

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Jon Takasugi

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

ANA CARIAS, an individual,

Plaintiff,

v.

BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC., a Delaware
Corporation; and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.: 21STCV38841

Unlimited Jurisdiction

COMPLAINT

- 1. CONSTRUCTIVE WRONGFUL
TERMINATION AND RETALIATION
IN VIOLATION OF PUBLIC
POLICY;**
- 2. HARASSMENT BASED ON AGE;**
- 3. DISCRIMINATION BASED ON
DISABILITY AND RACE;**
- 4. FAILURE TO ACCOMMODATE;**
- 5. FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS;**
- 6. FAILURE TO TAKE REASONABLE
STEPS TO PREVENT
DISCRIMINATION AND/OR
HARASSMENT;**
- 7. FAILURE TO PAY OVERTIME
WAGES;**
- 8. FAILURE TO PROVIDE MEAL
BREAKS;**
- 9. FAILURE TO PROVIDE REST
PERIODS;**
- 10. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS [California
Labor Code §226(a)];**
- 11. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS [California
Labor Code §226.1];**

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**12. FAILURE TO REIMBURSE
EXPENSES;
13. UNLAWFUL WITHOLDING OF
WAGES;
14. WAITING TIME PENALTIES;
15. NEGLIGENCE;
16. NEGLIGENT HIRING,
SUPERVISON, AND RETENTION;
AND,
17. VIOLATION OF CALIFORNIA’S
UNFAIR COMPETITION LAW (Cal.
Bus. & Prof. C. §§17200-17208)**

DEMAND FOR JURY TRIAL

Plaintiff ANA CARIAS (“PLAINTIFF”) hereby files this Complaint against Defendant BUBBA GUMP SHRIMP CO. RESTAURANT, INC., a California Corporation, (“DEFENDANT”) and DOES 1 THROUGH 20, inclusive. PLAINTIFF is informed and believes, and on the basis of that information and belief, alleges as follows:

PARTIES

1. PLAINTIFF is, and at all times material hereto was, an individual residing in the County of Los Angeles in the State of California.

2. PLAINTIFF is informed and believes, and on this basis alleges that DEFENDANT BUBBA GUMP SHRIMP CO. RESTAURANT, INC. is, and at all times material hereto was, a Delaware corporation organized and existing under the laws of the State of Delaware and authorized to conduct business in the County of Los Angeles (i.e., California Entity No. C1795958).

3. The true names and capacities of DOES 1 through 20, inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF at this time, who therefore sues said defendants by such fictitious names; when the true names and capacities of such defendants are ascertained, PLAINTIFF will seek leave of court to amend this Complaint to insert same. PLAINTIFF is informed and believes and thereon alleges that each defendant named as a DOE is responsible for each and every act and obligation hereinafter set forth.

1 4. PLAINTIFF is informed and believes and thereon alleges that each defendant
2 named in this Complaint now is, and was at all times herein mentioned, the agent, servant,
3 employee, representative, alter ego, members of and/or engaged in a joint venture, partnership and
4 common enterprise of the other defendants herein, and was at all such times acting within the
5 course and scope of said agency and employment and with the consent and permission of each of
6 the other co-defendants, and each of the defendants herein ratified each of the acts of each of the
7 other co-defendants, and each of them.

8 **JURISDICTION AND VENUE**

9 5. Venue is proper in Los Angeles County because at least some of the transactions
10 that are the subject matter of this Complaint occurred therein and/or each DEFENDANT either is
11 found, maintains office, transacts business, and/or has an agent therein.

12 **FACTS COMMON TO ALL CAUSES OF ACTION**

13 6. In or about 2010, PLAINTIFF was hired by DEFENDANT as kitchen staff at
14 DEFENDANT's Universal City site in Los Angeles. DEFENDANT has been in casual restaurant
15 business and has maintained restaurants and branches throughout California and in the United
16 States.

17 7. PLAINTIFF's position was non-exempt and her most recent hourly rate was \$18
18 per hour.

19 8. PLAINTIFF is informed and believes, and on the basis of that information and
20 belief, alleges that PLAINTIFF was not paid for all hours and/or overtime worked.

