

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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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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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

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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.

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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.

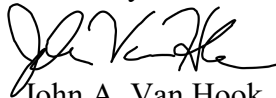
Defendants violated Labor Code § 226(a) by failing to maintain and provide to Villalobos and the other aggrieved employees accurate itemized wage statements.

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.

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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

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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 incorrect 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.

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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.

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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.

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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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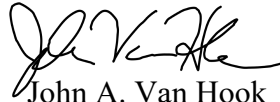
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Labor and Workforce Development Agency

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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