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

BEATRIZ CASTILLO, an individual,

Plaintiff,

v.

SPANGLISH KITCHEN, INC., a California
 Corporation; ANTONIO MORO, an
 individual; and DOES 1 THROUGH 20,
 inclusive,

Defendants.

Case No.: 22STCV14032
 Unlimited Jurisdiction

COMPLAINT

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

Complaint

Beatriz Castillo v. Spanglish Kitchen, Inc., et al.

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13. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.1];
 14. UNLAWFUL WITHOLDING OF WAGES;
 15. WAITING TIME PENALTIES;
 16. BATTERY;
 17. ASSUALT;
 18. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
 19. NEGLIGENCE;
 20. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
 21. NEGLIGENT HIRING, SUPERVISION, AND RETENTION;
 22. FAILURE TO PROVIDE EMPLOYMENT RECORDS; AND
 23. UNFAIR BUSINESS PRACTICES.

DEMAND FOR JURY TRIAL

14 Plaintiff BEATRIZ CASTILLO (“PLAINTIFF”) hereby files this Complaint against
15 Defendant SPANGLISH KITCHEN, INC. (“SPANGLISH”), a California Corporation,
16 ANTONIO MORO (“MORO”), an individual (Collectively, “DEFENDANTS”) and DOES 1
17 THROUGH 20, inclusive. PLAINTIFF alleges as follows:

18 **PARTIES**

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

21 2. PLAINTIFF is informed and believes, and on this basis alleges that Defendant
22 SPANGLISH is, and at all times material hereto was, a California corporation organized and
23 existing under the laws of the State of California and authorized to conduct business in the County
24 of Los Angeles.

25 3. PLAINTIFF is informed and believes, and on this basis alleges that Defendant
26 MORO is an individual conducting business in California and working in the County of Los
27 Angeles.

28 4. The true names and capacities of DOES 1 through 20, inclusive, whether individual,

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

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

13 **JURISDICTION AND VENUE**

14 6. Jurisdiction is proper because plaintiff worked for defendants in the state of
15 California, and all actions relevant to this Complaint occurred in the State of California.

16 7. Venue is proper in Los Angeles County because at least some of the transactions
17 that are the subject matter of this Complaint occurred therein and/or each defendant either is found,
18 maintains office, transacts business, and/or has an agent therein.

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

20 8. On or around April 16, 2017, PLAINTIFF was hired by SPANGLISH as a kitchen
21 worker with responsibilities such as dish cleaning, food preparation, and trash disposal.

22 9. PLAINTIFF's most recent hourly rate was \$14.75/hour.

23 10. Regardless of the fact that PLAINTIFF often worked 80 hours a week,
24 PLAINTIFF's overtime hours were not fully paid, and when some overtime hours were paid, they
25 were compensated in cash or a separate paycheck based solely on PLAINTIFF's regular hourly
26 rate.

27 11. Most of the time, PLAINTIFF was so terribly busy at the kitchen that PLAINTIFF
28 had to finish eating while attending to work tasks at the meantime.

1 12. Likewise, PLAINTIFF, and many other similarly situated, was typically provided
2 no rest breaks despite the long work hours.

3 13. On March 15, 2020, PLAINTIFF's hands and arms were injured when PLAINTIFF
4 was placing heavy boxes over her head at work, and her arms injuries got worse due to the nature
5 of her repetitive work.

6 14. The onsite manager MORO warned PLAINTIFF that SPANGLISH would fire
7 employees if they reported work-related injuries. Fearing this type of retaliation and being
8 terminated, PLAINTIFF waited a month to report her injuries when she simply could not take the
9 pain anymore.

10 15. Nevertheless, instead of being sent to see a doctor, PLAINTIFF received refusal of
11 treatment and accommodation and was subject to insults due to her initial and subsequent
12 complaints about her work-related injuries.

13 16. Furthermore, PLAINTIFF is a victim of workplace discrimination, harassment, and
14 even other tortious acts.

15 17. One day while she was cutting onions in a corner, MORO slapped PLAINTIFF in
16 the face twice, telling her to hurry up.

17 18. In SPANGLISH, PLAINTIFF was not the only person who suffered from MORO's
18 hostile and violent behaviors. Other female employees were also specially targeted because
19 MORO perceived that they did not have the same strength as men to carry out the work duties and
20 meet with Moro's demands.

