

BEGAM MARKS & TRAULSEN, P.A.
11201 North Tatum Blvd., Suite 110
Phoenix, Arizona 85028-6037
(602) 254-6071

Richard P. Traulsen – State Bar #016050
rtraulsen@BMT-law.com
Local Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Donna Hernandez, individually and on
behalf of all similarly situated individuals,

Plaintiff,

v.

RxC Acquisition Company and Does 1-
10,

Defendants.

Case No.:

**COLLECTIVE AND CLASS ACTION
COMPLAINT AND JURY TRIAL
DEMAND**

COMES NOW Plaintiff, DONNA HERNANDEZ, by and through her undersigned
counsel, and hereby brings this Collective and Class Action Complaint against Defendants,
RxC ACQUISITION COMPANY and DOES 1-10, and states as follows:

INTRODUCTION

1. This is a collective and class action brought by Plaintiff on behalf of herself
and all similarly situated current and/or former Customer Service Representatives
("CSRs") of Defendants to recover for Defendants' willful violations of the Fair Labor
Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, and alleged contractual obligations (or
unjust enrichment if no contract is found), and other appropriate rules, regulations, statutes,
and ordinances.

2. The U.S. Department of Labor ("DOL") recognizes that call center jobs, like
those held by Plaintiff in Defendants' call center, are homogenous and issued guidance to

1 alert and condemn an employer’s non-payment of an employee’s necessary boot-up and
2 call ready activities. *See* DOL Fact Sheet #64, attached hereto as Exhibit A at 2 (“An
3 example of the first principal activity of the day for agents/specialists/representatives
4 working in call centers includes starting the computer to download work instructions,
5 computer applications and work-related emails.”). Additionally, the FLSA requires that
6 “[a] daily or weekly record of all hours worked, including time spent in pre-shift and post-
7 shift job-related activities must be kept.” *Id.*

8 3. Defendants subjected Plaintiff, and those similarly situated, to Defendants’
9 policy and practice of failing to compensate their CSRs for their necessary boot-up and call
10 ready work, which resulted in the failure to properly compensate CSRs as required under
11 applicable federal and state laws.

12 4. Plaintiff seeks a declaration that her rights, the rights of the FLSA Collective,
13 and the rights of the Rule 23 Class were violated and seeks to recover an award of unpaid
14 wages and overtime premiums, liquidated damages, penalties, injunctive and declaratory
15 relief, attorneys’ fees and costs, pre- and post-judgment interest, and any other remedies to
16 which she and the putative Collective and Class may be entitled.

17 **JURISDICTION AND VENUE**

18 5. This Court has subject-matter jurisdiction over Plaintiff’s FLSA claims
19 pursuant to 28 U.S.C. § 1331 because Plaintiff’s claims arise under the FLSA, 29 U.S.C.
20 §§ 201, *et seq.*

21 6. This Court has subject-matter jurisdiction over Plaintiff’s FLSA claim
22 pursuant to 29 U.S.C. § 216(b), which provides that suits under the FLSA “may be
23 maintained against any employer . . . in any Federal or State court of competent
24 jurisdiction.”

25 7. This Court has supplemental jurisdiction over Plaintiff’s state law claims
26 pursuant to 28 U.S.C. § 1367(a) because these claims arise from a common set of operative
27 facts and are so related to the claims within this Court’s original jurisdiction that they form
28 a part of the same case or controversy.

1 8. Upon information and belief, Defendants’ annual sales exceed \$500,000 and
2 they have more than two employees, so the FLSA applies in this case on an enterprise
3 basis. *See* 29 U.S.C. § 203(s)(1)(A).

4 9. Defendants’ CSRs, including Plaintiff, engage in interstate commerce—
5 including, but not limited to utilizing telephone lines and Internet—and therefore, they are
6 also covered by the FLSA on an individual basis.

7 10. This Court has personal jurisdiction over Defendants because they operated
8 a physical call center in Arizona where CSRs worked.

9 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a
10 substantial part of the events or omissions giving rise to the claims alleged herein occurred
11 within this District.

12 **PARTIES**

13 12. Plaintiff is an individual who resides in the County of Maricopa, City of
14 Peoria, Arizona. Plaintiff worked for Defendants as a Customer Service Representative
15 from September 2012 to March 2022. Plaintiff executed her Consent to Sue form, attached
16 hereto as Exhibit B.

17 13. Defendant RxC Acquisition Company is a Delaware corporation with its
18 principal place of business in Pennsylvania.

19 14. Defendant RxC Acquisition Company is a wholly owned subsidiary of
20 McKesson Corporation.

