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Superior Court of CA,
County of Santa Clara
24CV441497
Reviewed By: A. Montes

8 **SUPERIOR COURT STATE OF CALIFORNIA**

9 **COUNTY OF SANTA CLARA**

10 ADELA GOMEZ, an individual,

11 Plaintiff(s),

12 v.

13 MARCO POLO LAUNDRY, INC., a
14 California Corporation, MARCO
15 VAZMENDES, an individual, DOES 1-20,
16 inclusive,

17 Defendant(s).

Case No.: 24CV441497

**PLAINTIFF'S COMPLAINT FOR
DAMAGES**

1. **Failure to Pay State Minimum Wage**
(Lab. Code § 1197, 1194, 1194.2)
2. **Failure to Pay Overtime** (Lab. Code §
510, 1194, 1194.2)
3. **Failure to Provide Meal Breaks** (Lab.
Code §§ 510, 226.7)
4. **Failure to Provide Rest Breaks** (Lab.
Code §§ 512, 226.7)
5. **Failure to Provide Accurate Pay Stubs**
(Lab. Code § 226)
6. **Failure to Timely Pay Wages During
Employment** (Lab. Code §§ 204, 210)
7. **Failure to Pay All Wages on Discharge**
(Lab. Code §§ 201-203)
8. **Violation of Unfair Competition Law**
(Bus. & Prof. Code § 17200)
9. **Retaliation in Violation of Lab. Code §
1102.5**
10. **Wrongful Termination in Violation of
Public Policy**

PLAINTIFF DEMANDS JURY TRIAL

1
2 **I. INTRODUCTION**

3 1. Plaintiff ADELA GOMEZ brings this action against her former employers,
4 Defendants MARCO POLO LAUNDRY, INC and MARCO VAZMENDES, based on
5 Defendants' failure to pay Plaintiff for all hours worked, failure to pay overtime, failure to
6 provide meal and rest breaks or pay premiums in lieu thereof, failure to timely pay wages,
7 failure to provide and maintain accurate and compliant wage statements, and unlawful
8 retaliation.

9 **II. JURISDICTION & VENUE**

10 2. This Court has subject matter jurisdiction to hear this case because the amount in
11 controversy exceeds this Court's jurisdictional minimum and because Defendants were residents
12 of, or were doing business in, the State of California, County of Santa Clara.

13 3. Venue in this Court is proper pursuant to sections 395 and 395.5 of the Code of
14 Civil Procedure in that at all relevant times herein, one or more Defendants conducted
15 substantial business and/or committed violations of law in the County of Santa Clara.

16 **III. PARTIES**

17 4. Plaintiff ADELA GOMEZ is an individual over the age of eighteen (18). At all
18 relevant times herein, Plaintiff was a California resident, employed by Defendants in the County
19 of Santa Clara, California.

20 5. On information and belief, Plaintiffs allege that Defendant MARCO
21 VAZMENDES is an individual and during all times relevant is and was the Chief Executive
22 Officer ("CEO") of Defendant MARCO POLO LAUNDRY, INC. and, as such, this Defendant
23 is believed to be an "other person acting on behalf of an employer" within the meaning of Labor
24 Code §§ 558 and 558.1.

25 6. On information and belief, Plaintiffs allege that Defendant MARCO POLO
26 LAUNDRY, INC. is a California Corporation with its principal place of business in San Jose,
27 California.

28 7. Plaintiffs do not know the true names and capacities of Defendants sued in this

1 Complaint as DOES 1 through 20, inclusive, and therefore sues these Defendants by fictitious
2 names. Plaintiffs will amend this Complaint to allege the true names and capacities of DOES 1
3 through 20, inclusive, when ascertained. Plaintiffs are informed and believes, and on that basis
4 alleges, that each of the Defendants named herein as DOES 1 through 20, inclusive, is
5 responsible in some manner for the occurrence, injury, and other damages alleged in this
6 Complaint.