21 19. As her arms' condition become more intolerable and even numb at night, on or
22 around August 28, 2020, PLAINTIFF asked MORO to talk with the owner of SPANGLISH
23 regarding her injuries. Nevertheless, MORO accused PLAINTIFF of being a liar and mocked her
24 in Spanish such as "you are a fucking liar," "you are pretending to be a dumbass," "hurry up you
25 turtle," and "get out of here".

26 20. Worse yet, MORO threw a pan at PLAINTIFF and hit her ankle, which began to
27 swell up in pain.

28 21. PLAINTIFF was placed on disability leave by her healthcare provider since that

1 day, and she became fearful and anxious about returning to work and facing the physical and
2 mental abuse directed at women.

3 22. On August 27, 2021, PLAINTIFF complied with *Labor Code* §2699.3(a) in that
4 PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development
5 Agency (“LWDA”) and DEFENDANTS of the specific provisions of the labor Code alleged to
6 have been violated, including the facts and theories to support the alleged violation. As of the date
7 of filing this complaint, (more than 60 calendar days after PLAINTIFF’s LWDA letters were
8 mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended
9 to investigate the alleged violations.

10 23. On August 27, 2021, PLAINTIFF filed a complaint with the Department of Fair
11 Employment and Housing (“DFEH”) and obtained a Right to Sue letter on the same day.
12 PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and
13 Right to Sue notices.

14 **FIRST CAUSE OF ACTION**

15 **CONSTRUCTIVE WRONGFUL TERMINATION**

16 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

19 25. PLAINTIFF was employed as an employee by SPANGLISH and/or DOES 1
20 through 10.

21 26. PLAINTIFF was subjected to working conditions that violated public policy, in that
22 SPANGLISH took adverse employment actions against PLAINTIFF because PLAINTIFF had
23 sustained injuries while on the job, made complaints about the work-related injuries, and sought
24 an accommodation due to the injuries and disability. Even worse, SPANGLISH threatened that
25 PLAINTIFF would be fired if PLAINTIFF reported work-related injuries. SPANGLISH
26 discharged PLAINTIFF also because PLAINTIFF made complaints about workplace gender
27 discrimination. *California Government Code* §12940 provides that it is against the law to
28 discriminate against an employee due to disability and gender and to retaliate against an employee

for requesting an accommodation for disability regardless of whether the request was granted. These policies are also enumerated in Labor Code §132(a), the California Fair Employment and Housing Act (“FEHA”), the California and United States Constitutions, among other laws and regulations.

27. SPANGLISH intentionally created and/or knowingly permitted these working conditions.

28. These working conditions were so intolerable that a reasonable person in PLAINTIFF’s position would have had no reasonable alternative except to resign.

29. PLAINTIFF resigned because of these working conditions, and the employment relationship is actually severed involuntarily by DEFENDANTS’ acts, against PLAINTIFF’s will.

30. PLAINTIFF’s protected activities described above were substantial motivating factors for SPANGLISH’s adverse employment actions taken against PLAINTIFF.

31. As a substantial result of SPANGLISH’s intentional acts in violation of public policy, PLAINTIFF was harmed. Specifically, PLAINTIFF lost income, and endured emotional and mental damages, among other related damages. The exact amount of damage to PLAINTIFF shall be proved at trial.

32. PLAINTIFF believes that SPANGLISH’s conducts described above were done with malice, fraud and oppression and with conscious disregard for PLAINTIFF’s rights and with the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to punitive and exemplary damages.

33. In addition, PLAINTIFF is entitled to interest, penalties, and costs, among other damages against SPANGLISH.

SECOND CAUSE OF ACTION

RETALIATION IN VIOLATION OF PUBLIC POLICY

(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)

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

1 35. PLAINTIFF had sustained injuries while on the job, made complaints about the
2 work-related injuries, and sought an accommodation due to the injuries and disability. PLAINTIFF
3 also made complaints about workplace gender discrimination.

4 36. PLAINTIFF was constructively discharged;

5 37. PLAINTIFF's protected activities described above were substantial motivating
6 reasons for SPANGLISH's adverse employment actions taken against PLAINTIFF.

