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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

TESSA BROWER-WALSH, an individual, on
behalf of Plaintiff, and on behalf of all persons
similarly situated,

Plaintiff,

v.

THERAPYMATCH, INC. dba HEADWAY, a
Delaware corporation; and DOES 1-50,
Inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/29/2025 12:48:43 AM

Clerk of the Superior Court
By D. Donaldson ,Deputy Clerk

Case No: 25CU053855C

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et
seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.

LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.
9) UNLAWFUL DEDUCTIONS;
10) FAILURE TO PAY VACATION WAGES DUE.
11) VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

PLAINTIFF TESSA BROWER-WALSH (“PLAINTIFF”), an individual, on behalf of PLAINTIFF and all other similarly situated current and former employees, alleges on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant THERAPYMATCH, INC. dba HEADWAY (“DEFENDANT” and/or DEFENDANTS”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANTS own and operate a platform that connects patients to mental health care professionals in California, including in the County of San Diego where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANTS in California from August 2024 to May 2025, as a misclassified exempt employee, paid in part by commission-based compensation.

4. PLAINTIFF reserves the right to seek leave to amend this complaint to add new Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

1 5. PLAINTIFF brings this Class Action on behalf of herself and on behalf of a class
2 of employees that worked for DEFENDANT in California at any time beginning four (4) years
3 prior to the filing of the original Complaint and ending on the date as determined by the Court
4 (“CLASS PERIOD”). The members of the class are so numerous that joinder of all class members
5 is impractical. PLAINTIFF reserves the right to amend the following class definition before the
6 Court determines whether class certification is appropriate, or thereafter upon leave of Court:
7 **California Class:** All of DEFENDANTS’ current and former employees in California occupying
8 the role of Provider Growth Associate during the CLASS PERIOD (“California Class”).

9 6. The amount in controversy for the aggregate claim of the CALIFORNIA CLASS
10 Members is under five million dollars (\$5,000,000.00).

11 7. PLAINTIFF brings this Class Action on behalf of PLAINTIFF and a CALIFORNIA
12 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
13 CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to lawfully
14 compensate these employees. DEFENDANTS’ uniform policy and practice alleged herein was an
15 unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained and continue
16 to retain wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.
17 PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining
18 such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
19 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS’
20 past and current unlawful conduct, and all other appropriate legal and equitable relief.

21 8. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names
24 pursuant to California Civil Procedure Code Section 474. PLAINTIFF will seek leave to amend
25 this Complaint to allege the true names and capacities of DEFENDANTS DOES 1 through 50,
26 inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that
27 information and belief alleges, that the DEFENDANTS named in this Complaint, including
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1 DEFENDANTS DOES 1 through 50, inclusive, are responsible in some manner for one or more of
2 the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3 9. The agents, servants and/or employees of DEFENDANTS and each of them acting
4 on behalf of DEFENDANTS acted within the course and scope of his, her or its authority as the
5 agent, servant and/or employee of DEFENDANTS, and personally participated in the conduct
6 alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged herein.
7 Consequently, the acts of each DEFENDANTS are legally attributable to the other DEFENDANTS
8 and all DEFENDANTS are jointly and severally liable to PLAINTIFF and the other members of
9 the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
10 DEFENDANTS' agents, servants and/or employees.

11 10. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
12 PLAINTIFF'S employer, within the meaning of California Labor Code Section 558, who violated
13 or caused to be violated, a Section of Part 2, Chapter 1 of the California Labor Code or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commission
15 and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code
16 Section 558, at all relevant times.

17 11. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
18 PLAINTIFFS' employer either individually or as an officer, agent, or employee of another person,
19 within the meaning of California Labor Code Section 1197.1, who paid or caused to be paid to any
20 employee a wage less than the minimum fixed by California state law, and as such, are subject to
21 civil penalties for each underpaid employee.

22 12. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
23 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
24 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

25 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and other
27 members of the CALIFORNIA CLASS who has been economically injured by DEFENDANTS'
28 past and current unlawful conduct, and all other appropriate legal and equitable relief.

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1 two times the state minimum wage for full-time employment by employers with at least twenty-six
2 employees. Plaintiff earned an annual salary below the threshold in 2024 and 2025 to meet the test
3 of exemption.

4 20. At all times during the CLASS PERIOD, PLAINTIFF and the other members of the
5 California Class primarily performed non-exempt job duties and were not primarily engaged in
6 duties that meet the test of the exemption, but were nevertheless classified by DEFENDANTS as
7 exempt. PLAINTIFF and the other members of the California Class engaged in a finite set of tasks
8 and had no power to exercise any independent judgment and/or discretion. More specifically,
9 DEFENDANTS' policy, practice and procedure restrained PLAINTIFF and the other members of
10 the California Class from evaluating possible courses of action and implementing decisions based
11 on their independent judgment and discretion. In other words, in exercising their duties,
12 PLAINTIFF and the other members of the California Class lacked any power to make any
13 independent choice free from immediate supervision and with respect to matters of significance.
14 PLAINTIFF and other members of the California Class did not exercise the requisite discretion or
15 independent judgment in the training or supervision of employees based on the constraints,
16 direction and control imposed by DEFENDANTS.

17 21. At all times during the CLASS PERIOD, PLAINTIFF and the other members of the
18 California Class did not have the authority to hire, fire, or promote employees, determine their pay
19 rates or benefits, or give raises, or otherwise make employment-related, personnel decisions.
20 Consequently, PLAINTIFF and the other members of the California Class did not have the authority
21 to decide whether or not an employee should be disciplined for an infraction. Disciplinary decisions
22 were made by other departments, or dictated by company policies. Overall, recommendations made
23 by PLAINTIFF and the other members of the California Class were given no weight on all the
24 above issues. As a result, as PLAINTIFF and the other members of the California Class were
25 engaged in a type of work that required no exercise of independent judgment or discretion as to any
26 matter of significance. Moreover, PLAINTIFF and the other members of the California Class were
27 engaged in a type of work unrelated to management policies.

28 22. Further, the work schedule for PLAINTIFF and the other members of the California

1 Class were set by DEFENDANTS. Typically, PLAINTIFF and other members of the California
2 Class, regularly worked in excess of eight (8) hours in a workday and more than forty (40) hours in
3 a workweek. Nevertheless, DEFENDANTS never provided PLAINTIFF and the other members of
4 the California Class with overtime compensation and other benefits for the overtime hours worked
5 as required by law due to DEFENDANTS' improper treatment.

6 23. As a matter of company policy, practice, and procedure, DEFENDANTS have
7 unlawfully, unfairly and/or deceptively treated PLAINTIFF and the other members of the
8 California Class as exempt employees, failed to pay the required overtime compensation and
9 otherwise failed to comply with all applicable labor laws with respect to PLAINTIFF and the other
10 members of the California Class.

11 24. From time-to-time during the CLASS PERIOD, DEFENDANTS improperly
12 misclassified PLAINTIFF and the California Class members who were paid on a draw versus
13 commission basis as exempt from overtime compensation. During the CLASS PERIOD,
14 DEFENDANTS included advanced draws in order to meet the salary-basis test for the overtime
15 exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet the salary-
16 basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.) As a
17 result, PLAINTIFF and the California Class members who were paid on a draw versus commission
18 basis forfeited overtime wages by DEFENDANTS' failure to accurately classify them as non-
19 exempt from overtime compensation.

20 25. By reason of this uniform exemption practice, policy and procedure applicable to
21 PLAINTIFF, DEFENDANTS committed acts of unfair competition in violation of the California
22 Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a company-
23 wide policy, practice and procedure which failed to properly classify PLAINTIFF and the other
24 members of the California Class and thereby failed to pay them overtime wages for documented
25 overtime hours worked.

26 26. The proper classification of PLAINTIFF and the other members of the California
27 Class is DEFENDANTS' burden. DEFENDANTS had no business policy, practice, or procedure
28 to ensure that PLAINTIFF and the other members of the California Class were properly classified

1 as exempt, and in fact, as a matter of corporate policy erroneously and unilaterally classified
2 misclassified as exempt based on job title alone. As a result of DEFENDANTS' intentional
3 disregard of the obligation to meet this burden, DEFENDANTS failed to pay all required overtime
4 compensation for work performed by PLAINTIFF and the other members of the California Class
5 and violated the California Labor Code and regulations promulgated thereunder as herein alleged.

