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SUPERIOR COURT OF CALIFORNIA

ALAMEDA COUNTY

UNLIMITED JURISDICTION

ASHLEIGH GARRETT, PLAINTIFF, VS. DAN CHOU, HAVE BLUE, LLC, A4 CAPITAL, LLC. AND DOES 1 THROUGH 5, DEFENDANTS.	CASE NO.: 23CV056472 **COMPLAINT FOR DAMAGES**

1. Plaintiff Ashleigh Garrett brings this action against Defendants Dan Chou, Have Blue, LLC, A4 Capital, LLC, and Does 1 through 5 and alleges the following:

I. INTRODUCTION

2. Plaintiff Ashleigh Garrett ("Plaintiff"), a non-exempt employee, brings this action against her former employers Dan Chou, Have Blue, LLC, A4 Capital, LLC, and Does 1 through 5 (together "Defendants"), seeking to recover (1) unpaid wages; (2) unpaid overtime, (3) premium compensation for missed meal and rest periods; (4) waiting time penalties; (4) statutory penalties for failure to comply with record keeping requirements and (5) reasonable attorneys' fees and cost. Plaintiff also seeks to recover damages for Defendants' wrongful termination.

3. Plaintiff also seeks to recover civil penalties on behalf of herself and all aggrieved employees pursuant to California Labor Code sections 2698 *et. seq*. from Defendants for the same underlying violations, as alleged below. Unless otherwise stated, Plaintiff and all former and current hourly non-exempt employees who worked Defendants at any spa location in California during the one-year statute of limitations period from approximately October 9, 2022 to the present (“PAGA Period”) are collectively referred to “Aggrieved Employees.”

4. This Complaint asserts claims against Defendants for violations of (a) California Labor Code and (b) applicable Industrial Wage Commission ("IWC").

II. VENUE AND JURISDICTION

5. It is appropriate for this court to exercise jurisdiction over Defendants because they are residents of and/or doing business in the State of California.

6. Venue is proper in this Court in accordance with Section 395(a) of the California Code of Civil Procedure because at all relevant times Defendants resided and/or reside in Alameda County. Moreover, Defendants employed Plaintiff in Alameda County and the harms occurred in Alameda County, California.

7. The damages sought in this matter exceed $25,000.

III. PARTIES

A. Plaintiff

8. Plaintiff Ashleigh Garrett is now and was, at all times mentioned herein, a natural individual, residing in Pleasant Hill, California. At all relevant times herein, Defendants employed Plaintiff in Pleasanton, Alameda County, California.

B. Entity Defendants

9. Plaintiff is informed and believes and thereon alleges that Defendant Have Blue, LLC, is, and at all times mentioned herein was a limited liability company registered in the state of California with its principal place of business in Pleasanton, California (Entity No. 201803210372).

10. Plaintiff is informed and believes and thereon alleges that Defendant A4 Capital, LLC. is, and at all times mentioned herein was a limited liability company registered in the state of

California with its principal place of business in Pleasanton, California (Entity No. 201718410297.)

C. Individual Defendant

11. Defendant Dan Chou is a natural person. Defendant Dan Chou conducts his business in Pleasanton, California. Plaintiff is also informed and believes, and on that basis alleges, that Defendant Dan Chou is the managing member of Have Blue, LLC and A4 Capital, LLC.

12. Plaintiff is informed and believes and upon that alleges that at all times relevant, Defendant Dan Chou was acting on behalf of Have Blue, LLC, A4 Capital, LLC, and he violated, or caused to be violated, various provisions of the California Labor Code ("Labor Code"), including, but not limited, to Part 2, Chapter 1 of the Labor Code, which regulates hours and days of work in the applicable order of the Industrial Welfare Commission. Defendant Dan Chou also violated the applicable order of the Industrial Welfare Commission, Sections, regulating hours and days of work. Defendant Dan Chou exercised substantial discretionary authority or oversight over decisions that ultimately determined Have Blue, LLC, A4 Capital, LLC's unlawful employment policies, as alleged below. Therefore, under Labor Code sections 558 and 558.1, Defendant Dan Chou is personally liable for all alleged violations.

D. Doe Defendants

13. The true names and capacities of Defendants Does 1 through 5, inclusive, are currently unknown to Plaintiff, whom, therefore, Plaintiff sues by their fictitious names to California Code of Civil Procedure section 474. Plaintiff is informed and believes and thereon alleges that each of these Defendants was in some manner responsible for the events and happenings alleged in this complaint and for Plaintiff's injuries and damages.

14. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants was, at all times herein mentioned, the agent, employee, partner and/or representative of one or more of the remaining Defendants and was acting within the course and scope of such relationship. Plaintiff is further informed and believes that each of the Defendants herein gave consent to, ratified, and authorized the acts alleged herein to each of the remaining Defendants.

15. Unless otherwise stated, Defendants Dan Chou, Have Blue, LLC, A4 Capital, LLC, and

Does 1-5, are hereinafter referred to as Defendants.

E. Joint Enterprise Allegations

16. On information and belief, Plaintiff alleges that at all relevant times, Have Blue, LLC and A4 Capital, LLC, performed (either through unified operation or common control) the related activities for a common business purpose as a single enterprise. They performed all such activities through one or more establishments or by one or more corporate or other organizational units. They were and are under common ownership in that one corporate defendant so dominated and controlled the finances, policies and practices of the other corporate defendant and that the other corporate defendants were merely a conduit or instrument of the controlling corporation in pursuit of a single business venture. Therefore, disregarding the separate nature of the corporations is necessary to prevent an injustice to Plaintiff and other similarly situated employees.

17. All corporate defendants participated in a common venture or in a similar or functionally reciprocal business; they have identical equitable ownership; common directors, officers, and employees; share the same resources, pool assets and revenues, or use of one corporation's financial resources to pay or guaranty the other's obligations. Have Blue, LLC and A4 Capital, LLC jointly benefited from transactions entered into by one of them. Defendants used common management and financial control, and their operations depended on each other.

