

**IN THE UNITED DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**ADRIAN ROBINSON, on behalf §
of himself and all others §
similarly situated, §
§
Plaintiffs, §
§
v. §
§
American Family Care, Inc., §
§
Defendant. §
§**

CIVIL ACTION NO.

JURY TRIAL

COMPLAINT

COMES NOW the named plaintiff, Adrian Robinson (hereinafter “Plaintiff”), by and through the undersigned, and hereby files this lawsuit against American Family Care, Inc. (hereinafter “AFC”), pursuant to §216(b) of the Fair Labor Standards Act of 1938 claiming unpaid overtime wages on behalf of himself and others similarly situated, based on the following:

I. PARTIES

1) Plaintiff Adrian Robinson resides in Calera, Shelby County, Alabama and he has concurrently filed his consent to become a party plaintiff in this action pursuant to 29 U.S.C. §216(b). See Exhibit A.

2) Defendant American Family Care, Inc. and its registered agent Dr. Bruce Irwin maintain their primary offices at 3700 Cahaba Beach Rd, Birmingham, Alabama 35242.

II. JURISDICTION AND VENUE

3) This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331. Venue is proper in the Northern District of Alabama under 28 U.S.C. §1391(b).

4) Defendant is subject to the requirements of the Fair Labor Standards Act of 1938, as amended (hereafter the “FLSA”), due to its employees’ (2 or more) repeated contacts, via the instrumentalities of commerce, with businesses outside Alabama, including its own operations.

III. GENERAL ALLEGATIONS

5) According to its website, AFC operates urgent care centers, sometimes called walk-in clinics, which have become a very popular medical solution for millions of Americans.

6) AFC contends these centers provide convenience and affordability that are not possible with more traditional medical providers.

7) The primary purpose of AFC's urgent care centers is to provide quality health care services, in an expeditious manner, during convenient hours and on weekends without needing a prior appointment.

8) There are approximately ten (10) urgent care centers in Tennessee owned by AFC.

9) There are approximately forty-five (45) urgent care centers in Alabama owned by AFC.

10) There are approximately seven (7) urgent care centers in Georgia owned by AFC.

11) There are approximately four (4) urgent care centers in Florida owned by AFC.

12) Generally, AFC's urgent care centers have a staffing budget that includes a dedicated clinic manager or a clinic manager shared with another center(s).

13) Generally, AFC's urgent care centers are assigned a Director or Clinic Director (hereafter "Clinic Director") who is ultimately responsible to the Vice President of Clinical Operations for the performance of that center and the other centers in the Clinic Director's market.

14) For some centers, the Clinic Director concurrently serves as the Vice President of Clinical Operations.

15) AFC organizes its urgent care centers into markets and some of those markets are denoted by AFC internally as: “Birmingham,” “North Alabama,” “East Alabama,” “Montgomery,” “South Alabama / Florida,” “Tennessee / Nashville Area,” “Tennessee / Knoxville Area,” and “Georgia / Atlanta Area.”

16) The Vice President of Clinical Operations is generally responsible for multiple markets.

17) The “Tennessee / Nashville Area” market is comprised of approximately seven (7) urgent care centers.

18) In the last three (3) years, some or all of these centers were located at the following addresses:

291 Indian Lake Blvd.	Hendersonville	TN	37075
1763 Madison St. Commons	Clarksville	TN	37043
5826 Nolensville Pike	Nashville	TN	37211
6606 Charlotte Pike Ste. 104	Nashville	TN	37209
355 Pleasant Grove Rd #1400	Mt. Juliet	TN	37122
985 Industrial Blvd.	Smyrna	TN	37167
2070 Wall Street	Spring Hill	TN	37064

19) The “Tennessee / Knoxville Area” market is comprised of approximately four (4) urgent care centers.

20) In the last three (3) years, some or all of these centers were located at the following addresses:

9203 Kingston Pike	Knoxville	TN	37922
26 Parkway Dr.	Ft. Oglethorpe	GA	30742
1015 Hunters Crossing Dr.	Alcoa	TN	37701
3520 Cummings Hwy	Chattanooga	TN	37719

21) The “North Alabama” market is comprised of approximately seven (7) urgent care centers.

