

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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1) CHELSEA KILBURN, Individually and On	:	
Behalf of All Others Similarly Situated,	:	
	:	
Plaintiff,	:	COLLECTIVE ACTION
	:	COMPLAINT
-against-	:	
	:	CASE NO. CIV-18-757-D
2) CONCENTRA, INC.,	:	_____
	:	
Defendant.	:	
-----X		

INTRODUCTION

Plaintiff Chelsea Kilburn (“Plaintiff”), individually and on behalf of all others similarly situated, files this Collective Action Complaint and Jury Demand against Defendant Concentra, Inc. (“Defendant”) seeking all relief available under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”) on behalf of Plaintiff and all current and former Assistant Center Directors (“ACDs”) who worked at any of Defendants’ Concentra medical center locations in the United States. The following allegations are based on personal knowledge as to Plaintiff’s own conduct and are made on information and belief as to the acts of others:

NATURE OF THE ACTION

1. Plaintiff alleges on behalf of herself and other current and former ACDs who will opt into this action pursuant to the FLSA that they are entitled to: (i) unpaid wages from Defendant for overtime work for which they did not receive overtime premium pay, as required by law, (ii) liquidated damages under the FLSA, and (iii) reasonable attorneys’ fees and costs of this action.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b).

3. Defendant is subject to personal jurisdiction in the Western District of Oklahoma.

4. Venue is proper in the Western District of Oklahoma pursuant to 28 U.S.C. § 1391 because Plaintiff was employed by Defendant in this District and a substantial part of the events or omissions giving rise to the claim occurred within this District.

5. Defendant is a covered employer within the meaning of the FLSA, and has had gross revenues exceeding \$500,000.00 for all relevant times.

THE PARTIES

Plaintiff Chelsea Kilburn

6. Plaintiff Kilburn was, at all relevant times, an adult individual residing in Edmond, Oklahoma.

7. During all relevant times, Plaintiff was employed by Defendant as an ACD from on or about May 1, 2011 until on or about September 6, 2016, at a Concentra medical center located in Oklahoma City, Oklahoma.

8. Plaintiff's written consent to join this action is attached hereto as Exhibit A.

Defendant

9. Defendant is a corporation, organized and existing under the laws of Delaware, with its corporate headquarters in Addison, Texas.

10. Defendant provides medical care and services to employees of participating employers.

11. Defendant currently employs ACDs in hundreds of locations in 38 states across the country.

12. Defendant employed Plaintiff and employs and has employed other similarly situated current and former ACDs at its Concentra locations nationwide.

13. At all times relevant, Defendant has been an employer within the meaning of Section 3(d) of the FLSA. 29 U.S.C. § 203(d).

14. At all times relevant, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA. 29 U.S.C. § 203(r).

15. At all times relevant, Defendant has been an enterprise engaged in commerce or the production of goods for commerce within the meaning of section 3(s)(1) of the FLSA because Defendant has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have moved in or were produced for commerce by any person, 29 U.S.C. § 203(s)(1).

16. Defendant has had and has a gross volume of sales made or business done of not less than \$500,000.00.

17. At all times relevant, Plaintiff and all similarly situated ACDs were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

18. Defendant directed the work of Plaintiff and similarly situated employees, and benefited from work performed that it suffered or permitted from them.

19. Plaintiff and similarly situated employees worked in excess of 40 hours per workweek, without receiving overtime compensation as required by the FLSA.

20. Pursuant to Defendant's policy and pattern or practice, Defendant did not pay Plaintiff and other similarly situated employees proper overtime wages for hours they worked for its benefit in excess of 40 hours in a workweek.

COLLECTIVE ACTION ALLEGATIONS

21. Pursuant to 29 U.S.C. § 207, Plaintiff seeks to prosecute her FLSA claim as a collective action on behalf of all persons who are or were formerly employed by Defendant at its clinic locations as ACDs and other similarly situated current and former employees holding comparable positions but different titles, at any time from three years prior to the date of filing this Complaint through the date of entry of judgment in this case (the “Putative FLSA Collective”).

