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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

Jacquelyn Weitz, on behalf of the State of
California pursuant to the Private Attorneys
General Act,

Plaintiff,

vs.

TakeLessons, Inc., and Does 1 through 10,

Defendants.

Case No. 37-2024-00007416-CU-OE-CTL

**Complaint for Recovery of Civil
Penalties Pursuant to the California
Private Attorneys General Act**

Plaintiff Jacquelyn Weitz ("Plaintiff") brings this action as an aggrieved employee on behalf of
the State of California and other current and former employees of Defendants pursuant to the Private

Attorneys General Act (the “PAGA”). Plaintiff alleges:

1. TakeLessons, Inc. (“Defendant”) is believed to be a Delaware stock corporation with its principal address located at One Microsoft Way, Redmond, WA 98052. Defendant is the employer of Plaintiff and other persons who, like Plaintiff, provided or provide teaching services for remuneration (referred to by Defendant as “Providers”) to other of Defendant’s users (referred by Defendant as its “Students”) using Defendant’s platform.
2. Plaintiff was employed by Defendant in California. Defendant committed one or more of the alleged violations set forth below against Plaintiff, and Plaintiff is therefore an “aggrieved employee” under Labor Code section 2699(c).
3. The persons against whom Defendant committed one or more violations include, but are not limited to, Providers and all other persons who provided services for remuneration in California during the applicable statute of limitations period (hereinafter collectively “Providers”).
4. Plaintiff does not presently know the true names and capacities of the defendants named as Does 1 through 10 and therefore sues such defendants by these fictitious names. Each of the defendants has been or is the principal, officer, director, agent, employer, employee, representative, and/or co-conspirator of each of the other defendants and in such capacity or capacities participated in the acts or conduct alleged herein and incurred liability therefor. At an unknown time, some or all the defendants conspired with other defendants to commit the wrongful acts described herein. These wrongful acts were committed in furtherance of such conspiracy. Each of the defendants aided and abetted other defendants in committing the wrongful acts alleged herein. Each of the defendants acted for personal gain or in furtherance of such defendant’s own financial advantage in committing the wrongful acts alleged herein. Each of the defendants violated or caused to be violated the statutes and/or Wage Order provisions set forth below. Plaintiff will request leave of the Court to amend this Complaint to set forth their true names, identities, and capacities when Plaintiff ascertains them. The named defendants and the Doe defendants are hereinafter referred to collectively as “Defendants.”

5. Defendant employed Plaintiff and other Providers, but willfully misclassified them as independent contractors. Providers are not free from the control and direction of Defendant in connection with the performance of the Provider's work, both under the contract for the performance of the work and in fact. For example:

- Defendant prohibits Providers during the term of the Provider's agreement with Defendant and for two years thereafter from "directly or indirectly, circumvent, initiate, solicit, negotiate, contract or enter into any business transactions with any [Student] introduced by [Defendant] through [Defendant's] Services, without [Defendant's] consent" and requires Providers to pay a monetary penalty to Defendant equal to the commission or fee Defendant would have realized in such transactions.
- Defendant prohibits Providers from soliciting any Student to work with or for another company for employment, independent contracting services, performances, or other service.
- Defendant deducts fees from its Provider's compensation before paying the remaining portion to the Provider.
- Defendant reserves the right to suspend or terminate Provider's access to the Provider's account with Defendant.
- Defendant reserves the right to monitor disputes between Providers and Students.
- Defendant requires that any money paid by its Students to its Providers be paid directly to Defendant, including the initial lesson package and all subsequent lessons. Failure to comply with this guideline will result in Provider's immediate removal from the site.
- Defendant requires Providers to provide any items needed to teach Defendant's Students, including computers of required minimum specifications, broad band/high speed internet, webcams, learning materials, microphones, access to a scanner, document editing software, *inter alia*, but does not reimburse Providers for the expenses of such items.
- Providers have 48 hours to accept a new Student.
- Defendant issues a 1099 to each Provider for the compensation it pays them.
- Defendant ranks Providers in its search results, and declining students can affect Providers' ranking in its search results.

6. Defendant directs Plaintiff and other Providers how to perform services. For example, Defendant required Plaintiff and other Providers to:

- Discuss a backup platform with Defendant's Students before the first class.
- Give the Student a call to see if they are having trouble connecting if the Student has not joined the Classroom within the first 5-10 minutes of the class.
- Maintain a Lesson Journal of each Student's progress.

