

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TARYN BALDWIN,

Plaintiff,

-against-

TMPL LEXINGTON LLC d/b/a TMPL
LEXINGTON, EMPIRE HOLDINGS AND
INVESTMENTS, LLC, and PATRICK
WALSH,

Defendants.

**AMENDED COMPLAINT
23 Civ. 9899 (PAE) (JLC)**

**JURY TRIAL
DEMANDED**

Plaintiff Taryn Baldwin (“Plaintiff”), by her attorneys, Frontera Law PLLC, complaining of TMPL Lexington LLC d/b/a TMPL Lexington, Empire Holdings And Investments, LLC, and Patrick Walsh (collectively, “Defendants”), alleges as follows:

PRELIMINARY STATEMENT

1. Defendants own and operate multiple luxury fitness centers including: TMPL Clubs in New York (the “TMPL gyms”), LIV Fitness Clubs in Puerto Rico, and the Palm Beach Sports Club fitness centers in Florida. Plaintiff worked for the TMPL gyms throughout her employment.

2. Plaintiff is a personal trainer. The first time Patrick Walsh saw her working at TMPL Lexington he introduced himself and spoke to her very briefly. Then, within days, he acquired her personal cell phone number and started texting her, intermixing work related and personal conversations. Shortly thereafter, Walsh requested that Baldwin be his personal trainer. Baldwin told her manager that she did not feel comfortable training Walsh, but her manager ignored her feelings and

suggested she try to date Walsh. Baldwin therefore complied and trained him because she felt she had no choice but to do so.

3. Baldwin had no desire to date Walsh and sought to only have professional interactions with him. However, in addition to the personal training sessions, Walsh repeatedly tried to engage with Baldwin on a personal level, sending her selfies while traveling and inviting her to dinner, drinks, and movie dates. The invitations were often sent under the guise of speaking with Plaintiff about business but when Baldwin accepted and met up with Walsh outside the gym, he spent just a few minutes talking about work and focused the majority of the conversation on personal topics, which made Baldwin uncomfortable.

4. Baldwin did not want to continue meeting with Walsh and expressed frustration and discomfort to her coworkers and supervisor but was punished for “gossiping” when she did so. The invitations from Walsh culminated in a dinner invitation in August 2022, supposedly to discuss social media content and strategies to grow the TMPL gyms’ online following and ended with Walsh inappropriately kissing and groping Baldwin without her consent.

5. Baldwin felt violated by Walsh and was careful to avoid spending time with him alone outside the TMPL gyms. However, she continued training him and engaging with him in a friendly and professional manner to protect her employment; she feared retaliation if she were to speak up about his unlawful actions.

6. Defendants also failed to pay Baldwin for all the hours she worked each week and did not pay any overtime wages. Baldwin was incorrectly paid on a biweekly basis for much of her employment and during the latter half of her time with

Defendants, she was only paid for the hours she spent training clients, and not for the other hours she worked each week at the gym participating in photo shoots, cleaning, meeting with and recruiting clients, *et al.*

7. Plaintiff brings this action seeking declaratory, injunctive, equitable, and affirmative relief. Plaintiff also seeks monetary damages to redress the injuries she suffered as a result of being subjected to unlawful sexual harassment and discrimination, sexual assault, and hostile work environment in violation of the New York State Human Rights Law, N.Y. Exec. Law §§ 290 *et seq.* (“NYSHRL”), the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.* (“NYCHRL”), and the New York City Victims of Gender-Motivated Violence Protection Law (“VGMVPA”), N.Y.C. Admin. Code § 10-1101 *et seq.* Plaintiff additionally seeks to recover unpaid wages, statutory damages, pre- and post-judgment interest, attorneys’ fees, and costs pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), and the New York Labor Law § 190, *et seq.* (“NYLL”).

JURISDICTION & VENUE

8. This Court had subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1367(a) as Plaintiff is asserting claims under the Fair Labor Standards Act.

9. This Court has supplemental jurisdiction over Plaintiff’s state and city law claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(b) because a substantial portion of the events or omissions giving rise to this action occurred within this judicial district.

ADMINISTRATIVE REQUIREMENTS

11. Contemporaneous with the filing of this Complaint, Baldwin will file a Charge of Discrimination (the “Charge”) with the U.S. Equal Employment Opportunity Commission alleging violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. (“Title VII”). Upon issuance of a Notice of Right to Sue or other adjudication of the Charge, Baldwin will seek to amend this action to add Title VII claims.

12. Further, within ten days of the filing of this Complaint, Plaintiff will serve a copy of the Complaint on the New York City Law Department, New York State Attorney General, and the New York City Human Rights Commission to fulfill the administrative prerequisites with respect to her NYSHRL and NYCHRL claims alleged herein.

THE PARTIES

Plaintiff Taryn Baldwin

13. Baldwin resides in New York, New York.

14. Baldwin worked for Defendants as a personal trainer from January 2022 through September 2023.

15. At all times relevant to this Amended Complaint, Plaintiff was an employee of Defendants as the term is defined by the NYSHRL, NYCHRL, NYLL, and FLSA.

