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Attorneys for Plaintiff,
MICHELLE MARIN RAMIREZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

MICHELLE MARIN RAMIREZ, an
individual, on her own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

NEW U THERAPY CENTER &
FAMILY SERVICES, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 24STCV08227

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 4);**
- 2. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4)**
- 3. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 4);**
- 4. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 4);**
- 5. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203);**
- 6. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 7. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**
- 8. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.**

DEMAND FOR A JURY TRIAL

1 All allegations in this Complaint are based upon information and belief except for those
2 allegations which pertain to the Plaintiff named herein and her counsel. Each allegation has
3 evidentiary support or is likely to have evidentiary support after a reasonable opportunity for
4 further investigation and discovery.

5 MICHELLE MARIN RAMIREZ (“Plaintiff”) alleges the following:

6 1. This is a class action brought under California law by an individual who was
7 employed by New U Therapy Center & Family Services (“NEW U” or “Defendant”) (along
8 with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of
9 herself and others similarly situated to recover wages from Defendants due to Defendants’
10 systematic failure to pay overtime wages, failure to provide meal and rest breaks (or pay the
11 statutory compensation due), failure to issue accurate wage statements, failure to reimburse
12 business expenses, failure to pay wages due on termination and failure to provide personnel
13 records.

14 2. Plaintiffs have worked as employees in Defendant’s clinic in Valencia,
15 California. While working, Plaintiffs have been forced to endure stressful and illegal workplace
16 conditions created by Defendant’s efforts to maximize profits and tightly control labor costs.

17 3. Plaintiff, like her co-workers whom Defendant also employed during the
18 applicable limitations period, spend their workdays at NEW U as administrative assistants and
19 other non-exempt hourly employees, under illegal and highly regimented circumstances. That
20 regimen results from Defendant’s insistence to strictly monitor and curtail labor costs, which
21 Defendant accomplishes by not paying for all labor costs, refusing to provide meal periods,
22 refusing to provide rest breaks, not paying the required extra hour for missed meal and rest
23 breaks, failing to reimburse business expenses, failing to provide personnel records and by
24 using other unlawful stratagems to ensure that labor costs remain artificially low.

25 4. Plaintiff brings this class action to recover, among other things, wages and
26 penalties from unpaid wages earned and due, including but not limited to, premium overtime
27 wages, late and missed rest break wages, wages due to discharged or quitting employees,
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1 penalties for failure to maintain required records, to provide accurate itemized wage statements,
2 reimbursement of business expenses, and interest, attorneys' fees, costs, and expenses.

3 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
4 herself and all members of the class, to compensate these workers for the unpaid wages and to
5 protect current and future workers of Defendant from being subjected to similar wage theft and
6 otherwise unlawful working conditions.

7 6. Plaintiff also brings an action seeking relief for Defendant's violations of
8 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
9 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
10 business practices, as well as injunctive relief.

11 JURISDICTION AND VENUE

12 7. This Court has jurisdiction over this Complaint under Code of Civil Procedure
13 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
14 *Professions Code* §§ 17200 *et seq.* Plaintiff Michelle Marin Ramirez brings this Complaint on
15 her own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

16 8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
17 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
18 herein, occurred in the County of Los Angeles and because Defendant owned and operated
19 their businesses in the County of Los Angeles.

20 THE PARTIES

21 PLAINTIFF

22 9. At all times relevant hereto, Plaintiff was:

- 23 (a) An individual over age 18 and a resident of Los Angeles County,
24 California;
25 (b) Employed as an hourly employee for Defendant NEW U in Valencia,
26 California;
27 (c) Did not receive overtime compensation required by *Labor Code* §§510
28 and 1194 and the applicable Wage Orders;

- 1 (d) Did not receive the meal periods required by *Labor Code* §266.7 and the
2 applicable Wage Orders;
3 (e) Did not receive the rest periods required by *Labor Code* §266.7 and the
4 applicable Wage Orders;
5 (f) Did not receive accurate wage statements as mandated by *Labor Code*
6 §226;
7 (g) When she resigned from her employment, did not receive her final
8 paycheck within the time limits prescribed by *Labor Code* §201;
9 (h) Was not reimbursed for business expenses; and
10 (i) Was not provided her personnel records. Each of these was a violation of
11 the *Labor Code*.