6 27. Additionally, DEFENDANTS failed to provide all the legally required off-duty meal
7 and rest breaks to PLAINTIFF and the other members of the California Class, as required by the
8 applicable Wage Order and Labor Code. As a result of its willful misclassification, DEFENDANTS
9 did not have a practice of providing meal and rest breaks to PLAINTIFF and the other members of
10 the California Class. DEFENDANTS' failure to provide PLAINTIFF and other members of the
11 California Class with legally required meal and rest breaks is evidenced by DEFENDANTS'
12 business records which contain no record of these breaks.

13 28. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods,
18 failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked,
19 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for off-the-
20 clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS
21 overtime at the correct regular rate of pay, failed to pay PLAINTIFF and the other members of the
22 CALIFORNIA CLASS redeemed sick pay at the regular rate of pay, failed to reimburse
23 PLAINTIFF and the other members of the CALIFORNIA CLASS for business expenses, and failed
24 to issue to PLAINTIFF and the other members of the CALIFORNIA CLASS with accurate itemized
25 wage statements showing, among other things, all applicable hourly rates in effect during the pay
26 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'
27 uniform policies and practices are intended to purposefully avoid the accurate and full payment for
28 all time worked as required by California law which allows DEFENDANTS to illegally profit and

1 gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling
2 operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD
3 should be adjusted accordingly.

4 **A. Meal Period Violations**

5 29. From time to time during the CLASS PERIOD, as a result of their rigorous work
6 schedules, DEFENDANTS' inadequate staffing practices, and their misclassification by
7 DEFENDANTS, PLAINTIFF and other CALIFORNIA CLASS members are from time to time
8 unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their
9 meal periods. PLAINTIFF and other CALIFORNIA CLASS members are required to perform work
10 as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
11 meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
12 members with a second off-duty meal period for some workdays in which these employees are
13 required by DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
14 PLAINTIFF and other CALIFORNIA CLASS members does not qualify for the limited and
15 narrowly construed "on-duty" meal period exception. When they were provided with meal periods,
16 PLAINTIFF and other CALIFORNIA CLASS members were, from time to time, required to remain
17 on duty and on call. Further, DEFENDANTS from time to time required PLAINTIFF and other
18 CALIFORNIA CLASS members to maintain cordless communication devices in order to receive
19 and respond to work-related communications during what was supposed to be their off-duty meal
20 breaks. DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members
21 with legally required meal breaks is evidenced by DEFENDANTS' business records. As a result of
22 their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
23 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
24 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

25 **B. Rest Period Violations**

26 30. From time to time during the CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS members were also required to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods as a result of their rigorous work requirements,

1 DEFENDANTS' inadequate staffing, and their misclassification. Further, for the same reasons,
2 these employees were denied their first rest periods of at least ten (10) minutes for some shifts
3 worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at
4 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
5 time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
6 ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF
7 and other CALIFORNIA CLASS members were, from time to time, required to remain on duty
8 and/or on call. Further, DEFENDANTS from time to time required PLAINTIFF and other
9 CALIFORNIA CLASS members to maintain cordless communication devices in order to receive
10 and respond to work-related communications during what was supposed to be their off-duty rest
11 breaks. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-
12 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS'
13 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS members were from time to
14 time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

15 **C. Unreimbursed Business Expenses**

16 31. DEFENDANTS as a matter of corporate policy, practice, and procedure,
17 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
18 and the other CALIFORNIA CLASS members for required business expenses incurred by the
19 PLAINTIFF and other CALIFORNIA CLASS members in direct consequence of discharging their
20 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
21 required to indemnify employees for all expenses incurred in the course and scope of their
22 employment. California Labor Code Section 2802 expressly states that "an employer shall
23 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
24 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
25 directions of the employer, even though unlawful, unless the employee, at the time of obeying the
26 directions, believed them to be unlawful."

27 32. In the course of their employment, DEFENDANTS required PLAINTIFF and other
28 CALIFORNIA CLASS members to incur personal expenses for the use of their personal cell

1 phones, as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
2 CALIFORNIA CLASS members were required to use their personal cell phones, in order to
3 perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse
4 PLAINTIFF and other CALIFORNIA CLASS members for the use of their personal cell phones.
5 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
6 CALIFORNIA CLASS members incurred unreimbursed business expenses that included, but were
7 not limited to, costs related to the use of their personal cell phones, all on behalf of and for the
8 benefit of DEFENDANTS.

9 **D. Wage Statement Violations**

10 33. California Labor Code Section 226 required an employer to furnish its employees
11 an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
12 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
13 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
14 name of the employee and only the last four digits of the employee's social security number or an
15 employee identification number other than a social security number, (8) the name and address of
16 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
17 period and the corresponding number of hours worked at each hourly rate by the employee.

18 34. From time to time during the CLASS PERIOD, as a result of, inter alia,
19 DEFENDANTS' misclassification of Plaintiff and the members of the CALIFORNIA CLASS,
20 DEFENDANT issued inaccurate itemized wage statements to PLAINTIFF and other
21 CALIFORNIA CLASS which failed to show, among other things, all deductions, the total hours
22 worked and all applicable hourly rates in effect during the pay period and the corresponding amount
23 of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and
24 rest periods.

25 35. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and the
26 CALIFORNIA CLASS members with wage statements that accurately provided the name and
27 address of the legal entity that is the employer, in violation of California Labor Code Section
28 226(a)(8).

1 36. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 California Labor Code Section 226.

4 37. As a result, DEFENDANTS issued PLAINTIFF and other CALIFORNIA CLASS
5 members with wage statements that violate California Lab. Code § 226(a)(1)-(9). Further,
6 DEFENDANTS' violations are knowing and intentional, and were not isolated due to an
7 unintentional payroll error due to clerical or inadvertent mistake.

8 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

9 38. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
10 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
11 for all hours worked.

12 39. During the CLASS PERIOD, from time-to-time DEFENDANTS required
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
14 work, including but not limited to sending and receiving work-related communications. This
15 resulted in PLAINTIFF and other CALIFORNIA CLASS members having to work while off-the-
16 clock.

17 40. DEFENDANTS directed and directly benefited from the undercompensated off-the-
18 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS members.

19 41. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
20 assignments, and employment conditions of PLAINTIFF and the other CALIFORNIA CLASS
21 members.

22 42. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
23 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
24 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
25 wages earned and owed for all the work they performed.

26 43. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt
27 employees, subject to the requirements of the California Labor Code.

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1 44. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
2 CALIFORNIA CLASS members of all minimum regular, overtime, and double time wages owed
3 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than eight
5 (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

6 45. DEFENDANTS knew or should have known that PLAINTIFF'S and the other
7 CALIFORNIA CLASS members' off-the-clock work was compensable under the law.

8 46. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
9 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit
10 for the time spent working while off-the-clock, including but not limited to, sending and receiving
11 work-related communications. DEFENDANTS' uniform policy and practice to not pay
12 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
13 accordance with applicable law is evidenced by DEFENDANTS' business records.

14 **F. Regular Rate Violation –Redeemed Sick Pay**

15 47. From time to time during the CLASS PERIOD, DEFENDANTS failed and continue
16 to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members
17 for redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members
18 forfeited wages due to them for redeemed sick pay rates. DEFENDANTS' uniform policy and
19 practice not to pay the CALIFORNIA CLASS members at the correct rate for sick pay in
20 accordance with applicable law is evidenced by DEFENDANTS' business records.

21 48. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
22 members' compensation was DEFENDANTS' non-discretionary incentive program that paid
23 PLAINTIFF and other CALIFORNIA CLASS members incentive wages based on their
24 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
25 paid on an hourly basis with bonus compensation when the employees met the various performance
26 goals set by DEFENDANTS.

27 49. However, from time to time, when calculating the regular rate of pay in those pay
28 periods where PLAINTIFF and other CALIFORNIA CLASS members redeemed sick pay, and

1 earned non-discretionary bonuses, DEFENDANTS failed to accurately include the non-
2 discretionary bonus compensation as part of the employee's "regular rate of pay". Management
3 and supervisors described the incentive/bonus program to potential and new employees as part of
4 the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF
5 and other CALIFORNIA CLASS members must be included in the "regular rate of pay." The
6 failure to do so has resulted in a systematic underpayment of redeemed sick pay to PLAINTIFF and
7 other CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
8 Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the same
9 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
10 sick time, whether or not the employee actually works overtime in that workweek.
11 DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation as
12 part of the "regular rate of pay" for purposes of sick pay compensation was in violation of California
13 Labor Code Section 246, the underpayment of which is recoverable under California Labor Code
14 Sections 201, 202, 203, and/or 204.