21 15. Defendant RxC Acquisition Company does business as “RxCrossroads by
22 McKesson.”

23 16. The “RxCrossroads by Mckesson” brand now operates under a unified brand
24 called “CoverMyMeds.” *See CoverMyMeds*, <https://www.mckesson.com/About-McKesson/Businesses/CoverMyMeds/> (last visited September 22, 2023).
25

26 17. Defendants administer copay assistance and pharmacy voucher programs.
27 Defendants connect patients to drug therapies on behalf of their pharmaceutical company
28

1 clients by enrolling patients in copay assistance plans or pharmacy voucher programs that
2 reimburse pharmacies for all or part of drug therapy costs.

3 18. Defendants operate a call center in Arizona where CSRs work.

4 19. Upon information and belief, a significant amount of Defendant RxC
5 Acquisition Company's call center workforce is comprised of staffing company
6 placements (Defendants Does 1-10).

7 20. Upon information and belief, Defendants transitioned their customer service
8 workforce to remote/hybrid positions in and around March 2020.

9 21. Defendant RxC Acquisition Company may accept service through its
10 registered agent Corporation Service Company at 8825 N. 23rd Avenue, Suite 100,
11 Phoenix, AZ 85021.

12 **GENERAL ALLEGATIONS**

13 22. Defendant RxC Acquisition Company employed Plaintiff as an hourly call
14 center Customer Service Representative ("CSR"). Defendant RxC Acquisition Company
15 assigns CSRs, like Plaintiff, to answer customer calls from its clients' patients.

16 23. Upon information and belief, Defendant RxC Acquisition Company's clients
17 included pharmaceutical companies like Amgen and Novartis.

18 24. Plaintiff's primary job duties included answering phone calls and providing
19 customer service. More specifically, this included speaking to patients, medical providers,
20 and insurance companies regarding payment options for medications and drug therapies,
21 like copayment programs, vouchers, and coupons.

22 25. Plaintiff regularly worked at least 40 hours per workweek.

23 26. Regardless of whether Defendants scheduled Plaintiff to work a workweek
24 totaling under 40 hours, a workweek totaling 40 hours, or a workweek totaling in excess
25 of 40 hours, Plaintiff regularly worked a substantial amount of time off-the-clock as part
26 of her job duties as a CSR. Defendants never compensated Plaintiff for this necessary time
27 worked off-the-clock.

28 27. 29 C.F.R. § 553.221 provides:

1 Compensable hours of work generally include all of the time during which
2 an employee is on duty on the employer’s premises or at a prescribed
3 workplace, as well as all other time during which the employee is suffered or
4 permitted to work for the employer. Such time includes all pre-shift and post-
5 shift activities which are an integral part of the employee’s principal activity
6 or which are closely related to the performance of the principal activity, such
7 as attending roll call, writing up and completing tickets or reports, and
8 washing and re-racking fire hoses.

9 28. 29 C.F.R. § 790.8 states “[a]mong activities included as an integral part of a
10 principal activity are those closely related activities which are indispensable to its
11 performance.”

12 **A. Unpaid Boot-Up and Call Ready Work.**

13 29. Plaintiff was tasked with providing customer service on behalf of Defendant
14 RxC Acquisition Company’s clients by use of Defendant RxC Acquisition Company’s
15 telephones, Defendant RxC Acquisition Company’s computers, and the programs
16 accessible from Defendant RxC Acquisition Company’s computers.

17 30. To access Defendant RxC Acquisition Company’s systems, Plaintiff, and all
18 other current and/or former CSRs, must turn on or wake up their computers, enter their
19 credentials, and then log in to multiple computer programs, servers, and applications. Once
20 this boot-up and call ready work is completed, Plaintiff, and all other current and/or former
21 CSRs, must log in to Defendant RxC Acquisition Company’s phone system to take their
22 first call at their scheduled shift start time.

23 31. In addition to completing the process described above, CSRs who worked
24 remotely also had to log in to Defendant RxC Acquisition Company’s virtual private
25 network (VPN).

26 32. Defendants do not compensate Plaintiff, and all other current and/or former
27 CSRs, until they have logged into the phone system and marked themselves “available” to
28 take incoming calls.

33. The boot-up and call ready work regularly takes up to 10 minutes per shift,
or more if technical issues arise. Defendants did not compensate Plaintiff and CSRs for this
time.

1 34. Regardless of how long the boot-up and call ready work takes, Defendants
2 did not allow Plaintiff, and all other current and/or former CSRs, to clock in before their
3 scheduled shift start time.