18. From on or about October 13, 2022 and continuing until May 27, 2023, Defendants were the employer of Plaintiff and they jointly exercised control over her wages, hours, or working conditions. Analogously, Defendants engaged, suffered, or permitted Plaintiff to work under working conditions described herein.

IV. GENERAL ALLEGATIONS

19. Defendants own, operate, manage, control, maintain, and oversee a franchise massage and spa business "Massage Envy" in multiple locations in the Bay Area, including but not limited to spas at 2100 Portola Avenue, Suite E, Livermore, California; 2463 Naglee Road, Tracy, CA 95304, and 3348 Village Dr Castro Valley, CA 94546.

20. Plaintiff started her employment with Defendants on or about October 13, 2022. She was hired as an esthetician to provide skin care services to Defendants' customers. Plaintiff ended her

employment with Defendants on or about May 27, 2023. The period from October 13, 2022 through May 27, 2023 is hereinafter referred to as the "Plaintiff's Employment Period."

21. During the Employment Period, Plaintiff was protected by California Labor Code and the applicable Wage Order.

F. Facts relevant to Plaintiff's Wage-and-hour Claims

22. On October 13, 2022, Defendants made an employment offer to Plaintiff for a position of an esthetician. In their offer, Defendants agreed to pay Plaintiff the following hourly rates and offered the following employment benefits:

a. $ 22 /hour for massage;
b. $ 24 /hour for anti-aging eye treatment, exfoliating lip therapy, neck & dec treatment, exfoliating treatments, CyMe Boost, and other enhancements;
c. $ 26 /hour chemical peels, microderm infusion treatments, and other advanced services.
d. Three (3) paid sick days lump sum. Sick time lump sum will be given upon hire and can be used once you have successfully completed 90-days of employment.
e. For full-time employees (over 30 hours per week):
f. Medical insurance effective the first of the month after 60-days of employment.
g. For part-time employees working 20 or more hours per week, dental and vision insurance effective the first of the month after 90-days of employment. Optional dependent coverage will be deducted from your paychecks on a pre-tax basis.

23. A true and correct copy of Defendants' Employment Offer is attached and incorporated by reference into the allegations of Plaintiff's complaint as Exhibit "1."

24. In addition, Defendants promised Plaintiff a sign-on bonus of at least $2,500 after 60 days of continued employment with Defendants.

25. Relying on Defendants' promises, Plaintiff accepted the offer and stated her employment on or about October 17, 2022 at Defendants' location in Livermore, California.

26. Prior to January 2023, Plaintiff was a part-time employee, working 15-20 hours per workweek. By January 2023, Plaintiff had become a full-time employee working more than 30 hours per workweek.

27. During the Employment Period, Defendants failed to perform obligations and promises made to Plaintiff in her employment offer. Specifically, Defendants never paid Plaintiff a sign-on bonus, proper hourly rates, failed to provide medical benefits, including dental, vision, and health insurance, and failed to provide paid sick leave time all contrary to the job offer, employment

agreement, or Defendants' written policies.

28. During the Employment Period, on at least two occasions, Defendants required Plaintiff to attend training courses: one in Tracy, California and another one in Walnut Creek, California. Defendants failed to pay Plaintiff for training hours.

29. During the Employment Period, Plaintiff regularly worked more than eight (8) hours in a workday or forty (40) hours in a workweek ("overtime"). Defendants had actual or constructive knowledge that Plaintiff had been working overtime. Defendants paid Plaintiff wages for overtime work at least one- and one-half times at a rate that was less than Plaintiff's regularly hourly rate. For example, Defendants did not include commissions and rest recovery compensation earned by Plaintiff when calculating overtime and Plaintiff's legal regular hourly rate.

30. Defendants failed to provide Plaintiff with a 30-minute meal break during the first 5 hours of work because they did not relieve her of all duties during her shift due to chronic staff shortages. If there were any meal breaks taken such breaks were taken on duty.

31. Similarly, Defendants consistently required Plaintiff to work straight 4 hours without a 10-minute rest break.

32. Defendants were aware of the fact that Plaintiff could not take her meal and rest breaks.

33. Defendants refused to provide Plaintiff paid sick leave when Plaintiff was ill and not able to work. For example, Plaintiff informed Defendants that she was on medical leave due to acute bronchitis on December 9-13, 2022. She provided a doctor's note to her managers. Defendants did not pay for Plaintiff's sick leave. On April 14, 2023, Plaintiff made a request to take sick leave on April 15, 2023 to care for her ill grandmother. Defendants refused to grant her sick leave and subjected her to disciplinary action by writing her up. On another occasion, Defendants also refused to pay Plaintiff's accrued 24 hours of sick leave for April 27- May 5, 2023. Instead of 24 hours, they paid only 22.5. All these actions were in violation of California Labor Code sections 245 *et. sec.* Ultimately, Defendants terminated Plaintiff's employment in retaliation for exercising her sick leave rights and complaining about payroll practices.

34. Defendants failed to pay Plaintiff the wages due to her upon termination on or about May 27, 2023, including overtime owed, minimum wage for training hours, sign-on bonuses, and

premiums for missed meal and rest periods.

G. Facts Relevant to Plaintiff's Wrongful Termination

35. While working for Defendants, Plaintiff noticed a number of irregularities committed by Defendants when paying her wages. Specifically, Plaintiff discovered that the pay structure, hourly rates, earned commissions, and work hours stated in Plaintiff's paystubs did not reflect her actual compensation terms as promised in Plaintiff's employment offer. Plaintiff had reasonable and a good faith belief that these irregularities violated California and federal laws. Plaintiff complained to Defendant Dan Chou. On or about February 21, 2023, Plaintiff and Defendant Dan Chou had a meeting to discuss Plaintiff's concerns regarding her wages. During the meeting, Plaintiff requested that her pay structure should be corrected and that it should reflect the terms stated in her employment agreement. Plaintiff also complained that she was not offered medical benefits despite working more than 30 hours a workweek. During the meeting, Defendant Dan Chou could not explain these irregularities. Later, because of these complaints and other unlawful reasons, as explained below, Defendants retaliated against Plaintiff by subjecting her to multiple disciplinary actions, including oral and written reprimands.

