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9 Attorneys for Plaintiff
10 QING YAO

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 QING YAO, an individual,
14
15 Plaintiff,

16 v.

17 ANNAVEE INC. dba CHANG'S GARDEN,)
18 a corporation, ANNAVEE WINGYI WONG)
19 KIM, an individual, and DOES 1 through 10,)
20 inclusive,)
21 Defendants.)
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23
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28

) **CASE NO. C24NNCV00369**

)

) *[Assigned for All Purposes to the Honorable*
) *Hon. Ralph C. Hofer, Department D]*

)

) **THIRD AMENDED COMPLAINT FOR:**

)

1. **UNLAWFUL FAILURE TO PAY OVERTIME COMPENSATION**
2. **FAILURE TO PROVIDE REST BREAKS**
3. **FAILURE TO PROVIDE MEAL BREAKS**
4. **INACCURATE WAGE STATEMENTS**
5. **UNFAIR BUSINESS PRACTICES**
6. **CONVERSION**
7. **SPLIT SHIFT**
8. **AGE DISCRIMINATION**
9. **CONSTRUCTIVE WRONGFUL TERMINATION AND RETALIATION**
10. **PRIVATE ATTORNEY'S GENERAL ACT CLAIMS**
11. **VIOLATIONS UNDER LABOR CODE SECTION 558.1**
12. **VIOLATION OF LABOR CODE SECTION 1198.5**

COMES NOW Plaintiff QING YAO, upon knowledge as herself and her own actions, and upon information and belief as to all other matters, alleges as follows:

PARTIES

1. Plaintiff QING YAO (“Plaintiff” and/or “YAO”) is an individual residing in Arcadia, California.

2. Plaintiff is informed and believes, and on that basis alleges that Defendant Annavee Inc. (“CHANG’S GARDEN”) is and at all times mentioned in this complaint, a California corporation, and doing business as CHANG’S GARDEN located at Arcadia in the State of California.

3. Plaintiff is informed and believes, and on that basis alleges that Defendant Annavee Wingyi Wong Kim (“KIM”) is and at all times mentioned in this complaint, hired Plaintiff in 2006 as a server in CHANG’S GARDEN.

4. The true names and capacities of the Defendants named herein as DOES 1 to 10, inclusive, whether individual, corporate, or otherwise, are unknown to Plaintiff, and therefore, Plaintiff sues such Defendants by fictitious names as provided by Cal. Cod. Civ. Proc. § 474. Plaintiff will seek leave to amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitious DOE Defendants are residents of the State of California and/or do business in the State of California and participated in the acts and omissions alleged below.

5. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants named herein as DOES 1 through 10 was the agent, servant, employee, and representative of one or more of the other Defendants, and in engaging in the acts or omissions alleged below, was acting within the scope of its authority as such agent, servant, employee, and representative with the permission and consent of the above individuals and/or entities.

6. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants named herein as DOES 1 through 10 was the agent, servant, employee, and representative of one or more of the other Defendants, and in engaging in the acts or omissions alleged below, was acting within the scope of its authority as such agent, servant, employee, and

1 representative with the permission, consent, and ratification of the above individuals and/or entities.
2 Plaintiff is informed and believes and thereon alleges that there exists, and at all times mentioned
3 herein existed, a unity of interest and ownership of and between Defendants and DOES 1 through
4 10 inclusive, such that any individuality and separateness of each Defendant has ceased.

5 7. The term “Defendants” in this Complaint is intended to refer to Defendant KIM,
6 Defendant CHANG’S GARDEN, and to all DOE Defendants in this action.

7 JURISDICTION

8 8. This is an unlimited civil action in that the amount requested exceeds the sum of
9 \$35,000.00.

10 9. Venue in this Court is proper pursuant to California Code of Civil Procedure § 395
11 because: (a) at least one of the Defendants now reside and/or is doing business in the Court’s
12 jurisdictional area of Los Angeles County, California; and/or (b) the unlawful conduct complained
13 of herein and resulting injury to Plaintiff occurred within the Court’s jurisdictional area of Los
14 Angeles County, California.