4 35. The boot-up and call ready work Plaintiff, and all other current and/or former
5 CSRs, must complete before they begin being compensated is the same regardless of
6 whether they worked in the physical call center or worked remotely.

7 36. The boot-up and call ready work is integral and indispensable to the
8 performance of Plaintiff's principal job duties and integral and indispensable to Defendant
9 RxC Acquisition Company's business.

10 37. Thus, the unpaid boot-up and call ready work performed by Plaintiff, and all
11 other current and/or former CSRs, directly benefits Defendants.

12 ***B. Defendants' Policy and Practice of Off-the-Clock Work Violates Federal***
13 ***Law.***

14 38. At all times relevant, Defendants suffered or permitted Plaintiff, and all other
15 current and/or former CSRs, to routinely perform off-the-clock boot-up and call ready work
16 by not compensating CSRs until after they completed the boot-up and call ready work.

17 39. Defendants knew or should have known that they must pay their employees
18 for all compensable time throughout the workweek. *See* 29 C.F.R. §§ 553.221, 790.8,
19 785.19(a).

20 40. Despite this, Defendants failed to compensate Plaintiff, and all other current
21 and/or former CSRs, for their compensable boot-up and call ready work performed in any
22 amount.

23 41. Defendants knew, or should have known, that the FLSA, 29 U.S.C. § 207,
24 requires Defendants to compensate non-exempt employees who work in excess of 40 hours
25 in a workweek at a rate of one and one-half times their regular rate of pay—including the
26 compensable boot-up and call ready work performed.

1 42. Despite this, Defendants failed to compensate Plaintiff, and all other current
2 and/or former CSRs, for their boot-up and call ready work performed in excess of 40 hours
3 in a workweek at one and one-half times their regular rates of pay.

4 43. For example, upon information and belief, during the workweek of August
5 2, 2021 to August 6, 2021, Defendants paid Plaintiff for over 40 hours of work. However,
6 the hours Defendants paid Plaintiff did not include the boot-up and call ready work as
7 alleged herein. Had Defendants properly paid Plaintiff for all hours worked during this pay
8 period, then they would have paid her additional overtime wages equal to the
9 uncompensated boot-up and call ready work.

10 44. Defendants are aware of each and every workweek Plaintiff was scheduled
11 and worked for more than 40 hours because Defendants' own payroll records reflect the
12 number of hours they paid Plaintiff.

13 45. Defendants are aware of Plaintiff's regular hourly rate for each and every
14 workweek Plaintiff worked because Defendants' own payroll records reflect the hourly
15 rate they paid Plaintiff. For example, upon information and belief, Plaintiff's hourly rate
16 for the exemplar week noted above was \$24.76 per hour.

17 46. Despite this, Defendants failed to compensate Plaintiff, and all other current
18 and/or former hourly CSRs working in Defendants' call center or remotely in Arizona for
19 their compensable boot-up and call ready work performed in workweeks totaling less than
20 40 hours and in workweeks totaling in excess of 40 hours at the proper legal rates, including
21 overtime premiums.

22 47. In reckless disregard of the FLSA and Arizona common law, Defendants
23 adopted and then adhered to its policy, plan, or practice of employing Plaintiff, and all
24 other current and/or former CSRs, to perform compensable boot-up and call ready work
25 off-the-clock. This illegal policy, plan, or practice caused incorrect payments for all straight
26 time and overtime performed by Plaintiff, and all other current and/or former CSRs, in
27 violation of the FLSA and Arizona common law.

28 ***C. Recordkeeping.***

1 48. The Arizona wage and hour laws require that “[e]mployers shall maintain
2 payroll records showing the hours worked for each day worked, and the wages and earned
3 paid sick time paid to all employees for a period of four years.” *See* A.R.S. § 23-364.

4 49. Further, 29 C.F.R § 516.1 subjects “every employer subject to any provisions
5 of the Fair Labor Standards Act” to maintain employee records.

6 50. Federal regulations mandate each employer to maintain and preserve payroll
7 or other records containing, without limitation, the total hours worked by each employee
8 each workday and total hours worked by each employee each workweek. *See* 29 C.F.R §
9 516.2.

10 51. Upon information and belief, Defendants failed to establish, maintain, and
11 preserve accurate timesheet and payroll records for all hours worked by Plaintiff as
12 required by the FLSA and Arizona wage and hour law because it failed to include the off-
13 the-clock boot-up and call ready work on Plaintiff’s and all other current and/or former
14 CSRs’ payroll records.

