

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Other Civil

Court File No. _____

Loving Care Home Services, Inc.

**ASSURANCE OF
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minn. Stat. § 8.31, subd. 2b, between the State of Minnesota, by and through its Attorney General, Keith Ellison (“Attorney General”), and Loving Care Home Services, Inc. (“Loving Care”);

WHEREAS, pursuant to Minnesota Statutes sections 177.45 and 181.1721, the Attorney General has authority to enforce Minnesota’s laws relating to employment, including, but not limited to, Minnesota Statutes chapters 177 and 181 under Minnesota Statutes section 8.31;

WHEREAS, Loving Care did not pay employees all overtime wages owed, did not pay employees all wages earned at the time they were due, and did not keep records as required by Minnesota law;

WHEREAS, the Attorney General and Loving Care (collectively, the “Parties”) desire to resolve fully this matter by this Assurance; and

NOW THEREFORE, the Attorney General and Loving Care hereby agree to entry of an order with the following terms and conditions:

FACTUAL ALLEGATIONS

1. Loving Care is a Minnesota corporation that employs both nannies and “companionship services” employees, as defined by Minn. Stat. § 177.23, subd. 11.

2. Neither nannies nor companionship services employees are exempt from either state or federal overtime requirements.

3. After receiving employee complaints that Loving Care was not paying its employees overtime wages as required by law, the Attorney General's Office ("AGO") issued a civil investigative demand ("CID"). Subsequently, Loving Care responded to the CID by providing documents and information about its overtime wage payment practices to the AGO.

I. LOVING CARE FAILED TO KEEP ADEQUATE RECORDS.

4. The records that Loving Care produced did not comply with Minnesota's recordkeeping requirements. Minnesota Statutes section 177.30 requires employers to keep an accurate record of employee names, addresses, occupations, rates of pay, and hours worked each day. Minnesota Statutes section 181.032 lays out what information must be provided to employees, including the rate of pay and total hours worked.

5. The documentation Loving Care provided to the AGO did not comply with either sections 177.30 or 181.032. In particular, Loving Care did not keep or provide the full names and addresses of all employees. Loving Care also did not accurately record the hours that its employees worked each day.¹ Finally, Loving Care often did not accurately record the rates of pay for its employees. For example, some employees worked 24-hour shifts as companionship services employees but Loving Care's pay records listed the employee as having worked 1 hour at a daily pay rate.

6. The records Loving Care provided also conflicted with the information Loving Care provided related to employee rates of pay. For example, employees who were paid on a day rate

¹ When Loving Care placed nanny employees with customers, it sometimes did not record any hours worked when the customers paid the nanny employees directly.

sometimes were listed as receiving \$8.34 per hour, which was below the applicable minimum wage.

II. LOVING CARE FAILED TO PAY WAGES OWED.

7. Based upon the records Loving Care provided, Loving Care violated Minnesota and federal law by failing to pay employees all earned wages at the time their wages were owed. Particularly, Loving Care failed to pay workers all overtime wages owed under Minnesota Statutes section 177.25, 181.101 and 29 U.S.C. § 207.

8. Loving Care's records show that it paid some employees overtime in some circumstances. Despite this awareness of its general obligation to pay overtime, its nanny and companionship services employees routinely worked more than 40 hours per week without receiving overtime wages owed according to law.

9. From the records Loving Care provided and through interviews with employees, the AGO has determined that Loving Care owes 61 employees \$1,333.94 in regular wages, \$17,196.83 in unpaid overtime wages, and \$20,790.17 in liquidated damages. The AGO has provided Loving Care with an itemization of the back wages and liquidated damages owed to each of these 61 employees. Per Minnesota Statutes section 177.27, subd. 3, the AGO calculated the wages owed to employees based on the best available evidence because Loving Care's records were often incomplete and contradictory.

INJUNCTIVE RELIEF

10. Loving Care, including its principals, officers, directors, employees, agents, servants, independent contractors, affiliates, subsidiaries, successors, and those in active concert

or participation with them who receive actual notice of this Order, are hereby subject to the following permanent injunctive relief:

a. Loving Care shall pay employees all owed wages promptly—including overtime wages—pursuant to Minn. Stat. §§ 177.25, 181.101, .13-.14.²

b. Loving Care shall keep and maintain records pursuant to Minn. Stat. §§ 177.30 and 181.032. Such records must include, but are not limited to, the following: (1) the full name, address, and job title of each of Loving Care’s employees; (2) sufficient details establishing all hours each employee worked, including what days each employee worked, even if the employee is not paid on an hourly basis; (3) each employee’s rate of pay, which must match the rate of pay given to employees on the employee notice forms required by Minn. Stat. § 181.032(a); (4) if an employee’s rate of pay varies, the employee’s daily time records must specify what rates were paid for what hours; and (5) if Loving Care utilized provisions of Minn. Stat. § 177.23, subd. 11 or 29 C.F.R. § 785.10-.45 when calculating worker pay for overnight work, the employee’s daily time records must specify the method by which worker pay was calculated in accordance with Minn. Stat. § 177.23, subd. 11 or 29 C.F.R. § 785.10-.45. Loving Care shall maintain these records for all employees, even if Loving Care does not pay the employees for their work directly.