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

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

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

17 **THIRD CAUSE OF ACTION**

18 **DISCRIMINATION IN VIOLATION**

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

20 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

23 42. PLAINTIFF was an employee of SPANGLISH and/or DOES 1 through 10.

24 43. During PLAINTIFF's employment with SPANGLISH, PLAINTIFF was injured,
25 and PLAINTIFF's injury rendered PLAINTIFF disabled within the meaning for disability under
26 FEHA. SPANGLISH herein were aware of PLAINTIFF's injuries and disabilities. However,
27 SPANGLISH otherwise expected PLAINTIFF to work through the pain without treatment or
28 accommodation.

1 44. Moreover, PLAINTIFF constantly endured severe gender-based discrimination at
2 work. SPANGLISH knew of such discrimination against PLAINTIFF but failed to take immediate
3 and appropriate corrective action.

4 45. PLAINTIFF's disability and gender were substantial motivating reasons for
5 SPANGLISH's conduct that caused the constructive wrongful termination against PLAINTIFF.

6 46. As a substantial result of SPANGLISH's intentional acts, PLAINTIFF was harmed.
7 The exact amount of damage to PLAINTIFF shall be proved at trial.

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

12 48. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
13 among other damages against SPANGLISH.

14 **FOURTH CAUSE OF ACTION**

15 **HARASSMENT IN VIOLATION**

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

17 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

20 50. PLAINTIFF was an employee of SPANGLISH.

21 51. PLAINTIFF was subjected to harassing conducts because PLAINTIFF's disability
22 and gender. Even worse, PLAINTIFF was a victim of workplace verbal abuse and physical assault
23 on multiple occasions due to PLAINTIFF's gender.

24 52. The harassing conducts was severe or pervasive.

25 53. A reasonable person in PLAINTIFF's circumstances would have considered the
26 work environment to be hostile, intimidating, offensive, oppressive, and abusive. As a matter of
27 fact, PLAINTIFF considered the work environment to be hostile, intimidating, offensive,
28 oppressive, or abusive.

1 54. A supervisor of SPANGLISH, MORO, engaged in the harassing conducts, and
2 SPANGLISH knew the conducts but failed to take immediate and appropriate corrective action.

3 55. As a substantial result of SPANGLISH's intentional acts, PLAINTIFF was harmed.
4 The exact amount of damage to PLAINTIFF shall be proved at trial.

5 56. PLAINTIFF believes that SPANGLISH's conducts described above were done
6 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
7 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
8 punitive and exemplary damages.

9 57. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
10 among other damages against SPANGLISH.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO ACCOMMODATE – FAILURE TO ACCOMMODATE**

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

14 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

17 59. PLAINTIFF was employed as an employee by SPANGLISH.

18 60. During PLAINTIFF's employment with SPANGLISH, PLAINTIFF was injured,
19 and PLAINTIFF's injury rendered PLAINTIFF disabled within the meaning for disability under
20 FEHA.

21 61. SPANGLISH herein were aware of PLAINTIFF's disability that limited
22 PLAINTIFF's work activities.

23 62. PLAINTIFF was able to perform the essential duties of the position or a vacant
24 alternative position to which PLAINTIFF could have been reassigned with reasonable
25 accommodation for PLAINTIFF's disability.

26 63. However, SPANGLISH failed to provide such reasonable accommodation for
27 PLAINTIFF's disability. SPANGLISH otherwise expected PLAINTIFF to work through the pain
28 without treatment or accommodation.

64. As a substantial result of SPANGLISH's failure to accommodate, PLAINTIFF was harmed. The exact amount of damage to PLAINTIFF shall be proved at trial.

65. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs, among other damages against SPANGLISH.

SIXTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS

IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)

(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)

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

67. PLAINTIFF was an employee of SPANGLISH.

68. PLAINTIFF had a disability that was known to SPANGLISH, and PLAINTIFF's injury rendered PLAINTIFF disabled within the meaning for disability under FEHA.

69. PLAINTIFF requested that SPANGLISH make reasonable accommodation for PLAINTIFF so that PLAINTIFF would be able to perform the essential job requirements.

70. PLAINTIFF was willing to participate in an interactive process to determine whether reasonable accommodation could be made so that PLAINTIFF would be able to perform the essential job requirements.