12 **DEFENDANT**

13 10. Plaintiff is informed and believes, and based on that information and belief,
14 alleges, Defendant NEW U is, and at all times mentioned herein was:

- 15 (a) A California corporation, with a principal place of business at 25000
16 Stanford Avenue, #167, Valencia, California. NEW U has been
17 authorized to do business and has been doing business in the County of
18 Los Angeles;
19 (b) The former employer of Plaintiff and the current and former employer of
20 the putative Class members;
21 (c) Paid Plaintiff and all Class Members on an hourly basis;
22 (d) Failed to pay Plaintiff and all putative Class members premium overtime
23 wages;
24 (e) Failed to provide Plaintiff and all putative Class members with meal and
25 rest periods, failed to provide Plaintiff and all putative Class Members
26 with accurate itemized wage statements and failed to issue final
27 paychecks timely to Plaintiff and all putative Class Members;
28 (f) Was not reimbursed for business expenses; and

1 (g) Was not provided personnel records. Each of these was a violation of the
2 *Labor Code*.

3 11. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
5 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
6 *Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true
7 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

8 12. Plaintiff is informed and believes, and based on that information and belief
9 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
10 reside in or are authorized to do, or are otherwise doing, business in the State of California.
11 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
12 conduct business in the County of Imperial. Each of the Defendants DOES 1 through 100 was
13 the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter
14 ego and/or representative of one or more of the other Defendants named herein, and acting with
15 permission, authorization, and/or ratification and consent of the other Defendants.

16 13. Plaintiff is informed and believes, and based on that information and belief
17 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
18 inclusive, are responsible in some manner for one or more of the events and happenings that
19 proximately caused the injuries and damages hereinafter alleged.

20 14. Plaintiff is informed and believes, and based on that information and belief
21 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
22 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
23 the other Defendants and that each Defendant was acting within the course and scope of his,
24 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
25 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
26 Class, for the damages sustained as a proximate result of their conduct.

27 15. Plaintiff is informed and believes, and based on that information and belief
28 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,

1 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
2 themselves and entered into a combination and systemized campaign of activity to *inter alia*
3 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
4 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
5 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
6 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
7 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
8 the actions of one Defendant were accomplished in concert with, and with the knowledge,
9 ratification, authorization and approval of each of the other Defendants.

10 **CLASS ALLEGATIONS**

11 **A. The Definition of the Class**

12 16. The Class ("the Class") is defined as follows:

13 (a) "All current and former employees who were hourly paid employees of
14 Defendants and worked at the NEW U in California at any time during the
15 period commencing on the date that is four (4) years prior to the filing of this
16 Complaint and continuing through the present date (the "Class Period")."

17 (b) "All persons who were hourly paid employees of Defendants and worked at
18 the NEW U in California and left the employ of Defendants at any time during
19 the period commencing on the date that is within one (1) year prior to the filing
20 of this Complaint and continuing through the present date (the "Class Period")."

21 17. Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to
22 amend or modify the Class description with greater specificity or further division into
23 subclasses or limitation to particular issues.

24 18. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
25 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
26 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
27 amend this Complaint once she completes and complies with the provisions under the law.

28 **B. Maintenance of the Action**

1 19. Plaintiff brings this action individually and on behalf of herself and as
2 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
3 and 17204 and *Code of Civil Procedure* § 382.

4 **C. The Class Requisites**

5 20. At all material times, Plaintiff was a member of the Class.

