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and all Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

MARIA ELENA VILLALOBOS, an
individual; on behalf of herself and all
Aggrieved Employees,

Plaintiffs,
v.

PEGGY DAY ENTERPRISES, INC. a
California corporation; MARGARET A.
HENEKS, an individual; and
DOES 1-100, inclusive,

Defendants.

Case No.: 22CV002959

[Hon. Carrie M. Panetta]

**DECLARATION OF JOHN A. VAN HOOK
IN SUPPORT OF MOTION FOR
APPROVAL OF SETTLEMENT OF
REPRESENTATIVE PAGA CLAIMS**

Filed concurrently herewith:

- **MOTION AND MEMORANDUM OF
POINTS AND AUTHORITIES**
- **[PROPOSED] ORDER**

Date: December 1, 2023

Time: 8:30am

Dept.: 14

1 I, John A. Van Hook, declare as follows:

2 1. I am a member of the Bar of the State of California (SBN 205067) and am
3 admitted to practice before all courts of the State of California. I am the owner of the Van
4 Hook Law Firm, and co-lead counsel of record for the named Plaintiff Maria Elena Villalobos
5 (“Plaintiff” or “Villalobos”) and the allegedly aggrieved employees. I submit this declaration
6 in support of Plaintiff’s Motion for Approval of Representative PAGA Claims (the “Motion”).
7 I have personal knowledge of the facts set forth in this declaration and, if called upon to do so,
8 could and would testify competently thereto, except where I make a statement on information
9 and belief, in which case I am informed and believe the statement to be true.

10 2. Along with my co-counsel, Adrian C. Byrne of The Byrne Law Group, I have
11 been lead counsel on behalf of Plaintiff and the allegedly aggrieved employees throughout this
12 action.

13 3. My co-counsel and I began to investigate potential wage and hour claims by
14 Plaintiff against Defendants Peggy Day Enterprises, Inc. (“Peggy Day”) and Margaret A.
15 Heneks (“Heneks”) (“Defendants”) in or about April 2022. After investigation and evaluation
16 of potential claims, on June 16, 2022, Plaintiff filed a notice of potential claims with the Labor
17 and Workforce Development Agency (“LWDA”) pursuant to PAGA, in which Plaintiff
18 identified as allegedly “Aggrieved Employees” all of Defendants non-exempt employees in
19 California from June 16, 2021, to April 20, 2023 (the “PAGA Period”).

20 4. On October 3, 2022, after waiting the statutorily required 65-day notice period,
21 Plaintiff filed this action in the Superior Court of California, County of Monterey, Case No.
22 22STCV03448 (“the Lawsuit”).

23 5. Shortly after filing the Lawsuit, the Parties began to discuss a potential
24 resolution. Significantly, Defendants argued that they run a small family-owned business upon
25 which the financial burden of protracted litigation would have a devastating effect,
26 jeopardizing the existence of the business. Moreover, protracted litigation of these claims

1 would cause Plaintiff to incur attorney's fees and costs that would far outweigh the potential
2 penalties at issue. Therefore, in the interests of achieving a beneficial result for Plaintiff, the
3 State of California and the potential aggrieved employees, as well as the interests of judicial
4 efficiency, Plaintiff and Defendants began to focus their efforts on a potential resolution.

5 6. Counsel for the Parties began exchanging information regarding the Lawsuit,
6 both formally and informally. On December 20, 2022, Plaintiff served formal written
7 discovery on Defendants, including Requests for Production of Documents, Form
8 Interrogatories (Employment), Form Interrogatories (General), and Special Interrogatories.
9 Defendants responded to these requests. Plaintiff also served a Notice of Deposition of Peggy
10 Day's Person Most Knowledgeable ("PMK"). On February 17, 2023, Defendants provided
11 data for the allegedly Aggrieved Employees which indicated that there were approximately 181
12 Aggrieved Employees who worked a total of approximately 2,352 pay periods during the
13 PAGA Claim Period.

14 7. The Parties scheduled a full-day private mediation for April 20, 2023, with
15 highly experienced mediator Brandon McKelvey, Esq., of McKelvey Resolution. In advance of
16 that mediation, Defendants provided Plaintiff with additional documents and information,
17 including Plaintiff's personnel, payroll records, and timekeeping records. In addition, with
18 respect to data concerning the Plaintiffs' representative claims, Defendants also provided
19 headcounts, and pay period data for the allegedly Aggrieved Employees during the PAGA
20 Period.

21 8. In further preparation for mediation and to facilitate analysis of Defendants'
22 PAGA exposure, my co-counsel and I conducted our own investigation, conducting extensive
23 interviews with the Plaintiff, and reviewing relevant policies and procedures applicable to the
24 claims at issue, including overtime pay, wage statements, meal and rest breaks, among other
25 pertinent issues.

9. On April 20, 2023, the Parties participated in a full-day private mediation. The Parties exchanged substantial information through the mediation, including legal authority regarding disputed legal issues, and additional information regarding relevant policies and procedures. In addition, Defendants shared significant information regarding the financial condition of the corporate defendant, as well as the finances and assets of the individual defendant. Based on this information, I believe that there was a substantial risk that further litigation could result in the insolvency of one or more of the Defendants and that Defendants would likely be unable to pay a substantial monetary judgment if one were obtained at trial.

10. Through this mediation, the Parties reached an agreement in principle to resolve this matter on a PAGA representative basis (the “PAGA Settlement”) in addition to reaching a confidential agreement for the resolution of all of Plaintiff’s individualized claims, including her claims for wrongful termination, retaliation, disability discrimination and individual claims under the Labor Code for unpaid wages, penalties and other individualized relief. These individual claims were settled separately, have already been dismissed, and their settlement was not dependent upon the PAGA settlement or its court approval.

11. On or about June 8, 2023, the Parties fully executed the long-form PAGA Settlement Agreement. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Settlement Agreement.

12. The PAGA Settlement Agreement provides that Defendants will pay a total of \$50,000 (the “Gross PAGA Settlement Fund”), as a non-reversionary settlement fund to settle the representative PAGA claims in this action. From the Gross Settlement Fund of \$50,000, the following amounts will be paid, subject to this Court’s approval:

- a. Plaintiffs' Counsel's attorney's fees of less than 1/3 of the Gross PAGA Settlement Fund (\$16,500.00) in connection with the PAGA claims;
- b. Reimbursement of Plaintiff's Counsel's out-of-pocket litigation expenses of \$4,336 arising out of the PAGA Claims; and

1 c. PAGA Settlement administration expenses of \$3,500.

2 d. This results in an estimated Net PAGA Settlement Fund of \$25,664.00
3 (comprised of the Gross PAGA Settlement Fund, minus requested fees,
4 costs, and PAGA settlement administration expenses).

5 13. As required by PAGA, 75% of the Net PAGA Settlement Fund will be paid to
6 the LWDA and the remaining 25% of the Net PAGA Settlement Fund will be distributed
7 among the Aggrieved Employees on a pro-rata basis according to their pay periods during the
8 relevant time period. Defendants' data as of April 20, 2023, indicates approximately 181
9 current and former Aggrieved Employees and a total of approximately 2,352 pay periods. The
10 Parties agreed that the 2,352 pay periods shall be subject to a 10% buffer, meaning that no
11 additional consideration shall be necessary if the total number of weekly pay periods in the
12 PAGA Member List is not greater than 2,587 (110% of 2,352). If the total number of weekly
13 pay periods is greater than 2,587, then the Gross PAGA Settlement Amount shall be increased
14 by a pro-rata amount for those pay periods greater than 2,587.

15 14. Payments will be made to the Aggrieved Employees by check to their last
16 known home address, and Aggrieved Employees will not be required to submit a claim form or
17 take any other steps to receive their payment. As this is a PAGA-only settlement, non-PAGA
18 individualized claims (such as claims for alleged unpaid wages, or wrongful termination) of
19 other Aggrieved Employees are not being released by virtue of the PAGA Settlement.

20 15. Subject to the Court's approval, the settlement administration, including
21 calculation and issuance of payments, will be performed by Phoenix Settlement Administrators
22 ("PSA"), a nationally recognized settlement administrator. A true and correct copy of the quote
23 provided by PSA is attached as **Exhibit 2**.

