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July 30, 2024

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Caring Companions At Home, Inc.
881 Dover Drive, Ste. 260
Newport Beach, CA 92663

Re: Notice by Terri Day, on behalf of herself and all similarly-situated aggrieved California employees of Caring Companions At Home, Inc., as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator and Caring Companions At Home, Inc.:

Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698, *et seq.* ("PAGA"), Terri Day ("Ms. Day" or "Claimant") intends to bring a civil action against her employer, Caring Companions At Home, Inc. ("Caring Companions" or "Employer"), individually and on behalf of all other similarly-aggrieved employees. This letter serves as Claimant's written notice pursuant to Labor Code section 2699.3(a)(1)(A) providing the Labor and Workforce Development Agency (hereafter "LWDA") the opportunity to investigate the alleged claims contained herein.

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative civil action for PAGA penalties on behalf of herself and all other aggrieved employees of Employer and shall seek civil penalties under the PAGA on behalf of herself and all other aggrieved employees in the State of California. A copy of this notice is being sent to Employer by certified mail at the address above.

FACTUAL STATEMENT

Terri Day worked in Orange County, California as a live-in caregiver, available around-the-clock to provide assistance to residents in need of care. She was paid on an hourly basis at times at approximately \$17.50 per hour. However, she was not compensated for sleep time.

Ms. Day was required to use her personal cell phone to clock in and out for work using Employer's cell phone application. Ms. Day was practically required to purchase bedding for one of Employer's client for whom she worked. However, she was not reimbursed for these expenses.

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For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order on behalf of herself and all other aggrieved employees of Employer. Claimant alleges that Employer:

1. Failed to pay Claimant and other aggrieved employees all wages due including minimum, regular, and overtime wages;
2. Failed to reimburse all reasonable and necessary business expenses;
3. Failure to provide accurate and itemized wage statements;
4. Failed to pay all wages due during and upon separation of employment; and
5. Failed to maintain accurate records.

Accordingly, Claimant now seeks civil penalties on behalf of herself and other non-exempt aggrieved employees based on Employer's alleged violations of the California Labor Code and the applicable IWC Wage Order. Claimant's claims are set forth below.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the applicable Wage Order)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid... (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed...”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked, as a result of Employer’s policy of not paying Claimant and other aggrieved employees any wages for sleep time during in-home care assignments and mandatory training time. Indeed, the Employer subtracted eight hours from Claimant and other aggrieved employees’ 24-hour workday and paid no wages for the eight hours of “sleep time.”

Employer failed to pay Claimant and other aggrieved employees working under the title of in-home caregiver for all hours worked including minimum, regular, and overtime wages. Irrespective of the number of hours actually worked by Claimant and other aggrieved employees, Employer paid Claimant and other aggrieved employees for only eighty (80) hours per pay periods and failed to pay any overtime wages due for hours worked in excess of eight (8) hours per day.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES

(Labor Code §§ 2802 and 2804, and the “Uniforms and Equipment” Section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].’”

Section 9(a) of the applicable IWC Wage Order states in pertinent part: “When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term ‘uniform’ includes wearing apparel and accessories of distinctive design or color.”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any

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employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees working under the title of in-home caregiver or similar job title for necessary business-related expenses incurred in direct consequence of the discharge of their duties. Claimant and other aggrieved employees were required to use their personal cellular device for work-related purposes and other work-related expenses, such as bedding which was required for work-related purposes, without receiving reimbursement for these business expenditures. As such, Employer failed to reimburse Claimant and other aggrieved employees for the costs incurred by employees in direct consequence of the discharge of their duties for Employer.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS

(Labor Code § 226, and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer . . . ; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

“An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.” Cal. Labor Code § 226(e)(1).

Section 7(A) of the applicable IWC Wage Order provides: “Every employer shall keep accurate information with respect to each employee including the following: ... (4) Total hours worked in the payroll period and applicable rates of pay.” Employer failed to accurately record the hours worked for Claimant and other aggrieved employees working under the title of in-home caregiver or similar job title.

Employer failed to provide Claimant and other current and former employees working under the title of in-home caregiver or similar job title with accurate, timely, itemized wage statements complying with the requirements of the Labor Code and the applicable IWC Wage Order. Furthermore, Claimant's wage statements did not include the correct number of hours worked and wages earned due to Employer's policy of not paying Claimant and other aggrieved employees for sleep time during in-home care assignments and mandatory training.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF
EMPLOYMENT**

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201(a) states: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202(a) states: "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203(a) states, in relevant part: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment."

Labor Code section 204(a) states, in pertinent part: "All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." The "Minimum Wages" Section of the applicable Wage Order further states "every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period."

Labor Code section 256 states: "The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203."

As detailed above, Employer failed to pay Claimant and other aggrieved employees working under the title of in-home caregiver or similar job title all wages that were due and owing to them, including minimum and overtime wages, within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the

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applicable IWC Wage Order because of the violations alleged herein. As a result, Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§1174, 1174.5, 2699, and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) requires every person, including Employer, employing labor in the state to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

Section 7(A) of the applicable IWC Wage Order provides: “Every employer shall keep accurate information with respect to each employee including the following: ... (4) Total hours worked in the payroll period and applicable rates of pay.” Employer failed to accurately record the hours worked for Claimant and other aggrieved employees working under the title of in-home caregiver or similar job title.

Employer failed to maintain accurate payroll records for Claimant and other current and former employees working under the title of in-home caregiver or similar job title showing the hours worked daily and the wages paid. Claimant alleges that Employer failed to maintain accurate records of all hours worked by Claimant and all other current and former employees working under the title of in-home caregiver beyond the sixteen (16) hours as identified on Claimant’s wage statements regardless of how many hours they actually worked or were suffered and permitted to work.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Labor Code section 558.1(b) expressly defines “other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Employer violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

Accordingly, Claimant will pursue *civil penalties* under the PAGA on behalf of herself and other aggrieved employees working under the title of in-home caregiver or similar job title, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. Employer violated this requirement by its failure to accurately record employees’ hours worked and/or paid including wages owed for all work performed, including sleep time and mandatory training. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to

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maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

Employer failed to accurately record all hours worked by Claimant and other aggrieved employees including all accurate wages to be paid, in part as a result of Employer's policy of not paying Claimant and other aggrieved employees for sleep time and mandatory training.

Claimant will pursue all remedies on behalf of herself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of Employer's unlawful actions.

CONCLUSION

Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of herself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, she reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Should you have any questions, please feel free to contact me at your convenience.

Very truly yours,
COHELAN KHOURY & SINGER



Marta Manus, Esq.

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