Defendant Empire Holdings And Investments, LLC

16. Defendant Empire Holdings And Investments, LLC is a Florida limited liability company doing business in New York State.

17. Empire Holdings And Investments, LLC is self-described as a “holding company that acquires, develops, owns, and operates boutique luxury fitness clubs across the United States and Puerto Rico.”¹

18. The “boutique luxury fitness clubs” that Empire Holdings And Investments, LLC currently owns and operates include: five (5) TMPL gym locations in New York (with a sixth location slated to open in 2024); two (2) LIV Fitness Clubs in Puerto Rico; two (2) Palm Beach Sports Club fitness centers in Florida; and one (1) location of Christi’s Fitness in Vero Beach, Florida.

19. Empire Holdings And Investments, LLC is the parent company of, *inter alia*, Defendant TMPL Lexington LLC.

20. Empire Holdings And Investments, LLC is an “enterprise engaged in interstate commerce” within the meaning of the FLSA.

21. Empire Holdings And Investments, LLC has employees engaged in commerce or in the production of goods for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

¹ Empire Holdings, *About Us*, <https://empireholdings.com/> (last visited February 2, 2024).

22. In the three years preceding the filing of this Amended Complaint, Empire Holdings And Investments, LLC had an annual gross volume of sales exceeding \$500,000.

23. Defendants were Plaintiff's employers. Defendants hired Plaintiff and controlled the terms and conditions of Plaintiff's employment, and the wage violations and discriminatory conduct that are the subject of this Amended Complaint took place during Plaintiff's employment with Defendants.

Defendant TMPL Lexington LLC

24. Defendant TMPL Lexington LLC is a Delaware corporation authorized to do business in the state of New York. It owns, operates, and does business as TMPL Lexington located at 155 East 53rd Street, New York, NY 10022.

25. TMPL Lexington a luxury fitness club that belongs to the TMPL gyms brand which currently includes 5 fitness centers.

26. Plaintiff worked at TMPL Lexington throughout her employment with Defendants.

27. TMPL Lexington is an "enterprise engaged in interstate commerce" within the meaning of the FLSA.

28. TMPL Lexington has employees engaged in commerce or in the production of goods for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

29. In the three years preceding the filing of this Amended Complaint, TMPL Lexington had an annual gross volume of sales exceeding \$500,000.

Defendant Patrick Walsh

30. Patrick Walsh is the CEO and owner of Empire Holdings And Investments, LLC and TMPL Lexington.

31. Walsh is also an investor and entrepreneur.

32. Walsh is the former CEO of Town Sports International, a publicly traded company and former parent company of New York Sports Club.

33. Walsh is also reportedly the third largest investor in Truth Social, the media company launched by former U.S. President Trump in 2021. Per Reuters, Walsh is said to have personally invested \$6.2 million.²

34. Throughout Plaintiff's employment, Walsh visited the TMPL gyms on a regular basis, approximately biweekly.

35. Walsh held and exercised power and authority over personnel decisions at the TMPL gyms including terms and conditions of employment, hiring, firing, compensation, uniforms, and policies.

36. Walsh exercised this power and authority over personnel decisions personally and through the managers at the TMPL gyms.

37. Walsh regularly communicated with TMPL's executive team and held weekly meetings with the leadership of the TMPL gyms to stay up to date with the goings on at each location.

38. When Walsh was present at the TMPL gyms, he personally supervised the work being done by Plaintiff and other employees.

² Helen Coster and Krystal Hu, *Who funded Trump's Truth Social?*, REUTERS (October 28, 2022), <https://www.reuters.com/technology/who-funded-trumps-truth-social-some-answers-2022-10-28/>.

39. Walsh spent a significant amount of time at TMPL Lexington throughout Plaintiff's employment because it is the TMPL gyms' 24,000 square-foot flagship location which includes a first of its kind recovery spa that opened in May 2022.

40. Plaintiff also worked as Walsh's personal trainer, at his request.

41. Even when he was not present, Walsh regularly communicated with Plaintiff about her work duties and responsibilities via text message and in person conversation.

42. Together with the Empire Holdings And Investments, LLC and TMPL Lexington, Walsh jointly employed Plaintiff.

43. Walsh exercised sufficient control over Plaintiff's working conditions, and over the unlawful policies and practices alleged in this Amended Complaint, to be considered her employer.

FACTUAL ALLEGATIONS

44. Plaintiff began working for Defendants as a personal trainer in January 2022 and her last day of work was September 29, 2023.

45. Although Plaintiff completed her personal training certification in or around 2020, she did not begin working as a trainer until she was hired by Defendants.

46. Plaintiff was excited to begin her career as a personal trainer at the TMPL gyms, but her feelings of excitement soon faded away due to the sexual harassment, discrimination, and wage violations she was subjected to by Defendants.

