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MELISSA RAMIREZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MELISSA RAMIREZ, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

ZYNEX MEDICAL, INC., a corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 24CV440194

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY EARNED WAGES
(LABOR CODE §§ 204, 210, 221-223);**
- (2) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (3) WAITING TIME PENALTIES (LABOR
CODE §§ 201-203);**
- (4) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE §§ 2802,
2804);**
- (5) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*);**
- (6) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Melissa Ramirez (“Plaintiff”), on behalf of herself and all others similarly
2 situated, as well as the State of California and other aggrieved employees, hereby brings this First
3 Amended Class and Representative Action Complaint against Zynex Medical, Inc., a corporation;
4 and Does 1 through 100, inclusive (collectively, “Defendants”), and on information and belief
5 alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, as well as the State
8 of California and other aggrieved employees, hereby brings this class and representative action
9 for recovery of unpaid wages and penalties under California Business and Professions Code
10 section 17200, *et. seq.*; Labor Code sections 201-204, 210, 221-223, 226, 558, 2802, 2804, and
11 2698 *et seq.*, in addition to seeking declaratory relief and restitution. This class and representative
12 action is brought pursuant to California Code of Civil Procedure section 382. This Court has
13 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
14 controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in Santa Clara County. Defendants own, maintain offices, transact business, have an
19 agent or agents within Santa Clara County, and/or otherwise are found within Santa Clara County,
20 and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
24 the filing of this action and within the statute of limitations periods applicable to each cause of
25 action pled herein, Plaintiff was employed by Defendants. Plaintiff was, and is, a victim of
26 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has
27 been deprived of the rights guaranteed by Labor Code §§ 201-204, 210, 221-223, 226, 558, 2802,
28 2804, and 2698 *et seq.*; and Business & Professions Code § 17200, *et seq.* (Unfair Competition).

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as a pain management device manufacturer and distributor, and that they employed
4 Plaintiff and other similarly situated employees within the state of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Classes (as defined in Paragraph 22) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
14 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

15 7. At all times herein mentioned, each of said Defendants participated in the acts
16 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
17 each of them, were the agents, servants, and employees of each of the other Defendants, as well
18 as the agents of all Defendants, and at all times herein mentioned were acting within the course
19 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
20 and/or otherwise ratified each of the acts or omissions alleged herein.

21 8. At all relevant times, Defendants, and each of them, were members of and engaged
22 in a joint venture, partnership, and common enterprise, and acting within the course and scope of
23 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
24 alleges that all Defendants were joint employers for all purposes of Plaintiff and the Classes.

25 **GENERAL FACTUAL ALLEGATIONS**

26 9. Plaintiff was employed by Defendants as a Territory Manager from approximately
27 October 2022 until approximately March 2024. Plaintiff was paid a base salary plus
28 “commissions” and/or bonuses.

1 10. Throughout Plaintiff's employment with Defendants, Plaintiff's and other
2 employees' wages were consistently paid late, in violation of Labor Code § 204. Specifically,
3 non-commission wages earned in the first 15 days of the month were generally paid by Defendants
4 on or about the first day of the following month, and non-commission wages earned in the latter
5 half of month were paid on or after the 15th day of the following month. For example, Plaintiff's
6 non-commission wages earned from November 1-15, 2023, were paid on December 1, 2023, and
7 Plaintiff's non-commission wages earned from November 16-30, 2023, were paid on December
8 15, 2023. On information and belief, all of Defendants' employees in California (exempt and non-
9 exempt) were paid by Defendants for their non-commission wages in the same manner.

10 11. The above practice violates Labor Code § 204, which mandates that all wages
11 earned in the first 15 days of the month be paid by the 26th day of that month, and that all wages
12 earned from the 16th day through the last day of the month be paid by the 10th day of the following
13 month. Defendants' payday practices, described above, fail to abide by these mandates.

14 12. With respect to commissions, Defendants' payday practices were also unlawful.
15 Specifically, commissions were paid approximately one month or more after they were earned.
16 For example, and as outlined in Defendants' commission pay plan, commissions earned in the
17 first half of December were not paid until on or about January 14; commissions earned in the
18 second half of December were not paid until on or about February 1; commissions earned in the
19 first half of January were not paid until on or about February 16, and so on. As with non-
20 commission wages, this practice violated the mandates of Labor Code § 204.

21 13. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 continue to pay their employees untimely in the manners described above.

23 14. In addition to paying employees consistently late, Defendants failed to pay
24 Plaintiff all of the commissions that were owed to her. Specifically, there were several
25 commissions that Plaintiff earned in the latter half of 2023 that were never paid to her. Plaintiff
26 reached out multiple times to her supervisor, Kathleen Malone, about the unpaid commissions,
27 but they were never paid. Plaintiff is informed and believes, and based thereon alleges, that other
28 employees were likewise not paid all of their earned commissions during the relevant time period.