24 16. The PAGA Settlement Agreement provides for payment of the PAGA
25 settlement funds by way of two instalments, as follows:

26 i. Within One Hundred Fifty (150) days of April 20, 2023 (i.e., September 17,

2023) Defendants shall deposit Twenty-five Thousand Dollars and No/100 Cents (\$25,000.00) with the Settlement Administrator.

ii. Within Two Hundred Forty (240) days of April 20, 2023 (i.e., December 16, 2023) (the “Funding Date”), Defendants shall deposit the remaining Twenty-five Thousand Dollars and No/100 Cents (\$25,000.00) with the Settlement Administrator.

17. On December 16, 2023, Defendants will provide the PAGA Settlement Administrator with the PAGA Member List, which shall be used solely for the administration of this PAGA Settlement and for no other purpose, and which shall not be shared with any persons or entity not employed by the PAGA Settlement Administrator and working on the administration of this PAGA Settlement.

18. Within 28 days from December 16, 2023 (the date the full amount of the Gross Settlement Amount has been deposited with the Settlement Administrator), the Settlement Administrator shall cause all Settlement Payments to be paid, including the payment to the LWDA, the payment to the Aggrieved Employees, and the payments to Plaintiff’s Counsel for the approved attorney’s fees and costs. Accompanying the payments to the Aggrieved Employees the PAGA Settlement Administrator will mail a Notice of Settlement of PAGA Action. Attached hereto as **Exhibit 3** is a true and correct copy of the Notice of Settlement of PAGA Action.

19. Concurrent with the filing of this Motion, Plaintiff’s Counsel has submitted the PAGA Settlement Agreement to the LWDA for its review.

20. As set forth in the Motion, the PAGA Settlement Agreement here was the result of extensive arm’s-length negotiations between the Parties. Given the risks and challenges that Plaintiffs’ claims would face in extended litigation, and the vigorous substantive and procedural defenses that Defendants would present, my co-counsel and I believe that this is a fair and reasonable settlement, and a fair and reasonable outcome for the LWDA and for the

1 Aggrieved Employees. As described above, the financial position of the Defendants was also a
2 factor in the settlement, as protracted litigation of these claims would cause Plaintiff to incur
3 attorney's fees and costs that could far outweigh the amounts of PAGA penalties potentially at
4 issue. In negotiating this PAGA Settlement, my co-counsel and I applied various risk discounts
5 to account for the perceived strengths and weaknesses of each claim, as well as Defendants'
6 anticipated defenses.

7 21. Throughout this litigation, including in the settlement negotiations and in the
8 settlement agreement, Defendants steadfastly argue that Plaintiff would lose her PAGA claims
9 if they were tried because Defendants complied with their obligations under the Labor Code.
10 As to Plaintiff's claims for unpaid wages and overtime, Defendants have argued that they had
11 lawful timekeeping and payroll policies, and that they had a valid expense policy that
12 adequately reimbursed all expenses due. Defendants also argue that they provided meal periods
13 and authorized and permitted employees to take rest periods, and that any non-compliant meal
14 and rest periods were the result of decisions by the employees themselves, and not the result of
15 Defendants' actions. Further, Defendants also argue that their wage statements are accurate and
16 complete, arguing that Plaintiff's theories of recovery on wage statement penalties are factually
17 and legally unsupported. Defendants also argued that even if some violations could be proven,
18 not every aggrieved employee could establish a violation in every pay period, greatly reducing
19 the potential PAGA penalties that Plaintiff could recover.

20 22. While Plaintiff rejects these various defenses, they have not been tested in
21 litigation, raising substantial risks and uncertainty that some or all of Plaintiff's PAGA claims
22 might be defeated on the merits if this litigation continued. Further, even if Plaintiff were to
23 prevail on all of her PAGA claims, it is far from certain that Plaintiff could prove that *every*
24 *aggrieved employee* suffered a violation in *every pay period*, as is assumed by Plaintiff's
25 estimate of potential PAGA penalties.

23. While Plaintiffs, my co-counsel and I remained confident that we could overcome these arguments and defenses, and ultimately prevail, these issues created a substantial risk that Plaintiff would not prevail on a representative basis. If Plaintiff prevailed on a representative basis, substantial risk remained as to the recoverability of any award based upon Defendants' financial position.

24. Additional uncertainties existed with respect to the valuation of Plaintiffs' PAGA claims. In addition to Defendants' defenses on the underlying claims, there is conflicting and developing case law regarding PAGA and its calculation of penalties, including the availability of "stacked" PAGA penalties and the Court's discretion to reduce PAGA penalties under Labor Code § 2699(e)(2), which created further uncertainties as to the amounts of PAGA penalties that Plaintiffs might recover, even if they did prevail. While Plaintiff certainly disputes this statutory interpretation, Plaintiff recognizes the lack of certainty, including the lack of appellate authority, as to how trial Courts would interpret the statute and the amount of penalties, if any, that may be awarded.

25. In light of these potential issues, and in my experience settling and obtaining court approval of PAGA and other wage-and-hour settlements, this is fair and reasonable result for the State of California (which will receive 75% of the Net Settlement Fund) and the Aggrieved Employees (which will receive the remaining 25% on a pro-rata basis).

26. The following is a brief description of my legal background. I have been practicing law in the State of California for more than 23 years. I graduated from Harvard Law School in 1999 and was admitted to the California State Bar in December 1999. I have practiced employment law almost exclusively since May 2003, including approximately 14 years in the Labor and Employment departments of two leading national law firms, during which handled wage and hour class actions, FLSA collective actions, and representative PAGA actions, among other wage and hour litigation. I also provided clients with employment advice and counsel, including on wage and hour issues. I estimate that I handled more than 65 class,

collective, and PAGA representative cases during this time, including many involving banking and financial industry employees.

27. In June 2019, I started my own practice focusing on representing workers in employment litigation, including wage and hour, class and PAGA representative actions. I am currently handling multiple putative class and PAGA representative actions on behalf of workers in California courts.

28. In reaching the settlement, my co-counsel and I assessed and advised Plaintiff on all of the risks of continued pursuit of this litigation and the factors in valuing these claims. Based on my knowledge of the facts of this case, my evaluation of the strengths and challenges of Plaintiff's claims and Defendants' defenses, I believe the PAGA Settlement Agreement represents a fair and reasonable result and a beneficial settlement of these claims. I, along with my c-counsel and Plaintiff, fully support this PAGA settlement.

29. This PAGA Settlement Agreement provides for reimbursement of Plaintiffs' litigation costs of up to \$4,336. The following is a description of the costs incurred in connection with this PAGA settlement.

Cost Amount	Nature of Cost Incurred
\$75.00	PAGA notice filing fee
\$511.00	Court filing and service fees
\$3,750.00	Mediation fee
\$4,336.00	Costs Total

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 25, 2023, at Sherman Oaks, California.



John A. Van Hook

EXHIBIT

1

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“PAGA Settlement Agreement”) is made by and between Plaintiff MARIA ELENA VILLALOBOS (“Plaintiff”), individually, and on behalf of all other aggrieved employees (the “Aggrieved Employees,” as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) on the one hand, and Defendant PEGGY DAY ENTERPRISES, INC., MARGARET HENEKS (“Defendants”), on the other hand. Plaintiff and Defendants are collectively referred to herein as “the Parties.”

This PAGA Settlement Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees she represents, the State of California, and Defendants, subject to the approval of the Court.

WHEREAS, on October 3, 2022, Plaintiff filed a complaint (“Complaint”) in the Superior Court of California, County of Monterey, entitled *Maria Elena Villalobos, an individual, on behalf of herself and all Aggrieved Employees v. Peggy Day Enterprises, Inc., a California corporation; Margaret A. Heneks, an individual; and DOES 1-100 inclusive*, Case No. 22CV002959 (the “Lawsuit”). Defendants filed their General Denial to the Complaint on November 23, 2022. The Lawsuit asserts representative claims for civil penalties payable to plaintiff, other aggrieved employees, and the State of California pursuant to PAGA, based on allegations that Defendants (1) failed to pay regular and minimum wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to reimburse business expenses; (6) failed to provide itemized accurate wage statements; (7) continuing wages penalty; (8) unfair competition. Specifically, the Representative PAGA Claims are PAGA claims asserted or which could have been asserted in the Lawsuit and both or either of Plaintiff’s complaint and/or PAGA Notice filed with the Labor and Workforce Development Agency (“LWDA”), including all PAGA claims stated expressly or by implication in the Notice filed with the LWDA or that could have been alleged based on the facts and circumstances set forth therein. The applicable PAGA Notices related to the Lawsuit are attached hereto jointly as **Exhibit A** (all of the foregoing is collectively referred to as Plaintiff’s “Representative PAGA Claims”).