15 50. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
17 matter of company policy, practice, and procedure, intentionally and knowingly failed to
18 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
19 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick
20 pay as required by California law which allowed DEFENDANTS to illegally profit and gain an
21 unfair advantage over competitors who complied with the law. To the extent equitable tolling
22 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS
23 PERIOD should be adjusted accordingly.

24 **G. Unlawful Deductions**

25 51. DEFENDANTS, from time-to-time, unlawfully deducted wages from
26 PLAINTIFF'S and CALIFORNIA CLASS members' pay without explanations and without
27 authorization to do so or notice to PLAINTIFF and the CALIFORNIA CLASS members. As a
28 result, DEFENDANTS violated Labor Code Section 221.

H. Timekeeping Manipulation

52. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the CALIFORNIA CLASS worked each day. As a result, DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours worked.

53. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from time to time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

54. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and benefit for the time that the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

I. Unlawful Rounding Practices

55. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS members being undercompensated for all their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS members, from time to time,

1 forfeited compensation for their time worked by working without their time being accurately
2 recorded and without compensation at the applicable overtime rates.

3 56. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
4 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS members' time
5 being inaccurately recorded.

6 **J. Violations for Untimely Payment of Wages**

7 57. Pursuant to California Labor Code Section 204, PLAINTIFF and the CALIFORNIA
8 CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF
9 and the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages,
10 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
11 rest period premium wages within the permissible time period.

12 58. Pursuant to California Labor Code Section 201, "If an employer discharges an
13 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."
14 Pursuant to California Labor Code Section 202, if an employee quits his or her employment, "his
15 or her wages shall become due and payable not later than 72 hours thereafter, unless the employee
16 has given 72 hours previous notice of his or her intention to quit, in which case the employee is
17 entitled to his or her wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS
18 members were, from time to time, not timely provided the wages earned and unpaid at the time of
19 their discharge and/or at the time of quitting, in violation of California Labor Code Sections 201
20 and 202.

21 59. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
22 paying all wages due at time of termination for all CALIFORNIA CLASS members whose
23 employment ended during the CLASS PERIOD.

24 **K. Sick Pay Violations**

25 60. California Labor Code Section 246 (a)(1) mandates that "An employee who, on or
26 after July 1, 2015, works in California for the same employer for 30 or more days within a year
27 from the commencement of employment is entitled to paid sick days as specified in this section."
28 Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.

1 From time to time, DEFENDANTS failed to have a policy or practice in place to provide
2 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
3 leave. As of January 1, 2024, DEFENDANTS failed to adhere to the law in that they failed to
4 provide and allow employees to use at least 40 hours or five days of paid sick leave per year.

5 61. California Labor Code Section 246(i) requires an employer to furnish its employees
6 with written wage statements setting forth the amount of paid sick leave available. From time to
7 time, DEFENDANTS violated California Labor Code Section 246 by failing to furnish PLAINTIFF
8 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount of
9 paid sick leave available.

10 **L. Reporting Time Violations**

11 62. Further, DEFENDANTS from time to time required PLAINTIFF and other
12 CALIFORNIA CLASS Members to report to work, but were furnished less than half their
13 scheduled shift's worth of work and were not paid reporting time pay as required by Cal. Code
14 Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, "(A) Each workday an
15 employee is required to report for work and does report, but is not put to work or is furnished less
16 than half said employee's usual or scheduled day's work, the employee shall be paid for half the
17 usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
18 hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." In
19 addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS Members
20 to engage in additional work, this sometimes resulted in a second reporting for work in a single
21 workday. In such a circumstance of a second reporting for work in a single workday,
22 DEFENDANTS failed to pay these employees reporting time pay as required by Cal. Code Regs.,
23 tit. 8 § 11040. Subdivision 5(B) states: "If an employee is required to report for work a second
24 time in any one workday and is furnished less than two (2) hours of work on the second reporting,
25 said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall be
26 not less than the minimum wage." Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

26 **M. Vacation Time Violations**

27 63. Further, upon PLAINTIFF'S and CALIFORNIA CLASS MEMBERS' separation
28 of employment, they had not used all of their vested vacation and thus their unused, vested vacation

1 was required to have been paid at their final rate upon separation of employment. DEFENDANT,
2 however, failed to pay the vested vacation time, and when it did, paid it at the incorrect rate. As a
3 result, DEFENDANTS violated Labor Code §227.3.

4 64. Specifically, as to PLAINTIFF, PLAINTIFF was misclassified as an exempt
5 employee by DEFENDANTS and, as a result, was from time to time unable to take off-duty meal
6 and rest breaks and was not fully relieved of duty for their rest and meal periods. PLAINTIFF was
7 required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift
8 without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF
9 with a second off-duty meal period each workday in which she was required by DEFENDANTS
10 to work ten (10) hours of work. As a result of DEFENDANTS' misclassification of PLAINTIFF
11 as an exempt employee, PLAINTIFF was required to remain on-duty and on-call for the rest break.
12 DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during what was
13 supposed to be their off-duty meal periods. As a result of DEFENDANTS' misclassification of
14 PLAINTIFF as an exempt employee, PLAINTIFF therefore forfeited meal and rest breaks without
15 additional compensation and in accordance with DEFENDANTS' strict corporate policy and
16 practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to
17 comply with California Labor Code Section 226. Further, DEFENDANTS also failed to reimburse
18 PLAINTIFF for required business expenses related to the personal expenses incurred for the use
19 of her personal cell phone, on behalf of and in furtherance of her employment with
20 DEFENDANTS. To date, as a result of DEFENDANTS' misclassification of PLAINTIFF as an
21 exempt employee, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and
22 double time compensation still owed to her, or any penalty wages owed to her under California
23 Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
24 the sum or value of \$75,000.

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CLASS ACTION ALLEGATIONS

65. PLAINTIFF brings this Class Action on behalf of herself and on behalf of two classes of employees that worked for DEFENDANTS in California at any time beginning four (4) years prior to the filing of the original Complaint and ending on the date as determined by the Court (“CLASS PERIOD”). The members of the classes are so numerous that joinder of all class members is impractical. PLAINTIFF reserves the right to amend the following class definitions before the Court determines whether class certification is appropriate, or thereafter upon leave of Court:

California Class: All of DEFENDANTS’ current and former employees in California occupying the role of Provider Growth Associate during the CLASS PERIOD (“California Class”).

66. The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00)

67. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to reimburse for business expenses, failure to compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

68. The members of the class are so numerous that joinder of all class members is impractical.

69. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure to provide accurate itemized wage statements, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions

1 affecting solely any individual members of the class. Among the questions of law and fact common
2 to the class are:

- 3 a. Whether DEFENDANTS maintained legally compliant meal period policies and
4 practices;
- 5 b. Whether DEFENDANTS maintained legally compliant rest period policies and
6 practices;
- 7 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS
8 members accurate overtime wages;
- 9 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS
10 members at least minimum wage for all hours worked;
- 11 e. Whether DEFENDANTS failed to compensate PLAINTIFF and the CALIFORNIA
12 CLASS members for required business expenses;
- 13 f. Whether DEFENDANTS issued legally compliant wage statements;
- 14 g. Whether DEFENDANTS committed an act of unfair competition by systematically
15 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
16 CLASS for all time worked;
- 17 h. Whether DEFENDANTS committed an act of unfair competition by systematically
18 failing to record all meal and rest breaks missed by PLAINTIFF and other
19 CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit
20 of this work, required employees to perform this work and permits or suffers to
21 permit this work;
- 22 i. Whether DEFENDANTS committed an act of unfair competition in violation of
23 California Business and Professions Code Sections 17200, *et seq.* (the “UCL”), by
24 failing to provide the PLAINTIFF and the other members of the CALIFORNIA
25 CLASS with the legally required meal and rest periods.

26 70. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a
27 result of DEFENDANTS’ conduct and actions alleged herein.
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1 71. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
2 PLAINTIFF has the same interests as the other members of the class.

3 72. PLAINTIFF will fairly and adequately represent and protect the interests of the
4 CALIFORNIA CLASS members.

