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Superior Court of California
County of Riverside

6/16/2021

J. Bishop

Electronically Filed

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Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
SUPERIOR COURT OF RIVERSIDE COUNTY**

LAKISHA LAWSON, NAHRAIN KARAM,
on behalf of themselves and others similarly
situated,

Plaintiffs,

v.

TWOMAGNETS INC., and DOES 1-20,
inclusive

Defendants.

Case No: CVRI2100370

**FIRST-AMENDED CLASS ACTION
COMPLAINT**

1. FAILURE TO PAY OVERTIME
2. FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS
3. FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS
4. FAIURE TO FURNISH WAGE STATEMENTS
5. WAITING TIME PENALTIES
6. UNFAIR BUSINESS PRACTICES
7. PENALTIES UNDER LABOR CODE § 210
8. PAGA VIOLATIONS

[AMOUNT DEMANDED EXCEEDS
\$25,000.00]

1 Plaintiff Lakisha Lawson (“Plaintiff Lawson”) and Nahrain Karam (“Plaintiff Karam”)
2 (collectively “Plaintiffs”), an individual, on behalf of themselves and all others similarly situated,
3 as defined below, hereby allege the following facts and claims against Defendant Twomagnets,
4 Inc. (doing business as Clipboard Health) and Does 1-20 (collectively “Defendants”), and
5 respectfully request a trial by jury of all issues and causes of action so triable.

6 **INTRODUCTION**

7 1. This class action complaint challenges Defendants’ past and ongoing unlawful
8 practices and policies on behalf of Plaintiffs and other similarly situated former and current
9 workers of Defendants, whose rights they violated and continue to violate under California law.

10 2. Specifically, as to Plaintiffs and others similarly situated workers, Defendants
11 have:

- 12 a. Failed and continue to fail to pay overtime time for all overtime hours worked
13 in violation of Labor Code §§ 510, 1194, and the applicable California Industrial
14 Welfare Commission Wage Orders (“Applicable Wage Orders”);
- 15 b. Failed and continue to fail to authorize and/or permit meal periods in violation
16 of Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
- 17 c. Failed and continue to fail to authorize and/or permit rest periods in violation of
18 Labor Code §§ 226.7, and the Applicable Wage Orders;
- 19 d. Failed and continue to fail to furnish itemized wage statements in violation of
20 Labor Code § 226, and the Applicable Wage Orders; and
- 21 e. Committed and continue to commit unfair business practices in violation of
22 Business & Professions Code § 17200, et seq.

23 3. The acts complained of herein occurred and will occur, at least in part, within the
24 time-period of four (4) years preceding the filing of the original Complaint, up to and through
25 the time of trial.

26 **JURISDICTION AND VENUE**

27 4. This Court has jurisdiction over Defendants because they are entities with
28 sufficient minimum contacts in California, and/or because they intentionally availed themselves

1 of the California market so as to render the exercise of jurisdiction over them by the California
2 courts consistent with traditional notions of fair play and justice.

3 5. Pursuant to Code of Civil Procedure § 395(a) venue is proper in this County since
4 at least some of the acts and omissions that are the subject matter of this Complaint occurred
5 herein and/or Defendants are found, maintain offices, transact business, exist and/or have an
6 agent herein.

7 **PARTIES**

8 6. At all relevant times mentioned herein, Plaintiff Lawson is a resident of California,
9 and Plaintiff Karam was a resident of Texas. Both Plaintiffs are nurses.

10 7. Upon information and belief, Defendant Twomagnets Inc. is a staffing agency to
11 the healthcare industry and is, and at all times herein mentioned was, a Delaware company and
12 duly authorized to do business in California.

13 8. The true names or capacities, whether individual, associate or otherwise, of Does
14 1-20, inclusive, are unknown to Plaintiffs and, therefore, Plaintiffs sue these doe defendants by
15 such fictitious names. Plaintiffs will seek leave of this Court to amend this Complaint to allege
16 such names and capacities as soon as they are ascertained. Upon information and belief, each of
17 these fictitiously named defendants is responsible in some manner for the occurrences alleged
18 herein, and Plaintiffs' injuries and damages as alleged and set forth herein were proximately
19 caused by such fictitiously named defendants.

