

November 6, 2024

**VIA EMAIL AND U.S.P.S. CERTIFIED MAIL WITH RETURNED RECEIPT
REQUESTED**

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
Email: PAGAFilings@dir.ca.gov

Re: **Private Attorneys General Act of 2004 Notice**

Employee: **Hannah Bernstein**

Employer: **Compile, Inc. d/b/a BetterHelp; Teladoc Health**

Dear PAGA Administrator:

Pursuant to California Labor Code § 2699.3(a), Hannah Bernstein (“Plaintiff”) hereby notifies the California Labor & Workforce Development Agency (“LWDA”) that she intends to seek civil penalties and injunctive relief pursuant to California Labor Code § 2699(a), (e), (f), and (k) against Compile, Inc., d/b/a BetterHelp, and its owner Teladoc Health, Inc. (collectively “BetterHelp” or “Defendants”), for their violations of the California Labor Code and applicable Industrial Welfare Commission (“IWC”) Wage Order(s).

Defendants promote BetterHelp as the largest online therapy service provider and claim that they help millions of people with their life challenges through on-line mental health counseling. In reality, however, Defendants employ a business model that exploits the therapists it hires to carry out the online services by denying them legally required compensation and making them sign oppressive written agreements that violate California law. Defendants’ ongoing policies and practices not only cause multiple violations of the California Labor Code, as set forth herein, but they also undermine the ethics and integrity of the therapist-patient relationship.

As further discussed below, Defendants’ ongoing policies and procedures have violated the following provision of the California Labor Code, among others:

- California Labor Code § 226.8 (willful misclassification of individuals as independent contractors instead of employees);
- California Labor Code § 432.5 (requiring employees or applicants for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law)



- Labor Code § 226.8 (willful misclassification)
 - Labor Code §§ 1197.5(j) (unlawfully prohibiting discussion of wages)
 - Bus. & Prof. Code § 16600 (unlawful non-compete clause)
- California Labor Code §§ 201-204, 221, 223 (failure to pay for all hours worked);
- California Labor Code § 510 (overtime), § 1182.12 (minimum wage), § 1197 (minimum wage), and § 1198 (overtime);
- California Labor Code §§ 204, 210 (failure to pay all wages earned twice during each calendar month, on days designated in advance by the employer as the regular paydays);
- California Labor Code § 1174 (failure to maintain accurate records);
- California Labor Code § 226 (failure to provide accurate itemized wage statements);
- California Labor Code §§ 201-203 (waiting time penalties for failure to pay all wages due upon termination);
- California Labor Code § 2802 (failure to reimburse work expenses).

Throughout the Relevant Period, Defendants committed, and continue to commit, the acts herein alleged. Defendants' conduct has been knowing, willful, intentional, oppressive, malicious, and fraudulent.¹

Background of Defendant

Compile, Inc. d/b/a BetterHelp is an online therapy platform that offers mental health support services including therapy sessions, messaging, group therapy, live webinars.

BetterHelp is a Nevada corporation, headquartered in Texas, and registered to do business in the State of California. BetterHelp conducts extensive activities in California and during the Relevant Period, has employed more than 100 employees in California.

Teladoc Health, parent company of BetterHelp, is a virtual care service that provides access to board-certified doctors and nurse practitioners across the United States. Teladoc offers comprehensive care including talk therapy, diagnosis and medication support.

Teladoc is Delaware corporation, headquartered in New York, and registered to do business in the State of California. Teladoc conducts extensive activities in California and during

¹ "Relevant Period" includes the one-year period preceding the date of this letter. "Aggrieved Employees" has the same meaning as defined in California Labor Code § 2699(c)(1).



the Relevant Period, has employed more than 100 employees in California.

Defendants jointly exercised control over Hannah Bernstein and Aggrieved Employees with respect to the terms, conditions, wages, hours, and working conditions of their employment. Defendants have acted as the legal employer of Plaintiff and the Aggrieved Employees as set forth below.

Background of Plaintiff

Plaintiff is an employee of Defendants, who Defendants misclassified as an independent contractor. Plaintiff is a therapist who has worked for Defendants in California since approximately December 2023.

Misclassification of Plaintiff and Aggrieved Employees

Defendants have willfully misclassified Plaintiff and other Aggrieved Employees as “independent contractors,” rather than employees.

Defendants have exercised and continue to exercise significant control (and maintain the right to exercise significant control) over the way that Plaintiff and Aggrieved Employees perform their duties, including which clients they are assigned and permitted to work with, the limitations on client sessions and the length of time they are permitted to spend with the clients, and the way they must use the BetterHelp platform, among other things. Defendants also exercise substantial control over the non-negotiable, standardized wage scale and pay policies used to compensate Plaintiff and the Aggrieved Employees, including the required tasks for which they are compensated and those for which they are not compensated. Defendants further exercise control over the templates, worksheets and equipment Plaintiff and the Aggrieved Employees must use for the job. Defendants even exercise control over the speech that Plaintiff and the Aggrieved Employees are permitted to use, including speech concerning the specifics and logistics of the BetterHelp platform they are required to use and the terms and conditions of their compensation. These are only examples of the numerous ways in which Defendants exercise control over and/or have the right to exercise control over the wage, hours, and working conditions of Plaintiff and the Aggrieved Employees.