15 52. When the employer fails to keep accurate records of the hours worked by its
16 employees, the rule in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687–88 (1946)
17 controls. That rule states:

18 [w]here the employer’s records are inaccurate or inadequate . . . an employee
19 has carried out his burden if he proves that he has in fact performed work for
20 which he was improperly compensated and if he produces sufficient evidence
21 to show the amount and extent of that work as a matter of just and reasonable
22 inference. The burden then shifts to the employer to come forward with
23 evidence of the precise amount of work performed or with evidence to
24 negative the reasonableness of the inference to be drawn from the employee’s
25 evidence. If the employer fails to produce such evidence, the court may then
26 award damages to the employee, even though the result be only approximate.

27 53. The Supreme Court set forth this test to avoid placing a premium on an
28 employer’s failure to keep proper records in conformity with its statutory duty, thereby
allowing the employer to reap the benefits of the employees’ labors without proper
compensation as required by the FLSA. Where damages are awarded pursuant to this test,
“[t]he employer cannot be heard to complain that the damages lack the exactness and

1 precision of measurement that would be possible had he kept records in accordance with .
2 . . the Act.” *Id.*

3 **COLLECTIVE ACTION ALLEGATIONS**

4 54. Plaintiff brings this action pursuant to the FLSA, 29 U.S.C. § 216(b)
5 individually and on behalf of:

6 *All current and former Customer Service Representatives, and/or other job*
7 *titles performing the same or similar job duties, who worked at RxC*
8 *Acquisition Company at any time in the last three years.*

8 (hereinafter referred to as the “FLSA Collective”). Plaintiff reserves the right to amend this
9 definition as necessary.¹

10 55. Plaintiff does not bring this action on behalf of any executive, administrative,
11 or professional employees exempt from coverage under the FLSA.

12 56. 29 U.S.C. § 216(b) Conditional Certification “Similarly Situated” Standard:
13 With respect to the claims set forth in this action, a collective action under the FLSA is
14 appropriate because, under 29 U.S.C. § 216(b), the call center employees described are
15 “similarly situated” to Plaintiff. The class of employees on behalf of whom Plaintiff brings
16 this collective action are similarly situated because (a) they have been or are employed in
17 the same or similar positions; (b) they were or are subject to the same or similar unlawful
18 practices, policies, or plan (namely, Defendants’ practices, policies, or plan of not paying
19 their CSR employees for their compensable work performed in excess of 40 hours per
20 workweek at an overtime premium of at least one and one-half times their regular rates of
21 pay); (c) their claims are based upon the same legal theories; and (d) the employment
22 relationship between Defendants and every putative FLSA Collective member is exactly
23 the same, and differs only by name, location, and rate of pay.

24 57. Upon information and belief, Plaintiff estimates the FLSA Collective,
25 including both current and former call center workers over the relevant period, will include
26

27 ¹ Plaintiff specifically reserves the right to amend the definition and/or propose subclasses
28 related to whether an employee worked in a physical call center, remotely, or in a hybrid
environment.

1 several hundred members who would benefit from the issuance of court-supervised notice
2 of this action and the opportunity to join it. The precise number of members of the FLSA
3 Collective should be readily available from a review of Defendants’ personnel, scheduling,
4 time, and payroll records; and from input received from members of the FLSA Collective
5 as part of the notice and “opt-in” process provided by 29 U.S.C. § 216(b).

6 58. Plaintiff shares the same interests as members of the FLSA Collective in that
7 the outcome of this action will determine whether they are entitled to unpaid overtime
8 compensation, interest, attorneys’ fees and costs owed under the FLSA. Because the facts
9 in this case are similar, if not altogether identical, and the factual assessment and legal
10 standards lend themselves to a collective action.

11 **BREACH OF CONTRACT CLASS ACTION ALLEGATIONS²**

12 59. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23 on behalf of a
13 putative Class defined to include:

14 *All current and former Customer Service Representatives in Arizona, and/or*
15 *other job titles performing the same or similar job duties, who worked at RxC*
16 *Acquisition Company at any time in the last three years.*

17 (hereinafter referred to as the “Class”). Plaintiff reserves the right to amend this definition
18 as necessary.³

19 60. *Numerosity:* The members of the Class are so numerous that joinder of all
20 members in the case would be impracticable, and the disposition of their claims as a Class
21 will benefit the parties and the Court. The precise number of members of the Class should
22 be readily available from a review of Defendants’ personnel and payroll records.

23 61. *Commonality/Predominance:* There is a well-defined community of interest
24 among members of the Class and common questions of both law and fact predominate in

25 ² To the extent the Court finds, or Defendants argue, the relationship between itself and its
26 CSRs did not form a contract, Plaintiff reserves the right to seek Rule 23 class certification
27 under Plaintiff’s and the Class’ quasi-contract claims (Count III).