7 8. Plaintiffs are informed and believe, and on that basis alleges, that each Defendant
8 was in some manner responsible for the acts and damages alleged herein, and/or are indebted to
9 Plaintiffs as alleged herein, and that each Defendant was the agent, employer and co-conspirator
10 of each other Defendant, and was acting in the course and scope of such agency and conspiracy.
11 In this Complaint where Plaintiffs refers to Defendant singularly, such reference shall be
12 construed to be a reference to all Defendants named herein, including those named fictitiously.

13 IV. FACTUAL ALLEGATIONS

14 9. Defendants operate a commercial laundry business in San Jose, California.
15 Plaintiff was employed by Defendants as a laundry worker from approximately December 31,
16 2020 to January 3, 2023.

17 10. Plaintiff was routinely required to work more than eight (8) hours in a workday
18 or more than forty (40) hours in a workweek, and frequently also more than twelve (12) hours in
19 a workday. Defendants did not pay overtime wages for those hours worked.

20 11. Defendants also failed to pay Plaintiff for all hours worked.

21 12. Plaintiff was denied the opportunity to take duty-free and code-complaint meal
22 and rest periods. Defendants did not provide Plaintiff any additional pay for missed meal periods
23 or rest periods.

24 13. Defendants also failed to provide pay stubs to Plaintiff accurately reflecting the
25 number of regular or overtime hours worked, corresponding applicable hourly pay rates, the
26 correct amount of gross and net wages, or pay premiums for missed meal and rest periods. For
27 much of the time Plaintiff worked for Defendants, Defendants provided no pay stubs at all.

28 14. On or about January 2, 2023, Defendants implemented a policy that employees

1 could not use their cell phones at work. Plaintiffs' assigned shifts covered both night and
2 daytime hours. Plaintiff needed access to her cell phone so she could assess her family
3 members' safety and well-being and have contact with them in the event of an emergency, and
4 to be able to call or videoconference with her children's school. Prior to Defendants'
5 implementation of the no-phone policy Plaintiff would clock out when she needed to make a
6 call. Plaintiff communicated to Defendants her reasons for needing phone access, but
7 Defendants declined to make any exceptions to the new policy and forbade Plaintiff from any
8 use of her phone during her shift, even while clocked out. Plaintiff protested that she did not
9 believe the new policy was lawful, and told Defendants that while she would follow the policy,
10 she did not agree with it.

11 15. The next day, January 3, 2023, Plaintiff was sent home and was told it was due to
12 lack of work. On subsequent days Defendants continued to tell her there was no available work,
13 and on January 11, Defendants told Plaintiff there would be no more work at all and Plaintiff
14 should find a new job.

15 16. Upon Plaintiff's discharge, Defendants failed to pay Plaintiff all wages earned
16 and payable.

17 **V. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **Failure to Pay State Minimum Wage**

20 **(Lab. Code § 1197, 1194, 1194.2)**

21 **(As to All Defendants)**

22 17. Plaintiff incorporates in this cause of action each and every allegation of the
23 preceding paragraphs, as though fully set forth herein.

24 18. Labor Code §§ 1194, 1197, 1197.1 and the applicable Industrial Welfare
25 Commission ("IWC") Wage Order require employers to pay an amount equal to or greater than
26 the minimum wage for each hour worked.

27 19. Defendants failed to pay Plaintiff at least the minimum wage for each hour
28 worked.

1 20. As a direct and proximate result of Defendants' unlawful conduct, as set forth
2 herein, Plaintiff has suffered damages, including loss of earnings for time worked on behalf of
3 Defendants.

4 21. Plaintiff requests relief as described below.

5 **SECOND CAUSE OF ACTION**

6 **Failure to Pay Overtime Wage**

7 **(Lab. Code, § 510, 1194, 1194.2)**

8 **(As to All Defendants)**

9 22. Plaintiff incorporates in this cause of action each and every allegation of the
10 preceding paragraphs, as though fully set forth herein.

11 23. Labor Code section 510 requires employers to pay overtime compensation to all
12 employees, unless they are exempt from the overtime pay requirements. During all periods of
13 employment, Plaintiff was misclassified as an independent contractor and exempt employee.

14 24. Plaintiff has worked in excess of eight (8) hours in a workday, twelve (12) hours
15 in a workday, forty (40) hours in a workweek, and/or eight (8) hours on the seventh consecutive
16 day of a workweek.