5 73. PLAINTIFF retained able class counsel with extensive experience in class action
6 litigation.

7 74. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
8 interest of the other CALIFORNIA CLASS members.

9 75. There is a strong community of interest among PLAINTIFF and the members of the
10 CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
11 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
12 sustained.

13 76. The questions of law and fact common to the CALIFORNIA CLASS members
14 predominate over any questions affecting only individual members, including legal and factual
15 issues relating to liability and damages.

16 77. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy because joinder of all class members is impractical. Moreover,
18 since the damages suffered by individual members of the class may be relatively small, the expense
19 and burden of individual litigation makes it practically impossible for the members of the class
20 individually to redress the wrongs done to them. Without class certification and determination of
21 declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of
22 separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- 23 a. Inconsistent or varying adjudications with respect to individual members of the
24 CALIFORNIA CLASS which would establish incompatible standards of conduct
25 for the parties opposing the CALIFORNIA CLASS; and/or,
26 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
27 which would, as a practical matter, be dispositive of the interests of the other
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members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

78. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. and Prof. Code §§ 17200, *et seq.*)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)

79. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

80. DEFENDANTS are each a “person” as that term is defined under California Business and Professions Code Section 17021.

81. California Business and Professions Code Sections 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

82. By the conduct alleged herein, DEFENDANTS have engaged and continues to engage in business practices which violate California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 515, 558, 1194, 1197, 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant to California Business and Professions Code Section 17203 as may be necessary to prevent and

1 remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully
2 withheld.

3 83. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair
4 in that these practices violated public policy, were immoral, unethical, oppressively unscrupulous
5 or substantially injurious to employees, and were without valid justification or utility for which this
6 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
7 Business and Professions Code, including restitution of wages wrongfully withheld.

8 84. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
9 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
10 mandated meal and rest periods and the required amount of compensation for missed meal and rest
11 periods, failed to pay minimum and overtime wages owed, and failed to reimburse all necessary
12 business expenses incurred, due to a systematic business practice that cannot be justified, pursuant
13 to the applicable California Labor Code and Industrial Welfare Commission requirements in
14 violation of California Business and Professions Code Sections 17200, *et seq.*, and for which this
15 Court should issue injunctive and equitable relief, pursuant to California Business and Professions
16 Code Section 17203, including restitution of wages wrongfully withheld.

17 85. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
18 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
19 other members of the CALIFORNIA CLASS to be underpaid during their employment with
20 DEFENDANTS.

21 86. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
22 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
24 required by California Labor Code Sections 226.7 and 512.

25 87. Therefore, PLAINTIFF demands on behalf of PLAINTIFF and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
27 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
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workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

88. PLAINTIFF further demands on behalf of PLAINTIFF and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was not timely provided as required by law.

89. By and through the unlawful and unfair business practices described herein, DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

90. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business practices in violation of California Business and Professions Code Sections 17200, *et seq.*

91. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

92. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair, and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and unfair business practices in the future.

PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

9 93. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 94. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
13 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
14 Welfare Commission requirements for DEFENDANTS' failure to accurately calculate and pay
15 minimum wages to PLAINTIFF and CALIFORNIA CLASS members.

16 95. Pursuant to California Labor Code Section 204, other applicable laws and
17 regulations, and public policy, an employer must timely pay its employees for all hours worked.

18 96. California Labor Code Section 1197 provides the minimum wage for employees
19 fixed by the commission is the minimum wage to be paid to employees, and the payment of a less
20 wage than the minimum so fixed is unlawful.

21 97. California Labor Code Section 1194 establishes an employee's right to recover
22 unpaid wages, including minimum wage compensation and interest thereon, together with the costs
23 of suit.

24 98. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the
25 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
26 work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
27 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
28 CALIFORNIA CLASS.

1 99. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing
3 a uniform policy and practice that denies accurate compensation to PLAINTIFF and the other
4 members of the CALIFORNIA CLASS in regard to minimum wage pay.

5 100. In committing these violations of the California Labor Code, DEFENDANTS
6 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
7 by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an
8 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
9 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
10 and regulations.

11 101. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
13 minimum wage compensation for their time worked for DEFENDANTS.

14 102. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
16 failure to pay all earned wages.

17 103. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
18 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
19 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered
20 and will continue to suffer an economic injury in amounts which are presently unknown to them,
21 and which will be ascertained according to proof at trial.

22 104. DEFENDANTS knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA CLASS were under-compensated for their time worked.
24 DEFENDANTS systematically elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
26 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
27 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages for
28 their time worked.

1 105. In performing the acts and practices herein alleged in violation of California labor
2 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
3 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
4 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
6 consequences to them, and with the despicable intent of depriving them of their property and legal
7 rights, and otherwise causing them injury in order to increase company profits at the expense of
8 these employees.

9 106. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
10 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment
11 of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor
12 Code and/or other applicable statutes. To the extent minimum wage compensation is determined
13 to be owed to the CALIFORNIA CLASS members who have terminated their employment,
14 DEFENDANTS' conduct also violates Labor Code Sections 201 and/or 202, and therefore these
15 individuals are also entitled to waiting time penalties under California Labor Code Section 203,
16 which penalties are sought herein on behalf of these CALIFORNIA CLASS members.
17 DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further,
18 PLAINTIFF and other CALIFORNIA CLASS members are entitled to seek and recover statutory
19 costs.

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

24 107. PLAINTIFF and the other members of the CALIFORNIA CLASS reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
26 Complaint.

27 108. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
28 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all
2 overtime worked including work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek. Pursuant to California Labor
4 Code Section 204, other applicable laws and regulations, and public policy, an employer must
5 timely pay its employees for all hours worked.

6 109. California Labor Code Section 510 provides that employees in California shall not
7 be employed more than eight (8) hours per workday and/or more than forty (40) hours per
8 workweek unless they receive additional compensation beyond their regular wages in amounts
9 specified by law.

10 110. California Labor Code Section 1194 establishes an employee's right to recover
11 unpaid wages, including minimum and overtime compensation and interest thereon, together with
12 the costs of suit. California Labor Code Section 1198 further states that the employment of an
13 employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

14 111. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
15 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
16 they worked, including overtime work.

17 112. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
18 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing
19 a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and
20 other CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the
21 other members of the CALIFORNIA CLASS for overtime worked, including, the overtime work
22 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
23 forty (40) hours in any workweek.

24 113. In committing these violations of the California Labor Code, DEFENDANTS
25 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
26 PLAINTIFF and other CALIFORNIA CLASS members. DEFENDANTS acted in an illegal
27 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
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1 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations.

3 114. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
4 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
5 overtime compensation for their time worked for DEFENDANTS.

6 115. California Labor Code Section 515 sets out various categories of employees who are
7 exempt from the overtime requirements of the law. None of these exemptions are applicable to
8 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
9 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
10 agreement that would preclude the causes of action contained herein this Complaint. Rather,
11 PLAINTIFF brings this Action on behalf of PLAINTIFF and the CALIFORNIA CLASS based on
12 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
13 California.

14 116. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting
16 a failure to pay all earned wages.

17 117. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
18 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
19 maximum hours permissible by law as required by California Labor Code Sections 510, 1194, and
20 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were
21 regularly required to work, and did in fact work overtime, and did in fact work overtime as to which
22 DEFENDANTS failed to accurately record and pay as evidenced by DEFENDANTS' business
23 records and witnessed by employees.

24 118. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
26 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
27 CLASS have suffered and will continue to suffer an economic injury in amounts which are presently
28 unknown to them, and which will be ascertained according to proof at trial.

1 119. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were undercompensated for their time worked.
3 DEFENDANTS systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
5 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF
6 and the other members of the CALIFORNIA CLASS the correct overtime wages for their overtime
7 worked.

8 120. In performing the acts and practices herein alleged in violation of California labor
9 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
10 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
11 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
13 consequences to them, and with the despicable intent of depriving them of their property and legal
14 rights, and otherwise causing them injury in order to increase company profits at the expense of
15 these employees.

