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PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 12, FOR ALL
PURPOSES.

SUMMONS ISSUED

FILED
MAY 22 2020

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By A. Stewart, Deputy Clerk

Attorneys for Plaintiff Gabriella Crivello

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

GABRIELLA CRIVELLO, an individual,

Plaintiff,

vs.

NEW DIRECTIONS FOR YOUNG ADULTS,
INC., a corporation; and DOES 1-100, inclusive,

Defendants.

Case No.:

C20 - 00909

COMPLAINT FOR DAMAGES

1. FAILURE TO PAY OVERTIME
2. FAILURE TO PAY MINIMUM WAGE
3. FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
4. FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS
5. FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF EMPLOYMENT
6. FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
7. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

JURY TRIAL DEMANDED

Plaintiff Gabriella Crivello brings this action against New Directions, a corporation; and Does 1 through 100, for violations of the Labor Code.

PARTIES

1. Gabriella Crivello ("Crivello" or "Plaintiff") is and at all times relevant herein was employed in Contra Costa County, California, and was an "employee" as defined by the Labor Code and the applicable California Industrial Wage Commission ("IWC") Order(s).

1 2. New Directions for Young Adults ("New Directions" or "Defendant" is a California
2 corporation formed under the laws of California.

3 3. At all times relevant herein, New Directions has been an "employer" under the Labor
4 Code and the applicable California Industrial Wage Commission ("IWC") Order(s).

5 4. New Directions and Does 1-100 are collectively referred to as Defendants.

6 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
7 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
8 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
9 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
10 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
11 alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such
12 Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of
13 said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

14 6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
15 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
16 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
17 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
18 within the course and scope of such agency, service, employment partnership, joint venture and/or
19 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
20 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
21 the remaining Defendants.

22 **VENUE AND JURY TRIAL DEMAND**

23 7. Venue is proper in this court because the unlawful acts alleged herein took place in
24 Contra Costa County, California and Plaintiff's place of employment with Defendants was within
25 Contra Costa County. Plaintiff hereby demands a jury trial.

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GENERAL ALLEGATIONS

8. Crivello was hired by New Directions in November 2017 as a Clinician, and her last day of employment was March 20, 2020. At all times relevant, her employment was at New Directions' facility in Pleasant Hill, California. It is estimated that, at all times since Crivello's hire, New Directions has had more than forty employees in California. Crivello was at all times relevant herein a full-time employee.

9. Crivello, throughout her employment with New Directions, was not paid by the hour, but was paid a flat annual salary, regardless of the number of hours worked. Initially, her salary was \$40,000 per year (or \$3,333.33 per month) for a presumed 40-hour workweek. This was raised on March 19, 2018 to \$43,000 per year (or \$3,583.33 per month), and again on December 10, 2018 to \$48,000 per year (\$4,000 per month).

10. Crivello typically started her workday around 8:30 a.m. (until December 2019, when she would start working at 8:00 a.m.), took an approximate one-hour lunch period from approximately 2:00-3:00 p.m., and stopped working for the day at around 6:00 p.m. (for an approximate 8.5-hour day). Crivello worked five days per week for an approximate 42.5-hour workweek.

11. Crivello was never paid overtime at 1.5 times her regular rate of pay, nor was she provided with the opportunity to take an uninterrupted ten-minute rest period for every four hours worked.

12. Additionally, Crivello was "on-call" on weekends (every four to five weeks), meaning that she was expected to keep her phone on her and to be at all times available to respond immediately to a clinical question or assist the weekend staff. This, of course, limited Crivello's ability to engage in personal activities, insofar as she could go nowhere and do nothing without her cell phone being on her person.

13. Furthermore, Crivello was also required to use her personal cell phone in the course of her job duties, and in fact used her phone from two to three hours per workday. However, she was not reimbursed for any portion of her personal phone bill.