28 ³ Plaintiff specifically reserves the right to amend the definition and/or propose subclasses
related to whether an employee worked in a physical call center, remotely, or in a hybrid
environment.

1 the action over any questions affecting individual members. These common legal and
2 factual questions include, but are not limited to, the following:

- 3 a. Whether Defendants offered to pay Plaintiff and the Class certain
4 rates (depending on the technical job titles) per hour for each hour
5 worked as call center workers;
- 6 b. Whether Plaintiff and the Class accepted Defendants' offer by
7 performing the essential functions of the job;
- 8 c. Whether Defendants breached the contract by failing to pay
9 Plaintiff and the Class for each and every hour worked; and
- 10 d. Whether Plaintiff and the Class were damaged.

11 62. *Typicality*: Plaintiff's claims are typical of those of the Class in that Plaintiff
12 and all other members suffered damages as a direct and proximate result of Defendants'
13 common and systemic payroll policies and practices. Plaintiff's claims arise from
14 Defendants' same policies, practices, and course of conduct as all other Class members'
15 claims and Plaintiff's legal theories are based on the same legal theories as all other Class
16 members: whether Plaintiff and the Class worked under an implied contract to be paid for
17 each and every hour worked by Defendants.

18 63. *Adequacy*: Plaintiff will fully and adequately protect the interests of the Class
19 and Plaintiff retained national counsel who are qualified and experienced in the prosecution
20 of nationwide wage-and-hour class actions. Neither Plaintiff nor her counsel have interests
21 that are contrary to, or conflicting with, the interests of the Class.

22 64. *Superiority*: A class action is superior to other available methods for the fair
23 and efficient adjudication of the controversy, because, *inter alia*, it is economically
24 infeasible for members of the Class to prosecute individual actions of their own given the
25 relatively small amount of damages at stake for each individual. Given the material
26 similarity of the Class members' claims, even if each member of the Class could afford to
27 litigate a separate claim, this Court should not countenance or require the filing of hundreds
28 or thousands of identical actions. Individual litigation of the legal and factual issues raised
by Defendants' conduct would cause unavoidable delay, a significant duplication of efforts,

1 and an extreme waste of resources. Alternatively, proceeding by way of a class action
2 would permit the efficient supervision of the putative Class claims, create significant
3 economies of scale for the Court and the parties, and result in a binding, uniform
4 adjudication on all issues.

5 65. The case will be manageable as a class action. This class action can be
6 efficiently and effectively managed by sending the same FLSA opt-in notice to all workers
7 similarly situated and adding for the Class within that group a separate opt-out notice
8 pertaining to their rights under the common law. Plaintiff and her counsel know of no
9 unusual difficulties in the case and Defendants has payroll systems that will allow the class,
10 wage, and damages issues in the case to be resolved with relative ease. Because the
11 elements of Rule 23(b)(3), or in the alternative (c)(4), are satisfied in the case, class
12 certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559
13 U.S. 393, 398 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff
14 whose suit meets the specified criteria to pursue her claim as a class action”).

15 **COUNT I**

16 **VIOLATION OF THE FAIR LABOR STANDARDS ACT,**
17 **U.S.C. § 201, *et seq.*, FAILURE TO PAY OVERTIME WAGES**
18 **(FLSA Collective)**

19 66. Plaintiff re-alleges and incorporates all previous paragraphs herein.

20 67. At all times relevant to this action, Defendants were an “employer” under the
21 FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, *et seq.*

22 68. Defendants are engaged in interstate commerce or in the production of goods
23 for commerce, as defined by the FLSA.

24 69. At all times relevant to this action, Plaintiff was an “employee” of
25 Defendants within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

26 70. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of
27 goods for commerce; or (3) was employed in an enterprise engaged in commerce or in the
28 production of goods for commerce.

1 71. The position of Customer Service Representative is not exempt from the
2 FLSA.

3 72. Defendants' other job titles performing similar customer service
4 representative job duties are not exempt from the FLSA.

5 73. At all times relevant to this action, Defendants "suffered or permitted"
6 Plaintiff to work and thus "employed" her within the meaning of the FLSA, 29 U.S.C. §
7 203(g).

8 74. The FLSA requires an employer to pay employees the federally mandated
9 overtime premium rate of one and a half times their regular rate of pay for every hour
10 worked in excess of 40 hours per workweek. *See* 29 U.S.C. § 207.