17 25. Defendants have failed or otherwise refused to pay Plaintiff overtime
18 compensation for all overtime hours worked in the manner required by California law.

19 26. As a direct and proximate result of Defendants' unlawful conduct, as set forth
20 herein, Plaintiff has suffered damages, including loss of earnings for hours of overtime worked
21 on behalf of Defendants.

22 27. Plaintiff requests relief as described below.

23 **THIRD CAUSE OF ACTION**

24 **Failure to Provide Meal Breaks**

25 **(Lab. Code §§ 510, 226.7)**

26 **(As to All Defendants)**

27 28. Plaintiff incorporates in this cause of action each and every allegation of the
28 preceding paragraphs, as though fully set forth herein.

 29. An employer's failure to provide an opportunity to take a meal break entitles the

1 employee to an hour of pay for each day an employer fails to provide an opportunity to take a
2 meal break.

3 30. At all times herein relevant, Plaintiff was a non-exempt employee and entitled to
4 meal breaks.

5 31. At all times herein relevant, Defendants employed Plaintiff for periods of five (5)
6 hours or more without providing meal breaks of at least thirty (30) minutes or a second meal
7 period of at least thirty (30) minutes when Plaintiff worked more than ten (10) hours in a
8 day. Plaintiff did not waive her right to meal periods throughout his employment.

9 32. Defendants further failed to compensate Plaintiff for the premium wage(s) owed
10 resulting from their failure to provide the opportunity to take a meal break.

11 33. As a direct and proximate result of Defendants' unlawful conduct, as set forth
12 herein, Plaintiff has suffered damages, including a loss of wages.

13 34. Plaintiff requests relief as described below.

14
15 **FOURTH CAUSE OF ACTION**

16 **Failure to Provide Rest Breaks**

17 **(Lab. Code §§ 512, 226.7)**

18 **(As to All Defendants)**

19 35. Plaintiff incorporates in this cause of action each and every allegation of the
20 preceding paragraphs, as though fully set forth herein.

21 36. Labor Code section 226.7 provides that all non-exempt employees are entitled to
22 at least a 10-minute rest break for each work period of more than four (4) hours, or major
23 fraction thereof.

24 37. An employer's failure to provide an opportunity to take a rest break entitles the
25 employee an hour of pay for each day an employer fails to provide an opportunity to take a rest
26 break.

27 38. At all times relevant, Plaintiff was a non-exempt employee and entitled to rest
28 breaks.

39. At all times relevant, Defendants failed to authorize and permit Plaintiff to take

1 rest periods of at least 10 minutes for each work period of more than four (4) hours, or major
2 fraction thereof.

3 40. Defendants further failed to compensate Plaintiff for the premium wage(s) owed
4 resulting from their failure to provide the opportunity to take rest breaks.

5 41. As a direct and proximate result of Defendants' unlawful conduct, as set forth
6 herein, Plaintiff has suffered damages, including a loss of wages.

7 42. Plaintiff requests relief as described below.

8
9 **FIFTH CAUSE OF ACTION**
10 **Failure to Provide Accurate Pay Stubs**
11 **(Lab. Code § 226)**
12 **(As to All Defendants)**

13 43. Plaintiff incorporates in this cause of action each and every allegation of the
14 preceding paragraphs, as though fully set forth herein.

15 44. Labor Code section 226(a) requires employers to provide employees with regular
16 itemized written statements showing, among other things, total hours worked, all applicable
17 hourly rates during the pay period, the corresponding number of hours worked at each rate by
18 the employee, and total gross and net wages earned during the pay period. Defendants
19 knowingly and intentionally failed to provide timely, accurate itemized wage statements
20 including this required information.

21 45. Labor Code § 226(e) provides that an employee suffering injury as a result of a
22 knowing and intentional failure by an employer to comply with section 226(a) is entitled to
23 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
24 a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period,
25 up to a maximum amount of \$4,000.

26 46. Labor Code § 226(e)(2) provides that an employee is deemed to suffer injury for
27 the purposes of Labor Code § 226 if the employer fails to provide the employee his/her wage
28 statement.

