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6
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MEDICAL GROUP; U.S. HEALTHWORKS,
8 INC.; SELECT MEDICAL HOLDINGS
CORPORATION; SELECT MEDICAL
CORPORATION; CONCENTRA GROUP
9 HOLDINGS, LLC; CONCENTRA, INC.;
CONCENTRA PRIMARY CARE OF
10 CALIFORNIA; and OCCUPATIONAL
HEALTH CENTERS OF CALIFORNIA
11

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 KRISTINA RAINES AND DARRICK
FIGG, individually and on behalf of all
15 others similarly situated,

16 Plaintiffs,

17 v.

18 U.S. HEALTHWORKS MEDICAL
GROUP, a corporation; U.S.
19 HEALTHWORKS, INC., a corporation;
SELECT MEDICAL HOLDINGS
20 CORPORATION, a corporation;
SELECT MEDICAL CORPORATION,
21 a corporation; CONCENTRA GROUP
HOLDINGS, LLC, a corporation;
22 CONCENTRA, INC., a corporation;
CONCENTRA PRIMARY CARE OF
23 CALIFORNIA, a medical corporation;
OCCUPATIONAL HEALTH
24 CENTERS OF CALIFORNIA, a
Medical Corporation; and DOES 4 and 8
25 through 10, inclusive,

26 Defendants.
27
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Case No. 3:19-cv-01539-DMS-DEB

**ANSWER TO THIRD AMENDED
COMPLAINT**

Complaint Filed: October 23, 2018
Removal Date: August 15, 2019
FAC Filed: July 16, 2020
SAC Filed: February 19, 2020
TAC Filed: August 6, 2020
Trial Date: None

District Judge: Hon. Dana M. Sabraw
Magistrate Judge: Hon. Daniel E. Butcher

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Defendants U.S. HEALTHWORKS MEDICAL GROUP; U.S. HEALTHWORKS, INC.; SELECT MEDICAL HOLDINGS CORPORATION; SELECT MEDICAL CORPORATION; CONCENTRA GROUP HOLDINGS, LLC; CONCENTRA, INC.; CONCENTRA PRIMARY CARE OF CALIFORNIA; and OCCUPATIONAL HEALTH CENTERS OF CALIFORNIA (“Defendants”) answer the Third Amended Complaint (“TAC”) filed by Plaintiff KRISTINA RAINES and DARRICK FIGG (“Plaintiffs”).

PLAINTIFFS’ ALLEGATIONS

Plaintiffs’ “Introduction”

1. In answering Paragraph 1, Defendants contend this Paragraph consists entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to which a response is not required. If a response is required, Defendants admit they are a provider of occupational health services in California. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations, as they pertain to other unknown and unnamed individuals and/or entities other than Defendants, and on that basis, Defendants deny the allegations. Except as herein expressly admitted, Defendants deny, generally and specifically, each and every remaining allegation in this Paragraph.

2. In answering Paragraph 2, Defendants contend this Paragraph consists entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to which a response is not required. If a response is required, Defendants admit that some Defendants asked patients medically relevant questions during medical examinations. Except as herein expressly admitted, Defendants deny, generally and specifically, each and every remaining allegation in this Paragraph.

3. In answering Paragraph 3, Defendants contend this Paragraph consists entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to

1 which a response is not required. If a response is required, Defendants deny, generally
2 and specifically, each and every remaining allegation in this Paragraph.

3 **Plaintiffs’ “Alleged Parties”**

4 4. In answering Paragraph 4, Defendant denies Plaintiff Raines is a resident
5 of the state of California at all times relevant. Defendants lack sufficient knowledge
6 or information to form a belief about the truth of the remaining allegations, and on that
7 basis, Defendants deny the allegations.

8 5. In answering Paragraph 5, Defendants lack sufficient knowledge or
9 information to form a belief about the truth of the allegations, and on that basis,
10 Defendants deny the allegations.

11 6. In answering Paragraph 6, due to the vague and ambiguous nature of and
12 use of the phrase “California corporation,” Defendants are without knowledge or
13 information sufficient to form a belief as to the allegations, and on that basis, deny
14 same. Defendants admit U.S. Healthworks Medical Group, P.C. was a professional
15 corporation formed in California. Except as herein expressly admitted, Defendants
16 deny, generally and specifically, each and every remaining allegation in this
17 Paragraph.

18 7. In answering Paragraph 7, Defendants admit U.S. HEALTHWORKS,
19 INC. was incorporated under the laws of a state in the United States of America and
20 had a principal place of business in the State of Texas.

21 8. In answering Paragraph 8, due to the vague and ambiguous nature of and
22 use of the phrase “at all times relevant” and “provided employers comprehensive
23 occupational health services,” Defendants are without knowledge or information
24 sufficient to form a belief as to the allegations, and on that basis, deny same. Except
25 as herein expressly admitted, Defendants deny, generally and specifically, each and
26 every remaining allegation in this Paragraph.

27 9. In answering Paragraph 9, Defendants admit CONCENTRA GROUP
28 HOLDINGS, LLC is incorporated under the laws of Delaware. Except as herein

1 expressly admitted, Defendants deny, generally and specifically, each and every
2 remaining allegation in this Paragraph.

