

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION**

CASE NO:

BARBARA WILKINS, and
all others similarly situated under
29 U.S.C. 216(b),

Plaintiff(s),

v.

HOME CARE GIVER SERVICES,
INC. d/b/a HOME CARE ONE,
a Florida corporation, and
ANTHONY J. PERSICO, individually,

Defendants.

_____ /

COMPLAINT

Plaintiff, BARBARA WILKINS (“Plaintiff”), pursuant to *29 U.S.C. § 216(b)*, files the following Complaint against Defendants, HOME CARE GIVER SERVICES, INC. d/b/a HOME CARE ONE (“HOME CARE ONE”) and ANTHONY J. PERSICO (“PERSICO”), individually (collectively referred to hereinafter as “Defendants”), on behalf of herself, and all others similarly situated, and alleges:

INTRODUCTION

1. Defendants have unlawfully deprived Plaintiff, and all other employees similarly situated, of federal overtime compensation during the course of their employment. This is an action arising under the Fair Labor Standards Act (“FLSA”) pursuant to *29 U.S.C. §§ 201-216*, to recover all wages owed to Plaintiff, and those similarly situated to Plaintiff, during the course of their employment.

PARTIES

2. During all times material hereto, Plaintiff was a resident of Broward County, Florida, over the age of 18 years, and otherwise *sui juris*.
3. During all times material hereto, Defendant, HOME CARE ONE, was a Florida corporation located and transacting business within Palm Beach County, Florida, within the jurisdiction of this Honorable Court. HOME CARE ONE operates its principal location at 601 North Congress Avenue, Suite 405, Delray Beach, Florida.
4. During all times material hereto, Defendant, PERSICO, was and a resident of the Southern District of Florida and was President and operator of the Defendant company within Palm Beach County, Florida.
5. During all times material hereto, Defendant, PERSICO, was over the age of 18 years, and was vested with ultimate control and decision-making authority over the hiring, firing, pay practices for Defendant, HOME CARE ONE, during the relevant time period.
6. Defendant, HOME CARE ONE was Plaintiff's employer, as defined by 29 U.S.C. § 203(d), during all times pertinent to the allegations herein.
7. Defendant, PERSICO, was also Plaintiff's employer, as defined by 29 U.S.C. § 203(d), during all times pertinent to the allegations herein.

JURISDICTION AND VENUE

8. All acts and omissions giving rise to this dispute took place within Palm Beach County, Florida.
9. Defendant, HOME CARE ONE, is headquartered and regularly transacts business in Palm Beach County, Florida, and jurisdiction is therefore proper within the Southern District of Florida pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. §§ 1331 and 1337.

10. Venue is proper within the Southern District of Florida pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

11. Defendant, HOME CARE ONE, is a home health aide agency that has been operating in the State of Florida since 2002.

12. According to its own website, HOME CARE ONE advertises itself to the South Florida community as follows:

Home Care One offers affordable in-home care services in Palm Beach and Broward County. You'll work with a care coordinator at your local office to set a care schedule that works best for you and your family. We can assist with Bathing, Toileting, Dressing, Eating, Transfers, Ambulation, Alzheimers and Dementia Care.

See www.homecareone.com.

13. The website for HOME CARE ONE further states the following:

Home Care One specializes in the Screening and Credentialing of Nurses, Nurse Aids and Companions. Hour Highly Qualified Caregivers are Triple Screened (Health, Background and References) so the needs of the Client are matched with the Appropriate Skills and Attributes of the Caregiver. We offer 24-Hour Live-in and/or Hourly Care, Competitive Rates and a free In-Home evaluation.

Id.

14. Based upon the content of its website, Defendant, HOME CARE ONE, advertises itself to the South Florida community as a provider of healthcare services to elderly and disabled individuals.

15. Defendant, HOME CARE ONE, sends its employees to the private dwellings of elderly and special needs individuals to offer home health medical services.