21 9. After several years of working for DEFENDANT, PLAINTIFF was purportedly
22 offered paid vacation time as a benefit, but PLAINTIFF was not paid outstanding vacation benefits
23 earned upon departure.

24 10. Working in a busy restaurant such as DEFENDANT's Universal City location,
25 PLAINTIFF was often times not provided compliant meal breaks and rest periods. PLAINTIFF's
26 meal breaks, when she had them, were often interrupted with job duties. Even worse, despite not
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1 having meal breaks at all at times, DEFENDANT's management often clocked PLAINTIFF out
2 without her permission as if she had such a break. PLAINTIFF also typically had no rest breaks
3 during her shifts.

4 11. Moreover, DEFENDANT did not provide free work uniforms for PLAINTIFF and
5 other employees similarly situated, but ordered PLAINTIFF to purchase uniform shirt, pants and
6 hats out of pocket.

7 12. During the coronavirus pandemic, DEFENDANT also failed to provide the basic
8 personal protective equipment such as masks or hand sanitizer to PLAINTIFF. PLAINTIFF felt
9 particularly unsafe working without protection at a restaurant that was open to public at that time.

10 13. PLAINTIFF constantly had to endure age and gender-based harassment and
11 discrimination. For instance, insults in Spanish were persistently directed at PLAINTIFF such as
12 "hurry up fucking old lady," "you are too old," and "quit, quit already." On many occasions,
13 DEFENDANT's employees such as Pedro Doe ("Pedro") and Miguel Doe ("Miguel") told
14 PLAINTIFF that she was too old to work in a restaurant, and that she should not come to work
15 anymore. DEFENDANT knew of Pedro and Miguel's harassment and discrimination against
16 PLAINTIFF but failed to take immediate and appropriate corrective action.

17 14. After PLAINTIFF reported her back injury and on-the-job burn injury to
18 DEFENDANT, DEFENDANT told PLAINTIFF that they would not hire someone else to take
19 over PLAINTIFF's shift, and that PLAINTIFF may quit if she did not like it. After PLAINTIFF's
20 last day at work in or about August 21, 2020, she was placed on disability leave by her healthcare
21 provider. PLAINTIFF became fearful and anxious about returning to work and facing further
22 abuse.

23 15. On June 14, 2021, PLAINTIFF complied with *Labor Code* §2699.3(a) in that
24 PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development
25 Agency ("LWDA") and DEFENDANTS of the specific provisions of the labor Code alleged to
26 have been violated, including the facts and theories to support the alleged violation. As of the date
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1 of filing this complaint, (more than 60 calendar days after PLAINTIFF's LWDA letters were
2 mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended
3 to investigate the alleged violations. As such PLAINTIFF seeks relief hereunder on behalf of all
4 those similarly situated pursuant to PAGA.

5 16. On June 14, 2021, PLAINTIFF filed a complaint with the Department of Fair
6 Employment and Housing and obtained a Right-to-Sue letter on the same day.

7 **FIRST CAUSE OF ACTION**

8 **CONSTRUCTIVE WRONGFUL TERMINATION**

9 **AND RETALIATION IN VIOLATION OF PUBLIC POLICY**

10 **(PLAINTIFF against all DEFENDANTS)**

11 17. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
12 Complaint by reference as though fully set forth herein.

13 18. PLAINTIFF was employed as an employee by DEFENDANTS.

14 19. It is the public policy of the State of California that employers must follow all
15 employment laws and that employees are not subjected to retaliation or any adverse employment
16 action for being disabled or due to their age. Similarly, it is against the law to discriminate against
17 an employee due to a disability or based on age. These policies are enumerated in Labor Code
18 §132(a), the California Fair Employment and Housing Act ("FEHA"), the California and United
19 States Constitutions, among other laws and regulations.

20 20. Constructive discharge occurs when the employer's conduct effectively forces an
21 employee to resign, and when the employment relationship is actually severed involuntarily by the
22 employer's acts, against the employee's will.