15 GENERAL ALLEGATIONS

16 10. Plaintiff has duly and promptly exhausted her administrative remedies for civil
17 penalties and other costs in accordance with the Labor Code Private Attorneys General Act of 2004
18 (“PAGA”). On November 29, 2023, the Labor and Workforce Development Agency (“LWDA”)
19 acknowledged receipt of Plaintiff’s PAGA Letter against Defendants. However, as of today,
20 Defendants have failed to respond. A true and correct copy of the email correspondence from
21 LWDA is attached hereto and incorporated herein as **Exhibit A**.

22 11. Plaintiff has likewise timely and properly exhausted her administrative remedies for
23 discrimination and retaliation under the California Fair Employment and Housing Act, California
24 Government Code § 12900 et seq. On February 29, 2024, the California Department of Fair
25 Employment and Housing (“DFEH”) issued the Notice to Complainant of Right-to-Sue. A true
26 and correct copy of the said Notice to Right-to-Sue and DEFH Form is attached hereto and
27 incorporated herein as **Exhibit B**.

28 12. Plaintiff devoted nearly 15 years of dedicated service as a server at CHANG’S

1 GARDEN, a bustling establishment well-known for its cuisine.

2 13. As Plaintiff continued in her role, management began favoring younger servers,
3 cutting her hours despite her consistent performance. This discriminatory behavior, especially
4 noticeable when Plaintiff was over 40, significantly impacted her livelihood.

5 14. When Plaintiff raised concerns, management responded with severe retaliation,
6 further reducing her hours, and effectively pushing her out of the job.

7 15. Throughout Plaintiff's tenure, she faced numerous labor violations, including denied
8 breaks, unpaid overtime, mishandled tip distribution, and lack of transparency in tip logs.

9 16. Defendants' failure to provide accurate wage statements compounded Plaintiff's
10 challenges, revealing a pattern of discrimination, retaliation, and disregard for fair labor practices.

11 17. Plaintiff asserts that KIM should be held accountable for specific labor violations
12 given her roles in ownership, operations, and/or management within CHANG'S GARDEN. In her
13 capacity as an owner, director, officer, or managing agent of CHANG'S GARDEN, KIM is
14 implicated in breaches of minimum wage regulations, hours of work provisions set by the Industrial
15 Welfare Commission, and violations of Labor Code Sections § 510, § 226, § 226.7, § 512, § 558,
16 § 1194 and § 1198. Consequently, Defendants are liable for the wrongful withholding and
17 conversion of Plaintiff's gratuities.

18 **FIRST CAUSE OF ACTION**

19 **Unlawful Failure to Pay the Legal Overtime Compensation in accordance with**

20 **§ 1194, § 510 and § 1198 of the California Labor Code**

21 **(Against All DEFENDANTS)**

22 18. Plaintiff realleges and incorporates by reference each paragraph above as though
23 fully set forth herein.

24 19. Plaintiff's employment was governed by California law.

25 20. Plaintiff worked as a server at CHANG'S GARDEN Restaurant. Defendants paid
26 Plaintiff below the legal minimum wage for some or all hours worked, violating California Labor
27 Code § 1194(a), which entitles employees to recover the unpaid balance, along with interest,
28 attorney's fees, and costs of suit.

1 21. California Labor Code sections § 510 and § 1198 require employers to pay
2 employees one-and-a-half times the regular rate of pay for hours worked beyond eight in a day or
3 forty in a workweek.

4 22. Plaintiff often worked more than eight hours per day and occasionally had ten-hour
5 shifts. Despite this, she didn't receive correct overtime pay for these extra hours but was instead
6 compensated at her regular rate.

7 23. Plaintiff regularly worked over eight hours per day on Wednesdays and Sundays,
8 yet Defendants failed to provide proper overtime compensation as required by IWC Wage Order 4
9 and California Labor Code §§ 510 and 1198.

10 24. Defendants' actions caused Plaintiff damages, including loss of earnings for
11 overtime hours worked, to be determined at trial, along with interest, attorneys' fees, costs, and an
12 injunction mandating future compliance with overtime payment.