22) In the last three (3) years, some or all of these centers were located at the following addresses:

1285 Hwy 72 East	Athens	AL	35611
1841 Cherokee Ave SW	Cullman	AL	35055
2604 Hwy 31 South	Decatur	AL	35603
410 Sutton Rd.	Huntsville	AL	35763
7559 Hwy 72 West	Madison	AL	35758
4550 University Dr.	Huntsville	AL	35816
8151 Whitesburg Dr.	Huntsville	AL	35801

23) The “Birmingham” market is comprised of approximately twenty (20) urgent care centers.

24) In the last three (3) years, some or all of these centers were located at the following addresses:

120 Colonial Promenade Pkwy	Alabaster	AL	35007
5911 Harris Lane	Bessemer	AL	35022
72 Hwy 304	Calera	AL	35040
6554 Aaron Aronov Dr.	Fairfield	AL	35064
1664 Forestdale Blvd	Birmingham	AL	35214
366 E. Meighan Blvd.	Gadsden	AL	35071

919 Odum Rd.	Gardendale	AL	35903
5410 Hwy 280	Birmingham	AL	35242
5569 Grove Blvd. Ste. 121	Hoover	AL	35226
2757 Greensprings Hwy	Birmingham	AL	35209
1680 Montgomery Hwy	Hoover	AL	35216
710 15th St.	Tuscaloosa	AL	35401
1652 Montclair Rd.	Birmingham	AL	35210
30 Holmes Dr.	Oxford	AL	36203
9232 Parkway East	Birmingham	AL	35206
2970 Pelham Pkwy	Pelham	AL	35124
20 Hazelwood Dr.	Pell City	AL	35125
5892 Trussville Crossing Pkwy	Birmingham	AL	35235
9070 69 South	Tuscaloosa	AL	35405
200 Montgomery Hwy	Vestavia Hills	AL	35216

25) The “East Alabama” market is comprised of approximately six (6) urgent care centers.

26) In the last three (3) years, some or all of these centers were located at the following addresses:

2445 Murphy Mill Rd.	Dothan	AL	36303
600 Boll Weevil Circle Ste. A	Enterprise	AL	36333
6509 Gateway Rd.	Columbus	AL	31909
2544 Enterprise Dr.	Opelika	AL	36801
15415 Panama City Beach Pkwy	Panama City	AL	32413
1902 South College St.	Auburn	AL	36832

27) The “Montgomery” market is comprised of approximately seven (7) urgent care centers.

28) In the last three (3) years, some or all of these centers were located at the following addresses:

4305 Atlanta Hwy	Montgomery	AL	36109
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2570 Berryhill Road	Montgomery	AL	36117
101 Paul Stabler Dr.	Montgomery	AL	36037
1965 Cobbs Ford Rd.	Prattville	AL	36066
34 Taylor Rd. North	Montgomery	AL	36117
2815 East Blvd.	Montgomery	AL	36116
4452 US Hwy 231	Wetumpka	AL	36092

29) The “South Alabama / Florida” market is comprised of approximately nine (9) urgent care centers.

30) In the last three (3) years, some or all of these centers were located at the following addresses:

6631 Park Dr.	Daphne	AL	36526
1012 Hwy 98 E. #100	Destin	FL	32541
10040-A County Rd. 48	Fairhope	AL	36532
900 Montlimar Dr.	Mobile	FL	36609
13457 Atlantic Blvd. Ste. 5	Jacksonville	FL	32225
25775 Perdido Beach Blvd. Ste. E-5	Orange Beach	AL	36561
4713 Hwy 90	Pace	FL	32571
1097 Industrial Pkwy	Saraland	AL	36571
5235 Rangeline Service Rd. S. Ste. A	Mobile	AL	36619

31) The “Georgia / Atlanta Area” market is comprised of approximately six (6) urgent care centers.