20 9. Upon information and belief, Plaintiffs allege that at all relevant times each of the
21 defendants was the principal, agent, employer, employee, partner, joint venturer, officer, director,
22 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and
23 predecessor in interest of some or all of the other defendants, and was engaged with some or all
24 of the other defendants in a joint enterprise for profit, and bore such other relationships to some
25 or all of the other defendants so as to be liable for the conduct of each of them.

26 10. Upon information and belief, Plaintiffs allege that each defendant acted pursuant
27 to and within the scope of the relationships alleged above, that each defendant knew or should
28 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the

1 conduct of all other defendants, and/or that each defendant acted pursuant to a conspiracy and
2 agreement to do the things alleged herein.

3 **FACTUAL ALLEGATIONS**

4 11. In or around November 2019, Defendants assigned and paid Plaintiff Lawson to
5 work as a nurse at various healthcare facilities in California, including at Balboa Nursing and
6 Rehabilitation Center in San Diego, Redlands Healthcare Center in Redlands, New Orange Hills
7 in Orange County, and Inland Christian Home, Inc. in Ontario. In or around July 2020,
8 Defendants assigned and paid Plaintiff Karam to work as a nurse at Magnolia Rehabilitation &
9 Nursing Center in Riverside. Plaintiffs regularly worked back-to-back shifts lasting 16 hours or
10 more. Plaintiffs no longer works for Defendants.

11 12. At all relevant times mentioned herein, Defendants classified Plaintiffs as
12 independent contractors.

13 13. Defendants had the right to control and direct, and did in fact, exercise control
14 and direction over Plaintiffs' job duties and working conditions. Among other forms of control
15 and direction, Defendants had the right to discipline or terminate them, with or without cause;
16 required them to work on their clients' premises; required them to obtain approval prior to taking
17 time off work; supervised and evaluated their work performance; and their clients' set Plaintiffs'
18 work schedule.

19 14. Defendants also supplied most of the instrumentalities, tools, and the place for
20 Plaintiffs to do their work and Plaintiffs had no personal investment in most of the equipment or
21 materials required for them do their work. Thus, Plaintiffs were not free from the control and
22 direction of Defendants in connection with their work's performance—the first element that must
23 be met under California's ABC test in order for a worker to be lawfully classified as an
24 independent contractor.

25 15. Defendants also cannot meet the second element of the ABC test because they
26 required Plaintiffs to perform work that was within their usual course of their business.
27
28

16. Defendants cannot meet the third element of the ABC test, either, since during the time Plaintiffs worked for Defendants, they did not engage in an independently established business, trade or occupation.

17. Defendants are required to satisfy all three elements of the ABC test in order to lawfully classify Plaintiffs as an independent contractor. As alleged above, they cannot satisfy any of them.

18. By misclassifying Plaintiffs as an independent contractor in violation of California law, Defendants deprived them of the rights, protections, and benefits afforded to non-exempt employees in California, including, but not limited to, daily or weekly overtime pay, meal and rest breaks, and furnishment of wage statements.

19. As alleged above, Plaintiffs regularly worked 16-hour shifts, and at times worked more than 40 hours a week. Yet, Defendants did not pay Plaintiffs daily or weekly overtime.

20. Upon information and belief, during the applicable recovery period, Defendants have had a pattern and practice of misclassifying other workers they assign to work at facilities inside California as “independent contractors,” because they exercised control over them similar to the kind of control they exercised over Plaintiffs; the workers were in the same line of business as Defendants; and the workers did not engage in an independently established business, trade or occupation.

21. By misclassifying these workers as “independent contractors,” Defendants, as they did with Plaintiffs, also deprived them of their rights, protections, and benefits afforded to non-exempt employees under California law, including, but not limited to, daily or weekly overtime pay, meal and rest breaks, and furnishment of wage statements.

CLASS ALLEGATIONS

22. This action is brought and may properly be maintained as a class action pursuant to the provisions of Code of Civil Procedure § 382.

23. Plaintiffs reserve the right under California Rules of Court, Rule 1855 (b) to amend or modify the description of the class, as defined below, with greater specificity or division into subclasses or limitation to certain issues.

1 24. Pursuant to Code of Civil Procedure § 382, this action qualifies as a class action
2 because there is a well-defined community of interest in the litigation and the proposed class is
3 easily ascertainable.

4 25. For the purposes of this Complaint, “Class Period” means any time from four
5 years prior to the filing of this Complaint until date of certification.