71. However, SPANGLISH failed to participate in a timely good-faith interactive process with PLAINTIFF to determine whether reasonable accommodation could be made.

72. As a substantial result of SPANGLISH's failure to engage in the interactive process, PLAINTIFF was harmed. The exact amount of damage to PLAINTIFF shall be proved at trial.

73. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs, among other damages against SPANGLISH.

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1 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In
2 addition, any work in excess of eight hours on any seventh day of a workweek shall be
3 compensated at the rate of no less than twice the regular rate of pay of an employee.

4 82. PLAINTIFF regularly worked for SPANGLISH for more than eight (8) hours in a
5 day and/or forty (40) hours in a week. In fact, PLAINTIFF often worked more than 12 hours in a
6 day and/or 80 hours a week.

7 83. SPANGLISH knew or should have known that PLAINTIFF had worked overtime
8 and double-time hours.

9 84. PLAINTIFF was at all times relevant a non-exempt hourly employee of
10 SPANGLISH.

11 85. However, PLAINTIFF did not receive all overtime and double-time pay.
12 Sometimes, PLAINTIFF received no pay at all for the overtime.

13 86. As a result of the unlawful acts of SPANGLISH, PLAINTIFF has been deprived of
14 wages and overtime in amounts to be proven at trial, and PLAINTIFF is entitled to recovery of
15 such amounts from SPANGLISH, plus interest, penalties and attorney's fees and costs.

16 **NINTH CAUSE OF ACTION**

17 **UNTIMELY PAYMENT OF WAGES**

18 **(PLAINTIFF against all DEFENDANTS)**

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

21 88. *Labor Code* §210(a) provides that any employer who fails to timely pay the wages
22 of each employee shall be subject to a penalty in the amount of one hundred dollars (\$100) per
23 employee per violation in an initial citation, and two hundred dollars per employee per employee
24 for each violation in a subsequent citation, or any willful and intentional violation, plus 25 percent
25 of the amount unlawfully withheld.

26 89. DEFENDANTS failed to timely pay PLAINTIFF all overtime wages that are due
27 and payable for each pay period.
28

1 90. As a result of DEFENDANTS’ aforementioned unlawful act, PLAINTIFF suffered
2 damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties
3 promulgated under *Labor Code* §§226 and 226.3.

4 **TENTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL BREAKS**

6 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

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

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

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

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

26 96. Section 11(D) of the *IWC Wage Order(s)* provides that “If an employer fails to
27 provide an employee a meal period in accordance with the applicable provisions of this order, the
28 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of

1 compensation for each workday that the meal period is not provided.”

2 97. Furthermore, an employer may not undermine a formal policy of providing meal
3 breaks by pressuring employees to perform their duties in ways that omit breaks. The wage orders
4 and governing statute do not countenance an employer's exerting coercion against the taking of,
5 creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

6 98. At all times relevant herein, PLAINTIFF was employed by SPANGLISH in a non-
7 exempt position.

8 99. PLAINTIFF's employment with SPANGLISH entitled PLAINTIFF to meal
9 breaks.

10 100. PLAINTIFF was at times not given meal breaks and at other times meal breaks
11 which were not compliant with labor laws. Further, at times PLAINTIFF worked more than 10
12 hours in a shift; however, PLAINTIFF was not given or advised that PLAINTIFF may take a
13 second meal break.

14 101. PLAINTIFF had been harmed and SPANGLISH are liable to PLAINTIFF for one
15 (1) hour of additional premium pay at the regular rate of compensation for each day in which the
16 proper meal was not provided. The exact amount of missed meal break wages owed to PLAINTIFF
17 shall be proved at trial, and PLAINTIFF is entitled to recovery of such amounts from
18 SPANGLISH, plus interest, penalties and attorney's fees and costs.

19 **ELEVENTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REST PERIODS**

21 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

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

27 104. At all times relevant herein, PLAINTIFF was employed by SPANGLISH in a non-
28 exempt position.

1 112. As a result of SPANGLISH's aforementioned unlawful act, Plaintiff suffered
2 damage. Plaintiff is therefore entitled to recover from SPANGLISH damages and penalties
3 promulgated under Labor Code §§226 and 226.3.