Further, Plaintiff and Aggrieved Employees perform duties consistent with and in the same class of business offered by Defendants to the public—*i.e.*, online mental health counseling and therapy services. Plaintiff and Aggrieved Employees are not customarily engaged in an independently established trade, occupation, or business.

Defendants fail to compensate Plaintiff and Aggrieved Employees for the work that they are required and/or suffered and permitted to do. Similarly, throughout the Relevant Period, Defendants have and continue to willfully and unlawfully classify Plaintiff and Aggrieved Employees as “independent contractors” even though Defendants exercise significant behavioral and financial control over Aggrieved Employees. The work relationship between Plaintiff and the Aggrieved Employees, on the one hand, and Defendants, on the other, does not satisfy any test for



justifying independent contractor classification, whether the ABC Test, including *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, and Labor Code §§ 2775-2787; the control test and secondary factors set forth in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341; or the multi-factor test used under the Fair Labor Standards Act (FLSA).

The foregoing violates California Labor Code § 226.8, and the applicable IWC Wage Order, among other applicable laws and regulations. Defendants have committed the misclassification willfully and intentionally to further its scheme of evading many, if not all, the other Labor Code provisions described below.

Prohibiting Speech Regarding Wages, Payment Terms and Mechanisms

Defendants have required and continue to require Plaintiff and the Aggrieved Employees to agree in writing that they will not discuss the specifics and logistics of their interactions with the BetterHelp platform, including, but not limited to, payment terms and mechanisms, without express written approval from Defendants. This constitutes a violation of California Labor Code § 1197.5, which states: “An employer shall not prohibit an employee from disclosing the employee’s own wages, discussing the wages of others, inquiring about another employee’s wages, or aiding or encouraging any other employee to exercise his or her rights under this section.”

Requiring Employees and Job Applicants to Sign Unlawful Agreements

Defendants have required their therapists and other similarly situated individuals including Plaintiff and the Aggrieved Employees (whether as legal employees and/or job applicants), to agree, in writing, to terms and conditions which have been known by Defendants and/or its agents, managers, superintendents, or officers, to be prohibited by law.

This includes Defendants’ requirement that the applicants to, and holders of, the therapist and/or similar job position with Defendants agree, in writing, that they are independent contractors, when they are really employees under applicable law.

It also includes Defendants’ requirement that the applicants to, and holders of, the therapist and/or similar position agree, in writing, to non-compete provisions that are clearly unlawful under California Bus. & Prof. Code § 16600. Indeed, as a matter of ongoing policy and practice, Defendants consistently and uniformly have required Plaintiff and Aggrieved Employees to agree in writing that they “will not, in any manner whatsoever, during the term of this Agreement, and for a period of one (1) year following the date of termination of this Agreement, directly or indirectly, on its own behalf or on behalf of or in association with any other person or entity: solicit, accept business, or attempt to induce, encourage, or entice any actual or prospective clients or members of the Company who Contractor personally contacted or provided Provider Services to, or about which the Contractor became aware of and/or received Confidential Information about, for the purpose of: (i) materially interfering with the Company's business as currently conducted; (ii) doing business with such clients or members in the same class of business offered by the Company; or (iii) marketing similar services provided by the Company to any such actual or



prospective clients or members.”

The unlawful agreements Defendants require Plaintiff and the Aggrieved Employees to sign further include an unlawful agreement that they will not discuss the specifics and logistics of their interactions with the BetterHelp platform, including, but not limited to, payment terms and mechanisms, without express written approval from Defendants.

The foregoing violates California Labor Code § 432.5, and the applicable Wage Order, among other applicable laws and regulations.

Failure to Pay for All Hours Worked (Including Minimum Wages and Overtime Wages)

Having wrongfully classified Plaintiff and other Aggrieved Employees as “independent contractors,” Defendants have routinely required and/or suffered and permitted Plaintiff and the Aggrieved Employees to regularly work off-the-clock. For example, Defendants’ policy has been to pay its therapists and similarly situated individuals by the hour for client sessions, but to cap the compensable time at 45 minutes per session, no matter how long the session must take. As a matter of policy and practice, Defendants also have failed to pay Plaintiff and Aggrieved Employees for any of the numerous hours they regularly need to spend preparing for sessions, documenting sessions, communicating with clients outside the session time, and performing administrative work. Defendants also fail to pay Plaintiff and the Aggrieved Employees for client no-shows and late cancellations. These policies and practices have a detrimental impact on the therapists and patients alike.

The foregoing violates California Labor Code §§ 201-204, 221, 223, and the applicable Wage Order, among other applicable laws and regulations.

