

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED

2008 NOV 14 AM 11:44

U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

PATRICIA JO LEMASTER,
TERRI JO LEMASTER and
PEGGY MCCOMAS,

Plaintiffs,

v.

ALTERNATIVE HEALTHCARE
SOLUTIONS, INC.
and MICKEY RUGGIERO,

Defendants.

CASE NO. _____

3-08-1101

JURY DEMANDED

ORIGINAL COMPLAINT

JURISDICTION & VENUE

1 This Court has jurisdiction because Plaintiffs' claims arise under federal law – the Fair Labor Standards Act, 29 U.S.C § 201, *et seq* (the FLSA). 28 U.S.C § 1331 & 29 U.S.C. § 216(b)

2. Venue is proper in the Middle District of Tennessee, Nashville Division, because Defendants, Alternative Healthcare Solutions, Inc. (Alternative Healthcare) and Mickey Ruggiero (Ruggiero)(Alternative Healthcare and Ruggiero hereinafter referred to collectively as Defendants), do business in this district and division.

SUMMARY

3 Patricia Jo LeMaster, Terri Jo LeMaster and Peggy McComas (collectively Plaintiffs) are former hourly employees of Defendants Plaintiffs frequently worked in excess of

forty (40) hours in a workweek for Defendants. However, Defendants did not pay Plaintiffs proper overtime compensation. More specifically, Defendants paid Plaintiffs their straight hourly rate for all hours worked including those in excess of forty (40) in a workweek. As a result, Defendants violated the FLSA.

THE PARTIES

4. Plaintiffs are individuals who reside in Valdosta, Lowndes County, Georgia.
5. Alternative Healthcare is a corporation doing business in Lebanon, Wilson County, Tennessee. Alternative Healthcare may be served with process by serving its registered agent, Gia N Ruggiero, 437 Park Ave., Suite B, Lebanon, Tennessee 37087.
6. Mickey Ruggiero is an individual who resides and does business in Lebanon, Wilson County, Tennessee. Ruggiero is a principal of Alternative Healthcare. Ruggiero may be served with process at 122 Bluegrass Parkway, Lebanon, Tennessee 37090, or at any other place where Ruggiero may be found.

COVERAGE FACIS

7. Defendants employed Plaintiffs and are employers within the meaning of the FLSA. 29 U.S.C. § 203(d).
8. Defendants are an enterprise within the meaning of Section 3(r) of the FLSA. 29 U.S.C. § 203(r).
9. Defendants are an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA. 29 U.S.C. § 203(s)(1). Defendants' employees engage in commerce or in the production of goods for commerce. For at least the past three years, Defendants' gross revenue volume has exceeded \$500,000.00.

FACTS

10 Alternative Healthcare is in the business of providing staffing services to the home health care industry. Ruggiero is responsible for the day-to-day operation of Alternative Healthcare. Ruggiero has the power to hire and fire employees, set pay rates, determine payroll policies and practices, and otherwise acts directly or indirectly in the interest of Defendants in relation to Defendants' employees.

11. Plaintiffs formerly worked for Defendants as nurses. Plaintiffs frequently worked more than forty hours in a workweek for Defendants.

12 Because they paid Plaintiffs by the hour, Defendants tracked the hours Plaintiffs worked each workweek. Rather than pay Plaintiffs overtime for hours worked in excess of forty in a workweek, however, Defendants paid Plaintiffs at the same hourly rate for all hours worked.

13 The United States Department of Labor (the DOL) investigated Defendants' pay practices. At the conclusion of its investigation, the DOL determined that Defendants improperly failed to pay overtime to the employees in Plaintiffs' job category. Despite the DOL's determination, Defendants have failed and refused to compensate Plaintiffs for their unpaid overtime.

THE LAW

14. The FLSA requires employers to pay their employees at one-and-one-half times their regular rates for all hours worked in excess of forty in a workweek. 29 U.S.C. § 207.