32) In the last three (3) years, some or all of these centers were located at the following addresses:

1800 Howell Mill Road NW Ste. 130	Atlanta	GA	30318
5610 Roswell Rd. Ste. 100	Sandy Springs	GA	30342
1095 Woodstock Road	Roswell	GA	30075
3481 Ernest Barrett Pkwy	Marieta	GA	30075
12994 Highway 9	Milton	GA	30064
6440 Bella Ferry Road	Woodstock	GA	30004

33) Kay Parks is a Vice Presidents of Clinical Operations for AFC.

34) At any time in the last three (3) years, as Vice President of Clinical Operations, Kay Parks had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 18 above.

35) At any time in the last three (3) years, as Vice President of Clinical Operations, Kay Parks had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 20 above.

36) At any time in the last three (3) years, as Vice President of Clinical Operations, Kay Parks had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 22 above.

37) At any time in the last three (3) years, as Vice President of Clinical Operations, Kay Parks had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 24 above.

38) At any time in the last three (3) years, as Vice President of Clinical Operations, Kay Parks had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 26 above.

39) At any time in the last three (3) years, as Vice President of Clinical Operations, Kay Parks had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 28 above.

40) At any time in the last three (3) years, as Vice President of Clinical Operations, Kay Parks had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 30 above.

41) At any time in the last three (3) years, as Vice President of Clinical Operations, Kay Parks had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 32 above.

42) Gwen Dwyer, is also a Vice President of Clinical Operations for AFC.

43) At any time in the last three (3) years, as Vice President of Clinical Operations, Gwen Dwyer had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 18 above.

44) At any time in the last three (3) years, as Vice President of Clinical Operations, Gwen Dwyer had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 20 above.

45) At any time in the last three (3) years, as Vice President of Clinical Operations, Gwen Dwyer had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 22 above.

46) At any time in the last three (3) years, as Vice President of Clinical Operations, Gwen Dwyer had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth above in Paragraph 24 above.

47) At any time in the last three (3) years, as Vice President of Clinical Operations, Gwen Dwyer had a Clinic Director or multiple Clinic

Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 26 above.

48) At any time in the last three (3) years, as Vice President of Clinical Operations, Gwen Dwyer had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 28 above.

49) At any time in the last three (3) years, as Vice President of Clinical Operations, Gwen Dwyer had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 30 above.

50) At any time in the last three (3) years, as Vice President of Clinical Operations, Gwen Dwyer had a Clinic Director or multiple Clinic Directors reporting to her that were responsible for some or all of the urgent care centers at the addresses set forth in Paragraph 32 above.

51) At all relevant times in the last three (3) years, Plaintiff Robinson has worked as a Clinic Manager for AFC.

52) Up until December 29, 2017, Plaintiff Robinson was assigned to the Calera urgent care center located at 72 Hwy 304, Calera, Alabama 35040.

53) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a fill-in clinic manager at an AFC urgent care center(s) located in Alabaster, Alabama.

54) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a clinic manager at an AFC urgent care center(s) located in Bessemer, Alabama.

55) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a fill-in clinic manager at an AFC urgent care center(s) located in Forestdale, Alabama.

56) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a fill-in clinic manager at an AFC urgent care center(s) located in Gardendale, Alabama.

57) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a fill-in clinic manager at an AFC urgent care center(s) located in Pelham, Alabama.

58) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a clinic manager at an AFC urgent care center(s) located in Alpharetta, Georgia.

59) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a clinic manager at an AFC urgent care center(s) located in Buckhead, Georgia.

60) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a clinic manager at an AFC urgent care center(s) located in Marietta, Georgia.

61) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a clinic manager at an AFC urgent care center(s) located in Sandy Springs, Georgia.

62) In the last three (3) years, Plaintiff Robinson has also worked on a full time or temporary basis as a clinic manager at an AFC urgent care center(s) located in Woodstock, Georgia.

63) As a result of working at the centers outlined above, Plaintiff Robinson has experience working as a clinic manager in both the “Birmingham” market and the “Georgia / Atlanta Area” market.

64) Plaintiff Robinson worked at urgent care centers for which Kay Parks had oversight or responsibility.

65) Plaintiff Robinson worked at urgent care centers for which Gwen Dwyer had oversight or responsibility.

