

Court of Common Pleas of Philadelphia County  
 Trial Division  
**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)  
**NOVEMBER 2015**  
 E-Filing Number: 1511023086 **001532**

PLAINTIFF'S NAME ROBERTINA BREAUCHY	DEFENDANT'S NAME CAREGIVERS AMERICA, LLC
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PLAINTIFF'S ADDRESS 33 NORTH MAIN STREET MUNCY PA 17756	DEFENDANT'S ADDRESS 718 SOUTH STATE STREET CLARKS SUMMIT PA 18411
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PLAINTIFF'S NAME	DEFENDANT'S NAME
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PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
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PLAINTIFF'S NAME	DEFENDANT'S NAME
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PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
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TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 1	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition Action <input type="checkbox"/> Transfer From Other Jurisdictions <input type="checkbox"/> Notice of Appeal
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AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury <input checked="" type="checkbox"/> Other: CLASS ACTION	<input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition <input type="checkbox"/> Commerce <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival
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CASE TYPE AND CODE  
 C1 - CLASS ACTION

STATUTORY BASIS FOR CAUSE OF ACTION

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)	<b>FILED</b> <b>PRO PROTHY</b> <b>NOV 10 2015</b> <b>D. SAVAGE</b>	IS CASE SUBJECT TO COORDINATION ORDER? YES      NO
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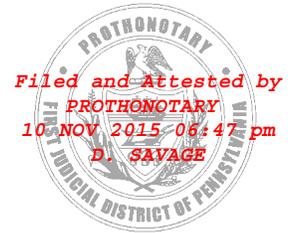
TO THE PROTHONOTARY:  
 Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: ROBERTINA BREAUCHY  
 Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY PETER D. WINEBRAKE	ADDRESS WINEBRAKE & SANTILLO, LLC 715 TWINING ROAD, SUITE 211 DRESHER PA 19025
PHONE NUMBER (215) 884-2491	FAX NUMBER (215) 884-2492

SUPREME COURT IDENTIFICATION NO. 80496	E-MAIL ADDRESS pwinebrake@winebrakelaw.com
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SIGNATURE OF FILING ATTORNEY OR PARTY <i>PETER WINEBRAKE</i>	DATE SUBMITTED Tuesday, November 10, 2015, 06:47 pm
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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  
Phone: (215) 884-2491



*Plaintiff's Counsel*

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ROBERTINA BREAUCHY,

Plaintiff,

v.

CAREGIVERS AMERICA, LLC,

Defendant.

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:  
: PHILADELPHIA COUNTY  
: COURT OF COMMON PLEAS  
:  
: CLASS ACTION  
:  
: JURY TRIAL DEMANDED  
:  
:

**COMPLAINT -- CLASS ACTION**

**10 — Contract: Other**

**NOTICE**

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 the 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 SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

PHILADELPHIA BAR ASSOCIATION  
Lawyer Referral and Information Service  
1101 Market Street, 11th Floor  
Philadelphia, Pennsylvania 19107  
(215) 238-1701

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notification. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notification. Ademas, la corte puede decidira favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

**LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATA-MENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.**

ASOCIACION DE LICENCIADOS DE  
FILADELFIA  
Servicio De Referencia E Informacion Legal  
1101 Market Street, 11th Floor  
Filadelfia, Pennsylvania 19107  
(215) 238-1701

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.

### **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 regularly conduct business in Philadelphia County. For example, Defendant’s website represents that Defendant’s Lansdale, PA office serves Philadelphia County.

### **FACTS**

5. Defendant is in the business of providing, inter alia, non-medical homecare and companionship services to customers throughout eastern and central Pennsylvania, including within Philadelphia 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.” As Defendant’s website explains: “A trained CareGiver will assist customers to safely complete activities of daily living, such as bathing, grooming, transportation to medical appointments, grocery shopping, meal preparation, medication

reminders, and companionship.” See <http://www.caregiversamerica.com/non-medical-home-health-care>.

7. Plaintiff has been employed by Defendant as a Caregiver since approximately March 2013.

8. The PMWA defines compensable work to include, inter alia, the time during which an employee is required “to be on duty or to be at the prescribed work place” and “time spent in traveling as part of the duties of the employee during normal working hours.” 34 Pa. Code § 231.1. The PMWA also entitles employees to overtime compensation “not less than one and one-half times” the employee’s regular pay rate for all hours worked over 40 hours in a 7-day workweek. See 43 P.S. § 333.104(c). This entitlement extends to Plaintiff and other Caregivers. See Bayada Nurses, Inc. v. Commonwealth, 8 A.2d 866 (Pa. 2010); Grajales v. Safe Haven Quality Care, LLC, 2013 Pa. Dist. & Cnty. Dec. LEXIS 128 (Dauphin Cty. Com. Pl. Sept. 5, 2013).

9. In determining the compensable work time that Plaintiff and other Caregivers spend at customers’ homes, Defendant generally utilizes the Caregiver’s *scheduled* – rather than *actual* – customer visit hours. This practice results in Plaintiff and other Caregivers receiving no payroll credit for time spent working at customers’ homes either before or after the scheduled visit hours. Plaintiff, who often has been required to perform work at customers’ homes outside of the scheduled visit hours, estimates that Defendant’s above practice has robbed her of hundreds of compensable work hours.

10. Also, Defendant generally fails to compensate Plaintiff and other Caregivers for all 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 – compensable at the \$7.25/hour minimum wage rate – for only a portion of the 45-minute period. And sometimes, she would receive no travel time pay at all. This is true even though Plaintiff was on-duty during the entire 45 minutes.

11. Moreover, in determining the number of overtime hours worked by Plaintiff and other Caregivers, Defendant does not count any travel time. For example, if, during a particular 7-day workweek, Plaintiff was credited with spending 42 hours at customers’ homes and was credited with 3 hours of travel time, she would receive overtime premium pay for only 2 – rather than 5 – overtime hours.

### **CLASS ACTION ALLEGATIONS**

12. Plaintiff brings this lawsuit as a class action on behalf of herself and all individuals who, during any time within the past three years, were employed by Defendant as Caregivers, as defined in paragraph 6 above.

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

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

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

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

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

18. 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.

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

### **COUNT I**

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

21. 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.

22. The PMWA requires Defendant to pay Plaintiff and other class members overtime premium compensation "not less than one and one-half times" the regular pay rate for all hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

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

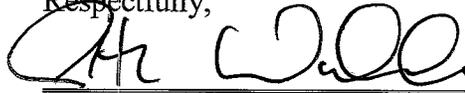
### **PRAYER FOR RELIEF**

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

Date: November 10, 2015

Respectfully,



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

Jerry Martin, Esq. (*pro hac vice* admission anticipated)  
Barrett Johnston Martin & Garrison LLC  
414 Union Street, Suite 900  
Nashville, TN 37219  
(615) 244-2202

*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 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: November 10, 2015

  
Signature