6 21. The Class action meets the statutory prerequisites for maintaining a class action
7 under Code of Civil Procedure § 382 in that:

8 (a) The persons who comprise the Class are so numerous that the joinder of all
9 those persons is impracticable and the disposition of their claims as a Class
10 will benefit the parties and the Court;

11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the Class and will apply
13 uniformly to every Class member;

14 (c) The claims of the representative Plaintiff are typical of the claims of each
15 Class member. Plaintiff, like all Class members, has sustained damages
16 arising from Defendants' violations of the laws of the State of California.
17 Plaintiff, and the Class members, were and are similarly or identically
18 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
19 pattern of misconduct engaged in by the Defendants;

20 (d) The representative Plaintiff has, and will continue to, fairly and adequately
21 represent and protect the interests of the Class and has retained counsel
22 who are competent and experienced in class action litigation. There are no
23 material conflicts between the claims of the representative Plaintiff and the
24 Class members that would make class certification inappropriate. Counsel
25 for the Class will vigorously assert the claims of all Class members.

26 22. The persons who comprise the Class are so numerous that joining all of them is
27 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
28 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff

1 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
2 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
3 Plaintiff are experienced, qualified and generally able to conduct complex class action
4 litigation.

5 23. The Court should permit the action to be maintained as a class action under
6 *Code of Civil Procedure* § 382 because:

- 7 (a) The questions of law and fact common to the Class predominate over any
8 question affecting only individual members;
- 9 (b) A class action is superior to any other available method for fairly and
10 efficiently adjudicating the claims of the Class;
- 11 (c) The Class members are so numerous that it is impractical to bring all of
12 them before the Court;
- 13 (d) Plaintiff and other Class members will not be able to obtain effective and
14 economic legal redress unless the action is maintained as a class action;
- 15 (e) There is a community of interest in obtaining appropriate legal and
16 equitable relief for the statutory violations, and in obtaining adequate
17 compensation for the damages and injuries for which Defendants are
18 responsible in an amount sufficient to adequately compensate the Class
19 members;
- 20 (f) Without Class certification, the prosecution of separate actions by
21 individual Class members would create a risk of:
- 22 i. Inconsistent or varying adjudications for individual Class members
23 that would establish incompatible standards of conduct for
24 Defendant; and/or,
- 25 ii. Adjudication for individual Class members that would, as a
26 practical matter, dispose of other non-party members' interests, or
27 that would substantially impair or impede the non-parties' ability
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1 to protect their interests, by, for example, potentially exhausting
2 the funds available from Defendants, and

3 (g) Defendants have acted or refused to act on grounds generally applicable
4 to the Classes, making final injunctive relief appropriate for the Class, as
5 a whole.

6 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
7 that would set forth the subject and nature of the action. The Defendant's own business records
8 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
9 any further notices may be required, Plaintiff would contemplate using additional media and/or
10 mailing.

11 GENERAL ALLEGATIONS

12 25. At all times material hereto, NEW U has been and is, a mental health provider.

13 26. Plaintiff and members of the Class were employed as administrative assistants
14 and office workers at NEW U in Valencia, California by Defendant at various times during the
15 Class Period.

16 THE CONDUCT

17 27. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
18 Plaintiff and members of the Class wages and compensation owed under California law.

19 28. Starting on or about September 13, 2021 and continuing through April 10, 2023,
20 Defendant employed Plaintiff as an Administrative Assistant at their clinic in Valencia,
21 California. Plaintiff managed the clinic's calendar, clinicians' caseloads, answered the phone,
22 greeted patients, called patients, performed intake and filed documents.

23 29. While employed by Defendant, Plaintiff was paid approximately \$22.00 per
24 hour.

25 30. The employment by Defendant of the Class Members, and each them, is
26 governed by Industrial Welfare Commission Wage Order 4, which covers those persons
27 employed in the professional, technical, clerical, mechanical and similar occupations.

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FAILURE TO PAY OVERTIME

31. Under California law, non-exempt employees as defined by Wage Order 4, are entitled to premium wages for overtime worked.