3 10. In answering Paragraph 10, Defendants admit CONCENTRA INC. is
4 incorporated under the laws of Delaware. Except as herein expressly admitted,
5 Defendants deny, generally and specifically, each and every remaining allegation in
6 this Paragraph.

7 11. In answering Paragraph 11, Defendants admit CONCENTRA
8 PRIMARY CARE OF CALIFORNIA, A MEDICAL CORPORATION is
9 incorporated under the laws of California. Except as herein expressly admitted,
10 Defendants deny, generally and specifically, each and every remaining allegation in
11 this Paragraph.

12 12. In answering Paragraph 12, Defendants admit SELECT MEDICAL
13 HOLDINGS CORPORATION is incorporated under the laws of Delaware and has a
14 principal place of business in Pennsylvania.

15 13. In answering Paragraph 13, Defendants admit SELECT MEDICAL
16 CORPORATION is incorporated under the laws of Delaware and has a principal place
17 of business in Pennsylvania.

18 14. In answering Paragraph 14, Defendants admit OCCUPATIONAL
19 HEALTH CENTERS OF CALIFORNIA, A MEDICAL CORPORATION is
20 incorporated under the laws of California and had a principal place of business in
21 Texas.

22 15. In answering Paragraph 15, Defendants contend this Paragraph consists
23 entirely of legal conclusions and/or Plaintiffs' characterization of their own TAC, to
24 which a response is not required. If a response is required, Defendants deny, generally
25 and specifically, each and every remaining allegation in this Paragraph.

26 16. In answering Paragraph 16, Defendants contend this Paragraph consists
27 entirely of legal conclusions and/or Plaintiffs' characterization of their own TAC, to
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1 which a response is not required. If a response is required, Defendants deny, generally
2 and specifically, each and every remaining allegation in this Paragraph.

3 17. In answering Paragraph 17, Defendants contend this Paragraph consists
4 entirely of legal conclusions and/or Plaintiffs' characterization of their own TAC, to
5 which a response is not required. If a response is required, Defendants deny, generally
6 and specifically, each and every remaining allegation in this Paragraph.

7 **Plaintiffs' allegations regarding "Jurisdiction and Venue"**

8 18. In answering Paragraph 18, Defendants admit the Paragraph.

9 19. In answering Paragraph 19, Defendants admit Plaintiff filed a first
10 amended complaint.

11 20. In answering Paragraph 20, Defendants deny Defendants as defined by
12 Plaintiff removed the action, but admit certain Defendants did remove the action under
13 the Class Action Fairness Act.

14 21. In answering Paragraph 21, Defendants contend this Paragraph consists
15 entirely of legal conclusions and/or Plaintiffs' characterization of their own TAC, to
16 which a response is not required.

17 **Plaintiffs' allegations regarding "Concentra Acquisition And Management Of**
18 **USHW And USHW Facilities"**

19 22. In answering Paragraph 22, due to the vague and ambiguous nature of
20 and use of the phrase "USHW MEDICAL GROUP" and "at all times relevant,"
21 Defendants are without knowledge or information sufficient to form a belief as to the
22 allegations, and on that basis, deny same. Except as herein expressly admitted,
23 Defendants deny, generally and specifically, each and every remaining allegation in
24 this Paragraph.

25 23. In answering Paragraph 23, due to the vague and ambiguous nature of
26 and use of the phrase "CONCENTRA DEFENDANTS" and "at all times relevant,"
27 Defendants are without knowledge or information sufficient to form a belief as to the
28 allegations, and on that basis, deny same. Except as herein expressly admitted,

1 Defendants deny, generally and specifically, each and every remaining allegation in
2 this Paragraph.

3 24. In answering Paragraph 24, due to the vague and ambiguous nature of
4 and use of the phrase “CONCENTRA DEFENDANTS” and “USHW MEDICAL
5 GROUP” Defendants are without knowledge or information sufficient to form a belief
6 as to the allegations, and on that basis, deny same. Except as herein expressly admitted,
7 Defendants deny, generally and specifically, each and every remaining allegation in
8 this Paragraph.

9 25. In answering Paragraph 25, Defendants contend this Paragraph consists
10 entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to
11 which a response is not required. If a response is required, Defendants deny, generally
12 and specifically, each and every allegation in this Paragraph.

13 **Plaintiffs’ “General Allegations”**

14 26. In answering Paragraph 26, Defendants contend this Paragraph consists
15 entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to
16 which a response is not required. If a response is required, Defendants admit California
17 law permits an employer to condition an employment offer upon the job applicant
18 passing a “pre-placement” medical examination. Except as herein expressly admitted,
19 Defendants deny, generally and specifically, each and every remaining allegation in
20 this Paragraph.

21 27. In answering Paragraph 27, Defendants lack sufficient knowledge or
22 information to form a belief about the truth of the allegations, as they pertain to other
23 unknown and unnamed individuals and/or entities other than Defendants, and on that
24 basis, Defendants deny the allegations.

25 28. In answering Paragraph 28, Defendants admit those defendants providing
26 pre-employment medical examinations did so in California and have served over
27 200,000 in providing medical examinations as independent third-party businesses.

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1 Except as herein expressly admitted, Defendants deny, generally and specifically, each
2 and every remaining allegation in this Paragraph.