WHEREAS, on June 16, 2022, Plaintiff sent a Notice of Claims Pursuant to the Private Attorneys General Act of 2004 to the LWDA, AND on January 3, 2023, send a First Amended Notice of Claims Pursuant to the Private Attorneys General Act of 2004 to the LWDA, providing notice of her intent to pursue representative actions pursuant to PAGA, on behalf of herself, other aggrieved employees, and the State of California, as well as on behalf of a group of aggrieved employees (the notices by Plaintiff to the LWDA are collectively referred to as the “PAGA Notice” herein, attached as **Exhibit A**).

WHEREAS, during the pendency of the Action, the Parties conducted significant investigation of the facts and law and engaged in formal discovery prior to mediation. In response to Plaintiff’s Counsel’s formal discovery requests, Defendants provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and the Aggrieved Employees, and the claims in the Lawsuit, including time punch and payroll data, to provide Plaintiff’s Counsel the

opportunity to investigate Plaintiff's allegations and the PAGA claims.

WHEREAS, on April 20, 2023, the Parties attended a full-day mediation with experienced wage-and-hour and employment law mediator Brandon McKelvey and were able to reach a resolution of Plaintiff's Representative PAGA Claims, subject to the approval of the Court. As a result, the Parties agreed to settle Plaintiff's Representative PAGA Claims, taking into account all known facts and circumstances including the difficulty of proving some of Plaintiff's claims, potential defenses asserted by Defendants, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the PAGA Period is defined as the period from June 16, 2021 to April 20, 2023.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as "All non-exempt employees who are or were employed by Defendants within the State of California from June 16, 2021 to April 20, 2023. Defendants represent that there were approximately 181 Aggrieved Employees who worked a total of approximately 2,352 pay periods during the PAGA Period.

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff's Representative PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiff and the Aggrieved Employees have or may have against Defendants and each of their past or present affiliates, d/b/a's, owners, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys (collectively, the "Released Parties"). The Parties further acknowledge that this PAGA Settlement Agreement is a compromise of disputed claims and that nothing in this PAGA Settlement Agreement shall be construed as an admission by Defendants or the Released Parties of any wrongdoing or liability. Specifically, Defendants and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and the PAGA Notice. Defendants and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, the Parties believe and agree that this PAGA Settlement Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, and have arrived at the settlement after extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, Defendants and Plaintiff and their respective counsel are of the opinion that the amount and terms of the Settlement are reasonable and adequate and are in the best interests of the Plaintiff, the Aggrieved Employees, and Defendants in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiff

and the Aggrieved Employees, the Van Hook Law Firm and The Byrne Law Group, believe that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. **Effective Date.** The effective date (“Effective Date”) of this PAGA Settlement Agreement shall mean the following: (a) the date of entry of the order of the court approving this settlement; or (b) if a timely appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

2. **PAGA Released Claims/Effect of Judgment on Aggrieved Employees and LWDA.** The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, et. seq. only, against the “Released Parties.” It is expressly understood and agreed that this settlement only includes a full release of the PAGA claims asserted in the Lawsuit and Plaintiff’s Complaint and/or PAGA Notice filed with the LWDA attached as **Exhibit A**, including all PAGA claims stated expressly or by implication in the Notice filed with the LWDA or that could have been alleged based on the facts and circumstances set forth therein and any related claims for attorneys’ fees, costs, or interest resulting based on the PAGA cause of actions (all of the foregoing are collectively referred to as Plaintiff’s “Representative PAGA Claims”). This settlement shall not and does not purport to release the non-PAGA individual claims of any Aggrieved Employee other than Plaintiff who shall execute a general release of all claims as part of the terms of the PAGA Settlement Agreement. Accordingly, with the exception of Plaintiff, this settlement shall not impact Aggrieved Employees’ ability to assert claims other than PAGA claims arising from the alleged foregoing violations of the Labor Code.

3. General Release. General Release means Plaintiff's irrevocable and unconditional release, acquittal, and discharge of the Released Parties from any and all PAGA Released Claims defined in Paragraph 2 and any and all existing claims, demands, suits, actions, causes of action, obligations, agreements, contracts, promises, liabilities, debts, compensation, damages, losses, costs, expenses, and attorneys' fees, of any and every kind, nature or character, known or unknown, suspected or unsuspected, actual or potential, absolute or contingent, pending or anticipated, including but not limited to those arising under any federal, state, or local law, regulation or ordinance, contract, quasi-contract, the common law, public policy, or any constitution, such as, without limitation, the California Constitution; the California Labor Code, including Labor Code section 132a; Family and Medical Leave Act; California Family Rights Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the California Fair Employment and Housing Act; the Private Attorneys General Act of 2004; Americans with Disabilities Act; Older Workers Benefit Protection Act; Age Discrimination in Employment Act; Consolidated Omnibus Budget Reconciliation Act of 1985; Employee Retirement Income Security Act of 1974; Immigration Reform and Control Act; the Workers Adjustment and Retraining Notification Act; the Occupational Safety and Health Act; the Sarbanes-Oxley Act of 2002; the Fair Credit Reporting Act; the Equal Pay Act; the Genetic Information Nondiscrimination Act of 2008; statutory provision regarding the Confidentiality of AIDS Information – Cal. Health & Safety Code § 120775; California Confidentiality of Medical Information Act; California Civil Code § 51 et seq.; Wage Orders of the California Industrial Welfare Commission; the California Code of Regulations; the California Business and Professions Code; Fair Labor Standards Act; and claims of intentional infliction of emotional distress; defamation and/or libel, or any other damage to reputation claims; breach of implied contract; breach of the covenant of good faith and fair dealing, as well as any other express or implied covenant; or any other statute or common law principle of similar effect, known or unknown, which Plaintiff now has, owns, or holds, or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned, or held, or claimed to have, own, or hold or which Plaintiff at any time hereinafter may have, own, or hold, or claim to have, own, or hold, against each or any of the Released Parties, arising from acts, events, or circumstances occurring on or before the effective date of this PAGA Settlement Agreement. Any worker's compensation claims by Plaintiff and any other claims which cannot be released by law are not released by this PAGA Settlement Agreement. With respect to claims released in this Section, Plaintiff expressly waives the benefits of California Civil Code § 1542. Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a complete release and discharge of the claims in the General Release, Plaintiff expressly acknowledges that this PAGA Settlement Agreement is intended to include in its effect all claims she does not know of or suspect to exist in her favor at the time of execution hereof and that this PAGA Settlement Agreement contemplates the extinguishment of all such claims.

4. **Notice to LWDA.** Pursuant to California Labor Code § 2699(k)(2), Plaintiff shall submit to the LWDA a copy of this PAGA Settlement Agreement at the same time that Plaintiff submits it to the Court for approval.

5. **No Right to Opt Out.** The parties agree that there is no statutory right for any Aggrieved Employee to opt-out or otherwise exclude him or herself from the Settlement.

6. **Gross Settlement Amount.** Defendants agree to pay, in accordance with the terms set forth herein, the total sum of Fifty Thousand Dollars and No/100 Cents (\$50,000.00) as the non-reversionary gross settlement amount (the “Gross Settlement Amount”) in full settlement of the Representative PAGA Claims. Defendants shall pay the Fifty Thousand Dollars and No/100 Cents (\$50,000.00) in installments as follows: Twenty-five Thousand Dollars and No/100 Cents (\$25,000.00) within One Hundred Fifty (150) days of April 20, 2023, the date of execution of the Memorandum of Understanding among the Parties; and a further Twenty-five Thousand Dollars and No/100 Cents (\$25,000.00) within Two Hundred Forty (240) days of April 20, 2023.