36. Defendants also deprived Plaintiff of her and kin sick leave benefits under the Healthy Workplaces, Healthy Families Act of 2014 (i.e., California Labor Code 233 *et. seq.* and 245 *et. seq.*) and ultimately terminated Plaintiff for exercising her sick leave rights under the Act.

37. For example, on December 9-13, 2022, Plaintiff was authorized to take medical leave by her doctor due to acute bronchitis. Plaintiff informed Defendants about her leave. Plaintiff was orally reprimanded and told that her absence was inconvenient for the business. Plaintiff was denied sick leave pay. Plaintiff was told to bring doctor's note in person for all future medical leaves.

38. On April 14, 2023, Plaintiff requested sick leave for April 15, 2023 to care for her 82-year old grandmother, who was ill, recovering from an arm surgery. This request was made under Labor Code Sections 233 *et. seq.* and 245 *et. seq.*, which allows Plaintiff to take paid sick leave to care for an ill grandparent. On April 15, 2023, Plaintiff spent a full day taking care of her grandmother. Not only was Plaintiff denied sick leave pay, but on April 17, 2023, Plaintiff was

written up for taking this leave. The manager Sanchez texted Plaintiff and told her this was "unexcused absence."

39. Another example of retaliation took place on May 6, 2023, when Plaintiff was written up again for taking medical leave. Based on prior instructions, Plaintiff brought doctor's note in person before the start of her shift, instead of calling in advance. Plaintiff simply followed the prior instructions provided to Plaintiff. Plaintiff was written up for not calling in advance. Defendants stated that this was in violation of Defendant's sick leave policy stated in Employee Handbook. Defendants never provided Plaintiff with Employee Handbook.

40. On May 6, 2023, Plaintiff was also written for "being late." Manager Sanchez changed Plaintiff's schedule without providing any prior notice. She admitted her error when Plaintiff arrived late. Nevertheless, Plaintiff was still subjected to a write-up.

41. These are some of the examples of Defendants' retaliatory practices against Plaintiff, which ultimately lead to Plaintiff's unlawful termination.

42. On May 27, 2023, Defendants terminated Plaintiff, purportedly, for being late. Plaintiff explained to Manager Sanchez that she was late because her medication made her drowsy and she overslept.

43. Throughout her employment with Defendants, Plaintiff demonstrated nothing but a strong work ethic and great people skills. Because of her likeable and joyful personality, she helped Defendants to build and maintain a strong client-base. She was one of the highest performers at the Spa in terms of generating revenue for Defendants. For example, on January 20, 2023, Defendants gave Plaintiff the Best Customer Service Award for 2022 for being "a star employee and demonstrating excellent customer service." In April 2023, Defendants also awarded Plaintiff with an Esthetician of the Quarter for the period from January to March 2023.

FIRST CAUSE OF ACTION

Failure to Pay Wages

(Cal. Labor Code §§ 200, 500, 1194, 1194.2, 1197, 1198 and Wage Order)

(Individually Against All Defendants)

44. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs

of this Complaint.

45. At all relevant times, Defendants were employers subject to California Labor Code and the applicable California Industrial Welfare Commission Wage, which include provisions setting forth the definition of “hours worked.”

46. Pursuant to Alameda’s Minimum Wage Ordinance, Code of Ordinances, Section 4-60.40, the applicable Wage Order, and Labor Code sections 1182.12 and 1197, Defendants were required to pay Plaintiff a minimum wage for all work performed.

47. Pursuant to Wage Order No. 2-2001, Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, Defendants were required to pay Plaintiff a minimum wage.

48. At all relevant times, Plaintiff was a non-exempt employee of Defendants under California law.

49. The California Labor Code and the applicable IWC Wage Order requires that all employees be compensated for all "hours worked." The terms “hours worked” are defined as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

50. Defendants were required to compensate their hourly employees for all hours worked pursuant to the applicable IWC Wage Order and Labor Code §§ 200, 226, 500, 510, 1197, and 1198.

51. During the Plaintiff’s Employment Period and PAGA Period, at least on two occasions, Defendants required Plaintiff to attend training courses: one in Tracy, California and another one in Walnut Creek, California. Defendants failed to pay Plaintiff for training hours. Defendants’ failure to pay for training hours caused a violation of the minimum wage requirement under California Labor Code section 1194.

52. In addition, Defendants failed to pay Plaintiff the hourly rates set forth in her employment offer:

a. $ 24 /hour for anti-aging eye treatment, exfoliating lip therapy, neck & dec treatment, exfoliating treatments, CyMe Boost, and other enhancements;
b. $ 26 /hour chemical peels, microderm infusion treatments, and other advanced services.

53. As a direct and proximate result of Defendants' wrongful acts and omissions alleged herein, Plaintiff has suffered actual damages, including unpaid minimum wage, in an amount to be proven at trial.

54. Plaintiff has incurred and will continue to incur attorney's fees as a result of prosecuting this cause of action, which they seek to recover under Labor Code sections 1194.2 and 218.5.

55. Pursuant to Labor Code section 1194.2, Plaintiff is entitled to recover, and hereby seeks, liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon from Defendants in an amount subject to proof at trial and a penalty in an amount of $50 for each day Defendants failed to pay Plaintiff minimum wage under Alameda's Minimum Wage Ordinance, Code of Ordinances, Section 4-60.65.

56. Furthermore, Labor Code section 204(a) provides in pertinent part that

> (a) 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. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

57. Defendants failed to comply with the requirement of Labor Code section 204 when they failed to pay Plaintiff for training hours and the correct hourly rate twice during each month This violation was willful and intentional. As such, Plaintiff seeks all statutory penalties provided by Labor Code section 210.