6 26. The putative class Plaintiffs will seek to certify is currently composed of and
7 defined as follows:

8 All individuals Defendants classified as “independent contractors” and
9 assigned to work at any facility inside California during the Class Period
10 (the “Class”).

11 27. **Numerosity:** Pursuant to Code of Civil Procedure § 382, the members of the Class
12 are so numerous that their individual joinder is impracticable. The precise number of class
13 members and their addresses will be known to Plaintiffs through discovery. Class members may
14 be notified of the pendency of this action by mail, electronic mail, the internet, or published
15 notice.

16 28. **Common Questions Predominate:** Common questions of law and fact exist as
17 to all members of the Class and predominate over any questions that affect only individual
18 members of the Class. The predominant common questions of law and fact, among other things,
19 include, whether Defendants:

- 20 a. Failed and continue to fail to pay overtime time for all overtime hours worked
21 in violation of Labor Code §§ 510, 1194, and the Applicable Wage Orders;
22 b. Failed and continue to fail to authorize and/or permit meal periods in violation
23 of Labor Code §§ 226.7, 512, and the Applicable Wage Orders;
24 c. Failed and continue to fail to authorize and/or permit rest periods in violation
25 of Labor Code §§ 226.7, and the Applicable Wage Orders;
26 d. Failed and continue to fail to furnish itemized wage statements in violation of
27 Labor Code § 226, and the Applicable Wage Orders; and
28

e. Committed and continue to commit unfair business practices in violation of Business & Professions Code § 17200, et seq.

29. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Class they seek to represent because they, as workers of Defendants, were exposed and subjected to the same unlawful business practices as the other members of the Class. Plaintiffs and the members of the Class they seek to represent sustained the same types of damages and losses.

30. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' attorneys have experience in employment and class action matters and may adequately represent the Class in this matter. Plaintiffs have no adverse interests to those in the Class.

31. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of the Class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The relatively minor amount of individual damages in question coupled with the expenses and burdens of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Plaintiffs and the Class Against Defendants)

32. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein.

33. Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage Orders at all times relevant hereto, Defendants were required to compensate Plaintiffs and the

1 Class for all worked overtime hours, which is calculated at one and one-half times the regular
2 rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Defendants
3 were also required to compensate Plaintiffs and the Class for all hours worked in excess of 12
4 hours in any workday at double their regular rate of pay.

5 34. Despite being misclassified as “independent contractors,” Plaintiffs, and the Class
6 are, in fact, non-exempt employees entitled to the protections of the Applicable Wage Orders,
7 and Labor Code §§ 200, 226, 500, 510, and 1198.

8 35. During the applicable recovery period, Plaintiffs and the Class worked in excess
9 of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek. However,
10 Defendants failed to properly compensate them for all their overtime and/or double-time hours
11 worked as required under the aforementioned laws.

12 36. As a direct result of aforementioned violations, Plaintiffs and the Class have
13 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
14 lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to
15 fully perform their obligations under state law, all to these employees’ respective damage in
16 amounts according to proof at time of trial, but in amounts in excess of the jurisdiction of this
17 Court.

18 37. Pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, and 1194, Plaintiffs and
19 the Class are entitled to recover owed overtime and double-time compensation, as well as
20 penalties, interest, attorney's fees, and costs.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO AUTHORIZE AND/OR PERMIT MEAL BREAKS**

23 **(Plaintiffs and the Class Against Defendants)**

24 38. Plaintiffs hereby incorporate by reference all other allegations contained in this
25 Complaint as though fully set forth herein.

26 39. Labor Code § 226.7(a) provides, "No employer shall require any employee to
27 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
28 Commission."

40. Labor Code § 512(a) provides, in relevant part, that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

41. During the applicable recovery period, Plaintiffs and the Class regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

42. During the applicable recovery period, Defendants have failed to pay Plaintiffs and the Class premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders, Defendants are liable for civil penalties pursuant to Labor Code §§ 558 (excluding underpaid wages) and 2698 et seq.

43. Plaintiff and the Class are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a meal period was not authorized and/or permitted. Plaintiff and the Class are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND/OR PERMIT REST BREAKS

(Plaintiffs and the Class Against Defendants)

44. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein.

1 45. California Labor Code § 226.7(a) provides, "No employer shall require any
2 employee to work during any meal or rest period mandated by an applicable order of the
3 Industrial Welfare Commission."

4 46. The Applicable Wage Orders require that employers authorize and/or permit non-
5 exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of
6 each work period. The rest break is based on the total hours worked daily and must be at the
7 minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction
8 thereof.