The Gross Settlement Amount, which represents the total amount payable under this Settlement by Defendants (subject to the Escalator Clause described below), will be allocated as follows:

- a. PAGA Counsel’s attorneys’ fees request of up to 33% (1/3) of the Gross Settlement Amount calculated as Sixteen Thousand Five Hundred Dollars and No/100 Cents (\$16,500)(“PAGA Counsel’s Fees”) and PAGA Counsel’s separate request for reasonable litigation costs incurred in this matter (“PAGA Counsel’s Costs”) calculated as an amount not to exceed Four Thousand Three Hundred and Thirty-Six Dollars and No/100 Cents \$4,336. Defendants will not oppose these requests. To the extent that the Court approves less than the amount of attorney’s fees and costs that PAGA Counsel requests, any reduced amount shall revert to the Net PAGA Fund, as defined below at paragraph “6.c.”
- b. Administration costs estimated not to exceed Three Thousand Five Hundred Dollars and No/100 Cents (\$3,500) to be paid to the Settlement Administrator (“Administration Costs”).
- c. The remainder of the Gross Settlement Amount (the “Net PAGA Fund”) after deducting items (a) and (b) is approximately Twenty-five Thousand Six Hundred Sixty-Four Dollars and No/100 Cents (\$25,664.00), and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the “LWDA PAGA Portion”) and 25% paid to the Aggrieved Employees (the “Aggrieved Employees’ PAGA Portion”) on a pro-rata basis as set forth in Paragraph 12 below.

7. **Allocation Adjustment.** The Parties agree that should the Court deny approval of the Gross Settlement Amount, the Parties agree to renegotiate in good faith in an effort to obtain approval of the settlement.

8. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. Defendants will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee's payment from the Aggrieved Employees' PAGA Portion, Defendants will use the following formula: $\text{Settlement Payment} = \text{Aggrieved Employees' PAGA Portion} \times [\text{Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period} \div \text{Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period}]$.

9. Escalator Clause. Defendants estimate that as of April 20, 2023, there were approximately 2,352 pay periods for all 181 Aggrieved Employees during the PAGA Period. If it is determined that the pay periods during the PAGA Period exceeds 2,352 by more than ten percent (10%), i.e., exceeds 2,587 pay periods for all PAGA Members, then the Gross Settlement Amount will increase proportionately according to the number of additional pay periods over ten percent (10%).

10. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued by the Settlement Administrator, if applicable. IRS Form 1099s are used for payments of miscellaneous income that is not considered wages, such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Defendants, their counsel and Plaintiff's and the Aggrieved Employees' counsel are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel's fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

11. Circular 230 Disclaimer. EACH PARTY TO THIS PAGA SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS PAGA SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS PAGA SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HER OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS PAGA SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS PAGA SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT

PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS PAGA SETTLEMENT AGREEMENT.

12. PAGA Settlement Payment Procedures.

- a. Defendants shall pay the Gross Settlement Amount of Fifty Thousand Dollars and No/100 Cents (\$50,000.00) in installments as follows: Within One Hundred Fifty (150) days of April 20, 2023 (i.e., September 17, 2023), Defendants shall deposit Twenty-five Thousand Dollars and No/100 Cents (\$25,000.00) with the Settlement Administrator. Within Two Hundred Forty (240) days of April 20, 2023 (i.e., December 16, 2023), Defendants shall deposit the remaining Twenty-five Thousand Dollars and No/100 Cents (\$25,000.00) with the Settlement Administrator, and shall also provide the Settlement Administrator with a list of all 181 Aggrieved Employees with each listed employee's full name, last known mailing address, social security number, the actual number of pay periods worked by him or her during the PAGA Period. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information.
- b. Within 28 calendar days from the date the full amount of the Gross Settlement Amount has been deposited with the Settlement Administrator, the Settlement Administrator shall:
 - i. Distribute a total of Twenty-Five percent (25%) of the Net PAGA Fund to the Aggrieved Employees, along with the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). Aggrieved Employees shall not be required to make claims to receive their share of the PAGA settlement. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's last known mailing address. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Aggrieved Employees involved, and will then perform a single re-mailing. It will be conclusively presumed that an Aggrieved Employee's individual settlement payment check was received if the payment check has not been returned within thirty (30) days of the original mailing. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining uncashed for more than One Hundred Twenty (120) days after

issuance will be distributed pursuant to the State Controller's Office, Unclaimed Property Division.

- ii. Distribute a total of Seventy-Five percent (75%) of the Net PAGA Fund to the LWDA.
 - iii. Distribute PAGA Counsel's fees and costs, as approved by the Court.
 - iv. Distribute General Release Payment to Plaintiff, as approved by the Court.
 - v. Distribute payment to itself for services as Settlement Administrator, as approved by the Court.
- c. Settlement Checks issued to Aggrieved Employees pursuant to this PAGA Settlement Agreement will expire one hundred and twenty (120) days from the date they are mailed by the Settlement Administrator.
- d. The Parties and their counsel shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

13. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth herein. As noted above, the costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount, and the Parties agree to use Phoenix Settlement Administrators as the Settlement Administrator.

14. Duties of the Parties Related to Approval. Promptly upon execution of this PAGA Settlement Agreement, Plaintiff shall file her motion for approval of the proposed Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(1). The approval motion will request Court approval of the following: (1) the terms of this PAGA Settlement Agreement, (2) PAGA Counsel's Fees and PAGA Counsel's Costs, (3) payment of General Release Payment to Plaintiff, (4) payments to Aggrieved Employees and the LWDA, (5) payment to the Settlement Administrator, and (6) Final Judgment. In conjunction with the approval motion, Plaintiff shall submit a proposed Final Judgment to the Court.

15. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain Final Judgment.

16. Invalid without Court Approval. If the Court does not approve the Settlement or does not enter judgment as provided for in this Settlement or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the

Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement. In the event this PAGA Settlement Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties hereto represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that the PAGA Settlement Agreement does not become final for any reason, this PAGA Settlement Agreement shall be null and void and any order entered by the Court in furtherance thereof shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this PAGA Settlement Agreement.

17. Non-Admission of Wrongdoing. The Parties agree that this PAGA Settlement Agreement does not constitute an admission by Defendants or any Released Party, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this PAGA Settlement Agreement nor anything in this PAGA Settlement Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendants or the Released Parties. Nothing in this PAGA Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the pendency of the Lawsuit, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

18. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this PAGA Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this PAGA Settlement Agreement will not constitute a waiver of any other provision.

19. Covenants and Representations. Plaintiff represents and warrants she has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim, right, liability, demand, obligation, expense, action, or causes, or portion thereof, or interest therein, which is or may be subject to this Settlement. Plaintiff acknowledges she has read this Settlement, fully understands her rights, privileges, and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges she had the opportunity to consult with her attorney to explain the terms of this Settlement and the consequences of signing this Settlement.

20. Termination of Settlement. If the Court does not approve the Settlement or does not enter judgment as provided for in this Settlement or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

21. Enforcement. The Parties agree that following entry of the Final Judgment, this PAGA Settlement Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Lawsuit over all parties and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the PAGA Settlement Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

22. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees, and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

23. Entire Agreement. This PAGA Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this PAGA Settlement Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this PAGA Settlement Agreement unless in writing and signed by the Parties.

24. Severability. If any provision of this PAGA Settlement Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the PAGA Settlement Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this PAGA Settlement Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this PAGA Settlement Agreement, except upon waiver in writing by the applicable Released Party.

25. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this PAGA Settlement Agreement. Hence, in any construction to be made of this PAGA Settlement Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

26. Choice of Law. This PAGA Settlement Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

27. Counterparts. This PAGA Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically. All executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

28. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this PAGA Settlement Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this PAGA Settlement Agreement.

Dated: 06/07/23

Maria Elena Villalobos
Maria Elena Villalobos (Jun 7, 2023 15:18 PDT)

PLAINTIFF MARIA ELENA VILLALOBOS

DEFENDANT PEGGY DAY ENTERPRISES, INC.

Dated: 6/8/2023

DocuSigned by:
Margaret Heneks
EC28BF28362E41D
MARGARET HENEKS, CEO

Dated: 6/8/2023

DocuSigned by:
Margaret Heneks
EC28BF28362E41D
MARGARET HENEKS, an Individual

APPROVED AS TO FORM:

Dated: 06/07/23

VAN HOOK LAW FIRM

By: John Van Hook
JOHN VAN HOOK

Dated: June 7, 2023

THE BYRNE LAW GROUP

By: Adrian Byrne
ADRIAN BYRNE

Dated: 6/12/2023

NOLAND, HAMERLY, ETIENNE & HOSS

DocuSigned by:
Sharilyn R. Payne
594AD6DBD87D44F
SHARILYN R. PAYNE

EXHIBIT A



VAN HOOK LAW FIRM
14156 Magnolia Blvd., Suite 200
Sherman Oaks, California 91423
(310) 592-5884
john@vanhooklawfirm.com
www.vanhooklawfirm.com

June 16, 2022

VIA ONLINE FILING

Labor and Workforce Development Agency
Department of Industrial Relations

Re: Notice of Claims Pursuant to Labor Code Private Attorneys General Act 2004
Maria Elena Villalobos v. Peggy Day Enterprises, Inc., a California corporation, and
Margaret A. Heneks, an individual.