13 25. Defendants knowingly and willfully failed to pay overtime, breaching California
14 Labor Code and IWC Wage Order, demonstrating bad faith and malice.

15 **SECOND CAUSE OF ACTION**

16 **Meal Break Violations**

17 **Pursuant to Labor Code § 226.7**

18 **(Against All DEFENDANTS)**

19 26. Plaintiff incorporates by reference and realleges all of the allegations in each
20 paragraph as though fully set forth herein.

21 27. Defendants failed to provide Plaintiff with timely, duty-free meal periods lasting at
22 least thirty (30) minutes for every five (5) hours worked, as well as rest breaks of at least ten (10)
23 minutes for every four (4) hours worked, as required by their policies, California Labor Code
24 Sections 226.7 and 512(a), and relevant IWC Wage Order.

25 28. This failure was evident either by the absence of meal breaks within the first five
26 hours of Plaintiff's shift or by compelling her to continue working without designated meal periods
27 throughout her entire shift.

28 29. Labor Code Sections 226.7 and 512(a), along with relevant case law such as Brinker

1 Rest. Corp. v. Superior Court, establish that employers cannot require employees to work more
2 than five hours without providing an uninterrupted meal period of at least thirty (30) minutes. If the
3 total work period does not exceed six (6) hours, the meal period may be waived by mutual consent,
4 with the first meal period commencing after no more than five hours.

5 30. Pursuant to Labor Code § 226.7, Plaintiff is entitled to damages equal to one (1)
6 hour of wages for each workday that Defendants failed to provide her with an adequate meal period,
7 with the exact sum to be determined at trial.

8 **THIRD CAUSE OF ACTION**

9 **Rest Break Violations**

10 **(Against All DEFENDANTS)**

11 31. Plaintiff incorporates by reference and realleges all of the allegations in each
12 paragraph as though fully set forth herein.

13 32. Defendants, including each individual defendant, routinely deprived Plaintiff of
14 required rest periods as mandated by California law and failed to compensate her for each workday
15 where such breaks were withheld.

16 33. Plaintiff was consistently denied rest breaks, either by being forbidden from taking
17 breaks initially or by being required to continuously perform job duties throughout her shift without
18 provided rest periods.

19 34. Labor Code § 226.7 requires employers to compensate employees with one (1) hour
20 of pay at the regular rate for each workday in which adequate rest periods were not provided.

21 35. Pursuant to Labor Code § 226.7, Plaintiff is entitled to damages equivalent to one
22 (1) hour of wages for each workday in which Defendants failed to provide her with a rest period,
23 with the exact amount to be determined during trial.

24 **FOURTH CAUSE OF ACTION**

25 **Inaccurate Wage Statements – Violation of Labor Code § 226**

26 **(Against All DEFENDANTS)**

27 36. Plaintiff realleges and incorporates by reference each paragraph above as though
28 fully set forth herein.

1 37. Defendants consistently withheld accurate, itemized wage statements from Plaintiff
2 at each payment period, opting instead to provide generic earnings statements reflecting a fixed
3 salary. These intentionally inaccurate statements misrepresented both gross and net earnings for
4 Plaintiff and other employees.

5 38. Labor Code § 226(e) mandates that if an employer knowingly and intentionally fails
6 to provide an accurate, itemized wage statement to an employee, the employee is entitled to recover
7 the greater of actual damages or fifty dollars (\$50) for the initial pay period in which the violation
8 occurred, along with one hundred dollars (\$100) for each subsequent violation, not exceeding an
9 aggregate penalty of four thousand dollars (\$4,000).

10 39. Due to Defendants' deliberate and knowing failure to furnish Plaintiff with accurate,
11 itemized wage statements, Plaintiff is entitled to fifty dollars (\$50) for the initial pay period of the
12 violation, and one hundred dollars (\$100) for each subsequent violation, with a maximum aggregate
13 penalty of four thousand dollars (\$4,000).

