

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 **Shimoda Law Corp.**
4 9401 East Stockton Boulevard, Suite 120
5 Elk Grove, CA 95624
6 Telephone: (916) 525-0716
7 Facsimile: (916) 760-3733

8 Attorneys for Plaintiff BARBARA LEAR

ELECTRONICALLY FILED
Superior Court of California
County of Alameda

03/15/2022

Chad Finke, Executive Officer / Clerk of the Court

By: X. Bowie Deputy

9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**

11 **BARBARA LEAR,**

12 **Plaintiff,**

13 **vs.**

14 **RAXIUM, INC., a Delaware Corporation; and**
15 **DOES 1 to 100, inclusive,**

16 **Defendants.**

Case No. 21CV004358

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES:**

1. Private Attorneys General Act

17
18
19
20
21
22 Plaintiff BARBARA LEAR ("Plaintiff"), on behalf of herself and all other similarly situated
23 employees, hereby files this Complaint against Defendants RAXIUM, INC., a Delaware
24 Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants").
25 On information and belief, Plaintiff allege the following:

26 **INTRODUCTION**

27 1. This is a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff based on
28 the following violations of the California Labor Code: (1) Failure to Pay Overtime Wages, (2) Failure to

PLAINTIFF'S FAC

1 Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure
2 to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage
3 Statements, (6) Failure to Pay Final Wages, (7) Provisions Regulating Hours and Days of Work in Any
4 Industrial Welfare Commission Order, (8) Failure to Maintain Accurate Records, (9) Failure to Provide
5 Paid Sick Leave.

6 JURISDICTION AND VENUE

7 2. The Alameda County Superior Court has jurisdiction in this matter pursuant to California
8 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code and
9 Wage Order No. 4.

10 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
11 Defendants reside in Alameda County. In addition, some of the wrongful acts and violations of law
12 asserted herein occurred within Alameda County, and Defendants' obligation to pay wages arose in
13 Alameda County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
14 (1984).

15 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
16 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
17 of herself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
18 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
19 ("LWDA") on approximately November 24, 2021. Plaintiff provided facts and legal bases for her
20 claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act
21 cause of action. Plaintiff also submitted the \$75.00 filing fee. The November 24, 2021, notice was also
22 sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any
23 response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative
24 remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf
25 of herself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code §
26 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19
27 (2005). Aggrieved Employees include, but is not limited to, the following: all non-exempt employees
28 who have or continue to work for Defendants in California from November 24, 2020, to present.

1 **PARTIES**

2 5. BARBARA LEAR is an individual over the age of eighteen (18) and is a resident of
3 the State of California.

4 6. On information and belief, Plaintiff alleges, RAXIUM, INC., is now and/or at all
5 times mentioned in this Complaint was a Delaware Corporation and the owner and operator of an
6 industry, business and/or facility doing business in the State of California.

7 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
8 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
9 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
10 names and capacities of these DOE Defendants when they are ascertained.

11 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
12 other Defendants and was acting within the course and scope of such agency or employment. The
13 Defendants are jointly and severally liable to Plaintiff.

14 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
15 were members of and/or engaged in a joint employment, joint venture, partnership and common
16 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
17 joint venture, partnership and common enterprise.

18 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
19 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

20 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
21 wrongs, complaints, injuries and/or damages alleged in this Complaint.

22 **GENERAL ALLEGATIONS**

23 12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 11 as though fully
24 set forth herein.

25 13. Defendants operate a business that designs and fabricates visual and light display
26 products/technology. Plaintiff worked for Defendants as a Process Technician from approximately May
27 6, 2019, through September 19, 2021. Plaintiff was a non-exempt, hourly employee. Other Aggrieved
28 Employees also worked for Defendants as non-exempt, hourly employees.

1 14. Plaintiff and Aggrieved Employees regularly worked twelve (12) hours in a shift, or
2 more. Specifically, Plaintiff and Aggrieved Employees either worked from 7:00 a.m. to 7:00 p.m., or
3 7:00 p.m. to 7:00 a.m., on a rotating four (4) day a week schedule. Additionally, because Plaintiff and
4 Aggrieved Employees work with potentially harmful chemicals, before clocking and beginning work,
5 Defendants required Plaintiff and Aggrieved Employees to dress in their personal protective equipment
6 ("PPE") in employee locker rooms. Plaintiff and Aggrieved Employee were required to take this PPE
7 off in the employee lockers rooms after the end of their shift. Plaintiff and Aggrieved Employees would
8 also have hand off meetings with employees working the prior shift during this time. Only after putting
9 on this PPE and having the handoff meeting off the clock did employees clock in and go to their
10 workstations. This was a daily occurrence and would take approximately five (5) to ten (10) minutes
11 each time. The shift transition would also include reviewing the "pass down" notes from the prior shift,
12 which would detail what work was performed and what work still needed to be performed. This also
13 occurred off the clock.