Dear PAGA Administrator:

Pursuant to Labor Code § 2699.3 (the Labor Code Private Attorneys General Act) please take notice of the following facts, theories, and Labor Code violations alleged against Peggy Day Enterprises, Inc. (“Peggy Day”) and Margaret A. Heneks (together, “Defendants”).

Summary of Facts and Theories

Maria Elena Villalobos (“Villalobos”), a resident of Monterey County, was employed by Peggy Day from approximately September 2021 until approximately April 2022. Peggy Day’s entity address registered with the California Secretary of State is 851 Munras Avenue, Monterey, CA 93940 and its registered agent for service of process is listed as Margaret A. Heneks, 49 Wawona Road, Carmel Valley, CA 93924.

Individual Liability under Labor Code § 558.1:

Villalobos is informed and believes, and based thereon alleges, that Margaret A. Heneks (“Heneks”) is the owner, officer, and/or manager of Peggy Day and while acting in this capacity caused said corporation to violate provisions of the Labor Code and IWC Wage Order 15-2001 with respect to Villalobos and all other aggrieved employees. Thus, pursuant to Labor Code § 558.1, Heneks is jointly and severally liable for the violations alleged herein.

Joint Employer, Integrated Enterprise, and Alter Ego Theories of Liability

Villalobos is further informed and believes, and based thereon alleges, that Heneks controls Peggy Day’s day-to-day operations, including its employment pay practices, that there exists a unity of interest between Peggy Day and Heneks, that the corporate formalities of Peggy Day have been disregarded, that Peggy Day and Heneks operated as an integrated enterprise, and that Peggy

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June 16, 2022

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Day and Heneks were joint employers of Villalobos and all other aggrieved employees. Thus, in the interests of justice, Heneks should also be held jointly and severally liable for the wage and hour violations asserted herein under both joint employer, integrated enterprise, and alter ego theories of liability.

During the time period relevant to this notice, Heneks operated a home care business, “Peggy Day Enterprises, Inc.” located in Monterey County, California. Villalobos worked for Defendants and her position primarily consisted of housekeeping duties at various client locations. During her employment, Villalobos was paid as an hourly employee.

Aggrieved Employees

For purposes of this notice, the “aggrieved employees” are all of Defendants’ hourly California employees who worked at any time beginning one year prior to the date of this notice. Villalobos estimates that during the past year, the Company employed at least 50 hourly employees in the state of California.

Misclassification as Personal Attendant/Caregiver

Defendants misclassified Villalobos and the other aggrieved employees as “caregivers or personal attendants” and, as a result of that misclassification, paid them overtime only after 9 hours of work per day instead of 8 hours of work per day. Moreover, Defendants further relied on this misclassification to deny Villalobos and other aggrieved employees meal and rest periods.

Despite Defendants’ misclassification of Villalobos and other aggrieved employees as “caregivers or personal attendants”, the vast majority of Villalobos and other aggrieved employees’ work-related duties fell outside the scope of the caregiver/personal attendant role. Villalobos and other aggrieved employees were required to perform primarily non-caregiving/non-personal attendant duties, including but not limited to housecleaning, laundry, and cooking. As a result of this misclassification, Villalobos and other aggrieved employees were deprived of overtime after 8 hours per day and were denied the meal and rest periods to which they were legally entitled.

Failure to Pay Minimum Wage

Defendants required Villalobos and other aggrieved employees to work at multiple client locations in the same day, but failed to compensate Villalobos and other aggrieved employees for the time spent traveling between multiple job locations in the same workday. Villalobos was required to clock out of her timekeeping system after finishing her first job, then drive directly to the next location, and clock back in only after arriving at the next job. Thus, Defendants implemented an illegal policy of failing to compensate Villalobos and other aggrieved employees for this compensable work time spent travelling between multiple work locations in the same workday.

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California law does not permit any time to be uncompensated. See *Armenta v. Osmose, Inc.* 135 Cal. App. 4th 314, 317 (2005) finding minimum wage violations where the employer paid employees only for “productive” work but not “nonproductive” work.

Defendants implemented an illegal rounding policy that was not neutral and systematically resulted in the underpayment of wages to Villalobos and other aggrieved employees.

Thus, Defendants failed to pay Villalobos and the other aggrieved employees at least minimum wage for all hours worked and failed to comply with Labor Code §§ 1194, 1197, and 1197.1 and the provisions of the relevant IWC Wage Order 15-2001 requiring Defendants to compensate Villalobos and the other aggrieved employees at least minimum wage for all hours worked.

Failure to Pay Overtime

Defendants had in place an unlawful scheme to avoid payment of all overtime wages owed to Villalobos and other aggrieved employees.

Firstly, Defendants misclassified Villalobos and other aggrieved employees as personal attendants/caregivers, despite more than 20% of Villalobos and other aggrieved employees’ work duties consisting of non-personal attendant/non-caregiver tasks. As a result, Villalobos and other aggrieved employees should have been compensated overtime after 8 hours per day but instead were compensated overtime only after working 9 hours per day.

Secondly, even if one were to assume, *arguendo*, that Villalobos and other aggrieved employees were properly classified as personal attendants/caregivers and thus were entitled to overtime only after 9 hours of work per day, Defendants still failed to record all hours worked and failed to pay overtime owed when Villalobos and other aggrieved employees worked more than 9 hours per day. On days in which Villalobos and other aggrieved employees worked more than 9 hours per day and were not compensated for time spent traveling between job locations, Defendants’ failure to compensate Villalobos and other aggrieved employees for this travel time deprived them of overtime pay due and owing.

Moreover, Defendants implemented an illegal rounding policy that was not neutral and systematically resulted in the underpayment of wages to Villalobos and other aggrieved employees. On days in which Villalobos and other aggrieved employees worked overtime, such illegal rounding deprived them of overtime pay due and owing.

Failure to Reimburse Business Expenses

Defendants required Villalobos and other aggrieved employees to utilize their own personal vehicles to drive between job locations and their own personal cellphones to record their work hours and conduct other job duties for Defendants. Defendants’ reimbursements for mileage were not reflective of the true mileage driven, thus failing to fully compensate Villalobos and other

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June 16, 2022

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aggrieved employees for the use of their personal vehicles. In addition, Defendants failed to reimburse Villalobos and other aggrieved employees for use of their personal cellphones.

Thus, Defendants failed to comply with Labor Code § 2802(a), which requires that employers reimburse or indemnify employees for “all necessary expenditures or losses incurred in direct consequence of the discharge of his or her duties.”

Failure to Provide Legally Compliant Meal and Rest Periods

Villalobos and other aggrieved employees suffered other wage and hour violations. Villalobos and other aggrieved employees performed primarily housekeeping duties, which exceeded 20% of their work responsibilities. As such, Villalobos and other aggrieved employees were entitled to receive meal and rest breaks but were not provided the legally-compliant meal or rest breaks to which they were entitled.

Defendants paid no premium pay under Labor Code § 226.7(b) to Villalobos and the other aggrieved employees, even though meal and rest period violations occurred.

Failure to Keep Accurate Records

Defendants’ failed to accurately maintain employment records for Villalobos and the other aggrieved employees. Defendants failed to record as compensable work time the time spent traveling between job locations in the same workday. In addition, Defendants failed to record meal periods, as they were not provided.

Failure to Provide Accurate Itemized Wage Statements

Villalobos and other aggrieved employees’ paystubs did not reflect all hours worked. In addition, the pay rates itemized on Villalobos and other aggrieved employees’ wage statements were inaccurate: Villalobos and other aggrieved employees’ overtime should have been compensated after 8 hours of work per day, but was compensated only after 9 hours of work per day.

Defendants also failed to pay meal and rest period premiums to Villalobos and the other aggrieved employees under Labor Code § 226.7(b) despite failing to provide Villalobos and the other aggrieved employees with the meal and rest periods to which they were entitled.