58. Wherefore, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION

Breach of Written Employment Agreement

(Cal. Lab. Code §§ 1182.12, 1194.2, 1197, and Wage Order)

(Individually Against Defendants Have Blue, LLC, A4 Capital, LLC, and Does 1-5)

59. On October 13, 2022, Defendants made an employment offer to Plaintiff for a position of an esthetician. In their offer, Defendants agreed to pay Plaintiff the following hourly rates and offered the following employment benefits:

a. $ 22 /hour for massage;
b. $ 24 /hour for anti-aging eye treatment, exfoliating lip therapy, neck & dec treatment, exfoliating treatments, CyMe Boost, and other enhancements;
c. $ 26 /hour chemical peels, microderm infusion treatments, and other advanced services.
d. Three (3) paid sick days lump sum. Sick time lump sum will be given upon hire and can be used once you have successfully completed 90-days of employment.
e. For full-time employees (over 30 hours per week):
f. Medical insurance effective the first of the month after 60-days of employment.
g. For part-time employees working 20 or more hours per week, dental and vision insurance effective the first of the month after 90-days of employment. Optional dependent coverage will be deducted from your paychecks on a pre-tax basis.

See Exhibit “1”

60. In addition, Defendants promised Plaintiff a sign-on bonus of at least $2,500 after 60 days of continued employment with Defendants.

61. Relying on Defendants’ promises, Plaintiff accepted the offer and stated her employment on or about October 17, 2022 at Defendants’ location in Livermore, California.

62. Throughout her employment with Defendants, Plaintiff performed all conditions, covenants, and promises required on her part to be performed in accordance with the terms and conditions of the Employment Agreement.

63. Prior to January 2023, Plaintiff was a part-time employee, working 15-20 hours per workweek. By January 2023, Plaintiff had become a full-time employee working more than 30 hours per workweek.

64. As set forth above, Defendants breached each provision of the Employment Agreement,

listed above, Specifically, Defendants never paid Plaintiff a sign-on bonus, proper hourly rates, failed to provide medical benefits, including dental, vision, and health insurance, and failed to provide paid sick leave time all contrary to the job offer, employment agreement, or Defendants' written policies.

65. As a result of Defendants' breach of the Employment Agreement, Plaintiff has been damaged in an amount to be determined at trial.

66. Pursuant to Labor Code sections 218 and 218.5, Plaintiff is entitled to recover reasonable attorney's fees and costs of suit.

67. Wherefore, Plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION

Failure to Pay Overtime

(Cal. Labor Code §§ 510, 1194, 1198 and Wage Order)

(Individually Against All Defendants)

68. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

69. During the Plaintiff's Employment Period and PAGA Period, Defendants were employers subject to California Labor Code section 510 and California Industrial Welfare Commission Wage Order, which includes provisions setting forth the definition of overtime and the amount of compensation to be paid to an employee that works overtime.

70. During the Plaintiff's Employment Period and PAGA Period, Defendants were required to compensate Plaintiff for all overtime work performed, at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week (whichever was greater), and for the first eight (8) hours on the seventh (7th) consecutive day of any work week. Additionally, Defendants were required to compensate Plaintiff with double time after twelve (12) hours in a single workday and after eight (8) hours on the seventh (7th) consecutive day of any work week.

71. During the Plaintiff's Employment Period and PAGA Period, Defendants engaged, suffered, or permitted Plaintiff to work in excess of eight (8) hours in a day.

72. During the Plaintiff’s Employment Period and PAGA Period, Defendants engaged, suffered, or permitted Plaintiff to work in excess of forty (40) hours a week.

73. During the Plaintiff’s Employment Period and PAGA Period, Defendants paid Plaintiff wages for overtime hours at a rate that was less than Plaintiff’s regularly hourly rate. For example, Defendants did not include commissions and rest recovery compensation earned by Plaintiff when calculating overtime and Plaintiff’s legal regular hourly rate.

74. As a direct and proximate result of Defendants’ wrongful acts and omissions alleged herein, Plaintiff has suffered actual damages in an amount to be proven at trial. Plaintiff has incurred and will continue to incur attorney's fees as a result of prosecuting this cause of action.

75. Wherefore, Plaintiff prays for relief as set forth below.

FOURTH CAUSE OF ACTION

Failure to Provide Meal and Rest Periods

Cal. Lab. Code § § 512, 226.7

(Individually Plaintiff Against All Defendants)

76. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

77. During the Plaintiff’s Employment Period and PAGA Period, Defendants were employers subject to California Labor Code section 512 and the applicable California Industrial Welfare commission Wage Order, which include provisions requiring Defendants to provide meal and rest periods to Plaintiff.

78. The applicable California Industrial Welfare Commission Wage Order provides that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period at least 30 minutes and that no employer shall employ any person for a work period of more than ten (10) hours without providing a second meal period of at least 30 minutes.

79. Labor Code section 226.7 and the applicable Wage Orders of the Industrial Welfare Commission provide that if an employer fails to provide a non-exempt employee with an appropriate off duty meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided. If

an employer fails to provide an employee a rest period in accordance with the 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.

80. During the Plaintiff's Employment Period and PAGA Period, Plaintiff regularly worked more than six hours per shift, which required Defendants to provide her with at least one 30-minute off-duty uninterrupted meal periods and at least two 10-minute off-duty uninterrupted rest breaks.

81. During the Plaintiff's Employment Period and PAGA Period, Defendants knew that Plaintiff was entitled to meal periods, but regularly denied her this right due to chronic staff shortages in the following manner:

a) Defendants failed to provide a 30-minute off duty meal break within the first five hours of work; therefore, any breaks were late;
b) Defendants failed to provide second meal period when the employees worked 10 hours per shift or more;
c) Defendants interrupted Plaintiff's meal breaks and as such these meal breaks were shorter than 30 minutes;
d) Defendants failed to provide Plaintiff with meal breaks at all despite the employees worked more than five hours per shift;
e) Defendants failed to establish a record keeping or reporting system that would track all missed or non-complaint meal breaks.