A. Plaintiff's Accomplishments as a Personal Trainer

47. Although Plaintiff was new to the field of personal training, she took to it quickly and was very successful in her role.

48. Plaintiff enjoyed connecting with clients and helping them to reach their health and fitness goals.

49. During her employment, Plaintiff was repeatedly ranked the number one female trainer at TMPL Lexington and for a short time she also held the title of number two female trainer in all the TMPL gyms.

50. Plaintiff was ranked as one of the top five trainers at TMPL Lexington on numerous occasions throughout her employment.

B. Meeting Walsh & Commencing Personal Training Sessions

51. Plaintiff spoke to Walsh for the first time in May 2022 when he saw her in the gym.

52. Walsh texted Plaintiff for the first time on May 30, 2022.

53. Walsh asked Plaintiff's manager, Steven Putkowski, for Plaintiff's personal cell phone number and Putkowski provided it without informing Plaintiff.

54. Walsh texted Plaintiff about the upcoming grand opening of the spa in TMPL Lexington and asked her to post photos of herself in the spa on her Instagram account, purportedly to increase publicity.

55. Plaintiff was surprised to hear from Walsh, especially because she had not given him her number, but was not initially uncomfortable with his messages as they were all work related. However, on May 31, 2022, while talking about the spa, he told Plaintiff that he needed "an exclusive on all [her] hot pics."

56. Walsh's inappropriate request for "hot pics" left Plaintiff feeling troubled and uncomfortable.

57. The next time he reached out, on June 9, 2022, Walsh asked Plaintiff to film a video with her twin sister at the spa and then invited them to visit him in Palm Beach, Florida.

58. Walsh's next contact with Plaintiff was on June 21, 2022, when he wrote, "Hey Taryn! I'm in nyc this week through the weekend. If you have any opening slots I'd love to train with you"

59. Plaintiff was surprised and intimidated when Walsh asked her to be his personal trainer but agreed to train him because he was her employer and she felt she was required to comply with his request.

60. Plaintiff trained Walsh throughout the summer and fall of 2022 and then again from June to August 2023.

61. During the training sessions Walsh regularly commented about Plaintiff's body and held her hands when she was passing him gym equipment.

62. None of Plaintiff's other clients spoke about her body or initiated physical contact with her in the ways that Walsh did so.

63. Plaintiff did not feel comfortable training Walsh.

64. On or about August 8, 2022, Plaintiff scheduled a meeting with her manager, Steven Putkowski and told him that she did not want to continue training Walsh.

65. Putkowski disregarded Plaintiff's concerns and suggested she try to date Walsh.

66. Plaintiff was shocked by Putkowski's words and indifference to her concerns. She felt completely unsupported. Plaintiff continued to train Walsh even though she dreaded having to do so.

67. During her employment, several of Plaintiff's coworkers made comments about the fact that Walsh was known to date his employees.

68. Plaintiff was told that Walsh had previously dated at least two other employees of the TMPL gyms.

69. Putkowski told another female trainer at TMPL Lexington that Walsh "likes blondes."

70. Plaintiff has blonde hair.

71. Plaintiff did not know if there was any truth to the rumors about Walsh's dating preferences or history of dating employees, but hearing those rumors left her feeling even more uneasy about having to interact with him on a regular basis.

C. Walsh Repeatedly Invites Plaintiff Out to Dinner and Drinks

72. In addition to training with Plaintiff, Walsh began to text her on nearly a daily basis in July 2022.

73. Walsh sent her multiple selfies and talked to her about his travels.

74. Plaintiff did not want to engage with Walsh but responded politely whenever he wrote to her.

75. On July 8, 2022, Walsh invited Plaintiff to dinner at Mamo, an Italian restaurant in Manhattan.

76. Plaintiff accepted the invitation to dinner and while there, Walsh invited her to go hiking the next week. She initially agreed to be polite but canceled the plans the next morning.

77. In total, Walsh invited Plaintiff to meet him for dinner and/or drinks 12 times in July and August 2022.

78. Plaintiff agreed to meet him a total of four times.

D. The August 12, 2022 Incident

79. The fourth time that Plaintiff agreed to meet Walsh was on August 12, 2022, when he invited her to dinner at his brother's residence, where he was temporarily staying, in Manhattan.

80. Walsh said that they would be talking about work and specifically mentioned wanting to discuss social media strategies.

81. Plaintiff agreed to meet Walsh.

82. Plaintiff was hopeful that it would be a working dinner leading to new job opportunities at the TMPL gyms.

83. Plaintiff arrived to see Walsh at approximately 8:00 p.m.

84. Plaintiff and Walsh had a drink and then ate dinner. After dinner, Walsh served dessert and then invited Plaintiff to watch a movie with him.

85. Walsh told Plaintiff that he had prepared the horror movie, *The Black Phone*, for them to watch together.

86. Plaintiff did not want to stay to watch the movie but agreed to do so because Walsh was very insistent that she stay.