23 21. PLAINTIFF was constructively terminated and retaliated against by
24 DEFENDANTS in violation of public policy as a result of PLAINTIFF having a disability and
25 making related complaints which were not addressed properly. Moreover, PLAINTIFF was
26 constructively terminated and retaliated against by DEFENDANTS in violation of public policy
27 due to her age, as DEFENDANT's permitted and ratified a hostile work environment.

1 22. The facts that PLAINTIFF had sustained an injury while on the job and complained
2 about the pain were substantial motivating factors for DEFENDANTS' adverse employment
3 actions taken against PLAINTIFF.

4 23. Similarly, PLAINTIFF's age was also a motivating factor for DEFENDANTS'
5 adverse employment actions taken against PLAINTIFF.

6 24. As a substantial result of DEFENDANT's intentional and negligent acts in
7 violation of public policy, PLAINTIFF was harmed. Specifically, PLAINTIFF lost income, and
8 endured emotional and mental damages, among other related damages. The exact amount of
9 damage to PLAINTIFF shall be proved at trial.

10 25. PLAINTIFF believes that DEFENDANT's conducts described above were done
11 with malice, fraud and oppression and with conscious disregard for her rights and with the intent,
12 design and purpose to cause her harm. As such, PLAINTIFF is also entitled to punitive and
13 exemplary damages.

14 26. In addition, PLAINTIFF is entitled to interest, penalties, and costs, among other
15 damages against DEFENDANTS.

16 **SECOND CAUSE OF ACTION**

17 **HARASSMENT IN VIOLATION**

18 **OF CALIFORNIA GOVERNMENT CODE §12940, ET SEQ**

19 **(PLAINTIFF against all DEFENDANTS)**

20 27. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
21 Complaint by reference as though fully set forth herein.

22 28. PLAINTIFF was employed as an employee by DEFENDANT.

23 29. PLAINTIFF was subjected to harassment by DEFENDANT due to her age which
24 created a work environment that was hostile, intimidating, offensive, oppressive, and abusive.

25 30. The harassing conduct, including the ongoing comments by Pedro and Miguel were
26 sever and pervasive as they occurred often and included such severe comments directed at
27 PLAINTIFF as, "hurry up fucking old lady," "you are too old," and "quit, quit already."
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1 31. This offended PLAINTIFF and would likewise cause a reasonable person under
2 similar circumstances to find the work environment to be hostile, intimidating, offensive,
3 oppressive, and/or abusive. In fact, PLAINTIFF considered her work environment to be hostile,
4 intimidating, offensive, oppressive, and abusive because of this egregious conduct.

5 32. DEFENDANT knew or should have reasonably known of this conduct but did
6 nothing about it.

7 33. As a result, PLAINTIFF was harmed. This harassment was a substantial factor in
8 causing PLAINTIFF's harm, including her ultimate wrongful constructive termination.

9 34. As a substantial result of DEFENDANT's intentional and negligent acts in
10 violation of *Government Code* Section 12940 et seq., PLAINTIFF was harmed. Specifically,
11 PLAINTIFF lost income, and endured emotional and mental damages, among other related
12 damages. The exact amount of damage to PLAINTIFF shall be proved at trial.

13 35. PLAINTIFF believes that DEFENDANT's conduct described above was done with
14 malice, fraud and oppression and with conscious disregard for her rights and with the intent, design
15 and purpose to cause her harm. As such, PLAINTIFF is also entitled to punitive and exemplary
16 damages.

17 36. In addition, PLAINTIFF is entitled to interest, penalties, attorneys' fees and costs,
18 among other damages against DEFENDANTS.

19 **THIRD CAUSE OF ACTION**

20 **DISCRIMINATION IN VIOLATION**

21 **OF CALIFORNIA GOVERNMENT CODE §12940, ET SEQ**

22 **(PLAINTIFF against all DEFENDANTS)**

23 37. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
24 Complaint by reference as though fully set forth herein.

25 38. PLAINTIFF was employed as an employee by DEFENDANTS.