82. During the Plaintiff's Employment Period and PAGA Period, pursuant to Defendants' uniform policy, practice, and pattern, Defendants failed to provide Plaintiff with timely off-duty rest periods of not less than 10 minutes as required by the Labor Code. Some of the examples of Defendants' unlawful common practices include, but not limited to, the following conducts:

a) Defendants failed to provide one 10-minute off duty rest break when Plaintiff worked more than 3.5 hours per shift.
b) Defendants failed to provide two 10-minute off duty rest breaks when Plaintiff worked more than 6 hours per shift.
c) Defendants failed to provide three 10-minute off duty rest breaks when Plaintiff worked more than 10 hours per shift.
d) Defendants interrupted Plaintiff rest breaks and as such these meal breaks were shorter than 10 minutes;
e) Defendants failed to establish a record keeping or reporting system that would track all missed or non-complaint rest breaks.

83. During the Plaintiff's Employment Period and PAGA Period, Defendants knew that Plaintiff were non-exempt employees working without meal and rest break and knowingly failed to provide meal and rest breaks.

84. Because Defendants failed to provide the required uninterrupted off duty meal break and 10-minute rest breaks, Defendants are liable to Plaintiff for one (1) hour of additional pay at the regular rate of compensation for each workday that the proper meal and/or rest breaks were not provided pursuant to Labor Code section 226.7 and the applicable Wage Order.

85. As a direct and proximate result of Defendants' wrongful acts and omissions alleged herein, Plaintiff has suffered actual damages in an amount subject to prove at trial.

86. Furthermore, Labor Code section 204(a) provides in pertinent part that

> (b) 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. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

87. Defendants failed to comply with the requirement of Labor Code section 204 when they failed to pay Plaintiff meal and rest break premiums twice during each month This violation was willful and intentional as Plaintiff often complained about her inability to take meal and rest breaks. As such, Plaintiff seeks all statutory penalties provided by Labor Code section 210.

88. Wherefore, Plaintiff prays for relief as set forth below.

FIFTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements and Maintain Adequate Records

[Cal. Lab. Code §§ 226(a) & (e); 226.2(a)(2) 1174-5; 2698 *et. seq*., and Wage Order]

(Individually Against All Defendants)

89. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

90. Labor Code section 226(a) provides that every employer shall furnish each of him or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of her or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

91. Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) and 226.2(a)(2) because they failed to provide to Plaintiff wage statements that accurately show:

a. gross wages earned,
b. total hours worked by the employee,
c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
d. net wages earned, …
e. the name and address of the legal entity that is the employer, and
f. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.
g. The total hours of compensable rest and recovery periods,
h. the rate of compensation, and the gross wages paid for those periods during the

pay period.

i. the total hours of other nonproductive time, … the rate of compensation, and the gross wages paid for that time during the pay period.

92. Section 6 of the applicable IWC Wage Order requires Defendant to maintain time records showing, among others, when the employee begins and ends each work period, and total daily hours worked in itemized wage statements, payment of wages, and accurately report total hours worked by Plaintiff, including meal periods. Defendants have failed to comply with the wage order because they did not keep track of Plaintiff's work hours.

93. California Labor Code section 226(e) further provides that any employee suffering injury due to a willful violation of the aforementioned obligations may collect the greater of either actual damages or $50 for the first inadequate pay statement and $100 for each inadequate statement thereafter. During the course of Plaintiff' employment, Defendant consistently failed to provide Plaintiff with adequate pay statements as required by California Labor Code section 226.

94. Defendants failed to provide such adequate statements willingly and with full knowledge of their obligations under section 226. Defendants' failure to provide such adequate statements has caused injury to Plaintiff.

95. Plaintiff is entitled to recover the greater of actual damages or penalties as a result of Defendants' failure to provide proper records, in an amount to be proven at trial. Plaintiff incurred costs and attorney fees in bringing this action, and such costs and attorney fees should be awarded to Plaintiff under California Labor Code section 226.

96. Wherefore, Plaintiff prays for relief as set forth below.

SIXTH CAUSE OF ACTION

Failure to Pay All Wages Due at Termination

(Cal. Labor Code §§ 202, 203)

(Individually Against All Defendants)

97. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

98. Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section

202 provides that an employer is required to provide an employee who resigns all unpaid wages within 72 hours of their resignation, or upon resignation if the employee has provided at least 72 hours' notice. Under Labor Code section 203, if an employer willfully fails to pay such wages, for every day that final wages or any part of the final wages remain unpaid, the employer is liable for a penalty equivalent to the employee's daily wage, for a maximum of 30 days.

99. Defendants unlawfully fired Plaintiff on May 27, 2023. Defendants, however, as described above, willfully failed and refused to pay Plaintiff all accrued wages owed, including minimum wage, overtime, premiums for missed meal and rest periods, and contractual wages at the correct hourly rate on the day of her termination as required under California Labor Code section 201.

100. Since the date of Plaintiff's separation with Defendants, Plaintiff has been available and ready to receive the wages due and owing Plaintiff. Plaintiff has not refused to receive any payment from Defendants.

101. Defendants' failure to pay the wages due and owing Plaintiff was willful in that Plaintiff has made a demand for this payment but Defendants have refused to pay any portion of the amount due and owing Plaintiff.

102. Defendants' willful failure to pay Plaintiff the wages due and owing Plaintiff constitutes a violation of Labor Code section 203 that provides that an employee's wages will continue as a penalty until paid up to 30 days from the time the wages were due. Therefore, Plaintiff is entitled to a penalty in an amount to be proven at trial.

103. Wherefore, Plaintiff prays for relief as set forth below.

SEVENTH CAUSE OF ACTION

Wrongful Termination in Retaliation for Complaining About Unlawful Activities

(Cal. Labor Code §1102.5)

(Against Defendants Have Blue, LLC, A4 Capital, LLC, and Does 1 through 5)

104. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

105. Defendants terminated Plaintiff's employment in retaliation for exercising her sick leave and kin care rights and for complaining about illegal payroll practices.