32. Here, Defendant required Plaintiff and the Class to at times perform compensable tasks pre and post shift off-the-clock for which they did not receive any compensation. Specifically, it took about 5 minutes for the computer to turn on so that Plaintiff and Class members could clock in for their shifts on Gusto. Additionally, prior to clocking in for her shift, Plaintiff printed schedules. Further, as part of the Class Members' employment Plaintiff and Class members spent time helping patients after clocking out. Additionally, Plaintiff and Class members spent time off the clock taking a required Tuberculosis test. As a result, and because they improperly treated such pre and post-shift time and testing time as non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

33. At all times during the relevant time period, Plaintiff and the Class routinely worked schedules such that they were due pay at overtime rates. During this period, it was the practice and policy of Defendant to not pay employees at appropriate overtime rates. Monies for unpaid overtime remain due and owing.

34. Further, Plaintiff and Class members overtime pay was not properly calculated and paid. Plaintiff and Class members were paid at less than one- and one-half times their base rate. Moreover, even though Plaintiff's time records show that she worked overtime, her paystubs do not show that she was paid for that overtime.

MEAL BREAKS AFFORDED LATE AND/OR SHORTENED

35. Under California law, non-exempt employees as defined by Wage Order 4, are entitled to a 30-minute lunch period for each 10 hours worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof. Non-exempt employees are entitled to one hour pay at their regular pay rate for each day the requisite rest and/or meal periods are not provided.

36. Plaintiff and the Class's meal and rest breaks were at times afforded late; after the fifth hour and/or shortened due to work commitments.

1 37. Defendant's policies and procedures were applied to all non-exempt employees
2 in California and resulted in non-exempt employees working time which was not compensated
3 by any wages in violation of Labor Code sections 510, 1194 and the applicable Wage Orders.
4 As a result, Defendant owes wages at the legal overtime rate for unpaid overtime to each of
5 their California non-exempt employees whose daily hours were reduced even though their
6 meals periods were afforded late and/or shortened.

7 **REST BREAKS WERE INTERRUPTED**

8 38. Plaintiff and the Class's rest breaks were at times interrupted.

9 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

10 39. As a result of Defendant's failure to pay employees at required overtime rates,
11 and to afford premium pay for late and/or interrupted meal/rest breaks the wage statements
12 issued to the employees did not comply with *Labor Code* §226 and California Industrial
13 Welfare Commission ("IWC") Wage Order 4 in that they did not accurately reflect all wages
14 earned, due and owing.

15 **FAILURE TO PAY WAGES ON TERMINATION AND/OR RESIGNATION**

16 40. As a further result of Defendant's failure to pay employees at required overtime
17 rates and to afford premium pay for late and/or interrupted meal/rest breaks, when the
18 employees left their employ, they were not timely paid all wages due them, as required by
19 *Labor Code* §§ 201, 202 and Wage Order 4. Further, it was the practice of Defendant's to not
20 pay employees the final paychecks within the time periods mandated by *Labor Code* §§201,
21 202 and Wage Order 4. Plaintiff was paid her last paycheck one week after her resignation.

22 **LACK OF EXPENSE REIMBURSEMENT**

23 41. Defendant failed to reimburse Plaintiff and members of the Class for business-
24 related expenses, such as cell phone use.

25 **REGULAR RATE OF PAY**

26 42. California law uses the terms "compensation" and "pay" interchangeably and
27 requires that all applicable remuneration, including but not limited to, commissions, and/or
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1 non-discretionary bonuses, and/or gift cards, etc., be included when calculating an employee's
2 regular rate of pay.

3 43. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
4 should have known that Plaintiff and Class members were entitled to be paid at a regular rate
5 of pay, and corresponding overtime rate of pay, that included as eligible income all income
6 derived from nondiscretionary bonuses, gift cards and/or other forms of compensation.

7 44. Defendant failed to properly pay and calculate overtime due to excluding
8 bonuses from regular rate of pay calculations. Such bonuses are required under California law
9 to be included in an employee's regular rate of pay for overtime calculations. Defendant failed
10 to do so, thereby failing to pay employees their full wages as required under the Labor Code.

11 45. Plaintiff and members of the Class received bonuses that must be included when
12 calculating their regular rates of pay for purposes of overtime and meal/rest premiums.
13 However, Defendant failed to correctly calculate Plaintiff and members of the Class's regular
14 rate of pay to include all applicable remuneration, including, but not limited to, bonuses, etc.
15 Specifically, Defendant provided Plaintiff with a \$100 bonus twice for 2 months in her regular
16 paycheck for a total of \$400.00. However, Plaintiff's paystubs do not reflect any bonuses paid
17 to Plaintiff.

