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HEINI CIFUENTES SILVA

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

HEINI CIFUENTES SILVA, an
individual,

Plaintiff,

vs.

AREVALO TORTILLERIA, INC., a
California corporation; UNITED
EMPLOYMENT SOLUTIONS INC., a
California corporation, and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 24STCV33929

COMPLAINT FOR:

- 1. SEX DISCRIMINATION ON THE BASIS OF PREGNANCY (Govt. Code §12940(a));**
- 2. DISCRIMINATION BASED UPON PHYSICAL DISABILITY (Govt. Code §12940);**
- 3. FAILURE TO PREVENT DISCRIMINATION (Govt. Code §12940(k));**
- 4. RETALIATION IN VIOLATION OF PUBLIC POLICY (Govt. Code §12940 et seq.);**
- 5. HARASSMENT DUE TO PHYSICAL DISABILITY (Govt. Code §12940(a));**
- 6. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (Govt. Code §12940);**
- 7. FAILURE TO PAY MINIMUM WAGES DUE (Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1 1198; IWC Wage Order No. 1);**
- 8. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code §226.7; IWC Wage Order No. 1);**
- 9. WAITING TIME PENALTIES (Cal. Labor Code §226; IWC Wage Order No. 1);**
- 10. FAILURE TO PAY WAGES DUE AT TERMINATION (Cal. Labor Code §203; IWC Wage Order No. 1);**

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11. FAILURE TO PROVIDE UNIFORM
MAINTENANCE ALLOWANCE (Cal.
Labor Code § 2802);
12. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor*
Code §1198.5); and
13. UNFAIR COMPETITION (Cal. Bus. & Prof.
Code §§17200 et seq.).

DEMAND FOR A JURY TRIAL

Heini Cifuentes Silva alleges the following:

I.

JURISDICTION AND VENUE

1. This action is brought pursuant to California Government Code §12920 *et seq.*, and the rules, regulations and directives implementing those statutes. This Court also has jurisdiction over this Complaint under Code of Civil Procedure §410.10.

2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, as against the persons identified herein, occurred in the County of Los Angeles and because Defendants Arevalo Tortilleria, Inc. and United Employments Solutions Inc. owned and operated their businesses in the County of Los Angeles.

II.

PARTIES

3. Plaintiff Heini Cifuentes Silva (“Plaintiff”) was an employee of Defendant Arevalo Tortilleria, Inc. (“AT”) and United Employment Solutions Inc. (“UNITED”) (collectively “Defendants”) and at all times relevant to the matters alleged herein, has been a resident of Los Angeles County.

1 4. Plaintiff is informed and believes and thereon alleges that Defendant AT is a
2 California corporation with its principal place of business located at 1537 W. Mines Avenue,
3 Montebello, CA 90640. At all material times, AT has been, and is, a manufacturer of tortillas.
4 Plaintiff is informed and believes and thereon alleges that at all times material hereto AT has
5 been authorized to do business and has been doing business in the State of California.

6 5. Plaintiff is informed and believes and thereon alleges that Defendant UNITED is
7 a California corporation with its principal place of business located at 10803 Foothill Blvd.,
8 Suite 190, Rancho Cucamonga, CA 91342. At all material times, UNITED has been, and is, a
9 staffing agency. Plaintiff is informed and believes and thereon alleges that at all times material
10 hereto UNITED has been authorized to do business and has been doing business in the State of
11 California.

12 6. Plaintiff is informed and believes and thereon alleges, that at all times relevant
13 herein, Defendant and some of Does 1 through 100 were the agents, employees, and/or
14 servants, masters, or employers of the remaining Does 1 through 100, and in doing the things
15 herein alleged, were acting within the course and scope of such agency or employment, and
16 with the approval and ratification of each of the other Defendants.

17 7. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
18 as Does 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
19 fictitious names and capacities. Plaintiff will amend her Complaint to show their true names
20 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
21 alleges that at all times relevant, each of these fictitiously named Doe Defendants was an
22 individual person who owned, controlled, or managed the business for which Plaintiff worked
23 and/or who directly or indirectly exercised operational control over Plaintiff's working
24 conditions. These Doe Defendants held ownership, officer, director and/or executive positions
25 with the remaining Defendants, and acted on behalf of the remaining Defendants, which
26 included decision-making responsibility for, and establishment of, sex discrimination and
27 physical disability discrimination and wage and hour policies and practices for Defendants,
28 which have damaged Plaintiff. Therefore, Does 1 through 100, in addition to the remaining

1 Defendants, are “employers” as a matter of law and personally liable on the causes of action
2 alleged herein.

3 8. Plaintiff is informed and believes and thereon alleges that Defendants Does 1
4 through 100 are, and at all times relevant hereto were, persons, corporations or other business
5 entities organized and existing under and by virtue of the laws of the State of California, and
6 are/were qualified to transact and conduct business in the State of California, and did transact
7 and conduct business in the State of California, and are thus subject to the jurisdiction of the
8 State of California. Specifically, Does 1 through 100 maintain offices, operate businesses,
9 employ persons, and conduct business in, and engage in disability discrimination, sex
10 discrimination and wage and hour violations in the County of Los Angeles.