106. At all times mentioned herein, California Labor Code Section 1102.5 was in full force and effect and was binding on Defendants and each of them. California Labor Code § 1102.5(b) provides that:

> "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

107. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times, Defendants adopted, implemented, and enforced policies and procedures in violation of California Labor Code §§ 200, 226, 510, 226, 1102.5, 233, 245-246.5 and Wage Order No. 2 when Plaintiff's complained about and objected to Defendants' illegal employment practices as alleged above.

108. At all relevant times, Plaintiff had a reasonable belief that Defendants were violating state and federal labor laws that govern work hours and compensation, including but not limited to California Labor Code California Labor Code §§ 200, 226, 510, 226, 1102.5, 233, 245-246.5 and Wage Order No. 2 and reported these violations to Defendants' management.

109. At all relevant times, Plaintiff had reasonable cause to believe the information that she reported and disclosed to Defendants' managers, who had the authority to correct them, constituted a violation of or noncompliance with governing laws, statutes, and regulations.

110. Plaintiff is informed and believes, and based thereon alleges, that Defendants' decision to fire Plaintiff's employment was substantially motivated by the above-mentioned complaints and objections by Plaintiff to Defendants regarding unlawful pay practices and exercising her rights under California Healthy Workplaces, Healthy Families Act of 2014.

111. As a proximate result of the aforesaid acts of Defendants and each of them, Plaintiff has lost, and will continue to lose, earnings and benefits and has suffered and/or will

suffer other actual, consequential, and incidental financial losses, in an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

112. As a proximate result of the aforesaid acts of Defendants and each of them, Plaintiff has become and continues to be emotionally distressed, humiliated, and aggravated. Additionally, Plaintiff claims general damages for such mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

113. Pursuant to California Labor Code § 98.6, Plaintiff seeks back pay and benefits; reimbursement of her actual damages pursuant to Labor Code § 1105; and a civil penalty of $10,000 for each violation pursuant to California Labor Code § 1102.5(f).

114. Wherefore, Plaintiff prays for relief as set forth below.

EIGHTH CAUSE OF ACTION

Wrongful Termination in Retaliation for Exercising Sick Leave and Kin Care Rights

(Cal. Labor Code §233-246.5)

(Against Defendants Have Blue, LLC, A4 Capital, LLC, and Does 1 through 5)

115. Pursuant to Labor Code § 233, an employer who provides sick leave for its employees shall permit its employees to use the employee's accrued and available sick leave for diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member and/or the employee himself or herself. Additionally, an employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of an employee and/or the employee's family member.

116. Similarly, Labor Code section 246 requires employers to provide paid leave in an amount no less than 24 hours or 3 days of paid sick leave, which is greater. Labor Code § 246.5(a)(1) requires employers to "provide paid sick days for the following purposes: (1) [d]iagnosis, care, or treatment of, or preventative care for, an employee or an employee's family member."

117. California Labor Code §245.6(c) prohibits retaliation against employees who

exercise their sick leave rights under the Healthy Workplaces, Healthy Families Act of 2014. It reads:

> (1) An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.
> (2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of …. c) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

118. Defendants deprived Plaintiff of her sick leave benefits under California Labor Code Sections 233 and 246. Defendants ultimately terminated Plaintiff for exercising her sick leave rights under California Labor Code Sections 233 and 246 in conjunction with the unlawful reasons stated above.

119. As a proximate result of the aforesaid acts of Defendants and each of them, Plaintiff has lost, and will continue to lose, earnings and benefits and has suffered and/or will suffer other actual, consequential, and incidental financial losses, in an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

120. As a proximate result of the aforesaid acts of Defendants and each of them, Plaintiff has become and continues to be emotionally distressed, humiliated, and aggravated. Additionally, Plaintiff claims general damages for such mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

121. The conduct which Plaintiff complains of in this complaint, and which is alleged above, was carried out by Defendants' willfully, intentionally, and with oppression, malice and fraud and was carried out with conscious disregard of Plaintiff's rights, and as such Plaintiff is entitled to an award of exemplary damages according to proof. The aforementioned conducted on which punitive damages is alleged, as described hereinabove, was done with the advance knowledge by an officer, director and/or managing agent of Defendants, of the unfitness of the

Defendants’ employees and agents, and the employees were employed with a conscious disregard of the rights and/or safety or others. The aforementioned conducted on which punitive damages is alleged, as described hereinabove, was authorized, ratified and/or committed by an officer, director, and/or managing agent of Defendants.

122. 248. As further direct, legal and proximate result of Defendants’ conduct, Plaintiff was caused to and did employ the services of counsel to prosecute this action and is accordingly entitled to an award of attorneys' fees according to proof as well as costs. Further, Plaintiff seeks attorney fees pursuant to California Code of Civil Procedure section s 1021.5 et. seq. and Labor Code § 1102.5 and 2699.

123. Wherefore, Plaintiff prays for relief as set forth below.

NINTH CAUSE OF ACTION

Termination in Violation of Public Policy

(Against Defendants Have Blue, LLC, A4 Capital, LLC, and Does 1 through 5)

124. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

125. California courts have held that complaints involving wages owed implicate a public policy sufficient to permit a cause of action for wrongful termination in violation of public policy. *Gould v. Maryland Sound Industries, Inc.*, 31 Cal.App.4th 1137, 1147-1150 (1995). This is because wage and hour laws “concern not only the health and welfare of the workers themselves, but also the public health and general welfare.” C*alifornia Grape Etc. League v. Industrial Welfare Com*., 268 Cal.App.2d 692, 703 (1969)

126. Similarly, it is a fundamental, substantial and well-established public policy under California law that a workplace be free of retaliation and discrimination against employees who exercise their sick leave rights California Healthy Workplaces, Healthy Families Act of 2014. This fundamental public policy is expressed under California Labor Code §§233 and 245, *et seq.*

127. Pursuant to the well-established, substantial and fundamental public policy contained in the Labor Code section 98.6 it is declared policy of this State that there should not be discrimination against applicants, employees, and/or workers who exercise any right afforded

them by the Labor Code.

