

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-CV-81203

CARMEN B. SOSA, individually and
on behalf of all others similarly situated,

Plaintiff,

-vs-

GUARDIAN CARE OF PALM BEACH, INC.
d/b/a GUARDIAN CARE SERVICES,

Defendant.

COMPLAINT

Plaintiff CARMEN B. SOSA, individually and on behalf of all others similarly situated, files this Complaint against Defendant GUARDIAN CARE OF PALM BEACH, INC., and states:

1. This is an action to recover money damages for minimum wage violations, overtime violations, and unpaid wages under the laws of the United States and the State of Florida.
2. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201 et seq., hereinafter called the “FLSA”) to recover unpaid back wages, an additional amount as liquidated damages, and reasonable attorneys’ fees and costs.
3. Plaintiff CARMEN B. SOSA is a resident of Palm Beach County and is a covered employee for purposes of the FLSA.
4. Defendant GUARDIAN CARE OF PALM BEACH, INC. (“GUARDIAN CARE” or “Employer”), is a Florida Profit Corporation which maintains its principal place of

business in Palm Beach County, Florida and, at all times material hereto, was and is engaged in the operation of an institution primarily engaged in the care of the sick, the aged, or mentally ill, thereby subject to “enterprise” coverage as defined under 29 USC §203.

5. Jurisdiction is conferred on this Court by 29 U.S.C. §203 (r)(1). The Employer is and, at all times pertinent to this Complaint, operating as an institution primarily engaged in the care of the sick, the aged, or mentally ill, and otherwise satisfies the FLSA’s requirements.
6. Plaintiff was continuously employed by Employer as a caregiver from approximately March 2017 to September 2017.
7. Plaintiff worked in excess of 40 hours per week.
8. All conditions prior to the filing of this lawsuit have occurred or otherwise been satisfied.

COUNT I

FLSA – OVERTIME COMPENSATION

9. The Plaintiff realleges and adopts by reference herein paragraphs 1 through 8 above.
10. The Plaintiff worked in excess of forty hours per week for which Plaintiff was not compensated at the statutory rate of one and one half times Plaintiff’s regular rate of pay.
11. Plaintiff was, and is, entitled to be paid at the statutory rate of one and one half times Plaintiff’s regular rate of pay for those hours worked in excess of forty (40) hours.
12. At all times material herein, the Defendant failed, and continues to fail, to maintain proper time records as mandated by the FLSA.
13. The Defendant’s actions were willful and/or showed reckless disregard for the provisions of the FLSA as evidenced by its failure to compensate Plaintiff at the statutory rate of one

and one half times Plaintiff's regular rate of pay for the hours worked in excess of forty (40) hours per week when they knew, or should have known, such was, and is, otherwise due.

14. In addition, the Defendant has failed to properly disclose or apprise the Plaintiff of Plaintiff's rights under the FLSA.
15. Due to the intentional, willful and unlawful acts of the Defendant, the Plaintiff has suffered damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.
16. The Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C §216(b).

WHEREFORE, the Plaintiff demands judgment be entered against the Defendant:

- A. Declaring, pursuant to 29 U.S.C. §201, et al., that the acts and practices complained of herein are in violation of the FLSA;
- B. Awarding overtime compensation in the amount due for her time worked in excess of forty (40) hours per work week;
- C. Awarding liquidated damages in an amount equal to the overtime award;
- D. Awarding reasonable attorneys' fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);
- E. Awarding pre-judgment interest; and
- F. Awarding such other and further relief as the Court may deem necessary and proper under the circumstances.

COUNT II

**FLSA – MINIMUM WAGE VIOLATION/PROMPT PAYMENT
VIOLATION**

17. The Plaintiff realleges and adopts by reference herein paragraphs 1 through 8 above.
18. The FLSA provides that employers engaged in commerce shall pay employees the applicable hourly minimum wage. 29 U.S.C. §206.
19. The FLSA provides that any employer who violates the provisions of 29 U.S.C. §207 shall be liable to the employee or employees affected in the amount of their unpaid compensation and in an additional equal amount as liquidated damages. 29 U.S.C. 216(b).
20. The FLSA is further interpreted to require “prompt payment” on the part of employers, requiring them to pay their employees on the designated payday.
21. Defendant failed to pay the Plaintiff the minimum wage and likewise failed to make “prompt payment” of regularly scheduled pay.
22. The FLSA likewise requires employers to maintain adequate and accurate written records of the actual hours worked and the true wages earned by employees. 29 U.S.C. 211(c); 29 CFR 516.2, 516.28.
23. Defendant willfully failed to maintain adequate and accurate written records in order to facilitate their exploitation of Plaintiff and her fellow workers.
24. The FLSA and supporting regulations requires employers to notify employees of the employment laws’ requirements. 29 CFR 516.4.
25. Defendant willfully failed to notify Plaintiff of the requirements of the employment laws in order to facilitate its exploitation of Plaintiff and her fellow workers.

26. Defendant's failure to pay Plaintiff the minimum wage rate and its failure to otherwise make prompt payment was willful.

27. The Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

WHEREFORE, the Plaintiff demands judgment be entered against the Defendants:

A. Declaring, pursuant to 29 U.S.C. §§201 and 202, that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;

B. Awarding overtime compensation in the amount due for their time worked in excess of forty (40) hours per week;

C. Awarding liquidated damages in an amount equal to the overtime award;

D. Awarding reasonable attorneys' fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);

E. Awarding pre-judgment interest; and

F. Awarding such other and further relief as the Court may deem necessary and proper under the circumstances.

COUNT III

STATE CLAIM-CONTRACT/UNPAID WAGES

28. The Plaintiff realleges and adopts by reference herein paragraphs 1 through 8 above.

29. The Defendant verbally agreed to pay Plaintiff for her services.

30. The Defendant breached the agreement and failed to pay Plaintiff for some or all of the services rendered on their behalf.

31. As a direct and proximate result of the Defendant's breach of the agreement, the Plaintiff has suffered damages.

32. Pursuant to Fl. Stat. § 448.08, the Plaintiff is entitled to an award of attorneys' fees.

WHEREFORE, the Plaintiff respectfully requests this Court to enter a judgment against the Defendant for monetary damages, award of attorneys' fees and costs, prejudgment and postjudgment interest, and for such other and further relief as the Court may deem necessary and proper under the circumstances.

DEMAND FOR JURY TRIAL

The Plaintiff demands trial by jury on all issues so triable as a matter of right.

/s/ Richard Llerena

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