26 39. During her employment with DEFENDANTS, PLAINTIFF was injured, and her
27 injury rendered her disabled within the meaning for disability under FEHA.
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1 40. DEFENDANTS herein were aware of PLAINTIFF's injury and disability.
2 However, DEFENDANTS otherwise expected PLAINTIFF to work through the pain without
3 treatment or accommodation.

4 41. This unreasonable expectation and DEFENDANT's failure to accommodate
5 PLAINTIFF resulted in PLAINTIFF's constructive wrongful termination.

6 42. PLAINTIFF's disability was a substantial motivating reason for DEFENDANTS'
7 conduct that caused the constructive wrongful termination.

8 43. As a substantial result of DEFENDANT's negligent and intentional acts related to
9 her disability, PLAINTIFF was harmed. The exact amount of damage to PLAINTIFF shall be
10 proved at trial.

11 44. PLAINTIFF believes that DEFENDANTS' conducts described above were done
12 with malice, fraud and oppression and with conscious disregard for her rights and with the intent,
13 design and purpose to cause her harm. As such, PLAINTIFF is also entitled to punitive and
14 exemplary damages.

15 45. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
16 among other damages against DEFENDANTS.

17 **FOURTH CAUSE OF ACTION**

18 **DISABILITY DISCRIMINATION – FAILURE TO ACCOMMODATE**

19 **IN VIOLATION OF GOVERNMENT CODE §12940(m)**

20 **(PLAINTIFF against all DEFENDANTS)**

21 46. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
22 Complaint by reference as though fully set forth herein.

23 47. PLAINTIFF was employed as an employee by DEFENDANTS.

24 48. During her employment with DEFENDANTS, PLAINTIFF was injured, and her
25 injury rendered her disabled within the meaning for disability under FEHA.

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68. *Labor Code* §510(a) provides that any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

70. DEFENDANT knew or should have known that PLAINTIFF had worked overtime hours. For example, at times DEFENDANT deducted meal periods that were not taken. This resulted in overtime work not being accounted for.

72. However, PLAINTIFF did not receive all overtime pay earned.

EIGHTH CAUSE OF ACTION

(PLAINTIFF against all DEFENDANTS)

1 75. *Labor Code* §512(a) provides that employees who work more than five hours in a
2 day are entitled to a meal period of at least 30 minutes; and a second meal period of at least 30
3 minutes if they work for more than 10 hours in a day.

4 76. *Labor Code* §512 further provides that “An employer may not employ an employee
5 for a work period of more than 10 hours per day without providing the employee with a second
6 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
7 hours, the second meal period may be waived by mutual consent of the employer and the employee
8 only if the first meal period was not waived.”

9 77. *Labor Code* §516 provides that the Industrial Welfare Commission may adopt or
10 amend working condition orders with respect to meal periods for any workers in California
11 consistent with the health and welfare of those workers.

12 78. Section 11(C) of the *IWC Wage Order(s)* provides that “Unless the employee is
13 relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on
14 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only
15 when the nature of the work prevents an employee from being relieved of all duty and when by
16 written agreement between the parties an on-the-job paid meal period is agreed to. The written
17 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

18 79. Section 11(D) of the *IWC Wage Order(s)* provides that “If an employer fails to
19 provide an employee a meal period in accordance with the applicable provisions of this order, the
20 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday that the meal period is not provided.”

22 80. Furthermore, an employer may not undermine a formal policy of providing meal
23 breaks by pressuring employees to perform their duties in ways that omit breaks. The wage orders
24 and governing statute do not countenance an employer's exerting coercion against the taking of,
25 creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.
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1 81. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in non-
2 exempt positions.

3 82. PLAINTIFF's employment with DEFENDANTS entitled PLAINTIFF to meal
4 breaks.

5 83. PLAINTIFF was at times not given meal breaks and at other times meal breaks
6 which were not complaint with labor laws.

7 84. PLAINTIFF had been harmed and DEFENDANTS are liable to PLAINTIFF for
8 one (1) hour of additional premium pay at the regular rate of compensation for each day in which
9 the proper meal was not provided. The exact amount of missed meal break wages owed to
10 PLAINTIFF shall be proved at trial. PLAINTIFF is also entitled to interest, penalties, and
11 attorney's fees and costs, among other damages.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST PERIODS**

14 **(PLAINTIFF against all DEFENDANTS)**

15 85. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
16 Complaint by reference as though fully set forth herein.

