

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DAVID POGGI,
on his own
behalf and others
similarly situated,

Plaintiff,

Case Number _____

v.

HUMANA, INC.,

Defendant.

_____/

COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiff, (on his own and on behalf of others similarly situated) was an employee of Defendant, a foreign for profit corporation, and brings this action for unpaid wages, retaliation, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201-216 (the "FLSA"). Plaintiff(s) worked as an hourly worker for Defendant and performed related activities for Defendant in Pinellas County, Florida. Plaintiff is employed in a labor position with Defendant and has been so employed with Defendant for approximately the past eighteen months.

2. Defendant is a for profit corporation that operates and conducts business in, among others, Pinellas County, Florida, and is therefore, within the jurisdiction of the Court. Defendant is an EMPLOYER as defined by the FLSA and Defendant conducts interstate commerce, using telephones, highways and byways and products and supplies (that are used in connection with services provided to Defendant's customers) which do

not originate from Florida. Upon information and belief, Defendant grosses far in excess of \$500,000.00 in annual revenue at all times material to this case, including the 24 months prior to February 14, 2017.

3. This action is brought under the FLSA to recover from Defendant, unpaid wages, liquidated damages, and reasonable attorneys' fees and costs. This action is intended to include each and every hourly employee who worked for the Defendant at any time within the past three (3) years.

4. The Court has jurisdiction over Plaintiff(s) claims as all material events transpired in Pinellas County, including those brought pursuant to 28 U.S.C. § 1337 and the FLSA.

5. At all material times relevant to this action, Defendant was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203(s).

6. At all material times relevant to this action, Plaintiff(s) in his capacity as an employee(s) were individually covered by the FLSA. Plaintiff used telephones, computers in connection with Defendant's business interest.

7. At all times relevant to this action, Defendant failed to comply with 29 U.S.C. §§ 201-209, because Plaintiff(s) performed services for Defendant for which no provisions were made by Defendant to properly pay Plaintiff(s) for all hours worked during their employment.

8. During their employment with Defendant, Plaintiff(s), and those similarly situated to them, were not paid for all time worked during one or more work weeks. Specifically, Defendant failed to pay Plaintiff and those similarly situated to them for work performed off the clock, including but not limited to requiring Plaintiff(s) to work

without compensation. In fact, in many instances, Defendant did not keep track of the hours worked by Plaintiff and simply paid Plaintiff a flat rate or salary that would have equated to far less than the minimum wage and no provisions for overtime. Routinely, Defendant would require Plaintiff to work time in excess of forty hours a week and Defendant would make no provision to pay Plaintiff for the overtime wages and, likewise, Defendant would make no attempt to even record those hours that Plaintiff worked over forty hours in a given week throughout the entirety of Plaintiff's employment. Plaintiff contacted Defendant in writing on February 6, 2017, asking to be paid for time that Plaintiff worked, but for which Defendant did not pay Plaintiff. (See, Attachment A).

9. Defendant failed, refused and/or neglected to keep accurate time records pursuant to 29 U.S.C. § 211(c) of Plaintiff(s), and others similarly situated to them, true hours of work. Defendant refused to respond to written demands for payment of unpaid wages and minimum wages and overtime wages (compensation) made by the named Plaintiff and on behalf of the named Plaintiff. Defendant has not objected to the quantum of hours worked by Plaintiff. Defendant did not turn over any documentation that may have assisted Plaintiff(s) in providing a more specific demand. The extent to which other similarly situated workers may be owed wages under the FLSA has yet to be determined. To the extent that relevant documents exist, such are believed to be in the exclusive possession of Defendant; however Defendant has not produced any documentation relating to this claim. At no point has Defendant ever suggested, informed or advised Plaintiff that Plaintiff was exempt or that Plaintiff did not work the time that Plaintiff has

claimed to have worked, but not been paid for, and Defendant has never denied owing Plaintiff wages as sought by Plaintiff's above referenced February 6, 2017 letter.

RECOVERY OF OVERTIME and MINIMUM WAGE COMPENSATION

10. Plaintiff(s) reincorporates and readopts all allegations contained within Paragraphs 1-9, above.

11. Plaintiff(s), and those similarly situated to them, are/were entitled to be paid their regular rate of pay for each hour worked per work week. Likewise, Plaintiff(s) and those similarly situated to them are/were entitled to be paid time and a half for each hour worked over 40 hours each week of their employment. During their employment with Defendants, Plaintiff(s), and those similarly situated to them, regularly worked hours for each week and were not paid even minimum wages for said time. Plaintiff was not a managerial employee, but was a laborer for Defendant. Plaintiff did not exercise discretion in the performance of his job duties for Defendant.

12. As a result of Defendant's intentional, willful, and unlawful acts in refusing to pay Plaintiff, and those similarly situated to them, their correct rate of pay for each hour worked work week in one or more work weeks, Plaintiff, and those similarly situated to them, have suffered damages plus incurring reasonable attorneys' fees and costs.

13. As a result of Defendant's willful violation of the FLSA and Article X, Section 24 of the Florida Constitution, Plaintiff(s), and those similarly situated to them, are entitled to payment of the unpaid wages under Florida law, as well as minimum wages liquidated damages under the FLSA.

14. Plaintiff(s) demands a trial by jury.

WHEREFORE, Plaintiff(s), and all other similarly situated employees, demand judgment against Defendant, for the payment of all hours at the regular rate of pay for the hours worked by them for which Defendant did not properly compensate them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief that this Court determines to be just and appropriate.

I HEREBY AFFIRM THAT THE FACTUAL STATEMENTS MADE ABOVE ARE TRUE AND CORRECT, UNDER PENALTY OF PERJURY.



David Poggi

DATED this 14 day of February 2017.

s/W. John Gadd

W. John Gadd, Esq.

FL Bar Number 463061

Bank of America Building

2727 Ulmerton Rd. Ste. 250

Clearwater, FL 33762

Tel – (727)524-6300

Email – wjg@mazgadd.com

/s/ Kyle Lee

Lee Law PLLC

FL Bar Number 105321

P.O. Box 4476

Brandon, FL 33509-4476

813-343-2813

Email: Kyle@kyleleelaw.com

JS 44 (Rev. 11/15)

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.)*

<p>I. (a) PLAINTIFFS DAVID POGGI, on his own behalf and others similarly situated, (b) County of Residence of First Listed Plaintiff Pinellas <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i> (c) Attorneys (Firm Name, Address, and Telephone Number) W. John Gadd, Esq. 2727 Ulmerton Road, Suite 250 Clearwater, FL 33762</p>	<p>DEFENDANTS HUMANA, INC., County of Residence of First Listed Defendant Jefferson <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) UNKNOWN</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 3 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

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"/> 155 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	<p>PERSONAL INJURY</p> <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"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<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
			<p>LABOR</p> <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	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<p>SOCIAL SECURITY</p> <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
<p>REAL PROPERTY</p> <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	<p>CIVIL RIGHTS</p> <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	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <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 <p>Other:</p> <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	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
			<p>IMMIGRATION</p> <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 Remanded or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
 29 USC 201-216

Brief description of cause:
 FLSA - WAGE AND HOUR

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.V.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: 02/16/2017 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Humana Hit with Employee's FLSA Lawsuit](#)