9 47. Pursuant to Labor Code § 226.7, if an employer fails to authorize and/or permit
10 an employee a rest break in accordance with the Applicable Wage Orders, the employer shall pay
11 the employee one additional hour of pay at the employee's regular rate of pay for each workday
12 that the rest break is not provided. The provisions of the Applicable Wage Orders state that the
13 rest break is defined as a "net" ten minutes, which means that the rest break begins when the
14 employee reaches an area away from the work area that is appropriate for rest.

15 48. During the applicable recovery period, Defendants did not authorize and/or permit
16 pay Plaintiffs and the Class to take lawful rest breaks and failed to pay them premium wages
17 mandated by Labor Code § 226.7(b). As a result of violations of Labor Code §§ 226.7 and the
18 Applicable Wage Orders, Defendants are liable for civil penalties pursuant to Labor Code §§ 558
19 (excluding underpaid wages) and 2698 et seq.

20 49. Plaintiffs and the Class are entitled to recover one additional hour of pay at their
21 regular rate of compensation with Defendants for each workday that a rest break was not
22 authorized and/or permitted. Plaintiffs and the Class are also entitled to their costs and reasonable
23 attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of
24 interest.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH WAGE STATEMENTS**

3 **(Plaintiffs and the Class Against Defendants)**

4 50. Plaintiffs hereby incorporate by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 51. This claim is brought under Labor Code § 226(a), which sets forth reporting
7 requirements for employers when paying wages, including that every employer shall furnish each
8 of his or her employees an itemized statement in writing showing, among other things, (1) gross
9 wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable
10 hourly rates in effect during the pay period, (5) the corresponding number of hours worked at
11 each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

18 53. Defendants knowingly and intentionally failed to provide Plaintiffs and the Class
19 with wage statements required by Labor Code § 226(a).

20 54. As a direct and proximate result of Defendants' conduct as alleged above,
21 Plaintiffs and the Class are each entitled to a civil penalty of \$50 for the initial pay period and
22 \$100 for each subsequent pay period in which Defendants violated the reporting requirements of
23 Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3,
24 Defendants are subject to a civil penalty in the amount of \$250 per employee per violation in an
25 initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the
26 employer fails to provide the employee a wage deduction statement or fails to keep the records
27 required under Labor Code § 226(a).
28

1 **FIFTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(Plaintiffs and the Class Against Defendants)**

4 55. Plaintiffs hereby incorporate by reference all other allegations contained in this
5 Complaint as though fully set forth herein.

6 56. Labor Code §§ 201 and 202 require that an employer pay all wages due to an
7 employee after said employee is discharged or quits.

8 57. Labor Code § 203 provides a penalty for the willful failure to pay all wages due
9 to an employee who is discharged or quits. This penalty consists of an amount equal to the sum
10 of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in
11 an amount not to exceed the equivalent of 30 days' pay.

12 58. During the applicable recovery period, Plaintiffs and many members of the Class
13 separated from Defendants as a result of being discharged or having voluntarily resigned their
14 employment.

15 59. While working for Defendants, Plaintiffs and the separated Class Members were
16 entitled to compensation for the violations set forth in this Complaint. But Defendants failed to
17 pay all wages due to them, by failing to pay for, among other things, overtime and double-time,
18 and premium wages for unlawful meal or rest breaks. Defendants are required to compensate
19 Plaintiffs and the separated Class Members for all their unpaid wages earned and an additional
20 penalty equal to the daily earnings of such employees up to an amount equal to those owed for
21 30 days of work.

22 **SIXTH CAUSE OF ACTION**

23 **UNFAIR BUSINESS PRACTICES**

24 **(Plaintiffs and the Class Against Defendants)**

25 60. Plaintiffs hereby incorporate by reference all other allegations contained in this
26 Complaint as though fully set forth herein.

27 61. Defendants have engaged in unfair business practices in California by practicing,
28 employing and utilizing the employment practices outlined in this Complaint by requiring their

1 drivers and other non-exempt employees to perform the labor complained of herein without
2 proper compensation. Defendants' utilization of such unfair business practices constitutes unfair
3 competition and provides an unfair advantage over their competitors.

4 62. Plaintiffs and the Class seek full restitution and disgorgement of monies, as
5 necessary and according to proof, to restore any and all monies withheld, acquired and/or
6 converted by Defendants by means of the unfair practices complained of herein.