11 75. Defendants violated the FLSA by failing to pay Plaintiff the federally
12 mandated overtime premium for all hours worked in excess of 40 hours per workweek.

13 76. Upon information and belief, Defendants have corporate policies of evading
14 overtime pay for its hourly workers.

15 77. Defendants' violations of the FLSA were knowing and willful.

16 78. By failing to compensate their hourly workers at a rate not less than one and
17 one-half times their regular rate of pay for work performed in excess of 40 hours in a
18 workweek, Defendants violated the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C.
19 §§ 207(a)(1) and 215(a). All similarly situated CSRs, or other job titles performing the
20 same or similar job duties, are victims of a uniform and company-wide enterprise which
21 operates to compensate workers at a rate less than the federally mandated overtime wage
22 rate. This uniform policy, in violation of the FLSA, has been, and continues to be, applied
23 to CSRs, or other job titles performing the same or similar job duties, who have worked or
24 are working for Defendants in the same or similar position as Plaintiff.

25 79. None of the provisions of the FLSA can be contravened, set aside, abrogated,
26 or waived by Plaintiff or the Collective.

27
28

1 80. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of
2 the Act, a worker is entitled to their unpaid overtime wages plus an additional equal amount
3 in liquidated damages, costs, and reasonable attorneys’ fees.

4 **COUNT II**
5 **BREACH OF CONTRACT**
6 **(Arizona Class)**

7 81. Plaintiff, individually and on behalf of the proposed Class, re-alleges and
8 incorporates by reference the above paragraphs as if fully set forth herein.

9 82. Plaintiff and the Class were hired at various times. Defendants offered to pay
10 Plaintiff and the Class certain rates per hour for each hour worked as a CSR. Each Class
11 members’ contractual hourly rate is identified in paystubs and other records that
12 Defendants prepares as part of its regular business activities.

13 83. Plaintiff and the Class accepted the offer and worked for Defendants as CSR,
14 and/or other job titles performing the same or similar job duties.

15 84. Plaintiff and the Class also accepted the offer by their performance—i.e.,
16 reporting for work and completing the tasks assigned to them.

17 85. Plaintiff’s duties, and the duties of Class members, required boot-up and call
18 ready work.

19 86. Plaintiff and every other member of the Class performed under their contract
20 by doing their jobs in addition to carrying out the off-the-clock duties Defendants required.

21 87. Upon information and belief, Defendants do not compensate their CSRs,
22 and/or other job titles performing the same or similar job duties, until after the boot-up and
23 call ready work is complete.

24 88. Despite being required to complete these integral boot-up and call ready
25 duties, Plaintiff and the Class were not compensated at their hourly rate for their work
26 performed.

27
28

1 89. By failing to pay Plaintiff and the Class for the boot-up and call ready work,
2 Defendants breached their contract with Plaintiff and the Class to pay their hourly rate for
3 each hour worked.

4 90. Defendants breached their duty to keep accurate records and to keep track of
5 the time Plaintiff and the Class spent performing boot-up and call ready work, which is a
6 fundamental part of an employer’s job.

7 91. In sum, the facts set forth above establish the following elements and terms
8 of the contract:

- 9 a. Offer: a set hourly rate for each hour worked as a CSR;
10 b. Acceptance: Plaintiff and the Class accepted the offer overtly or
11 via performance (i.e., each showed up to work and completed the
12 tasks assigned to them by Defendants);
13 c. Breach: Defendants did not pay Plaintiff and the Class for each
14 hour (or part thereof) worked; and
15 d. Damages: By failing to pay Plaintiff and the Class their hourly rate
for each hour worked, Plaintiff and the Class were damaged in an
amount to be determined at trial.

16 92. As a direct and proximate cause of Defendants’ breach, Plaintiff and the
17 Class were damaged in an amount to be proven at trial.

18 **COUNT III**
19 **UNJUST ENRICHMENT**
20 **(Arizona Class)**

21 93. Plaintiff, individually and on behalf of the proposed Class, re-alleges and
22 incorporates by reference the above paragraphs as if fully set forth herein.

23 94. Upon information and belief, Plaintiff’s and every other Class member’s
24 boot-up and call ready work—which is integral and indispensable to their principal
25 activities as a CSR—provided valuable work and income for Defendants; namely,
26 compensation to Defendants for completing customer service activities that directly
27 benefited Defendants.
28

1 95. Boot-up and Call Ready Work: Plaintiff and the Class were unable to
2 perform any job function without turning on or waking up their computer, logging in to the
3 desktop, and opening the required programs. In short, to start their work of fielding
4 customer calls precisely at their designated start time, Plaintiff and the Class worked off-
5 the-clock before their shift began. Without the boot-up and call ready work, Plaintiff and
6 the Class were unable to take customer calls at their designated start time. Further, upon
7 information and belief, Defendants do not compensate their CSRs until after the boot-up
8 and call ready work is complete.