1 15. Plaintiff is further informed and believes, and based thereon alleges, that
2 Defendants unlawfully reduced her and other employees' commissions by not paying
3 commissions, or by clawing back commissions, when a customer initiated a return, regardless
4 whether the customer actually returned the item and was issued a refund. Thus, some of Plaintiff's
5 commissions were reversed (i.e., deducted from future commissions), or not paid in the first
6 instance, despite the fact that the customer did not actually return the item and Defendants did not
7 actually issue a refund to the customer. On information and belief, other employees' commissions
8 were likewise deducted (or not paid in the first instance) as a result of this policy/practice,
9 resulting in unlawful deductions from their commission wages.

10 16. Defendants have also failed to reimburse Plaintiff and other employees for all
11 business expenses they incurred in the discharge of their duties. While Defendants did reimburse
12 some expenses, they refused to reimburse other expenses, even though those other expenses were
13 reasonable and were incurred in direct consequence of the discharge of employees' duties. For
14 example, Plaintiff and other Territory Managers were required to obtain paper prescriptions and
15 other related documents from medical clinics and submit those documents electronically to
16 Defendants. These documents were several pages long, and sometimes as long as 50 pages or
17 more, for each prescription. The documents contained patients' medical information subject to
18 privacy laws (i.e., HIPAA), and therefore, the documents needed to be shredded. However,
19 Defendants expressly refused to provide shredders or to reimburse the cost of a shredder. This
20 forced Plaintiff and other employees to purchase their own shredders at their own expense,
21 without reimbursement.

22 17. As another example, Plaintiff and other employees were often required to print out
23 documents such as Requests for Authorization (RFAs) and other documents, but Defendants
24 refused to reimburse the cost of such printing. Plaintiff and other employees also needed to use
25 their personal computers to perform certain work tasks, including (but not limited to) creating
26 spreadsheets to track various metrics regarding the clinics and patients that they serviced. These
27 spreadsheets were quite large and too cumbersome to view or manipulate on a cell phone screen;
28 as a result, Plaintiff and other employees frequently used their computers to access, view, and

work with the spreadsheets. However, Defendants refused to reimburse the cost of a personal computer or any portion thereof, despite the fact that Defendants knew (or reasonably should have known) that employees were using their personal computers for work purposes.

18. Defendants also directed Plaintiff and other employees to provide gifts to clinics as part of their marketing efforts, and particularly around the holidays. In December, for example, there was a company-wide marketing campaign called “5 Days of Zynex” (or similar phrase), where Plaintiff and other employees were expected to purchase goodie bags or baskets and fill them with food and other promotional items, and to deliver them to clinics/customers in their territory. They were further expected to include the Zynex logo on the outside of the bags or baskets. However, Defendants expressly refused to reimburse the cost of these goodie bags, baskets, or other gift items, that Plaintiff and other employees purchased specifically for these marketing campaigns that Defendants directed them to carry out.

19. As a result of Defendants’ failure to pay all earned wages (including but not limited to commission wages), Defendants failed to pay all wages to Plaintiff and other formerly employed employees at the separation of their employment.

20. As a further result of Defendants’ failure to pay all earned wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other employees. These failures resulted in employees’ wage statements including inaccurate information regarding, *inter alia*, gross wages earned and net wages earned.

21. In addition, the wage statements issued to Plaintiff and other commission-earning employees were facially deficient, in that commissions were paid one month in arrears, but the wage statements on which they were reported did not specify that they had been earned in prior pay periods. As described above, Defendants’ commission pay plan provides that, for example, commissions earned in the first half of June will be paid on or about July 15. However, the wage statement on which those commissions were reported is the wage statement with a purported pay period of June 16-30. Thus, in the June 16-30, 2023 wage statement (paid on July 14, 2023) that Plaintiff received, Defendants reported commissions that were actually earned in the first half of June 2023, and the wage statement did not indicate that the reported commissions were actually

1 earned in a different pay period than the pay period reported on the wage statement. This violates
2 Labor Code § 226(a)(1) and (a)(5), in that the wage statements mis-reported the gross wages and
3 net wages earned in the pay period (in the example above, the June 16-30, 2023 pay period),
4 and/or Labor Code § 226(a)(6), in that the wage statements included the incorrect dates of the pay
5 period for which the employee is paid, with respect to commissions.