c. Loving Care shall develop written policies on its obligation to pay overtime wages when employees perform work exceeding 40 hours per week. The policies shall include, at minimum, the following: (1) a list of the occupations and/or job titles for which Loving Care employees are entitled to overtime; (2) a detailed explanation of how Loving Care pays its employees who work overnight shifts in accordance with federal and Minnesota overtime and

² If Loving Care employs any employees who are exempt from federal but not state overtime requirements, 48 hours is the cumulative applicable hours over which overtime must be paid.

minimum wage laws, including but not limited to 29 C.F.R. § 785.10-.45 and/or Minn. Stat § 177.23, subd. 11; and (3) an acknowledgment that Loving Care employees who are placed with clients through Loving Care are still entitled to overtime premiums from Loving Care as a joint employer even when the client is exempt from the overtime premiums. Loving Care will have this written policy in place within 30 days after the Court's entry of this AOD. Loving Care agrees to provide these policies to the Attorney General promptly upon request.

d. Loving Care will provide all employees with the notice forms required for new employees by Minn. Stat. § 181.032(d) within 30 days after the Court's entry of this AOD.

11. Loving Care shall fulfill the terms of this Assurance of Discontinuance, and all of its parents, subsidiaries, and successors, shall be bound by this Assurance as if they had signed it, so as to accomplish the full relief contemplated by this Assurance. Loving Care shall not affect any change in its form of doing business, organizational identity, organizational structure, affiliations, ownership, or management composition as a method or means of attempting to avoid the requirements of this Assurance.

12. There shall be no retaliation or discrimination against any current or former employee because of the filing of a complaint with the Attorney General or other government agency, giving testimony or assistance to the Attorney General or other government agency, or participation in any manner in any investigation or proceeding by the Attorney General or other government agency.

MONETARY PAYMENT

13. Within thirty (30) days of the Court's entry of this Assurance of Discontinuance, Loving Care shall pay to the Attorney General the sum of \$39,320.94, less the Minnesota and federal tax withholdings and deductions described in paragraph 14 below (the "Settlement Sum"),

pursuant to Minn. Stat. § 8.31. All or any portion of the Settlement Sum may be distributed to employees as back wages, liquidated damages, and/or restitution by the Attorney General in his discretion pursuant to Minn. Stat. §§ 8.31, 177.27, 177.45, and 181.1721. Any remaining funds shall be remitted to the Treasury of the State of Minnesota pursuant to Minn. Stat. § 8.31. The Settlement Sum shall be made payable to the State of Minnesota and sent by check to Assistant Attorney General Jonathan Moler, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101.

14. **Withholdings.** The Settlement Sum shall be reduced by the amount necessary for Loving Care to withhold lawful taxes and withholdings on back wages owed to employees. The AGO has provided Loving Care with an itemization of back wages and liquidated damages owed to each of its employees. Loving Care shall determine the appropriate lawful taxes and withholdings for each employee, make such taxes and withholdings, and remit such taxes and withholdings to the appropriate government agency as it would through the normal course of employment. Loving Care may utilize its payroll processor to satisfy the requirements of this paragraph. Within thirty (30) days of the execution of this Assurance of Discontinuance, Loving Care shall provide the Attorney General with a notarized statement: (1) itemizing the net back wages after lawful taxes and withholdings, (2) the lawful taxes and withholdings from wages for each employee receiving monetary compensation under this Assurance of Discontinuance, (3) confirmation that the lawful taxes and withholdings have been remitted to the appropriate government agency; and (4) attesting to the accuracy of the lawful taxes and withholdings made.

15. **Employee Contact Information.** Within thirty (30) days of execution of this Assurance of Discontinuance, Loving Care shall provide the Attorney General with the most current contact information Loving Care has for all individuals receiving monetary compensation

from this Assurance of Discontinuance consistent with the AGO itemization referenced in paragraph 9. This contact information shall include phone number, email, mailing address, the employee's status as a current or former employee, and for former employees the last four digits of the former employee's Social Security Number. Loving Care shall provide this information in Excel Spreadsheet format using the template provided to it by the AGO.