4 113. PLAINTIFF is entitled to injunctive relief to ensure compliance with the
5 aforementioned Labor Code provision.

6 **THIRTEENTH CAUSE OF ACTION**

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

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

9 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

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

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

21 117. As a result of SPANGLISH's aforementioned unlawful act, Plaintiff suffered
22 damage. Plaintiff is therefore entitled to recover from SPANGLISH damages and penalties
23 promulgated under Labor Code §§226 and 226.3.

24 **FOURTEENTH CAUSE OF ACTION**

25 **UNLAWFUL WITHHOLDING OF WAGES**

26 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

128. As a result of SPANGLISH's aforementioned unlawful act, PLAINTIFF suffered damage. PLAINTIFF is entitled to recover from SPANGLISH the statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code sections 203, plus interest and attorney's fees in the amount to be proven at trial.

SIXTEENTH CAUSE OF ACTION

BATTERY

(PLAINTIFF against all DEFENDANTS)

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

130. MORO touched PLAINTIFF with the intent to harm and offend PLAINTIFF. As alleged herein, MORO committed a harmful and offensive touching of PLAINTIFF by slapping PLAINTIFF, throwing a pan at PLAINTIFF and hit PLAINTIFF in the ankle, among other unaccounted occasions.

131. A reasonable person in PLAINTIFF's situation would have been offended by the touching. As a matter of fact, PLAINTIFF was harmed and offended by MORO's conduct.

132. PLAINTIFF did not consent to the touching.

133. An employee's unauthorized conduct may be within the scope of employment if the conduct was committed in the course of a series of acts authorized by the employer.

134. Moreover, an employee's wrongful or criminal conduct may be within the scope of employment even if it breaks a company rule or does not benefit the employer.

135. MORO's conducts described herein was undertaken, authorized, and ratified by DEFENDANTS' officers, directors, and/or managing agents. DEFENDANTS further had advanced knowledge of the actions and conduct of said individuals.

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

1 137. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
2 among other damages against DEFENDANTS.

3 **SEVENTEENTH CAUSE OF ACTION**

4 **ASSAULT**

5 **(PLAINTIFF against all DEFENDANTS)**

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

8 139. MORO acted, intending to cause harmful and offensive contact. As alleged herein,
9 MORO intended to cause harmful and offensive contact of PLAINTIFF on many occasions.

10 140. PLAINTIFF had a reasonable apprehension of an imminent harmful or offensive
11 bodily contact.

12 141. PLAINTIFF did not consent to MORO's conduct.

13 142. An employee's unauthorized conduct may be within the scope of employment if
14 the conduct was committed in the course of a series of acts authorized by the employer.

15 143. Moreover, an employee's wrongful or criminal conduct may be within the scope of
16 employment even if it breaks a company rule or does not benefit the employer.

17 144. MORO's conducts described herein was undertaken, authorized, and ratified by
18 DEFENDANTS' officers, directors, and/or managing agents. DEFENDANTS further had
19 advanced knowledge of the actions and conduct of said individuals.

20 145. As a substantial result of DEFENDANTS' intentional acts, PLAINTIFF was
21 harmed. The exact amount of damage to PLAINTIFF shall be proved at trial.

22 146. PLAINTIFF believes that DEFENDANTS' conducts described above were done
23 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
24 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
25 punitive and exemplary damages.

26 147. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
27 among other damages against DEFENDANTS.

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1 **EIGHTEENTH CAUSE OF ACTION**

2 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

3 **(PLAINTIFF against all DEFENDANTS)**

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

6 149. MORO's conducts towards PLAINTIFF were so outrageous and extreme that it
7 went beyond all possible bounds of decency and that a reasonable person would regard as
8 intolerable in a civilized community. As alleged herein, MORO, as PLAINTIFF's supervisor,
9 created a hostile working environment and committed several physical attacks against
10 PLAINTIFF, among other unaccounted occasions.

11 150. MORO intended to cause PLAINTIFF emotional distress, and/or MORO acted
12 with reckless disregard of the probability that PLAINTIFF would suffer emotional distress,
13 knowing that PLAINTIFF was present when the conduct occurred.

14 151. An employee's unauthorized conduct may be within the scope of employment if
15 the conduct was committed in the course of a series of acts authorized by the employer.