87. Plaintiff sat as far from Walsh as possible on the couch, but he moved towards her after the movie began. A few minutes later, he put his arms around Plaintiff and began kissing her. Walsh then reached his hands under her clothing and tried to lower her pants.

88. When Walsh reached under Plaintiff's clothes, he touched her breasts.

89. When Walsh tried to lower Plaintiff's pants, he touched her vulva over her pants.

90. Baldwin did not want to be kissed and did not consent to Walsh kissing her.

91. Baldwin did not want Walsh to touch her body and did not consent to his touching of any sexual or intimate parts of her body.

92. Walsh engaged in unlawful sexual conduct and nonconsensual, forcible touching of Baldwin as defined in N.Y. Penal Law § 130.52.

93. Walsh's unlawful forcible touching of Baldwin was motivated by her gender, *i.e.* motivated by the fact that Plaintiff is a woman he considered sexually attractive.

94. In response, Plaintiff promptly stood up and asked that he call her an Uber to go home.

95. Walsh agreed to do so, and she arrived home at approximately 1:00 a.m.

96. Walsh texted Plaintiff and asked her if she got home safe but did not apologize or acknowledge anything about his sexual advances that night or at any time thereafter.

97. Walsh also failed to engage in any substantive work-related conversations with Plaintiff that evening.

98. Plaintiff felt scared and ashamed after the encounter with Walsh on August 12, 2022 (referred to hereafter as “the August 12th Incident”). She felt embarrassed about putting herself in a situation that made it easy for Walsh to kiss and touch her without her consent.

99. Plaintiff was afraid to tell her coworkers about the August 12th Incident because she thought she would be blamed for having gone to Walsh’s apartment in the first place and having invited the behavior.

100. Plaintiff did speak with her sister and a few friends about the August 12th Incident and confided in them that Walsh had sexually assaulted her, but she did not say anything to the staff at TMPL.

101. Instead, Plaintiff spoke to her coworkers in more general terms about Walsh and said she did not like training him or having to engage with him so regularly because he made her uncomfortable.

102. In or around late August 2022, of Plaintiff’s coworkers told TMPL manager Jane Nielsen that Walsh was sending Plaintiff inappropriate text messages. The coworker said Walsh appeared to be hitting on Plaintiff and making her feel uncomfortable. In response, Nielsen said that the coworker should “mind his business” and “stop gossiping.”

103. On or around August 30, 2022, Putkowski was also made aware of the fact that Plaintiff had expressed discomfort and frustration about Walsh to other TMPL employees.

104. In response Putkowski met with Plaintiff and admonished her for “gossiping” and told her to stop talking about her issues with other TMPL employees.

105. Plaintiff was effectively silenced and reprimanded for communicating with others at TMPL about workplace concerns and about her discomfort with the way she was treated by her employer.

106. Neither Nielsen nor Putkowski investigated the claims about Walsh and his inappropriate communication with Plaintiff.

107. Nielsen and Putkowski’s comments are indicative of the existence of a hostile work environment at TMPL.

108. The managers’ words and behavior confirmed Plaintiff’s belief that she could not turn to or trust TMPL’s management to protect her interests as an employee.

E. Promotional Photo and Video Shoots for TMPL

109. In December 2022, Sydney Bakich, who currently serves as the Brand Director for TMPL, contacted Plaintiff and invited her to be in a promotional photoshoot and video shoot for the TMPL gyms.

110. Plaintiff agreed to participate.

111. The photoshoot and video shoot were both held on December 12, 2022.

112. Plaintiff felt uncomfortable throughout both the photo and video shoot because she quickly realized that the goal was to get “sexy” images of Plaintiff, rather than images that portray strength and fitness, which is what she had expected.

113. Throughout the video shoot, Bakich repeatedly said, “it’s all about the ass” and said that she wanted more images of Plaintiff’s backside. She also directed Plaintiff to squeeze her breasts together while posing.

114. Plaintiff did not like any of the content from the photoshoot and told Bakich that she did not want the photos to be used.

115. In response, Bakich texted Plaintiff saying, “I’ll need to try to at least [sic] use some because he was paid for his time, I cannot scrap an entire shoot.”

116. Bakich’s response made Plaintiff feel pressured to agree to use the photos even though she did not like them or want them published.

117. Ultimately, Plaintiff okayed the use of several images despite feeling objectified by the photoshoot.

118. However, Plaintiff did not approve of any of the content from the video shoot taken at the TMPL Lexington spa that same day.

119. The video content from the spa was overtly sexual and Plaintiff did not want such content to be shared online.

120. On January 25, 2023, Plaintiff asked Bakich, via text, not to publish the spa video.

121. Bakich ignored Plaintiff’s wishes and the spa video was shared on TMPL’s website and social media platforms.

122. Plaintiff was humiliated.

123. One of Plaintiff’s personal training clients told her that it looked like a softcore porn video.

124. Plaintiff spoke to Putkowski and insisted that the video be removed.

125. Defendants did eventually delete the spa video but not before Plaintiff suffered significant humiliation. She felt hurt and disrespected by Defendants' actions.