66) Regardless of whether Kay Parks or Gwen Dwyer had responsibility over a particular center where Plaintiff worked, AFC's practices and policies followed by each center were substantially similar and so were the responsibilities and duties of the clinic manager.

67) New clinic managers working at urgent care centers falling under the purview of Kay Parks or Gwen Dwyer, regardless of the center's geographic location, receive one week of training at AFC's corporate office.

68) AFC utilizes a standardized "AFC Clinic Manager Handbook" as part of new clinic managers' training.

69) The standardized AFC Clinic Manager Handbook and standardized policies and practices are important to AFC so it can ensure consistency among its many urgent care centers.

70) The clinic manager handbook expressly teaches expressly that consistency and standardization are important to the company as follows,

At AFC, it is important to maintain a high degree of consistency and standardization throughout the organization in an effort to achieve the highest levels of customer satisfaction and loyalty. This has become especially necessary during our recent period of growth and expansion into newer markets. The site visit check list is a tool designed to highlight the most important aspects of the AFC healthcare delivery model, emphasizing the qualities, processes, policies and procedures that have made AFC the "Gold Standard" in the delivery of acute primary care. The site visit checklist is may be found on AFCWeb.

71) This handbook is meant to provide clinic managers with the knowledge necessary to perform their jobs where it sets forth,

We are glad you joined us!

This manual is designed to provide you with the tools and information you need to be successful and effective in your new position. It is divided into four weeks of instruction, with information about the frequency of the responsibility and the overall training objective. You will complete each of the four weeks in a time frame that is dependent on your position, your hire date, and your current clinic managerial skill level.

72) Consistent with Paragraph 70 above, providing quality healthcare services and good customer service are of the utmost importance to AFC.

73) Long patient wait times for service can negatively impact the quality of AFC's customer service.

74) AFC's motto is "The Right Care Right Now."

75) Long patient wait times for service are inconsistent with AFC's motto.

76) Lack of patient interaction with an AFC employee can also negatively affect customer service.

77) To facilitate good customer service, AFC has implemented and issued information maintained on AFCWeb as to how to greet customers, in-person or on the phone.

78) To facilitate good customer service AFC also implemented the "AFC's 10/15 Philosophy," which among other things sets forth that the

majority of AFC patients should have personal interaction at least every 10 minutes and all other patients should have personal interaction at least every 15 minutes.

79) AFC also provides customer service training to new hires which is affirmed in AFC's Clinic Manager Handbook where it says,

- Online Orientation course curricula for all new hires, including Customer Service, HIPAA, Hazard Communication, and more.

80) Customer service is so high up on AFC's list of priorities that a failure to meet customer service expectations is a transgression second only to dishonesty and/or potentially violent, violent, or criminal acts.

81) This is taught in AFC's Clinic Manager Handbook where it says in pertinent part,

the first occurrence. There is no substitute for good judgment and common sense. In general, the most serious infractions involve dishonesty and potentially violent or criminal acts. Close behind are failures to meet our customer service expectations and violations of company policies, particularly those with

82) Payroll costs are the largest single category of costs for AFC.

83) This fact is confirmed in AFC's policy, HR-320 titled Time Clocks and Time Keeping.

84) AFC reduces its payroll costs companywide by not paying overtime compensation to its clinic managers (not in training).

85) AFC has intentionally failed and/or refused to pay Plaintiff and others similarly situated overtime compensation in accordance with the provisions of the FLSA.

IV. CLAIM ONE - FLSA CLAIM FOR UNPAID OVERTIME PURSUANT TO 216(b) OF THE FAIR LABOR STANDARDS ACT

86) This action is brought pursuant to the FLSA, 29 U.S.C. § 201 et seq. and, specifically the collective action provisions of the Act in order to remedy violations of its overtime provisions.

87) Through a scheme to misclassifying clinic managers as overtime exempt, AFC has deprived the named plaintiff, as well as others similarly situated, their lawful overtime wages.

88) At all times relevant to this action, AFC was an “employer” of the named plaintiff as defined by § 203(d) of the FLSA.

89) At all times relevant to this action, Plaintiff was an “employee” of AFC as defined by § 203(e)(1) of the FLSA, and he worked in the United States.

