

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2017 MAY 15 PM 1:26

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA, FLORIDA

CYNTHIA JOHNSON, on behalf of herself )  
and others similarly situated, )

Plaintiff, )

v. )

KEY CENTER FOUNDATION, INC. )

Defendant. )

Civil Action No.: 5:17-cv-216-CL-32PRL

**COMPLAINT**

COMES NOW the Plaintiff, CYNTHIA JOHNSON (“PLAINTIFF”), on behalf of herself and others similarly situated, and files this Complaint against DEFENDANT, KEY CENTER FOUNDATION, INC. (“DEFENDANT”), respectfully stating unto the Court the following:

**GENERAL ALLEGATIONS**

1. This is a cause of action to recover compensatory and liquidated damages, attorney fees, and other relief from DEFENDANT for violations of the Fair Labor Standards Act (“FLSA”) and for breach of contract.
2. At all material times, PLAINTIFF was a citizen and resident of Florida.
3. At all material times, DEFENDANT was a Florida corporation which operated group home facilities including a facility in Citrus County, Florida and it is that facility where PLAINTIFF was employed at all relevant times.

**BACKGROUND**

4. PLAINTIFF brings this action to require DEFENDANT to pay back wages owed to

PLAINTIFF, which DEFENDANT failed to pay in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.*

5. At all relevant times, DEFENDANT acted through its officers, agents, servants and employees.
6. Upon information and belief, at all relevant times, DEFENDANT had annual gross sales in excess of \$500,000.00 and two or more employees who regularly handled goods that moved in or were produced for interstate commerce.
7. At all relevant times, DEFENDANT was an enterprise engaged in commerce as defined at 29 U.S.C. § 203.
8. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1337 and by 29 U.S.C. § 216.
9. In or around August 2009, DEFENDANT hired PLAINTIFF to work as a manager. Pursuant to their agreement, PLAINTIFF was supposed to work a 40 hour week for which she was paid an hourly rate of \$12.73.
10. In addition, PLAINTIFF did not receive her final paycheck and has been forced to retain counsel to help her get her compensation.
11. Despite their agreement, PLAINTIFF was frequently required to work as many as 70 to 80 hours per week and she received no additional compensation when she did so. As a result, there were certain weeks in which PLAINTIFF did not earn at least minimum wage.
12. The proposed collective class of individuals consists of hourly employees of DEFENDANT, who worked liked PLAINTIFF more than 40 hours per week and who were not compensated for their time when they exceeded 40 hours.

13. The FLSA requires an employer to pay its employees at a rate of at least minimum wage for all hours worked and also requires an employer to pay its employees time and one-half when they work more than 40 hours per week.
14. Despite working at the direction and knowledge of DEFENDANT, PLAINTIFF and those similarly situated were not paid at an overtime rate of pay when they worked overtime.
15. Upon information and belief, DEFENDANT has, since the beginning of PLAINTIFF'S employment, willingly, deliberately and intentionally refused to pay PLAINTIFF and those similarly situated time and one-half for overtime hours.
16. PLAINTIFF and those similarly situated are therefore, owed compensation for time actually worked but not paid, and back wages by DEFENDANT, who willingly and knowingly withheld those wages.

**COUNT I**  
**VIOLATION OF THE FAIR LABOR STANDARDS ACT**

17. The General Allegations and Background above are hereby incorporated by reference as though fully set forth herein.
18. DEFENDANT regularly engages in commerce and its employees, including PLAINTIFF and those similarly situated, handled and used materials, which have moved in interstate commerce.
19. At all relevant times, DEFENDANT was an employer within the meaning of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* and is subject to the provisions of the Act.
20. PLAINTIFF and those similarly situated, at all relevant times were non-exempt employees of DEFENDANT, as defined by the Fair Labor Standards Act of 1938, as

amended, 29 U.S.C. §§ 201, *et seq.* who performed overtime work for which they were compensated at only their regular hourly rate.

