

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
Frankfort Division

DANIEL DAVIS , individually)	
and on behalf of himself and all)	
others similarly situated,)	
)	
Plaintiff)	Case No. _____
)	
v.)	
)	<i>Electronically filed</i>
OMNICARE, INC.;)	
HOME CARE PHARMACY, LLC;)	
D&R PHARMACEUTICAL)	
SERVICES, LLC;)	
THREE FORKS APOTHECARY, LLC;)	
)	
Defendants)	

COMPLAINT

Introduction

1. Plaintiffs and putative class members drove thousands of miles from their Kentucky bases delivering pharmaceuticals and supplies for Defendants. Defendants falsely classified Plaintiffs as independent contractors while exerting complete control over their work duties and methods, and requiring them to sign non-compete agreements to prevent them from driving for any other entity. Because Defendants falsely classified Plaintiffs, they paid Plaintiffs and the putative class on a flat fee basis without reimbursement for any of the vehicle costs associated with the deliveries. Due to this illegal payment scheme, Plaintiffs and putative class members earned far less than minimum wage and were denied overtime pay. They now file this action to recover from Defendants unpaid and

underpaid wages as well as vehicle costs, unlawful deductions and unpaid taxes pursuant to KRS 337, *et seq.* and the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

PARTIES

2. Plaintiff Daniel Davis, who resides in Jessamine County, Kentucky, performed delivery services for some or all of the Defendants between September 2014 and October 2017. Davis also dispatched drivers for some or all Defendants in this action.

Omnicare and its subsidiaries

3. Defendant Omnicare, Inc. is a for-profit corporation organized in Delaware with its principal place of business in Ohio. Omnicare does business throughout the Commonwealth of Kentucky.

4. Defendant Home Care Pharmacy, LLC is a for-profit corporation organized in Delaware with its principal place of business in Ohio. Home Care is a wholly-owned subsidiary of Omnicare, Inc. Home Care does business throughout the Commonwealth of Kentucky.

5. Defendant D&R Pharmaceutical Services, LLC is a for-profit limited liability company organized in Kentucky with its principal place of business in Ohio. D&R is a wholly-owned subsidiary of Omnicare, Inc. D&R does business throughout the Commonwealth of Kentucky.

6. Defendant Three Forks Apothecary, LLC is a for-profit limited liability company organized in Kentucky with its principal place of business in Ohio. Three

Forks is a wholly-owned subsidiary of Omnicare, Inc. Three Forks does business throughout the Commonwealth of Kentucky.

7. Omnicare and its three subsidiaries – Home Care, D&R, and Three Forks (Omnicare Subsidiaries) – operate as a single entity (collectively, Omnicare) and are otherwise jointly and severally liable for the claims asserted in this Complaint.

Omnicare ultimately owns 100% of the shares of Home Care, D&R, and Three Forks.

8. The Omnicare Subsidiaries are instrumentalities and alter egos of Omnicare, Inc. such that the Court should pierce the corporate veil between the entities.

9. Further, Omnicare is liable for the claims asserted in this Complaint due to its own direct involvement in the facts at issue and as a joint employer of Davis and members of the putative class.

JURISDICTION AND VENUE

10. As set forth below, Defendants operate multiple distribution centers within Kentucky as bases of their operations. Plaintiffs and putative class members are based at a distribution center but travel throughout the Commonwealth and neighboring states, making deliveries on Defendants' behalf.

11. These delivery routes include travel throughout eastern Kentucky, including counties within this Division; thus, some of the unlawful conduct complained of herein occurred in this Division and District.

12. This Court has jurisdiction pursuant to 29 U.S.C. § 216.

13. The amount in question exceeds this Court's jurisdictional minimum.

14. This Court has jurisdiction and venue is appropriate.

FACTS

15. Omnicare is a pharmacy that sells and delivers prescription medications and medical devices to nursing homes, medical facilities, and homes across the United States. These items are only available by delivery; thus delivery is an integral part of Omnicare's business.

16. Omnicare holds a competitive bidding process for provision of delivery services in specific regions of the United States. As part of this process, Omnicare develops the routes delivery drivers must run in a particular region and includes them in its requests for proposal.

17. The lowest bidder receives all Omnicare's delivery work in that particular state or region.

18. As a result of the bidding process, Omnicare selected Act Fast Delivery of Kentucky to deliver Omnicare products to customers in Kentucky.