90) The provisions of §§ 206 and §§ 207 of the FLSA, respectively, apply to AFC.

91) All members of the putative class were covered by §§ 206 and §§ 207 of the FLSA while employed as a clinic manager at AFC.

92) As a clinic manager, Plaintiff Robinson was classified by AFC as an exempt employee not entitled to overtime compensation under the FLSA.

93) As a clinic manager, Plaintiff Robinson was paid a fixed salary.

94) At AFC's urgent care centers, all clinic managers (not in training) are classified as overtime exempt regardless of their assigned urgent care center's location, size, or number of patients and regardless of the clinic manager's prior management experience.

95) Companywide, AFC claims these clinic managers are bona fide executives not entitled to overtime compensation pursuant to 29 U.S.C. § 213(a)(1).

96) At AFC, all clinic managers (not in training) are paid a fixed salary.

97) The clinic managers' FLSA exempt status is noted on AFC's job description for the position and also in AFC's policy HR-315 titled Overtime.

98) Companywide, AFC uses a single job description for the position of clinic manager.

99) Under HR-315, employees classified as non-exempt receive overtime compensation for working more than 40 hours in a week.

100) Under this same policy, clinic managers are entitled to additional compensation if they work weekends and/or holidays, or perform weekend call work, but instead of monies, subject to their supervisor's approval, they receive compensatory time off, *i.e.* comp days.

101) As a clinic manager, Plaintiff Robinson did not receive overtime compensation at the rate of one and one-half (1 ½) his regular rate of pay for hours worked in excess of forty (40) in a week.

102) Among other elements, for AFC to properly claim Plaintiff and its other clinic managers are/or were exempt executives, AFC must prove the clinic managers possess "management" as their most important responsibility.

103) Where an employee does not spend 80% or more of his or her time engaged in management activities, while such a fact is not dispositive, this fact supports a finding that the employee is not an exempt executive.

104) Here, clinic managers and Plaintiff Robinson do not possess management as their most important responsibility.

105) Instead, Plaintiff and other similarly situated clinic managers spend 80% or more of their time primarily acting as floaters performing the

work of hourly paid employees, engaging in customer service, and performing other non-management tasks.

106) As evidence that AFC does not expect its clinic managers to possess “management” as their most important responsibility, Plaintiff points to the fact that qualified candidates for the position need not possess a management degree, business degree, or the like, nor are they required to have management or executive experience.

107) Candidates need only hold an associate degree in a non-specified discipline, or three years of medical experience.

108) Prior supervisory experience is only desired, not necessary or required.

109) This is consistent with the hiring of Plaintiff Robinson as a clinic manager.

110) Plaintiff Robinson had no former management or supervisory experience.

111) AFC’s training program for clinic managers also supports the conclusion that it does not expect its clinic managers to possess management as their most important job.

112) AFC's training for new clinic managers is not management oriented, instead it is "process" oriented.

113) Despite his lack of any management or supervisory experience, Plaintiff Robinson's training consisted of just two weeks shadowing another clinic manager in Gardendale Alabama, and one additional week in training at AFC's corporate office.

114) During his clinic manager training, Plaintiff Robinson was paid in the neighborhood of \$14 to \$15 per hour.

115) During this time when he was in training and paid hourly, AFC did not want him to work over 40 hours a week and Plaintiff cannot recall any time when he did.

116) After AFC started paying Plaintiff Robinson a fixed salary as an overtime exempt employee, the number of hours he worked consistently exceeded 40 in a week, but otherwise his job responsibilities remained the same compared to those he had while paid hourly in training.

117) As a clinic manager, Plaintiff Robinson normally worked in excess of 40 hours in a week.

118) Up until May of 2017, Plaintiff Robinson normally worked from 7:30 AM until sometime between 5:30 PM to 6:30 PM and at times well

beyond. Plaintiff Robinson was scheduled to work 5 days a week and he was on call on the weekends. During this time the urgent care center would accept patients from 7:45 AM until 6:00 PM.

119) Sometime in May of 2017 Plaintiff Robinson had to start working from 7:30 AM until 8:00 PM or later. Thereafter the urgent care center accepted patients from 7:45 AM until 8:00 PM.

