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RAMONA ALCANTAR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

RAMONA ALCANTAR, individually and as
a private attorney general;

Plaintiff,

vs.

CHUNWEI, INC, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

20STCV32662

COMPLAINT FOR:

- (1) DISCRIMINATION BASED ON
DISABILITY IN VIOLATION OF
FEHA**
- (2) FAILURE TO ACCOMMODATE
IN VIOLATION OF FEHA**
- (3) FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS IN
VIOLATION OF FEHA**
- (4) RETALIATION IN VIOLATION
OF FEHA**
- (5) FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION**
- (6) RETALIATION (CALIFORNIA
LABOR CODE § 98.6 AND 1102.5)**
- (7) WRONGFUL TERMINATION**
- (8) VIOLATION OF CALIFORNIA
LABOR CODE §§ 510 AND 1198
(UNPAID OVERTIME)**
- (9) VIOLATION OF CALIFORNIA
LABOR CODE §§ 1194, 1197 AND
1197.1 (UNPAID MINIMUM
WAGES)**
- (10) VIOLATION OF CALIFORNIA
LABOR CODE § 226.7 (UNPAID
REST PERIOD PREMIUMS)**
- (11) VIOLATION OF CALIFORNIA
LABOR CODE §§ 226.7 AND**

512(a) (UNPAID MEAL PERIOD
PREMIUMS)

(12) VIOLATION OF CALIFORNIA
LABOR CODE § 226(a) (FAILURE
TO PROVIDE ACCURATE
WAGE STATEMENTS)

(13) VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202 AND
203 (FINAL WAGES NOT
TIMELY PAID)

(14) FAILURE TO PROVIDE
PERSONNEL RECORDS

(15) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.

(16) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ

DEMAND FOR TRIAL BY JURY

Plaintiff RAMONA ALCANTAR (“Plaintiff”), as an individual, and as a private attorney
general alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of
Los Angeles, State of California.

2. Defendant Chunwei, Inc. (“Chunwei”), and at all times mentioned herein was, a
corporation organized and existing under the laws of the State of California, doing business in the
County of Los Angeles, California.

3. Chunwei at all times herein mentioned was, (a) conducting business in the County of
Los Angeles, State of California; (b) the employer of Plaintiff consistent with California Labor
Code and Industrial Welfare Commission Wage Orders; and (c) Plaintiff’s employer as defined
under Government Code section 12926 subsection (c).

4. The acts alleged herein arose, in part, in Los Angeles County, within the State of California.

5. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged was proximately caused by its conduct. Doe Defendants 1 through 50 and Chunwei are herein collectively referred to as "Defendants."

6. Plaintiff timely filed a Complaint of Discrimination under the provisions of the California Fair Employment and Housing Act (“FEHA”) against Defendants with the California Department of Fair Employment & Housing, and received a Notice of Case Closure, including a Right-to-Sue Notice (hereinafter collectively referred to as “DFEH Complaint”). Plaintiff therefore exhausted her administrative remedies against the Defendants prior to filing this civil action.

GENERAL ALLEGATIONS

7. Plaintiff was employed by Defendants from approximately November 2018 through approximately July 2019 as a food packer in Los Angeles, California.

8. Plaintiff was scheduled to work Monday through Friday was required to work at least eight (8) hours per day and often work in excess of ten (10) hours per day.

9. Plaintiff's responsibilities included packaging food and general labor.

10. Plaintiff and similarly aggrieved current and former non-exempt employees (“Aggrieved Employees”) were required to regularly work more than five (5) hours without being

provided a meal period and to work more than ten (10) hours without being provided with a second meal period. In fact, Plaintiff was reprimanded for taking or attempting to take an uninterrupted 30-minute meal period. Further, Defendants forced Plaintiff and Aggrieved employees to take their lunch after six (6) hours of working.

11. Plaintiff and Aggrieved Employees never waived their rights to a meal period when they worked six (6) or more hours.

12. Plaintiff and Aggrieved Employees never received a second lunch period.

13. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour of pay at their regular rate of pay when a meal period was missed or interrupted.