11 9. Plaintiff is informed and believes and thereon alleges that Defendants directly
12 employed or exercised control over Plaintiff’s working conditions.

13 10. Plaintiff is further informed and believes, and thereon alleges, that each of the
14 fictitiously named Defendants aided and assisted the named Defendants in committing the
15 wrongful acts alleged herein, and that her damages were proximately caused by each
16 Defendant.

17 III.

18 **FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF ACTION**

19 **Employment Information**

20 11. Plaintiff began working for AT and UNITED in or about March 2024 and was
21 wrongfully terminated on or about October 10, 2024. Plaintiff’s job position was Line
22 Worker/Tortilla. Plaintiff sorted tortilla and arranged them on the line. Plaintiff earned \$16.15
23 per hour and worked 5 days per week, 8 hours per day.

24 12. Plaintiff is informed and believes and thereon alleges that AT contracted with
25 UNITED whereby UNITED would provide AT with staffing/employment services.

26 13. Plaintiff is informed and believes and thereon alleges that AT and UNITED
27 exercised control over Plaintiff’s wages, hours and/or working conditions (start time, end time,
28 etc.) such that they were joint employers.

1 14. Given the amount of influence, control and direction AT and UNITED exerted
2 over Plaintiff's employment, AT and UNITED were Plaintiff's co-employers.

3 **Sex and Disability Discrimination and Wrongful Termination**

4 15. Plaintiff was denied a work environment free of sex and disability
5 discrimination.

6 16. On or about September 25, 2024, Plaintiff was going to arrive at work late due
7 to a physician appointment. As a result, Plaintiff informed her supervisor, Maria Fernandez,
8 that she was pregnant. As such, this condition constitutes a physical disability, as that term is
9 defined in *Government Code* § 12926(l)(1)(A), (B).

10 17. Maria told Plaintiff that she needed to notify the manager, Jasmin, of Plaintiff's
11 pregnancy. Jasmine wanted to notify UNITED since Plaintiff worked for AT through UNITED.

12 18. On or about September 26, 2024, Plaintiff notified UNITED that she was
13 pregnant and UNITED told her she needed a physician's note to make sure that Plaintiff could
14 continue working. UNITED also stated they needed to know if she has any restrictions.

15 19. On or about October 10, 2024, Plaintiff visited her physician and she was
16 provided with a physician's note that contained the typical restrictions relating to a pregnant
17 woman: no lifting more than 15 pounds, being able to sit every 2 hours and no bending.

18 20. Plaintiff immediately provided the physician's note to UNITED. UNITED
19 provided the note to the Human Resources Department ("HR") at AT.

20 21. Plaintiff was able to continue in her position with the restrictions in place.

21 22. Later that day, on or about October 10, 2024, Plaintiff received a call from
22 UNITED informing her that HR had declined her restrictions and that she could no longer
23 continue in her position, but that she could return to her position after the birth of her baby.

24 23. Plaintiff noticed that there was a woman working at AT who was 8 months
25 pregnant who had the same restrictions, but she was not terminated.

26 24. On or about October 10, 2024, AT and UNITED wrongfully terminated Plaintiff
27 due to her pregnancy.

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1 25. AT and UNITED regularly employed five or more persons and therefore are
2 employers, as that term is defined in Government Code § 12926(d).

3 26. On December 19, 2024, Plaintiff filed an administrative complaint with the
4 Department of Fair Employment and Housing ("DFEH") alleging sex discrimination and
5 discrimination based on pregnancy-related physical disability by AT and UNITED. On
6 December 19, 2024, the DFEH issued to Plaintiff a Right to Sue Notice as to AT and UNITED.

7 **Wage and Hour Violations**

8 27. The employment by Defendants AT and UNITED is governed by Industrial
9 Welfare Commission Wage Order 1, which covers those persons employed in the
10 manufacturing industry.

11 28. AT and UNITED failed to pay Plaintiff minimum wages due to their failure to
12 afford compliant rest breaks.

13 29. Plaintiff's rest breaks were not compliant since she was restricted from leaving
14 her work area during her rest breaks.

15 30. As a result of AT and UNITED not paying minimum wages and affording
16 Plaintiff compliant rest breaks, the wage statements issued to her did not comply with Labor
17 Code §226 and California Industrial Welfare Commission ("IWC") Wage Order No, 1 in that
18 they did not accurately reflect all wages earned and due and owing.

19 31. AT and UNITED failed to pay Plaintiff all her wages on termination.

20 32. AT and UNITED failed to reimburse Plaintiff for her necessary business
21 expenses.

22 33. AT and UNITED failed to provide Plaintiff with her requested employment
23 records.

24 34. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
25 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
26 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
27 amend this Complaint once she completes and complies with the provisions under the law.