120) Once a customer was checked-in as a patient, the center would remain open until the last patient leaves.

121) Prior to May of 2017, Plaintiff Robinson's worked on average 50 to 60 hours a week. After May of 2017 until his resignation, his weekly hours worked routinely ranged between 60 to 65 hours a week.

122) AFC utilized a time keeping system to capture the hours worked by Plaintiff and other clinic managers, no different that the system and process utilized by the hourly paid staff at the urgent care centers.

123) Plaintiff Robinson's annual salary was \$35,000.00 or thereabout.

124) His salary was based on an hourly rate of approximately \$16.96 per hour.

125) However, because of the number of hours Plaintiff Robinson worked, prior to May of 2017 his effective hourly rate of pay was within an

approximate range of \$11.22 per hour to \$13.46 per hour (Weekly salary divided by total number of hours worked in that week).

126) After May of 2017 his effective hourly rate of pay fell within an approximate range of \$10.36 per hour and \$11.22 per hour (Weekly salary divided by total number of hours worked in that week).

127) Accordingly, as a so-called executive exempt manager, Plaintiff Robinson was earning equal to or in most cases less than the hourly paid, non-exempt employees working at his urgent care center.

128) Medical assistants at his urgent care center are paid approximately \$10 - \$13 per hour plus overtime compensation.

129) Lab techs at his center are paid approximately \$11 - \$14 per hour plus overtime compensation.

130) Office staff, i.e. front office, at his location are paid approximately \$8.50 - \$10.50 plus overtime compensation.

131) Physicians and Nurse Practitioners report respectively to AFC's Chief Medical Officer or Director of Physician Extenders.

132) It is not surprising that Plaintiff's and clinic managers' pay is similar to that of hourly paid non-exempt employees because AFC required

that clinic managers spend the vast majority of their time performing non-management tasks normally performed by hourly paid employees.

133) Plaintiff and clinic managers are and were required to engage in non-management tasks.

134) The non-management tasks Plaintiff engaged in, included but were not limited to:

- (a) Testing the fax machine;
- (b) Sterilizing instruments;
- (c) Emptying sharps containers;
- (d) Cleaning consultation rooms after patients leave before new patients are assigned to the room;
- (e) Performing patient surveys via phone;
- (f) Addressing patient complaints;
- (g) Turning on and testing equipment prior to the days start;
- (h) Performing drug screens;
- (i) Performing blood alcohol tests;
- (j) Performing blood pressure tests;
- (k) Drawing labs and performing lab work;
- (l) Administering injections;
- (m) Checking-in/registering patients;
- (n) Directing physicians to appropriate consultation rooms;
- (o) Catering to physicians and nurse practitioners needs;
- (p) Printing paperwork for patients checking-out;
- (q) Discharging/checking-out patients;
- (r) Walking patients to their cars;
- (s) Answering the phones;
- (t) Sending a litany of faxes to corporate and 3rd parties;
- (u) Calling or faxing patient referrals to 3rd party providers;
- (v) Checking-in and stocking deliveries;
- (w) Calling patients and providing them lab and x-ray results;
- (x) Calling prescriptions into patients' pharmacies;

- (y) Washing and folding laundry, cleaning and sweeping general areas, emptying the trash, washing and putting away dishes, cleaning restrooms, cleaning the restrooms, spraying for bugs, etc.;
- (z) Other duties normally performed by hourly medical staff during the course of shift.

135) Plaintiff Robinson spent in excess of 80% of his time engaged in non-management duties.

136) AFC has never monitored Plaintiff and calculated the amount of time he was engaged in exempt work as a percentage of his total hours worked in a week.

137) In addition to the assertions above that support the conclusion that Plaintiff was non-exempt, buttressing the same is the fact that the discretion and independent authority AFC bestowed on Plaintiff and others similarly situated was severely limited.

138) Plaintiff and other clinic managers have no input as to what services the center will offer.

139) The selection and purchase of supplies and materials utilized by the center is performed by the corporate office, not the clinic managers.

140) Plaintiff did not have the authority and independent discretion to determine appropriate inventories levels for supplies and material.