16. **Tax Documents.** For all current employees receiving back wages pursuant to the AGO itemization referenced in paragraph 9, Loving Care shall include those back wages in the Form W-2 tax documents it prepares for employees for the year 2021. Loving Care shall additionally prepare Form W-2s for each former employee receiving back wages pursuant to the AGO itemization referenced in paragraph 9. Loving Care shall additionally prepare 1099-MISC forms for all current and former employees receiving liquidated damages. Loving Care shall provide these tax documents to all current employees and will provide these tax documents to former employees upon request.

STAYED CIVIL PENALTY

17. Loving Care shall pay a stayed civil penalty of \$50,000 to the Attorney General upon application to the Court and a showing by the Attorney General that Loving Care has violated any of the terms of this Assurance. The Court shall decide whether the civil penalty shall be imposed, upon a motion by the Attorney General, and after an evidentiary hearing, if the Court deems such hearing necessary. The release in paragraph 19 does not prevent the Attorney General from moving for, or collecting, the stayed civil penalty described in this paragraph.

GENERAL TERMS

18. Nothing in this Assurance shall relieve Loving Care of its obligations to comply with all applicable Minnesota and federal laws and regulations.

19. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the Attorney General, by execution of this Assurance, hereby fully and completely releases Loving Care of any and all claims of the Attorney General under Minn. Stat. §§ 177.25, 181.101, and 181.13-.14 connected with or arising out of the allegations contained in this Assurance, up to and including the date of this Assurance. The Attorney General through this Assurance does not settle, release, or resolve any claim against Loving Care or any other person or entity involving any private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31, 177.27, or 181.171. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division.

20. Loving Care neither admits nor denies the Attorney General's allegations contained herein.

21. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

22. The person signing this Assurance for Loving Care warrants that she is authorized to execute this Assurance and does so in an official capacity that binds Loving Care and its successors and assignees.

23. This Assurance constitutes the full and complete terms of the agreement entered into by Loving Care and the Attorney General.

24. Each of the parties is represented by counsel, participated in the drafting of this Assurance, and agrees that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

25. The facts alleged in this Assurance will be taken as true, without further proof, in any subsequent litigation by or on behalf of the Attorney General to enforce its rights to any payment or monetary judgment pursuant to this Assurance, such as a nondischargeability complaint in any bankruptcy case.

26. The facts alleged in this Assurance establish all elements necessary to sustain an action by the Attorney General pursuant to section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Assurance will have collateral estoppel effect for such purposes.

27. Loving Care agrees that the Stayed Civil Penalty in paragraph 17 of this Assurance, if imposed by any court, represents a civil penalty owed to the State of Minnesota, is not compensation for actual pecuniary loss, and therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. 523(a)(7).

28. Loving Care understands that if a Court of competent jurisdiction holds that Loving Care has committed a violation of this Assurance, that such violation may subject Loving Care to sanctions for contempt pursuant to Minn. Stat. § 8.31, subd. 2b, and that the Attorney General may thereafter, in his sole discretion, initiate legal proceedings against Loving Care for any and all violations of this Assurance.

29. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any rights or any future rights.

30. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance.

31. Nothing in this Assurance shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

32. Loving Care shall not state or imply, directly or indirectly, that the State of Minnesota or the Attorney General have approved of, condone, or agree with any conduct or actions by Loving Care.

33. Loving Care agrees that, in accordance with Minn. Stat. § 8.31, subd. 2b, the Attorney General, without further notice to Loving Care, may file this Assurance with the Ramsey County District Court on an *ex parte* basis, and that the Court may issue the Order below without further proceedings.

34. The Parties agree that this Assurance, including any issues related to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

35. The Ramsey County District Court shall have jurisdiction of this matter for purposes of enforcing this Assurance.

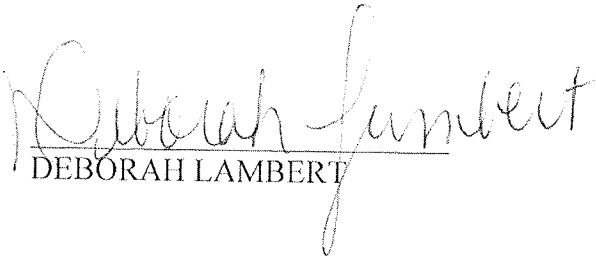
36. Service of notices required by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

Jon Moler, Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101

Deborah Lambert, Owner
Loving Care Home Services, Inc.
3880 Laverne Ave N
Suite 150
Lake Elmo, MN 55042


Dated: June 22, 2021

LOVING CARE HOME SERVICES, INC.


DEBORAH LAMBERT

Dated: 6/30/21

KEITH ELLISON
Attorney General
State of Minnesota


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445 Minnesota Street, Suite 1200
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Attorney for State of Minnesota

ORDER

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: _____

JUDGE OF DISTRICT COURT

THERE BEING NO CAUSE FOR FURTHER DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.