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1 **FIRST CAUSE OF ACTION**

2 **(Sex (Pregnancy) Discrimination in violation of Government Code 12940(a)– By Plaintiff**
3 **Against Defendants AT and UNITED and Does 1 through 100)**

4 35. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 36. FEHA offers protection to employees against the unlawful practices of
7 employers by broadly prohibiting employment discrimination in discharges, or terms and
8 conditions of employment based on disability. FEHA provides, in pertinent part:

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10 It is an unlawful employment practice . . . [f]or an employer, because of sex
11 [and/or] gender . . . to refuse to hire or employ the person . . . or to bar or to
12 discharge the person from employment . . . or to discriminate against the person
in compensation or in terms, conditions, or privileges of employment.

13 Gov't Code § 12940(a).

14 37. Discrimination based on the fact that a person is pregnant, has given birth, is
15 breastfeeding, or has a related medical condition is a form of sex discrimination. Gov't Code §§
16 12940(a), 12926(r)(1), 12945(a)(1); *Lopez v. La Casa de Las Madres* (2023) 89 Cal. App. 5th
17 365, 378; *see also Badih v. Myers* (1995) 36 Cal. App. 4th 1289, 1296 (pregnancy
18 discrimination is a form of sex discrimination under article I, section 8 of the California
Constitution).

19 38. At all relevant times, FEHA was in full force effect, and thus is binding on AT
20 and UNITED.

21 39. AT and UNITED were aware of Plaintiff's pregnancy because Plaintiff
22 informed them of her pregnancy.

23 40. At all relevant times, Plaintiff was performing competently in her position.

24 41. As set forth above, Plaintiff was treated differently and was discriminated
25 against on the basis of her pregnancy, namely, that AT and UNITED wrongfully terminated
26 Plaintiff on or about October 10, 2024.

27 42. Upon information and belief, employees who were not pregnant, and even those
28 who were pregnant, were not terminated.

1 43. Plaintiff believes AT and UNITED's decision was motivated by sex (pregnancy)
2 discrimination and/or was made in retaliation due to her pregnancy.

3 44. As set forth above, Plaintiff was wrongfully terminated on a discriminatory and
4 retaliatory basis.

5 45. As set forth above, AT and UNITED's acts and omissions constitute violations
6 of FEHA.

7 46. AT and UNITED 's unlawful acts, practices, and omissions proximately caused
8 Plaintiff to suffer monetary damages, humiliation, mental anguish, and physical and emotional
9 distress, in the amount of at least \$1,000,000, subject to proof at trial. Plaintiff claims such
10 amount as damages together with pre-judgment interest thereon pursuant to Civil Code sections
11 3287, 3288, and/or any other applicable provision providing for prejudgment interest.

12 47. The unlawful acts and practices alleged by Plaintiff were done by managing
13 agents of AT and UNITED and/or indicate a ratification of management's actions by AT and
14 UNITED. AT and UNITED and their managing agents committed the acts herein maliciously,
15 fraudulently, recklessly, willfully, and with wrongful and deliberate intent of causing great
16 harm to Plaintiff. Therefore, an award of punitive damages, sufficient to punish AT and
17 UNITED and to serve as an example to deter AT and UNITED from similar conduct in the
18 future, should be made, pursuant to Civil Code section 3294. Plaintiff claims such amount as
19 damages together with pre-judgment interest thereon pursuant to California Civil Code sections
20 3287, 3288, and/or any other applicable provision providing for pre-judgment interest.

21 48. Pursuant to California Government Code §12965(b), Plaintiff requests an award
22 of attorneys' fees in this action.

23 **SECOND CAUSE OF ACTION**

24 **(Discrimination Based on Physical Disability in Violation of Govt. Code 12940(a) – By**
25 **Plaintiff Against Defendants AT and UNITED and Does 1 through 100)**

26 49. Plaintiff realleges and incorporates by reference all of the allegations set forth in
27 this Complaint.

1 50. Under the California Fair Employment and Housing Act ("FEHA"),
2 Government Code § 12940(a), an employer cannot discriminate against an employee, because
3 of a physical disability.

4 51. Discrimination based on the fact that a person has a pregnancy-related medical
5 condition is a form of discrimination. Gov't Code §§ 12926(r)(1) and 12945(a)(1); *Lopez*, 89
6 Cal. App. 5th at 378.

7 52. FEHA also provides that it shall be unlawful for an employer to “. . .
8 discriminate against a person for requesting accommodation under this subdivision, regardless
9 of whether the request was granted.” Gov't Code § 12940(m)(2).

10 53. At all relevant times, FEHA was in full force effect, and thus is binding on AT
11 and UNITED.

12 54. Plaintiff suffered from the physical limitation as set forth above and was
13 therefore a member of the class of persons protected from disability discrimination under
14 California Government Code § 12940(a).

15 55. Upon learning about Plaintiff's pregnancy-related disability, on or about October
16 10, 2024, AT and UNITED wrongfully terminated Plaintiff in violation of California
17 Government Code § 12940.

