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SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**

TAMIKO BROOKS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HOME CARE ASSISTANCE OF
CALIFORNIA, LLC, a Delaware Limited
Liability Company; HOME CARE
ASSISTANCE, INC., a California
Corporation; HOME CARE ASSISTANCE,
LLC, a Delaware Limited Liability Company,
and DOES 1 through 100,

Defendants.

Case No.: 21STCV06850

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Tamiko Brooks (“Plaintiff”) on behalf of herself and all others similarly situated,
2 hereby brings this Representative Action against Defendants Home Care Assistance of California,
3 LLC, a Delaware Limited Liability Company, Home Care Assistance, Inc., a California
4 Corporation, Home Care Assistance, LLC, a Delaware Limited Liability Company, and DOES 1
5 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all similarly aggrieved employees, hereby brings
8 this representative action for recovery civil penalties under California Labor Code § 2698 *et seq.*
9 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
10 amount in controversy exceeds this Court's jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to California Code of Civil
13 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
14 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business,
15 have an agent or agents within the County of Los Angeles, and/or otherwise are found within the
16 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
17 service of process.

18 **PARTIES**

19 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
20 Plaintiff was and currently is, a California resident. During the statute of limitations period,
21 Plaintiff was employed by Defendants as a non-exempt employee in Los Angeles County.

22 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
23 year preceding the date the California Labor and Workforce Development Agency (“LWDA”) and
24 Defendants were put on notice (and subsequent filing of this matter) and continuing to the
25 present, Defendants did (and continue to do) business within the County of Los Angeles and the
26 State of California by operating an in-home health care services company and therefore, were
27 (and are) doing business in the County of Los Angeles and the State of California.

1 5. Plaintiff does not know the true names or capacities, whether individual, partner,
2 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
3 defendants are sued under such fictitious names. Plaintiff prays for leave to amend this
4 Representative Action Complaint when the true names and capacities are known. Plaintiff is
5 informed and believes, and based thereon alleges, that each fictitiously named defendant is and
6 was responsible in some way for the alleged wage and hour violations and other wrongful conduct
7 which subjected Plaintiff and the aggrieved employees, as defined below, to the illegal
8 employment practices, wrongs and injuries complained of herein. All references in this
9 Complaint to “Defendants” shall be deemed to include all DOE Defendants.

10 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved
12 employees (as defined herein).

13 7. At all times herein mentioned, each of said Defendants participated in the doing
14 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
15 Defendants, and each of them, were the agents, servants, and employees of each and every one of
16 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
17 were acting within the course and scope of said agency and employment. Defendants, and each
18 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
19 omissions complained of herein.

20 8. At all times mentioned herein, Defendants, and each of them, were members of
21 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
22 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
23 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
24 aggrieved employees (as defined herein).

25 **REPRESENTATIVE ACTION ALLEGATIONS**

26 9. Defendants provide in-home health care services to elderly persons throughout
27 California. Plaintiff has been employed by Defendants in the non-exempt position of “Caregiver”
28 from approximately January 2020 to the present. Plaintiff has been on a leave of absence since

February 2020. Additionally, Plaintiff previously worked for Defendants in California from February 2017 to October 16, 2017, when she transferred to Las Vegas, Nevada where she continued to work until mid-2019. As Caregiver, Plaintiff provides personal attendant services at Defendants' clients' private homes.

10. During Plaintiff's employment with Defendants, Defendants regularly, systematically, and impermissibly rounded and/or truncated the hours worked by non-exempt employees in Defendants' favor, which resulted, over a period of time, in the failure to properly compensate them, including Plaintiff, for all hours worked, thereby depriving them of all required minimum and overtime wages earned. Specifically, Defendants required Plaintiff and other aggrieved employees to clock in and out using a call-in and/or smartphone application system, which recorded their time worked to the minute, but Defendants' timekeeping system failed to pay Plaintiff and other non-exempt employees for all hours worked "on-the-clock," whether by rounding and/or truncating of hours. Further, Defendants' rounding mechanism was not even-handed over time, as is required to be lawful. Therefore, Plaintiff and other aggrieved employees were not compensated for all hours actually worked, depriving them of all required minimum and overtime wages earned.

11. Defendants also required Plaintiff and other aggrieved employees to use their personal cellular phones for work. Specifically, Defendants required Plaintiff and other aggrieved employees to use their personal cellular phones to communicate with supervisors and coworkers, make calls for residents, track and manage patient care information through a smartphone application portal, and to clock in and out of shifts. However, Defendants never reimbursed Plaintiff for a reasonable portion of her cellular phone expenses, as mandated by *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014), and Labor Code § 2802.

12. Defendants also failed to provide Plaintiff and other non-exempt employees with all required meal periods because, upon information and belief, Defendants did not maintain a lawful meal period policy and failed to provide duty-free meal periods to Plaintiff and other non-exempt employees. Defendants required Plaintiff and other non-exempt employees to remain on the premises at all times during their scheduled shifts, and did not allow Plaintiff and other non-

1 exempt employees to leave clients unattended. Plaintiff and other non-exempt employees only
2 occasionally took interrupted meal breaks while they fed and/or monitored their clients' meal
3 times. Assuming *arguendo* that Plaintiff and Defendants entered into a lawful written on-duty
4 meal period agreement, such an agreement inherently concedes that the nature of Plaintiff's work
5 precluded duty-free rest periods.

