

FILED/ENDORSED
Clerk of the Superior Court

JAN 11 2021

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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

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Wage Statement Violations**
- 2. Failure to Reimburse Expenses**
- 3. 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**,

FIRST AMENDED CLASS ACTION COMPLAINT

FAX FILED

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 and failure to pay reimbursement expenses.

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 remedies 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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28 //

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 through Second Causes 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;

- 1 (4) Whether Defendants issued paystubs to Plaintiff and putative class members that
2 did not state the correct total overtime hours worked;
- 3 (5) Whether as a result of Defendants' policies and practices Plaintiff and putative
4 class members received all reimbursements owed to them;
- 5 (6) Whether Defendants had a policy and practice to reimburse Plaintiff and putative
6 class members for the full amount of their expenses incurred;
- 7 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
8 class. The putative class also sustained damages arising out of Defendants' common
9 course of conduct in violation of the law as complained of herein. Plaintiff and all
10 members of the putative class received inaccurate wage statements that did not state all of
11 the information required by Labor Code section 226 and were not fully reimbursed for
12 expenses due to Defendants taxing Plaintiff's and putative class members'
13 reimbursements. As a result, Plaintiff and each member of the putative class will have
14 suffered the same type of harm and seek the same type of recovery based on the same
15 legal theories.
- 16 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
17 putative class. For all relevant times, Plaintiff resided in California and worked for
18 Defendants in California. Moreover, Plaintiff is an adequate representative of the
19 putative class as Plaintiff has no interests that are adverse to those of putative class
20 members. Additionally, Plaintiff has retained counsel who has substantial experience in
21 complex civil litigation and wage and hour matters.
- 22 (e) Superiority: A class action is superior to other available means for the fair and efficient
23 adjudication of the controversy since individual joinder of all members of the putative
24 class is impracticable. Class action treatment will permit a larger number of similarly
25 situated persons to prosecute their common claims in a single forum simultaneously,
26 efficiently, and without the unnecessary duplication of effort and expense that numerous
27 individual actions would engender. Further, as damages suffered by each individual
28 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. Plaintiff and similarly situated employees were reimbursed for certain expenses from Defendants; however, Defendants failed to fully reimburse Plaintiff and similarly situated employees as Defendants included the amounts paid as reimbursement to Plaintiff's and similarly situated employees' taxable wages. This policy and practice of Defendants to tax Plaintiff's and similarly situated employees' reimbursement amounts also resulted in unlawful deductions.

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

1 stated she worked 1.74 hours earning a rate of \$61.80 and 1.74 hours earning a rate of \$30.90. As a
2 result, Plaintiff and similarly situated employees were not able to promptly and easily determine the
3 address of their employer, total hours worked and all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate from their paystubs alone.

5 **CAUSES OF ACTION**
6 **FIRST CAUSE OF ACTION**
7 **WAGE STATEMENT VIOLATIONS**
8 **(As to all Defendants)**

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

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

13 *(1) gross wages earned, (2) total hours worked by the employee, except for*
14 *any employee whose compensation is solely based on a salary and who is*
15 *exempt from payment of overtime under subdivision (a) of Section 515 or*
16 *any applicable order of the Industrial Welfare Commission, (3) the*
17 *number of piece-rate units earned and any applicable piece rate if the*
18 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
19 *all deductions made on written orders of the employee may be aggregated*
20 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
21 *period for which the employee is paid, (7) the name of the employee and*
22 *the last four digits of his or her social security number or an employee*
23 *identification number other than a social security number, (8) the name*
24 *and address of the legal entity that is the employer and, if the employer is*
25 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
26 *name and address of the legal entity that secured the services of the*
27 *employer, and (9) all applicable hourly rates in effect during the pay*
28 *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, the
total number of overtime hours worked, and all applicable hourly rates in effect during the pay

1 period and the corresponding number of hours worked at each hourly rate. Plaintiff and similarly
2 situated employees were not able to promptly and easily determine the address of their employer,
3 total hours worked and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate from their paystubs alone

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

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO REIMBURSE EXPENSES**
10 **(As to all Defendants)**

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

13 23. California Labor Code section 2802(a) states that "An employer shall indemnify his or
14 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
15 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
16 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
17 unlawful."