141) Supplies and materials are reordered through a system established by the corporate office with pre-determined inventory levels where clinic managers need only perform a count and send an email to purchasing on specific days designated by corporate.

142) Weekly reports are automatically generated and maintained by a computer system established and implemented by AFC's corporate office.

143) AFC's corporate office, not Plaintiff, determined the number of staff necessary for the operations of Plaintiff's center.

144) Plaintiff's and the other clinic managers' authority and discretion is so limited, they have no say in the layout of the center. Instead, they must comply with laminated diagrams provided by AFC's corporate office dictating how the center should look and where items are placed, including but not limited to:

- (a) Where shelving and storage is placed;
- (b) Where equipment is placed;
- (c) Where computers desks and chairs are placed;
- (d) How and where waiting room chairs are set up;
- (e) Where medication and supplies are located;
- (f) The location of paper towels and toilet paper;
- (g) The location of blankets;
- (h) How to lay out the kitchen and where plates, cups, etc. are located;

145) Clinic managers also lack authority to grant staff at their centers leaves of absence;

146) Clinic managers lack the authority and discretion to choose the channel that is viewed on the televisions in their centers' waiting rooms and the magazines available for patients to read;

147) Plaintiff once placed magazines in the waiting room of his center and as the result of an audit he was reprimanded for doing so.

148) Clinic managers lack the discretion to hire or fire employees without first having the approval of their Director and human resources.

149) If the Director wants someone hired, the clinic manager is instructed to make an offer to the individual, but that offer is still contingent on the approval of human resources.

150) In fact, by company policy, AFC requires the Director to interview potential hires.

151) Clinic managers also do not have the authority and independent discretion to set the rates of pay for the hourly staff working at their centers.

152) Clinic managers lack the authority and discretion to close a center in the event of an emergency such as snow or tornados.

153) While the clinic managers simply plug a staff member's name into a corporate provided staffing matrix of positions and times needed for coverage, their staffing decision is not final as the Clinic Director must give his or her approval.

154) This practice is in place because the Clinic Director monitors remotely in real-time the patient numbers for the center. If patient numbers are low, the Clinic Director will determine when and how many staff needs to clock-out and advises the clinic manager accordingly. Also, the Clinic Director can change the staffing and transfer staff to other centers within her area of responsibility without input from the clinic managers.

155) In the end, the hourly paid staffing allowed by AFC is insufficient to cover the needs of the center and the clinic manager, including Plaintiff, had to fill the staffing gaps and/or work extended hours.

156) Clinic managers lack the authority and independent discretion to engage providers for routine maintenance or repairs at the center. This is all handled by AFC's corporate office.

157) The factual assertions outlined above, viewed in their totality, show Plaintiff and others similarly situated routinely worked in excess of forty

(40) hours in a week without receiving overtime compensation and that their duties were such that AFC was not entitled to claim an overtime exemption.

158) Thus, Plaintiff is entitled to receive overtime compensation for each hour he worked in excess of forty (40) hours in a week during the relevant two (2) or three (3) year statute of limitations.

V. COLLECTIVE ACTION ALLEGATIONS

159) Plaintiff brings Claim One as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b). In addition to the claims of individually named Plaintiff, Plaintiff brings this action as representative of all similarly situated current and former clinic managers. The potential class of “opt-in” plaintiffs can be defined as:

All clinic managers (not in training) currently or formerly employed by AFC that worked in excess of forty (40) hours in a week for a fixed salary, any time during the period January 22, 2015 to date, at an urgent care center in markets for which Kay Parks and/or Gwen Dwyer have or had control as a Vice President of Clinical Operations.

160) FLSA claims may be pursued by those who opt-in to this case pursuant to 29 U.S.C. § 216(b).

161) Plaintiff, individually and on behalf of other similarly situated employees seeks relief on a collective basis challenging AFC’s practices of

classifying clinic managers as overtime exempt and failing to pay them overtime compensation when working in excess of forty (40) hours in a week.

162) The number and identity of other potential plaintiffs yet to opt-in and consent to be a party may be determined from the records maintained by AFC and putative class members can easily and quickly be notified of the pendency of this action.