22. Defendant is liable under the FLSA for, *inter alia*, failing to properly pay overtime wages to Plaintiff and the members of the Putative FLSA Collective.

23. There are numerous similarly situated current and former ACDs (and other employees holding comparable positions, but different titles) who have not been paid proper overtime wages in violation of the FLSA and who would benefit from the issuance of court-supervised notice of this lawsuit and the opportunity to join it. Thus, notice should be sent to the Putative FLSA Collective pursuant to 29 U.S.C. § 216(b).

24. Those similarly situated employees are known to Defendant, are readily identifiable and can be located through Defendant’s records.

25. Plaintiff and the members of the Putative FLSA Collective, all of whom regularly worked more than 40 hours in a workweek, were employed as ACDs by Defendant at their clinic locations.

26. Defendant failed to pay Plaintiff and the members of the Putative FLSA Collective overtime compensation for the hours they worked over 40 in a workweek.

27. Defendant failed to keep accurate records of all hours worked by Plaintiff and the members of the Putative FLSA Collective.

28. Throughout the relevant period, it has been Defendant's policy, pattern, or practice to require, suffer, or permit the Plaintiff and the members of the Putative FLSA Collective to work in excess of 40 hours per workweek without paying them overtime wages for all overtime hours worked.

29. Defendant assigned the work that the Plaintiff and the members of the Putative FLSA Collective have performed or Defendant was aware of the work they performed.

30. The work performed by the Plaintiff and the members of the Putative FLSA Collective constitutes compensable work time under the FLSA and was not preliminary, postliminary or *de minimus*.

31. Defendant has intentionally, willfully, and regularly engaged in a company-wide policy, pattern, or practice of violating the FLSA with respect to the Plaintiff and the members of the Putative FLSA Collective, which policy, pattern or practice was authorized, established, promulgated, and/or ratified by Defendant's corporate headquarters. This policy, pattern or practice includes but is not limited to:

- a. willfully failing to record all of the time the Plaintiff and the members of the Putative FLSA Collective have worked for the benefit of Defendant;
- b. willfully failing to keep accurate time records as required by the FLSA;
- c. willfully failing to credit the Plaintiff and the members of the Putative FLSA Collective for all hours worked including overtime hours, consistent with the requirements of the FLSA; and
- d. willfully failing to pay the Plaintiff and the members of the Putative FLSA Collective wages for all hours worked including overtime wages for hours in excess of 40 hours per workweek.

32. Defendant is aware, or should have been aware, that the FLSA requires it to pay the Plaintiff and the members of the Putative FLSA Collective an overtime premium for hours worked in excess of 40 hours per workweek.

PLAINTIFF'S WAGE AND HOUR ALLEGATIONS

33. Consistent with Defendant's policy, pattern or practice, Plaintiff and the members of the Putative FLSA Collective regularly worked in excess of 40 hours per workweek without being paid overtime wages.

34. All members of the FLSA Collective performed the same primary job duties.

35. The primary duties that Plaintiff and the other ACDs regularly performed include, but are not limited to:

- a. customer service;
- b. answering phones;
- c. checking patients in and out of the clinic;
- d. confirming appointments; and
- e. clerical and data entry duties.

36. Plaintiff's and the other ACDs' primary job duties did not include:

- a. hiring;
- b. firing;
- c. setting rates of pay;
- d. promoting employees; or
- e. disciplining other employees.

37. Plaintiff's and the other ACDs' primary duties did not differ substantially from the duties of non-exempt hourly paid employees.

38. Plaintiff and the other ACDs did not exercise a meaningful degree of independent discretion with respect to the exercise of their duties.

39. Plaintiff's and the other ACDs' primary duties were customer service and clerical. Customer service and clerical duties occupied the majority of the Plaintiff's and the other ACDs' working hours.

40. Pursuant to a centralized, company-wide policy, pattern, and practice, Defendant classified all ACDs as exempt from coverage of the overtime provisions of the FLSA and applicable state laws.

41. Defendant did not perform a person-by-person analysis of every ACD's job duties when making the decision to classify all of them (and other employees holding comparable positions but different titles) as exempt from the FLSA's overtime protections, as well as the protections of applicable state laws.