126. The use of the spa video was one more example of Defendants' failure to respect her requests and failure to respect her body.

127. Upon information and belief, Walsh told Bakich to get Plaintiff to participate in the photoshoot because he wanted sexually revealing photos and videos of Plaintiff.

F. Walsh Continues to Pursue Plaintiff

128. After the incident of sexual assault in August 2022, Walsh and Plaintiff's interactions decreased significantly.

129. Plaintiff made it a point not to meet with Walsh alone outside of TMPL.

130. Plaintiff also avoided Walsh at TMPL as much as possible.

131. Walsh initiated contact with Plaintiff after the August 12th Incident and continued scheduling personal training sessions with her.

132. Plaintiff did not initiate any communication or contact with Walsh. She spoke with him only when he contacted her.

133. Plaintiff continued to train Walsh in personal training sessions because she felt she had to since he was the boss.

134. Plaintiff did not want to train Walsh.

135. Walsh continued to invite Plaintiff out when they spoke in person during personal training sessions and via text message. Plaintiff repeatedly declined.

136. On only one occasion, in October 2022, Plaintiff met up with Walsh for dinner, but she only did so because he specifically requested that both Plaintiff and her twin sister (who happened to be in town) meet him so that he could talk to Plaintiff's sister about social media strategy and "pick her brain" about marketing ideas.

137. Despite her significant reservations about spending time with Walsh, Plaintiff agreed to the dinner for her sister's sake. Plaintiff thought it could be an important career networking opportunity for her. Walsh is a well-connected businessperson and Plaintiff did not want her sister to miss out on a chance for work and career advancement because of the August 12th Incident. However, no job or networking opportunities developed from the dinner.

138. Aside from the dinner she went to with her sister, Plaintiff limited her contact with Walsh. She only responded to Walsh's text messages when he wrote to her and trained him when he scheduled sessions with her.

139. On January 27, 2023, seemingly in an effort to reconnect with Plaintiff, Walsh asked to meet with Plaintiff at TMPL Lexington to discuss Pilates.

140. Plaintiff agreed to meet with him because the meeting would be at TMPL Lexington during her workday.

141. Walsh told Plaintiff that he had secured a lease for a new TMPL location which would be opening in 2024 and that he wanted to create a Pilates studio at the new location. He offered her the opportunity to be in charge of the Pilates programming and studio.

142. Plaintiff was excited by the potential opportunity to enter a leadership position at the company. She began to research Pilates certification courses and equipment options for use in the studio.

143. However, no real plans for the Pilates studio ever materialized. Walsh thanked Plaintiff for the research and information she shared with him but did not take any official steps towards building the studio, or even a Pilates program at the TMPL gyms.

144. Plaintiff realized that Walsh fabricated the Pilates studio opportunity in an effort to get her to communicate with him more, possibly to regain trust.

145. Plaintiff continued to keep her distance from Walsh. She attempted to limit their communications to work related matters despite his efforts to engage more personally by sending more selfies, family vacation photos, trying to make small talk about movies and tv shows, and regularly commenting about her physique.

146. For example, on May 31, 2023, he wrote, “Taryn, u r looking amazing 😊 as always. Love u in the tmpl top 🔥 Have a great week! Look fwd to training next time...”

147. Walsh continued training with Plaintiff on and off until August 2023.

148. In September 2023, Plaintiff felt exhausted and drained by the time and effort she exerted avoiding Walsh and trying to keep their relationship from veering from professional into the personal sphere.

149. Plaintiff liked working as a personal trainer, but she felt unsupported by TMPL.

150. Plaintiff constantly felt on edge when communicating with Walsh, in person and over text message.

151. Plaintiff felt anxiety going into TMPL and over the last few months of her employment, she steadily decreased the time that she spent there.

152. Plaintiff was still a highly respected and sought after trainer, so she continued working and training her clients, but she did little to try and establish relationships with new clients.

153. Plaintiff felt like she could no longer continue working at TMPL and quit on September 29, 2023.

154. Plaintiff quit because she did not have the will to continue tiptoeing around Walsh.

155. Plaintiff was afraid Walsh would try to kiss and/or grope her again.

156. TMPL did nothing to support her when she raised concerns about Walsh and his sexual harassment.

157. Plaintiff felt that she had no other choice but to leave her employment.

158. Plaintiff was constructively discharged from her employment at TMPL.

G. Wage Payment Violations

159. Defendants paid personal trainers per training session they completed with a client.

160. At the start of her employment, Plaintiff was paid 35% of the session fee the client paid.

161. Plaintiff's pay subsequently increased to 45% and then 55% of the session fee paid by the client.

162. The percentages of payment issued to Plaintiff, and the decisions to raise the percentage payment amount per training session to 45% and then 55%, were solely determined by Defendants.

163. In addition to the payment issued to Plaintiff per training session, Defendants paid her and the other personal trainers for “floor hours” which were the hours spent at the gym cleaning, organizing gym equipment, talking with clients and other gym members outside of the time spent in a session, and calling potential clients to discuss the personal training options available to them.