- Allow Defendant to handle the billing for all lessons (initial and subsequent lessons) for all Students provided by Defendant, for as long as the Provider works with them.
- Maintain accurate information regarding location, availability and services offered.
- Render services at the rate established at the time of booking.
- Honor scheduling policies as agreed to by Providers and Students.
- Log into the Provider's account every 60 days to keep the Provider's account active and have the opportunity for new students to book lessons.
- Not possess, use, sell, or be under the influence of alcohol or drugs while conducting instruction (unless teaching mixology lessons and all students are over 21 years old).
- Providers must accurately mark lessons in their TakeLesson's account after lessons are completed to receive payment for those lessons.
- Notify Defendant if a Student misses more than three consecutive lessons in a row.
- Alert Defendant if a Student is having any trouble with billing.
- Refrain from listing personal information on the Provider's teaching profile, such as the Provider's last name, phone number, email address and/or links to other websites.
- Refrain from making any representation, contract, or commitment on Defendant's behalf unless specifically requested or authorized by Defendants in writing to do so.
- Accurately mark lessons in the Provider's TakeLesson's account after lessons are complete to receive payment for those lessons.
- Observe all anti-harassment and non-discrimination laws in the performance of the Provider's services.
- Refrain from taking payment from Students outside of TakeLesson's website.
- Successfully complete a background investigation at the Provider's expense by a vendor approved by Defendant and in accordance with Defendant's standards. Defendant reserves the right to conduct further background investigations if there is reason to believe that the Provider is engaging in activities rendering their further engagement inappropriate and to take any action it deems necessary for the safety and well-being of its users.

7. The work that Providers perform is not outside the usual course of Defendant's business. Defendant's business model would not function without Providers performing the services that are central to Defendant's business. Without Providers, Defendant would not have a marketplace or its business. Defendant monetizes its business by using its Providers to provide services to its Students. Defendant's Providers are central to its core business of providing teachers its Students.

8. Providers also work for Defendant continuously over a period of months or even years. Providers are not contracted to perform a single discrete task but instead may perform services on an ongoing basis.
9. Defendant actively seeks out Providers and Students, collects money from its Students, and makes money from the provision of services performed by its Providers to its Students by collecting a fee from its Providers based on the amount charged to its Students.
10. Defendant cannot show that Providers are “customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed” by Providers.
11. Defendant violated California Labor Code 2810.5 by failing to provide Providers with written notice of: the rate or rates of pay and basis thereof; the physical address of the employer’s main office or principal place of business, and a mailing address, if different; the telephone number of the employer; the name, address, and telephone number of the employer’s workers’ compensation insurance carrier; or that an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.
12. Defendant failed to compensate Providers for all hours worked at the proper rates, including hours spent preparing for teaching sessions, and including any overtime hours that may have been worked at the proper rates.
13. Defendant improperly deducted money from Providers’ wages in violation of Labor Code section 221.
14. Defendant violated Defendant’s meal period obligations. Defendant failed to provide Plaintiff and other Providers with the required duty-free meal periods in a timely manner because it treated them as independent contractors rather than employees. Defendant failed to pay Plaintiff and other Providers the compensation due them pursuant to Labor Code section 226.7 and the applicable Wage Order.

- 1 15. Defendant violated Defendant's rest period obligations. Defendant did not provide Plaintiff and
2 other Providers with all legally required paid rest periods to which they were entitled because it
3 treated them as independent contractors rather than employees. Defendant failed to pay Plaintiff
4 and other Providers the compensation due them pursuant to Labor Code section 226.7 and the
5 applicable Wage Order.
- 6 16. Defendant violated Labor Code section 2802. Defendant required Plaintiff and other Providers to
7 incur expenses in direct consequence of the discharge of the Provider's duties or of the Provider's
8 obedience to the directions of Defendant but did not pay for or reimburse Providers for such
9 expenses.
- 10 17. Defendant violated Labor Code section 204. Defendant did not pay Providers the wages owing
11 them in the time required by section 204. For example, Defendant did not pay for all hours worked
12 by the Providers.
- 13 18. Defendant terminated certain Providers. Defendant violated Labor Code sections 201, 202, and
14 203 by failing to pay terminated Providers all wages earned and unpaid at the time of the
15 termination of their employment. Defendant violated section 201 as to Providers who were
16 discharged by willfully failing to timely pay the wages earned and unpaid upon the termination of
17 their employment, including unpaid wages for regular hours worked, unpaid overtime, unpaid meal
18 premiums and/or unpaid rest period premiums. Defendant violated section 202 as to Providers who
19 quit by willfully failing to timely pay the wages earned and unpaid upon the termination of their
20 employment, including unpaid wages for regular hours worked, unpaid overtime, unpaid meal
21 premiums and/or unpaid rest period premiums. Defendant violated section 203 as to Providers by
22 willfully failing to pay the wages owing to them under section 201 or 202.
- 23 19. Defendant violated Defendant's obligations under Labor Code section 226(a). Defendant violated
24 section 226(a) by failing to provide Providers employee wage statements in the proper form and
25 did not allow Providers to retain the right to elect to receive a written paper stub or record and
26 those Providers who were provided with electronic wage statements were unable to convert the
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1 electronic statements into hard copies at no expense to the Provider. Defendant violated section
2 226(a)(1) by failing to provide Providers statements of wages that accurately showed gross wages
3 earned, including wages for regular hours worked, overtime hours worked, missed meal periods,
4 and/or missed rest periods. Defendant violated section 226(a)(2) by failing to provide Providers
5 statements of wages that accurately showed the total hours worked by the Provider. Defendant
6 violated section 226(a)(3) by failing to provide Providers statements of wages that accurately
7 showed the number of piece-rate units earned and any applicable piece rate to the extent they were
8 paid on a piece-rate basis. Defendant violated section 226(a)(4) by failing to provide Providers
9 statements of wages that accurately showed all deductions. Defendant violated section 226(a)(5)
10 by failing to provide Providers with statements of wages that accurately showed net wages earned,
11 including net wages earned for regular hours worked, overtime hours worked, meal period wages,
12 and/or rest period wages. Defendant violated section 226(a)(6) by failing to provide Providers with
13 statements of wages that accurately showed the inclusive dates of the period for which they were
14 paid. Defendant violated section 226(a)(7) by failing to provide Providers with statements of
15 wages that accurately showed the name of the employee and only the last four digits of his or her
16 social security number or an employee identification number other than a social security number.
17 Defendant violated section 226(a)(8) by failing to provide Providers with statements of wages that
18 accurately showed the name and address of the legal entity that is the employer. Defendant violated
19 section 226(a)(9) by failing to provide Providers with statements of wages that accurately showed
20 the applicable hourly rates in effect during the pay period and the corresponding number of hours
21 worked at each hourly rate by failing to accurately show the actual number of regular hours worked
22 at the applicable hourly rate, failing to accurately show the actual overtime hours worked at the
23 applicable overtime hourly rate, and/or failing to accurately show the meal and/or rest period
24 premium hours and the applicable hourly rate at which they were to be paid.

