

FILED BY FAX

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10 on behalf of herself and similarly situated employees

FILED/ENDORSED
Clerk of the Superior Court

JUL 26 2021

By K. SHRONTZ
DEPUTY CLERK

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SOLANO

KIMBERLY WEBB, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

PROFESSIONAL HEALTHCARE AT
HOME, LLC, a California Limited Liability
Company; and
DOES 1 to 100, inclusive,

Defendants.

Case No. FCS055317

Assigned to Judge Christine Carringer For All
Purposes

CLASS ACTION

SECOND AMENDED COMPLAINT FOR
DAMAGES:

1. Wage Statement Violations
2. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff KIMBERLY WEBB ("Plaintiff"), on behalf of herself and all other similarly
situated employees, hereby files this Complaint against Defendants PROFESSIONAL
HEALTHCARE AT HOME, LLC, a California Limited Liability Company; and DOES 1 to 100,

SECOND AMENDED CLASS ACTION COMPLAINT

1 inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
2 Plaintiff allege the following:

3 **INTRODUCTION**

4 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
5 Plaintiff for wage statement violations.

6 **JURISDICTION AND VENUE**

7 2. The Solano County Superior Court has jurisdiction in this matter pursuant to California
8 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code and
9 Wage Order No. 5.

10 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
11 the wrongful acts and violations of law asserted herein occurred within Solano County, and Defendants'
12 obligation to pay wages arose in Solano County pursuant to *Madera Police Officers Assn. v. City of*
13 *Madera*, 36 Cal.3d 403, 414 (1984).

14 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
15 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
16 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
17 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
18 approximately August 13, 2020. Plaintiff provided facts and legal bases for her claims within the notice
19 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
20 Plaintiff submitted the \$75.00 filing fee. The August 13, 2020 notice was also sent via certified mail to
21 Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
22 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
23 believes that she has exhausted all administrative remedied pursuant to the Private Attorneys General
24 Act and may bring this action on behalf of herself and all similarly situated employees. *See* Cal. Labor
25 Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385
26 n.19 (2005).

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PARTIES

5. KIMBERLY WEBB is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, PROFESSIONAL HEALTHCARE AT HOME, LLC, is now and/or at all times mentioned in this Complaint was a California Limited Liability Company and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

8. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

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CLASS ALLEGATIONS

12. Plaintiff brings the First Cause of Action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

all individuals who have worked, or continue to work, for Defendants in California at any time from April 20, 2018 to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants had a policy and practice to issue paystubs to Plaintiff and putative class members that complied with Labor Code section 226;
- (2) Whether Defendants issued paystubs to Plaintiff and putative class members that did not state the address of the legal entity that employed Plaintiff and putative class members;
- (3) Whether Defendants issued paystubs to Plaintiff and putative class members that did not state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate;

(4) Whether Defendants issued paystubs to Plaintiff and putative class members that did not state the correct total overtime hours worked;

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class received inaccurate wage statements that did not state all of the information required by Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

14. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Plaintiff worked for Defendants from approximately June 26, 2012 to June 26, 2020.

17. Defendants issued defective paystubs to Plaintiff and similarly situated employees. Specifically, the paystubs did not include the address of the legal entity that employed Plaintiff and similarly situated employees. Additionally, rather than stating the total number of overtime hours worked by Plaintiff and similarly situated employees and the corresponding overtime rate, Defendants listed an overtime base rate, which was equivalent to Plaintiff's and similarly situated employees' regular rate of pay and an overtime premium rate, which was equivalent to half of Plaintiff's and similarly situated employees' regular rate of pay. Thus, Defendants failed to state the actual overtime rate for overtime wages it paid to Plaintiff and similarly situated employees. Moreover, by splitting the overtime rate into an overtime base rate and premium rate, Defendants listed twice the number of overtime hours worked by Plaintiff and similarly situated employees rather than the correct number of overtime hours worked. For example, during Plaintiff's 3/30/19 to 4/5/19 pay period, rather than stating Plaintiff worked 1.74 overtime hours with a corresponding overtime rate of \$92.70, Plaintiff's paystub stated she worked 1.74 hours earning a rate of \$61.80 and 1.74 hours earning a rate of \$30.90. As a result, Plaintiff and similarly situated employees were not able to promptly and easily determine the address of their employer, total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate from their paystubs alone.

