



May 22, 2025

California Labor & Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Sent via Online Portal

Sleep Data Services LLC
d/b/a BetterNight
c/o David D. French
5471 Kearny Villa Rd Suite 200
San Diego, Ca 92123

Sent via Certified Mail

RE: Labor Code Violations
Notice of Claim Seeking Penalties Under Labor Code § 2698, et seq.

To Whom It May Concern:

Please be advised that Lexicon Law, PC has been retained by Darlene Franco (hereinafter, "Ms. Franco") to protect her rights and interests in her employment. Pursuant to Labor Code Private Attorneys General Act of 2004 (the "PAGA"), Labor Code Section 2698 et seq., and in accordance with the requirements of Labor Code section 2699.3(a)(1), this letter shall constitute the written notice of intent to seek penalties under Labor Code section 2699. This letter sets forth the specific provisions of the Labor Code alleged to have been violated by the above listed companies regarding Ms. Franco and other similar situated and nonexempt employees, including the facts and theories to support the alleged violations.

Sleep Data Services LLC d/b/a Betternight (hereinafter, "Betternight"), is and was the limited liability company responsible for operating services consisting of sleep health solutions, including the diagnosis and treatment of sleep disorders, as well as the provision of home sleep testing and continuous positive airway pressure (CPAP) therapy services throughout the United States.

Ms. Franco and the other aggrieved employees were and are employees of the entity that owned and operated by Better Night, is and was the limited liability company responsible for operating services consisting of sleep health solutions, including the diagnosis and treatment of sleep disorders, as well as the provision of home sleep testing and continuous positive airway pressure (CPAP) therapy services throughout the United States. During their employment, Ms. Franco and the other aggrieved employees worked more than eight (8) hours per day and forty (40) hours per week without receiving overtime and double wages. Further, Ms. Franco and the other aggrieved employees worked without receiving an uninterrupted meal period every five (5) hours worked, and without receiving an uninterrupted rest period every four (4) hours worked. Ms. Franco and the other aggrieved employees were not provided all wages

earned and unpaid at the time of their discharge, and were denied minimum wages, straight wages, overtime, and double time. Lastly, Ms. Franco and the other aggrieved employees were not provided with accurate itemized statements reflecting all wages earned and were not reimbursed for job-related expenses.

Ms. Franco is therefore an “aggrieved employee” as defined in California Labor Code section 2699, subdivision (a) and brings this complaint under the PAGA on behalf of himself and all other non-exempt Employees. In engaging in the conduct as described above, Defendant has violated, and continue to violate, provisions of Labor Code and wage orders promulgated by the Industrial Welfare Commission (“IWC Wage Order 4-2001”) including, but not limited to the following:

Unlawful Failure to Pay Overtime

Defendant has failed to maintain a policy that compensates its nonexempt employees for all hours worked, including overtime. Specifically, Defendant only pays its aggrieved employees a flat rate for all hours worked. Ms. Franco and the other aggrieved employees work over eight (8) hours per day and forty (40) hours per week, seven (7) days a week, but are not paid one and one-half their regular rate of pay for overtime work or double time for all hours over eight (8) per day and all hours on the seventh consecutive day of work. As a result of violations of California Labor Code 10, 1194, and Industrial Welfare Commission Wage Order 4-2001 for failure to pay overtime and double time, Defendant is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, Defendant has required Ms. Franco and the other aggrieved employees to work hours in excess of eight (8) hours a day and/or in excess of forty (40) hours per week, and/or seven (7) days per week and were not paid all wages earned at the time of discharge. Thus, employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by California Labor Code § 1194, and Defendant is liable for civil penalties pursuant to California Labor Code § 2698 et seq.

Unlawful Failure to Pay Minimum Wage

Defendant has failed to maintain a policy that compensates its employees an amount of equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission Wage Order 4-2001. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission Wage Order 4-2001 for failure to pay minimum wage, Ms. Franco and other similarly situated individuals are entitled to liquidated damages and Defendant is also liable for civil penalties pursuant to California Labor Code §§ 558, 1197, 1197.1, and 2698 et seq.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

Defendant has failed to maintain a policy that provides its nonexempt employees with off-duty meal periods as required by California law. Ms. Franco and similarly situated nonexempt employees continually worked in excess of twelve (12) hours a day without being provided a first meal period in the first five hours and a second meal period at or around the tenth hours as required by Labor Code §§ 226.7, 512, and Wage Order 4-2001. Defendant also failed to pay the aggrieved employees the premium compensation mandated by Labor §226.7(B) for these missed meal periods. As a result of violation of Wage Order 4-2001 California Labor Code §§226.7 and 512, Defendant is liable for civil penalties pursuant to California Labor Code §§558 and 2698 et seq.