16. Some of the services offered by Defendant, HOME CARE ONE, through its employees, are bathing, dressing, hygiene, health monitoring, healthcare services, housekeeping, laundry services, meal preparation, and companionship for elderly and/or sick individuals.
17. These activities constitute healthcare services under the Fair Labor Standards Act (“FLSA”).
18. Defendant, HOME CARE ONE, is not exempt from FLSA coverage.
19. Defendant, HOME CARE ONE, is covered under the FLSA through enterprise coverage, as HOME CARE ONE was engaged in interstate commerce during all pertinent times in which Plaintiff was employed. More specifically, HOME CARE ONE was engaged in operating an institution that provided healthcare services and care for the sick and elderly, including, but not limited to: bathing, dressing, hygiene, health monitoring, housekeeping, and/or companionship. Accordingly, Defendant, HOME CARE ONE, was engaged in interstate commerce pursuant to *29 U.S.C. § 203(s)(1)(B)*.
20. Furthermore, Defendant, HOME CARE ONE, was also engaged in interstate commerce by virtue of the fact that its business activities involved those to which the FLSA applies. Defendant, HOME CARE ONE’s business and Plaintiffs’ work for HOME CARE ONE affected interstate commerce because the materials and goods that Plaintiff used on a constant and/or continuous basis moved through interstate commerce prior to or subsequent to Plaintiff’s use of the same.
21. During her employment with Defendant, HOME CARE ONE, Plaintiff, and all other similarly situated employees, handled and worked with various goods and/or materials that have moved through interstate commerce, including, but not limited to: cleaning supplies,

food items, cleaning equipment, linen materials, trash bags, hygiene products, and mobility equipment.

22. Defendant, HOME CARE ONE, also regularly employed two (2) or more employees for the relevant time period, who handled goods or materials similar to those goods and materials handled by Plaintiff, or used the instrumentalities of interstate commerce, or the mails, thus making Defendant, HOME CARE ONE's business an enterprise covered by the FLSA.
23. Upon information and belief, Defendant, HOME CARE ONE, grossed or did business in excess of \$500,000.00 during the years of 2015, 2016, 2017, and is expected to gross in excess of \$500,000.00 in 2018.
24. During all material times hereto, Plaintiff, and all others similarly situated, was a non-exempt employee of Defendant, HOME CARE ONE, and Defendant, PERSICO, within the meaning of the FLSA.
25. Plaintiff began working as a non-exempt employee for Defendant, HOME CARE ONE on or about August 2018.
26. Defendant, PERSICO, maintained control over the day-to-day operations of HOME CARE ONE, including the payroll, hiring, firing, and scheduling duties.
27. Defendant, PERSICO, was President of Defendant, HOME CARE ONE, and controlled the company's payroll practices, and was vested with ultimate decision-making authority for Defendant, HOME CARE ONE.
28. Plaintiff, and similarly situated individuals, were employed by Defendant, HOME CARE ONE, as a home health aide and assisted individuals with bathing, toileting assistance,

dressing, hygiene, and performed housekeeping, laundry, and healthcare services, prepared meals, and otherwise provided companionship to sick, elderly individuals.

29. Plaintiff worked for Defendant, HOME CARE ONE, from August 2018 until she resigned from her employment on or about October 24, 2018.

Plaintiff's Initial Employment Period – First Four (4) Weeks

30. On or about August 1, 2018, Plaintiff began working for Defendant, HOME CARE ONE, and was assigned to work an average of fifty (50) hours per week.

31. Plaintiff's agreed regular hourly rate during this initial time period was \$10.00 an hour.

32. During the first four (4) weeks of her employment, Plaintiff worked fifty (50) hours each week.

33. During this initial employment period worked by Plaintiff, HOME CARE ONE paid Plaintiff a straight \$10.00 an hour regardless of the number of hours Plaintiff worked.

34. Defendant, HOME CARE ONE, failed to pay plaintiff one-and-one-half times her regular hourly rate for any hours worked in excess of forty (40) in any given workweek.