7 63. Plaintiffs and the Class seek, on their own behalf and on behalf of the general
8 public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at
9 least in part, within the last four (4) years preceding the filing of the original complaint in this
10 action.

11 64. Upon information and belief, Plaintiffs allege that at all times herein mentioned
12 Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by
13 Business and Professions Code § 17200 et seq., including those set forth in the Complaint herein,
14 thereby depriving Plaintiffs and the Class, and other members of the general public the minimum
15 working condition standards and conditions due to them under the California labor laws and the
16 applicable Wage Orders as specifically described herein.

17 65. Plaintiffs and the Class are further entitled to and do seek both a declaration that
18 the above-described business practices are unfair, unlawful and/or fraudulent and injunctive
19 relief restraining Defendants from engaging in any of such business practices in the future. Such
20 misconduct unless and until enjoined and restrained by order of this Court, will cause great and
21 irreparable injury in that Defendants will continue to violate these California laws, represented
22 by labor statutes and the wage orders, unless specifically ordered to comply with same. This
23 expectation of future violations will require current and future employees to repeatedly and
24 continuously seek legal redress in order to gain compensation to which they are entitled under
25 California law. Plaintiffs and the Class have no other adequate remedy at law to ensure future
26 compliance with the California labor laws and the Applicable Wage Orders alleged to have been
27 violated herein.

SEVENTH CAUSE OF ACTION
PENALTIES UNDER LABOR CODE § 210
(Plaintiffs and the Class Against Defendants)

66. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein.

67. This claim is brought under Labor Code § 210, which relevantly provides:

(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

(b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3...

68. Labor Code § 204(a) also pertinently provides:

All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month...

69. As alleged above, during the applicable recovery period, Defendants failed to pay Plaintiff and the Class all wages owed to this date. By failing to pay the wages owed to Plaintiff and the Class on their regular paydays, Defendants violated Labor Code § 204(a), and thus owe penalties of \$100 for the initial violation and \$200 for each subsequent violation, plus 25 percent of the wages they withheld from Plaintiffs and the Class under Labor Code § 210.

EIGHTH CAUSE OF ACTION

PAGA VIOLATIONS

(By Plaintiffs and the Aggrieved Employees Against Defendants)

70. Plaintiffs hereby incorporate by reference all other allegations contained in this Complaint as though fully set forth herein.

71. Plaintiffs and other non-exempt employees who worked for Defendants during the applicable recovery period are aggrieved employees as defined under Labor Code § 2699(a) ("Aggrieved Employees"). Plaintiffs and Aggrieved Employees bring this cause for the labor law violations alleged in this Complaint, all of which are incorporated by reference as though fully set forth under this cause of action.

72. Defendants committed violations of the Labor Code against Plaintiffs and Aggrieved Employees as alleged in this Complaint, including, but not limited to, the following:

- a. Failing to pay overtime time for all overtime hours worked in violation of Labor Code §§ 510, 1194;
- b. Failing to authorize and/or permit meal periods in violation of Labor Code §§ 226.7, 512;
- c. Failing to authorize and/or permit rest periods in violation of Labor Code §§ 226.7;
- d. Failing to furnish itemized wage statements in violation of Labor Code § 226;
- e. Failing to pay all wages owed at the time of separation in violation of Labor Code §§ 201-203;

f. Failing to pay all wages owed on regular pay days in violation of Labor Code §§ 204 & 210;

91. On January 27, 2021, Plaintiff sent a written notice to Defendant Twomagnets, Inc. and the Labor and Workforce Development Agency (“LWDA”) notifying them of the specific violations and the facts and theories supporting those violations. More than 60 days have passed since the date the notice was mailed to Defendants and LWDA. A true and correct copy of Plaintiffs’ written notice to Defendant Twomagnets, Inc. and the LWDA is attached hereto as “Exhibit A,” which Plaintiffs incorporate by reference as though fully set forth herein.