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

Defendant has failed to maintain a policy that provides Ms. Franco and the other aggrieved employees with off-duty rest periods as required by California law. Ms. Franco and the other aggrieved employees worked five (5) or more hours without being provided at least a ten-minute rest period every four (4) hours, in which they were relieved of all duties, as required by Labor Code §226.7, 512 and Wage Order 4-2001. Defendant failed to pay Ms. Franco and similarly situated employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. As a result of violations of California Labor Code §§ 226.7, 512 and Wage Order 4-2001, Defendant is liable for civil penalties pursuant to California Labor Code §§558 and 2698 et seq.

Unlawful Failure to Furnish Accurate Wage Statements

Defendant has violated California Labor Code § 226(a) by willfully failing to furnish its nonexempt employees with accurate, itemized wage statements showing the actual hours worked on a daily basis. When Defendant compensated Ms. Franco and other similarly situated individuals it failed to provide compensation for overtime, missed meal and rest periods, and necessary expenditures or losses incurred during the course of employment. As a result of violations of California Labor Code § 226(a), Defendant is liable for civil penalties pursuant to California Labor Code §§ 226.3 and 2698 et seq.

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

Defendant has failed to keep payroll records accurately showing the wages paid to employees. Under California Labor § 1174 (d), employers must keep “payroll records showing the hours worked daily by and the wages paid to employees [...]” Because Defendant did not keep accurate time records reflecting hours worked, they are liable for civil penalties pursuant to California Labor Code § 2698 et seq. To the extent that Defendant’ failure to keep accurate payroll records was willful, Defendant is liable for civil penalties under California Labor Code § 1174.5.

Unlawful Violation of California Labor Code§ 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 et seq., an employer who “requires or causes an employee to work for longer hours than those fixed” or “violates or refuses or neglects to comply with any provision of the Labor Code Regarding employees’ wages, hours and working conditions,” is subject to PAGA penalties. As described above, Defendant has required its nonexempt employees to work hours in excess of eight (8) hours in a day and forty (40) in a week (thereby violating § 1199(a)) and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating§ 1199(b)). Accordingly, Defendant is liable for civil penalties pursuant to California Labor Code§ 2698 et seq.

Unlawful Failure to Pay All Wages Twice Each Calendar Month

Defendant has failed to compensate Ms. Franco and other similarly situated employees for wages due for all missed meal periods. Accordingly, Defendant violated California Labor Code§ 204(a), which requires that employers pay “all wages [. . .] twice during each calendar month on days designated in advance by the employer as the regular paydays “(emphasis added). As a result, Defendant is liable for civil penalties pursuant to California Labor Code§ 2698 et seq.

Failure to Enforce Maximum Hours of Work

Additionally, because Defendant failed to enforce the maximum hours of work fixed by the Industrial Welfare Commission with respect to Ms. Franco and other similarly situated employees as required by California Labor Code§ 1198, Defendant is liable for civil penalties pursuant to California Labor Code§ 2698 et seq.

Unlawful Failure to Pay Wages Due Upon Termination

Defendant has violated California Labor Code§§ 201 and 202 by willfully failing to pay all compensation due and owing to all former Ms. Franco and the other aggrieved employees at the time employment was terminated. Defendant willfully failed to pay its nonexempt employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code§§ 201 and 202. Pursuant to §§ 203 and 256 of the Labor Code, Ms. Franco and the other aggrieved employees and similarly situated individuals are also entitled to recover up to thirty (30) days of wages due to Defendant’ “willful” failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. Additionally, because Defendant violated California Labor Code §§ 201, 201 and 203 of the Labor Code, Defendant is liable for civil penalties pursuant to California Labor Code § 2698 at seq.

Unlawful Failure to Compensate Pay Job Related Expenses

Defendant has violated California Labor Code § 2802, by willfully failing to compensate Ms. Franco and the other aggrieved employees for all expenses incurred as a result of their employment. Defendant willfully failed to reimburse its nonexempt employees for work related expenses as required by California Labor Code § 2802. Pursuant to §§200, 203, 218.5, 226, 226.7, 512, 1194, 1198 and 2802 of the Labor Code, Ms. Franco and the other aggrieved employees and similarly situated individuals are also entitled to recover nonpayment of expenses for Defendant' "willful" failure to comply with the statutory requirements of sections 2802 of the Labor Code. Additionally, because Defendant violated California Labor Code § 2802 of the Labor Code, Defendant is liable for civil penalties pursuant to California Labor Code § 2698 at seq.

Conclusion and Notification

Defendant has violated or has caused to be violated a number of California wage and hour laws, the facts of which are described in detail above. Ms. Franco requests the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Ms. Franco requests the agency inform her if it does not intend to investigate these violations so that she may file a lawsuit which includes the violations discussed in this letter.

Very truly yours,

JACK RISEMBERG, ESQ.
LEXICON LAW, PC