21. During their employment with DEFENDANT, PLAINTIFF and those similarly situated performed overtime work for which they were not properly compensated in violation of the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* More specifically, DEFENDANT violated the overtime provision of the FLSA by failing to pay PLAINTIFF and those similarly situated at a rate of time and one-half when they worked more than 40 hours in a week. In addition, there were weeks when PLAINTIFF was not paid at least minimum wage.
22. Upon information and belief, DEFENDANT'S pay system was unilaterally imposed upon PLAINTIFF and those similarly situated by DEFENDANT.
23. DEFENDANT'S failure to compensate PLAINTIFF and those similarly situated for all compensable hours violates the overtime provisions of the FLSA and the regulations thereunder.
24. DEFENDANT'S failures to compensate PLAINTIFF and those similarly situated for their overtime was a willful and knowing violation of the Act.
25. As a result of DEFENDANT'S willful and knowing failure to properly compensate PLAINTIFF and those similarly situated, they have suffered substantial delay in receipt of wages owed and damages.
26. Pursuant to 29 U.S.C. §§206, 207 and 216, DEFENDANT owes PLAINTIFF and those similarly situated compensation at a rate of time and one-half pay for their unpaid overtime, and an additional equal amount as liquidated damages, together with an additional sum for attorney's fees and costs of litigation.

27. All conditions precedent to maintaining this action have occurred or otherwise been waived.

WHEREFORE, PLAINTIFF demands judgment against DEFENDANT and respectfully prays the Court that PLAINTIFF and those similarly situated will recover unpaid wages, unpaid overtime, liquidated damages, pre- and post-judgment interest, nominal damages, attorney fees, and other relief by reason of DEFENDANT'S violations of the FLSA; for a trial by jury on all issues so triable, and, for such other and further relief as the Court may deem just and proper.

**COUNT II**  
**BREACH OF CONTRACT**

28. The General Allegations and Background above are hereby incorporated by reference as though fully set forth herein.
29. DEFENDANT breached its agreement with PLAINTIFF by requiring her to work more than 40 hours per week and not paying her when she exceeded 40 hours per week. This happened throughout her employment.
30. In addition, by failing to pay PLAINTIFF her final paycheck, DEFENDANT breached its agreement with PLAINTIFF to compensate her at a rate of \$12.73 per hour for every hour she worked.
31. Further, PLAINTIFF was not paid her extended illness benefit or time off-standard time she accrued.
32. Pursuant to Florida Statute 448.08, PLAINTIFF is entitled to attorney's fees and costs of litigation if she is successful in this action.

WHEREFORE, PLAINTIFF demands judgment against DEFENDANT and respectfully prays the Court that PLAINTIFF will recover unpaid wages, pre- and post-judgment interest, nominal damages, attorney fees, and other relief by reason of DEFENDANT'S breach of contract;

for a trial by jury on all issues so triable, and, for such other and further relief as the Court may deem just and proper.

Dated: May 10, 2017

Respectfully submitted,

**THE LAW OFFICE OF MATTHEW BIRK**

**/s/ Matthew W. Birk**

**Matthew W. Birk**

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ATTORNEYS FOR PLAINTIFF

JS 44 (Rev. 08/16)

**CIVIL COVER SHEET**

5:17-cv-216-oc-32PRL

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**  
 CYNTHIA JOHNSON, on behalf of herself and others similarly situated,

**(b) County of Residence of First Listed Plaintiff** Citrus  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorneys (Firm Name, Address, and Telephone Number)**  
 The Law Office of Matthew Birk, LLC, 309 NE 1st St. Gainesville, FL 32601, (352) 244-2069

**DEFENDANTS**  
 KEY CENTER FOUNDATION, INC.

County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES)

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

Attorneys (If Known) \_\_\_\_\_

2017 MAY 15 PM 1:26  
 U.S. DISTRICT COURT  
 MIDDLE DISTRICT OF FLORIDA  
 GAINESVILLE, FLORIDA

**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)

Click here for: [Nature of Suit Code Descriptions.](#)

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

**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. 216

Brief description of cause:  
Breach of contract, claim for unpaid wages, PTO and overtime

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMANDS    CHECK YES only if demanded in complaint:  
 JURY DEMAND:     Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 05/10/2017    SIGNATURE OF ATTORNEY OF RECORD: s/Matthew W. Birk

**FOR OFFICE USE ONLY**

RECEIPT # ONE    AMOUNT \$ 400    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_

8125

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Key Center Foundation Hit with Class Action Over Back Wages](#)

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