18 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

19 46. Defendant failed to allow Plaintiff and Class member to timely inspect their
20 personnel records and payroll files.

21 **FIRST CAUSE OF ACTION**

22 **(Failure to Pay Overtime in Violation of Labor Code §§510, 558, 1194.3 and Wage Order** 23 **4 By Plaintiffs Against Defendant and Does 1-100)**

24 47. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this Complaint.

26 48. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
27 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 4, Defendant was required to
28 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in

1 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
2 hours on the seventh (7th) consecutive day of any work week.

3 49. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
4 who had not been paid overtime compensation could recover the unpaid balance of the full
5 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
6 fees and costs of suit.

7 50. Pursuant to IWC Wage Order No 4-2001, § 3, "Employment beyond eight (8)
8 hours in any workday is permissible provided the employee is compensated for such overtime
9 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
10 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
11 workday...

12 51. California Labor Code section 558 provides in pertinent part:

13 (a) Any employer or other person acting on behalf of an employer who
14 violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the
16 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid
18 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

19 (2) For each subsequent violation, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee was
21 underpaid in addition to an amount sufficient to recover underpaid
wages.

22 (3) Wages recovered pursuant to this section shall be paid to the affected
23 employee...

24 (c) The civil penalties provided for in this section are in addition to any
25 other civil or criminal penalty provided by law.

26 52. Plaintiff and Class Members were required to take a Tuberculosis test off the
27 clock. Additionally, at times, Plaintiff and Class members engaged in pre and post shift
28 activities off the clock for which they were not compensated.

1 53. At all times relevant, Plaintiff and Class Members consistently worked hours for
2 which they were not paid because Plaintiff and the Class Members were required to engage in
3 pre and post-shift off-the-clock activities such as helping patients.

4 54. Throughout Plaintiff's employment, Defendant failed and refused to pay and
5 properly calculate overtime compensation to Plaintiff and Class Members as required by law.

6 55. The foregoing overtime compensation is owed and unpaid. As a direct and
7 proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class
8 Members suffered damages in an amount to be proven at trial.

9 56. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
10 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
11 attorneys' fees, costs and interest.

12 **SECOND CAUSE OF ACTION**

13 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

14 **(IWC Wage Order No. 4; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and**
15 **Does 1 through 100)**

16 57. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this Complaint.

18 58. California Labor Code §226.7(a) prohibits an employer from requiring an
19 employee to work during any meal period mandated by an applicable Industrial Wage Order.
20 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
21 employee to work during a meal or rest break or recovery period mandated pursuant to an
22 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
23 Commission..."

24 59. California Labor Code §1198 makes unlawful the employment of an employee
25 under conditions the IWC prohibits.

26 60. IWC Order No. 4-2001(11)(A) provides, in relevant part: "No employer shall
27 employ any person for a work period of more than five (5) hours without a meal period of not
28 less than 30-minutes, except that when a work period of not more than six (6) hours will

1 complete the day's work the meal period may be waived by mutual consent of the employer and
2 the employee."

3 61. IWC Order No. 4-2001 (11)(c) further provides, in relevant part: "Unless the
4 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
5 considered an 'on duty' meal period and counted as time worked."

6 62. Section 512(a) of the California Labor Code provides, in relevant part, that:

7 An employer may not employ an employee for a work period of more than five
8 hours per day without providing the employee with a meal period of not less
9 than 30-minutes, except that if the total work period per day of the employee is
10 no more than six hours, the meal period may be waived by mutual consent of
11 both the employer and employee. An employer may not employ an employee
12 for a work period of more than 10 hours per day without providing the
13 employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 12 hours, the second meal period may
be waived by mutual consent of the employer and the employee only if the first
meal period was not waived.

14 63. The Labor Code and Wage Order provisions cited above require California
15 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
16 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
17 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
18 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
19 the fifth hour of their shifts.