16 121. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS request
17 recovery of overtime wages, according to proof, interest, statutory costs, as well as the assessment
18 of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor
19 Code and/or other applicable statutes. To the extent overtime compensation is determined to be
20 owed to the CALIFORNIA CLASS members who have terminated their employment,
21 DEFENDANTS' conduct also violates California Labor Code Sections 201 and/or 202, and
22 therefore these individuals are also entitled to waiting time penalties under California Labor Code
23 203, which penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful,
24 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members
25 are entitled to seek and recover statutory costs.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

5 122. PLAINTIFF and the other members of the CALIFORNIA CLASS reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 123. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
9 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS members as
10 required by the applicable Wage Order and Labor Code. The nature of the work performed by
11 PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from being
12 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
13 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were often not
14 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
15 failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally required meal
16 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
17 Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS members with
18 a second off-duty meal period in some workdays in which these employees were required by
19 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of
20 the CALIFORNIA CLASS forfeited meal breaks without additional compensation and in
21 accordance with DEFENDANTS' strict corporate policy and practice.

22 124. DEFENDANTS further violated California Labor Code Section 226.7 and the
23 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
24 members who were not provided a meal period, in accordance with the applicable Wage Order, one
25 additional hour of compensation at each employee's regular rate of pay for each workday that a
26 meal period was not provided.

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125. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)

126. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

127. From time to time, PLAINTIFF and other CALIFORNIA CLASS members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with all the legally required paid rest periods is evidenced by DEFENDANTS' business records.

128. DEFENDANTS further violated California Labor Code Sections 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members who were not provided a rest period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that rest
2 period was not provided.

3 129. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial, and
5 seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code § 226)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

10 130. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 131. California Labor Code Section 226 provides that an employer must furnish
14 employees with an "accurate itemized" statement in writing showing:

- 15 a. Gross wages earned,
16 b. total hours worked by the employee, except for any employee whose compensation
17 is solely based on a salary and who is exempt from payment of overtime under
18 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
19 Commission,
20 c. the number of piece-rate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis,
22 d. all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,
24 e. net wages earned,
25 f. the inclusive dates of the period for which the employee is paid,
26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of an
28

employee identification number other than social security number may be shown on the itemized statement,

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

132. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS members' missed meal and rest breaks or were not paid for all hours worked, DEFENDANTS violated California Labor Code Section 226 in that DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

133. DEFENDANTS failed to provide PLAINTIFF and the CALIFORNIA CLASS members with wage statements that accurately provided the name and address of the legal entity that is the employer, in violation of California Labor Code Section 226(a)(8).

134. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226(a)(1)-(9).

135. DEFENDANTS knowingly and intentionally failed to comply with California Labor Code Section 226(a)(1)-(9), causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to California Labor Code Section 226, in an amount according to proof at the time of trial

(but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)

136. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

137. California Labor Code Section 200 provides that:

As used in this article:

- (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

138. California Labor Code Section 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

139. California Labor Code Section 202 provides, in relevant part, that:

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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

140. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS members' employment contract.

141. California Labor Code Section 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or

1 who quits, the wages of the employee shall continue as a penalty from the due date
2 thereof at the same rate until paid or until an action therefor is commenced; but the
3 wages shall not continue for more than 30 days.

4 142. The employment of PLAINTIFF and many CALIFORNIA CLASS members
5 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
6 missed meal and rest breaks, as required by law.

7 143. Therefore, as provided by California Labor Code Section 203, on behalf of
8 themselves and the members of the CALIFORNIA CLASS whose employment has ended,
9 PLAINTIFF demands up to thirty (30) days of pay as penalty for not paying all wages due at time
10 of termination for all employees who terminated employment during the CLASS PERIOD and
11 demand an accounting and payment of all wages due, plus interest and statutory costs as allowed
12 by law.

13 **EIGHTH CAUSE OF ACTION**

14 **Failure To Reimburse Employees for Required Expenses**

15 **(Cal. Lab. Code §§ 2802)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

17 144. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 145. California Labor Code Section 2802 provides, in relevant part, that:
21 An employer shall indemnify his or her employee for all necessary expenditures or
22 losses incurred by the employee in direct consequence of the discharge of his or her
23 duties, or of his or her obedience to the directions of the employer, even though
24 unlawful, unless the employee, at the time of obeying the directions, believed them to
25 be unlawful.

26 146. From time to time during the CLASS PERIOD, DEFENDANTS violated California
27 Labor Code Section 2802, by failing to indemnify and reimburse PLAINTIFF and the
28 CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties
for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the
CALIFORNIA CLASS members for expenses which included, but were not limited to, the use of
their personal cell phones, all on behalf of and for the benefit of DEFENDANTS. Specifically,

1 DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS members to use their
2 personal cell phones, to execute their essential job duties on behalf of DEFENDANTS.
3 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and
4 the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell
5 phones, within the course and scope of their employment for DEFENDANTS. These expenses
6 were necessary to complete their principal job duties. DEFENDANTS are estopped by
7 DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were
8 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
9 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
10 members for these expenses as an employer is required to do under the laws and regulations of
11 California.

12 147. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
13 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
14 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
15 statutory rate and costs under California Labor Code Section 2802.

16 **NINTH CAUSE OF ACTION**

17 **Unlawful Deductions from PLAINTIFF and CLASS MEMBERS Paychecks**

18 **[Cal. Labor Code §§ 221 and 223]**

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

20 148. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
21 allegations in the preceding paragraphs.

22 149. During the CLASS PERIOD, DEFENDANTS regularly and consistently maintained
23 corporate policies and procedures designed to reduce labor costs by reducing or minimizing the
24 amount of compensation paid to its employees, especially overtime compensation.

25 150. DEFENDANTS made deductions from PLAINTIFF and the other CLASS
26 MEMBERS' paychecks during various pay periods.

27 151. Labor Code § 221 provides it is unlawful for any employer to collect or receive from
28 an employee any part of wages theretofore paid by employer to employee.

152. Labor Code § 223 provides that where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract. Labor Code section 225 further provides that the violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

153. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or received from PLAINTIFFS and the other CLASS MEMBERS' part of the wages paid to their employees.

154. Wherefore, PLAINTIFFS and the other CLASS MEMBERS demand the return of all wages unlawfully deducted from the paychecks, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

TENTH CAUSE OF ACTION

For Failure to Pay Vacation Wages

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)

155. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

156. At all relevant times, California Labor Code §227.3 provides for the following:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

157. At all times relevant, including at times throughout the four-year period preceding the filing of the original complaint, PLAINTIFF, and upon information and belief, and CALIFORNIA CLASS Members were subject to an employer policy and/or contract of employment that provided for paid vacations not otherwise provided by a collective-bargaining agreement. Upon PLAINTIFF'S and CALIFORNIA CLASS Members' separation of

1 employment, they had not used all of their vested vacation and thus their unused, vested vacation
2 was required to have been paid at their final rate upon separation of employment. As a result of
3 the miscalculation, Defendants violated Labor Code §227.3.

4 158. PLAINTIFF seeks, on her behalf and on behalf of the CALIFORNIA CLASS, all
5 damages and remedies available under California Labor Code §227.3, including payment of the
6 vacation wages at the final rate.

7 **ELEVENTH CAUSE OF ACTION**

8 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

9 **(Cal. Lab. Code §§2698 *et seq.*)**

10 **(Alleged by PLAINTIFF against all DEFENDANTS)**

11 159. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
12 herein, the prior paragraphs of this Complaint.

13 160. PAGA is a mechanism by which the State of California itself can enforce state labor
14 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
15 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
16 a law enforcement action designed to protect the public and not to benefit private parties. The
17 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
18 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
19 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
20 private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch.
21 906, § 1.) Accordingly, PAGA claims cannot be subject to arbitration.

22 161. PLAINTIFF, and such persons who may be added from time to time who satisfy the
23 requirements and exhaust the administrative procedures under the PAGA, bring this
24 Representative Action on behalf of the State of California with respect to PLAINTIFF and the
25 following aggrieved employees during the time period of October 6, 2024, and the present
26 ("PAGA PERIOD"): All of DEFENDANTS' current and former employees occupying the role of
27 Provider Growth Associate and/or all of DEFENDANTS' current and former employees classified
28

1 by DEFENDANTS as exempt and who earn or earned a monthly salary equivalent less than two
2 times the state minimum wage for full-time employment (“Aggrieved Employees”).

3 162. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code
4 Section 2699(c) because PLAINTIFF was employed by DEFENDANTS and personally suffered
5 each of the alleged Labor Code violations committed by DEFENDANTS.

6 163. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
7 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
8 and the applicable IWC Wage Order. At all relevant times, for the reasons described herein and
9 others, PLAINTIFF and the AGGRIEVED EMPLOYEES were aggrieved employees of
10 DEFENDANTS within the meaning of Labor Code Section 2699(c).