3 29. In answering Paragraph 29, Defendants admit those defendants providing
4 pre-employment medical examinations are independent third-party businesses
5 providing services to the applicants/examinees and are not functioning as agents of the
6 examinee’s employer. Except as herein expressly admitted, Defendants deny,
7 generally and specifically, each and every remaining allegation in this Paragraph.

8 **Plaintiffs’ allegations regarding “Agency”**

9 30. In answering Paragraph 30, Defendants deny, generally and specifically,
10 each and every allegation in this Paragraph.

11 31. In answering Paragraph 31, Defendants deny, generally and specifically,
12 each and every allegation in this Paragraph, including each subpart.

13 32. In answering Paragraph 32, Defendants deny, generally and specifically,
14 each and every allegation in this Paragraph, including each subpart.

15 **Plaintiffs’ allegations regarding “USHW’s Role as a Business Establishment**
16 **Providing Services to Class Members”**

17 33. In answering Paragraph 33, Defendants admit those defendants providing
18 pre-employment medical examinations are independent third-party businesses
19 providing services, including occupational health services, to the
20 applicants/examinees and are not functioning as agents of the examinee’s employer.
21 Except as herein expressly admitted, Defendants deny, generally and specifically, each
22 and every remaining allegation in this Paragraph.

23 34. In answering Paragraph 34, Defendants admit those defendants providing
24 pre-employment medical examinations treated those it serves as patients, establishes
25 a physician/patient relationship, conducts medical examinations in line with medical
26 standards, and has patients understand and acknowledge privacy rights. Except as
27 herein expressly admitted, Defendants deny, generally and specifically, each and every
28 remaining allegation in this Paragraph.

1 35. In answering Paragraph 35, Defendants admit those defendants providing
2 pre-employment medical examinations are independent third-party businesses
3 providing services, including occupational health services, to the
4 applicants/examinees and are not functioning as agents of the examinee’s employer.
5 Except as herein expressly admitted, Defendants deny, generally and specifically, each
6 and every remaining allegation in this Paragraph.

7 **Plaintiffs’ allegations regarding “USHW’s Unlawful Practices”**

8 36. In answering Paragraph 36, Defendants contend this Paragraph consists
9 entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to
10 which a response is not required. If a response is required, Defendants deny, generally
11 and specifically, each and every remaining allegation in this Paragraph.

12 37. In answering Paragraph 37, Defendants contend this Paragraph consists
13 entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to
14 which a response is not required. If a response is required, Defendants admit those
15 defendants providing pre-employment medical examinations used standardized
16 medical questionnaires for most procedures in order to have medically-relevant
17 background information. Except as herein expressly admitted, Defendants deny,
18 generally and specifically, each and every remaining allegation in this Paragraph.

19 38. In answering Paragraph 38, Defendants contend this Paragraph consists
20 entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to
21 which a response is not required. If a response is required, Defendants admit those
22 defendants providing pre-employment medical examinations used standardized
23 medical questionnaires for most procedures in order to have medically-relevant
24 background information. Except as herein expressly admitted, Defendants deny,
25 generally and specifically, each and every remaining allegation in this Paragraph.

26 39. In answering Paragraph 39, due to the vague and ambiguous nature of
27 and use of the timeframe, Defendants are without knowledge or information sufficient
28 to form a belief as to the allegations, and on that basis, deny same. Except as herein

1 expressly admitted, Defendants deny, generally and specifically, each and every
2 remaining allegation in this Paragraph.

3 40. In answering Paragraph 40, Defendants deny, generally and specifically,
4 each and every remaining allegation in this Paragraph.

5 41. In answering Paragraph 41, Defendants admit those defendants providing
6 pre-employment medical examinations provided forms regarding disclosure of
7 protected health information to patients. Except as herein expressly admitted,
8 Defendants deny, generally and specifically, each and every remaining allegation in
9 this Paragraph.

10 42. In answering Paragraph 42, Defendants contend this Paragraph consists
11 entirely of legal conclusions and/or Plaintiffs' characterization of their own TAC, to
12 which a response is not required. If a response is required, Defendants deny, generally
13 and specifically, each and every remaining allegation in this Paragraph.

14 43. In answering Paragraph 43, Defendants contend this Paragraph consists
15 entirely of legal conclusions and/or Plaintiffs' characterization of their own TAC, to
16 which a response is not required. If a response is required, Defendants deny, generally
17 and specifically, each and every remaining allegation in this Paragraph.

18 44. In answering Paragraph 44, Defendants contend this Paragraph consists
19 entirely of legal conclusions and/or Plaintiffs' characterization of their own TAC, to
20 which a response is not required. If a response is required, Defendants admit those
21 defendants providing pre-employment medical examinations used a patient's medical
22 history to determine whether a patient could do a given position with or without
23 accommodation. Except as herein expressly admitted, Defendants deny, generally and
24 specifically, each and every remaining allegation in this Paragraph.

25 45. In answering Paragraph 45, Defendants deny, generally and specifically,
26 each and every remaining allegation in this Paragraph.

27 46. In answering Paragraph 46, Defendants deny, generally and specifically,
28 each and every remaining allegation in this Paragraph.

1 **Plaintiffs’ alleged “Facts Specific to Plaintiff Raines”**

2 47. In answering Paragraph 47, Defendants lack sufficient knowledge or
3 information to form a belief about the truth of the allegations, as they pertain to
4 individuals and/or entities other than Defendants, and on that basis, Defendants deny
5 the allegations.