164. The floor hours were paid at New York’s statutory minimum wage rate of \$15 per hour.

165. Plaintiff was also paid for hour-long introduction meetings with potential new personal training clients (referred to as Fitness Orientations or FOs).

166. She received payment of \$15 per FO completed.

167. When she began at TMPL, Plaintiff was told that in addition to the FOs and personal training sessions she did each week, she must complete fifteen to twenty floor hours per week.

168. Plaintiff completed her weekly floor hours but noticed that the hours were not accurately being tracked by Defendants.

169. Plaintiff told her manager, Putkowski, when she completed the floor hours and he would verbally confirm that she had done so.

170. Plaintiff was paid an arbitrary amount for the floor hours each week that was not actually based on the work she had done.

171. For example, for approximately the first three months of her employment with Defendants, Plaintiff was paid for exactly 20 floor hours per week.

172. Plaintiff sometimes worked more, or less, than exactly twenty hours per week but the pay was the same week to week.

173. Plaintiff was also told that Defendants' policy was to pay a maximum of 20 hours for floor hours per week.

174. If Plaintiff, or any other personal trainer, worked more than twenty floor hours in a week, they would only get paid for twenty hours.

175. During approximately the first four months of Plaintiff's employment with Defendants, from in or around January 2022 to April 2022, Plaintiff regularly spent six to seven days of the week working at TMPL Lexington. She had just started as a personal trainer and was eager to learn and develop relationships with her clients, so she spent a lot of time at the gym.

176. From in or around January 2022 to April 2022, Plaintiff regularly worked approximately twenty-five hours per week of floor hours but was only paid for twenty hours.

177. From in or around January 2022 to April 2022, Plaintiff also conducted approximately five to seven FOs per week and spent approximately ten to thirteen hours doing personal training sessions with clients.

178. From in or around January 2022 to April 2022, Plaintiff regularly worked a combined total of forty to forty-five hours per week.

179. For example, Plaintiff worked all seven days the week of April 24, 2022.

180. The week of April 24, 2022, Plaintiff worked approximately 25 floor hours, conducted 5 FOs, and met with 12 personal training clients for one-hour sessions each.

181. She worked a combined total of approximately 42 hours the week of April 24, 2022.

182. Plaintiff was not paid for all her floor hours the week of April 24, 2022.

183. Plaintiff was not paid overtime wages the week of April 24, 2022.

H. Defendants Cease Payment of Plaintiff's Floor Hours

184. For the first year of her employment, Plaintiff consistently complied with the requirement to complete floor hours.

185. Although she was doing the floor hours, Putkowski constantly reminded Plaintiff of the requirement, but did not track the hours she completed to accurately pay her what she was owed.

186. Plaintiff was frustrated by Putkowski's failure to supervise her work in a structured or consistent manner. He purported to be supervising her work and noting the floor hours she completed but did not actually keep track of the hours.

187. Plaintiff also felt pressure from Putkowski to be on the premises of TMPL Lexington as much as possible, even when she'd already done all her floor hours work for the week.

188. Plaintiff was frustrated by this expectation, particularly because she would not receive any pay for more than twenty floor hours per week.

189. Plaintiff was annoyed by Putkowski's frequent requests that she be on the premises of TMPL Lexington and did not want to spend any more time there than

necessary because of Walsh's behavior and Putkowski's negative responses to her concerns.

190. In or around January 2023, Plaintiff asked Putkowski if she could stop doing weekly floor hours.

191. Putkowski said Plaintiff would no longer be required to do floor hours.

192. Plaintiff felt relieved because not having to do floor hours meant Putkowski did not pressure her to be at the gym as much.

193. Plaintiff was particularly relieved because the removal of floor hours from her schedule meant she could spend less time at the gym and be less likely to interact with Walsh.

194. Plaintiff did not want to see or interact with Walsh for any reason other than to train him, which she only did because she was required to do so.

195. Although the weekly floor hour requirement was lifted, Plaintiff did continue to do floor hour work on a weekly basis.

196. For example, Plaintiff still cleaned before and after training sessions with her clients and also made phone calls to clients and prospective clients regularly.

197. Putkowski was aware that Plaintiff was completing floor hour work because he saw her at the gym, and she spoke to him and texted him about the work she was doing on a regular basis.

198. For example, on August 2, 2023, Plaintiff texted Putkowski asking if she could do calls that day, which referred to the calls to clients that were part of the standard floor hour work for personal trainers.

199. Putkowski responded to Plaintiff in the affirmative and knew that Plaintiff was making calls without getting any compensation.

200. Plaintiff's paycheck for the pay period from July 31 to August 6, 2023 does not include any payment of wages for floor hours.

201. As of late January 2023, Defendants no longer paid Plaintiff for any floor hours.

202. Plaintiff only received payment for the FOs and personal training sessions she completed each week.

203. Plaintiff regularly completed about ten hours of floor hours per week from approximately January 2023 through September 2023 and they were unpaid.