20 64. As alleged herein, Plaintiff and Class members at times were afforded their meal
21 breaks late and/or their meal breaks were shortened, at the direction of Defendant and/or with
22 their endorsement, encouragement, knowledge and acquiescence. Moreover, Defendant failed
23 to inform employees of their rights to off-duty thirty-minute meal periods before the fifth or
24 even sixth hour of their shifts.

25 65. Plaintiff and members of the Class were afforded their meal period late and/or
26 were interrupted during their meal period because work needed to get done.

66. Defendant has a policy or practice of failing to ensure that all Plaintiff and members of the Class take the meal periods required by California Labor Code §226.7 and IWC Wage Order No. 4-2001 §11.

67. By their actions in interrupting Plaintiff and Class members' meal periods, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendant failed to provide their employees with statutory timely off-duty meal periods.

68. Defendant also has a policy or practice of failing to pay each of their employees who was not provided with a meal period as required an additional one hour of compensation at each employee's regular rate of pay.

69. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring a private right of action to recover wages due based on the deprivation of timely meal periods under Cal. Labor Code § 226.7(b).

70. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage Orders.

THIRD CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

(Labor Code § 226.7 and IWC Wage Order No. 4 By Plaintiffs Against Defendant and Does 1 through 100)

71. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

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1 72. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
2 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
3 per four hours of work, or major fraction thereof.

4 73. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
5 fails to provide an employee with rest periods in accordance with those provisions, the
6 employer shall pay the employee one hour of pay at the employee's regular rate of
7 compensation for each workday that the rest periods were not so provided.

8 74. Defendant has intentionally and improperly denied uninterrupted rest periods to
9 Plaintiff and the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

10 75. At all times relevant hereto, Plaintiff and members of the Class have worked 8
11 or more hours daily.

12 76. At all times relevant hereto, each Defendant failed to provide rest periods as
13 required by Labor Code § 226.7 and the applicable Wage Order.

14 77. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
15 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
16 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
17 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

18 **FOURTH CAUSE OF ACTION**

19 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

20 **ITEMIZED STATEMENTS**

21 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

22 78. Plaintiff and the Class reallege and incorporate by reference all of the allegations
23 set forth in this Complaint.

24 79. Pursuant to the applicable IWC Wage Orders, Defendant is/was the employer of
25 Plaintiff and the Class.

26 80. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 4-
27 2001 section 7, Defendant is required to maintain and provide accurate records relating to
28

1 employee compensation including all formulas and production records used to calculate wages
2 due.

3 81. Defendant is further required to provide semimonthly or at the time of each
4 payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all
5 deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the
6 employee is being paid; (5) the name of the employee; and (6) the name and address of the
7 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

8 82. Section 226(e) provides that an employee is entitled to recover \$50 for the
9 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay
10 period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay
11 periods in which the employer knowingly and intentionally failed to provide accurate itemized
12 statements to the employee causing the employee to suffer injury.

13 83. Notwithstanding these provisions. Defendant has engaged in a uniform practice
14 of refusing to maintain and provide the accurate records and wage statements required by
15 California law.

16 84. Throughout the Class Period, Defendant intentionally and knowingly provided
17 Plaintiff and other members of the Class with weekly itemized wage statements containing
18 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
19 that the payments owed to Plaintiff and the members of the Class for overtime compensation
20 and untimely or interrupted meal and rest periods were not included in gross wages earned by
21 Plaintiff and members of the Class. Further, Defendant failed to furnish Plaintiff and the Class,
22 upon payment of wages, itemized statements accurately showing the number of hours worked
23 and the rates paid.

24 85. As a result, Plaintiff and members of the Class have been injured by having been
25 deprived of the true facts pertaining to their compensation and employment.

26 86. Plaintiff and members of the Class were damaged by these failures because,
27 among other things, the failures led them to believe that they were not entitled to overtime
28 compensation, to be paid for meal and rest periods not provided, even though they were so

1 entitled and these failures hindered them from determining the amounts of wages owed to
2 them.