6 48. In answering Paragraph 48, Defendants lack sufficient knowledge or
7 information to form a belief about the truth of the allegations, as they pertain to
8 individuals and/or entities other than Defendants, and on that basis, Defendants deny
9 the allegations.

10 49. In answering Paragraph 49, Defendants lack sufficient knowledge or
11 information to form a belief about the truth of the allegations, as they pertain to
12 individuals and/or entities other than Defendants, and on that basis, Defendants deny
13 the allegations.

14 50. In answering Paragraph 50, Defendants lack sufficient knowledge or
15 information to form a belief about the truth of the allegations, as they pertain to
16 individuals and/or entities other than Defendants, and on that basis, Defendants deny
17 the allegations.

18 51. In answering Paragraph 51, Defendants deny, generally and specifically,
19 each and every remaining allegation in this Paragraph.

20 52. In answering Paragraph 52, Defendants admit Plaintiff Raines went to a
21 U.S. Healthworks facility for a pre-employment medical examination she chose not to
22 complete. Defendants lack sufficient knowledge or information to form a belief about
23 the truth of the remaining allegations, and on that basis, Defendants deny the
24 allegations.

25 53. In answering Paragraph 53, Defendants deny, generally and specifically,
26 each and every remaining allegation in this Paragraph.

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1 54. In answering Paragraph 54, Defendants lack sufficient knowledge or
2 information to form a belief about the truth of the remaining allegations, and on that
3 basis, Defendants deny the allegations.

4 55. In answering Paragraph 55, Defendants lack sufficient knowledge or
5 information to form a belief about the truth of the remaining allegations, and on that
6 basis, Defendants deny the allegations.

7 **Plaintiffs’ alleged “Facts Specific to Plaintiff Figg”**

8 56. In answering Paragraph 56, Defendants lack sufficient knowledge or
9 information to form a belief about the truth of the allegations, as they pertain to
10 individuals and/or entities other than Defendants, and on that basis, Defendants deny
11 the allegations.

12 57. In answering Paragraph 57, Defendants lack sufficient knowledge or
13 information to form a belief about the truth of the allegations, as they pertain to
14 individuals and/or entities other than Defendants, and on that basis, Defendants deny
15 the allegations.

16 58. In answering Paragraph 58, Defendants admit Plaintiff Figg went to a
17 U.S. Healthworks facility for a pre-employment medical examination, in which he
18 chose to complete the standardized medical questionnaires and was provided forms
19 regarding the voluntary disclosure of protected health information. Defendants lack
20 sufficient knowledge or information to form a belief about the truth of the remaining
21 allegations, and on that basis, Defendants deny the allegations.

22 59. In answering Paragraph 59, Defendants deny, generally and specifically,
23 each and every remaining allegation in this Paragraph.

24 60. In answering Paragraph 60, Defendants lack sufficient knowledge or
25 information to form a belief about the truth of the remaining allegations, and on that
26 basis, Defendants deny the allegations.

27 61. In answering Paragraph 61, due to the vague and ambiguous nature of
28 and use of the phrase “USHW,” Defendants are without knowledge or information

1 sufficient to form a belief as to the allegations, and on that basis, deny same. Except
2 as herein expressly admitted, Defendants deny, generally and specifically, each and
3 every remaining allegation in this Paragraph.

4 62. In answering Paragraph 62, Defendants lack sufficient knowledge or
5 information to form a belief about the truth of the remaining allegations, and on that
6 basis, Defendants deny the allegations.

7 **Plaintiffs’ “Class Allegations”**

8 63. In answering Paragraph 63, Defendants admit Plaintiffs seek to bring this
9 action on behalf of themselves and a putative class. Defendants deny class certification
10 is appropriate and deny Plaintiffs are entitled to the relief sought. Except as herein
11 expressly admitted, Defendants deny, generally and specifically, each and every
12 remaining allegation in this Paragraph.

13 64. In answering Paragraph 64, Defendants admit Plaintiffs seek to bring this
14 action on behalf of themselves and a putative class. Defendants deny class certification
15 is appropriate and deny Plaintiffs are entitled to the relief sought. Except as herein
16 expressly admitted, Defendants deny, generally and specifically, each and every
17 remaining allegation in this Paragraph.

18 65. In answering Paragraph 65, Defendants contend this Paragraph consists
19 entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to
20 which a response is not required. If a response is required, Defendants admit Plaintiffs
21 seek to bring this action on behalf of themselves and a putative class. Defendants deny
22 class certification is appropriate and deny Plaintiffs are entitled to the relief sought.
23 Except as herein expressly admitted, Defendants deny, generally and specifically, each
24 and every remaining allegation in this Paragraph.

25 66. In answering Paragraph 66, Defendants contend this Paragraph consists
26 entirely of legal conclusions and/or Plaintiffs’ characterization of their own TAC, to
27 which a response is not required. If a response is required, Defendants admit Plaintiffs
28 seek to bring this action on behalf of themselves and a putative class. Defendants deny

1 class certification is appropriate and deny Plaintiffs are entitled to the relief sought.
2 Except as herein expressly admitted, Defendants deny, generally and specifically, each
3 and every remaining allegation in this Paragraph.

4 67. In answering Paragraph 67, Defendants deny, generally and specifically,
5 each and every remaining allegation in this Paragraph.