35. Accordingly, during this initial employment period, Plaintiff is owed half-time in the amount of \$5.00 per hour for ten (10) hours per week for four (4) weeks.

36. In total, during the initial employment period of the first four (4) weeks, Plaintiff is entitled to recover \$50.00 per week for a total of \$200.00 in unliquidated damages.

37. However, Defendants' actions were intentional and/or willful and Plaintiff is therefore entitled to an additional amount of liquidated (double) damages for wages in the amount of \$200.00.

Plaintiff's Next Employment Period – Twelve (12) Hour Days

38. On or about September 2018, nearly one (1) month after hiring Plaintiff, Defendants assigned Plaintiff to work twelve (12) hour days seven (7) days a week for a span of three (3) weeks.
39. During this span of three (3) weeks, Plaintiff worked an average of eighty-four (84) hours per week.
40. Plaintiff was compensated at a rate of \$10.00 per hour for every hour she worked.
41. Defendants failed to ever pay Plaintiff one-and-one-half times her regular hourly rate for any hours worked in excess of forty (40) per week.
42. Accordingly, during this employment period, Plaintiff is owed half-time in the amount of \$5.00 per hour for forty-four (44) hours per week for three (3) weeks.
43. In total, during this employment period, Plaintiff is entitled to recover \$220.00 per week for a total of \$660.00 in unliquidated damages.
44. However, Defendants' actions were intentional and/or willful and Plaintiff is therefore entitled to an additional amount of liquidated (double) damages for wages in the amount of \$660.00.

Final Employment Period

45. During the final weeks of her employment in October 2018, Plaintiff worked fifty-six and one quarter (56.25) hours in one week and fifty and three quarters (50.75) hours in another week.
46. Plaintiff was compensated at a rate of \$10.00 per hour for the first forty (40) hours she worked during this time period.

47. Notably, Plaintiff was not compensated at all for any of the hours she worked in excess of forty (40) per week during this time period.
48. Defendants failed to ever pay Plaintiff one-and-one-half times her regular hourly rate for any hours worked in excess of forty (40) per week.
49. Accordingly, during this employment period, Plaintiff is owed time-and-one-half in the amount of \$15.00 per hour for sixteen and one quarter (16.25) hours for one (1) week and ten and three quarters (10.75) hours for another week.
50. In total, during this employment period, Plaintiff is entitled to recover \$243.75 in unliquidated damages for the first week and \$161.25 in unliquidated damages for the second week for a total of \$405.00 in unliquidated damages during this time period.
51. However, Defendants' actions were intentional and/or willful and Plaintiff is therefore entitled to an additional amount of liquidated (double) damages for wages in the amount of \$405.00.

Plaintiff Exercises Her Right to Overtime

52. At the end of October 2018, Plaintiff informed Defendants that she no longer wished to work for the company and voluntarily resigned.
53. Plaintiff inquired as to when she would receive her final paycheck and was advised that it would be sent to her in the mail.
54. Upon receipt of her final paycheck, Plaintiff advised Defendants that it was incorrect and did not accurately compensate her fully for the time she had worked.
55. Defendants advised Plaintiff that they would send Plaintiff another check when they administered payroll the following week.

56. After payroll was administered, Plaintiff still did not receive any additional compensation as required under federal law.

57. Overtime payments to Plaintiff remains due and owing.

58. Defendants, HOME CARE ONE, and PERSICO, were either recklessly indifferent as to the overtime requirements under federal law, or, in the alternative, *intentionally violated federal law* so that the Defendants could avoid having to pay Plaintiff her lawful (and hard-earned) wages.

59. As a result of these violations of federal law, Plaintiff has had retain the undersigned counsel to prosecute these claims and is therefore entitled to an award of reasonable attorney's fees and costs under the FLSA.