1 14. New Directions improperly classified Crivello as exempt from minimum and
2 overtime wage requirements in California, resulting in a failure to pay wages. The “Executive
3 Exemption”, the “Administrative Exemption”, and the “Professional Exemption” apply only if,
4 *inter alia*, the employee earns “a monthly salary equivalent to no less than two (2) times the state
5 minimum wage for full-time employment. Full-time employment is defined in Labor Code Section
6 515(c) as 40 hours per week.” (See, e.g., Cal. Code Regs., tit. 8, § 11040, subd. 1.(A)(1)(f), (2)(g),
7 (3)(d).) Since New Directions, at all times relevant, employed 26 or more employees, the
8 minimum wage applicable to its California employees was \$10.50 in 2017, \$11 in 2018, \$12 in
9 2019, and \$13 in 2020. (See Lab. Code, § 1182.12, subds. (b)(1)(A)-(D).) Accordingly, for New
10 Directions to properly classify Crivello as exempt from overtime and minimum wage requirements,
11 it needed to pay her a monthly salary of no less than \$3,640 in 2017 ($\$10.50 \times 2 \times 40 \text{ hours} \times 52$
12 $\text{weeks} / 12 \text{ months}$), \$3,813.33 in 2018 ($\$11 \times 2 \times 40 \text{ hours} \times 52 \text{ weeks} / 12 \text{ months}$), \$4,160 in
13 2019 ($\$12 \times 2 \times 40 \text{ hours} \times 52 \text{ weeks} / 12 \text{ months}$), and \$4,506.67 ($\$13 \times 2 \times 40 \text{ hours} \times 52 \text{ weeks} /$
14 12 months) in 2020. Even assuming that New Directions at all times employed 25 or fewer
15 employees, it still would have been required, to properly classify Crivello as exempt, to pay her a
16 monthly salary of \$3,466.67 in 2017 ($\$10 \times 2 \times 40 \text{ hours} \times 52 \text{ weeks} / 12 \text{ months}$), \$3,640 in 2018
17 ($\$10.50 \times 2 \times 40 \text{ hours} \times 52 \text{ weeks} / 12 \text{ months}$), \$3,813.33 in 2019 ($\$11 \times 2 \times 40 \text{ hours} \times 52 \text{ weeks}$
18 $/ 12 \text{ months}$), and \$4,160 in 2020 ($\$12 \times 2 \times 40 \text{ hours} \times 52 \text{ weeks} / 12 \text{ months}$). However, as set
19 forth above, New Directions did not pay Crivello a monthly salary equivalent to no less than two
20 times the state minimum wage for full-time employment. Further, Crivello did not supervise two
21 or more employees, and also did not have the authority to hire and fire employees, and her
22 recommendations for such, and as to the advancement or promotion of other employees, were not
23 given particular weight. (See, e.g., Cal. Code Regs., tit. 8, § 11040, subds. 1.(A)(1)(b), (c).)

24 15. Thus, for at least a substantial portion of Crivello’s employment (and, at most, for
25 the entire duration), New Directions improperly classified Crivello as exempt from minimum and
26 overtime wage requirements under the California Labor Code. As a result of this erroneous
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28

1 misclassification, New Directions failed to pay Crivello the minimum wage for all hours worked,
2 in violation of Labor Code sections 1182.12 and 1197.

3 16. Additionally, because Crivello frequently worked in excess of eight hours in a
4 workday and forty hours in a workweek, but was not paid overtime at one and one-half times her
5 regular rate of pay, New Directions violated Labor Code section 510. The foregoing minimum
6 wage and overtime violations were compounded by the fact that Crivello was on-call on weekends
7 and yet was not paid to any extent for that time worked, *supra*. (See *Seymore v. Metson Marine,*
8 *Inc.* (2011) 194 Cal.App.4th 361.)

9 17. Because Crivello did not fit into the Executive, Administrative, or Professional
10 exemptions, *supra*, she was entitled to a ten-minute rest period for every four hours worked and a
11 thirty-minute meal period for every five hours worked. However, as set forth above, she was not
12 provided the opportunity to take rest periods. Furthermore, while Crivello did generally have the
13 opportunity to take lunch breaks, she typically did not do so until after having worked
14 approximately six hours. Further, Crivello was not paid an hour's worth of pay at her regular rate
15 for every rest and meal period that was not provided in accordance with applicable Wage Orders of
16 the Industrial Welfare Commission. Accordingly, New Directions violated Labor Code sections
17 226.7 and 512.