9 96. As part of their ongoing relationship with Defendants, Plaintiff and the Class
10 expected to be paid wages for the time they spent doing their jobs, including performance
11 of the necessary boot-up and call ready work performed each shift.

12 97. By not paying Plaintiff and the Class for the time they spent performing
13 necessary boot-up and call ready work, Defendants were, and continue to be, unjustly
14 enriched at the expense of Plaintiff and the Class in an amount to be determined at trial.

15 98. By not paying Plaintiff and the Class for the time they spent performing
16 necessary boot-up and call ready work, Defendants also saved, and continue to save,
17 themselves hundreds-of-thousands of dollars in unpaid payroll taxes—taxes that would
18 have otherwise been credited to Plaintiff and the Class’ benefit.

19 99. It would be unjust and inequitable to allow Defendants to retain the benefit
20 of the work performed by Plaintiff and the Class without compensation.

21 100. As a direct and proximate cause of Defendants’ unjust enrichment, Plaintiff
22 and the Class were harmed at an amount to be proven at trial.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff requests the following relief:

- 25 a. An Order certifying this case as a collective action in accordance with
26 29 U.S.C. § 216(b) with respect to the FLSA claims set forth above;
- 27 b. An Order certifying the Arizona Class pursuant to Fed. R. Civ. P. 23;
- 28 c. An Order compelling Defendants to disclose in computer format, or
 in print if no computer readable format is available, the names,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

addresses, and email addresses of all those individuals who are similarly situated, and permitting Plaintiff to send notice of this action to all those similarly situated individuals including the publishing of notice in a manner that is reasonably calculated to apprise the potential collective members of their rights under this litigation;

- d. An Order designating Plaintiff to act as the Class Representative on behalf of the FLSA Collective and the Arizona Class;
- e. An Order declaring that Defendants willfully violated the FLSA and its attendant regulations as set forth above;
- f. An Order declaring that Defendants violated their obligations under the FLSA;
- g. An Order declaring that Defendants violated Arizona common law;
- h. An Order granting judgment in favor of Plaintiff and against Defendants and awarding the amount of unpaid overtime wages calculated at the rate of one and one-half (1.5) of Plaintiff's regular rate multiplied by all hours that Plaintiff worked in excess of 40 hours per week;
- i. An Order granting judgment in favor of Plaintiff and against Defendants and awarding the amount of unpaid straight-time wages calculated at Plaintiff's regular rate of pay;
- j. An Order awarding liquidated damages to Plaintiff and the FLSA Collective, in an amount equal to the amount of unpaid overtime wages found owing to Plaintiff and the Collective under the FLSA;
- k. An Order awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action;
- l. An Order awarding pre- and post-judgment interest to Plaintiff on these damages; and
- m. An Order awarding such further relief as this court deems appropriate.

JURY DEMAND

NOW COMES Plaintiff, by and through her undersigned attorneys, and hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above-entitled cause.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 13th day of October, 2023.

BEGAM MARKS & TRAUlsen, P.A.

By s/ Richard P. Traulsen

Richard P. Traulsen
11201 North Tatum Blvd., Suite 110
Phoenix, Arizona 85028-6037
Local Counsel for Plaintiff

And

Jacob R. Rusch (MN Bar No. 0391892)*
Timothy J. Becker (MN Bar No. 0256663)*
Zackary S. Kaylor (MN Bar No. 0400854)*
JOHNSON BECKER, PLLC
444 Cedar Street, Suite 1800
Saint Paul, MN 55101
E: jrusch@johnsonbecker.com
E: tbecker@johnsonbecker.com
E: zkaylor@johnsonbecker.com

Lead Attorneys for Plaintiff

**Pro Hac Vic forthcoming*

EXHIBIT A

U.S. Department of Labor
Wage and Hour Division



(Revised July 2008)

Fact Sheet #64: Call Centers under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees working in call centers.

Characteristics

A call center is a central customer service operation where agents (often called customer care specialists or customer service representatives) handle telephone calls for their company or on behalf of a client. Clients may include mail-order catalog houses, telemarketing companies, computer product help desks, banks, financial services and insurance groups, transportation and freight handling firms, hotels, and information technology (IT) companies.