18 56. By wrongfully terminating Plaintiff because of her physical disability, AT and
19 UNITED violated Government Code § 12940(a).

20 57. As a direct and proximate result of AT and UNITED's conduct, individually and
21 collectively, Plaintiff has suffered and continues to suffer substantial losses in income,
22 earnings, and benefits and has been damaged in her capacity to earn her salary, and has lost and
23 will continue to lose employment benefits, in an amount according to proof.

24 58. As a direct and proximate result of AT and UNITED's actions, Plaintiff has
25 suffered severe and serious injury to her person, all to her damage in the amount of at least
26 \$1,000,0000, and to be shown according to proof.
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1 59. AT and UNITED's conduct in discriminating against Plaintiff because of her
2 physical disability subjected her to cruel and unjust hardship in conscious disregard of her
3 rights, as it was anticipated by AT and UNITED that Plaintiff would be unable to find
4 comparable employment in the foreseeable future. Plaintiff is informed and believes, and
5 thereon alleges, that her wrongful termination by AT and UNITED was done with the intent to
6 cause her injury. As a consequence of the aforesaid oppressive, malicious and despicable
7 conduct, Plaintiff is entitled to an award of punitive damages in a sum to be shown according to
8 proof.

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10 60. Pursuant to California Government Code §12965(b), Plaintiff requests an award
11 of attorneys' fees in this action.

12 **THIRD CAUSE OF ACTION**

13 **(Failure to Prevent Discrimination from Occurring in Violation of Government Code**
14 **§12940(k) – By Plaintiff Against Defendants AT and UNITED and Does 1 through 100)**

15 61. Plaintiff realleges and incorporates by reference all of the allegations set forth in
16 this Complaint.

17 62. Plaintiff alleges that AT and UNITED violated Government Code §12940(k) by
18 failing to take all reasonable steps to prevent discrimination based on physical disability and
19 sex discrimination from occurring.

20 63. AT and UNITED knew or reasonably should have known of their employees
21 propensities for engaging in unlawful, discriminatory and harassing conduct in the workplace
22 and AT and UNITED should have restrained their employees from engaging in unlawful,
23 discriminatory and harassing conduct towards Plaintiff based on her pregnancy-related
24 disability, and AT and UNITED should have provided training and instruction to their
25 employees on the laws pertaining to discrimination and harassment. AT and UNITED failed to
26 take all reasonable steps necessary to prevent the discrimination and harassment from
27 occurring.
28

1 64. Plaintiff is informed and believes and thereupon alleges that AT and UNITED
2 failed to provide adequate training to their managers and employees.

3 65. AT and UNITED's discriminatory conduct toward Plaintiff and harassment
4 caused her to suffer physical, emotional and psychological injury, including, but not limited to,
5 humiliation, anxiety, fear, and loss of self-esteem, in the amount of at least \$1,000,000,
6 according to proof.

7 66. Plaintiff is hereby entitled to general and compensatory damages in an amount
8 to be proven at trial.

9 67. AT and UNITED's conduct were the proximate cause of the Plaintiff's damages.

10 68. AT and UNITED did the things hereinabove alleged, intentionally, oppressively,
11 and maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which
12 resulted in Plaintiff's wrongful termination against public policy, were obnoxious, despicable,
13 and ought not to be suffered by any member of the community.

14 69. All actions of AT and UNITED were known, ratified and approved by the
15 officers or managing agents of AT and UNITED. Therefore, Plaintiff is entitled to punitive or
16 exemplary damages against AT and UNITED in an amount to be determined at the time of
17 trial.

18 70. Pursuant to California Government Code §12965(b), Plaintiff requests an award
19 of attorneys' fees in this action.

20 **FOURTH CAUSE OF ACTION**

21 **(Retaliation in Violation of Public Policy – By Plaintiff Against Defendants AT and**
22 **UNITED and Does 1 through 100)**

23 71. Plaintiff realleges and incorporates by reference all of the allegations set forth in
24 this Complaint.

25 72. This cause of action is brought pursuant to the FEHA, Govt. Code §12940(h),
26 which provides that it is unlawful to retaliate against a person "because the person has opposed
27 any practices forbidden under [Government Code sections 12900 through 12966] or because
28 the person has filed a complaint, testified, or assisted in any proceeding under the FEHA."

1 73. AT and UNITED's adverse actions taken against Plaintiff as set forth herein
2 occurred in retaliation for Plaintiff's pregnancy, as hereinabove alleged. Such actions are and
3 were unlawful, discriminatory and retaliatory in violation of Cal. Gov. Code §12940 et seq.,
4 and Cal. Lab. Code §1102.5, and resulted in damages and injury to Plaintiff, as alleged herein,
5 including but not limited to lost wages and benefits.

6 74. As a result of her pregnancy-related physical disability, Plaintiff was denied the
7 right to work in an environment free of discrimination and harassment and was wrongfully
8 terminated by AT and UNITED.