14 **FIFTH CAUSE OF ACTION**

15 **Unfair Business Practices**

16 **(Against All DEFENDANTS)**

17 40. Plaintiff realleges and incorporates by reference each paragraph above as though
18 fully set forth herein.

19 41. Defendants, as detailed earlier, have engaged in unfair business practices in
20 California by consistently failing to properly compensate employees. These violations include, but
21 are not limited to, failure to pay overtime, inadequate provision of meal and rest periods, and non-
22 compliance with Labor Code Sections 226 and 226.7.

23 42. Additionally, Plaintiff alleges that Defendants unlawfully deducted tips, providing
24 them with an unfair competitive advantage. The retention of tips is regulated by Labor Code § 354,
25 which stipulates that employers found guilty may face misdemeanor charges. Penalties may include
26 fines up to \$1,000, imprisonment for up to 60 days, or both, as outlined in the statute.

27 **SIXTH CAUSE OF ACTION**

28 **Conversion**

1 (Against All DEFENDANTS)

2 43. Plaintiff hereby incorporates by reference all preceding paragraphs of this First
3 Amended Complaint as though fully set forth herein.

4 44. Plaintiff had the right to possess gratuities left by patrons of CHANG'S GARDEN
5 for her and other employees, which were intended solely for the benefit of Plaintiff and her co-
6 workers, including servers and other support staff who provided direct service to patrons.

7 45. At all relevant times, Defendants CHANG'S GARDEN and KIM were aware that
8 gratuities left by patrons were intended exclusively for the servers and other support staff. Under
9 no circumstances were these gratuities intended for the owners of the establishment, including
10 Defendant KIM, or for any use other than distribution to the employees who earned them through
11 their service.

12 46. Defendants intentionally and knowingly took possession of these gratuities,
13 withholding them from Plaintiff and other employees, and refused to return said gratuities despite
14 repeated demands for their return.

15 47. Defendants' actions substantially interfered with Plaintiff's right to possess the
16 gratuities by knowingly withholding them, thereby depriving Plaintiff and other employees of the
17 use and enjoyment of their rightful property.

18 48. Plaintiff did not consent to Defendants' taking possession of the gratuities or
19 retaining them for any purpose other than their intended distribution to the employees, including
20 Plaintiff and her co-workers.

21 49. As a direct and proximate result of Defendants' actions, Plaintiff was harmed by the
22 loss of the gratuities that rightfully belonged to her, causing her financial loss, emotional distress,
23 and other damages.

24 50. Defendants' conduct in withholding these gratuities was a substantial factor in
25 causing Plaintiff's harm, as they wrongfully exercised control over Plaintiff's property for their own
26 benefit or for purposes other than intended by the patrons who provided the gratuities.

27 **SEVENTH CAUSE OF ACTION**

28 **Violation on the Rule of Split Shift**

1 **(Against All DEFENDANTS)**

2 51. Plaintiff realleges and incorporates by reference each paragraph above as though
3 fully set forth herein.

4 52. Pursuant to Cal. Code Regs., tit. 8, § 11040, subd. 2(Q), if an employee works two
5 shifts separated by more than a rest or meal period, they are entitled to receive one hour of pay at
6 the minimum wage rate, in addition to the minimum wage for that workday. This regulation is
7 further clarified in Cal. Code Regs., tit. 8, § 11040, subd. 4(C), which allows any additional amounts
8 paid to the employee above the minimum wage to offset the split shift pay owed.

9 53. It is evident that Defendants failed to adhere to this regulation, as Plaintiff was not
10 provided with the additional pay despite working a split shift.

11 **EIGHTH CAUSE OF ACTION**

12 **Violation on the Rule against Discrimination**

13 **(Against All DEFENDANTS)**

14 54. Plaintiff realleges and incorporates by reference each paragraph above as though
15 fully set forth herein.

16 55. California Code § 98.6(a) explicitly prohibits retaliation against employees for filing
17 complaints, initiating labor-related proceedings, or asserting their rights under the Labor
18 Commissioner's jurisdiction. This encompasses complaints about unpaid wages or actions under
19 Section 2699. Retaliation is also banned if an employee testifies or plans to testify in such
20 proceedings, or if they advocate for their rights or the rights of others.