11 164. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE, like
12 PLAINTIFF, on behalf of PLAINTIFF and other current or former employees, to bring a civil
13 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

14 165. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
15 Section 2699.3. By certified letter, return receipt requested, dated October 6, 2025, PLAINTIFF
16 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to
17 DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
18 including the facts and theories to support the alleged violations. (See Exhibit #1.)

19 166. As of the date of this complaint, more than sixty-five (65) days after serving the
20 LWDA with notice of DEFENDANTS’ violations, the LWDA has not provided any notice by
21 certified mail of its intent to investigate the DEFENDANTS’ alleged violations as mandated by
22 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
23 2699.3(a)(2)(A), PLAINTIFF may commence and is authorized to pursue this cause of action.

24 167. At all times during the PAGA PERIOD, DEFENDANTS failed to compensate
25 PLAINTIFF and AGGRIEVED EMPLOYEES with an annual salary of at least two times the
26 state minimum wage for full-time employment by employers with at least twenty-six employees.
27 Plaintiff earned an annual salary below the threshold in 2024 and 2025 to meet the test of
28 exemption.

1 168. At all times during the PAGA PERIOD, PLAINTIFF and Aggrieved Employees
2 primarily performed non-exempt job duties and were not primarily engaged in duties that meet
3 the test of the exemption, but were nevertheless classified by DEFENDANTS as exempt.
4 PLAINTIFF and Aggrieved Employees engaged in a finite set of tasks and had no power to
5 exercise any independent judgment and/or discretion. More specifically, DEFENDANTS' policy,
6 practice and procedure restrained PLAINTIFF and Aggrieved Employees from evaluating
7 possible courses of action and implementing decisions based on their independent judgment and
8 discretion. In other words, in exercising their duties, PLAINTIFF and Aggrieved Employees
9 lacked any power to make any independent choice free from immediate supervision and with
10 respect to matters of significance. PLAINTIFF and Aggrieved Employees did not exercise the
11 requisite discretion or independent judgment in the training or supervision of employees based on
12 the constraints, direction and control imposed by DEFENDANTS.

13 169. At all times during the PAGA PERIOD, PLAINTIFF and Aggrieved Employees
14 did not have the authority to hire, fire, or promote employees, determine their pay rates or benefits,
15 or give raises, or otherwise make employment-related, personnel decisions. Consequently,
16 PLAINTIFF and Aggrieved Employees did not have the authority to decide whether or not an
17 employee should be disciplined for an infraction. Disciplinary decisions were made by other
18 departments, or dictated by company policies. Overall, recommendations made by PLAINTIFF
19 and Aggrieved Employees were given no weight on all the above issues. As a result, as
20 PLAINTIFF and Aggrieved Employees were engaged in a type of work that required no exercise
21 of independent judgment or discretion as to any matter of significance. Moreover, PLAINTIFF
22 and the other Aggrieved Employees were engaged in a type of work unrelated to management
23 policies.

24 170. From time-to-time during the PAGA PERIOD, DEFENDANTS improperly
25 misclassified PLAINTIFF and Aggrieved Employees who were paid on a draw versus
26 commission basis as exempt from overtime compensation. During the PAGA PERIOD,
27 DEFENDANTS included advanced draws in order to meet the salary-basis test for the overtime
28 exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet the salary-

1 basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.) As
2 a result, PLAINTIFF and Aggrieved Employees who were paid on a draw versus commission
3 basis forfeited overtime wages by DEFENDANTS' failure to accurately classify them as non-
4 exempt from overtime compensation.

5 171. Further, the work schedule for PLAINTIFF and Aggrieved Employees were set by
6 DEFENDANTS. Typically, PLAINTIFF and Aggrieved Employees regularly worked in excess
7 of eight (8) hours in a workday and more than forty (40) hours in a workweek. Nevertheless,
8 DEFENDANTS never provided PLAINTIFF and Aggrieved Employees with overtime
9 compensation and other benefits for the overtime hours worked as required by law due to
10 DEFENDANTS' improper treatment.

11 172. As a matter of company policy, practice, and procedure, DEFENDANTS have
12 unlawfully, unfairly and/or deceptively treated PLAINTIFF and Aggrieved Employees as exempt
13 employees, failed to pay the required overtime compensation and otherwise failed to comply with
14 all applicable labor laws with respect to PLAINTIFF and Aggrieved Employees.

15 173. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
16 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
17 Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
18 246, 510, 512, 515, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802
19 and 2804 in the following amounts:

20 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200)
21 per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code
22 Section 2699(f)];

23 b. For violations of Labor Code Section 226(a), a civil penalty in the amount
24 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for
25 any initial violation and one thousand dollars for each subsequent violation
26 [penalty per Labor Code Section 226.3];

27 c. For violations of Labor Code Sections 204, a civil penalty in the amount of
28 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial

violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and one hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for each AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 1197.1].

174. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code Section 2699(f) imposes upon DEFENDANTS a penalty of up to two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against all DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to California Code of Civil Procedure Section 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

- c. An order requiring DEFENDANTS to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA CLASS:
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to California Code of Civil Procedure Section 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to California Labor Code Sections 226.7, 512 and the applicable IWC Wage Order;
 - d. 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 each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of California Labor Code Section 226;
 - e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with California Labor Code Section 203.
 - f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- 1 a. For reasonable attorney's fees and costs of suit to the extent permitted by law,
2 including pursuant to Labor Code Section 2699, *et seq.*;
3 b. For civil penalties to the extent permitted by law pursuant to the Labor Code under
4 the Private Attorneys General Act; and
5 c. For such other relief as the Court deems just and proper.
6 4. On all claims:
7 a. An award of interest, including prejudgment interest at the legal rate;
8 b. Such other and further relief as the Court deems just and equitable; and
9 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
10 including and pursuant to, but not limited to, California Labor Code Sections 218.5,
11 226, 246 and/or 1194.

12 DATED: December 29, 2025

ZAKAY LAW GROUP, APLC

14 By: Nicole Noursamadi
15 Nicole Noursamadi, Esq.
16 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: December 29, 2025

ZAKAY LAW GROUP, APLC

By: Nicole Noursamadi
Nicole Noursamadi, Esq.
Attorney for PLAINTIFF

EXHIBIT A



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 101101

October 6, 2025

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

THERAPYMATCH, INC. dba HEADWAY

c/o C T Corporation System

330 N Brand Blvd, Suite 700

Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 2308 6687 67

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 515, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This notice is being sent in compliance with California Labor Code Section 2699.3. Our offices represent Plaintiff TESSA BROWER-WALSH ("Plaintiff") and other aggrieved employees. Plaintiff was employed by Defendant THERAPYMATCH, INC. dba HEADWAY ("Defendants" in California from August of 2024 through May of 2025 as a Provider Gross Associate and worked remotely for Defendants, who operate and conduct substantial business in Los Angeles, CA. Plaintiff was employed by Defendants as a misclassified exempt employee, paid in part by commission-based compensation.

As a result of Defendants' misclassification of exempt employees, Plaintiff alleges that within the past year, Plaintiff personally suffered violations of the following Labor Code Sections as a result of Defendants' failure to record and pay Plaintiff for all time worked, provide Plaintiff with compliant meal periods, provide Plaintiff with compliant rest periods, provide Plaintiff with accurate itemized wage statements that facially comply with the requirements provided for in Labor Code Section 226, furnish wages to Plaintiff with the frequency as set forth under Labor Code Section 204, and reimburse Plaintiff for necessary business expenses pursuant to Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 515, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804. These violations are actionable under California Labor Code Section 2699.3.

The information below provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. If the agency needs any further information, please do not hesitate to ask.

Plaintiff seeks to represent a group of aggrieved employees defined as any person currently

or formerly employed by Defendants who performed work in California and against whom one or more of the alleged violations listed above were committed during the relevant claim period (“Aggrieved Employees”). Plaintiff believes this group to be comprised of all current and former non-exempt and exempt employees who performed work for Defendants in California during the period beginning one year prior to the date of this Notice and continuing through the present.