14. Because of Defendants' policies and practices, Plaintiff was never able to take an uninterrupted ten (10) minute rest break and was reprimanded every time she asked for one or attempted to take one.

15. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour of pay at their regular rate of pay when a rest break was missed or interrupted.

16. Plaintiff requested that her supervisors provide her with a ten (10) minute uninterrupted rest break and/or a thirty (30) minute uninterrupted meal period, however such requests were denied.

17. Defendants employed a time rounding policy that was not neutral and designed to consistently round time in Defendants' favor, ensuring that Plaintiff, and the Aggrieved Employees were not paid for all time worked.

18. Furthermore, Defendants often requested Plaintiff and Aggrieved Employees to work prior to clocking-in or to keep working after they clocked-out for the day to finish their assigned work. In fact, Defendants required Plaintiff and Aggrieved Employees to don and doff a work coat and work boots prior to clocking in and after clocking out – both for the day and for purported meal periods. Defendants failed to pay Plaintiff and Aggrieved Employees for time worked off the clock prior to and at the end of their respective shifts.

19. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

1 20. Plaintiff and Aggrieved Employees did not receive payment of all wages, including
2 overtime and minimum wages and meal and rest period premiums, within any time permissible
3 under California Labor Code section 204.

4 21. Plaintiff and Aggrieved Employees were entitled to receive complete and accurate
5 wage statements in accordance with California law, but, in fact, they did not receive complete and
6 accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to
7 include the total number of hours worked by Plaintiff and Aggrieved Employees and the failure to
8 include premium pay for missed and/or interrupted rest and meal breaks.

9 22. Further, on or about July 2019, Plaintiff suffered a disability and was placed on a short
10 medical leave by her doctor. Plaintiff notified Defendants' supervisor of her disability and
11 requested that Defendants accommodate her medically necessary leave of absence.

12 23. In or about October 2019, Plaintiff returned from medical leave, with a note from her
13 doctor with modified work restrictions. However, in direct retaliation to Plaintiff's request and
14 taking of a medical leave, Defendants immediately terminated Plaintiff's employment.

15 24. Plaintiff never received the missing wages earned upon termination of her employment.

16 25. On or about May 21, 2020, Plaintiff's counsel sent a letter to Defendants, pursuant to
17 California Labor Code sections 226, 432, 1174 and 1198.5, requesting Plaintiff's personnel file
18 and other documents enumerated in aforementioned code sections. Defendants were required to
19 produce these documents within twenty-one (21) days and thirty (30) from the date of the request
20 respectively and failed to do so.

21 26. On or about June 12, 2020, Plaintiff notified Defendants via certified mail and filed an
22 online PAGA claim notice with the California Labor and Workforce Development Agency
23 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
24 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
25 section 2698 et seq.

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FIRST CAUSE OF ACTION

(Discrimination Based On Disability In Violation Of FEHA)

(Against All Defendants)

27. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

28. During Plaintiff's employment with Defendants, California Government Code sections 12940 - 12965, *et seq.*, were in full force and effect and binding upon Defendants. Said sections specifically required Defendants to refrain from discriminating against any employee on the basis of his or her disability or perceived disability.

29. Plaintiff is informed and believes and thereupon alleges that her disability or perceived disability was a substantial motivating factor contributing to Plaintiff's wrongful termination from her employment and failure to accommodate Plaintiff's medical condition.

30. To the extent that Plaintiff's disability was a substantial motivating factor contributing to Plaintiff's wrongful termination, said acts by Defendants constitute employment discrimination under the laws of the State of California.

31. Such discriminatory acts were a motivating factor in causing damages and injuries to Plaintiff as set forth in previous paragraphs.

32. As a direct result of the aforesaid acts of Defendants, Plaintiff lost, and will continue to lose, income and benefits, in an amount to be proven at trial.

33. As a direct result of the aforesaid acts of Defendants, Plaintiff has become mentally upset, distressed, depressed and aggravated and has suffered, and will continue to suffer, humiliation, embarrassment and mental and/or emotional distress. Thus, Plaintiff claims general damages for mental distress and aggravation in a sum according to proof at the time of trial. Plaintiff's wrongful termination is a substantial factor in causing damage and injury to Plaintiff as set forth above.