9 75. Plaintiff's pregnancy-related physical disability was the reason AT and UNITED
10 retaliated against her.

11 76. As a proximate result of this retaliatory conduct in violation of public policy,
12 Plaintiff was caused to suffer, and continues to suffer, from humiliation, anxiety, severe
13 emotional distress, worry, fear, and special damages, in the amount of at least \$1,000,000,
14 according to proof.

15 77. As a proximate result of AT and UNITED's retaliatory conduct, Plaintiff has
16 suffered damages including lost wages and general damages in an amount according to proof at
17 the time of trial.

18 78. AT and UNITED did the things hereinabove alleged, intentionally, oppressively,
19 and maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which
20 resulted in Plaintiff's wrongful termination against public policy, were obnoxious, despicable,
21 and ought not to be suffered by any member of the community.

22 79. All actions of AT and UNITED were known, ratified and approved by the
23 officers or managing agents of AT and UNITED. Therefore, Plaintiff is entitled to punitive or
24 exemplary damages against AT and UNITED in an amount to be determined at the time of
25 trial.

26 80. Pursuant to California Government Code §12965(b), Plaintiff requests an award
27 of attorneys' fees in this action.

28 **FIFTH CAUSE OF ACTION**

(Harassment Due to Physical Disability– By Plaintiff Against All Defendants and DOES 1 through 100)

81. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

82. Plaintiff was harassed by the actions, conduct and comments of Defendants, which actions, conduct and comments combined to create and allow a pattern of discriminatory treatment towards Plaintiff due to Plaintiff's physical disability. Defendants' actions constituted a continuing violation of Cal. Lab. Code §1102.5 and Cal. Gov. Code §12940, *et seq.*

83. Defendants negligently and in bad faith failed to properly investigate Plaintiff's claims of harassment and discrimination and take appropriate remedial action.

84. Defendants, and each of them, engaged in retaliatory actions against Plaintiff for complaining about and participating in the investigation of the above-referenced illegal conduct.

85. At all times herein mentioned, Defendants, and each of them were legally required to refrain from discriminating against and harassing any employee on the basis of sex and pregnancy-related disability. Within the time provided by law, Plaintiff filed a complaint with the DFEH, in full compliance with these sections, and received a right to sue letter.

86. Defendants' conduct resulted in the damages and injuries to Plaintiff as alleged in this Complaint. As a direct and proximate result of the conduct of Defendants and each of them, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to Plaintiff's damage in the amount of at least \$1,000,000, according to proof.

87. Defendants did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted in Plaintiff's wrongful termination against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

88. All actions of Defendants were known, ratified and approved by the officers or managing agents of AT and UNITED. Therefore, Plaintiff is entitled to punitive or exemplary damages against Defendants in an amount to be determined at the time of trial.

89. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

SIXTH CAUSE OF ACTION

**(Wrongful Termination in Violation of Public Policy, Govt. Code §§12940 et seq.
– By Plaintiff Against Defendants AT and UNITED Does 1 through 100)**

90. Plaintiff realleges and incorporates by this reference the allegations set forth in this Complaint.

91. Plaintiff alleges that significant policies exist in the State of California that prohibit discrimination, retaliation, wrongfully terminating an employee for being disabled, pregnant, complaining about harassment and protesting against unlawful employment practices. Among others, the right to be free from discrimination and retaliation are codified in the California and United States Constitutions and the provisions of Government Code §§12900 *et seq.*

92. These policies are set forth in various laws including but not limited to Government Code §§12940 (a), 12940 (k); Cal. Const. Art. 1, §8 (employment discrimination).

93. Plaintiff became disabled due to her pregnancy while working for AT and UNITED.

94. AT and UNITED, acting through their managers and employees, intentionally created and knowingly permitted the discrimination based on disability and harassment.

95. AT and UNITED wrongfully terminated Plaintiff in violation of important and well-established public policies, including, but not limited to, policies against employment discrimination based upon disability and against harassment.

96. AT and UNITED's wrongful conduct proximately caused Plaintiff to suffer general, special and statutory damages in an amount according to proof.

97. As a further proximate result of the unlawful acts of AT and UNITED as alleged above, Plaintiff has been harmed in that she has suffered humiliation, mental anguish, and emotional and physical distress that a reasonable person would suffer upon losing her job. As a result of such actions and consequent harm, Plaintiff has suffered such damages in the amount of at least \$1,000,000, according to proof.

98. The above acts of AT and UNITED constituted a wrongful termination of Plaintiff and were in violation of public policy as described above. Such termination was a substantial factor in causing damage and injury to Plaintiff as set forth below.

99. Plaintiff believes and thereon alleges that engaging in protected activity, including, but not limited to, her disability and pregnancy were factors in AT and UNITED's conduct as alleged hereinabove.

100. As a result of AT and UNITED's conduct, Plaintiff is entitled to recover punitive damages in amount according to proof at trial.

101. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

SEVENTH CAUSE OF ACTION

(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order No. 1 – By Plaintiff Against Defendants AT and UNITED Does 1 through 100)

102. Plaintiff realleges and incorporates by this reference the allegations set forth in this Complaint.

103. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the legal minimum wage... to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 1 also obligates employers to pay each

1 employee minimum wages for all hours worked. These minimum wage standards apply to each
2 hour employees worked for which they were not paid. Therefore, an employer's failure to pay
3 for any particular hour of time worked by an employee is unlawful, even if averaging an
4 employee's total pay over all hours worked, paid or not, results in an average hourly wage
5 above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

6 104. Here, Plaintiff was not paid minimum wages due to AT and UNITED's failure
7 to afford Plaintiff compliant rest breaks.

8 105. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
9 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
10 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

11 106. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
12 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
13 *Code* § 1194. Where an employee, such as Plaintiffs are not paid for all hours worked under
14 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
15 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
16 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
17 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
18 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
19 (N.D. Cal. 2016).

20 107. Plaintiff suffered and continued to suffer losses related to the use and
21 enjoyment of compensation due and owing to her as a direct result of AT and UNTIED's
22 unlawful acts and Labor Code violations in the amount of at least \$93,024.00, according to
23 proof at trial.

24 108. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
25 wages against employers and those individuals acting on their behalf. Plaintiff requests that
26 this Court assess said penalty against Defendants AT and UNITED in an amount to be proven
27 at trial.

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109. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558, 1194 and 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendants AT and UNITED owes her, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

EIGHTH CAUSE OF ACTION

(For Failure to Provide Rest Breaks in violation of Cal. Labor Code §226.7; IWC Wage Order No. 1– By Plaintiff Against Defendants AT and UNITED and Does 1 through 100)

110. Plaintiff realleges and incorporates by this reference the allegations set forth in this Complaint.

111. Labor Code § 226.7 and Wage Order No. 1 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

112. Labor Code § 226.7 and Wage Order No. 1 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

113. Defendants AT and UNITED have intentionally and improperly failed to afford compliant rest periods to Plaintiff in violation of Labor Code § 226.7 and Wage Order No. 1. Plaintiff was restricted from leaving her work area during her rest breaks.

114. At all times relevant hereto, Plaintiff has worked 8 or more hours daily.

115. At all times relevant hereto, Defendants AT and UNITED failed to provide rest periods as required by Labor Code § 226.7 and Wage Order No. 1.

116. By virtue of Defendants AT and UNITED's failure to afford Plaintiff rest periods, Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

NINTH CAUSE OF ACTION

1 **(Waiting Time Penalties in Violation of Labor Code §226 - By Plaintiff Against**
2 **Defendants AT and UNITED Does 1 through 100)**

3 117. Plaintiff realleges and incorporates by reference all of the allegations set forth in
4 this Complaint.

5 118. At all times relevant hereto, AT and UNITED failed to issue payrolls statements
6 to Plaintiff which complied with Labor Code § 226 in that the statements issued to Plaintiff did
7 not properly and accurately pay her minimum wages and premium pay for rest breaks not
8 afforded.

9 119. AT and UNITED knowingly and intentionally failed to comply with Labor Code
10 §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs
11 expended calculating the actual hours worked and the amount of employment taxes which were
12 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
13 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
14 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
15 Labor Code § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

16 120. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
17 attorneys' fees and costs in obtaining the injunction, pursuant to Labor Code § 226(g).

18 **TENTH CAUSE OF ACTION**

19 **(Failure to Pay All Wages Due on Termination in violation of Cal. Lab. Code §203– By**
20 **Plaintiff Against Defendants AT and UNITED and Does 1 through 100)**

21 121. Plaintiff realleges and incorporates by reference all of the allegations set forth
22 in this Complaint.

23 122. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
24 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
25 from employment, unpaid wages are due and payable within 72 hours of resignation.

26 123. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
27 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
28 paid, not to exceed thirty days.

1 124. Plaintiff was wrongfully discharged from AT and UNITED's employ and AT
2 and UNITED willfully failed to pay Plaintiff wages due to her.

3 125. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
4 she was not timely paid, not to exceed 30 days' wages.

5 126. By willfully failing to pay Plaintiff separate amounts owed for minimum wages
6 and meal/rest periods not provided, as set forth above, in a timely manner as required by Cal.
7 Lab. Code §§ 201 & 202, AT and UNITED are liable to her for penalties pursuant to Cal. Lab.
8 Code § 203, in an amount equal to 30 days of her per diem wage rate in an amount according to
9 proof.

10 **ELEVENTH CAUSE OF ACTION**

11 **(For Failure to Provide a Uniform Maintenance Allowance in Violation of Cal. Labor**
12 **Code § 2802 By Plaintiff Against Defendants AT and UNITED and Does 1 through 100)**

13 127. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 128. Under California law, if an employer requires non-exempt employees to wear a
16 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
17 §2802.