6 **CLASS ACTION ALLEGATIONS**

7 22. Class Definitions: Plaintiff bring this action on behalf of herself and the following
8 Classes pursuant to Section 382 of the Code of Civil Procedure:

9 a. The Unpaid Wage Class consists of all of the Defendants' current and former
10 employees who (i) were not paid all commissions owed to them, and/or (ii) had one or
11 more commissions reduced (or not paid at all) because of returns that were "requested" or
12 "initiated" but not actually completed, at any time from four years prior to the filing of this
13 action through the present.

14 b. The Expense Reimbursement Class consists of all of the Defendants' employees
15 in California who used their personal computers and/or personal printers without
16 reimbursement, and/or who purchased items related to Zynex marketing or other work-
17 related purchases that were not reimbursed by Defendants, at any time from four years
18 prior to the filing of this action through the present.

19 c. The Wage Statement Class consists of (a) all members of the Unpaid Wage Class
20 who received a wage statement at any time from one year prior to the filing of this action
21 through the present; and (b) all of Defendants' commission-earning employees who
22 received a wage statement that reported commissions at any time from one year prior to
23 the filing of this action to the present.

24 d. The Waiting Time Class consists of all members of the Unpaid Wage Class whose
25 employment with Defendants ended at any time from three years prior to the filing of this
26 action through the present.

27 23. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
28 joinder of all members would be unfeasible and impracticable. The membership of the Classes is

unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

24. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants paid all wages owed to Unpaid Wage Class members;
- ii. Whether Defendants reimbursed all expenses incurred by members of the Expense Reimbursement Class;
- iii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- iv. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment.

25. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual Class members. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each Class member, such as Defendants' payroll, reimbursement, wage statement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

26. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned wages, was not reimbursed all expenses incurred, was furnished with inaccurate wage statements, and was deprived of all final wages upon her separation of employment from Defendants.

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1 27. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
2 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
3 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
4 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
5 actions in state and federal courts in the past and are committed to vigorously prosecuting this
6 action on behalf of the members of the Classes.

7 28. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiff
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee were required to file an
15 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
16 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
17 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
18 an individual remedy would discourage the assertion of lawful claims by employees who would
19 be disinclined to file an action against their former and/or current employer for real and justifiable
20 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
21 prosecution of separate actions by individual class members would create a substantial risk of
22 inconsistent or varying verdicts or adjudications with respect to the individual class members
23 against Defendants herein; and which would establish potentially incompatible standards of
24 conduct for Defendants. Further, the claims of the individual members of the Classes are not
25 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
26 costs and expenses attending thereto. As such, the Classes identified in Paragraph 22 are
27 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY EARNED WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 30. Labor Code §§ 204 and 221-223 establish employees' right to be paid all wages
6 owed to them, prohibit employers from making deductions from earned wages and from secretly
7 paying a lower wage than that agreed upon, and establish pay dates on which employers must pay
8 all wages owed. Labor Code § 223 requires that no employee shall be paid a wage lower than the
9 wage any employer is purported to be paying as designated by statute or contract. Labor Code §
10 221 prohibits an employer from making deductions from wages (including but not limited to
11 commission wages) that have been earned by an employee.

12 31. At all relevant times, Defendants failed to conform their pay practices to the
13 requirements of the law by failing to pay Plaintiff and the Unpaid Wage Class for all commissions
14 earned.

15 32. As a direct and proximate result of Defendants' unlawful conduct as alleged
16 herein, Plaintiff and the Unpaid Wage Class have sustained economic damages, including but not
17 limited to unpaid wages and lost interest in an amount to be established at trial, and they are
18 entitled to recover economic and statutory damages and penalties and other appropriate relief as
19 a result of Defendants' violations of the California Labor Code.

20 33. Defendants' practice and uniform administration of corporate policy regarding
21 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
22 the Unpaid Wage Class in a civil action for the unpaid amount of unpaid wages, interest thereon,
23 statutory penalties, and attorneys' fees and costs of suit, per Labor Code §§ 204, 210, 218.5,
24 218.6, 223, 558, and Code of Civil Procedure § 1021.5.

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40. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, as alleged herein.

41. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

42. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and Waiting Time Class members their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from when the wages were due. Plaintiff and Waiting Time Class members are entitled to compensation per Labor Code § 203, plus reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. At all relevant times, Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

45. At all relevant times, Defendants were subject to Labor Code § 2804, which states, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

46. Due to Defendants' unlawful policy and practice of requiring employees to use their personal computers, printers, shredders, and other personal devices for work purposes, as well as Defendants' direction to purchase marketing-related materials and/or other items, and

1 their failure to reimburse Plaintiff and members of the Expense Reimbursement Class for these
2 expenses, Defendants have violated Labor Code § 2802.

3 47. As a proximate result of Defendants' policies and/or practices in violation of Labor
4 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered
5 damages in sums, which will be shown according to proof.