Further, Defendants issued Villalobos a final paystub in which she was compensated at the uncorrected hourly rate of \$15 per hour, which was below her hourly rate of \$20 per hour. In addition, this paystub did not include all hours that Villalobos had worked.

Failure to Pay Wages Within Specific Pay Period

Defendants intentionally and willfully failed to pay Villalobos and the other aggrieved employees all wages due to them within the specific pay periods required under California Labor Code section 204. For example, in violation of Labor Code section 204(b)(1), Defendants failed

Labor and Workforce Development Agency

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to pay all overtime wages owed “no later than the payday for the next regular payroll period.”

Unlawful Deductions from Wages

Defendants made various deductions from Villalobos and other aggrieved employee’s wages including deductions for travel time. Thus, Defendants failed to comply with Labor Code §§ 221 and 224 which makes it unlawful to make such deductions from an employee’s wages.

Failure to Pay Wages Owed at Separation

Villalobos and the other aggrieved employees also failed to receive all of the wages they were due upon their separation from Defendants’ employment, including but not limited to minimum wages, overtime, and meal and rest period premiums. Because of Defendants’ failure to pay all wages due at separation, Defendants had a continuing obligation to pay ongoing wages for 30 days as a penalty. During the 30 days after the end of Villalobos’s employment, Defendants failed to pay Villalobos the ongoing wages penalty to which she was entitled.

Summary of Labor Code Violations

The following alleged Labor Code violations are based on the above summary of Villalobos’s facts and theories.

Defendants violated Labor Code §§ 1194, 1197, and 1197.1 by failing to pay Villalobos and the other aggrieved employees minimum wages.

Defendants violated Labor Code §§ 510 and 1194 by failing to pay Villalobos and aggrieved employees overtime pay.

Defendant violated Labor Code § 2802 by failing to indemnify or reimburse Villalobos and the other aggrieved employees for necessary business expenses.

Defendants violated Labor Code § 226.7 by failing to provide duty-free meal periods to Villalobos and the other aggrieved employees and failing to pay an additional hour of compensation for those days in which duty-free meal periods were not provided.

Defendants violated Labor Code § 226.7 by failing to provide duty-free rest periods to Villalobos and the other aggrieved employees and failing to pay an additional hour of compensation for those days in which duty-free rest periods were not provided.

Defendants violated Labor Code §§ 201, 202, and 203 by willfully failing to pay wages due upon the separation of Villalobos and other aggrieved employees.

Defendants violated Labor Code § 204(b)(1) by failing to pay wages due to Villalobos and the other aggrieved employees within the respective time periods for payment.

Labor and Workforce Development Agency

June 16, 2022

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Defendants violated Labor Code § 206 (a) by failing to pay, without condition, all wages due to Villalobos and the other aggrieved employees. As of this date, Defendants have failed to pay their full wages due.

Defendants violated Labor Code § 216 by unlawfully withholding wages to Villalobos and the other aggrieved employees.

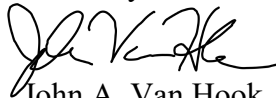
Defendants violated Labor Code § 226(a) by failing to maintain and provide to Villalobos and the other aggrieved employees accurate itemized wage statements.

Defendants violated Labor Code § 1198 by violating IWC Wage Order 15-2001 with respect to Villalobos and the other aggrieved employees.

Defendants violated Labor Code § 1199 by violating IWC Wage Order 15-2001 with respect to Villalobos and the other aggrieved employees, including §3 (hours and days of work), §4 (minimum wages), §7 (maintenance of records), §9 (relating to the provision of tools and equipment), §11 (meal periods), §12 (rest periods), and §15 (penalties).

Please advise within 65 days whether the LWDA intends to investigate these alleged violations. Please contact us if you have any questions.

Sincerely,



John A. Van Hook
Van Hook Law Firm

cc. **VIA CERTIFIED MAIL**
Peggy Day Enterprises, Inc.
c/o Margaret A. Heneks
49 Wawona Road
Carmel Valley, CA 93924

VIA CERTIFIED MAIL
Peggy Day Enterprises, Inc.
851 Munras Avenue
Monterey, CA 93940

VIA CERTIFIED MAIL
Margaret A. Heneks
49 Wawona Road
Carmel Valley, CA 93924



VAN HOOK LAW FIRM
14156 Magnolia Blvd., Suite 200
Sherman Oaks, California 91423
(310) 592-5884
john@vanhooklawfirm.com
www.vanhooklawfirm.com

January 3, 2023

VIA ONLINE FILING

Labor and Workforce Development Agency
Department of Industrial Relations

Re: First Amended Notice of Claims Pursuant to Labor Code Private Attorneys General Act 2004
Maria Elena Villalobos v. Peggy Day Enterprises, Inc., a California corporation, and Margaret A. Heneks, an individual.
LWDA Case No. LWDA-CM-889792-22

Dear PAGA Administrator:

On or about June 16, 2022, pursuant to Labor Code § 2699.3 (the Labor Code Private Attorneys General Act), Maria Elena Villalobos (“Villalobos”) filed an initial PAGA notice LWDA Case No. LWDA-CM-889792-22. Villalobos hereby submits this amended PAGA notice of the following facts, theories, and Labor Code violations alleged against Peggy Day Enterprises, Inc. (“Peggy Day”) and Margaret A. Heneks (together, “Defendants”). This Amended notice provides additional facts and theories regarding Defendants’ Labor Code violations.

Summary of Facts and Theories

Villalobos, a resident of Monterey County, was employed by Peggy Day from approximately September 2021 until approximately April 2022. Peggy Day’s entity address registered with the California Secretary of State is 851 Munras Avenue, Monterey, CA 93940 and its registered agent for service of process is listed as Margaret A. Heneks, 49 Wawona Road, Carmel Valley, CA 93924.

Individual Liability under Labor Code § 558.1:

Villalobos is informed and believes, and based thereon alleges, that Margaret A. Heneks (“Heneks”) is the owner, officer, and/or manager of Peggy Day and while acting in this capacity caused said corporation to violate provisions of the Labor Code and IWC Wage Order 15-2001 with respect to Villalobos and all other aggrieved employees. Thus, pursuant to Labor Code § 558.1, Heneks is jointly and severally liable for the violations alleged herein.

Labor and Workforce Development Agency

January 3, 2023

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Joint Employer, Integrated Enterprise, and Alter Ego Theories of Liability

Villalobos is further informed and believes, and based thereon alleges, that Heneks controls Peggy Day's day-to-day operations, including its employment pay practices, that there exists a unity of interest between Peggy Day and Heneks, that the corporate formalities of Peggy Day have been disregarded, that Peggy Day and Heneks operated as an integrated enterprise, and that Peggy Day and Heneks were joint employers of Villalobos and all other aggrieved employees. Thus, in the interests of justice, Heneks should also be held jointly and severally liable for the wage and hour violations asserted herein under both joint employer, integrated enterprise, and alter ego theories of liability.

During the time period relevant to this notice, Heneks operated a home care business, "Peggy Day Enterprises, Inc." located in Monterey County, California. Villalobos worked for Defendants and her position primarily consisted of housekeeping duties at various client locations. During her employment, Villalobos was paid as an hourly employee.

Aggrieved Employees

For purposes of this notice, the "aggrieved employees" are all of Defendants' hourly California employees who worked at any time beginning one year prior to the date of this notice. Villalobos estimates that during the past year, the Company employed at least 50 hourly employees in the state of California.

Misclassification as Personal Attendant/Caregiver

Defendants misclassified Villalobos and the other aggrieved employees as "caregivers or personal attendants" and paid them overtime only after 9 hours of work per day instead of 8 hours of work per day. Moreover, Defendants further relied on this misclassification to deny Villalobos and other aggrieved employees meal and rest periods.

Despite Defendants' misclassification of Villalobos and other aggrieved employees as "caregivers or personal attendants", the vast majority of Villalobos and other aggrieved employees' work-related duties fell outside the scope of the caregiver/personal attendant role. Villalobos and other aggrieved employees were required to perform primarily non-caregiving/non-personal attendant duties, including but not limited to housecleaning, laundry, and cooking. As a result of this misclassification, Villalobos and other aggrieved employees were deprived of overtime after 8 hours per day and were denied the meal and rest periods to which they were legally entitled.

