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Clerk of the Superior Court

OCT 28 2021

By D. HERTZ
DEPUTY CLERK

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on behalf of herself and similarly situated employees

**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

**THIRD 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,

FILED BY FAX

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 who received paper copies of their paystubs.

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;

(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

1 members of the putative class received inaccurate wage statements that did not state all of
2 the information required by Labor Code section 226. As a result, Plaintiff and each
3 member of the putative class will have suffered the same type of harm and seek the same
4 type of recovery based on the same legal theories.

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

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

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

25 GENERAL ALLEGATIONS

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

28 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. As a result, Plaintiff and similarly situated employees were not able to promptly and easily determine the address of their employer 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.

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

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

20. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not include the address of the legal entity that employed Plaintiff and similarly situated employees.

1 Plaintiff and similarly situated employees were not able to promptly and easily determine the address
2 of their employer during the pay period from their paystubs alone

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

6 **SECOND CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(As to all Defendants)**

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

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

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

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

20 25. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections
21 2699(a) and 2699.3.

22 **DAMAGES**

23 WHEREFORE Plaintiff requests relief as follows:

- 24 1. A jury trial;
- 25 2. As to the First Cause of Action:
 - 26 a. Penalties as provided for in Labor Code section 226, including the greater of all
27 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
28 violation occurred and one hundred dollars (\$100.00) per employee for each

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, Caitlyn A. Lopez, 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 October 25, 2021, I served the following documents on the party below:

9 • **THIRD 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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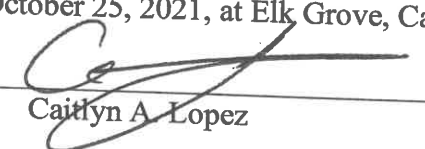
21 [] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the 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 October 25, 2021, at Elk Grove, California

27 
28 Caitlyn A. Lopez