128. Pursuant to the well-established, substantial and fundamental public policy contained in the Labor Code section 1102.5, an employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal stature, or violation or noncompliance with a state or federal rule or regulation.

129. Plaintiff had protected status under public policy when she reported/complained to Defendants of the issues/violations set forth above. All of Plaintiff's reporting gave Plaintiff protected status under public policy.

130. Plaintiff is informed and believes, and based thereon alleges, that Defendants' decision to fire Plaintiff's employment was substantially motivated by the above-mentioned complaints and objections by Plaintiff to Defendants regarding unlawful pay practices and exercising her rights under California Healthy Workplaces, Healthy Families Act of 2014.

131. Defendants knew, perceived, and/or believed that Plaintiff had the protected status(es) alleged above.

132. As a direct, legal and proximate result of Plaintiff's protected status(es), as stated above, Defendants retaliated against Plaintiff, discharged Plaintiff, all in violation of public policy.

133. Plaintiff's protected status, as described hereinabove, was a substantial motivating factor in Defendants aforementioned decisions that were adverse to Plaintiff in regard to compensation and terms, conditions and privileges of employment.

134. As a direct, foreseeable and proximate result of Defendants' violations of public policy, as stated above, and the California public policy delineated and embodied in the statutes and regulations Defendants violated as stated above, Defendant terminated Plaintiff and/or committed adverse employment actions against Plaintiff as stated above, all in violation of California public policy.

135. As a direct, foreseeable, and proximate result of Defendants' conduct, as alleged above, Plaintiff has suffered lost income, employment, and career opportunities, and has suffered and continues to suffer other economic loss, the precise amount of which will be proven at trial.

136. As a direct, foreseeable and proximate result of Defendants' conduct, as alleged

above, Plaintiff has suffered and continues to suffer pain and suffering, embarrassment, anger, loss of enjoyment of life, pain and suffering, and severe emotional distress, the precise amount of which will be proven at trial.

137. Plaintiff is informed and believes and thereon alleges that the conduct of Defendants was grossly intentional, negligently reckless, willful, wanton, malicious, oppressive and/or unmindful of obligations to Plaintiff and/or exhibits the entire want of care which would rise to the presumption of conscious indifference to the consequences so as to warrant the imposition of punitive damages in an amount sufficient to punish, penalize or deter Defendants, for which Defendants are all liable to Plaintiff.

138. Wherefore, Plaintiff prays for relief as set forth below.

TENTH CAUSE OF ACTION

Civil Penalties for Violation of Private Attorneys General Act of 2004

(Cal. Lab. Code §§ 2698 *et seq.* - Representative PAGA)

(Plaintiff, on Behalf of the LWDA, as to All Aggrieved Employees Against All Defendants)

139. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

140. On September 17, 2023, Plaintiff notified Defendants and the California Labor and Workforce Development Agency ("LWDA") via certified mail of Defendants' violations pursuant to Labor Code section 2966.3.

141. From September 17, 2023 to the present, Defendants did not take any remedial action and the LWDA did not intervene to investigate Plaintiff's claims. Accordingly, Plaintiff files this cause of action as a representative action under the Labor Code section 2699.3(a)(2)(C) and she is entitled to recover civil penalties for violations committed by Defendants during the statute of limitations period ("PAGA Period") on behalf of herself and all other aggrieved non-exempt employees of Defendants pursuant to Labor Code sections 2698 et seq.

142. Under the California Private Attorneys General Act ("PAGA") of 2004, Cal. Lab. Code §§ 2698-2699.5, an aggrieved employee, on behalf of herself and other current or former employees as well as the general public, may bring a representative action as a private attorney

general to recover penalties for an employer's violations of the California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other relief available under the California Labor Code, 75% must be allocated to California's Labor and Workforce Development Agency ("LWDA") and 25% to the aggrieved employee, pursuant to California Labor Code § 2699.

143. Plaintiff is an aggrieved employee with standing to bring this cause of action under the PAGA Act because of her employment with Defendants and Defendants' failure to comply with various California Labor Code violations for work performed in California as alleged above.

144. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, including, without limitation, the penalty provisions identified in Labor Code section 2699.5.

145. Plaintiff alleges that Defendants have violated the following provisions of the California Labor Code and the following provisions of the IWC Wage Orders that are actionable through the California Labor Code and PAGA as to herself and all other aggrieved employees, as previously alleged herein:

146. Failure to pay Plaintiff and other aggrieved employees overtime wages (Cal. Lab. Code §§ 510 and 2699 and Wage Order No. 2-2001, Section 3);

147. Failure to pay Plaintiff and other aggrieved employees wages (Cal. Lab. Code §§200, 204, 2010, 1194, 1197.1, and 2699 and Wage Order No. 2-2001, Section 4);

148. Failure to provide meal and rest break periods (Cal. Lab. Code §§ 512, 226.7, 558, and 2699 and Wage Order No. 2-2001, Sections 11 and 12);

149. Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226, 226.3, and 2699 and Wage Order No. 2-2001, Sections 6);

150. Failure to provide sick leave and kin care under California Labor Code sections 233, *et., seq.,* 245 *et. seq.* (Cal. Lab. Code §§233, 245-7, 558 and 2699(f).

151. California Labor Code § 2699(f), which is part of PAGA, provides in pertinent part:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the

civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

152. Plaintiff is entitled to recover civil penalties on behalf of the LWDA, to be paid by Defendants and allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for Defendants' violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty is already specifically provided by law.

153. Furthermore, Plaintiff is entitled to recover civil penalties on behalf of the LWDA, to be paid by Defendants and allocated as PAGA requires, pursuant to California Labor Code § 2699(f) for Defendants' violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty is not already specifically provided.

154. Under PAGA, Plaintiff and the State of California are entitled to and seeks to recover the maximum civil penalties permitted by law for the violations of the California Labor Code and IWC Wage Order No. 2-2001 or other applicable Wage Order(s) that are alleged in this Complaint.