Misclassification of Exempt Employees: To qualify as an exempt employee, California requires that an employee must be “primarily engaged in the duties that meet the test of the exemption” and “earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.” Labor Code § 515. This forms the two-part test the employers must establish to properly exempt its employees from overtime laws: (1) the salary basis test and (2) the duties test. For example, on January 1, 2024, the minimum wage in the State of California increased to \$16.00 per hour for employers. Thus, based on a forty (40) hour workweek, the minimum salary for California exempt employees employed by employers with at least twenty-six (26) employees in 2024, is \$66,560. On January 1, 2025, the minimum wage in the State of California increased to \$16.50 per hour for employers. Thus, based on a forty (40) hour workweek, the minimum salary for California exempt employees employed by employers with at least twenty-six (26) employees in 2025, is \$68,640.

Throughout Plaintiff’s employment, Defendants employed Plaintiff in various positions. Defendant improperly classified those positions as exempt from overtime laws and other laws governing the employment of non-exempt employees. Defendants failed to compensate Plaintiff and misclassified exempt employees, with an annual salary of at least two times the state minimum wage for full-time employment by employers with at least twenty-six employees. Specifically, Plaintiff earned an annual salary below the threshold in 2024 and 2025 to meet the test of exemption.

Plaintiff and misclassified aggrieved employees primarily performed non-exempt job duties and were not primarily engaged in duties that meet the test of the exemption, but were nevertheless classified by Defendants as exempt. Plaintiff and misclassified aggrieved employees engaged in a finite set of tasks and had no power to exercise any independent judgment and/or discretion. More specifically, Defendants’ policy, practice and procedure restrained Plaintiff and misclassified aggrieved employees from evaluating possible courses of action and implementing decisions based on their independent judgment and discretion. In other words, in exercising their duties, Plaintiff and misclassified aggrieved employees lacked any power to make any independent choice free from immediate supervision and with respect to matters of significance. Plaintiff and misclassified aggrieved employees did not exercise the requisite discretion or independent judgment in the training or supervision of employees based on the constraints, direction and control imposed by Defendants. Plaintiff and misclassified aggrieved employees did not have the authority to hire, fire, or promote employees, determine their pay rates or benefits, or give raises, or otherwise make employment-related, personnel decisions. Consequently, Plaintiff and misclassified aggrieved employees did not have the authority to decide whether or not an employee should be disciplined for an infraction. Disciplinary decisions were made by other departments, or dictated by company policies. Overall, recommendations made by Plaintiff and misclassified aggrieved employees were given no weight on all the above issues. As a result, as Plaintiff and misclassified aggrieved employees were engaged in a type of work that required no exercise of independent judgment or discretion as to any matter of significance. Moreover, Plaintiff and

misclassified aggrieved employees were engaged in a type of work unrelated to management policies.

Defendants improperly misclassified Plaintiff and misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendants included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendants cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.) As a result, Plaintiff and misclassified aggrieved employees who were paid on a draw versus commission basis forfeited overtime wages by Defendants' failure to accurately classify them as non-exempt from overtime compensation.

By reason of this uniform exemption practice, policy and procedure applicable to Plaintiff, Defendants committed acts of unfair competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to properly classify Plaintiff and misclassified aggrieved employees and thereby failed to pay them overtime wages for documented overtime hours worked. Additionally, Defendants failed to provide all the legally required off-duty meal and rest breaks to Plaintiff and misclassified aggrieved employees, as required by the applicable Wage Order and Labor Code. As a result of its willful misclassification, Defendants did not have a practice of providing meal and rest breaks to Plaintiff and misclassified aggrieved employees. Defendants' failure to provide Plaintiff and misclassified aggrieved employees with legally required meal and rest breaks is evidenced by Defendants' business records which contain no record of these breaks

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate Plaintiff and other Aggrieved Employees for missed meal and rest periods, failed to pay Plaintiff and other Aggrieved Employees for all time worked, failed to compensate Plaintiff and other Aggrieved Employees for off-the-clock work, failed to pay Plaintiff and other Aggrieved Employees overtime at the correct regular rate of pay, failed to compensate Plaintiff and other Aggrieved Employees meal and rest premiums at the regular rate of pay, failed to pay Plaintiff and other Aggrieved Employees redeemed sick pay at the regular rate of pay, failed to reimburse Plaintiff and other Aggrieved Employees for business expenses, and failed to issue to Plaintiff and other Aggrieved Employees accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. Defendants' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows Defendants to illegally profit and gain an unfair advantage over competitors who comply with the law.

Meal Period Violations: Pursuant to the Industrial Welfare Commission Wage Orders, Defendants were required to pay Plaintiff and the Aggrieved Employees for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the last year, Defendants required Plaintiff and other Aggrieved Employees to work without paying them for all the time they were under Defendants' control. Specifically, Defendants required Plaintiff to work while clocked out during what was supposed to be Plaintiff's off-duty meal break. Indeed, there were

many days where Plaintiff did not even receive a partial lunch. As a result, Plaintiff and other Aggrieved Employees forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. Defendants' uniform policy and practice not to pay Plaintiff and other Aggrieved Employees for all time worked is evidenced by Defendants' business records.

During the last year, as a result of their rigorous work schedules and Defendants' inadequate staffing practices, Plaintiff and other Aggrieved Employees were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during some shifts without receiving a meal break. Further, Defendants failed to provide Plaintiff and other Aggrieved Employees with a second off-duty meal period for some workdays in which these employees were required by Defendants to work ten (10) hours of work. The nature of the work performed by Plaintiff and other Aggrieved Employees does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, Plaintiff and other Aggrieved Employees were, from time to time, required to remain on duty and on call. Defendants' failure to provide Plaintiff and other Aggrieved Employees with legally required meal breaks is evidenced by Defendants' business records. As a result of their rigorous work schedules and Defendants' inadequate staffing, Plaintiff and other Aggrieved Employees therefore forfeited meal breaks without additional compensation and in accordance with Defendants' strict corporate policy and practice.

Rest Period Violations: From time to time during the past year, Plaintiff and other Aggrieved Employees were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and Defendants' inadequate staffing. Further, for the same reasons, these employees were from time to time denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, from time to time denied a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and from time to time denied a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. When they were provided with rest breaks, Plaintiff and other Aggrieved Employees were, from time to time, required to remain on premises, on duty and/or on call, and not fully relieved of all duties. Plaintiff and other Aggrieved Employees were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and Defendants' inadequate staffing, Plaintiff and other Aggrieved Employees were from time to time denied their proper rest periods by Defendants and Defendants' managers.

Unreimbursed Business Expenses: Defendants as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the Plaintiff and other Aggrieved Employees for required business expenses incurred by the Plaintiff and other Aggrieved Employees in direct consequence of discharging their duties on behalf of Defendants. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. California Labor Code Section 2802 expressly states that "an 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."

Within the last year, in the course of their employment, Defendants required Plaintiff and other Aggrieved Employees to incur personal expenses as a result of and in furtherance of their job duties for the use of their personal cell phones. Specifically, Plaintiff and other Aggrieved Employees were required to incur personal expenses for the use of their personal cell phones. However, Defendants unlawfully failed to reimburse Plaintiff and other Aggrieved Employees for the personal expenses incurred for the use of their personal cell phones, personal computers, and home internet. As a result, in the course of their employment with Defendants, the Plaintiff and other Aggrieved Employees incurred unreimbursed business expenses that included, but were not limited to, costs related to the personal expenses incurred for the use of their personal cell phones, all on behalf of and for the benefit of Defendants. For example, during the pay period of February 23, 2025 to March 8, 2025, Defendants required Plaintiff to use Plaintiff's personal cell phone. However, as evidenced by the example below, Defendants failed to reimburse Plaintiff for the use of Plaintiff's personal cell phone.

