

Peter Winebrake, Esquire (80496)  
 R. Andrew Santillo (93041)  
 Mark J. Gottesfeld (307752)  
 WINEBRAKE & SANTILLO, LLC  
 715 Twining Road, Suite 211  
 Dresher, PA 19025  
 Phone: (215) 884-2491  
 Attorneys for Plaintiff

MAURID D. KELLY  
 LACKAWANNA COUNTY  
 CLERK OF JUDICIAL  
 RECORDS CIVIL DIVISION  
 2017 MAY 16 AM 9 47

ROBERTINA BREAUCHY,  <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">v.</div> CAREGIVERS AMERICA, LLC,  <div style="text-align: right;">Defendant.</div>	: COURT OF COMMON PLEAS : LACKAWANNA COUNTY : : <b>FIRST AMENDED COMPLAINT -</b> : <b>CLASS ACTION</b> : : <b>2016-cv-3638 (Judge Moyle)</b> : : JURY TRIAL DEMANDED
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**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER [OR CANNOT AFFORD ONE], GO TO OR TELEPHONE THE OFFICE BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

NORTH PENN LEGAL SERVICES  
 507 LINDEN STREET, 3<sup>RD</sup> FLOOR  
 SCRANTON, PA 18503  
 (570) 342-0184

LAWYER REFERRAL SERVICE  
 LACKAWANNA BAR ASSOCIATION  
 338 N. WASHINGTON AVE, 3<sup>RD</sup> FLOOR  
 SCRANTON, PA 18503-1502  
 (570) 969-9600

## **FIRST AMENDED COMPLAINT – CLASS ACTION<sup>1</sup>**

Plaintiff Robertina Breauchy brings this class action lawsuit against Defendant CareGivers America, LLC, seeking all available relief under the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, et seq., the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq., and the Pennsylvania doctrine of unjust enrichment.

### **PARTIES**

1. Plaintiff resides at 33 North Main Street, Muncy, PA 17756.
2. Defendant is a corporation headquartered at 718 South State Street, Clarks Summit, PA 18411.

### **JURISDICTION AND VENUE**

3. This Court has personal jurisdiction over Defendant.
4. Venue in this Court is proper because, inter alia, Defendant is headquartered in and regularly conduct business in Lackawanna County.

### **FACTS**

5. Defendant is in the business of providing, inter alia, homecare and companionship services to customers in Pennsylvania, including within Lackawanna County.
6. Defendant employs individuals who are paid on an hourly basis and provide homecare and companionship services to Defendant’s customers. These employees – who hold job titles such as, for example, Caregiver, Certified Nurse Assistant, CNA, Home Health Aid, and HHA – are generally referred to by Defendant as “Caregivers.”

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<sup>1</sup> As reflected in the accompanying Stipulation, this First Amended Complaint is filed with Defendant’s consent pursuant to Pa. R. Civ. P. 1033.

7. Plaintiff was employed by Defendant as a Caregiver during the time period relevant to this lawsuit.

8. Caregivers sometimes visit the homes of more than one customer in a single workday. On such occasions, Defendant generally fails to compensate Plaintiff and other Caregivers for all of the time elapsed between customer visits. For example, if Plaintiff was scheduled to leave the home of her first customer at 10:15 a.m. and to arrive at the home of her second customer at 11:00 a.m., she often would not be compensated for the entire 45-minute period. Instead, she often would receive “travel time” pay for only a portion of the 45-minute period.

9. Because Plaintiff and other Caregivers often are credited with working 40 or more hours per week, much of the uncredited time described in paragraph 8 would be compensable at a “time and one-half” overtime premium rate if it were credited.

### **CLASS ACTION ALLEGATIONS**

10. Plaintiff brings this lawsuit as a class action on behalf of herself and all individuals who have worked for Defendant as hourly caregivers and, on at least ten (10) individual workdays during the period from November 10, 2012 until February 17, 2017, traveled between the homes of two or more different clients. Based on discovery, Plaintiff believes the number of Class Members approximates 2,250 individuals.

11. This action is properly maintained as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709.

12. The class is so numerous that joinder of all individual members is impracticable.

13. Defendant's conduct with respect to Plaintiff and the class raises questions of law and fact that are common to the entire class.

14. Plaintiff's claims and Defendant's anticipated defenses are typical of the claims or defenses applicable to the entire class.

15. Plaintiff's interests in pursuing this lawsuit are aligned with the interests of the entire class.

16. Plaintiff will fairly and adequately protect class members' interests because she and her experienced and well-financed counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of the entire class.

17. A class action provides the fairest and most efficient method for adjudicating the legal claims of all class members.

#### **COUNT I – PMWA**

18. All previous paragraphs are incorporated as though fully set forth herein.

19. Defendant is an employer covered by the PMWA's overtime pay mandate, and Plaintiff and the class members are employees entitled to the PMWA's protections.

20. The PMWA requires Defendant to pay Plaintiff and other class members overtime premium compensation calculated at 150% of their regular pay rate for all hours worked over 40 per week.

21. Defendant violated the PMWA by failing to pay Plaintiff and other class members for all hours worked over 40 per week.

#### **COUNT II – FLSA**

22. All previous paragraphs are incorporated as though fully set forth herein.

23. Defendant is an employer covered by the FLSA's overtime pay mandate, and Plaintiff and the class members are employees entitled to the FLSA's protections.

24. The FLSA requires Defendant to pay Plaintiff and other class members overtime premium compensation calculated at 150% of their regular pay rate for all hours worked over 40 per week.

25. Defendant violated the FLSA by failing to pay Plaintiff and other class members for all hours worked over 40 per week.

### **COUNT III – UNJUST ENRICHMENT**

26. All previous paragraphs are incorporated as though fully set forth herein.

27. The Pennsylvania unjust enrichment doctrine allows a plaintiff to recover damages when she: (i) has conferred a benefit on the defendant; (ii) the benefit has appreciated to the defendant; and (iii) under the circumstances, it is inequitable for the defendant to retain the benefit without payment of value.

28. Plaintiff and other class members conferred a benefit on Defendant through their willingness to visit multiple customers in a single workday, and Defendant benefitted from such multiple-customer visits.

29. It is inequitable for Defendant to retain the benefits of multiple-customer visits without compensating Plaintiff and other class members for all of the time expired between such visits. As such, Defendant has been unjustly enriched.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and the class, seek the following relief:

- A. Unpaid wages to the fullest extent permitted under the law;
- B. Prejudgment interest to the fullest extent permitted under the law;

- C. Liquidated damages to the fullest extent permitted under the FLSA;
- D. Litigation costs, expenses, and attorney's fees to the fullest extent permitted under the law; and
- E. Such other and further relief as this Court deems just and proper.

Date: May 12, 2017

Respectfully,



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Peter Winebrake (PA Attorney No. 80496)  
R. Andrew Santillo (PA Attorney No. 93041)  
Mark J. Gottesfeld (PA Attorney No. 307752)  
Winebrake & Santillo, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025  
(215) 884-2491

*For Plaintiff and the Putative Class*

**VERIFICATION**

I, Robertina Breauchy, hereby state:

1. I am a plaintiff in this action;
2. I verify that the statements made in the accompanying Amended Complaint are true and correct to the best of my knowledge information and belief; and
3. I understand that the statements in the Complaint are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: May 12, 2017

DocuSigned by:  
*Robertina Breauchy*  
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Signature