16 152. Moreover, an employee's wrongful or criminal conduct may be within the scope of
17 employment even if it breaks a company rule or does not benefit the employer.

18 153. MORO's conduct described herein was undertaken, authorized, and ratified by
19 DEFENDANTS' officers, directors, and/or managing agents. DEFENDANTS further had
20 advanced knowledge of the actions and conduct of said individuals.

21 154. As a substantial result of DEFENDANTS' intentional acts, PLAINTIFF suffered
22 and continues to suffer severe emotional distress in the form of suffering, anguish, fright, horror,
23 nervousness, grief, anxiety, worry, shock, humiliation, shame, embarrassment, and depression.

24 155. PLAINTIFF believes that DEFENDANTS' conducts described above were done
25 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
26 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
27 punitive and exemplary damages.

1 156. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
2 among other damages against DEFENDANTS.

3 **NINETEENTH CAUSE OF ACTION**

4 **NEGLIGENCE**

5 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

8 158. SPANGLISH owe, and at all times relevant owed, a duty to their employees to
9 provide a safe, non-discriminating, non-retaliatory and harassment-free work environment, to
10 make sure that its supervisors take action against employees practicing workplace discrimination,
11 retaliation, and harassment, to make sure supervisors and managers look after the safety of
12 employees during their watch, to pay employees proper wages when due, and to provide them with
13 proper wage statements.

14 159. SPANGLISH breached this duty to PLAINTIFF as highlighted above.

15 160. SPANGLISH's breach was and is the actual and proximate cause of PLAINTIFF's
16 harm.

17 161. As a substantial result of SPANGLISH's negligent acts, PLAINTIFF was harmed.
18 The exact amount of damage to PLAINTIFF shall be proved at trial.

19 **TWENTIETH CAUSE OF ACTION**

20 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

21 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

24 163. SPANGLISH owe, and at all times relevant owed, a duty to their employees to
25 provide a safe, non-discriminating, non-retaliatory and harassment-free work environment, to
26 make sure that its supervisors take action against employees practicing workplace discrimination,
27 retaliation, and harassment, to make sure supervisors and managers look after the safety of
28

employees during their watch, to pay employees proper wages when due, and to provide them with proper wage statements.

164. SPANGLISH breached this duty to PLAINTIFF as highlighted above.

165. SPANGLISH's breach was and is the actual and proximate cause of PLAINTIFF's harm.

166. As a result of this negligence, PLAINTIFF suffered and continues to suffer serious emotional distress in the form of suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, shame, embarrassment, and depression. This was a foreseeable result of SPANGLISH's negligence.

TWENTY-FIRST CAUSE OF ACTION

NEGLIGENT HIRING, SUPERVISION, AND RETENTION

(PLAINTIFF against all DEFENDANTS)

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

168. DEFENDANTS hired MORO.

169. MORO became unfit and incompetent to perform the work for which MORO were hired.

170. DEFENDANTS knew or should have known of MORO became unfit and incompetent to perform the work, and MORO created a particular risk to others.

171. MORO's unfitness and incompetence harmed PLAINTIFF.

172. DEFENDANTS' negligence in hiring, supervising and retaining of MORO was a substantial factor in causing PLAINTIFF's harm. The exact amount of damage to PLAINTIFF shall be proved at trial.

TWENTY-SECOND CAUSE OF ACTION

FAILURE TO PROVIDE EMPLOYMENT DOCUMENTS

(PLAINTIFF against all DEFENDANTS)

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

1 174. *Labor Code* §226(b) states that “(b) An employer that is required by this code or
2 any regulation adopted pursuant to this code to keep the information required by subdivision (a)
3 shall afford current and former employees the right to inspect or receive a copy of records
4 pertaining to their employment, upon reasonable request to the employer. The employer may take
5 reasonable steps to ensure the identity of a current or former employee. If the employer provides
6 copies of the records, the actual cost of reproduction may be charged to the current or former
7 employee.”

8 175. *Labor Code* §432 provides that “If an employee or applicant signs any instrument
9 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
10 request.”