204. Defendants also failed to pay Plaintiff for any of the photoshoots or video shoots she participated in while employed.

205. Plaintiff participated in photo and video shoots to create advertising and publicity content for the TMPL gyms on multiple occasions including May 10, 2022, July 6, 2022, September 28, 2022, December 12, 2022, and February 8, 2023.

206. The photo and video shoots lasted approximately 1.5 hours each and Plaintiff did not receive any compensation for her participation in the shoots.

207. Defendants regularly failed to pay Plaintiff for all the hours she worked per week.

208. Defendants did not pay Plaintiff overtime wages when she worked more than forty hours in a week.

209. From the start of her employment in January 2022 through January 29, 2023, Defendants paid Plaintiff on a biweekly basis.

210. During the entirety of Plaintiff's employment, over twenty-five percent of her duties were physical tasks, and she should have therefore been paid on a weekly basis in accordance with NYLL.

211. Defendants failed to furnish Plaintiff with a written wage notice at the time of her hiring, when her rate of pay changed, or at any other time during her employment, listing her wage payment rate(s) and other information as required by the NYLL.

212. Defendants failed to furnish Plaintiff with accurate wage statements reflecting, *inter alia*, her total pay amount, the number of hours worked in that pay period, and her regular and overtime rates of pay as required by the NYLL.

FIRST CAUSE OF ACTION
New York State Human Rights Law - Discrimination

213. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

214. New York Executive Law Section 296(1)(a) provides that: "It shall be an unlawful discriminatory practice . . . [f]or an employer . . . , because of an individual's . . . sex . . . to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

215. Defendants unlawfully discriminated against Plaintiff in the terms and conditions of her employment based on her sex (female) in violation of the NYSHRL.

216. Defendants subjected Plaintiff to unlawful sexual harassment, created and maintained a hostile work environment, and constructively discharged her in violation of the NYSHRL.

217. Defendants knew about Plaintiff's discrimination and harassment through her complaints to Steven Putkowski but failed to take appropriate action to correct it.

218. Defendants' unlawful discriminatory acts caused Plaintiff to suffer economic damages, including lost wages as well as emotional distress damages.

219. Defendants are liable to Plaintiff for back pay, front pay, emotional distress and other compensatory damages, pre-judgment interest, post-judgment interest, attorneys' fees, costs and disbursements.

SECOND CAUSE OF ACTION
New York City Human Rights Law - Discrimination

220. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

221. Defendants unlawfully discriminated against Plaintiff in the terms and conditions of her employment based on her gender in violation of the NYCHRL.

222. Defendants subjected Plaintiff to unlawful sexual harassment, created and maintained a hostile work environment, and constructively discharged her in violation of the NYCHRL.

223. Defendants knew about Plaintiff's discrimination and harassment through her complaints to Steven Putkowski but failed to take appropriate action to correct it.

224. Defendants' unlawful discriminatory acts caused Plaintiff to suffer economic damages, including lost wages as well as emotional distress damages.

225. Defendants acted willfully, with malice and/or reckless indifference to Plaintiff's rights, entitling Plaintiff to an award of punitive damages.

226. Defendants are liable to Plaintiff for back pay, front pay, emotional distress and other compensatory damages, punitive damages, pre-judgment interest, post-judgment interest, attorneys' fees, costs and disbursements.

THIRD CAUSE OF ACTION
VGMVPA - Gender Based Violence

227. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

228. New York City Administrative Code §10-1103 provides a civil cause of action for victims of violence "committed because of gender or on the basis of gender, and due, at least in part, to an animus based upon the victim's gender."

229. New York City Administrative Code §10-1103 defines "crime of violence" as "an act or series of acts that would constitute a misdemeanor or felony against a person as defined in state or federal law . . . whether or not those acts have actually resulted in criminal charges, prosecution or conviction."

230. Walsh subjected Plaintiff to a crime of violence by forcibly touching Plaintiff without her consent.

231. Plaintiff committed a crime of violence on the basis of Plaintiff's gender, and such crime of violence suffered by Plaintiff was due, at least in part, to an animus based on gender, causing Plaintiff to suffer injury.

232. Walsh's unlawful conduct caused Plaintiff to suffer economic and emotional distress damages.

233. Walsh acted willfully, with malice and/or reckless indifference to Plaintiff's rights, entitling Plaintiff to an award of punitive damages.

234. As a direct and proximate result of the aforementioned conduct, Plaintiff has sustained and will continue to sustain irreparable injuries and damages for physical and mental anguish and humiliation because of Walsh's violation of the VGMVPA.

FOURTH CAUSE OF ACTION
NYLL - Unpaid Minimum Wages

235. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

236. The NYLL and its supporting regulations require that employers pay employees at least the minimum wage for each hour worked up to forty per workweek.