CAUSES OF ACTION
FIRST CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

18. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 17 as though fully set forth herein.

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1 19. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
2 statement to an employee, semimonthly or at the time of each payment of wages, showing:

3 *(1) gross wages earned, (2) total hours worked by the employee, except for*
4 *any employee whose compensation is solely based on a salary and who is*
5 *exempt from payment of overtime under subdivision (a) of Section 515 or*
6 *any applicable order of the Industrial Welfare Commission, (3) the*
7 *number of piece-rate units earned and any applicable piece rate if the*
8 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
9 *all deductions made on written orders of the employee may be aggregated*
10 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
11 *period for which the employee is paid, (7) the name of the employee and*
12 *the last four digits of his or her social security number, (8) the name*
13 *and address of the legal entity that is the employer and, if the employer is*
14 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
15 *name and address of the legal entity that secured the services of the*
16 *employer, and (9) all applicable hourly rates in effect during the pay*
17 *period and the corresponding number of hours worked at each hourly rate*
18 *by the employee. The deductions made from payment of wages shall be*
19 *recorded in ink or other indelible form, properly dated, showing the*
20 *month, day, and year, and a copy of the statement and the record of the*
21 *deductions shall be kept on file by the employer for at least three years at*
22 *the place of employment or at a central location within the State of*
23 *California.*

24 20. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
25 itemized statement or failed to provide an accurate and complete itemized statement showing the
26 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
27 include the address of the legal entity that employed Plaintiff and similarly situated employees, the
28 total number of overtime hours worked, and all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate. Plaintiff and similarly
situated employees were not able to promptly and easily determine the address of their employer,
total hours worked and all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate from their paystubs alone

21 21. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
22 employees have been damaged as stated in the section below entitled "DAMAGES," which is
23 incorporated here to the extent pertinent as if set forth here in full.

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SECOND CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21 as though fully set forth herein.

23. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

24. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

25. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;

2. As to the First Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

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1 *Webb v. Professional Healthcare at Home, LLC*
2 *Solano County Superior Court of California, FCS055317*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On July 22, 2021, I served the following documents on the party below:

- 9 • Second Amended Complaint For Damages

10 Shannon B. Nakabayashi (SBN: 215469) 11 Hardev S. Chhokar (SBN: 311802) 12 JACKSON LEWIS P.C. 13 50 California Street, 9 th Floor 14 San Francisco, CA 94111-4615 15 Telephone: (415) 394-9400 16 Facsimile: (415) 394-9401 17 Email: hardev.chhokar@jacksonlewis.com 18 shannon.nakabayashi@jacksonlewis.com 19 fatimah.sikin@jacksonlewis.com 20 Suddie.Scott@Jacksonlewis.com	
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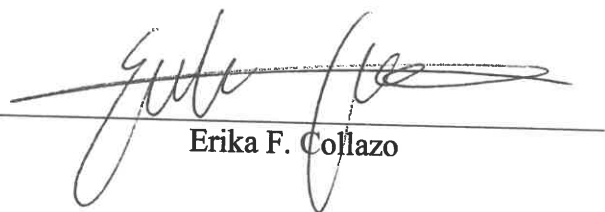
21 [] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set forth
25 above, I served the aforementioned document(s) on the parties in said action
26 by placing a true copy thereof enclosed in a sealed envelope with postage
27 thereon fully prepaid, for collection and mailing on this date, following
28 ordinary business practices, at Elk Grove, California, addressed as set forth
above.

19 [] [By Personal Service] By personally delivering a true copy thereof to the
20 office of the addressee above.

21 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
22 above. No error was reported by the e-mail service that I used.

23 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
24 personally delivered via the following overnight courier service: UPS.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct, and that this declaration was executed on July 22, 2021, at Elk Grove, California

27 
28 Erika F. Collazo