6 68. In answering Paragraph 68, Defendants deny, generally and specifically,
7 each and every remaining allegation in this Paragraph and its subparts.

8 69. In answering Paragraph 69, Defendants deny, generally and specifically,
9 each and every remaining allegation in this Paragraph.

10 70. In answering Paragraph 70, Defendants deny, generally and specifically,
11 each and every remaining allegation in this Paragraph.

12 71. In answering Paragraph 71, Defendants deny, generally and specifically,
13 each and every remaining allegation in this Paragraph.

14 72. In answering Paragraph 72, Defendants deny, generally and specifically,
15 each and every remaining allegation in this Paragraph.

16 **Plaintiffs’ “First Cause of Action For Violation of FEHA”**

17 73. In answering Paragraph 73, Defendants restate and incorporate by
18 reference their answer to all of the preceding Paragraphs, as though fully set forth
19 herein.

20 74. In answering Paragraph 74, Defendants contend this Paragraph is
21 comprised entirely of legal conclusions and/or purported statements of law to which a
22 response is not required. If a response is required, Defendants admit the FEHA speaks
23 for itself. Defendants deny, generally and specifically, each and every remaining
24 allegation in this Paragraph.

25 75. In answering Paragraph 75, Defendants deny, generally and specifically,
26 each and every remaining allegation in this Paragraph.

27 76. In answering Paragraph 76, Defendants deny, generally and specifically,
28 each and every remaining allegation in this Paragraph.

1 77. In answering Paragraph 77, Defendants contend this Paragraph is
2 comprised entirely of legal conclusions and/or purported statements of law to which a
3 response is not required. If a response is required, Defendants admit the FEHA speaks
4 for itself. Defendants deny, generally and specifically, each and every remaining
5 allegation in this Paragraph and its subparts.

6 78. In answering Paragraph 78, In answering Paragraph 78, Defendants
7 contend this Paragraph is comprised entirely of legal conclusions and/or purported
8 statements of law to which a response is not required. If a response is required,
9 Defendants admit the FEHA speaks for itself. Defendants deny, generally and
10 specifically, each and every remaining allegation in this Paragraph and its subparts.

11 79. In answering Paragraph 79, Defendants deny, generally and specifically,
12 each and every remaining allegation in this Paragraph.

13 80. In answering Paragraph 80, Defendants deny, generally and specifically,
14 each and every remaining allegation in this Paragraph.

15 81. In answering Paragraph 81, Defendants deny, generally and specifically,
16 each and every remaining allegation in this Paragraph.

17 82. In answering Paragraph 82, Defendants admit Plaintiff deposed Susan
18 Radoff. Except as herein expressly admitted, Defendants deny, generally and
19 specifically, each and every remaining allegation in this Paragraph.

20 **Plaintiffs’ “Second Cause of Action For Violation of Unruh Civil Rights Act”**

21 83. Defendants do not answer Paragraph 83, as the second cause of action
22 has been dismissed with prejudice.

23 84. Defendants do not answer Paragraph 84, as the second cause of action
24 has been dismissed with prejudice.

25 85. Defendants do not answer Paragraph 85, as the second cause of action
26 has been dismissed with prejudice.

27 86. Defendants do not answer Paragraph 86, as the second cause of action
28 has been dismissed with prejudice.

1 87. Defendants do not answer Paragraph 87, as the second cause of action
2 has been dismissed with prejudice.

3 88. Defendants do not answer Paragraph 88, as the second cause of action
4 has been dismissed with prejudice.

5 89. Defendants do not answer Paragraph 89 and its subparts, as the second
6 cause of action has been dismissed with prejudice.

7 90. Defendants do not answer Paragraph 90, as the second cause of action
8 has been dismissed with prejudice.

9 91. Defendants do not answer Paragraph 91 and its subparts, as the second
10 cause of action has been dismissed with prejudice.

11 92. Defendants do not answer Paragraph 92, as the second cause of action
12 has been dismissed with prejudice.

13 93. Defendants do not answer Paragraph 93, as the second cause of action
14 has been dismissed with prejudice.

15 **Plaintiffs’ “Third Cause of Action For Violation of Unruh Civil Rights Act”**

16 94. Defendants do not answer Paragraph 94, as the third cause of action has
17 been dismissed with prejudice.

18 95. Defendants do not answer Paragraph 95, as the third cause of action has
19 been dismissed with prejudice.

20 96. Defendants do not answer Paragraph 96, as the third cause of action has
21 been dismissed with prejudice.

22 97. Defendants do not answer Paragraph 97, as the third cause of action has
23 been dismissed with prejudice.

24 98. Defendants do not answer Paragraph 98, as the third cause of action has
25 been dismissed with prejudice.

26 99. Defendants do not answer Paragraph 99, as the third cause of action has
27 been dismissed with prejudice.

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1 100. Defendants do not answer Paragraph 100, as the third cause of action has
2 been dismissed with prejudice.

3 101. Defendants do not answer Paragraph 101, as the third cause of action has
4 been dismissed with prejudice.

5 102. Defendants do not answer Paragraph 102, as the third cause of action has
6 been dismissed with prejudice.

7 103. Defendants do not answer Paragraph 103, as the third cause of action has
8 been dismissed with prejudice.