Coverage

If the annual dollar volume of a call center's sales or business is \$500,000 or more, and the enterprise has at least two employees, all employees of the enterprise are covered by the FLSA on an "enterprise" basis. An enterprise may consist of one establishment, or it may be made up of multiple establishments.

Additionally, the FLSA also provides an "individual employee" basis of coverage. If the gross sales or volume of business done does not meet the requisite dollar volume of \$500,000 annually, employees may still be covered if they individually engage in interstate commerce, the production of goods for interstate commerce, or in an occupation closely related and directly essential to such production. Interstate commerce includes such activities as transacting business via interstate telephone calls, the Internet or the U.S. Mail (such as handling insurance claims), ordering or receiving goods from an out-of-state supplier, or handling the accounting or bookkeeping for such activities.

Requirements

Covered nonexempt employees are entitled to be paid at least the federal minimum wage as well as [overtime](#) at time and one-half their regular rate of pay for all hours worked over 40 in a workweek. (This may not apply to certain executive, administrative, and professional employees, including computer professionals and outside sales, as provided in Regulations [29 CFR 541](#)).

The FLSA requires employers to keep records of wages, hours, and other items, as specified in the recordkeeping regulations. With respect to an employee subject to both [minimum wage](#) and [overtime](#) provisions, records must be kept as prescribed by Regulations [29 CFR 516](#). Records required for exempt employees differ from those for non-exempt workers.

The FLSA also contains youth employment provisions regulating the employment of minors under the age of 18 in covered work, as well as recordkeeping requirements. Additional information on the youth employment provisions is available at www.youthrules.dol.gov.

Typical Problems

Hours Worked: Covered employees must be paid for all hours worked in a workweek. In general, “hours worked” includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work. An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications, and work-related emails.

Rest and Meal Periods: Rest periods of short duration, usually 20 minutes or less, are common in the industry (and promote employee efficiency), and must be counted as hours worked. *Bona fide* meal periods (typically 30 minutes or more) generally need not be compensated as work time as long as the employee is relieved from duty for the purpose of eating a regular meal.

Recordkeeping: A daily and weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities, must be kept.

Overtime: Earnings may be determined on an hourly, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the regular hourly rate derived from all such earnings. This is calculated by dividing the total pay (except for certain statutory exclusions) in any workweek by the total number of hours actually worked. See Regulations [29 CFR 778](#).

Salaried Employees: A salary, by itself, does not exempt employees from the [minimum wage](#) or from [overtime](#). Whether employees are exempt from [minimum wage](#) and/or [overtime](#) depends on their job duties and responsibilities as well as the salary paid. Sometimes, in call centers, salaried employees do not meet all the requirements specified by the regulations to be considered as exempt. Regulations [29 CFR 541](#) contain a discussion of the requirements for several exemptions under the FLSA (i.e., executive, administrative, and professional employees – including computer professionals, and outside sales persons).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Donna Hernandez, individually and on
behalf of all similarly situated individuals,

Case No.:

Plaintiff,

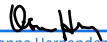
v.

CONSENT TO SUE

RxC Acquisition Company and Does 1-
10,

Defendant.

1. I understand this lawsuit against RxC Acquisition Company and Does 1-10 asserts claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* and Arizona state law concerning Defendants’ alleged failure to correctly pay overtime wages.
2. I hereby consent to opt-in and join and become a Plaintiff in this lawsuit and be bound by the Court, whether favorable or unfavorable, to any judgment or settlement of this action.
3. I hereby designate Johnson Becker, PLLC to represent me in this lawsuit and make all decisions on my behalf regarding the litigation and any potential settlement.

Signature:  Date: 10/10/2023
Donna Hernandez (Oct 10, 2023 10:11 PDT)

Print Name: Donna Hernandez

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Donna Hernandez , ;

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Richard P. Traulsen , Attorney
Begam, Marks & Traulsen
11201 N Tatum Blvd, Suite 100
Phoenix, Arizona 85028
602-254-6071

Defendant(s): RxC Acquisition Company , ;

County of Residence: Outside the State of Arizona

Defendant's Atty(s):

,
,

IFP REQUESTED

REMOVAL FROM COUNTY, CASE #

II. Basis of Jurisdiction: **1. U.S. Government Plaintiff**

III. Citizenship of Principal Parties(Diversity Cases Only)

Plaintiff:- **N/A**

Defendant:- **N/A**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI.Cause of Action: **5. This Court has subject-matter jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff's claims arise under the FLSA, 29 U.S.C. §§ 201, et seq.**

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/Richard P. Traulsen

Date: 10/13/2023

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