34. Because the acts taken toward Plaintiff were carried out by managerial employees of Defendants acting in a deliberate, cold, callous and intentional manner in order to injure and

1 damage Plaintiff, Plaintiff requests the assessment of punitive damages against Defendants in an
2 amount according to proof at the time of trial.

3 **SECOND CAUSE OF ACTION**

4 **(Failure To Accommodate In Violation of FEHA)**

5 **(Against All Defendants)**

6 35. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
7 forth above.

8 36. The public policy of the State of California set forth within Government Code section
9 12940 supports employment and utilization of persons with a medical disability or medical
10 condition. If it is within the ability of the employer to make a reasonable accommodation to such
11 medical condition, such reasonable accommodation must be made by the employer.

12 37. Plaintiff requested a reasonable accommodation from Defendant in order to lessen her
13 personal medical burden including taking a leave of absence from work. Plaintiff's request for
14 accommodation was rejected when Defendants wrongfully and retaliatorily terminated Plaintiff
15 shortly after Plaintiff returned from her medically necessary leave of absence.

16 38. As such, Defendants discriminated and retaliated against Plaintiff based on her medical
17 condition and need for medical accommodation. Defendants refused to provide Plaintiff with a
18 reasonable accommodation and this denial caused Plaintiff severe physical and emotional injury.

19 39. The conduct of Defendants in discriminating against and terminating Plaintiff was
20 oppressive, malicious and intentional done by managerial agents, and such conduct warrants the
21 imposition of punitive damages in a sum according to proof at the time of trial.

22 40. As a direct result of the aforesaid acts of Defendants, Plaintiff lost, and will continue
23 to lose, income and benefits, in an amount to be proven at trial.

24 41. As a direct result of the aforesaid acts of Defendants, Plaintiff has become mentally
25 upset, distressed, depressed, and aggravated and has suffered, and will continue to suffer,
26 humiliation, embarrassment and mental and/or emotional distress. Therefore, Plaintiff claims
27 general damages for mental distress and aggravation in a sum according to proof at the time of
28 trial. This discrimination and wrongful termination were substantial factors in causing damage

1 and injury to Plaintiff as set forth above.

2 42. Because the acts taken toward Plaintiff were carried out by managerial employees of
3 Defendants acting in a deliberate, cold, callous and intentional manner in order to injure and
4 damage Plaintiff, Plaintiff requests the assessment of punitive damages against Defendant in an
5 amount according to proof at the time of trial.

6 **THIRD CAUSE OF ACTION**

7 **(Failure To Engage In The Interactive Process in Violation of FEHA)**

8 **(Against All Defendants)**

9 43. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
10 forth above.

11 44. As a result of Plaintiff's serious medical issues, Defendants were required to timely
12 engage in good faith in the interactive process with Plaintiff to accommodate Plaintiff's serious
13 medical issues. Defendants failed to do so in violation of California Government Code section
14 12940(n). At all times relevant, Defendants were aware of this condition.

15 45. Rather than timely and in good faith engage in the interactive process with Plaintiff
16 based on her medical disability, Defendants discriminated and wrongfully terminated Plaintiff.

17 46. Defendants' refusal and failure to timely and in good faith engage in the interactive
18 process to provide Plaintiff with a reasonable accommodation caused Plaintiff severe physical and
19 emotional injury.

20 47. The conduct of Defendants in discriminating and terminating Plaintiff is oppressive,
21 malicious and intentionally done by managerial agents, and such conduct warrants the imposition
22 of punitive damages in a sum according to proof at the time of trial.

23 48. As a direct result of the aforesaid acts of Defendants, Plaintiff lost, and will continue
24 to lose, income and benefits, in an amount to be proven at trial.

25 49. As a direct result of the aforesaid acts of Defendants, Plaintiff has become mentally
26 upset, distressed and aggravated and has suffered, and will continue to suffer, humiliation,
27 embarrassment and mental and/or emotional distress. Thus, Plaintiff claims general damages for
28 mental distress and aggravation in a sum according to proof at the time of trial. This

1 discrimination, retaliation and wrongful termination was a substantial factor in causing damage
2 and injury to Plaintiff as set forth above.