17 86. State law requires employers to authorize paid rest periods of a specified minimum
18 duration of 10 minutes for every four hours an employee works. (See, e.g., *8 California Code*
19 *Regulations* §§11010-11150 ¶2 and §11160 ¶1; Wage order No. 5)

20 87. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in non-
21 exempt positions.

22 88. PLAINTIFF's employment with DEFENDANTS entitled PLAINTIFF to rest
23 breaks. PLAINTIFF's shifts that were over four (4) hours therefore were entitled to a rest period
24 of not less than ten (10) minutes prior to exceeding four (4) hours of employment for each four (4)
25 hours of work.

26 89. Throughout PLAINTIFF's employment, DEFENDANTS typically did not provide
27 PLAINTIFF with rest breaks and/or compliant breaks for every four hours of work.

1 90. An employer who fails to provide rest periods as required by an applicable Wage
2 Order must pay the employee one (1) additional hour of pay at the employee's regular rate of pay
3 for each workday that a rest period was not provided. The exact amount of missed rest break wages
4 owed to Plaintiff shall be proved at trial. PLAINTIFF is also entitled to interest, penalties, and
5 attorney's fees and costs, among other damages.

6 **TENTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

8 **IN VIOLATION OF LABOR CODE § § 226(a)(e)**

9 **(PLAINTIFF against all DEFENDANTS)**

10 91. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
11 Complaint by reference as though fully set forth herein.

12 92. *Labor Code* §226(a) requires employers to provide accurate itemized wage
13 statements for each wage payment. *Labor Code* §226 (e) provides for a recovery of the greater of
14 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
15 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
16 aggregate penalty of four thousand dollars (\$4,000) (per employee).

17 93. Further, *Labor Code* §226.3 provides for civil penalties against anyone who
18 violates *Labor Code* §226.

19 94. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage
20 statements, willfully or intentionally. DEFENDANTS also failed to account for accurate
21 withholdings, hours, wage rates, overtime, and meal and rest premiums among other things.

22 95. As a result of DEFENDANTS' aforementioned unlawful act, Plaintiff suffered
23 damage.

24 96. Plaintiff is therefore entitled to recover from DEFENDANTS damages and
25 penalties promulgated under Labor Code §§226 and 226.3.

26 97. PLAINTIFF is entitled to injunctive relief to ensure compliance with the
27 aforementioned Labor Code provision.

1 **ELEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **IN VIOLATION OF LABOR CODE § 226.3**

4 **(PLAINTIFF against all DEFENDANTS)**

5 98. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
6 Complaint by reference as though fully set forth herein.

7 99. *Labor Code* §§226 and 226.3 provides for civil penalties against anyone who
8 violates Labor Code §226. *Labor Code* §226(a) requires employers to provide accurate itemized
9 wage statements for each wage payment. Specifically, Labor Code §226.3 provides a penalty of
10 two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand
11 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
12 fails to provide the employee a wage statement in compliance with Labor Code §226.

13 100. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage
14 statements, willfully or intentionally. DEFENDANTS also failed to account for accurate
15 withholdings, hours, wage rates, overtime, and meal and rest premiums, among other things.

16 101. As a result of DEFENDANTS' aforementioned unlawful act, Plaintiff suffered
17 damage.

18 102. Plaintiff is therefore entitled to recover from DEFENDANTS damages and
19 penalties promulgated under Labor Code §§226 and 226.3.

20 **TWELFTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE EXPENSES**

22 **(PLAINTIFF against all DEFENDANTS)**

23 103. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
24 Complaint by reference as though fully set forth herein.

25 104. In California, employers must cover employees' expenses. Pursuant to *Labor Code*
26 §2802(a) an employer is required to "indemnify him or her employee for all necessary expenditures
27 and losses incurred by the employee in direct consequence of the discharge of his or her duties, or
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1 of his or her obedience to the directions of the employer..." This includes, "all reasonable costs"
2 as defined in *Labor Code* §2802(c). Further, *Labor Code* §2804 states the employee may not waive
3 these rights.