155. Plaintiff, for herself, further seeks reasonable attorneys' fees and costs pursuant to Labor Code sections 558 and 2699.

156. Wherefore, Plaintiff prays for relief as set forth below.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

1. Compensation for unpaid wage, including contractual wages, minimum wage, overtime compensation; premiums for missed meal and rest periods;
2. For compensatory and general damages against all Defendants in an amount according to proof, including back pay, front pay, employment benefits, past and future damages for emotional and mental distress, and past and future medical costs and expenses;
3. For liquidated damages under Cal. Lab. Code § 1194.2 and Alameda's Minimum Wage Ordinance, Code of Ordinances, Section 4-60.40

4. Waiting time penalty under Labor Code Section 203;
5. For all applicable statutory penalties pursuant to Labor Code Labor Code sections 210 and 226.
6. For all applicable civil penalties under Labor Code sections 1102.5, 558, 1197.1, 2699.
7. Pre-judgment interest at the maximum legal rate;
8. Reasonable attorney's fees pursuant to Labor Code sections 226, 1194, 558, 2699, and 218.5;
9. For costs of this suit; and
10. For any other and further relief that the court may deem proper and just.

Dated: December 12, 2023

KUCHINSKY LAW OFFICE, P.C.

BY______________________
Alexei Kuchinsky
Attorney for Plaintiff Garrett

Exhibit 1

Have Blue, LLC

October 13th, 2022

Ashleigh Garrett

Dear Ashleigh,

Congratulations! Have Blue LLC (DBA Massage Envy) is pleased to offer you the full-time position of Lead Esthetician to be based in our Livermore location. This offer is contingent upon favorable reference and background checks. You will be reporting directly to Kylie Sanchez (unless or until Have Blue's reporting structure changes).

Compensation

Hourly Rate. You will be paid for your facial services at the following rates:

- $ 22 /hour for massage
- $ 24 /hour for anti-aging eye treatment, exfoliating lip therapy, neck & dec treatment, exfoliating treatments, CyMe Boost, and other enhancements
- $ 26 /hour chemical peels, microderm infusion treatments, and other advanced services

Non Productive Time: You will be paid for Non-Productive Time at the current state minimum wage of $15 /hour. You will see a separate line item on your paystub for Non-Productive Time which will appear as "**NPT**".

If you are required to attend trainings or meetings, or there is a need for you to perform other non-massage related work, you will be paid at $15.00/hour.

Rest + Recovery Period: Every therapist that works over 4 hours is required to take a paid-10 minute break. Massage Envy pays you for a 15-minute break – 5 minutes more than what is legally required. You will be paid at a Rest and Recovery rate for your rest breaks which will be calculated by determining the average hourly rate which is determined by dividing the total compensation, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods. This will appear as a separate line item on your paycheck as "**R/R**".

Your Rest and Recovery time includes, getting the room ready for a massage, reading notes, taking notes, massage, prepping the room for the next client, breakdown of the room at the end of the day and any task related to the specific massage.

Have Blue, LLC

You will be provided with a copy of our Company policies and benefits information. Please read these materials carefully. Eligible employees are entitled to company benefits listed below after 60 days of continuous active employment. For more information, please consult Laura Dake at ldake@onedigital.com

- Three (3) paid sick days lump sum. Sick time lump sum will be given upon hire and can be used once you have successfully completed 90-days of employment.
- For full-time employees (over 30 hours per week):
  - Medical insurance effective the first of the month after 60-days of employment.
- For part-time employees working 20 or more hours per week, dental and vision insurance effective the first of the month after 90-days of employment. Optional dependent coverage will be deducted from your paychecks on a pre-tax basis.

Meal and Rest Breaks. You are entitled to take at least a 30-minute unpaid meal break if you work five (5) or more hours in a day. If you work a six (6)-hour day and have executed a written meal period waiver, you may waive your meal break. You are also entitled to receive two fifteen-minute paid break periods for each full eight (8) workday, one in the first four (4) hours of work, one in the next four (4) hours (or portion of four (4) hours) of work.

____
Initials

Your employment is at-will which means that either you or Have Blue may terminate the employment relationship at any time for any reason not prohibited by law. In addition, the terms of your employment may be modified with or without cause or prior notice, including your title, compensation, benefits and/or reporting structure, as well as Have Blue's personnel policies and procedures. The "at will" nature of your employment may only be changed in a document signed by Dan Chou or another Have Blue executive and you.

All new employees serve an introductory period of 90 days. During this period, you will have the opportunity to learn about the position and company. Have Blue will use this period to determine whether or not you are a good fit for the position. Introductory periods may be extended for legitimate business reasons, performance reasons, or because of approved absences taken by you during the introductory period. During the introductory period and during the entire course of your employment, you will be an at-will employee so employment is not guaranteed for the entire 90 days of the introductory period. In addition, satisfactory completion of the introductory period does not alter the at-will character of your employment relationship with Have Blue.

Like all of Have Blue employees, you will be required to sign your new hire paperwork within 72 hours of the onset of your employment. Our offer is contingent upon receipt of documentary evidence of your identity and eligibility to work in the United States and the completion of a satisfactory reference check, or our employment relationship with you may be terminated.

Have Blue, LLC

Please confirm your acceptance of these terms by returning a signed copy of this letter to Kylie Sanchez by the close of business 3 days from date of offer. An original will be provided as part of your new hire paperwork. This letter, along with your new hire paperwork, set forth the terms of your employment with Have Blue. This agreement supersedes any prior representations or agreements between you and Have Blue, whether written or oral. This agreement may not be modified or amended except by a written agreement signed by Dan Chou or another Have Blue Executive and you.

If you have any Human Resources questions, please call Next Level Strategies at 415.876.NEXT.

We are excited about the prospect of you joining our team, and look forward to the addition of your professionalism and experience to help Have Blue achieve its goals.

Very truly yours,

Dan Chou
Managing Partner
Have Blue

Agreed: __________________________________
Name

____
Signature

Date: ______________________