19. Act Fast entered into an agreement with Omnicare to deliver Omnicare products to customers throughout Kentucky. Omnicare is Act Fast's largest customer.

20. Omnicare operates three regional distribution centers located in Lexington, Ashland, and Beattyville, Kentucky. Act Fast provides delivery services for these distribution centers.

21. Act Fast hires drivers to deliver Omnicare products in Kentucky. While nominally working for Act Fast, these drivers make deliveries on behalf of

Omnicare from Omnicare facilities to Omnicare customers when and where Omnicare directs them to do so and in the manner Omnicare requires.

22. Plaintiffs and members of the putative class (collectively, Drivers) use their personal vehicles to make deliveries for Defendants' benefit.

23. Upon information and belief, Defendants employ more than 100 individuals as Drivers based in Kentucky.

24. Drivers make regularly scheduled deliveries to Omnicare's customers travelling routes set by Omnicare. After completion of the route, Omnicare requires Drivers to return to their assigned regional distribution center to return Omnicare's boxes, bags, totes, and paperwork.

25. Defendants pay Drivers a flat, predetermined rate for each route. When calculated as an hourly rate, these flat rates result in a sub-minimum wage to Drivers.

26. Drivers also make stat runs, which are individual deliveries from Omnicare facilities to Omnicare customers made on an expedited, emergency, and ad hoc basis. Drivers are required to be on-call on regular schedules to make such stat runs. Omnicare directs when and where Drivers make stat runs. Defendants typically pay Drivers approximately 70 cents per mile one way for stat deliveries, although some short stat runs are paid on a flat fee basis. Defendants calculate the mileage for stat runs, which is often less than the actual number of miles driven.

27. At some times relevant to this Complaint, Defendants also employed dispatchers who assigned Omnicare's stat run orders to Drivers. Defendants

required Dispatchers to perform delivery services as Drivers, even while dispatching other Drivers. Some Dispatchers not only assigned stat runs in the relevant Kentucky area, but also for Act Fast affiliates in Texas.

28. Drivers routinely work in excess of 40 hours per week, but are not paid at the overtime rate for these hours.

29. Defendants misclassified Drivers as independent contractors as a part of a fraudulent scheme to avoid their wage payment obligations under Kentucky's wage and hour laws.

30. The employer–employee relationship between Defendants and Drivers is evidenced by the following:

- a. Defendants require Drivers to follow specific routes to deliver products and specify the exact time to drive those routes.
- b. Defendants control the method Drivers used to electronically report their deliveries at each stop and mandate compliance with that method. Defendants additionally require Drivers to complete specific paperwork at each stop.
- c. Defendants do not permit Drivers to negotiate a fee for their services.
- d. Defendants issue Drivers a daily work schedule with the Driver's scheduled routes for the day. Defendants do not permit Drivers to reject these assignments or any stat runs assigned to them.
- e. Defendants require Drivers to wear a uniform imprinted with Act Fast's logo.

- f. Defendants require Drivers to sign a non-compete agreement, prohibiting them from working for any competitors.
 - g. Defendants' application materials refer to Drivers as Employee[s] and to Act Fast as Employer.
 - h. Defendants require Drivers to fill out a USCIS Form I-9 to verify their employment eligibility, which is only required for employees.
31. As employees, Drivers are not exempt from overtime or minimum wage requirements as set forth in KRS 337, *et seq.* or the FLSA, 29 U.S.C. § 201, *et seq.*
32. Act Fast and Omnicare are joint employers of the Drivers as evidenced by, but not limited to, the following:
- a. As set forth previously, Omnicare directs, controls, and supervises the way that Drivers perform their work. This level of control is expressly contemplated in the contract between Omnicare and Act Fast.
 - b. Due to the level of control Omnicare exercises over the Drivers, it knows or should know that Act Fast is unlawfully underpaying the Drivers and misclassifying them as independent contractors, all on Omnicare's behalf.
 - c. Upon information and belief, Omnicare is Act Fast's only customer in the Ashland and Beattyville areas and is Act Fast's largest customer in the Lexington area, representing nearly all deliveries in that area. Thus, if Omnicare were to stop using Act Fast in Kentucky, Act Fast would go out of business, as has happened in other states and regions when Omnicare stopped contracting with Act Fast.