47. Defendant knowingly and intentionally failed to provide Plaintiff with accurate

1 itemized wage statements.

2 48. Plaintiff requests relief as described below.

3
4 **SIXTH CAUSE OF ACTION**
5 **Failure to Timely Pay Wages During Employment**
6 **(Lab. Code §§ 204, 210)**
7 **(As to All Defendants)**

8 49. Plaintiff incorporates in this cause of action each and every allegation of the
9 preceding paragraphs, as though fully set forth herein.

10 50. Labor Code section 204 requires employees to be paid earned wages at least
11 twice per month. If an employer fails to pay wages during the proper pay period, the employee is
12 entitled to a penalty of \$100 for an initial violation and \$200 for each subsequent or willful, or
13 intentional violation. Additionally, the employee is entitled to 25% of the amount unlawfully
14 withheld.

15 51. Defendants failed to properly and timely compensate Plaintiff for all wages
16 earned during Plaintiff's pay period(s).

17 52. Defendants' acts were willful and/or intentional.

18 53. As a result of Defendants' conduct, Plaintiff is entitled to the penalty set forth in
19 section 210 of the Labor Code.

20 54. Plaintiff requests relief as described below.

21 **SEVENTH CAUSE OF ACTION**
22 **Failure to Pay All Wages on Discharge**
23 **(Lab. Code §§ 201-203)**
24 **(As to All Defendants)**

25 55. Plaintiff incorporates in this cause of action each and every allegation of the
26 preceding paragraphs, as though fully set forth herein.

27 56. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
28 due immediately upon discharge, or within seventy-two (72) hours of quitting without
notice. Labor Code § 203 provides that where an employer willfully fails to make such timely
payment, the employer must, as a penalty, continue to pay the subject employees' wages until

1 the back wages are paid in full or an action is commenced, up to a maximum of thirty (30) days'
2 wages.

3 57. Plaintiff was discharged from employment by Defendants without being paid all
4 wages that were due to them within the time required by Labor Code §§ 201 and
5 202. Defendants' failure to pay these wages Defendants have been and continue to be willful.

6 58. As a result of Defendants' conduct, Plaintiff is entitled to waiting time penalties
7 in the amount of up to thirty (30) days' wages under Labor Code § 203.

8 59. Plaintiff requests relief as described below.

9
10 **EIGHTH CAUSE OF ACTION**
11 **Violation of Unfair Competition Law**
12 **(Business & Professions Code § 17200, et seq.)**
13 **(As to All Defendants)**

14 60. Plaintiff incorporates in this cause of action each and every allegation of the
15 preceding paragraphs, as though fully set forth herein.

16 61. Defendants' conduct, as alleged herein, constitutes an unlawful, unfair, and/or
17 fraudulent business practices, as set forth in Business & Professions Code section
18 17200. Defendants conducted business activities while failing to comply with the legal
19 mandates cited herein. Plaintiff suffered injury in fact and lost money as a result of Defendants'
20 unfair competition.

21 62. As a result of Defendants' unlawful and unfair business practices, Plaintiff is
22 entitled to and does seek restitution, and other appropriate relief available under Business &
23 Professions Code § 17203, on his own behalf for four (4) years from the filing of this Action.

24 63. Plaintiff requests relief as described below.

25 **NINTH CAUSE OF ACTION**
26 **Retaliation in Violation of Labor Code § 1102.5**
27 **(As to All Defendants)**

28 64. Plaintiff incorporates in this cause of action each and every allegation of the
preceding paragraphs, as though fully set forth herein.

1 65. At all relevant times, Labor Code section 1102.5 was in effect and was binding
2 on Defendants. This statute prohibited Defendants from retaliating against any employee,
3 including Plaintiff, for raising reasonable, good faith complaints of workplace illegality,
4 “regardless of whether disclosing the information is part of the employee’s job duties.”