21 56. Plaintiff experienced age-based discrimination when management favored younger
22 servers, reducing her hours to give more shifts to younger employees.

23 57. It is unmistakably illegal for companies like the Defendants to engage in
24 discrimination against employees. These laws aim to prevent adverse employment actions based
25 on protected characteristics, such as failure to hire, termination, demotion, lack of training, loss of
26 pay, and retaliation—all of which Plaintiff suffered.

27 58. Defendants clearly violated this regulation by failing to provide additional pay
28 despite Plaintiff working a split shift.

1 **NINTH CAUSE OF ACTION**

2 **Constructive Wrongful Termination and Retaliation in Violation of Public Policy**
3 **(Against All DEFENDANTS)**

4 59. Plaintiff realleges and incorporates by reference each paragraph above as though
5 fully set forth herein.

6 60. Defendants' actions, as outlined above, amount to constructive wrongful termination
7 and retaliation against Plaintiff, violating public policy.

8 61. Despite Plaintiff's nearly 15 years of dedicated service at CHANG'S GARDEN,
9 Defendants engaged in discriminatory practices and retaliatory actions, leading to Plaintiff's
10 resignation.

11 62. Defendants' actions, including reducing Plaintiff's hours, denying proper breaks,
12 mishandling tip distribution, and failing to provide accurate wage statements, created a hostile work
13 environment, forcing Plaintiff to leave her job.

14 63. Defendants' retaliation against Plaintiff for speaking out against discrimination and
15 unfair labor practices is a direct violation of public policy.

16 64. These actions not only disregard California labor laws but also undermine basic
17 principles of fairness and equity.

18 65. Plaintiff suffered significant damages, including financial loss, emotional distress,
19 and harm to her professional reputation, due to Defendants' conduct.

20 66. Defendants' actions show a complete disregard for employee rights and justify
21 punitive damages to deter similar behavior in the future.

22 **TENTH CAUSE OF ACTION**

23 **Private Attorney's General Act Claims (Labor Code § 2698, et seq.)**

24 **(Against All DEFENDANTS)**

25 67. Plaintiff realleges and incorporates by reference each paragraph above as though
26 fully set forth herein.

27 68. Pursuant to the California Labor Code Private Attorneys General Act of 2004
28 (PAGA), Plaintiff brings this representative action on behalf of herself and other aggrieved

employees against Defendants for violations of the California Labor Code.

69. On November 29, 2023, Plaintiff provided written notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendants pursuant to Labor Code § 2699.3(a), describing Defendants’ Labor Code violations.

70. On November 29, 2023, the LWDA acknowledged receipt of Plaintiffs PAGA notice.

71. The LWDA has not indicated an intent to investigate, and more than 65 days have elapsed since notice; Plaintiff is therefore authorized to pursue civil penalties under Labor Code § 2699.

72. Acting as the State’s proxy under Labor Code § 2699, Plaintiff seeks civil penalties on behalf of the State of California and other “aggrieved employees” (Lab. Code § 2699(c)). Defendants’ unlawful practices include, without limitation, the following:

73. **Failure to pay overtime compensation in violation of Lab Code § 510 and 1198:** Plaintiff frequently worked in excess of eight hours per day, yet Defendants failed to compensate her at the legally required overtime rate of 1.5 times her regular hourly wage, in violation of Labor Code §§ 510 and 1198. Prior to the COVID-19 pandemic, Plaintiff was routinely scheduled to work approximately 11 hours per day, but was paid only her regular rate for all hours worked, without any lawful overtime premium.

74. **Failure to provide meal periods in violation of Lab Code §§ 512(a), 226.7, 1198:** Defendants did not provide timely, duty-free 30-minute meal periods, compelling Plaintiff to work through meals.

75. **Failure to provide rest periods in violation of Lab Code §§ 226.7, 1198:** Plaintiff was routinely denied 10-minute rest breaks, either forbidden from taking them or required to keep working throughout the shift.