18 24. Defendants included the amounts for reimbursements paid to Plaintiff and similarly
19 situated employees in their taxable wages. Because taxes were deducted from the amounts Defendants
20 paid Plaintiff and similarly situated employees to reimburse them for expenses, Defendants failed to
21 fully reimburse Plaintiff and similarly situated employees for the expenses they incurred.

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

25 **THIRD CAUSE OF ACTION**
26 **PRIVATE ATTORNEYS GENERAL ACT**
27 **(As to all Defendants)**

28 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
set forth herein.

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

- 4 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 5 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
6 Statements)
- 7 • Violation of Labor Code § 221, 223, 224, 225, 225.5 (Failure to Pay Contract Wages
8 and Unlawful Deductions)
- 9 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
10 Work in Any Industrial Welfare Commission Order)

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

13 29. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections
14 2699(a) and 2699.3.

15 DAMAGES

16 WHEREFORE Plaintiff requests relief as follows:

- 17 1. A jury trial;
- 18 2. As to the First Cause of Action:
 - 19 a. Penalties as provided for in Labor Code section 226, including the greater of all
20 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
21 violation occurred and one hundred dollars (\$100.00) per employee for each
22 violation in the subsequent pay periods, but not to exceed four thousand dollars
23 (\$4,000.00);
 - 24 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
25 226(e);
- 26 3. As to the Second Cause of Action:
 - 27 a. An amount to be proven at trial;
 - 28 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

1 4. As to the Third Cause of Action:

- 2 a. For civil penalties as provided for in the Labor Code for each enumerated
3 violation;
4 b. For those Labor Code sections, the violation of which there is no civil penalty
5 provided, the default penalty provided in Labor Code section 2699(f): for any
6 initial violation, one hundred dollars (\$100) for each aggrieved employee per
7 pay period; For any subsequent violation, two hundred dollars (\$200) for
8 each aggrieved employee per pay period;
9 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
10 d. For any other remedies as allowed by law and/or deemed appropriate by the
11 Court;

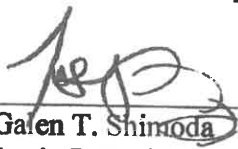
12 5. For such other and further relief as this Court may deem just and proper,
13 including, but not limited to:

- 14 a. Wages as proved at trial;
15 b. Injunctive and Declaratory relief;
16 c. Attorney's fees and costs as provided for by law; and
17 d. Interest.

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19
20
21 Dated: December 10, 2020

Shimoda Law Corp.

22
23 By: _____


Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

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, Rylee K. Fonseca, declare that:

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

8 On January 5, 2021, I served the following documents on the party below:

- 9 • First 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 San Francisco, CA 94111-4615 Telephone: (415) 394-9400 Facsimile: (415) 394-9401 Email: hardev.chhokar@jacksonlewis.com shannon.nakabayashi@jacksonlewis.com fatimah.sikin@jacksonlewis.com chris.davis@jacksonlewis.com	
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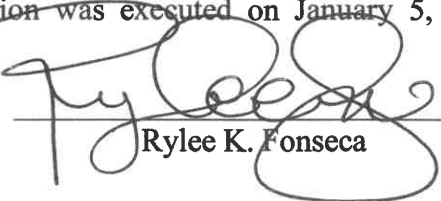
14 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
15 processing of correspondence for mailing with the United States Postal
16 Service and that each day's mail is deposited with the United States Postal
17 Service that same day in the ordinary course of business. On the date set
18 forth above, I served the aforementioned document(s) on the parties in
said action by placing a true copy thereof enclosed in a sealed envelope
with postage thereon fully prepaid, for collection and mailing on this date,
following 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
above. No error was reported by the e-mail service that I used.

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

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on January 5, 2021, at Elk Grove,
California

26 
27 Rylee K. Fonseca
28