237. The minimum wage provisions of Article 19 of the NYLL and the supporting NYDOL Regulations apply to Defendants.

238. Defendants failed to pay Plaintiff the minimum wages to which she was entitled under the NYLL.

239. Defendants willfully violated the NYLL by knowingly and intentionally failing to pay Plaintiff's minimum hourly wages.

240. As a result of Defendants' violations of the NYLL, Plaintiff is entitled to recover from Defendants, jointly and severally, unpaid minimum wages, liquidated

damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION
FLSA - Unpaid Overtime Wages

241. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

242. Defendants were required to pay Plaintiff overtime compensation at rates that were no less than one and one-half (1½) times the greater of her regular rate of pay, or the full federal minimum wage rate, for all hours worked in excess of forty per workweek pursuant to the overtime wage provisions of the FLSA, 29 U.S.C. § 207, *et seq.*

243. Defendants failed to pay Plaintiff the overtime wages to which she was entitled under the FLSA.

244. Defendants willfully violated the FLSA by knowingly and intentionally failing to pay Plaintiff the proper overtime wage rate.

Due to Defendants' FLSA violations, Plaintiff is entitled to recover from Defendants, jointly and severally, unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION
NYLL - Unpaid Overtime Wage

245. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

246. Under New York State Department of Labor ("NYDOL") regulations, including 12 N.Y.C.R.R. §§ 137-1.3, 146-1.4, Defendants were required to pay

Plaintiff one and one-half (1 ½) times his regular rate of pay for all hours worked in excess of forty per workweek.

247. Defendants failed to pay Plaintiff the overtime wages to which she was entitled to under the NYLL and its supporting regulations.

248. Defendants willfully violated the NYLL and its supporting regulations by knowingly and intentionally failing to pay Plaintiff the proper overtime wage rate.

249. Due to Defendants' NYLL violations, Plaintiff is entitled to recover from Defendants, jointly and severally, unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

SEVENTH CAUSE OF ACTION
NYLL - Failure to Provide Wage Statements

250. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

251. The Wage Theft Prevention Act of the NYLL requires employers to provide employees with an accurate wage statement each time they are paid.

252. Throughout Plaintiff's employment with Defendants, Defendants paid Plaintiff without providing an accurate wage statement at the end of every pay period listing, *inter alia*, her regular and overtime rates of pay; the number of regular and overtime hours worked per pay period; her gross wages; deductions; allowances, if any, claimed as part of the minimum wage; or net wages, in violation of NYLL § 195(3).

253. Due to Defendants' NYLL violations, Plaintiff is entitled to recover, from Defendants, jointly and severally, liquidated damages, reasonable attorneys' fees, and costs of the action, pursuant to NYLL § 198(1-d).

EIGHTH CAUSE OF ACTION
NYLL - Failure to Provide Wage Notices

254. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

255. The Wage Theft Prevention Act of the NYLL requires employers to provide all employees with a written notice of wage rates at the time of hire and whenever there is a change to an employee's rate of pay.

256. Defendants failed to furnish Plaintiff at the time hiring and whenever her rate of pay changed, with a wage notice containing her rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage including tip, meal, or lodging allowances; the regular payday designated by the employer in accordance with NYLL § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business and a mailing address if different; the telephone number of the employer, and anything otherwise required by law; in violation of the NYLL § 195(1).

257. Due to Defendants' NYLL violations, Plaintiff is entitled to recover, from Defendants, jointly and severally, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to the NYLL § 198(1-b).

NINTH CAUSE OF ACTION
NYLL - Failure to Pay Timely Wages

258. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

259. Defendants failed to pay Plaintiff on a timely basis as required by NYLL § 191(1)(a), which resulted in Plaintiff being underpaid from the start of her employment through January 2023.

260. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from Defendants the amount of the underpayments caused by Defendants' untimely wage payments as liquidated damages, as well as reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

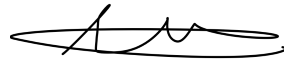
- a)** declare Defendants' conduct complained of herein to be in violation of Plaintiff's rights under the NYSHRL, the NYCHRL, the FLSA and the NYLL;
- b)** enjoin and permanently restrain these violations of the NYSHRL, NYCHRL, VGMVPA, FLSA, and NYLL and direct Defendants to take such affirmative action as is necessary to ensure that these unlawful employment actions and other unlawful actions are eliminated;
- c)** award monetary damages to Plaintiff to compensate her for the discrimination she experienced, including economic damages and damages for emotional distress;
- d)** award Plaintiff punitive damages pursuant to the NYCHRL and VGMVPA;
- e)** award Plaintiff damages for unpaid minimum and overtime wages;
- f)** award Plaintiff statutory damages as a result of Defendants' failure to furnish her with wage notices or accurate wage statements pursuant to the NYLL;

- g) award Plaintiff liquidated damages permitted by law pursuant to the FLSA and NYLL;
- h) award Plaintiff all other damages to which she is entitled;
- i) award Plaintiff reasonable attorneys' fees and costs in this action; and
- j) grant such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

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Attorneys for Plaintiff

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