76. **Failure to provide accurate wage statements in violation of Labor Code § 226(a):** Defendants failed to furnish **accurate, itemized wage statements** reflecting hours and earnings.

77. **Failure to maintain Personnel Records in violation of Lab. Code § 1198.5(c)(1):**

1 On information and belief, Defendants failed to maintain and retain Plaintiff's personnel records
2 for at least three (3) years after termination as required by Labor Code § 1198.5(c)(1). Plaintiff
3 ended employment on July 23, 2023. Despite multiple written requests and extensions, Defendants
4 could not and did not produce the required personnel records, evidencing non-retention and/or
5 failure to maintain those records as required by § 1198.5.

6 **78. Failure to Permit Inspection / Provide Copies of Personnel Records in Violation**
7 **of Lab. Code § 1198.5(a), (b)(1):** Plaintiff sent a written personnel-records request on August 11,
8 2023, and granted extensions on September 20, 2023 and October 10, 2023. Defendants did not
9 produce the personnel records within 30 days, violating § 1198.5(a), (b)(1).

10 **79. Failure to pay all wages due at termination in violation of Lab Code §§ 201,**
11 **202, and 203:** Plaintiff was constructively discharged on July 23, 2023. Because a constructive
12 discharge is treated as an involuntary resignation, Labor Code § 202 required Defendants to pay all
13 wages due within 72 hours of that date (or immediately if ≥ 72 hours' notice was provided).
14 Defendants failed to tender all earned wages by the statutory deadline—including unpaid overtime,
15 unpaid worked hours, and premiums for missed meal and rest periods—thereby violating § 202 and
16 triggering waiting-time penalties under § 203 for each day wages remained unpaid, up to thirty (30)
17 days.

18 **80. Failure to reimburse Ms. Yao for all expenses in violation of Labor Code § 2802:**
19 California Labor Code Section 2802 requires employers to pay for all necessary expenditures and
20 losses incurred by the employee in the performance of her job.

21 **81. Unlawful retention or misappropriation of tips in Violation of Labor Code §**
22 **351:** Defendants diverted servers' pooled tips to the manager and owner and withheld gratuities
23 intended exclusively for servers and support staff, while refusing to provide transparency into tip
24 logs (tips were distributed on the 5th and 20th of each month, but servers were not allowed to see
25 the logs). These practices constitute unlawful employer retention and misappropriation of gratuities
26 under § 351.

27 **82. Failure to Pay Wages for All Hours Worked (Off-the-Clock), Lab. Code §§**
28 **1194, 1197, 1198 and IWC Wage Order No. 5-2001:** Defendants required Plaintiff to continue

1 working after she had already clocked out, resulting in unpaid compensable time. All such time
2 constitutes “hours worked” under IWC Wage Order No. 5-2001.

3 83. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2699(c).
4 All preconditions to suit under § 2699.3 have been satisfied or excused.

5 84. Pursuant to Labor Code § 2699(f)–(g) and any predicate sections providing specific
6 penalties, Plaintiff seeks: (a) civil penalties for each violation per pay period, allocated 75% to the
7 State and 25% to aggrieved employees; (b) attorneys’ fees and costs; and (c) interest and such other
8 relief as the Court deems just and proper.

9 **ELEVENTH CAUSE OF ACTION**

10 **As an Owner, Liable for Labor Violations under Labor Code Section § 558.1**

11 **(Against Defendant KIM)**

12 65. Plaintiff realleges and incorporates by reference each paragraph above as though
13 fully set forth herein.

14 66. Defendant KIM, as an owner, director, officer, or managing agent of CHANG’S
15 GARDEN, bears responsibility as the employer for the labor violations detailed herein under Labor
16 Code section § 558.1.

17 67. Labor Code section § 558.1 imposes liability on any employer, owner, director,
18 officer, or managing agent who violates any provision regulating minimum wages or hours and
19 days of work, or the payment of overtime wages.

20 68. Defendant KIM, in her capacity as an owner, director, officer, or managing agent,
21 had direct control and authority over the operations and management of CHANG’S GARDEN,
22 including but not limited to employment practices, wage policies, and compliance with labor laws.