33. In the course of using their own vehicles for Defendants' benefit, Drivers incur various necessary and required costs, including but not limited to gasoline, vehicle parts and fluids, automobile repair and maintenance services, insurance, and depreciation. Drivers incur vehicle rental fees when their own vehicles are unusable, as they are not permitted to reject routes or stat runs. Collectively, all such costs are referred to herein as Vehicle Costs.

34. Defendants do not reimburse Drivers for Vehicle Costs.

35. In addition, Defendants require Drivers to provide kickbacks to Defendants in the form of unreimbursed Vehicle Costs. Because of Defendants' failure to account for these kickbacks, Drivers' wages are not paid free and clear as required by law.

36. This underpayment is further compounded by Defendants' unlawful deductions from Drivers' wages, including but not limited to deductions for payroll processing fees and data transfer fees (collectively, Unlawful Deductions).

37. Defendants also unlawfully charge Drivers for expenses solely for Defendants' benefit. These expenses include, but are not limited to, uniforms and employment screening fees (collectively, Unlawful Expenses).

38. Defendants also unlawfully fail to withhold income taxes, payroll taxes, FICA taxes, and other required payments (collectively, Required Deductions) for the Drivers' benefit.

39. Thus, at all relevant times, Defendants:

- a. Failed to pay the minimum wages for all hours worked (including wait time, on call time, and all other hours worked but not counted);
- b. Failed to pay at least 1.5 times the regular or minimum wage rate for hours worked in excess of 40 per week (including wait time, on-call time, and all other hours worked but not counted);
- c. Failed to reimburse for Vehicle Costs and other such kickbacks such that Drivers were paid below legal minimums;
- d. Withheld the Unlawful Deductions such that Drivers were paid below legal minimums;
- e. Charged the Unlawful Expenses such that Drivers were paid below legal minimums; and
- f. Failed to make Required Deductions.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

40. Upon information and belief, the class includes more than 100 individuals. Although too numerous to join individually, the class members are identifiable through employment records.

41. There are common questions of law and fact to the class. Each class member was subject to Defendants' common scheme of systematic underpayment and lack of reimbursement of kickbacks during the relevant period. While Drivers were paid different amounts for different routes, all such routes underpaid each Driver as a result of this common scheme.

42. Further, as described above, all class members were subject to the same Unlawful Deductions, Unlawful Expenses, and lack of Required Deductions pursuant to Defendants' standard Driver payment policy.

43. Further, as described above, all class members were subject to Defendants' control rendering them employees of both, not independent contractors.

44. The claims of the representative party, Davis, are typical of the class members. Davis was subject to the same common scheme regarding underpayment, failure to reimburse kickbacks, Unlawful Deductions, Unlawful Expenses and lack of Required Deductions as the members of the class. As such, his claims are identical to the class.

45. The representative party will fairly and adequately represent the interests of the parties. Plaintiff Davis has agreed to serve as class representative if a class is certified and accepts his obligation to act in the best interest of the class.

46. The proposed Class is also appropriate because questions of law or fact common to Class members predominate over any questions affecting only individual members. Further, proceeding as a class is superior to other available methods of fair and efficient adjudication of the controversy. Questions of law and fact predominate as every Class member was subject to identical efforts by Defendants' to impose their unlawful wage practices upon them. Further, absent treatment as a class, Class members would be required to file individual lawsuits throughout the Commonwealth to vindicate their rights under KRS 337, *et seq.* and 29 U.S.C. § 201, *et seq.*

47. As alleged herein, the proposed Class is also appropriate because Defendants have acted or refused to act on grounds that apply generally to the Class, so that final declaratory and/or injunctive relief is appropriate respecting the Class as a whole.

48. As such, pursuant to Fed. R. Civ. P. 23, the Class is properly defined as follows (the “Class”):

All current and former delivery drivers or dispatchers classified as independent contractors who were based at a Kentucky distribution center and performed work for Defendants from November 15, 2012 to the day the Court authorizes notice.

COUNT I: UNPAID MINIMUM WAGES

49. Defendants’ conduct as set forth in this Complaint violates Kentucky and federal minimum wage and overtime requirements, including but not limited to KRS 337.275, 337.285, 29 U.S.C. § 206, and 29 U.S.C. § 207.