4 105. PLAINTIFF was required to purchase Bubba Gump specific uniforms which are
5 not generally usable in the occupation. For example, PLAINTIFF may not be able wear a Bubba
6 Gump shirt if it works for some competitors.

7 106. DEFENDANTS did not reimburse PLAINTIFF for such expenses.

8 107. Therefore, DEFENDANTS are liable and PLAINTIFF is entitled to reimbursement
9 of expenses and other costs needed to adequately perform job for the benefit of DEFENDANTS.
10 Plaintiff is therefore entitled to reimbursement from DEFENDANT'S pursuant to *Labor Code*
11 §2802(a).

12 **THIRTEENTH CAUSE OF ACTION**

13 **UNLAWFUL WITHHOLDING OF WAGES**

14 **(PLAINTIFF against all DEFENDANTS)**

15 108. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
16 Complaint by reference as though fully set forth herein.

17 109. *California Labor Code* §216 provides that it is a misdemeanor for an employer to
18 "willfully refuse to pay wages due and payable after demand has been made" or "falsely deny the
19 amount or validity thereof."

20 110. *California Labor Code* §225.5 provides a penalty of \$100 for an initial violation
21 and \$200 for any subsequent violation of §216 plus 25% of the withheld amount.

22 111. Upon termination by DEFENDANTS, PLAINTIFF was entitled by law to receive
23 all of PLAINTIFF's wages and paycheck(s) immediately. Defendants also unlawfully withheld
24 the balance of earned wages, including overtime, missed meal and rest break wages, and expense
25 reimbursements. Moreover, these wages were demanded thereafter.

26 112. As a result of DEFENDANT's aforementioned unlawful acts, PLAINTIFF suffered
27 damage.
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1 113. As such, DEFENDANT must pay all wages owed and is are subject to the penalty
2 under *Labor Code* §225.5. PLAINTIFF is entitled to such penalties plus interest as required by
3 law, plus restitution of all wages earned but not paid. The exact amount of penalties will be proved
4 at trial.

5 **FOURTEENTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 **(PLAINTIFF against all DEFENDANTS)**

8 114. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
9 Complaint by reference as though fully set forth herein.

10 115. *Labor Code* §203 provides that “if an employer willfully fails to pay, without
11 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages
12 of an employee who is discharged or who quits, the wages of the employee shall continue as a
13 penalty from the due date thereof at the same rate until paid or until an action therefor is
14 commenced; but the wages shall not continue for more than 30 days.”

15 116. PLAINTIFF is owed wages by DEFENDANTS and was not paid all of
16 PLAINTIFF’s final wages since PLAINTIFF’s wrongful termination until the date of filing this
17 Complaint.

18 117. DEFENDANTS acted willfully in not paying DEFENDANTS final wages in full.

19 118. As a result of DEFENDANTS’ aforementioned unlawful act, PLAINTIFF suffered
20 damage.

21 119. PLAINTIFF is entitled to recover from DEFENDANTS the statutory penalty wages
22 for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum
23 pursuant to California Labor Code sections 203, plus interest and attorney’s fees in the amount to
24 be proven at trial.

25 **FIFTEENTH CAUSE OF ACTION**

26 **NEGLIGENCE**

27 **(PLAINTIFF against all DEFENDANTS)**

1 120. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
2 Complaint by reference as though fully set forth herein.

3 121. DEFENDANTS owe, and at all times relevant owed, a duty to their employees to
4 provide a safe, non-discriminating, non-retaliatory and harassment-free work environment, to
5 make sure that its supervisors take action against employees practicing workplace discrimination,
6 retaliation, and harassment, to make sure supervisors and managers look after the safety of
7 employees during their watch, to pay employees proper wages when due, and to provide them with
8 proper wage statements.

9 122. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

10 123. DEFENDANTS' breach was and is the actual and proximate cause of
11 PLAINTIFF's harm.

12 124. In so doing, DEFENDANTS caused Plaintiff harm including causing her to lose
13 the job in addition to general and consequential damages.