Failure to Pay Minimum Wage

Defendants required Villalobos and other aggrieved employees to work at multiple client locations in the same day, but failed to compensate Villalobos and other aggrieved employees for the time spent traveling between multiple job locations in the same workday. Villalobos was required to clock out of her timekeeping system after finishing her first job, then drive directly to the next location, and clock back in only after arriving at the next job. Thus, Defendants

Labor and Workforce Development Agency

January 3, 2023

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implemented an illegal policy of failing to compensate Villalobos and other aggrieved employees for this compensable work time spent travelling between multiple work locations in the same workday.

California law does not permit any time to be uncompensated. See *Armenta v. Osmose, Inc.* 135 Cal. App. 4th 314, 317 (2005) finding minimum wage violations where the employer paid employees only for “productive” work but not “nonproductive” work.

Defendants implemented an illegal rounding policy that was not neutral and systematically resulted in the underpayment of wages to Villalobos and other aggrieved employees.

Further, Defendants issued Villalobos a final paystub in which she was compensated at the incorrected hourly rate of \$15 per hour, which was below her hourly rate of \$20 per hour, and did not include all hours that Villalobos had worked.

Thus, Defendants failed to pay Villalobos and the other aggrieved employees at least minimum wage for all hours worked and failed to comply with Labor Code §§ 1194, 1197, and 1197.1 and the provisions of the relevant IWC Wage Order 15-2001 requiring Defendants to compensate Villalobos and the other aggrieved employees at least minimum wage for all hours worked.

Failure to Pay Overtime

Defendants had in place an unlawful scheme to avoid payment of all overtime wages owed to Villalobos and other aggrieved employees.

First, Defendants misclassified Villalobos and other aggrieved employees as personal attendants/caregivers, despite more than 20% of Villalobos and other aggrieved employees’ work duties consisting of non-personal attendant/non-caregiver tasks. As a result, Villalobos and other aggrieved employees should have been compensated overtime after 8 hours per day but instead were compensated overtime only after working 9 hours per day.

Second, even if one were to assume, *arguendo*, that Villalobos and other aggrieved employees were properly classified as personal attendants/caregivers and thus were entitled to overtime only after 9 hours of work per day, Defendants still failed to record all hours worked and failed to pay overtime owed when Villalobos and other aggrieved employees worked more than 9 hours per day. On days in which Villalobos and other aggrieved employees worked more than 9 hours per day and were not compensated for time spent traveling between job locations, Defendants’ failure to compensate Villalobos and other aggrieved employees for this travel time deprived them of overtime pay due and owing.

Third, Defendants paid non-discretionary bonuses to Villalobos and the other Aggrieved Employees, but failed to factor these non-discretionary bonuses into the regular rate of pay for purposes of calculating overtime.

Labor and Workforce Development Agency

January 3, 2023

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Finally, Defendants implemented an illegal rounding policy that was not neutral and systematically resulted in the underpayment of wages to Villalobos and other aggrieved employees. On days in which Villalobos and other aggrieved employees worked overtime, such illegal rounding deprived them of overtime pay due and owing.

Failure to Reimburse Business Expenses

Defendants required Villalobos and other aggrieved employees to utilize their own personal vehicles to drive between job locations, and their own personal cellphones to record their work hours. Defendants reimbursements for mileage were not reflective of the true mileage driven, thus failing to fully compensate Villalobos and other aggrieved employees for the use of their personal vehicles. In addition, Defendants failed to reimburse Villalobos and other aggrieved employees for use of their personal cellphones.

Thus, Defendants failed to comply with Labor Code § 2802(a), which requires that employers reimburse or indemnify employees for “all necessary expenditures or losses incurred in direct consequence of the discharge of his or her duties.”

Failure to Provide Legally Compliant Meal and Rest Periods

Villalobos and other aggrieved employees suffered other wage and hour violations. Villalobos and other aggrieved employees performed primarily housekeeping duties, which exceeded 20% of their work responsibilities. As such, Villalobos and other aggrieved employees were entitled to receive meal and rest breaks but were not provided any of the meal or rest breaks to which they were entitled.

Defendants paid no premium pay under Labor Code § 226.7(b) to Villalobos and the other aggrieved employees, even though meal and rest period violations occurred.

Failure to Keep Accurate Records

Defendants’ failed to accurately maintain employment records for Villalobos and the other aggrieved employees. Defendants failed to record as compensable work time the time spent traveling between job locations in the same workday. In addition, Defendants failed to record meal periods, as they were not provided.

Failure to Provide Accurate Itemized Wage Statements

Villalobos and other aggrieved employees’ paystubs did not reflect all hours worked. In addition, the pay rates itemized on Villalobos and other aggrieved employees’ wage statements were inaccurate: Villalobos and other aggrieved employees’ overtime should have been compensated after 8 hours of work per day, but was compensated only after 9 hours of work per day.

Labor and Workforce Development Agency

January 3, 2023

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Defendants also failed to pay meal and rest period premiums to Villalobos and the other aggrieved employees under Labor Code § 226.7(b) despite failing to provide Villalobos and the other aggrieved employees with the meal and rest periods to which they were entitled.

Moreover, Villalobos and the other aggrieved employees' paystubs did not reflect the correct overtime rate, as Defendants failed to factor Villalobos and the other aggrieved employees' non-discretionary bonus payments into their regular rate of pay for purposes of calculating overtime.

Further, Defendants issued Villalobos a final paystub in which she was compensated at the uncorrected hourly rate of \$15 per hour, which was below her hourly rate of \$20 per hour. In addition, this paystub did not include all hours that Villalobos had worked.

Failure to Pay Wages Within Specific Pay Period

Defendants intentionally and willfully failed to pay Villalobos and the other aggrieved employees all wages due to them within the specific pay periods required under California Labor Code section 204. For example, in violation of Labor Code section 204(b)(1), Defendants failed to pay all overtime wages owed "no later than the payday for the next regular payroll period."

Unlawful Deductions from Wages

Defendants made various deductions from Villalobos and other aggrieved employee's wages including deductions for travel time. Thus, Defendants failed to comply with Labor Code §§ 221 and 224 which makes it unlawful to make such deductions from an employee's wages.

Failure to Pay Wages Owed at Separation

Villalobos and the other aggrieved employees also failed to receive all of the wages they were due upon their separation from Defendants' employment, including but not limited to minimum wages, overtime, and meal and rest period premiums. Because of Defendants failure to pay all wages due at separation, Defendants had a continuing obligation to pay ongoing wages for 30 days as a penalty. During the 30 days after the end of Villalobos's employment, Defendants failed to pay Villalobos the ongoing wages penalty to which she was entitled.

Summary of Labor Code Violations

The following alleged Labor Code violations are based on the above summary of Villalobos's facts and theories.

Defendants violated Labor Code §§ 1194, 1197, and 1197.1 by failing to pay Villalobos and the other aggrieved employees minimum wages.

Defendants violated Labor Code §§ 510 and 1194 by failing to pay Villalobos and aggrieved employees overtime pay.

Labor and Workforce Development Agency

January 3, 2023

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Defendant violated Labor Code § 2802 by failing to indemnify or reimburse Villalobos and the other aggrieved employees for necessary business expenses.

Defendants violated Labor Code § 226.7 by failing to provide duty-free meal periods to Villalobos and the other aggrieved employees and failing to pay an additional hour of compensation for those days in which duty-free meal periods were not provided.

Defendants violated Labor Code § 226.7 by failing to provide duty-free rest periods to Villalobos and the other aggrieved employees and failing to pay an additional hour of compensation for those days in which duty-free rest periods were not provided.

Defendants violated Labor Code §§ 201, 202, and 203 by willfully failing to pay wages due upon the separation of Villalobos and other aggrieved employees.

Defendants violated Labor Code § 204(b)(1) by failing to pay wages due to Villalobos and the other aggrieved employees within the respective time period for payment.

Defendants violated Labor Code § 206 (a) by failing to pay, without condition, all wages due to Villalobos and the other aggrieved employees. As of this date, Defendants have failed to pay their full wages due.

Defendants violated Labor Code § 216 by unlawfully withholding wages to Villalobos and the other aggrieved employees.

Defendants violated Labor Code § 226(a) by failing to maintain and provide to Villalobos and the other aggrieved employees accurate itemized wage statements.

Defendants violated Labor Code § 1198 by violating IWC Wage Order 15-2001 with respect to Villalobos and the other aggrieved employees.