92. Plaintiffs and Aggrieved Employees seek to recover all civil penalties allowed under Labor Code §§ 558 (excluding underpaid wages), 2698, 2699, 2699.3 and 2699.5, for which Defendants are liable as a result of their violations of the Labor Code during the applicable recovery period, all in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants as follows:

1. Certification of this action as a class action on behalf of each of the Class alleged in this Complaint;
2. For general damages, according to proof, on each cause of action for which such damages are available;
3. For compensatory damages, according to proof, on each cause of action for which such damages are available;
4. For consequential damages, according to proof, on each cause of action for which such damages are available;
5. For restoration and restitution of lost wages, statutory penalties, and all other remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;
6. For reimbursement of all incurred business-related expenditures;
7. For declaratory and injunctive relief as requested herein;
8. For prejudgment and post-judgment interest according to law;

1 9. For reasonable attorneys' fees incurred in this action on those causes of action for
2 which such fees are recoverable under the law;

3 10. For costs of suit incurred in this action;

4 11. Disgorgement of all gains unjustly gained by Defendants;

5 12. Civil penalties under PAGA; and

6 13. Any other remedies, whether in law or equity, that the Court deems properly.
7

8 Dated: April 29, 2021

Respectfully submitted,

9
10 SHAKOURI LAW FIRM

11
12 By: Ashkan Shakouri
13 Ashkan Shakouri
14 Attorneys for Plaintiffs

15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs demand a jury trial on issues triable to a jury.
17

18 Dated: April 29, 2021

Respectfully submitted,

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20 SHAKOURI LAW FIRM

21
22 By: Ashkan Shakouri
23 Ashkan Shakouri
24 Attorneys for Plaintiffs
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EXHIBIT A

SHAKOURI LAW FIRM

Employment & Civil Litigation

11601 Wilshire Blvd, Fifth Floor
Los Angeles, CA 90025
Tel: (310) 575-1827
Fax: (310) 575-1890
ash@shakourilawfirm.com
shakourilawfirm.com

January 27, 2021

Via E-filing:

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

Via Certified U.S. Mail:

Twomagnets Inc.
557 Birch Street
San Francisco, CA 94102

Re: PAGA Notice Pursuant to California Labor Code § 2699
Claimant: Lakisha Lawson and Nahrain Karam
Employer: Twomagnets Inc. (dba Clipboard Health)

Dear Sir or Madam:

Claimants Lakisha Lawson and Nahrain Karam (“Claimants”) have retained Ashkan Shakouri of Shakouri Law Firm to represent them, and all other aggrieved employees as that term is defined under Labor Code § 2699 (c)¹, for wage and hour claims against Twomagnets Inc. (dba Clipboard Health) (“Employer”).

In or around November 2019, Employer assigned and paid Claimant Lawson to work as a nurse at various healthcare facilities in California, including at Balboa Nursing and Rehabilitation Center in San Diego, Redlands Healthcare Center in Redlands, New Orange Hills in Orange County, and Inland Christian Home, Inc. in Ontario. In or around July 2020, Employer assigned and paid Claimant Karam to work as a nurse at Magnolia Rehabilitation & Nursing Center in Riverside. Claimants regularly worked back-to-back shifts lasting 16 hours or more. Claimants no longer works for Employer.

¹ Labor Code § 2699(c) defines an “aggrieved employee” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

The aggrieved employees Claimants seek to represent consist of all individuals Employer classified as “independent contractors” and assigned to work at any facility inside California during the applicable recovery period (“Aggrieved Employees”).

Claimants were misclassified as an “independent contractor” in violation of California law. Employer cannot satisfy the first element that must be met under California’s ABC independent contractor test because Claimants were not free from its and/or its clients’ control and direction in connection with their work’s performance. Employer and/or its clients had the right to control and direct, and did in fact, exercise control and direction over Claimants’ job duties and working conditions. Among other forms of control and direction, Employer and/or its clients had the right to discipline or terminate them, with or without cause; required them to work on its clients’ premises; required them to obtain approval prior to taking time off work; supervised and evaluated their work performance; and set their work schedule. Employer and/or its clients also supplied most of the instrumentalities, tools, and the place for Claimants to do their work and Claimants had no personal investment in most of the equipment or materials required for them do their work.

Employer also cannot meet the second element of the ABC test because it and/or its clients required Claimants to perform work that was within their usual course of their business. Employer cannot meet the third element of the ABC test either, since during the time they worked for Employer, they did not engage in an independently established business, trade or occupation. Employer is required to satisfy all three elements of the ABC test in order to lawfully classify Claimants as an independent contractor. It cannot satisfy any of them.