18 18. Because of the aforementioned Labor Code violations, the itemized wage statements
19 issued to Crivello failed to accurately show the gross wages earned, the total hours worked, the net
20 wages earned, and all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate. Accordingly, New Directions violated Labor Code
22 section 226, subdivisions (a)(1), (2), (5), and (9).

23 19. Because Crivello was underpaid wages which have not been paid to date, New
24 Directions also failed to pay her all wages due and owing upon resignation, in violation of Labor
25 Code section 202.

26 20. The foregoing list of misconduct is a partial list only and set forth by way of example.

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FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME
(Lab. Code, § 510)
Against Defendants

21. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

22. Pursuant to Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of twelve hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

23. Pursuant to Labor Code section 1198 and applicable IWC Wage Order(s), it is unlawful to compensate an employee at a rate less than either one and one-half or two times the regular rate of pay for overtime hours worked, depending upon the number of hours worked by the employee on a daily or weekly basis.

24. Nevertheless, as set forth above, Defendants failed to compensate Plaintiff for all overtime worked.

25. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
(Lab. Code, § 1182.12, et seq.)
Against Defendants

26. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

1 27. Labor Code section 1182.12 sets forth the minimum wage for employees in
2 California.

3 28. Labor Code section 1197 provides that the minimum wage for employees fixed by
4 the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
5 unlawful.

6 29. Nevertheless, as set forth above, Defendants failed to pay Plaintiff the minimum
7 wage for every hour worked.

8 30. Labor Code section 1194.2 provides that in any action under Labor Code section
9 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an
10 order of the commission or by statute, an employee shall be entitled to recover liquidated damages
11 in an amount equal to the wages unlawfully unpaid and interest thereon.

12 31. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

13 **THIRD CAUSE OF ACTION**
14 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
15 **(Lab. Code, §§ 226.7, 512)**
 Against Defendants

16 32. Plaintiff hereby realleges and incorporates by reference each and every allegation set
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 33. Labor Code section 226.7 requires employers to provide employees meal periods as
20 mandated by Order of the Industrial Welfare Commission. It states:

21 a. No employer shall require any employee to work during any meal or rest period
22 mandated by an applicable order of the Industrial Welfare Commission.

23 b. If an employer fails to provide an employee a meal period or rest period in
24 accordance with an applicable order of the Industrial Welfare Commission, the employer shall
25 pay the employee one additional hour of pay at the employee's regular rate of compensation
26 for each work day that the meal or rest period is not provided.

1 34. Labor Code section 512(a) and the applicable Wage Order(s) provide that an employer
2 may not employ a person for a work period of more than five hours per day without providing that
3 employee a meal period of not less than thirty minutes, except that if the total work period per day is
4 no more than six hours, the meal period may be waived by mutual consent of both the employer and
5 employee. An employer may not employ a person for a work period of more than ten hours per day
6 without providing an employee with a second meal period of not less than thirty minutes, except that if
7 the total work period per day of the employee is no more than twelve hours, the meal period may be
8 waived by mutual consent of both the employer and the employee, and if the first meal period was not
9 waived.

10 35. During the relevant time period, Plaintiff was not provided with meal breaks as
11 required by law and did not receive an additional hour of premium pay for each missed meal period.

12 36. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
15 **(Lab. Code, § 226.7)**
16 **Against Defendants**

17 37. Plaintiff hereby realleges and incorporates by reference each and every allegation set
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 38. Labor Code section 226.7 requires employers to provide employees rest periods as
21 mandated by Order of the Industrial Welfare Commission. It states:

22 a. No employer shall require any employee to work during any meal or rest period
23 mandated by an applicable order of the Industrial Welfare Commission.

24 b. If an employer fails to provide an employee a meal period or rest period in
25 accordance with an applicable order of the Industrial Welfare Commission, the employer shall
26 pay the employee one additional hour of pay at the employee's regular rate of compensation
27 for each work day that the meal or rest period is not provided.