Plaintiff and the Aggrieved employees have worked and continue to work off-the-clock on a routine basis, including for the necessary work described above. Further, when Plaintiff and the Aggrieved employees work over 8 hours in a workday and/or over 40 hours in the workweek, Defendants fail to pay them overtime wages. Defendants also do not pay earned wages and at least minimum wage for the off-the-clock work either.

The foregoing violates California Labor Code §§ 510, 1182.12, 1197, 1198, and the applicable Wage Order, among other applicable laws and regulations.

Failure to Timely Pay All Wages Due

As a result of the foregoing, Defendants have failed to pay Plaintiff and the Aggrieved Employees all earned wages twice during each calendar month, on days designated in advance by Defendants as the regular paydays, in violation of California Labor Code § 204. The violations have been ongoing, deliberate, willful and intentional. Plaintiff and the Aggrieved Employees are entitled to civil penalties as calculated under Labor Code § 210.



Failure to Provide Accurate, Itemized Wage Statements

Defendants have failed and continue to fail to provide Plaintiffs and the Aggrieved Employees with accurate, itemized wage statements in accordance with Labor Code §226. Defendants knowingly and intentionally fail to provide a wage statement that omits and/or inaccurately states the gross wages earned, total hours worked, all deductions, net wages earned, and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Plaintiff and Aggrieved Employees cannot promptly and easily determine from the wage statement alone their accurate gross wages earned, total hours worked, all deductions, net wages earned, and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” The violations have been ongoing, deliberate, knowing, and intentional.

Failure to Timely Pay All Wages Following Separation from Employment

Defendants have failed to timely pay Plaintiff and other Aggrieved Employees who have separated from the Company all earned wages (including all off-the-clock and overtime wages) following their separation from the Company. Defendants’ failure to timely pay earned wages to Plaintiff and other former Aggrieved Employees has been deliberate, ongoing, willful and intentional. This is a violation of California Labor Code §§ 201-202 and carries waiting time penalties under Labor Code § 203, that can be enforced through Labor Code § 2699(a).

Failure to Reimburse for business expenses and losses

Defendants have consistently failed to reimburse Plaintiff and Aggrieved Employees for expenditures they had to incur to carry out their job functions, including computer costs and internet fees required to access the BetterHelp platform, insurance, and indemnification for third party claims. This is ongoing, deliberate, willful, and intentional, in violation of Labor Code § 2802.

Injunctive Relief

Pursuant to Labor Code §§ 2699(e)(1) and (k)(1), Plaintiff seeks injunctive relief for herself and the other Aggrieved Employees, including but not limited to, requiring Defendants to:

- (1) Reclassify Plaintiff and Aggrieved Employees as employees rather than independent contractors and provide them with all rights and safeguards afforded by the California Labor Code, IWC Wage Orders, and other applicable laws;
- (2) Cease and desist their unlawful policy of requiring Plaintiff and Aggrieved Employees to agree in writing to non-compete provisions, including those described above;
- (3) Cease and desist their unlawful policy of requiring Plaintiff and Aggrieved Employees to agree in writing that they will not discuss their payment terms and logistics with others;



- (4) Compensate Plaintiff and Aggrieved Employees for all time spent on work tasks at no less than their regular hourly rate, including but not necessarily limited to, all time spent on sessions with patients, all time spent preparing for and documenting sessions, all times communicating with patients and/or Defendants, and all time spent on administrative tasks.
- (5) Compensate Plaintiff and the Aggrieved Employees for all daily and weekly overtime work at the applicable premium rates.
- (6) Timely compensate Plaintiff and Aggrieved Employees all earned wages twice during each calendar month, on days designated in advance by Defendants as the regular paydays, in violation of California Labor Code § 204.
- (7) Provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements in accordance with Labor Code § 226, including wage statements that accurately state the gross wages earned, total hours worked, all deductions, net wages earned, and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”
- (8) Pay all earned and unpaid wages due to Aggrieved Employees immediately upon discharge if the discharge is involuntary and within 72 hours of discharge if it is voluntary, in accordance with Labor Code §§ 201-202.

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Plaintiff is represented by Schneider Wallace Cottrell Konecky LLP (“SWCK”), a law firm based in Emeryville, California. SWCK has extensive experience in the successful litigation and resolution of employment and representative actions nationwide. Plaintiff seeks injunctive relief and civil penalties associated with the above violations as against herself and all Aggrieved Employees suffering any violations of the same provisions identified above, plus reasonable attorneys’ fees and costs. A description of the work, mission, and credentials of the firm can be found at www.schneiderwallace.com. Plaintiff and SWCK are committed to zealously pursuing redress on behalf of the State of California and all other Aggrieved Employees for the violations set forth above.

Very truly yours,

SCHNEIDER WALLACE
COTTRELL KONECKY LLP



Joshua Konecky
Attorney at Law



Bernstein v. Compile, Inc., et al

PAGA Administrator Labor and Workforce Development

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via U.S.P.S. Certified Mail with Returned Receipt Requested

Compile, Inc. d/b/a BetterHelp

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