By unlawfully misclassifying Claimants as an “independent contractor,” Employer deprived them of the rights, protections, and benefits afforded to non-exempt employees in California, including, but not limited to, daily or weekly overtime pay, meal and rest breaks, and furnishment of wage statements. As alleged above, Claimants regularly worked 16-hour shifts and, at times, worked more than 40 hours a week. Yet, Employer did not pay them daily or weekly overtime.

Upon information and belief, Employer has had a pattern and practice of misclassifying other Aggrieved Employees it assigns to work at facilities inside California as “independent contractors,” because it and/or its clients exercised control over them similar to the kind of control they exercised over Claimants; the other Aggrieved Employees were in the same line of business as Employer and/or its clients; and the other Aggrieved Employees did not engage in an independently established business, trade or occupation.

By misclassifying other Aggrieved Employees as “independent contractors,” Employer, as they did with Claimants, also deprived them of their rights, protections, and benefits afforded to non-exempt employees under California law, but not limited to, daily or weekly overtime pay, meal and rest breaks, and furnishment of wage statements. Thus, other Aggrieved Employees suffered the same type of violations alleged by Claimants herein.

Employer has violated, and/or have caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code §§ 558 & 2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimants to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3.

Employer’s Failure to Pay Overtime

Pursuant to Labor Code §§ 200, 226, 500, 510 and 1198 and the Applicable Wage Orders at all times relevant hereto, Employer was required to compensate Claimants and other Aggrieved Employees for all worked overtime hours, which is calculated at one and one-half times the regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week. Employer was also required to compensate Claimants and other Aggrieved Employees for all hours worked in excess of 12 hours in any workday at double their regular rate of pay.

Despite being misclassified as “independent contractors,” Claimants and other Aggrieved Employees are, in fact, non-exempt employees entitled to the protections of the Applicable Wage Orders, and Labor Code §§ 200, 226, 500, 510, and 1198.

During the applicable recovery period, Claimants and other Aggrieved Employees worked in excess of 8 hours in a workday, 12 hours in a workday, and/or 40 hours in a workweek. However, as alleged above, Employer failed to properly compensate them for all their overtime and/or double-time hours worked as required under the aforementioned laws.

As a direct result of aforementioned violations, Claimants and other Aggrieved Employees have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Employer to fully perform its obligations under state law, all to their respective damage.

Pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, and 1194, Claimants and other Aggrieved Employees are entitled to recover owed overtime and double-time compensation, as well as penalties, interest, attorney's fees, and costs.

As a result of these violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employer’s Failure to Authorize and/or Permit Meal Breaks

Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

Labor Code § 512(a) provides, in relevant part, that: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than

30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

During the applicable recovery period, Claimants and other Aggrieved Employees regularly worked in excess of 5-hour work periods without being authorize and/or permitted to take a lawful meal break, as required by Labor Code §§ 226.7, 512, and the Applicable Wage Orders.

During the applicable recovery period, Employer has failed to pay Claimants and other Aggrieved Employees premium wages mandated by Labor Code § 226.7(b) for these unlawful meal breaks. As a result of violations of Labor Code §§ 226.7, 512, and the Applicable Wage Orders, Employer is liable for civil penalties pursuant to Labor Code §§ 558 and 2698 *et seq.*

Claimants and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a meal period was not authorized and/or permitted. Claimants and other Aggrieved Employees are also entitled to their costs and reasonable attorneys’ fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employer’s Failure to Authorize and/or Permit Rest Breaks

During the applicable recovery period, Employer has had policy and/or practice of not authorizing and/or permitting Claimants and other Aggrieved Employees to take lawful rest breaks under California law.

California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." The applicable Wage Orders require that employers authorize or permit non-exempt employees to take a rest break that must, insofar as practicable, be taken in the middle of each work period. The rest break is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof.

Pursuant to Labor Code § 226.7, if an employer fails to authorize or permit an employee a rest break in accordance with the applicable Wage Orders, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided. The provisions of the applicable Wage Orders state that the rest break is defined as a "net" ten minutes, which means that the rest break begins when the employee reaches an area away from the work area that is appropriate for rest.

During the applicable recovery period, Employer did not authorize and/or permit Claimants and other Aggrieved Employees to take lawful rest breaks and failed to pay premium wages mandated by Labor Code § 226.7(b), due to, among other reasons, work overload and understaffing at their jobsites.