23 69. Despite being aware or having the obligation to be aware of the labor violations
24 occurring at CHANG’S GARDEN, Defendant KIM failed to take appropriate corrective actions to
25 ensure compliance with the provisions of the Labor Code.

26 70. As a result of Defendant KIM’s neglect or active participation in the labor violations,
27 Plaintiff and other employees suffered financial harm, emotional distress, and infringement of their
28 statutory rights under the Labor Code.

71. Defendant KIM's actions or omissions directly contributed to the systemic and pervasive nature of the labor violations at CHANG'S GARDEN, establishing her liability under Labor Code section § 558.1.

72. Plaintiff seeks to hold Defendant KIM accountable for her role as an owner and managing agent of CHANG'S GARDEN, and requests appropriate remedies, including but not limited to compensatory damages, statutory penalties, injunctive relief, and any other relief deemed just and proper by the Court.

TWELFTH CAUSE OF ACTION

Failure to Produce Personnel Records – Violation of Labor Code Section 1198.5

(Against All DEFENDANTS)

73. Plaintiff realleges and incorporates by reference each paragraph above as though fully set forth herein.

74. On August 11, 2023, Plaintiff initiated communication with the Defendants by sending a Request for Personnel Records and Notice of File Preservation in Anticipation of Litigation regarding Plaintiff's employment.

75. Subsequent notices were sent on September 20, 2023, and October 10, 2023, extending the deadline for compliance with the request. Despite these efforts, Defendants failed to respond or provide Plaintiff's personnel records.

76. California Labor Code Section 1198.5(a) mandates that every current and former employee, or their representative, has the right to inspect and receive a copy of personnel records relating to the employee's performance or grievances.

77. Pursuant to California Labor Code Section 1198.5(b)(1), employers are required to make personnel records available for inspection to the employee or their representative within 30 calendar days of receiving a written request. Alternatively, the employer must provide a copy of the personnel records within the same timeframe.

78. Defendants' failure to comply with the statutory requirement to produce personnel records within the specified timeframe constitutes a violation of California Labor Code Section 1198.5.

1 79. As a result of Defendants' failure to produce Plaintiff's personnel records, Plaintiff
2 has been denied her statutory right to access and review critical employment-related information.

3 80. Pursuant to California Labor Code Section 1198.5(k), if an employer fails to permit
4 a current or former employee, or their representative, to inspect or copy personnel records within
5 the specified timeframe, the employee or the Labor Commissioner may recover a penalty of seven
6 hundred fifty dollars (\$750) from the employer. Hence, Plaintiff demands for such.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a trial by jury for all the foregoing claims.

9 **PRAYER**

10 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as to
11 all causes of action, as follows:

- 12 A. For Actual damages in an amount according to proof at trial, representing the value
13 of all gratuities wrongfully withheld by Defendants;
- 14 B. For general and compensatory damages according to proof at trial;
- 15 C. For all special damages, according to proof at trial;
- 16 D. For consequential damages according to proof at trial;
- 17 E. For exemplary and punitive damages in an amount to be determined by the Court;
- 18 F. For lost income in the form of front and back pay, loss of earning capacity and
19 employment benefits, and employment advancement opportunities;
- 20 G. For applicable statutory damages and penalties;
- 21 H. For reasonable attorneys' fees herein incurred by Plaintiff, pursuant to applicable
22 law;
- 23 I. For an award of pre- and post-judgment interest at the rate allowed by the law;
- 24 J. For cost of suit herein incurred by Plaintiff;
- 25 K. Penalties and relief pursuant to Labor Code § 2699
- 26 L. For such other and further relief as the Court may deem proper.

EXHIBIT A

Thank you for submission of your PAGA Case.