6 48. Plaintiff and members of the Expense Reimbursement Class are entitled to
7 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

8 49. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
9 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
10 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
11 accrue from the date on which they incurred the initial necessary expenditure.

12 **FIFTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

14 **(AGAINST ALL DEFENDANTS)**

15 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 51. Defendants have engaged, and continue to engage, in unfair and/or unlawful
17 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
18 Plaintiff and the members of the Classes all earned wages, failing to timely pay wages during
19 employment, failing to furnish accurate and complete itemized wage statements, failing to
20 reimburse business expenses incurred, and failing to pay all earned wages at separation of
21 employment.

22 52. Defendants' utilization of these unfair and/or unlawful business practices has
23 deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,
24 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
25 Defendants' competitors who have been and/or are currently employing workers and attempting
26 to do so in honest compliance with applicable wage and hour laws.

27 53. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein.
28 Plaintiff for herself, and on behalf of the members of the Classes, seeks restitution of monies as

necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

54. The acts complained of herein occurred within the four years immediately preceding the filing of this action. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (AGAINST ALL DEFENDANTS)

55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

56. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay all wages earned by Plaintiff and other aggrieved employees timely during their employment, in violation of Labor Code § 204;
- b. Failing to pay all wages earned by Plaintiff and other aggrieved employees, and taking unlawful deductions from Plaintiff's and other aggrieved employees' earned wages, in violation of Labor Code §§ 204 and 221-223;
- c. Failing to reimburse or indemnify Plaintiff and other aggrieved employees for expenses incurred while carrying out their duties for Defendants, in violation of Labor Code §§ 2802 and 2804;
- d. Failing to timely pay all final wages owed to Plaintiff and other aggrieved former employees at the separation of employment, in violation of Labor Code §§ 201-203;
- e. Failing to furnish accurate itemized wage statements to Plaintiff and other aggrieved employees, in violation of Labor Code § 226;
- f. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code § 1174.

57. On or about May 30, 2024, Plaintiff notified Defendant Zynex Medical, Inc., via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 56 (a)-(f) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act ("PAGA") with respect to these violations. As noted in Plaintiff's notice letter, the "aggrieved employees" Plaintiff seeks to represent in her PAGA action are all current and former employees (exempt and non-exempt) of Defendants who have worked for Defendants in California at any time from one year immediately preceding the date of Plaintiff's PAGA notice letter through the date that judgment is entered in Plaintiff's PAGA action or any alternative date agreed upon by the parties and/or approved by the court.

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of unpaid wages pursuant to Labor Code §§ 204 and 221-223;
5. Upon the Second Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
6. Upon the Third Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
8. Upon the Fifth Cause of Action, for restitution to Plaintiff and Class members of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;
9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00

for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

10. Prejudgment interest on all due and unpaid wages and other damages pursuant to California Labor Code §§ 218.6, 2802(b); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

11. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226(e), 2802(c), 2699(k), Code of Civil Procedure § 1021.5, and all other applicable statutes; and

12. For such other and further relief the Court may deem just and proper.

Date: August 5, 2024

Respectfully submitted,
MARQUEE LAW GROUP, APC

By:


Tuvia Korobkin
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: August 5, 2024

Respectfully submitted,
MARQUEE LAW GROUP, APC

By:


Tuvia Korobkin
Attorneys for Plaintiff

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On August 6, 2024 I served the foregoing document(s) described as:

on all interested parties in this action by transmitting a true copy of the document(s) described above, addressed as follows:

() **BY MAIL** as follows: I am “readily familiar” with the firm’s practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Beverly Hills, California.

() **BY PERSONAL SERVICE:** I caused to be delivered such envelope by hand to the above addressee(s).

() **BY OVERNIGHT COURIER:** I am “readily familiar” with the firm’s practice of collecting and processing overnight deliveries, which includes depositing such packages in a receptacle used exclusively for overnight deliveries. The packages were deposited before the regular pickup time and marked accordingly for delivery the next business day.

(X) **BY ELECTRONIC TRANSMISSION:** Participants in this case were served electronically to the address of the recipient(s) as set forth below. I am readily familiar with the Code of Civil Procedure and California Rules of Court for electronic service and this document/these documents were duly served electronically in accordance with said rules and regulations on the date stated above, and the transmission was reported as complete and without error.


Yessi Chinchilla

SERVICE LIST:

Polsinelli LLP c/o Lindsay David, Esq. c/o Justin Peters, Esq. 2049 Century Park East, Ste 2900 Los Angeles, CA 90067 E: <i>Idavid@polsinelli.com</i> ; <i>Jpeters@polsinelli.com</i>	<i>Attorneys for Defendant Zynex Medical, Inc.</i>
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