COUNT I – FEDERAL OVERTIME WAGE LAW VIOLATIONS – 29 U.S.C. § 207
(against All Defendants)

60. Plaintiff re-avers and re-alleges Paragraphs 1 through 59 above, as though fully set forth herein.

61. Plaintiff alleges this action pursuant to the Fair Labor Standards Act, 29 U.S.C. 216(b).

62. Plaintiff is entitled to: (i) half-time overtime wages; (ii) time-and-one-half overtime wages; and (iii) liquidated damages pursuant to the FLSA.

63. Plaintiff seeks recovery of damages as referenced above and further seeks interest, costs, and attorneys' fees pursuant to 29 U.S.C. 216(b).

WHEREFORE, Plaintiff, BARBARA WILKINS, demands judgment against Defendants, HOME CARE GIVER SERVICES, INC. d/b/a HOME CARE ONE, and ANTHONY J. PERSICO, individually, and respectfully requests that she be awarded the following relief: (a) unliquidated damages to be paid by the Defendants jointly and severally; (b) liquidated damages to be paid by the Defendants jointly and severally; (c) reasonable attorney's fees and costs to be

paid by the Defendants jointly and severally; and any and all such further relief as may be deemed just and reasonable under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, BARBARA WILKINS, hereby requests and demands a trial by jury on all appropriate claims.

Dated this 2nd day of November, 2018.

Respectfully Submitted,

**USA EMPLOYMENT LAWYERS –
JORDAN RICHARDS, PLLC**
805 East Broward Blvd. Suite 301
Fort Lauderdale, Florida 33301
Ph: (954) 871-0050
Counsel for Plaintiff, Barbara Wilkins

By: /s/ Jordan Richards
JORDAN RICHARDS, ESQUIRE
Florida Bar No. 108372
jordan@jordanrichardspllc.com
melissa@jordanrichadrspplc.com
livia@jordanrichardspllc.com
jake@jordanrichardspllc.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed via CM/ECF on this 2nd of November, 2018.

By: /s/ Jordan Richards, Esquire
JORDAN RICHARDS, ESQ.
Florida Bar No. 108372

SERVICE LIST:

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Barbara Wilkins, and all others similarly situated DEFENDANTS Home Care Giver Services, Inc. d/b/a Home Care One, and Anthony J. Persico, under 29 U.S.C. 216(b),

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

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number) USA Employment Lawyers - Jordan Richards PLLC, 805 E. Broward Blvd. Suite 301, Fort Lauderdale, Florida (954) 871-0050

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

- Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State Incorporated and Principal Place of Business In Another State Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PERSONAL INJURY, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

VII. CAUSE OF ACTION 29 U.S.C. 207 - Federal Overtime Violations Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE 11/02/2018

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of attorney

FOR OFFICE USE ONLY RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the

BARBARA WILKINS, and all others similarly situated
under 29 U.S.C. 216(b),

Plaintiff(s)

v.

HOME CARE GIVER SERVICES, INC. d/b/a HOME
CARE ONE, a Florida corporation, and ANTHONY J.
PERSICO, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

HOME CARE GIVER SERVICES, INC.
d/b/a HOME CARE ONE
Attn: Registered Agent - David A. Beale, Esq.
301 West Atlantic Avenue
2nd Floor, Suite #0-5
Delray Beach, Florida 33444

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

USA Employment Lawyers - Jordan Richards PLLC
805 E. Broward Blvd. Suite 301
Fort Lauderdale, Florida 33301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/02/2018

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

BARBARA WILKINS, and all others similarly situated
under 29 U.S.C. 216(b),

Plaintiff(s)

v.

HOME CARE GIVER SERVICES, INC. d/b/a HOME
CARE ONE, a Florida corporation, and ANTHONY J.
PERSICO, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

ANTHONY PERSICO
601 N. Congress Avenue, Suite 405
Delray Beach, Florida 33445

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

USA Employment Lawyers - Jordan Richards PLLC
805 E. Broward Blvd. Suite 301
Fort Lauderdale, Florida 33301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/02/2018

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Home Care One Accused of Wage Violations by Former Employee](#)