9 104. Defendants do not answer Paragraph 104, as the third cause of action has
10 been dismissed with prejudice.

11 105. Defendants do not answer Paragraph 105, as the third cause of action has
12 been dismissed with prejudice.

13 106. Defendants do not answer Paragraph 106, as the third cause of action has
14 been dismissed with prejudice.

15 107. Defendants do not answer Paragraph 107, as the third cause of action has
16 been dismissed with prejudice.

17 108. Defendants do not answer Paragraph 108, as the third cause of action has
18 been dismissed with prejudice.

19 109. Defendants do not answer Paragraph 109, as the third cause of action has
20 been dismissed with prejudice.

21 **Plaintiffs’ “Fourth Cause of Action for Violation of UCL”**

22 110. Defendants do not answer Paragraph 110, as the fourth cause of action
23 has been dismissed with prejudice.

24 111. Defendants do not answer Paragraph 111 and its subparts, as the fourth
25 cause of action has been dismissed with prejudice.

26 112. Defendants do not answer Paragraph 112, as the fourth cause of action
27 has been dismissed with prejudice.

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1 113. Defendants do not answer Paragraph 113, as the fourth cause of action
2 has been dismissed with prejudice.

3 114. Defendants do not answer Paragraph 114, as the fourth cause of action
4 has been dismissed with prejudice.

5 115. Defendants do not answer Paragraph 115, as the fourth cause of action
6 has been dismissed with prejudice.

7 116. Defendants do not answer Paragraph 116, as the fourth cause of action
8 has been dismissed with prejudice.

9 117. Defendants do not answer Paragraph 117, as the fourth cause of action
10 has been dismissed with prejudice.

11 118. Defendants do not answer Paragraph 118, as the fourth cause of action
12 has been dismissed with prejudice.

13 **Plaintiffs’ “Prayer for Relief”**

14 Answer to Plaintiffs’ Prayer for Relief and all Subparts: Defendants deny
15 Plaintiffs, the putative class, or allegedly aggrieved employees are entitled to the relief
16 Plaintiffs seek in the prayer for relief or in any subparts and/or numerical prayers
17 sought therein.

18 **ARBITRATION**

19 The Court lacks jurisdiction and is an improper venue to adjudicate putative
20 class members’ claims. Upon information and belief, certain putative class members
21 entered into valid and enforceable agreements to individual arbitration of claims
22 arising out of their employment and/or applications for employment. In filing this
23 Answer, Defendants in no way waive their right to compel individual arbitration of the
24 claims.

25 **GENERAL DENIAL**

26 All other allegations not specifically admitted are denied.
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AFFIRMATIVE DEFENSES

Without admitting they carry the burden of proof as to the issues raised thereby, Defendants assert the following separate and distinct affirmative defenses to the TAC, and each purported cause of action therein and pray for judgment as set forth below. Defendants also give notice they intend to rely upon such other and further affirmative defenses as may become available during investigation and discovery in this action. Defendants reserve the right to amend this Answer to assert any such defenses based on such investigation and discovery.

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)**

The TAC fails to state facts sufficient to constitute a cause of action against Defendants.

**SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations)**

The TAC and purported cause of action therein are barred, by the applicable statutes of limitation.

**THIRD AFFIRMATIVE DEFENSE
(Limitations Period)**

The TAC and each purported cause of action therein seek an improper limitations period.

**FOURTH AFFIRMATIVE DEFENSE
(Estoppel)**

The TAC and purported cause of action therein are barred, in whole or in part, by the doctrine of estoppel.

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FIFTH AFFIRMATIVE DEFENSE

(Waiver)

The TAC and purported cause of action therein are barred, in whole or in part, because Plaintiffs waived any right to recover any relief sought in the TAC or the purported cause of action alleged therein.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The TAC and purported cause of action therein are barred, in whole or in part, by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

The TAC and purported cause of action therein are barred, in whole or in part, by laches.

EIGHTH AFFIRMATIVE DEFENSE

(Preexisting Condition)

To the extent any Plaintiff suffered any symptoms of mental or emotional distress or injury, they were the result of a pre-existing psychological disorder or alternative concurrent cause, and not the result of any act or omission of Defendants.

NINTH AFFIRMATIVE DEFENSE

(Legitimate, Non-Discriminatory Business Reason)

The TAC and purported cause of action therein are barred, in whole or in part, on the grounds that any alleged actions taken by Defendants were reasonable in response to legitimate business and/or medical necessities, and were taken for legitimate non-discriminatory or retaliatory reasons.

TENTH AFFIRMATIVE DEFENSE

(Standing)

The TAC and purported cause of action therein are barred on the grounds and/or to the extent that Plaintiffs lack standing to assert the claims asserted.

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ELEVENTH AFFIRMATIVE DEFENSE

(Required Joinder)

The TAC and purported cause of action therein are barred on the grounds that Plaintiff has failed to join required parties.

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

The TAC and purported cause of action therein are barred, in whole or in part, because Plaintiff has failed, and continues to fail, to mitigate, by the exercise of reasonable effort and/or care, any damages allegedly caused by the acts and/or omissions allegedly attributed to Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

(Uncertainty)

The TAC is uncertain, vague, ambiguous, and unintelligible and Plaintiffs' losses, if any, are speculative and/or uncertain, and therefore not compensable.