28 39. Section 11 of the applicable IWC Wage Order provides:

“(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

40. During the relevant time period, Plaintiff was not provided with rest breaks as required by law and did not receive an additional hour of premium pay for each missed rest break.

41. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

FIFTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF EMPLOYMENT
(Lab. Code, § 201 *et seq.*)
Against Defendants

42. Plaintiff hereby realleges and incorporates by reference each and every paragraph set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

43. Labor Code section 201 requires an employer to pay an employee all wages earned and unpaid at the time the employer discharges the employee. Labor Code section 202 requires an employer to pay the employee all wages due no later than 72 hours after the employee quits his employment.

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

45. During the relevant time period, Defendants failed to pay Plaintiff all earned but unpaid wages at discharge.

46. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

SIXTH CAUSE OF ACTION
FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226, subd. (a))
Against Defendants

47. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

48. Pursuant to Labor Code section 226, subdivision (a), "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . , (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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 his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer . . . , (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer . . . , the rate of pay and the total hours worked for each temporary services assignment."

1 49. An employee suffering injury as a result of the knowing and intentional failure by an
2 employer to comply with Labor Code section 226, subdivision (a) is entitled to recover the greater of
3 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
4 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the
5 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
6 attorney's fees. (Lab. Code, § 226, subd. (e)(1).)

7 50. An employee is deemed to suffer injury if the employer fails to provide a wage
8 statement or if the employer fails to provide accurate and complete information as required by any one
9 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
10 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
11 during the pay period or any of the other information required to be provided pursuant to Labor Code
12 section 226, subdivision (a)(2)-(4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
13 name and address of the employer and iv) the name of the employee and the last four digits of his or
14 her social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A)
15 and (B)(i)-(iv).) "Promptly and easily determine" means a reasonable person would be able to readily
16 ascertain the information without reference to other documents or information. (Lab. Code, § 226,
17 subd. (e)(2)(C).)

18 51. During the relevant time period, Defendants intentionally and willfully failed to furnish
19 accurate itemized wage statements in violation of Labor Code section 226, subdivision (a).

20 52. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

21 **SEVENTH CAUSE OF ACTION**
22 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
23 **(Lab. Code, § 2802.)**
24 **Against Defendants**

25 53. Plaintiff hereby realleges and incorporates by reference each and every paragraph
26 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
27 allegations of this cause of action.

28 54. Labor Code section 202, subdivision (a) provides that "[a]n employer shall
indemnify his or her employee for all necessary expenditures or losses incurred by the employee in

1 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
2 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
3 believed them to be unlawful.

4 55. Nonetheless, as set forth above, Defendants failed to reimburse Plaintiff for all
5 incurred business expenses.

6 56. Labor Code section 2802 further provides that, in an action for reimbursement of
7 business expenses, a prevailing plaintiff is entitled to an award of attorney's fees.

8 57. Wherefore, Plaintiff has been injured as set forth above and requests relief as
9 hereafter provided.

10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 12 1. For unpaid wages, including rest and meal period premiums, and for reimbursement of
13 business expenses;
- 14 2. That this Court award injunctive relief, including that available under Labor Code
15 section 226(h);
- 16 3. For liquidated damages, including those available under Labor Code section 1194.2;
- 17 4. That this Court award statutory penalties including, but not limited to, those available
18 under Labor Code sections 203 and 226(e);
- 19 5. That this Court award statutory attorneys' fees and costs, including those available
20 under Labor Code sections 218.5, 226, subdivisions (e)(1) and (h), 1194, and 2802, as
21 well as Code of Civil Procedure section 1021.5;
- 22 6. That this Court award prejudgment and post-judgment interest according to any
23 applicable provision of law or as otherwise permitted by law, including those available
24 under Civil Code sections 3287(a) and 3289(b); and
- 25 7. That this Court award such other and further relief as the court deems just and proper.

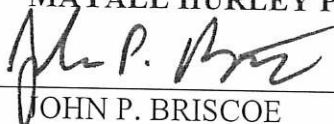
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1 **DATED:** May 19, 2020

MAYALL HURLEY P.C.

2
3 By



JOHN P. BRISCOE

Attorneys for Plaintiff

GABRIELLA CRIVELLO