11 176. *Labor Code* §1198.5 provides that “The employer shall make the contents of those
12 personnel records available for inspection to the current or former employee, or his or her
13 representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days
14 from the date the employer receives a written request, unless the current or former employee, or
15 his or her representative, and the employer agree in writing to a date beyond 30 calendar days to
16 inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
17 employer’s receipt of the written request. Upon a written request from a current or former
18 employee, or his or her representative, the employer shall also provide a copy of the personnel
19 records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days
20 from the date the employer receives the request, unless the current or former employee, or his or
21 her representative, and the employer agree in writing to a date beyond 30 calendar days to produce
22 a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the
23 employer’s receipt of the written request.”

24 177. On August 27, 2021, PLAINTIFF requested DEFENDANTS to produce
25 PLAINTIFF’s personnel file, all W2 information, all wage related documents, and all signed
26 documents.

27 178. DEFENDANTS failed to provide PLAINTIFF with complete employment records,
28 among other things.

1 179. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
2 damage.

3 180. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and
4 penalties promulgated under *Labor Code*.

5 181. PLAINTIFF is also entitled to injunctive relief to ensure compliance with the
6 aforementioned *Labor Code* provision.

7 **TWENTY-THIRD CAUSE OF ACTION**

8 **UNFAIR BUSINESS PRACTICES**

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

10 **(PLAINTIFF against SPANGLISH and/or DOES 1 through 10)**

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

13 183. SPANGLISH, themselves or through their supervisors, in an effort to exploit,
14 harass, and discriminate against their employees for profit or otherwise, have engaged in the
15 following unlawful, unfair, deceptive, and misleading business practices, amongst others outlined
16 in this complaint:

- 17 a. Wrongfully constructively terminating and retaliating against employees with
18 disabilities and on gender-based reasons;
- 19 b. Discriminating against employees based on disability and gender;
- 20 c. Failing to accommodate;
- 21 d. Failing to properly supervise and train its employees;
- 22 e. Failing to pay overtime wages earned and owed to employees;
- 23 f. Failing to provide proper meal breaks and rest periods, or to pay premium
24 wages for missed meal and rest periods to PLAINTIFF; and,
- 25 g. The foregoing wrongful activities have caused harm, fear, pressure, and
26 humiliation to the employee(s) at SPANGLISH.

27 184. PLAINTIFF is entitled to enforce all applicable penalty provisions of the California
28 Business and Professions Code §17202.

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against SPANGLISH, and DOES 1 through 10 inclusive, as follows:

1. General and compensatory damages, and liquidated damages (if applicable) of \$500,000, or in an amount to be subject to proof at trial to the extent permitted by law;

2. Special damages;

3. Emotional distress damages of \$250,000, or subject to proof at trial;

4. Civil and statutory penalties (including under PAGA where applicable);

5. Restoration of all money PLAINTIFF lost that DEFENDANTS have collected by the use of the unfair, deceptive, and misleading business practices described as in unfair business practices cause of action;

6. Injunctive relief prohibiting DEFENDANTS from engaging in the unfair, deceptive, and misleading business practices described as in unfair business practices cause of action;

7. Declaration that DEFENDANTS' business practices are unfair within the meaning described as in unfair business practices cause of action;

8. Punitive and exemplary damages;

1 9. Pre-judgment interest;
2 10. Costs of lawsuit herein incurred;
3 11. Attorneys' fees; and
4 12. For an award of such other and further equitable and legal relief as this Court may
5 deem appropriate.

6 WHEREFORE, PLAINTIFF prays for judgment against MORO, and DOES 11-20
7 inclusive, as follows:

8 13. General and compensatory damages, and liquidated damages (if applicable) of
9 \$500,000, or in an amount to be subject to proof at trial to the extent permitted by law;

10 14. Special damages;

11 15. Emotional distress damages of \$250,000, or subject to proof at trial;

12 16. Civil and statutory penalties;

13 17. Punitive and exemplary damages;

14 18. Pre-judgment interest;

15 19. Costs of lawsuit herein incurred;

16 20. Attorneys' fees; and

17 21. For an award of such other and further equitable and legal relief as this Court may
18 deem appropriate.

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20
21
22 Dated: April 27, 2022

BITTON & ASSOCIATES

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25 _____
26 Ophir J. Bitton
27 Lei Wei
28 Attorneys for Plaintiff,
Beatriz Castillo

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Dated: April 27, 2022



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