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Tessa Brower-Walsh	TherapyMatch, Inc. dba Headway	10840	02/23/2025	03/08/2025	03/14/2025	

	Hours Worked	Gross Pay	Pre-Tax Deductions	Employee Taxes Withheld	Post-Tax Deductions	Net Pay
Current	40.00	2,576.93	221.64	501.38	0.00	1,853.91
YTD	360.00	18,421.58	1,507.44	4,145.56	0.00	12,768.58

Earnings							Employee Taxes Withheld		
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount	Description	Amount	YTD
Commission			0		0	2,960.00	OASDI	155.64	1,117.38
Holiday			0		80	2,577.60	Medicare	36.40	261.32
Imputed Income - G02/23/2025 - 03/08/2025		0	0	0.47	0	2.82	Federal Withholding	204.29	1,833.05
Salary Pay	02/23/2025 - 03/08/2025	40	32.22	1,288.13	360	11,595.18	State Tax - CA	74.93	717.58
Vacation	02/23/2025 - 03/08/2025	40	32.22	1,288.80	40	1,288.80	CA SDI - CASDI	30.12	216.23
Earnings				2,577.40		18,424.40	Employee Taxes Withheld	501.38	4,145.56

Pre-Tax Deductions					Amount	YTD
Description						
401(k)					154.62	1,105.32
Dental (Pre-Tax)					1.92	11.52
FSA Health Care					20.00	120.00
Medical					45.10	270.60
Pre-Tax Deductions					221.64	1,507.44

Wage Statement Violations: California Labor Code Section 226 requires an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's 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. From time to time during the last year, when Plaintiff and other Aggrieved Employees missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements that included all required elements listed above. For example, as identified in the example below, Defendants issued Plaintiff with wage statements that failed to provide the accurate name and address of the legal entity that is the employer, in violation of California Labor Code section 226(a)(8).

TherapyMatch, Inc. dba Headway 205 Hudson St Floor 9 New York, NY 10013

Tessa Brower-Walsh

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Tessa Brower-Walsh	TherapyMatch, Inc. dba Headway	10840	03/23/2025	04/05/2025	04/11/2025	

As a result, Defendants issued Plaintiff and other Aggrieved Employees with wage statements that violate California Labor Code Section 226. Further, Defendants' violations are knowing and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations: During the last year, from time-to-time, Defendants failed and continue to fail to accurately pay Plaintiff and other Aggrieved Employees for all hours worked. During the last year, from time-to-time Defendants required Plaintiff and other Aggrieved Employees to perform pre-shift or post-shift work including but not limited to sending and receiving work-related communications. This resulted in Plaintiff and other Aggrieved Employees having to work while off-the-clock. Defendants directly benefited from the undercompensated off-the-clock work performed by Plaintiff and other Aggrieved Employees. Defendants controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of Plaintiff and other Aggrieved Employees.

Defendants were able to track the amount of time Plaintiff and other Aggrieved Employees spent working; however, Defendants failed to document, track, or pay Plaintiff and other Aggrieved Employees all wages earned and owed for all the work they performed. Plaintiff and other Aggrieved Employees were non-exempt employees, subject to the requirements of the California Labor Code. Defendants' policies and practices deprived Plaintiff and other Aggrieved Employees of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because Plaintiff and other Aggrieved Employees typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, Defendants' policies and practices also deprived them of overtime pay.

Defendants knew or should have known that Plaintiff's and other Aggrieved Employees' off-the-clock work was compensable under the law. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control, and benefit for the time spent working while off-the-clock, including but not limited to, undergoing pre-shift and post-shift work. Defendants' uniform policy and practice to not pay Plaintiff and other Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay: From time to time during the last year, Defendants failed and continue to fail to accurately calculate and pay Plaintiff and other Aggrieved Employees for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. Defendants' uniform policy and practice not to pay Plaintiff and other Aggrieved Employees at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by Defendants' business records.

State law provides that employees must be paid overtime at one-and-one-half times their “regular rate of pay.” Plaintiff and other Aggrieved Employees were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee’s performance. The second component of Plaintiff’s and other Aggrieved Employees’ compensation was Defendants’ non-discretionary incentive program that paid Plaintiff and other Aggrieved Employees incentive wages based on their performance for Defendants. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by Defendants. However, from time to time, when calculating the regular rate of pay in those pay periods where Plaintiff and other Aggrieved Employees worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonuses, Defendants failed to accurately include the non-discretionary bonus compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by Plaintiff and other Aggrieved Employees must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and redeemed sick pay to Plaintiff and other Aggrieved Employees by Defendants.

Specifically, California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Defendants’ conduct, as articulated herein, by failing to include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of California Labor Code Section 246 the underpayment of which is recoverable under California Labor Code Sections 201, 202, 203, and/or 204.

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate Plaintiff and other Aggrieved Employees at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed Defendants to illegally profit and gain an unfair advantage over competitors who complied with the law.

Unlawful Deductions: During the last year, Defendants, from time-to-time, unlawfully deducted wages from Plaintiff and Aggrieved Employees’ pay without explanations and without authorization to do so or notice to Plaintiff and the Aggrieved Employees. As a result, Defendants violated Labor Code Section 221.

Timekeeping Manipulation: During the last year, Defendants, from time-to-time, did not have an immutable timekeeping system to accurately record and pay Plaintiff and other Aggrieved Employees for the actual time Plaintiff and other Aggrieved Employees worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, Defendants were able to and did in fact, unlawfully, and unilaterally alter the time recorded in Defendants’ timekeeping system for Plaintiff and other Aggrieved Employees in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed

meal breaks and missed rest breaks. As a result, Plaintiff and other Aggrieved Employees, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

The mutability of the timekeeping system also allowed Defendants to alter employee time records by recording fictitious thirty (30) minute meal breaks in Defendants' timekeeping system so as to create the appearance that Plaintiff and other Aggrieved Employees clocked out for thirty (30) minute meal breaks when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of Defendants' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control and benefit for the time the timekeeping system was inoperable. Defendants' uniform policy and practice to not pay Plaintiff and the Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Unlawful Rounding Practices: During the last year, Defendants did not have in place an immutable timekeeping system to accurately record and pay Plaintiff and other Aggrieved Employees for the actual time these employees worked each day, including overtime hours. Specifically, Defendants had in place an unlawful rounding policy and practice that resulted in Plaintiff and the Aggrieved Employees being undercompensated for all of their time worked. As a result, Defendants were able to and did in fact unlawfully and unilaterally round the time recorded in Defendants' timekeeping system for Plaintiff and the Aggrieved Employees in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, Plaintiff and other Aggrieved Employees, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

Further, the mutability of Defendants' timekeeping system and unlawful rounding policy and practice resulted in Plaintiff's and the Aggrieved Employees' time being inaccurately recorded. As a result, from time to time, Defendants' unlawful rounding policy and practice caused Plaintiff and other Aggrieved Employees to perform work as ordered by Defendants for more than five (5) hours during a shift without receiving an off-duty meal break.

Untimely Payment of Wages: Pursuant to California Labor Code Section 204, Plaintiff and the Aggrieved Employees were entitled to timely payment of wages during their employment. Plaintiff and the Aggrieved Employees, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within the permissible time period. Pursuant to California Labor Code Section 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to California Labor Code Section 202, if an employee 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." Plaintiff and the Aggrieved Employees were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections 201 and 202. To date, Defendants have not fully paid Plaintiff the minimum, overtime and double time compensation still owed to them or any penalty wages owed to them

under California Labor Code Section 203.

Vacation Time Violations: Further, upon Plaintiff's and Aggrieved Employee's separation of employment, they had not used all of their vested vacation and thus their unused, vested vacation was required to have been paid at their final rate upon separation of employment. Defendants, however, failed to pay the vested vacation time, and when it did, paid it at the incorrect rate. As a result, Defendants violated Labor Code §227.3.

Reporting Time Violations: Further, Defendants from time to time required Plaintiff and other Aggrieved Employees to report to work, but were furnished less than half their scheduled shift's worth of work and were not paid reporting time pay as required by Cal. Code Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, "(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." In addition, when Defendants required Plaintiff and other Aggrieved Employees to engage in additional work, this sometimes resulted in a second reporting for work in a single workday. In such a circumstance of a second reporting for work in a single workday, Defendants failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8 § 11040. Subdivision 5(B) states: "If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall be not less than the minimum wage." Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

Sick Pay Violations: California Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, including within the last year, Defendants failed to have a policy or practice in place that provided Plaintiff and other Aggrieved Employees with sick days and/or paid sick leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide and allow employees to use at least 40 hours or five days of paid sick leave per year. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, including within the last year, Defendants violated California Labor Code Section 246 by failing to furnish Plaintiff and other Aggrieved Employees with wage statements setting forth the amount of paid sick leave available.

Defendants also include DOES 1-50, the true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise, are presently unknown to Plaintiff who therefore sues these Defendants by such fictitious names. To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals, including DOES 1-50, responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided in compliance with California Labor Code Section 2699.3, *et seq.*

If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

Nicole Noursamadi

Nicole Noursamadi, Esq.

Attorney for Plaintiff