14 15. In addition to their base hourly rate and applicable overtime, Plaintiff and Aggrieved
15 Employees were also paid non-discretionary remuneration, such as shift differentials for working the
16 night shift. Defendants failed to incorporate the value of this non-discretionary remuneration into
17 Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages,
18 meal and rest period premiums, and paid sick time.

19 16. Further, Defendants did not authorize and permit Plaintiff and Aggrieved Employees to
20 take all meal and rest periods owed to them. Plaintiff and Aggrieved Employees did not receive all
21 uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10) minute rest periods every
22 four (4) hours or major fraction thereof. In fact, Defendants specifically directed Plaintiff and
23 Aggrieved Employees to clock out before their fifth hour of work for meal periods (based on a template
24 timecard provided by them) regardless of whether they were able to take a meal period at that time or
25 not. Sometimes Plaintiff and Aggrieved Employees were able to take a meal period later in the day and
26 other times meal periods were missed entirely or did not last a full thirty (30) minutes. Additionally,
27 Plaintiff and Aggrieved Employees worked over ten (10) or twelve (12) hours in a day without being
28

1 authorized and permitted to take a second meal period or third rest period. Defendants did not pay
2 Plaintiff and Aggrieved Employees missed meal or rest period premiums.

3 17. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all minimum
4 wages, overtime wages, paid sick time, and meal and rest period premiums owed, the wage statements
5 Defendants issued were inaccurate. The paystubs Defendants issued did not itemize accurate regular
6 and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and
7 net wages earned. As a result, Plaintiff and Aggrieved Employees were not able to determine the total
8 wages owed to them from their paystubs alone.

9 18. As of this date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees
10 all minimum wages, overtime wages, paid sick time, and meal and rest period premiums owed to them..

11 **CAUSES OF ACTION**
12 **FIRST CAUSE OF ACTION**
13 **PRIVATE ATTORNEYS GENERAL ACT**
(As to all Defendants)

14 19. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 18 as though fully
15 set forth herein.

16 20. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
17 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
18 current and former employees:

- 19 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime
20 Wages)
- 21 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay
22 Minimum Wages)
- 23 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B)
24 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 25 • Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest
26 Periods or Pay Premiums in Lieu Thereof)
- 27 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 28 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

21. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

22. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

23. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and

//

//

//

//

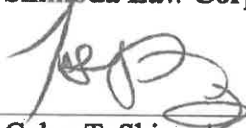
//

d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

Dated: February 7, 2022

Shimoda Law Corp.

By: _____


Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiff

1 *Lear v. Raxium, Inc.*
2 *Alameda County Superior Court of California 21CV004358*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On March 15, 2022, I served the following documents on the party below:

- 9 • First Amended Complaint for Civil Penalties

10 ULRICO S. ROSALES (SBN 139809) 11 NEDIM NOVAKOVIC (SBN 313574) 12 WILSON SONSINI GOODRICH & ROSATI 13 Professional Corporation 14 650 Page Mill Road 15 Palo Alto, CA 94304-1050 16 Telephone: (650) 493-9300 17 Facsimile: (650) 565-5100 18 Email: rosales@wsgr.com 19 jreyes@wsgr.com 20 nnovakovic@wsgr.com	
--	--

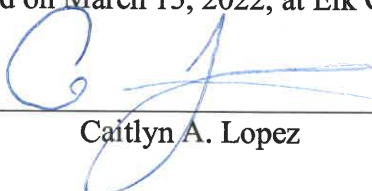
21 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set forth
25 above, I served the aforementioned document(s) on the parties in said action
26 by placing a true copy thereof enclosed in a sealed envelope with postage
27 thereon fully prepaid, for collection and mailing on this date, following
28 ordinary business practices, at Elk Grove, California, addressed as set forth
above.

29 [] [By Personal Service] By personally delivering a true copy thereof to the
30 office of the addressee above.

31 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
32 above. No error was reported by the e-mail service that I used.

33 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
34 personally delivered via the following overnight courier service: UPS.

35 I declare under penalty of perjury under the laws of the State of California that the foregoing is
36 true and correct, and that this declaration was executed on March 15, 2022, at Elk Grove, California.

37 
38 Caitlyn A. Lopez