42. Upon information and belief, Defendant's unlawful conduct described in this Collective Action Complaint is pursuant to a corporate policy or practice of minimizing labor costs by violating the FLSA.

43. Defendant's failure to pay overtime wages for work performed by the Putative FLSA Collective in excess of 40 hours per workweek was willful.

44. Defendant's unlawful conduct has been widespread, repeated and consistent.

FIRST CAUSE OF ACTION
Fair Labor Standards Act: Unpaid Overtime Wages
Brought on Behalf of Plaintiff and the Members of the Putative FLSA Collective
Against Defendant

45. Plaintiff and the members of the Putative FLSA Collective, reallege and incorporate by reference paragraphs 1-44 as if they were set forth again herein.

46. Defendant has engaged in a widespread pattern and practice of violating the FLSA, as detailed in this Collective Action Complaint.

47. Plaintiff and the members of the Putative FLSA Collective have consented in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b).

48. At all relevant times, Plaintiff and the members of the Putative FLSA Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

49. The overtime wage provisions set forth in 29 U.S.C. §§ 201 *et seq.* apply to Defendant.

50. Defendant is an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

51. At all times relevant, Plaintiff and the members of the Putative FLSA Collective were employees within the meaning of 29 U.S.C. §§ 203 (e) and 207(a).

52. Defendant has failed to pay Plaintiff and other similarly situated members of the Putative FLSA Collective the overtime wages to which they were entitled under the FLSA.

53. Defendant's violations of the FLSA, as described in the Complaint, have been intentional and willful. Defendant has not made a good faith effort to comply with the FLSA with respect to the compensation of the Plaintiff and other similarly situated members of the Putative FLSA Collective.

54. Because Defendant's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

55. As a result of the Defendant's violations of the FLSA, Plaintiff and all other similarly situated members of the Putative FLSA Collective have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201, *et seq.*

56. As a result of the unlawful acts of Defendant, Plaintiff and other similarly situated members of the Putative FLSA Collective have been deprived of overtime compensation and

other wages in amounts to be determined at trial, and are entitled to recover such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated members of the Putative FLSA Collective, prays for the following relief:

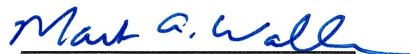
- A. Certification of the collective consisting of Plaintiff and all similarly situated ACDs;
- B. Unpaid wages and liquidated damages in the maximum amount allowed by 29 U.S.C. §§ 201 *et seq.* and the supporting United States Department of Labor regulations and the employer's share of FICA, FUTA, state unemployment insurance and any other required employment taxes;
- C. Pre-judgment interest;
- D. Attorneys' fees and costs of the action, including expert fees; and
- E. Such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Fed.R.Civ.P.38(b), Plaintiff demands jury trial on all claims herein.

Dated: August 8, 2018

Respectfully submitted,



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*Attorneys for Plaintiff and the
Putative FLSA Collective*

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CHELSEA KILBURN

(b) County of Residence of First Listed Plaintiff OKLAHOMA CO., OKLA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Waller Jorgenson Warzynski, 401 S. Boston, Suite 500, Tulsa, OK
918.629.3350

DEFENDANTS

CONCENTRA, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	LABOR	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 740 Railway Labor Act	SOCIAL SECURITY	<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PRISONER PETITIONS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 195 Contract Product Liability		Habeas Corpus:	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))		
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 463 Alien Detainee		<input type="checkbox"/> 864 SSID Title XVI		
		<input type="checkbox"/> 510 Motions to Vacate Sentence	IMMIGRATION	<input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS	
		<input type="checkbox"/> 530 General	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 465 Other Immigration Actions			
REAL PROPERTY	CIVIL RIGHTS	Other:				
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other				
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 550 Civil Rights				
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 555 Prison Condition				
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement				
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment					
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other					
	<input type="checkbox"/> 448 Education					

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201 et seq.
Brief description of cause:
collective action for unpaid overtime

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE August 8, 2018 SIGNATURE OF ATTORNEY OF RECORD Waller J. Warzynski

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Concentra Employee Claims She Was Improperly Classified, Owed Overtime Wages](#)