3 50. Because the acts taken toward Plaintiff were carried out by managerial employees of
4 Defendants acting in a deliberate, cold, callous and intentional manner in order to injure and
5 damage Plaintiff, Plaintiff requests the assessment of punitive damages against Defendants in an
6 amount according to proof at the time of trial.

7 **FOURTH CAUSE OF ACTION**
8 **(Retaliation in Violation of FEHA)**
9 **(Against All Defendants)**

10 51. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
11 forth above.

12 52. Defendants, by and through their managing agents and supervisors, discriminated and
13 retaliated against Plaintiff for engaging in protected activity including requesting an
14 accommodation based on Plaintiff's disability.

15 53. Such conduct violates California Government Code section 12940, *et seq.*, which
16 prohibits employers from retaliating against employees for engaging in protected activity.

17 54. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and
18 continues to sustain severe emotional distress, economic damages in earnings and other
19 employment benefits in an amount to be established according to proof.

20 55. Because the acts taken toward Plaintiff were carried out by managerial employees of
21 Defendant acting in a deliberate, cold, callous and intentional manner in order to injure and damage
22 Plaintiff, Plaintiff requests the assessment of punitive damages against Defendants in an amount
23 according to proof at the time of trial.

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FIFTH CAUSE OF ACTION

(Failure To Prevent Discrimination and Retaliation)

(Against All Defendants)

56. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

57. The FEHA, codified at California Government Code sections 12900, *et seq.*, provides in pertinent part that: “[It is an unlawful employment practice for] an employer ... to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.” (Cal. Gov. Code § 12940(k).)

58. At all relevant times herein and in violation of California Government Code section 12940(k), Defendants failed to take any reasonable steps to prevent discrimination and retaliation that Plaintiff suffered at the hands of Defendants based on Plaintiff’s medical issues.

59. In addition, Defendants failed to take reasonable steps to prevent discrimination and retaliation by their managing agents, including, but not limited to, discriminating against Plaintiff because of her disability.

60. In failing to take reasonable steps to prevent Defendants’ actions, as described above, Defendants violated California Government Code section 12940(k).

61. As a direct, foreseeable, and proximate result of Defendants’ failure to take reasonable steps to prevent Defendants’ unlawful conduct, Plaintiff has suffered and will continue to suffer extreme and severe mental anguish and emotional distress. Plaintiff will incur medical expenses for treatment by health professionals, and for other incidental medical expenses; and Plaintiff has suffered and continues to suffer loss of earnings and other employment benefits. Plaintiff is therefore entitled to general and compensatory damages in amounts to be proven at trial.

62. Defendants’ failure to take reasonable steps to prevent the discrimination that Plaintiff suffered at the hands of Defendants was done maliciously, willfully and oppressively, and with the intent to harm Plaintiff. Defendants engaged in despicable conduct and acted with a conscious disregard for Plaintiff’s rights and with an intent to injure them, such as to constitute oppression and malice under California Code of Civil Procedure section 3294. Plaintiff is therefore entitled

1 to punitive and exemplary damages in an amount sufficient to punish and make an example of
2 Defendants.

3 **SIXTH CAUSE OF ACTION**

4 **(Retaliation)**

5 **(Against All Defendants)**

6 63. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
7 forth above.

8 64. Defendants, by and through their managing agents and supervisors, retaliated against
9 Plaintiff for engaging in protected activity of disclosing, or potentially disclosing information, to
10 a government or law enforcement agency, to a person with authority over the employee or another
11 employee who has the authority to investigate, discover, or correct the violation or noncompliance.

12 65. Such conduct violates California Labor Code section 98.6(a) which provides that “[n]o
13 person shall discharge an employee or in any manner discriminate against any employee or
14 applicant for employment because the employee or applicant engaged in any conduct delineated
15 in this chapter.”