- 25 20. Defendant violated Labor Code section 1174 and applicable sections of the applicable Wage Order
26 regarding recordkeeping. Defendant failed to keep payroll records showing the hours worked daily
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by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, Plaintiff and other Providers. Defendant failed to keep accurate information as to the following with respect to Plaintiff and other Providers:

- the full name, home address, occupation and social security number;
- time records showing when the employee begins and ends each work period and meal periods, split shift intervals and total daily hours worked;
- total wages paid each payroll period, including the value of board, lodging, or other compensation actually furnished to the employee;
- total hours worked in the payroll period and applicable rates of pay;
- piece rates or an explanation of any incentive plan formula;
- an accurate production record.

21. Defendant violated Defendant's obligations under Labor Code section 246 by failing to pay all sick pay owing to Providers at the properly calculated rate of pay.

22. Defendant violated Wage Order 4 by failing to pay Providers for occasions on which they reported for work but not put to work. Certain Providers were required to report for work and did report but were not put to work or were furnished less than half of the Provider's usual or scheduled day's work, and Defendant failed to pay the reporting time pay to which they were entitled.

23. Defendant violated section 432.5 by requiring Providers to agree in writing to a term or condition that was known by Defendant or agent, manager, superintendent, or officer of Defendant to be prohibited by law. Defendant required Providers to agree in writing to a provision that stated the Provider would not "Solicit any instructor or user to work with or for another company for employment, independent contracting services, performances, or other service." Defendant also required Providers to agree in writing to a provision stating:

8. Non-Circumvention

During the term of this Agreement and for two years thereafter, no Member shall, directly or indirectly, circumvent, initiate, solicit, negotiate, contract or enter into any business transactions with any Member introduced by us through our Services, without our consent. In case of such circumvention, such Member agrees and guarantees that such Member will pay a legal monetary penalty that is equal to the commission or fee we would have realized in such transactions, had Member not circumvented our rights under this Agreement.

1 24. These provisions are illegal under Business & Professions Code section 16600, which provides:

2 Except as provided in this chapter, every contract by which anyone is restrained from
3 engaging in a lawful profession, trade, or business of any kind is to that extent void.

4 25. These provisions are illegal under Business & Professions Code section 16600.1(a), which
5 provides:

6 (a) It shall be unlawful to include a noncompete clause in an employment contract, or to
7 require an employee to enter a noncompete agreement, that does not satisfy an exception
8 in this chapter.

9 26. Defendant or an agent, manager, superintendent, or officer of Defendant knew these provisions
10 were prohibited by law.

11 27. Because of Defendant's violations, Defendants are liable for penalties pursuant to Labor Code
12 sections 210, 226.3, 226.8, 256, 558, 1174.5, 1197.1, and 2699(f), *inter alia*.

13 28. Plaintiff has incurred attorney's fees and costs in pursuing this claim.

14 29. On February 14, 2024, Plaintiff's attorney gave written notice to the Labor and Workforce
15 Development Agency ("LWDA") and to Defendant by certified mail identifying violations set
16 forth in this complaint. Once 65 days have passed from the date of the mailing of the notice,
17 Plaintiff will file an amended complaint alleging Plaintiff's compliance with the notice
18 requirements.

19 WHEREFORE, Plaintiff requests that judgment be entered against Defendants as follows:

- 20 1. For all civil penalties recoverable under the PAGA;
21 2. For attorney's fees and costs as allowed by law;
22 3. For prejudgment interest;

1 4. For such other and further relief as the Court deems proper.

2 Dated: February 15, 2024

3 THE DION-KINDEM LAW FIRM

4 BY:



5 PETER R. DION-KINDEM, P.C.

6 PETER R. DION-KINDEM

7 Attorney for Plaintiff Jacquelyn Weitz