163) The named plaintiff and the putative class are similarly situated with regard to the manner in which they are paid, i.e. salaried.

164) The named plaintiff and the putative class are similarly situated based on the fact that AFC utilized the same job description for all clinic managers.

165) The named plaintiff and the putative class are similarly situated with regard to their job duties.

166) The named plaintiff and the putative class are similarly situated with regard to the damages alleged.

167) Based on the number of urgent care centers falling under the purview of Kay Parks and Gwen Dwyer, AFC employs or has employed no less than sixty-six (66) clinic managers who have potential FLSA claims similar to the claims set out herein.

168) Consequently, joinder is impracticable.

169) There are questions of fact and law common to the class that predominates over any questions affecting only individual members. The questions of law and fact common to the class arising from AFC's actions include, without limitation, the following:

- (a) Whether plaintiffs are compensated overtime for hours worked over 40 in a week;
- (b) Whether plaintiffs are properly classified as exempt;
- (c) Whether Defendant's violations are willful;

170) The named plaintiff's claims as the collective action representative are typical to those of putative class members in that these employees have been employed in the same position, under the same Vice President of Clinical Operation and they were subject to the same or similar unlawful conduct alleged by the named plaintiff.

171) A collective action is the appropriate method for the fair and efficient adjudication for this controversy.

172) In the Eleventh Circuit the Court should apply the *Hipp* two-stage analysis for conditional collective action certification set forth and endorsed in *Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1261-62 (11th Cir. 2008).

173) Plaintiff is an adequate representative of the putative class because his and putative class members' interests do not conflict.

VI. CLAIM TWO – DECLARATORY JUDGMENT

174) Lastly, Plaintiff seeks a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, finding that AFC's actions misclassifying its clinic managers, as described in this complaint, are unlawful and in violation of the FLSA, regardless of a urgent care center's location within the United States or United States territories.

WHEREFORE, Plaintiff Robinson, prays for the following relief:

A. At the earliest possible time, Plaintiff be allowed to give notice, or that the Court issue Notice, to all AFC current and former clinic managers that work or worked at urgent care centers in markets for which Kay Parks and/or Gwen Dwyer have control as a Vice President of Clinical Operations;

B. Plaintiff and those similarly situated be awarded damages in the amount of their respective unpaid compensation (overtime), plus an equal amount of liquidated damages pursuant to 29 U.S.C. §216(b), and/or prejudgment interest if no liquidated damages are awarded;

C. Award Plaintiff's reasonable attorneys' fees, including the costs and expenses of this action;

D. Issue an Order, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, declaring that Defendant's actions, as described in the complaint, are unlawful and in violation of the FLSA and applicable regulations, regardless of a facility's location within the United States or United States territories;

E. Such other legal and equitable relief to which they may be entitled; and,

Dated: January 22, 2018

Respectfully submitted,

/s/ Robert J. Camp

ROBERT J. CAMP

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IN THE UNITED DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ADRIAN ROBINSON, on behalf
of himself and all others similarly
situated,

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Plaintiffs,

CIVIL ACTION NO.

v.

JURY TRIAL

American Family Care, Inc.,

Defendant.

CONSENT TO JOIN SUIT

ADRIAN ROBINSON states the following:
[Print Name]

1. I am over 18 years of age and competent to give the following consent in this matter.
2. I have worked for American Family Care as a clinic manager since mid-2015. I am currently assigned to the urgent care center located in Calera Alabama.
3. I understand that this suit is being brought against American Family Care, Inc., or related entities, to recover unpaid overtime compensation. I understand that the suit is brought pursuant to federal law.
4. I believe I am owed and have not been paid overtime compensation for all hours I worked over 40 in a week.
5. I hereby consent and agree to be a plaintiff in this lawsuit, even if brought as a collective action, and to be bound by any decision or judgment in this lawsuit or by any settlement of this case.

I swear or affirm that the foregoing Statements are true to the best of my knowledge.

DATED the 8 day of JAN, 2018.

Adrian Robinson
[PRINT NAME]

Adrian Robinson
[SIGN NAME]

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims American Family Care Fails to Pay Clinic Managers Overtime](#)