16 66. Such conduct also violates Labor Code section 1102.5, subd. (b) which provides that
17 “[a]n employer . . . shall not retaliate against an employee for disclosing information , or because
18 the employer believes that the employee disclosed or may disclose information . . . to a person
19 with authority over the employee or another employee who has the authority to investigate,
20 discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to
21 believe that the information discloses a violation of state or federal statute, or a violation of or
22 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
23 the information is part of the employee’s job duties.”

24 67. Pursuant to California Labor Code section 1105, Plaintiff is entitled to recover damages
25 from Defendants for injury suffered as a result of the foregoing retaliation.

26 68. During her employment, Plaintiff complained to Defendants that she was forced to
27 work without receiving her uninterrupted thirty (30) minute meal periods and uninterrupted ten
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(10) minute rest breaks and accordingly was not receiving her proper compensation. Plaintiff's complaints are protected from retaliation by statute, including California's Labor Code.

69. In violation of her statutory rights, and, in part, on the basis of Plaintiff's aforementioned legally protected rights, Defendants, and each of them, retaliated against Plaintiff by terminating Plaintiff's employment.

70. Plaintiff alleges that Defendants, and each of them, were motivated to retaliate against Plaintiff, in part, for her protected actions.

71. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, substantial losses in earnings, other employment benefits, and future earning capacity, and other pecuniary loss not presently ascertained, in an amount according to proof at the time of trial.

72. As a further direct and legal result of the acts and conducts of Defendants, and each of them, Plaintiff has been caused to and did suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, mental and physical pain, discomfort and anxiety, all to her damage in an amount according to proof at the time of trial. Plaintiff does not know at this time the exact duration or permanence of said injuries.

73. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in willful, malicious, intentional, oppressive, fraudulent and despicable conduct.

74. Defendants, and each of them, also acted in willful and conscious disregard of the rights, welfare and safety of Plaintiff thereby justifying the award of punitive and exemplary damages in an amount according to proof at the time of trial.

75. Plaintiff is also entitled to recover reasonable attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

(Wrongful Termination)

(Against All Defendants)

76. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

1 77. Defendants terminated Plaintiff's employment based on its discrimination against
2 Plaintiff based on her physical disability, and in retaliation for engaging in protected activity in
3 violation of fundamental, substantial and well-grounded public policies which are set forth in the
4 California Constitution and the FEHA. California Government Code section 12940, subsection (a)
5 specifically states "It is . . . unlawful . . . (f)or an employer, because of the race, religious creed,
6 color, national origin, ancestry, physical disability, mental disability, medical condition . . . to
7 discharge the person from employment"

8 78. The facts set forth herein above establish that all Defendants are guilty of malice and
9 oppression, warranting an assessment of exemplary damages in an amount appropriate to punish
10 said Defendants and to deter others from engaging in similar misconduct.

11 79. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has
12 sustained and continues to sustain severe emotional pain and suffering, including but not limited
13 to anguish, humiliation, anger, tension, anxiety, depression, and lowered self-esteem, according to
14 proof at trial.

15 80. As a further direct and proximate result of the unlawful conduct, Plaintiff has suffered
16 and continues to suffer loss of income, loss of earning capacity, loss of job opportunity, and other
17 economic damages, according to proof at trial.

18 **EIGHTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 510 and 1198)**

20 **(Against All Defendants)**

21 81. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
22 forth above.

23 82. California Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable wage order. California Labor Code section
25 1198 requires that "...the standard conditions of labor fixed by the commission shall be the
26 ...standard conditions of labor for employees. The employment of any employee ...under
27 conditions of labor prohibited by the order is unlawful."

28 83. California Labor Code section 1198 and the applicable Industrial Welfare Commission

1 (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at
2 a rate of pay either time and one-half or two-times that person’s regular rate of pay, depending on
3 the number of hours worked by the person on a daily or weekly basis.

4 84. Specifically, the applicable IWC Wage Order provides that Defendants were required
5 to pay Plaintiff, when working more than eight (8) hours in a day or more than forty (40) hours in
6 a workweek, at the rate of time-and one-half for all hours worked in excess of eight (8) hours in a
7 day or more than forty (40) hours in a workweek.