3 87. Plaintiff and members of the Class are entitled to the amounts provided in Labor
4 Code §226(e), plus attorneys' fees and costs.

5 88. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
6 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
7 provided by law for Defendants' improper conduct.

8 **FIFTH CAUSE OF ACTION**
9 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

10 **(Labor Code §§201-203 By Plaintiffs Against Defendant and Does 1 through 100)**

11 89. Plaintiff and the Class reallege and incorporate by reference all of the allegations
12 set forth in this Complaint.

13 90. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
14 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
15 from employment, unpaid wages are due and payable within 72 hours of resignation.

16 91. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
17 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
18 paid, not to exceed thirty days.

19 92. Plaintiff and the Class were discharged and/or resigned from Defendant's
20 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

21 93. Plaintiff was paid her last paycheck one week after she resigned from
22 Defendant's employ on April 14, 2023.

23 94. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's
24 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

25 **SIXTH CAUSE OF ACTION**
26 **(Reimbursement of Business Expenses in Violation of Cal. Labor Code §2802 By**
27 **Plaintiffs Against Defendant and Does 1 through 100)**
28

1 95. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 96. Labor Code §2802 requires employers to indemnify employees for all necessary
4 expenditures incurred by employees in the discharge of their duties.

5 97. At all times relevant herein, Defendant was aware that Plaintiff and Class
6 members were using their cell phones, but failed to indemnify Plaintiff for all her business-
7 related expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and
8 thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing
9 Plaintiff and Class Members for their work-related expenses that they incurred in using their
10 cell phones for work-related purposes.

11 98. As a result of Defendant's conduct, Plaintiff and Class Members suffered
12 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
13 business-related expenses incurred in the discharge of their duties.

14 99. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
15 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
16 costs of suit.

17 **SEVENTH CAUSE OF ACTION**

18 ***(Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)***

19 100. Plaintiff and the Class reallege and incorporate by reference all of the allegations
20 set forth in this Complaint.

21 101. California Labor Code Section 1198.5 provides:

- 22
- 23 (a) Every current and former employee, or his or her representative, has the
24 right to inspect and receive a copy of the personnel records that the
25 employer maintains relating to the employee's performance or to any
26 grievance concerning the employee.
- 27 (b) The employer shall make the contents of those personnel records available
28 for inspection to the current or former employee, or his or her
representative, at reasonable intervals and at reasonable times, but not later
than 30 calendar days from the date the employer receives a written request,
unless the current or former employee, or his or her representative, and the

1 employer agree in writing to a date beyond 30 calendar days to inspect the
2 records, and the agreed-upon date does not exceed 35 calendar days from
3 the employer's receipt of the written request to inspect the records. Upon a
4 written request from a current or former employee, or his or her
5 representative, the employer shall also provide a copy of the personnel
6 records,..... later than 30 calendar days from the date the employer receives
7 the request...

8 (k) If an employer fails to permit a current or former employee, or his or her
9 representative, to inspect or copy personnel records within the times specified I
10 this section... the current or former employee may recover a penalty of seven
11 hundred fifty dollars (\$750) from the employer.

12 (1) A current or former employee may also bring an action for injunctive relief
13 to obtain compliance with this section, and may recover costs and reasonable
14 attorney's fees in such an action.

15 102. Additionally, pursuant to Wage Order 4, at section 7 re: Records, employers are
16 required to keep accurate payroll records on each employee, and such records must be made
17 readily available for inspection by the employee upon reasonable request. The employer must
18 also maintain accurate production records.

19 103. On or about March 29, 2024, Plaintiff's counsel issued a written request to
20 Defendant for copies of her personnel records.

21 104. Under California Labor Code Sections 226, 432 and 1198.5, such records were
22 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
23 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
24 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of her
25 records.

26 105. As a direct result and consequence of Defendant's failure and refusal to permit
27 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
28 decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
penalty of \$750 based upon Defendant's violation of §1198.

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1 **EIGHTH CAUSE OF ACTION**

2 **FOR UNFAIR COMPETITION**

3 **(Business & Professions Code §§ 17200 et seq. By Plaintiffs Against Defendant and Does 1**
4 **through 100)**

5 106. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Complaint.