FOURTEENTH AFFIRMATIVE DEFENSE

(Actions Permitted By Law)

The TAC and/or each cause of action is barred on the grounds and/or to the extent that any actions taken by Defendants are permitted by law.

FIFTEENTH AFFIRMATIVE DEFENSE

(Agent's Immunity Rule)

The TAC and purported cause of action therein are barred, in whole or in part, because Defendants cannot be liable as an agent acting in an official capacity on behalf of the principal.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Agency)

The TAC and purported cause of action therein are barred, in whole or in part, because Defendants are not agents of each putative class members' potential employer.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(No Control of Relationship)

The TAC and purported cause of action therein are barred, in whole or in part, because Defendants could not control the relationship each putative class member and each putative class member’s potential employer.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Control of Conduct)

The TAC and purported cause of action therein are barred, in whole or in part, because each putative class member’s potential employer could not control Defendants’ conduct.

NINETEENTH AFFIRMATIVE DEFENSE

(No Employer Relationship)

The TAC and purported cause of action therein are barred, in whole or in part, because Plaintiff failed to state facts sufficient to establish that Defendants are an employer or potential employer.

TWENTIETH AFFIRMATIVE DEFENSE

(No Joint Employment)

The TAC and purported cause of action therein are barred, in whole or in part, because Plaintiff failed to state facts sufficient to establish that Defendants are joint employers or that Plaintiffs were engaged in circumstances of potential employment with Defendants.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

The TAC and purported cause of action therein are barred, in whole or in part, because of Plaintiffs’ failure to exhaust administrative remedies.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Impermissible Inquiry)

Any inquires by Defendants did not express, directly or indirectly, any limitation, specification, or discrimination barring the TAC and purported cause of action therein.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Any Inquiries Appropriate)

Any inquires or examinations by Defendants were job related and consistent with business necessity barring the TAC and purported cause of action therein.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Inquiries Medically Appropriate)

Any inquires or examinations by Defendants comport with standard practices of medical care barring the TAC and purported cause of action therein.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Valid Business Purpose)

The actions or policies complained of in Plaintiffs’ TAC were not arbitrary, but rather were reasonably related to a valid business reason barring the TAC and purported cause of action therein.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Important Public Policy)

The actions or policies complained of were necessary to further an important public policy barring the TAC and purported cause of action therein.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Actions Constitutionally Protected)

Defendants’ actions were based on their exercise of a constitutionally protected right barring the TAC and purported cause of action therein.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Actions Permitted by Another Law)

Defendants’ actions were permitted by statute, law, or both barring the TAC and purported cause of action therein.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Plaintiff Authorized Release)

Each Plaintiff authorized the disclosure of information complained of in the TAC barring the TAC and purported cause of action therein.

THIRTIETH AFFIRMATIVE DEFENSE

(Plaintiff Consented to Release)

Each Plaintiff consented to the disclosure of information complained of in the TAC barring the TAC and purported cause of action therein.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Conduct Justified)

Defendants’ conduct is justified because it substantively furthers one or more countervailing interests, including but not limited the need to ensure a healthy, safe workplace and conduct an exam within the parameters of industry standard, barring Plaintiffs’ TAC and purported cause of action therein.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(No Disclosure)

No disclosure by Defendants constituted medical information barring Plaintiffs’ TAC and purported cause of action therein.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Reasonable Business Judgment)

Plaintiffs’ claims for unfair business practices are barred because Defendants at all applicable times exercised reasonable business judgment.

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

(No Adverse Employment Action)

Plaintiffs’ causes of action are barred because Defendants took no adverse employment action.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(No Substantial Factor)

Any alleged adverse employment action was not a substantial factor in any harm to any Plaintiff, to the extent they suffered any, barring the TAC and purported cause of action therein.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(No Public Policy)

Plaintiffs fail to allege a requisite public policy barring the TAC and purported cause of action therein.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Public Policy Not a Motivating Reason)

Any alleged adverse employment action was not substantially motivated by a purpose that contravenes public policy.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Facts Alleged Insufficient to Support Claim for Punitive Damages)

Defendants allege that Plaintiffs are not entitled to recover punitive or exemplary damages because Plaintiffs have failed to allege facts sufficient to state a claim for punitive or exemplary damages or to show that Defendants engaged in oppressive, fraudulent, or malicious conduct.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(No Punitive Damages Against Corporate Defendants)

Defendants allege that Plaintiffs are not entitled to recover punitive damages from Defendants for the alleged acts referred to in the TAC on the grounds that said acts, if any, were performed by an employee or third party of Defendants, and that

1 none of Defendants’ officers, directors, or managing agents committed the alleged
2 acts, nor authorized them, nor ratified them, nor did Defendants or its members,
3 officers, directors, or managing agents have advance knowledge of the unfitness, if
4 any, of the employee or employees who allegedly committed said acts, nor did
5 Defendants employ said employee or employees with a conscious disregard of the
6 rights or safety of others. Civ. Code § 3294.

7 **FORTIETH AFFIRMATIVE DEFENSE**

8 **(Excessive Fine)**

9 As a separate defense to the TAC and the purported cause of action therein,
10 Defendants allege that an award of punitive damages or penalties against Defendants
11 under the circumstances of this case would constitute an excessive fine and otherwise
12 would be in violation of Defendants’ Due Process and other rights under the United
13 States and California Constitutions.