Defendants violated Labor Code § 1199 by violating IWC Wage Order 15-2001 with respect to Villalobos and the other aggrieved employees, including §3 (relating to hours and days of work), §4 (relating to minimum wages), §7 (relating to maintenance of records), §9 (relating to the provision of tools and equipment), §11 (relating to meal periods), §12 (relating to rest periods), and §15 (relating to penalties).

Please advise within 65 days whether the LWDA intends to investigate these alleged violations. Please contact us if you have any questions.

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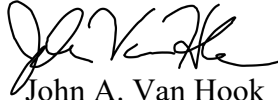
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Labor and Workforce Development Agency

January 3, 2023

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Sincerely,



John A. Van Hook
Van Hook Law Firm

cc. **VIA CERTIFIED MAIL**

Peggy Day Enterprises, Inc.
Agent for Service: Margaret A. Heneks
49 Wawona Road
Carmel Valley, CA 93924

VIA E-MAIL ONLY

Sharilyn R. Payne, Esq.
NOLAND HAMERLY ETIENNE & HOSS
spayne@nheh.com
Counsel for Defendants
PEGGY DAY ENTERPRISES, INC. and
MARGARET A. HENEKS

EXHIBIT B

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Maria Elena Villalobos v. Peggy Day Enterprises, Inc., et al.
(Monterey County Superior Court, Case No. 22CV002959)

I. NOTICE OF PAGA SETTLEMENT

The Monterey County Superior Court (the “Court”) has approved a settlement in the lawsuit named above and filed by Maria Elena Villalobos (“Plaintiff”) on behalf of herself, the State of California, and all other “aggrieved employees” against Peggy Day Enterprises, Inc. and Margaret Heneks (“Defendants”).

In this lawsuit, Plaintiff alleges that Defendants violated the California Labor Code by failing to: (1) pay regular and minimum wages; (2) pay overtime wages; (3) provide meal periods; (4) authorize and permit rest periods; (5) reimburse business expenses; (6) provide itemized accurate wage statements. Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the Private Attorneys General Act (“PAGA”).

Defendants deny these allegations. Defendants maintain that they were in compliance with the California Labor Code at all times and entered into the Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

The Court has not made a determination about Plaintiff’s allegations. This Notice is not to be understood as a statement of any opinion by the Court as to the merits of the claim. You are receiving this Notice because you are in the group of employees referred to as the “Aggrieved Employees” defined as: All non-exempt employees who are or were employed by Defendants within the State of California from June 16, 2021 through April 20, 2023.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

Pursuant to the terms of the Settlement Agreement, your individual PAGA payment is [CheckAmount].

Each individual PAGA payment is based on the number pay periods worked by each Aggrieved Employee in the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees. “PAGA Period” refers to the time period from June 16, 2021 through April 20, 2023.

III. RELEASE

The Court has approved the parties’ Settlement Agreement (“Settlement”). By operation of the Settlement’s terms, the LWDA and the Aggrieved Employees, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims. As a result of this release, Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

“Released Parties” means Defendants and each of their past or present divisions, d/b/a’s, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys.

“Released Claims” means all claims, rights, demands, liabilities and causes of actions that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the lawsuit and claims stated expressly or by implication in the notice filed with the LWDA, including any and all claims under the California Private Attorneys General Act of 2004, which include, but are not limited to: violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2699, and the California Industrial Welfare Commission Wage Order, which may have arisen during the PAGA Period.

IV. SETTLEMENT ADMINISTRATOR

You may call the Settlement Administrator, Phoenix Settlement Administrators toll free at 1(XXX) XXX-XXXX with any questions.

Settlement checks will be null and void 120 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the Controller of the State of California within thirty (30) calendar days of their expiration, to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, for the benefit of those Aggrieved Employees who did not cash their checks, until such time that they claim their property. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE

EXHIBIT

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PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	181
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	181
Subtotal Admin Only	\$3,500.00

Not-to-Exceed Total \$3,500.00

For 181 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

May 16, 2023

Case: Villalobos v. Peggy Day Enterprises, Inc., PAGA Administration wTranslation

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Adrian Byrne

Firm: Byrne Law Group

Contact Number: 800.805.4002

Email: adrian@thebyrnelawgroup.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 181 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$150.00	1	\$150.00
Programming Database & Setup	\$150.00	1	\$150.00
Toll Free Setup*	\$50.27	1	\$50.27
Call Center & Long Distance	\$2.00	13	\$26.00
NCOA (USPS)	\$15.00	1	\$15.00
Language Translation	\$200.00	1	\$200.00
Total			\$591.27

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.50	181	\$90.50
Notice and Check Packet	\$2.00	181	\$362.00
Estimated Postage (up to 1 oz.)*	\$0.64	181	\$115.84
Total			\$768.34

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	2	\$100.00
Skip Tracing Undeliverables	\$2.00	27	\$54.30
Remail Notice Packets	\$2.00	27	\$54.30
Estimated Postage	\$0.56	27	\$15.20
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$273.80

Database Programming

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$150.00	1	\$150.00
Case Manager	\$95.00	1	\$95.00
Total			\$245.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$150.00	1	\$150.00
Disbursement Review	\$150.00	1	\$150.00
Programming Manager	\$95.00	1	\$95.00
QSF Bank Account & EIN	\$50.00	1	\$50.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Total			\$695.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	1	\$100.00
Remail Undeliverable Checks (Postage Included)	\$1.50	34	\$51.59
Case Associate	\$50.00	2	\$100.00
Reconcile Uncashed Checks	\$75.00	1	\$75.00
Conclusion Reports	\$100.00	1	\$100.00
Case Manager Conclusion	\$75.00	1	\$75.00
Final Reporting & Declarations	\$100.00	1	\$100.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$250.00	1	\$250.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office	\$75.00	1	\$75.00
Estimated <u>7</u> Total Class Members			
Total			\$926.59

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$3,500.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT

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NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Maria Elena Villalobos v. Peggy Day Enterprises, Inc., et al.
(Monterey County Superior Court, Case No. 22CV002959)

I. NOTICE OF PAGA SETTLEMENT

The Monterey County Superior Court (the “Court”) has approved a settlement in the lawsuit named above and filed by Maria Elena Villalobos (“Plaintiff”) on behalf of herself, the State of California, and all other “aggrieved employees” against Peggy Day Enterprises, Inc. and Margaret Heneks (“Defendants”).

In this lawsuit, Plaintiff alleges that Defendants violated the California Labor Code by failing to: (1) pay regular and minimum wages; (2) pay overtime wages; (3) provide meal periods; (4) authorize and permit rest periods; (5) reimburse business expenses; (6) provide itemized accurate wage statements. Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the Private Attorneys General Act (“PAGA”).

Defendants deny these allegations. Defendants maintain that they were in compliance with the California Labor Code at all times and entered into the Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

The Court has not made a determination about Plaintiff’s allegations. This Notice is not to be understood as a statement of any opinion by the Court as to the merits of the claim. You are receiving this Notice because you are in the group of employees referred to as the “Aggrieved Employees” defined as: All non-exempt employees who are or were employed by Defendants within the State of California from June 16, 2021 through April 20, 2023.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

Pursuant to the terms of the Settlement Agreement, your individual PAGA payment is [CheckAmount].

Each individual PAGA payment is based on the number pay periods worked by each Aggrieved Employee in the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees. “PAGA Period” refers to the time period from June 16, 2021 through April 20, 2023.

III. RELEASE

The Court has approved the parties’ Settlement Agreement (“Settlement”). By operation of the Settlement’s terms, the LWDA and the Aggrieved Employees, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims. As a result of this release, Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

“Released Parties” means Defendants and each of their past or present divisions, d/b/a’s, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys.

“Released Claims” means all claims, rights, demands, liabilities and causes of actions that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the lawsuit and claims stated expressly or by implication in the notice filed with the LWDA, including any and all claims under the California Private Attorneys General Act of 2004, which include, but are not limited to: violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2699, and the California Industrial Welfare Commission Wage Order, which may have arisen during the PAGA Period.

IV. SETTLEMENT ADMINISTRATOR

You may call the Settlement Administrator, Phoenix Settlement Administrators toll free at 1(XXX) XXX-XXXX with any questions.

Settlement checks will be null and void 120 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the Controller of the State of California within thirty (30) calendar days of their expiration, to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, for the benefit of those Aggrieved Employees who did not cash their checks, until such time that they claim their property. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE