

NOTICE TO PLEAD

TO: Plaintiff Robertina Breauchy
You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from the date of service hereof or a judgment may be entered against you.

/s/ Michael J. Ossip
Attorney for Defendant

MORGAN, LEWIS & BOCKIUS, LLP
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You are notified

Attorneys for Defendant CareGivers America, LLC

**IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY,
PENNSYLVANIA**

ROBERTINA BREAUCHY,	:	
	:	
Plaintiff,	:	CLASS ACTION
	:	
v.	:	JURY TRIAL DEMAND
	:	
CAREGIVERS AMERICA, LLC,	:	16-cv-3638
	:	
Defendant.	:	

**DEFENDANT CAREGIVERS AMERICA, LLC'S VERIFIED ANSWER
TO PLAINTIFF'S COMPLAINT AND NEW MATTER**

Defendant CareGivers America, LLC (hereinafter “CareGivers”), by and through its undersigned counsel, hereby answers the Class Action Complaint (“Complaint”) of Plaintiff Robertina Breauchy (“Plaintiff”) as follows:

CareGivers admits that Plaintiff purports to bring this action as a class action seeking all available relief under the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §333.101 et seq., but denies that Plaintiff has actionable claims, denies that Plaintiff’s claims properly may be adjudicated as a class action, and denies that Plaintiff or those she seeks to represent are entitled to any relief.

PARTIES¹

1. CareGivers admits that its records reflect that Plaintiff’s last known address is 33 North Main Street, Muncy, Pennsylvania 17756.

2. CareGivers admits that it is a limited liability company headquartered at 718 South State Street, Clarks Summit, Pennsylvania 18411, but denies that it is a corporation.

JURISDICTION AND VENUE

3. The allegations in Paragraph 3 of the Complaint consist of legal conclusions to which no responsive pleading is required.

4. The allegations in Paragraph 4 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers admits that it conducts business in Philadelphia County via its Lansdale, Pennsylvania office. By way of further response, the parties have stipulated that venue is appropriate in Lackawanna County, where CareGivers’ headquarters is located, and the Court of Common Pleas of Philadelphia County has transferred this case to this Court.

¹ For the Court’s convenience and ease of reference, CareGivers has used the same section headings found in the Complaint, but it does not admit to the substance of any of those headings.

FACTS

5. CareGivers admits that it provides non-medical homecare and companionship services to customers in eastern and central Pennsylvania, including customers in Philadelphia County.

6. The allegations in Paragraph 6 of the Complaint purport to characterize information found on Caregivers' website, which speaks for itself. By way of further response, CareGivers admits that it employs individuals, known as "Caregivers," who are paid on an hourly basis to provide non-medical homecare and companionship services to its customers.

7. CareGivers admits that Plaintiff commenced her employment with CareGivers on March 14, 2013.

8. The allegations in Paragraph 8 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers specifically denies that its employees who are entitled to compensation, including overtime compensation, do not receive such compensation as required by the PMWA.

9. CareGivers denies that it determines compensable work hours based on the amount of time its Caregivers are scheduled to spend at each customer appointment. Pursuant to the CareGivers' Timekeeping Policy, CareGivers compensates its employees based on the amount of actual hours worked, rounded to the nearest quarter. CareGivers specifically denies that it did not compensate Plaintiff for "hundreds of compensable work hours." To the contrary, CareGivers compensated Plaintiff for all hours that she actually spent at each customer visit.

10. The allegations in Paragraph 10 of the Complaint regarding whether Plaintiff was "on duty" between customer visits consist of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, CareGivers admits that it compensated Plaintiff, at a rate of \$7.25 per hour, for the amount of time that it took her to travel

between scheduled customer appointments up to one hour for each period between customer visits. CareGivers specifically denies that it failed to compensate Plaintiff for the time elapsed between customer visits in accordance with the requirements of the PMWA.

11. CareGivers denies that it does not account for any travel time between customer visits when determining the amount of overtime hours worked by Plaintiff and other Caregivers. To the contrary, when calculating the number of compensable overtime hours, CareGivers accounts for the amount of travel time that is compensable under CareGivers' Timekeeping Policy.

CLASS ACTION ALLEGATIONS

12. CareGivers admits that Plaintiff purports to bring this action individually and on behalf of the class of employees listed in Paragraph 12 of the Complaint, but denies that any class as defined in Plaintiff's Complaint exists or is properly constituted.

13. The allegations in Paragraph 13 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers denies the allegations contained in Paragraph 13 of the Complaint and specifically denies that this action could be properly maintained as a class action pursuant to the Pennsylvania Rules of Civil Procedure.

14. The allegations in Paragraph 14 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers denies the allegations contained in Paragraph 14 of the Complaint and specifically denies that any class as defined in Plaintiff's Complaint exists or is properly constituted.

15. The allegations in Paragraph 15 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers

denies the allegations contained in Paragraph 15 of the Complaint and specifically denies that that any class as defined in Plaintiff's Complaint exists or is properly constituted.