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Wed 11/29/2023 6:18 PM

To:info@wthemislaw.com <info@wthemislaw.com>

11/29/2023

LWDA Case No. LWDA-CM-996896-23

Law Firm : West Themis Law

Plaintiff Name : Qing Yao, Wanxia Chen

Employer: Annavee Inc. dba Chang's Garden

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of

Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

EXHIBIT B



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

February 29, 2024

QING YAO
1028 Sunset Blvd., #3
Arcadia, CA 91007

RE: **Notice to Complainant**
CRD Matter Number: 202402-23681020
Right to Sue: YAO / Annavee Inc. et al.

Dear QING YAO:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. If you do not have an attorney, you must serve the complaint yourself. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

February 29, 2024

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202402-23681020

Right to Sue: YAO / Annavee Inc. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

February 29, 2024

QING YAO
1028 Sunset Blvd., #3
Arcadia, CA 91007

RE: **Notice of Case Closure and Right to Sue**
CRD Matter Number: 202402-23681020
Right to Sue: YAO / Annavee Inc. et al.

Dear QING YAO:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective February 29, 2024 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

QING YAO

CRD No. 202402-23681020

Complainant,

vs.

Annavee Inc.
627 W Duarte Road
Arcadia, CA 91007

Annavee Kim
407 S 3rd Ave., Unit B
Arcadia, CA 91006

Respondents

1. Respondent **Annavee Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Annavee Kim** individual as Co-Respondent(s).

3. Complainant **QING YAO**, resides in the City of **Arcadia**, State of **CA**.

4. Complainant alleges that on or about **July 26, 2023**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's age (40 and over) and as a result of the discrimination was forced to quit.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was forced to quit.

Additional Complaint Details: Claimant, Ms. Yao, worked as a dedicated and loyal server at Annavee Inc dba Chang's Garden, a popular and busy restaurant, for almost 15 years. As she aged, the management at Chang's Garden started giving her less hours and

1 explicitly told her it was because the management wanted to give more hours to the younger
2 servers. At the time of this discrimination, Claimant was over 40 years old. When Claimant
3 complained about this unfair treatment, the management retaliated by cutting her hours
4 even more, to a point where she could no longer earn a living wage at Chang's Garden. As
5 a result of the management's discriminatory and retaliatory decisions and actions, Claimant
6 was forced to resign from Chang's Garden, suffering constructive wrongful termination.
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1 VERIFICATION

2 I, **Sally S. Chan**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On February 29, 2024, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **San Marino, California**
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1 Dated: November 5, 2025

Respectfully Submitted,

2 **WEST THEMIS LAW, PC**

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4 By: 
5 Sally S. Chan, Esq.
6 Karen K. Tso, Esq.
7 Attorneys for Plaintiff
8 QING YAO
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PROOF OF SERVICE

I am a resident of the State of California, over the age of 18 years and not a party to the within action. My business address is WEST THEMIS LAW, PC, 2476 Huntington Drive San Marino, California 91108. On the date set forth below, I caused the parties herein to be served in the manner indicated below, at the addresses set forth below, with the attached document, to wit:

PLAINTIFF QING YAO'S THIRD AMENDED COMPLAINT

- ☐ Email: By transmitting via electronic mail the document(s) listed above to the email set forth below on this date per Code of Civil Procedure § 1010.6.
- ☒ Electronic Service Provider: By transmitting via electronic mail the document(s) listed above to the email set forth below on this date through electronic filing service provider, in accordance with the Code of Civil Procedure § 1010.6.
- ☐ U.S. Postal Service: By placing the document(s) listed above a sealed envelope with postage properly prepaid and putting same in a United States mailbox located Los Angeles County, California the same day.
- ☐ By Personal Service: By personal delivery this business day.

ADDRESS(ES):	EMAIL(S)
NIELSEN & PERRY, LLP	
KAELAN T. NIELSEN, State Bar No. 318177	KNielsen@LossOfLuxury.com
ALEXANDER M. PERRY, State Bar No. 318241	APerry@LossOfLuxury.com
11850 Wilshire Boulevard, Suite 201	
Los Angeles, CA 90025	
Telephone: (818) 531-0077	
Facsimile: (818) 531-0077	

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters stated on information and belief and as to those matters, I believe it to be true.

Date: November 5, 2025



Karen K. Tso, Esq.