona fide administrators, live in caregivers, management, or otherwise exempt employees as defined by the FLSA and relevant regulations.

34. Defendants' actions were intentional, willful, malicious and in reckless disregard of Plaintiffs' rights.

**COUNT V:
BREACH OF IMPLIED CONTRACT**

35. Plaintiffs hereby incorporate paragraphs 1–31 of Plaintiffs’ Amended Complaint.

36. Defendants entered into an implied contract with Plaintiffs to pay them wages for all work done and time spent for Defendants’ benefit.

37. Defendants breached this implied contract by failing to pay Plaintiffs and all the wages due for the benefit given to Defendants.

38. Plaintiffs are at will employees. The law implies that a contract for payment of wages existed by the very nature of the employer/employee relationship.

39. Plaintiffs were injured by Defendants’ breach of implied contract to pay wages.

40. Defendants’ actions were intentional, willful, malicious, and in reckless disregard for the rights of the Plaintiffs.

V. REQUESTED RELIEF

WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment in their favor and award them the following relief:

- a. All wages and other economic benefits lost as a result of the Defendants’ unlawful acts;
- b. All costs and attorney fees incurred in litigating this action;
- c. Treble damages for failure to pay wages;
- d. Liquidated damages pursuant to the FLSA;
- e. Compensatory damages;
- f. Pre- and post-judgment interest; and,
- g. Any and all other legal and/or equitable relief to which Plaintiffs are entitled.

DEMAND FOR TRIAL BY JURY

Come now the Plaintiffs, Paula Crane and Linda Brewster, by counsel, and request a trial by jury on all issues deemed so triable.

Respectfully submitted:

s/ Amy Ficklin DeBrota

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CERTIFICATE OF SERVICE

I hereby certify that an exact and true copy of the foregoing has been filed electronically on this 18th day of April, 2007. Notice of this filing will be sent to the following party by operation of the Court's electronic filing system and they may access this filing through the Court's system:

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