16. The allegations in Paragraph 16 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers denies the allegations contained in Paragraph 16 of the Complaint and specifically denies that any class as defined in Plaintiff's Complaint exists or is properly constituted.

17. The allegations in Paragraph 17 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers denies the allegations contained in Paragraph 17 of the Complaint and specifically denies that any class as defined in Plaintiff's Complaint exists or is properly constituted.

18. The allegations in Paragraph 18 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers denies the allegations contained in Paragraph 18 of the Complaint and specifically denies that any class as defined in Plaintiff's Complaint exists or is properly constituted.

19. The allegations in Paragraph 19 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers denies the allegations in Paragraph 19 of the Complaint and specifically denies that any class as defined in Plaintiff's Complaint exists or is properly constituted.

COUNT I

20. CareGivers hereby incorporates by reference its response to paragraphs 1-19 as if fully set forth herein.

21. The allegations in Paragraph 21 of the Complaint consist of legal conclusions to which no responsive pleading is required.

22. The allegations in Paragraph 22 of the Complaint consist of legal conclusions to which no responsive pleading is required.

23. The allegations in Paragraph 23 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a response is required, CareGivers denies the allegations contained in Paragraph 23 of the Complaint and specifically denies that it violated the PMWA or that Plaintiff or those she seeks to represent are entitled to any relief.

JURY TRIAL DEMAND

CareGivers acknowledges that Plaintiff purports to demand a trial by jury, but denies that she is entitled to any of the relief that she seeks.

PRAYER FOR RELIEF

CareGivers denies all allegations and assertions contained in Plaintiff's request for relief and denies that Plaintiff or any of the individuals whom she seeks to represent are entitled to any relief whatsoever, including any of the relief sought in Paragraphs A-D of the Prayer for Relief.

GENERAL DENIAL

CareGivers denies each and every allegation contained in the Complaint that has not otherwise been specifically admitted herein.

NEW MATTER

1. Plaintiff's Complaint fails, in whole or in part, to state facts sufficient to constitute a cause of action upon which relief can be granted.
2. CareGivers has not violated any legal duty owed to Plaintiff and, therefore, Plaintiff is not entitled to any recovery against CareGivers.
3. CareGivers has paid Plaintiff all wages that were due and owing and to which she was entitled.

4. Plaintiff cannot state a claim for overtime pay under the PMWA during any workweek if she worked fewer than forty compensable hours.

5. Plaintiff's claims fail, in whole or in part, because she has been compensated for all hours worked in accordance with the requirements of the PMWA.

6. Plaintiff's claims are barred, in whole or in part, to the extent that she failed to satisfy the applicable statutes of limitations and/or filing periods.

7. The types of claims alleged by Plaintiff on behalf of herself and the alleged class are matters in which individual questions predominate and, accordingly, are not appropriate for class action treatment.

8. Plaintiff's claims are not similar, common, or typical of those of any allegedly similarly situated individuals, and there is no basis in law or fact for a class action.

9. To the extent that Plaintiff was paid compensation beyond that to which she was entitled while employed by CareGivers, such additional compensation would satisfy, in whole or in part, any alleged claim for unpaid overtime or other monetary relief.

10. Plaintiff's claims are barred as to all hours allegedly worked of which CareGivers lacked knowledge.

11. The time for which Plaintiff was allegedly not compensated involved only periods in which she was off duty and are not compensable under any applicable law or regulation.

12. Plaintiff's claims are barred, in whole or in part, to the extent that she violated policies and guidelines or worked in violation of her supervisors' or managers' instructions.

RESERVATION OF RIGHTS

CareGivers reserves the right to amend its Answer and New Matter to the Complaint and to assert such additional defenses that may appear and prove applicable during the course of discovery and its continuing fact investigation.

WHEREFORE, CareGivers respectfully requests that Plaintiff's Complaint be dismissed in its entirety, with prejudice, and that the Court award CareGivers such other relief as the Court deems appropriate.

Respectfully Submitted,

MORGAN, LEWIS & BOCKIUS, LLP

/s/ Michael J. Ossip

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Keri L. Engelman (ID No. 311906)

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Dated: July 7, 2016

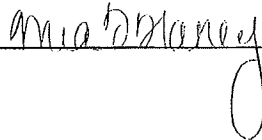
(215) 963-5000
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VERIFICATION

I, Mia Hancy, the President, at CareGivers America, LLC have read the foregoing Verified Answer and New Matter of Defendant CareGivers America, LLC to Plaintiff's Complaint. The averments contained therein are true to the best of my personal knowledge, information, and belief.

I understand that the statements contained herein are subject to the penalties set forth in 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: July 5, 2016



CareGivers America, LLC

CareGivers America, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2016, a true and correct copy of Defendant's Verified Answer and New Matter to Plaintiff's Complaint was sent via regular and electronic mail to all counsel of record including:

Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025

Date: July 7, 2016

/s/ Michael J. Ossip
Michael J. Ossip