14 **SIXTEENTH CAUSE OF ACTION**

15 **NEGLIGENT HIRING, SUPERVISION, AND RETENTION**

16 **(PLAINTIFF against all DEFENDANTS)**

17 125. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
18 Complaint by reference as though fully set forth herein.

19 126. DEFENDANT hired Pedro and Miguel.

20 127. Pedro and Miguel engaged in harassing behavior toward PLAINTIFF.

21 128. DEFENDANT knew or should have known of Pedro and Miguel harassing
22 conduct.

23 129. However, DEFENDANT failed to properly supervise Pedro and Miguel and instead
24 retained them despite their illegal conduct.

25 130. DEFENDANT was harmed by Pedro and Miguel's harassment.

26 131. DEFENDANT's negligent hiring, retention, and supervision of Pedro and Miguel
27 was a substantial factor in causing PLAINTIFF's harm.
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1 **SEVENTEENTH CAUSE OF ACTION**

2 **VIOLATION OF CAL. BUS. & PROF. CODE § § 17200 ET. SEQ.**

3 **FOR UNFAIR BUSINESS PRACTICES**

4 **(PLAINTIFF against all DEFENDANTS)**

5 132. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
6 Complaint by reference as though fully set forth herein.

7 133. DEFENDANTS, themselves or through their supervisors, in an effort to exploit,
8 harass, and discriminate against their employees for profit or otherwise, have engaged in the
9 following unlawful, unfair, deceptive, and misleading business practices, amongst others outlined
10 in this complaint:

- 11 a. Wrongfully constructively terminating and retaliating against employees with
12 disabilities;
- 13 b. Discriminating against employees based on disability;
- 14 c. Failure to accommodate;
- 15 d. Failing to properly supervise and train its employees;
- 16 e. Failing to pay all wages and sick leaves earned and owed to employees;
- 17 f. Failing to pay overtime wages earned and owed to employees;
- 18 g. Failing to provide proper meal breaks and rest periods, or to pay premium
19 wages for missed meal and rest periods to PLAINTIFF and members of the
20 CLASSES;
- 21 h. Failing to reimburse business expenses; and,
- 22 i. The foregoing wrongful activities have caused harm, fear, pressure, and
23 humiliation to the employee(s) at DEFENDANTS.

24 134. PLAINTIFF is entitled to enforce all applicable penalty provisions of the California
25 Business and Professions Code §17202.

26 135. Pursuant to the provisions of Section 17203 of the California Business and
27 Professions Code, Plaintiff is entitled to restoration of lost wages, medical expenses, and profits
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DEFENDANTS have collected by the use of the unfair, deceptive, and misleading business practices described in this Complaint.

136. Pursuant to provisions of Section 17203 et seq. DEFENDANTS must be ordered to disgorge all the unlawful profits in the relevant statutory to PLAINTIFF, which DEFENDANTS have received from improperly billing Clients and cheating of employees in terms of their hours reported as having been worked but not paid.

137. Pursuant to the provisions of Section 17203 of the California Business and Professions Code, this Court should issue an injunction prohibiting DEFENDANTS from engaging in the foregoing unfair, deceptive, and misleading business practices.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, and DOES 1 through 20 inclusive, as follows:

1. General and special damages, liquidated damages (if applicable), subject to proof at trial;
2. Emotional distress damages;
3. Civil and statutory penalties (including under PAGA where applicable);
4. Restitution of wages;
5. Injunctive relief available under Cal. Bus. & Prof. Code § § 17200 Et. Seq;
6. Punitive and exemplary damages;
7. Pre-judgment interest;
8. Costs of lawsuit;
9. Attorneys' fees; and,
10. For an award of such other and further equitable and legal relief as this Court may deem appropriate.

Dated: October 20, 2021

BITTON & ASSOCIATES



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Ophir J. Bitton
Lei Wei
Attorneys for Plaintiff,
Ana Carias

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Dated: October 20, 2021

A handwritten signature in black ink, appearing to be "Mrs".

Ophir J. Bitton
Lei Wei
Attorneys for Plaintiff,
Ana Carias