18 129. In addition to the cost of the uniform, the employer must provide non-exempt
19 employees with reasonable maintenance of the uniforms. The employer can either maintain the
20 uniform itself, or pay the employee a weekly maintenance allowance.

21 130. An employer may never impose a financial burden on employees, with respect
22 to purchasing or maintaining clothing, which would reduce the employees' wage rate below the
23 minimum wage.

24 131. Here, Plaintiff purchased clothing for her work, but was not reimbursed
25 therefor.

26 132. Under California law, if an employer requires non-exempt employees to wear a
27 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
28 §2802.

1 133. In addition to the cost of the uniform, the employer must provide non-exempt
2 employees with reasonable maintenance of the uniforms. The employer can either maintain the
3 uniform itself, or pay the employee a weekly maintenance allowance.

4 134. An employer may never impose a financial burden on employees, with respect
5 to purchasing or maintaining clothing, which would reduce the employees' wage rate below the
6 minimum wage.

7 135. Here, Plaintiff purchased clothing for her work, but was not reimbursed
8 therefor.

9 136. AT and UNITED failed to reimburse Plaintiff for the necessary clothing she
10 purchased for work nor pay Plaintiff a weekly maintenance allowance.

11 137. As a proximate result of the aforementioned violations of § 2802, Plaintiff is
12 entitled to recovery from AT and UNITED for reimbursement of necessary expenditures
13 including interest and attorneys' fees.

14 138. As a proximate result of the aforementioned violations of Labor Code § 2802,
15 Plaintiff has been damaged in an amount according to proof at the time of trial.

16 139. As a proximate result of the aforementioned violations of § 2802, Plaintiff is
17 entitled to recovery from AT and UNITED for reimbursement of necessary expenditures
18 including interest and attorneys' fees.

19 140. As a proximate result of the aforementioned violations of Labor Code § 2802,
20 Plaintiff has been damaged in an amount according to proof at the time of trial.

21 **TWELFTH CAUSE OF ACTION**

22 **(For Failure to Allow Inspection of Employment Records in Violation of Cal. Labor Code**
23 **§1198.5 By Plaintiff Against Defendants AT and UNITED and Does 1 through 100)**

24 141. Plaintiff realleges and incorporates by reference all of the allegations set forth
25 in this Complaint.

26 142. California Labor Code Section 1198.5 provides:

27 (a) Every current and former employee, or his or her representative, has the right
28 to inspect and receive a copy of the personnel records that the employer

1 maintains relating to the employee's performance or to any grievance concerning
2 the employee.

3 (b) The employer shall make the contents of those personnel records available
4 for inspection to the current or former employee, or his or her representative, at
5 reasonable intervals and at reasonable times, but not later than 30 calendar days
6 from the date the employer receives a written request, unless the current or
7 former employee, or his or her representative, and the employer agree in
8 writing to a date beyond 30 calendar days to inspect the records, and the
9 agreed-upon date does not exceed 35 calendar days from the employer's receipt
10 of the written request to inspect the records. Upon a written request from a
11 current or former employee, or his or her representative, the employer shall also
12 provide a copy of the personnel records,... later than 30 calendar days from the
13 date the employer receives the request...

14 (k) If an employer fails to permit a current or former employee, or his or her
15 representative, to inspect or copy personnel records within the times specified I
16 this section... the current or former employee may recover a penalty of seven
17 hundred fifty dollars (\$750) from the employer.

18 (l) A current or former employee may also bring an action for injunctive relief
19 to obtain compliance with this section, and may recover costs and reasonable
20 attorney's fees in such an action.

21 143. Additionally, pursuant to Wage Order No. 1, at section 7 re: Records, employers
22 are required to keep accurate payroll records on each employee, and such records must be made
23 readily available for inspection by the employee upon reasonable request. The employer must
24 also maintain accurate production records.

25 144. On or about December 19, 2024, Plaintiff's counsel issued a written request to
26 AT and UNITED for copies of her personnel records.

27 145. Under California Labor Code Sections 226, 432 and 1198.5, such records were
28 to include all records relating to Plaintiff's hours worked, wage statements and compensation.

1 Plaintiff's counsel and AT and UNITED did not enter into an agreement to enlarge the time for '
2 AT and UNITED s compliance, and AT and UNITED have failed and refused to permit
3 Plaintiff copies of her records.

4 146. As a direct result and consequence of AT and UNITED's failure and refusal to
5 permit Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an
6 order or decree mandating AT and UNITED 's compliance. Plaintiff has suffered and will
7 suffer harm as a result of AT and UNITED 's ongoing refusal to comply. Plaintiff also seeks
8 recovery of the statutory penalty of \$750 based upon AT and UNITED 's violation of §1198.5.

9 **THIRTEENTH CAUSE OF ACTION**

10 **(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. & Prof. Code**
11 **§17200 et. seq. – By Plaintiff Against Defendants AT and UNITED and Does 1 through**
12 **100)**

13 147. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 148. California Business & Professions Code § 17200 *et seq.* prohibits acts of unfair
16 competition, which shall mean and include any "unlawful and unfair business practices."