Claimants and other Aggrieved Employees are entitled to recover one additional hour of pay at their regular rate of compensation for each workday that a rest break was not authorized and/or permitted by Employer. Claimants and other Aggrieved Employees are also entitled to their costs and reasonable attorneys' fees, according to proof and to interest on all due and unpaid wages at the legal rate of interest.

As a result of these violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employer's Failure to Furnish Wage Statements

Labor Code § 226(a) sets forth reporting requirements for employers when paying wages, including that every employer shall furnish each of his or her employees an itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) net wages earned, (4) all applicable hourly rates in effect during the pay period, (5) the corresponding number of hours worked at each hourly rate, and (6) the name and address of the legal entity that is the employer.

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

Employer knowingly and intentionally failed to provide Claimants and other Aggrieved Employees with wage statement statements required by Labor Code § 226(a).

As a direct and proximate result of Employer's conduct as alleged above, Claimants and other Aggrieved Employees are each entitled to a civil penalty of \$50 for the initial pay period and \$100 for each subsequent pay period in which Employer violated the reporting requirements of Labor Code § 226, up to a maximum of \$4,000. Additionally, under Labor Code § 226.3, Employer is subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required under Labor Code § 226(a).

As a result of these violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employer's Failure to Pay All Wages Upon Separation

Labor Code §§ 201 and 202 require that an employer pay all wages due to an employee after said employee is discharged or quits. Labor Code § 203 provides a penalty for the willful failure to pay all wages due to an employee who is discharged or quits. This penalty consists of an

amount equal to the sum of the employee's wages at the employee's prior rate of pay, until the unpaid wages are paid, in an amount not to exceed the equivalent of 30 days' pay.

During the applicable recovery period, Claimants and some of the Aggrieved Employees have separated from Employer as a result of being discharged or having voluntarily resigned their employment. While employed by Employer, Claimants and the separated Aggrieved Employees were not paid all wages owed to them under California law, as alleged herein.

Employer is required to compensate Claimants and the separated Aggrieved Employees all their unpaid wages, and an additional penalty equal to their daily earnings up to an amount equal to those owed for 30 days of work.

As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Employer's Failure to Timely Pay Wages During Employment

As alleged above, during the applicable recovery period, Employer failed to pay Claimants and other Aggrieved Employees all wages owed to them to this date. By failing to pay wages on their regular paydays, Employer violated Labor Code § 204(a), and thus owes penalties under Labor Code § 210.

Labor Code § 210 specifically provides that every person who fails to pay the wages of an employee in a timely manner (pursuant to Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5) or withholds wages due an employee (pursuant to Labor Code § 223) shall be subject to a civil penalty as follows: (a) For any initial violation, \$ 50 for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, \$100 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As a result of these violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Penalties Sought

Without limitation, Claimants and other Aggrieved Employees will further seek any and all penalties and underpaid wages under Labor Code § 558 and PAGA. This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199,

1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Conclusion

Claimants respectfully request that the agency investigate the above allegations and hereby provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimants request that the agency inform them if it does not intend to investigate these violations so that they may pursue their claims as a representative action in civil court on behalf of themselves and other Aggrieved Employees.

Respectfully Submitted,

Ashkan Shakouri

Ashkan Shakouri
Attorney for Claimants and all other
Aggrieved Employees

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
4

5 I am employed in the County of Los Angeles, State of California, I am over the age of 18 and
6 not a party to the within action; my business address is 11601 Wilshire Boulevard, Fifth Floor, Los
7 Angeles, California 90025. I served the foregoing document(s) described as:

8 **FIRST-AMENDED CLASS ACTION COMPLAINT**

9 by mailing said document(s) in a sealed envelope with postage fully prepaid, as follows:

10 a. _____ Via overnight delivery.

11 b. X BY ELECTRONIC TRANSMISSION ONLY VIA CALIFORNIA RULES OF COURT,
12 EMERGENCY RULE 12: I electronically caused to be served the foregoing document on all interested
13 parties in this action via email only. The document will be deemed served on the date it was emailed.

14 e. Addressed to:

15 Andrew Lichtenstein
alichtenstein@omm.com

16 Adam Karr
akarr@omm.com

17 Allison Bader
abader@omm.com

18
19 O'Melveny & Myers LLP
20 400 South Hope Street, 18th Floor
21 Los Angeles, CA 90071

22 I declare under penalty of perjury under the laws of the State of California that the above is true
23 and correct.

24
25 Date: June 16, 2021

Ashkan Shakouri
Ashkan Shakouri