50. Pursuant to KRS 337.385 and 29 U.S.C. § 216, each and every member of the Class is entitled to recover all unpaid minimum wages, overtime wages, Vehicle Costs and other kickbacks, Unlawful Deductions, and Unlawful Expenses, as well as unpaid Payroll Deductions.

51. Additionally, pursuant to KRS 337.385 and 29 U.S.C. § 216, each and every member of the Class is entitled to recover liquidated damages in an amount equal to their unpaid wages damages as well as all attorney’s fees, costs, and other expenses associated with bringing this action. Each and every member of the Class is also entitled to pre- and post-judgment interest on all monetary awards.

COUNT II: UNLAWFUL PAYROLL DEDUCTIONS

52. Defendants' conduct as set forth in this Complaint violates KRS 337.060, Kentucky's statutory prohibition on payroll deductions.

53. Pursuant to KRS 337.385, each and every member of the Class defined above is entitled to recover liquidated damages in an amount equal to these unlawful deductions as well as all attorney's fees, costs, and other expenses associated with bringing this action. Each and every member of the Class is also entitled to pre- and post-judgment interest on all monetary awards.

COUNT III: UNJUST ENRICHMENT

54. Defendants were unjustly enriched by the shifting of a portion of the cost of doing business onto Drivers. Such costs include, but are not limited to, Drivers' Vehicle Costs and other kickbacks, Unlawful Deductions, and Unlawful Expenses.

55. Each and every member of the Class is entitled to restitution for all of Defendants' costs or fees that have been levied upon them, including but not limited to the Unlawful Deductions and Unlawful Expenses. Each and every member of the Class is also entitled to pre- and post-judgment interest on all monetary awards.

REQUEST FOR RELIEF

Wherefore, Davis, individually and on behalf of all those similarly situated, respectfully requests the Court provide the following relief against Defendants:

- a. Compensatory damages;
- b. Liquidated damages;
- c. Pre- and post-judgment interest;

- d. Attorney's fees, costs, and all other expenses associated with bringing these claims;
- e. Injunctive relief requiring Defendants to fully comply with the applicable wage and hour laws;
- f. Injunctive relief preventing Defendants from retaliating against any Driver associated with bringing these claims;
- g. Trial by jury on all claims so triable; and,
- h. Any and all other relief the Court deems proper.

Respectfully submitted,

CRAIG HENRY PLC

s/ Michele Henry
Michele Henry
239 South Fifth Street, Suite 1400
Louisville, KY 40202
(502) 614-5962
Facsimile: (502) 614-5968
mhenry@craighenrylaw.com

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.)

I. (a) PLAINTIFFS

Daniel Davis, individually and on behalf of himself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Craig Henry PLC
239 South Fifth Street, Suite 1400
Louisville, KY 40202 (502)614-5962

DEFENDANTS

Omnicare, Inc., et al.

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)

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<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)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			LABOR	
			<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

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 - Transfer
- 8 Multidistrict Litigation - Direct File

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. 201, et seq.

Brief description of cause:

Violations of the Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

02/19/2018

SIGNATURE OF ATTORNEY OF RECORD

s/ Michele Henry

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

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Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Daniel Davis, individually and on behalf of himself
and all others similarly situated,

Plaintiff(s)

v.

Omnicare, Inc., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Omnicare, Inc.
Serve: CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

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:

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:

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 \$ _____ 0.00 _____ .

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

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Daniel Davis, individually and on behalf of himself
and all others similarly situated,

Plaintiff(s)

v.

Omnicare, Inc., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Home Care Pharmacy, LLC
Serve: CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

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:

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:

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 \$ _____ 0.00 _____ .

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

Eastern District of Kentucky

Daniel Davis, individually and on behalf of himself
and all others similarly situated,

Plaintiff(s)

v.

Omnicare, Inc., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) D&R Pharmaceutical Services, LLC
Serve: CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

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:

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:

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 \$ _____ 0.00 _____ .

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
Eastern District of Kentucky

Daniel Davis, individually and on behalf of himself
and all others similarly situated,

Plaintiff(s)

v.

Omnicare, Inc., et al.

Defendant(s)

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Three Forks Apothecary, LLC
Serve: CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

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:

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: _____

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))

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

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_____ 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 \$ _____ 0.00 _____ .

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: [Lawsuit Accuses Omnicare, Subsidiaries of Multiple Labor Law Violations](#)