8 85. The applicable IWC Wage Order further provides that Defendants were required to pay
9 Plaintiff, when working more than twelve (12) hours in a day, overtime compensation at a rate of
10 two (2) times their regular rate of pay.

11 86. California Labor Code section 510 codifies the right to overtime compensation at one-
12 and one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
13 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
14 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
15 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day.

16 87. During the relevant time period, Plaintiff worked in excess of eight (8) hours in a day,
17 in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week. Although
18 Plaintiff regularly worked off-the-clock that should have been compensated at an overtime rate.

19 88. Moreover, Defendants failed to pay the correct overtime rate. Defendants' failure to
20 pay Plaintiff this overtime compensation, as required by California law, violates the provisions of
21 California Labor Code sections 510 and 1198, and is therefore unlawful.

22 89. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover unpaid
23 overtime compensation, as well as interest, costs, and attorneys’ fees.

24 **NINTH CAUSE OF ACTION**

25 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

26 **(Against All Defendants)**

27 90. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
28 forth above.

91. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

92. As set forth above, Defendants regularly required Plaintiff to work off-the-clock during meal periods and before and after her scheduled shifts. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not even pay minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1194, 1197 and 1197.1.

93. Defendants' failure to pay Plaintiff the minimum wage as required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff is entitled to recover the unpaid balance of her minimum wage compensation as well as interest, costs, and attorney's fees.

94. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

TENTH CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against All Defendants)

95. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

96. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's employment by Defendants.

97. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

98. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours

1 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
2 unless the total daily work time is less than three and one-half (3 1/2) hours.”

3 99. During the relevant time period, Defendants required Plaintiff to work four (4) or more
4 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period
5 worked. Defendants’ failure to properly staff and coordinate Plaintiff’s schedule forced Plaintiff
6 to work through all or part of her rest breaks.

7 100. Defendants had no policy and/or practice to pay premiums for missed rest breaks and
8 thus failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code
9 section 226.7.

10 101. Defendants’ conduct violates the applicable IWC Wage Orders and California Labor
11 Code section 226.7.

12 102. Pursuant to the applicable IWC Wage Order and California Labor Code section
13 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at
14 Plaintiff’s regular hourly rate of compensation for each work day that the rest period was not
15 provided.

16 **ELEVENTH CAUSE OF ACTION**

17 **(Violation of California Labor Code §§ 226.7 and 512(a))**

18 **(Against All Defendants)**

19 103. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
20 forth above.

21 104. At all relevant times herein set forth, the applicable IWC Wage Order and California
22 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff’s employment by Defendants.

23 105. At all relevant times herein set forth, California Labor Code section 226.7 provides that
24 no employer shall require an employee to work during any meal period mandated by the applicable
25 IWC Wage Order.

26 106. At all relevant times herein set forth, California Labor Code section 512(a) provides
27 that an employer may not require, cause, or permit an employee to work for a period of more than
28 five (5) hours per day without providing the employee with a meal period of not less than thirty

(30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

107. During the relevant time period, Defendants willfully required Plaintiff to work during meal periods and failed to compensate Plaintiff for work performed during meal periods. Moreover, Defendants did not schedule or take any action to relieve Plaintiff of her duties for second meal periods when she worked shifts over 10 hours or more. At the same time, Defendants had a practice and/or policy of not paying all premiums due for meal break violations. As a result, Defendants failed to pay Plaintiff all meal period premiums due pursuant to California Labor Code section 226.7.

108. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

109. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's regular hourly rate of compensation for each work day that the meal period was not provided.

TWELFTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against All Defendants)

110. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

111. Labor Code § 226(a) requires employers, including Defendants, to furnish employees accurate itemized wage statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions

made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

112. Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff with accurate and complete wage statements regarding, among other things, Plaintiff's correct regular rates of pay, rates of overtime pay, corresponding hours worked at each rate of pay, total gross wages earned, proper entity name, and total net wages earned, in violation of Labor Code § 226.

113. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failures lead to, among other things, the non-payment of all Plaintiff's wages, and deprived Plaintiff of the information necessary to, among other things, identify the discrepancies in Defendants' reported data, and to know, understand and question the rate of pay and hours Defendants used to calculate their wages.

114. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code §§ 226 and 226.3.

THIRTEENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201, 202, 203)

(Against All Defendants)

115. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

116. At all times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (12) hours previous notice of his or her intention to

quit, in which case the employee is entitled to his or her wages at the time of quitting.

117. During the relevant time period, Defendants willfully failed to pay Plaintiff earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

118. Defendants' failure to pay Plaintiff her wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

119. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

120. Plaintiff is entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

FOURTEENTH CAUSE OF ACTION

(Failure to Provide Personnel Records)

(Against All Defendants)

121. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

122. Pursuant to California Labor Code section 1198.5(b) "the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer, agree in to a date beyond the 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request."

123. Further, pursuant to Subsection (k) of Labor Code section 1198.5 "[i]f an employer

1 fails to permit a current or former employee, or his or her representative, to inspect or copy
2 personnel records within the times specified in this section, or times agreed to by mutual agreement
3 as provided in this section, the current or former employee or the Labor Commissioner may recover
4 a penalty of seven hundred fifty dollars (\$750) from the employer.”

5 124. Defendants intentionally and willfully failed to provide Plaintiff with a copy of records
6 pursuant to California Labor Code section 1198.5 within 30 calendar days from the date of the
7 request.

8 125. Pursuant to California Labor Code section 1198.5, Plaintiff is entitled to damages in
9 the amount of \$750.00 plus attorneys’ fees and costs.

10 **FIFTEENTH CAUSE OF ACTION**

11 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

12 **(Against All Defendants)**

13 126. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
14 forth above.

15 127. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
16 competition, which includes any “*unlawful, unfair or fraudulent business act or practice....*”

17 128. Defendants have engaged and continue to engage in unfair and/or unlawful business
18 practices in California in violation of California Business and Professions Code § 17200, *et seq.*,
19 by engaging in the conduct alleged herein, including, but not limited to, (1) failing to pay Plaintiff
20 all overtime and minimum wages owed; (2) failing to pay Plaintiff an additional hour of premium
21 pay for meal period violations; (3) failing to pay Plaintiff an additional hour of premium pay for
22 rest period violations; (4) willfully failing to timely pay Plaintiff all wages during and at the end
23 of employment; (5) knowingly failing to furnish Plaintiff with accurate and complete wage
24 statements; and (6) willfully failing to reimburse Plaintiff for incurred business expenses in the
25 discharge of her duties for Defendants and in obedience to Defendants’ instructions, which
26 includes the use of her personal cell phone, construction related tool, and personal vehicle.

27 129. Defendants’ utilization of these unfair and/or unlawful business practice deprived
28 Plaintiff of compensation to which Plaintiff was legally entitled, constitutes unfair and/or

1 unlawful competition, and provides an unfair advantage over Defendants' competitors who have
2 been and/or are currently employing workers and attempting to do so in honest compliance with
3 applicable wage and hour laws.

4 130. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
5 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore
6 any and all monies withheld, acquired and/or converted by the Defendants pursuant to Business
7 and Professions Code §§ 17203, 17208.

8 131. The acts complained of herein occurred within the last four (4) years immediately
9 preceding the filing of the Complaint in this action.

10 132. Plaintiff retained the services of counsel to file this court action to protect her interests,
11 to obtain restitution, and to enforce important rights affecting the public interest. Plaintiff thereby
12 incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under
13 the Code of Civil Procedure § 1021.5.

14 **SIXTEENTH CAUSE OF ACTION**
15 **(Violation of Labor Code § 2698, et seq.)**
16 **(Against All Defendants)**

17 133. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
18 forth above.

19 134. Plaintiff brings this claim as an individual employee and in her capacity as a private
20 attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code
21 section 2698, et seq. ("PAGA").