14 **FORTY-FIRST AFFIRMATIVE DEFENSE**

15 **(Unjust Enrichment)**

16 The TAC and the purported cause of action therein are barred, in whole or in part,
17 because any recovery from Defendants would result in Plaintiffs’ unjust enrichment.

18 **FORTY-SECOND AFFIRMATIVE DEFENSE**

19 **(Penalties Violate Due Process)**

20 Recovery of civil or statutory penalties is barred to the extent that the
21 accumulation of penalties would be so disproportionate to the harm alleged to violate
22 due process under the Constitutions of the United States and the State of California.

23 **FORTY-THIRD AFFIRMATIVE DEFENSE**

24 **(Claims Not Typical)**

25 The claims alleged by Plaintiffs on behalf of themselves and members of the
26 putative class are neither common to, nor typical of those, if any, of the group of
27 individuals Plaintiffs seek to represent.

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FORTY-FOURTH AFFIRMATIVE DEFENSE

(Individual Questions Predominate)

The claims alleged by Plaintiffs on behalf of themselves and members of the putative class are matters in which individual questions predominate and lack commonality, and accordingly, are not appropriate for class treatment.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Inadequate Representatives)

Plaintiffs and/or Plaintiffs’ counsel are inadequate representatives of the putative class they seek to represent.

FORTY-SIXTH AFFIRMATIVE DEFENSE

(Class Treatment Not Superior or Manageable)

Plaintiffs have not shown and cannot show that class treatment of the claims alleged in the TAC is superior to other methods of adjudicating the controversy, and a class action would not be manageable.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

(Violation of Seventh and Fourteenth Amendments)

Because liability or damages, if any, to each member of the class or representative group Plaintiffs seek to represent may not be determined by a single jury or on a group-wide basis, allowing this action to proceed as a class or representative action would violate Defendants’ rights under the Seventh and Fourteenth Amendments to the United States Constitution.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

(No Injury)

Plaintiffs lack standing to seek the relief in the TAC because they have not suffered any injury in fact, have not lost money or property, and are not members of the class and/or group they seek to represent.

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FORTY-NINTH AFFIRMATIVE DEFENSE

(Attorneys' Fees Barred)

Recovery of interest and attorneys' fees or costs is barred to the extent that such amounts are based on the recovery under provisions which do not provide for such fees or costs.

FIFTIETH AFFIRMATIVE DEFENSE

(Claims Waived)

The TAC is barred, in whole or in part, to the extent Plaintiffs and/or members of the proposed class have executed agreements, releases, and/or members of class settlements releasing or waiving the claims set forth in the TAC.

FIFTY-FIRST AFFIRMATIVE DEFENSE

(Putative Class Not Ascertainable)

The TAC is barred, in whole or in part, because Plaintiffs' class and subclass(es), as defined, are not readily ascertainable.

FIFTY-SECOND AFFIRMATIVE DEFENSE

(Arbitration)

This action may not be litigated in a judicial forum because Plaintiffs, and/or putative class members may be subject to mandatory, final, and binding arbitration and/or alternative dispute resolution agreements with Defendants and/or each putative class members' direct employer.

FIFTY-THIRD AFFIRMATIVE DEFENSE

(Exclusive Concurrent Jurisdiction)

The claims in the TAC are barred by the doctrine of exclusive concurrent jurisdiction and this action should be stayed.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

(Application to Class Claims)

In the event that any class or representative group should be certified or otherwise allowed to proceed in this matter, Defendants incorporate by reference, and

1 re-allege as to the causes of action of each member of that representative group, all of
2 the defenses as set forth above.

3 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(Additional Affirmative Defenses)**

5 Defendants allege that they currently have insufficient information upon which
6 to form a belief as to whether they may have additional, as yet unstated, defenses.
7 Defendants reserve the right to assert additional defenses in the event discovery
8 indicates additional defenses are appropriate.

9 **RESERVATION OF RIGHTS**

10 Defendants reserve the right to assert any additional defenses and matters in
11 avoidance that may be disclosed during additional investigation and discovery.

12 **PRAAYER FOR RELIEF**

13 WHEREFORE, Defendants pray as follows:

- 14 1. That judgment be entered in favor of Defendants and against Plaintiffs,
15 on all causes of action;
- 16 2. That the TAC herein be dismissed in its entirety with prejudice;
- 17 3. That Defendants be awarded their costs of suit herein;
- 18 4. That Defendants be awarded reasonable attorneys' fees as determined
19 by the Court pursuant to the law; and
- 20 5. For such other and further relief as the Court deems just and proper.
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DATED: December 29, 2023

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: /s/ Tim L. Johnson
Tim L. Johnson
Cameron O. Flynn

Attorneys for Defendants U.S.
HEALTHWORKS MEDICAL GROUP; U.S.
HEALTHWORKS, INC.; SELECT
MEDICAL HOLDINGS CORPORATION;
SELECT MEDICAL CORPORATION;
CONCENTRA GROUP HOLDINGS, LLC;
CONCENTRA, INC.; CONCENTRA
PRIMARY CARE OF CALIFORNIA; and
OCCUPATIONAL HEALTH CENTERS OF
CALIFORNIA

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Notice of Electronic Filing.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 29, 2023.

By: /s/ Tim L. Johnson
Tim L. Johnson