17 149. AT and UNITED's conduct as alleged herein has been and continues to be
18 unfair, unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
19 affecting the public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5.
20 Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and
21 therefore has standing to bring this suit for restitution.

22 150. Paying minimum wages, affording of rest breaks, providing a uniform
23 maintenance allowance and providing employment records, are fundamental public policies of
24 the State of California. It is also the public policy of this State to enforce minimum labor
25 standards, to ensure that employees are not required or permitted to work under substandard
26 and unlawful conditions, and to protect those employers who comply with the law from losing
27
28

1 competitive advantage to other employers who fail to comply with labor standards and
2 requirements.

3 151. AT and UNITED failed to pay Plaintiff minimum wages, afford Plaintiff rest
4 breaks, provide a uniform maintenance allowance and to provide her personnel records.

5 152. Through the conduct alleged herein, AT and UNITED acted contrary to these
6 public policies and has thus engaged in unlawful and/or unfair business practices in violation of
7 Business & Professions Code §§ 17200 *et. seq.*, depriving Plaintiff of the rights, benefits, and
8 privileges guaranteed to employees under California law.

9 153. AT and UNITED regularly and routinely violated the following statutes and
10 regulations with respect to Plaintiff:

- 11
- 12 (a) *Labor Code* § 1197 and Wage Order No. 1 (failure to pay minimum
 - 13 wages);
 - 14 (b) *Lab. Code* § 226.7 (failure to afford rest breaks);
 - 15 (c) *Labor Code* § 226 (failure to provide accurate wage statements to
 - 16 employees at the time of payment of wages);
 - 17 (d) *Labor Code* § 203 (failure to pay wages on termination);
 - 18 (e) *Labor Code* § 2802 (failure to provide a uniform maintenance allowance);
 - 19 and
 - 20 (c) *Labor Code* §1198.5 (failure to allow inspection of employment records).

21 154. By engaging in these business practices, which are unfair business practices
22 within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*, harmed Plaintiff and gained an
23 unfair competitive edge. Under the Business & Professions Code § 17203, Plaintiff is entitled
24 to obtain restitution of these funds.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
27 and against Defendants, and each of them, as follows:

- 1 1. For compensatory damages in the amount of minimum wages due to Plaintiff, in
2 the amount of at least \$93,024.00, according to proof;
- 3 2. For compensatory damages for lost wages and employment benefits, in the
4 amount of \$93,024.00, according to proof;
- 5 3. For compensatory damages for physical and emotional distress, in the amount of
6 at least \$1,000,000, according to proof;
- 7 4. For an award of consequential damages, according to proof;
- 8 5. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
9 workday that a rest period was not provided;
- 10 6. For payment of unpaid wages in accordance with California labor and
11 employment law;
- 12 7. For statutory damages pursuant to Cal. Lab. Code §226, according to proof;
- 13 8. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
14 § 203, in an amount equal to her daily pay rate at the time of termination, multiplied by the
15 total amount of days elapsed between the date of involuntary termination, and/or 72 hours after
16 notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
- 17 9. For specific relief enforcing waiting time penalties of 30 days of per diem wages
18 pursuant to Cal. Bus. & Prof. Code §17200, according to proof;
- 19 10. For statutory penalties pursuant to Cal. Lab. Code § 226.7, according to proof;
- 20 11. For prejudgment interest accrued on all due and unpaid minimum wages from
21 the date that wages were due and payable, pursuant to Cal. Lab. Code §§218.6 and 1194(a),
22 according to proof;
- 23 12. For compensatory damages in the amount of Plaintiff's uniform maintenance
24 expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
- 25 13. For reasonable costs, including attorneys' fees, in an amount according to proof
26 pursuant to *Government Code* § 12965(b), Cal. Labor Code §§ 1194, 218.5, 1198.5, 2802
27 and/or Cal. Code Civ. Proc. §1021.5;
- 28

1 14. For injunctive relief ordering the continuing unfair business acts and practices to
2 cease, as the Court deems just and proper;

3 15. For other injunctive relief ordering AT and UNITED to notify Plaintiff that she
4 has not been paid the proper amounts in accordance with California law;

5 16. For injunctive relief requiring AT and UNITED to comply with Labor Code
6 1198.5(b)(1);

7 17. For costs of suit, generally and pursuant to Code of Civil Procedure § 1021.5;

8 18. For punitive and exemplary damages in a sum to be determined at trial; and

9 19. For such other and further relief as the Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff Heini Cifuentes Silva hereby respectfully requests a trial by jury for all claims
12 and issues raised in her Complaint that may be entitled to a jury trial.

13
14 LIPELES LAW GROUP, APC

15 Date: December 19, 2024

16
17 By: Jasmine Badawi
18 Jasmine J. Badawi
19 Attorneys for Plaintiff
20 Heini Cifuentes Silva
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