5 66. As discussed herein Plaintiff made reasonable, good faith complaints of
6 workplace illegality to Defendants in response to Defendants’ policy forbidding all use of cell
7 phones during Plaintiff’s shift. In addition to Plaintiff’s reasonable belief, Defendants’ policy
8 was in fact unlawful in light of Defendants’ failure to provide code-compliant and duty-free
9 meal and rest breaks when Plaintiff could use her phone for necessary communications, as well
10 as Defendants’ failure to allow communications for emergency purposes, in violation of Labor
11 Code section 1139.

12 67. Defendants retaliated against Plaintiff for making these reasonable, good faith
13 complaints of workplace illegality, by taking adverse employment actions against Plaintiff,
14 including terminating Plaintiff’s employment.

15 68. As a direct and proximate result of Defendants’ violations of Labor Code §
16 1102.5, Plaintiff have suffered and will continue to suffer damages in an amount to be
17 ascertained at the time of trial.

18 69. Defendants’ aforesaid acts of retaliation against Plaintiff were malicious,
19 oppressive, despicable, and done in conscious disregard of Plaintiff’s rights. As such, exemplary
20 and punitive damages are warranted against Defendants, and each of them, in an amount
21 sufficient to punish said Defendants and to deter others from engaging in similar conduct.

22 70. Plaintiff has incurred and continues to incur legal expenses and attorneys’ fees.
23 Pursuant to Labor Code section 1102.5, Code of Civil Procedure section 1021.5, and/or other
24 provisions of law, Plaintiff is entitled to recover reasonable attorneys’ fees and costs in an
25 amount according to proof.

26 71. Plaintiff requests relief as described below.

27
28 **TENTH CAUSE OF ACTION**
 Wrongful Termination in Violation of Public Policy

(As to All Defendants)

72. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

73. An employee may bring a wrongful discharge claim against an employer based on a violation of public policy by an employer who violates a statute that inures to the benefit of the public. (See, e.g., *Stevenson v. Sup. Ct. (Huntington Mem. Hosp.)*, (1997) 16 Cal. 4th 880, *Jie v. Liang Tai Knitwear Co.* (2001) 89 Cal. App; 4th 654, 660-61; *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167. 172.) Thus, a violation of Labor Code 1102.5 is a violation of public policy.

74. Defendants, and each of them, terminated Plaintiff's employment, in whole or in part, in retaliation for Plaintiff's exercise of rights guaranteed under the Labor Code, as described herein.

75. Defendants' discharge of Plaintiffs was in violation of public policy, as found in Labor Code section 1102.5 which protected Plaintiff from retaliation for making reasonable, good faith complaints of workplace illegality to Defendants, as alleged herein.

76. As a direct and proximate result of Defendants' conduct, Plaintiff have suffered and will continue to suffer damages in an amount to be ascertained at the time of trial.

77. Defendants' aforesaid acts taken against Plaintiff in violation of public policy were malicious, oppressive, despicable, and done in conscious disregard of Plaintiff's rights. As such, exemplary and punitive damages are warranted against Defendants, and each of them, in an amount sufficient to punish said Defendants and to deter others from engaging in similar conduct.

78. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to Labor Code section 1102.5, Code of Civil Procedure section 1021.5, and/or other provisions of law, Plaintiff is entitled to recover reasonable attorneys' fees and costs in an amount according to proof.

PRAYER

1. For general damages according to proof in an amount to exceed \$1,000,000;
2. For special damages according to proof in an amount to exceed \$1,000,000;
3. For compensatory damages and unpaid wages;
4. For mental and emotional distress damages in an amount to be proved at trial;
5. For exemplary damages, according to proof;
6. For pre-judgment, post-judgment, and statutory interest and all amounts subject
herein;
7. For attorney's fees according to statute including Labor Code section 218.5,
Labor Code section 1194, Labor Code section 1102.5, Code of Civil Procedure section 1021.5,
and any other relevant provision under California law that provides for the recovery of
attorney's fees;
8. For costs of suit incurred in this action;
9. For penalties according to statute;
10. For injunctive relief;
11. For declaratory relief; and
12. For all other relief that this Court deems just and proper.

DATED: June 20, 2024

DREW LEWIS, PC

By: 
Drew Lewis
Attorney for Plaintiff(s)