22 135. On or about June 12, 2020, Plaintiff notified Defendants via certified mail and filed an
23 online PAGA claim notice with the California Labor and Workforce Development Agency
24 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
25 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
26 section 2698 et seq. The LWDA assigned Plaintiff's case number LWDA-CM-793247-20.
27 Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with
28 Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff's

1 notice to the LWDA, and thus Plaintiff has exhausted her administrative remedies, thereby
2 allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section
3 2699.

4 136. During all relevant times for this action, Defendants regularly required Plaintiff and
5 Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week.
6 However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages
7 and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees were
8 paid for just eight (8) hours in a day or forty (40) hours in a week.

9 137. During all relevant times for this action, Defendants failed to provide uninterrupted
10 meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours
11 per day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved
12 Employees to stay on duty and never provided an uninterrupted first or second meal break.

13 138. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to take
14 uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction thereof.

15 139. Although Defendants failed to provide uninterrupted meal and rest breaks as required
16 by California law, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for
17 those days in which they were not permitted to take a meal and/or rest break which was duty free.

18 140. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with
19 properly itemized wage statements including because Defendants failed to include the actual hours
20 worked, the correct rate of pay and the meal and rest period premiums owed.

21 141. Further, during Plaintiff and Aggrieved Employees' employment, Defendants were
22 required to pay all wages earned for labor in excess of the normal work period not later than the
23 payday for the next regular payroll period. However, Defendants failed to pay Plaintiff and
24 Aggrieved Employees all wages due to them within the time period specified by California Labor
25 Code section 204, including premiums owed.

26 142. Plaintiff, as an "Aggrieved Employee" within the meaning of Labor Code § 2698 *et*
27 *seq.*, acting on behalf of herself and other similarly Aggrieved Employees, brings this
28 representative action against Defendants to recover the civil penalties due to Plaintiff, other

1 similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor
2 Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200.00
3 for each subsequent violation per employee per pay period for the following Labor Code
4 violations:

- 5 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
6 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 7 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
8 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et*
9 *seq.*;
- 10 c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
11 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and
12 512;
- 13 d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
14 of premium pay for rest period violations in violation of Labor Code §§ 226.7 and
15 512;
- 16 e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
17 at end of employment in violation of Labor Code § 203;
- 18 f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
19 owed during employment;
- 20 g. Failing to furnish Plaintiff and other similarly Aggrieved Employees with
21 complete, accurate, itemized wage statements in violation of Labor Code § 226;
22 and for
- 23 h. Failing to maintain accurate records relating to Plaintiff and other similarly
24 Aggrieved Employees work periods, meal periods, total daily hours, hours per pay
25 period, and applicable pay rates;

26 143. Plaintiff was compelled to retain the services of counsel to file this court action to
27 protect her interests and other similarly aggrieved employees, and to assess and collect the civil
28 penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they

are entitled to recover under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For general and compensatory damages including but not limited to, lost wages and benefits and damages for emotional distress normally associated retaliation, wrongful termination, humiliation, and loss of reputation;

2. For punitive and exemplary damages according to proof;

3. For statutory attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5; Government Code section 12965; and Labor Code sections 226, 1194, 1198, 1198.5, 2668, *et seq.*, and as allowed by law and according to proof;

4. For statutory civil penalties pursuant to Labor Code section 2668, *et seq.*, and as allowed by law and according to proof;

5. For injunctive relief pursuant to California Government Code Section 12965(b)(3) including without limitation, a requirement that Defendants conduct training for all employees, supervisors, and management on the requirements of the FEHA, the rights and remedies of those who allege a violation of the FEHA, and the employer's internal grievance procedures;

6. For unpaid wages and overtime;

7. For unpaid wage premiums for each day Plaintiff did not receive a meal and/or rest period;

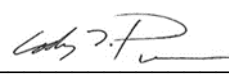
8. For costs of suit incurred herein;

9. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed; and

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

DATED: August 26, 2020

PAYNE NGUYEN, LLP

By: 

Cody Payne
Kim Nguyen
Attorneys for Plaintiff
RAMONA ALCANTAR

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DATED: August 26, 2020

By: 
Cody Payne
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Attorneys for Plaintiff
RAMONA ALCANTAR