6 13. Defendants also failed to authorize and permit Plaintiff and other non-exempt
7 employees to take all required duty-free rest periods because, upon information and belief,
8 Defendants did not maintain a lawful rest period policy and the nature of the work being
9 performed by Plaintiff and other non-exempt employees required that employees remain on duty
10 at all times during their shift, and therefore did not permit for duty-free rest periods while working.
11 Additionally, despite Defendants' failure to provide Plaintiff and other non-exempt employees
12 with all meal and rest periods to which they were legally entitled due to Defendants' uniform and
13 unlawful policies and/or practices, Defendants never provided Plaintiff and other non-exempt
14 employees with an hour of pay at their regular rate for each meal and rest period violation as
15 required by Labor Code § 226.7.

16 14. As a result of Defendants' failure to pay all earned minimum and overtime wages,
17 as well as meal and rest period premium wages, Defendants maintained inaccurate payroll
18 records, and issued inaccurate wage statements to Plaintiff and other aggrieved employees.

19 15. On approximately September 3, 2020, Plaintiff submitted a written personnel and
20 payroll records request to Defendants. Defendants failed to respond to Plaintiff's records request
21 within 21 days from the date of the request, in violation of Labor Code § 226(c).

22 16. Based on the foregoing, Plaintiff seeks to represent herself and all other aggrieved
23 employees, as defined by Labor Code § 2699(c), which includes all of Defendants' non-exempt
24 employees who worked for Defendants in California from December 17, 2019 through the
25 present.

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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACTION**

3 **(AGAINST ALL DEFENDANTS)**

4 17. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 18. Defendants have committed several Labor Code violations against Plaintiff and
6 other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of
7 Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
8 representative action against Defendants to recover the civil penalties due to Plaintiff, other
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
10 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for
11 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
12 each failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each
13 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
14 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
15 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
16 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
17 \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay
18 period for those violations of the Labor Code for which no civil penalty is specifically provided,
19 based on the following Labor Code violations;

- 20 a. Defendants violated Labor Code §§ 510, 558, 1194 and 1198 by failing to pay
21 Plaintiff and other aggrieved employees all overtime compensation earned;
- 22 b. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by
23 failing to pay Plaintiff and other aggrieved employees the statutory minimum wage
24 for all hours worked;
- 25 c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide
26 meal periods as required by law and failing to pay meal period premiums to
27 Plaintiff and other aggrieved employees at these employees’ respective regular
28 rates of compensation for meal period violations;

- 1 d. Defendants violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to
2 authorize and permit Plaintiff and other aggrieved employees to take all required
3 rest periods, and failing to pay rest period premiums to Plaintiff and other
4 aggrieved employees at these employees' respective regular rates of compensation
5 for rest period violations;
- 6 e. Defendants violated Labor Code § 2802 and 2804 by failing to reimburse Plaintiff
7 and other aggrieved employees for all necessary work expenses;
- 8 f. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
9 aggrieved employees all wages earned at least twice during each calendar month;
- 10 g. Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other
11 aggrieved employees with accurate and compliant itemized wage statements;
- 12 h. Defendants violated Labor Code §§ 558, 1174, and 1198 by failing to maintain
13 accurate records on behalf of Plaintiff and other aggrieved employees;
- 14 i. Defendants violated Labor Code §§ 201-203 by failing to timely pay all earned
15 wages to separating employees at the time of separation; and
- 16 j. Defendants violated Labor Code § 226 by failing to respond to Plaintiff and
17 other aggrieved employees' requests to inspect and/or copy employment records.

18 19. On December 17, 2020, Plaintiff notified Defendant Home Care Assistance of
19 California, LLC, via certified mail, and the LWDA via e-mail of Defendants' alleged California
20 Labor Code violations and Plaintiff's intent to bring a claim for civil penalties under California
21 Labor Code § 2698 *et seq.* with respect to those violations identified herein. Now that sixty-five
22 (65) days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has
23 exhausted her administrative requirements for bringing a claim under PAGA with respect to these
24 violations.

25 20. Plaintiff was compelled to retain the services of counsel to file this court action to
26 protect her interests and the interests of other aggrieved employees, and to assess and collect the
27 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
28 she is entitled to receive under California Labor Code § 2699.

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

4 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
6 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
7 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
8 pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial
9 violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee
10 per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation
11 pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial
12 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
13 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
14 subsequent violation per employee per pay period for those violations of the Labor Code for
15 which no civil penalty is specifically provided, based on the violations of Labor Code sections
16 cited in Paragraph 18 (a)-(j) above.;

17 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
18 2699(g), and Code of Civil Procedure § 1021.5; and

19 3. For such other and further relief, the Court may deem just and proper.

20
21 Dated: February 22, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

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23 By:



Fletcher W. Schmidt
Attorneys for Plaintiff