15. Employers who fail to pay their employees proper overtime are liable for all unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs. 29 U.S.C. § 216(b)

CAUSE OF ACTION: FAILURE TO PAY OVERTIME

16. Defendants violated, and continue to violate the overtime provisions of the FLSA. Plaintiffs worked more than forty hours in a workweek without receiving proper overtime compensation. Defendants continue to wrongfully withhold Plaintiffs' overtime compensation.

17. As described above, Defendants acted willfully in failing to pay Plaintiffs proper overtime compensation in accordance with the FLSA.

18. Plaintiffs are therefore entitled to their unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs

JURY DEMAND

19. Plaintiffs demand a trial by jury.

PRAYER

20. Plaintiffs pray for judgment against Defendants awarding them:

- a. All of their unpaid overtime compensation;
- b. An equal amount in liquidated damages;
- c. Reasonable attorneys' fees, costs and expenses as provided by the FLSA and other law; and
- d. Such other and further relief as may be necessary and appropriate.

Respectfully submitted,

YEZBAK LAW OFFICES

By: 

Charles Yezbak

State Bar No.: 18965

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UNITED STATES DISTRICT COURT
for the
Middle District of Tennessee

Patricia Lemaster, Terri Lemaster & Peggy McComas)
Plaintiff)
v.)
Alternative Healthcare Solutions & Mickey Ruggiero)
Defendant)

Civil Action No

3-08--1101

Summons in a Civil Action

To: *(Defendant's name and address)*

Alternative Healthcare Solutions, Inc.
c/o Gia Ruggiero-registered agent for service of
process
437 Park Ave. Suite B
Lebanon, TN 37087

A lawsuit has been filed against you

Within 20 days after service of this summons on you (not counting the day you received it), 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's attorney, whose name and address are:

If you fail to do so, 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

Date: NOV 14 2008

KEITH THROCKMORTON
Name of clerk of court
Ehewkins
Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3))

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

(1) personally delivering a copy of each to the individual at this place, _____;
_____ ; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____ ; or

(4) returning the summons unexecuted to the court clerk on _____ ; or

(5) other (*specify*) _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

Date: _____

Server's signature

Printed name and title

Server's address

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Patricia Lemaster, Terri Lemaster & Peggy McComas
Plaintiff

v

Alternative Healthcare Solutions & Mickey Ruggiero
Defendant

Civil Action No.

8-08-cv-1101

Summons in a Civil Action

To: (Defendant's name and address)

Mickey Ruggiero
122 Bluegrass Parkway
Lebanon, TN 37090

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), 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's attorney, whose name and address are:

If you fail to do so, 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.

KEITH THROCKMORTON

Date: NOV 14 2008

Name of clerk of court
Chawkins
Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3))

CIVIL COVER SHEET

AO 440 (Rev. 04/08) Civil Summons (Page 2)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____, by:

(1) personally delivering a copy of each to the individual at this place, _____; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____ who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is _____; or

(4) returning the summons unexecuted to the court clerk on _____; or

(5) other (specify) _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

Date: _____

Server's signature

Printed name and title

Server's address

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 THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS
 Patricia Jo Lemaster, Terri Jo Lemaster & Peggy McComas

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Charles Yezbak III 2002 Richard Jones Rd Suite B-200
 Nashville, TN 37215 615-250-2000

DEFENDANTS
 Alternative Healthcare Solutions, Inc & Mickey Ruggiero

County of Residence of First Listed Defendant Wilson Co., TN
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

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

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

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

Citizen of This State	PTF DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5		
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6		

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

CONTRACT	SPORTS	FOREFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY	<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 362 Personal Injury - Med Malpractice	<input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
	PERSONAL PROPERTY	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party	<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
	<input type="checkbox"/> 371 Truth in Lending	IMMIGRATION		<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 465 Other Immigration Actions		
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence		
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:		
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

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

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. sec. 201 et seq.

Brief description of cause:
violations of the wage provisions of the FLSA

VII. 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

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 11/14/08

SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____