

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-01964-JLK-NYW

KELSEY OLDERSHAW,
individually and on behalf of others similarly situated,

Plaintiffs,

v.

DAVITA HEALTHCARE PARTNERS, INC., AND TOTAL RENAL CARE INC.,

Defendants.

ORDER

Kane, J.

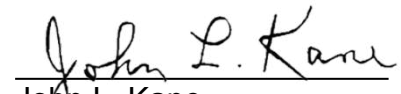
The Court, having reviewed representative Plaintiff Kelsey Shaw's Motion to Amend Complaint (Doc. 28), hereby GRANTS the Motion but REJECTS the form of Amended Complaint attached as (Doc. 28-1). The proposed form of the Complaint characterizes Plaintiffs' FLSA claims in terms of a "collective" and "class action," and further conflates the "collective" and "class" member status of the FLSA Opt-in Plaintiffs. As set forth in the Court's recent decision in *Turner v. Chipotle Mexican Grill, Inc.*, -- F. Supp. 3d --, 2015 WL 4979770 (D. Colo. August 21, 2015), FLSA collective actions are *not* class actions and do not hew to FRCP 23's "numerosity, commonality, typicality, adequacy, and superiority" requirements or any two-step certification process. Accordingly, the "Collective and Class Allegations" section of the proposed Amended Complaint will need to be reworked, as will any other references to the putative FLSA collective as a "class" or "class action." If Plaintiffs' intent is to pursue both collective action claims against Defendant under the FLSA and Colorado Wage Act/breach of contract claims as a Rule 23 class

action, then that distinction ought to be made in the pleadings and we will proceed accordingly.

Plaintiffs shall file a corrected form of Complaint, using the Court's "Amended Complaint" event in CM/ECF, on or before Monday, March 21, 2016.

IT IS SO ORDERED this 14th day of March, 2016.

By the Court:



John L. Kane
Senior U.S. District Court Judge