7 107. Pursuant to applicable IWC Wage Orders, Defendant was the employer of
8 Plaintiff and the Class. Each Defendant is also a "person" as that term is defined in Business &
9 Professions Code §17021.

10 108. The Business & Professions Code defines unfair competition as any unlawful,
11 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
12 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1)
13 failing to pay Plaintiff and the Class overtime compensation; (2) failing to pay Plaintiff and the
14 Class meal periods not provided, (3) pay Plaintiff and the Class rest periods not provided, (4)
15 furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the
16 applicable Labor Code and Industrial Welfare Commission requirements, (5) pay Plaintiff and
17 the Class wages due when leaving their employ, (6) failing to reimburse business expenses and
18 (7) failing to provide personnel records, all in violation of Business & Professions Code §§
19 17200 et seq.

20 109. By and through the unfair and unlawful business practices described herein,
21 Defendants have obtained valuable property, money and services from the Plaintiff and the
22 Class and have deprived them of valuable rights and benefits guaranteed by law all to the
23 detriment of Plaintiff and the Class.

24 110. All the acts described herein are violations of, among other things, the Labor
25 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
26 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
27 thereby constitute unfair and unlawful business practices in violation of Business & Professions
28 Code §§ 17200 et seq.

111. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which Defendant has acquired, or of which Plaintiff and the Class have been deprived by means of the above-described unfair and unlawful business practices.

112. Plaintiff and the Class are further entitled to, and do, seek a declaration that the above-described business practices are unfair and unlawful and that injunctive relief should be issued restraining Defendant from engaging in any of the above described unfair and unlawful business practices in the future.

113. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of the unfair and unlawful business practices of Defendant. As a result of the unfair and unlawful business practices described above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant is restrained from continuing to engage in these unfair and unlawful business practices. In addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor and against Defendant, as follows:

1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and Class Members, according to proof;

2. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal and/or rest period was not provided;

3. For compensatory damages in the amount of Plaintiff and Class Members' out of pocket expenses and/or reimbursement of monies incurred while performing Defendant's business-related duties plus interests, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);

4. For an award of consequential damages in Plaintiff and Class Members' favor and against Defendant, in an amount to be proven at trial;

- 1 5. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 2 6. For payment to Plaintiff and Class Members of waiting time penalties pursuant
- 3 to *Cal. Lab. Code* §203, in an amount equal to her respective daily rates of pay at the time of
- 4 termination or layoff, multiplied by the total amount of days elapsed between the date of the
- 5 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
- 6 maximum of 30 days' pay, according to proof;
- 7 7. For specific relief enforcing waiting time penalties of 30 days of per diem wages
- 8 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
- 9 8. For prejudgment interest accrued on all due and unpaid overtime from the date
- 10 that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according
- 11 to proof;
- 12 9. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, according to
- 13 proof;
- 14 10. For reasonable costs, including attorneys' fees, in an amount according to proof
- 15 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5, 2802 and/or *Cal. Code of Civ.*
- 16 *Proc.* §1021.5;
- 17 11. For an award of restitution of wages to Plaintiff and Class Members in an
- 18 amount equal to the amount of wages owed and unpaid, according to proof;
- 19 12. For injunctive relief ordering the continuing unfair business acts and practices to
- 20 cease, as the Court deems just and proper;
- 21 13. For injunctive relief requiring Defendant to comply with Labor Code
- 22 1198.5(b)(1);
- 23 14. For other injunctive relief ordering Defendant to notify Plaintiff and Class
- 24 Members that they have not been paid the proper amounts in accordance with California law;
- 25 15. For punitive and exemplary damages in a sum to be determined at trial;
- 26 16. For such other and further relief as the Court deems just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff Michelle Marin Ramirez hereby respectfully requests a trial by jury for all claims and issues raised in her Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: April 1, 2024

By: 

Kevin A. Lipeles
Attorneys for Plaintiff
Michelle Marin Ramirez