

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Christopher Lui

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Attorneys for Plaintiff,
Adriana Davila

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

ADRIANA DAVILA, an individual,

Plaintiff,

v.

DON LEE FARMS, a California
Corporation; DON LEE FARMS ORGANIC
RESEARCH FARM, LLC, a California
Limited Liability Company; Priority
Workforce, LLC, a California Limited
Liability Company; STEPHEN R. HOFER,
an individual; and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.: 22STCV21056

Unlimited Jurisdiction

COMPLAINT

- 1. CONSTRUCTIVE WRONGFUL TERMINATION;**
- 2. RETALIATION IN VIOLATION OF PUBLIC POLICY;**
- 3. DISCRIMINATION BASED ON PROTECTED STATUS – DISABILITY;**
- 4. HARASSMENT BASED ON PROTECTED STATUS – DISABILITY;**
- 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. NONPAYMENT OF MINIMUM 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

Adriana Davila v. Don Lee Farms, et al.

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13. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.3];
 14. FAILURE TO REIMBURSE EXPENSES;
 15. UNLAWFUL WITHHOLDING OF WAGES;
 16. WAITING TIME PENALTIES;
 17. CALIFORNIA PRIVATE ATTORNEY GENERAL ACT [California Labor Code §2698];
 18. INTENTIONAL MISREPRESENTATION;
 19. NEGLIGENT MISREPRESENTATION;
 20. NEGLIGENCE;
 21. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
 22. NEGLIGENT HIRING, SUPERVISION, AND RETENTION;
 23. FAILURE TO PROVIDE EMPLOYMENT RECORDS; AND
 24. UNFAIR BUSINESS PRACTICES.

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DEMAND FOR JURY TRIAL

17 Plaintiff ADRIANA DAVILA (“PLAINTIFF”) hereby files this Complaint against
18 Defendant DON LEE FARMS, a California Corporation, DON LEE FARMS ORGANIC
19 RESEARCH FARM, LLC, a California Limited Liability Company, STEPHEN R. HOFER
20 (“HOFER”), an individual, and DOES 1 THROUGH 20, inclusive (Collectively,
21 “DEFENDANTS”). PLAINTIFF is informed and believes, and on the basis of that information
22 and belief, alleges as follows:

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PARTIES

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

27 2. PLAINTIFF is informed and believes, and on this basis alleges that Defendant
28 DON LEE FARMS is, and at all times material hereto was, a California corporation organized and
existing under the laws of the State of California and authorized to conduct business in the County
of Los Angeles.

1 3. PLAINTIFF is informed and believes, and on this basis alleges that Defendant
2 DON LEE FARMS ORGANIC RESEARCH FARM, LLC is, and at all times material hereto was,
3 a California limited liability company organized and existing under the laws of the State of
4 California and authorized to conduct business in the County of Los Angeles.

5 4. PLAINTIFF is informed and believes, and on this basis alleges that Defendant
6 Priority Workforce, LLC is, and at all times material hereto was, a California limited liability
7 company organized and existing under the laws of the State of California and authorized to conduct
8 business in the County of Los Angeles.

9 5. PLAINTIFF is informed and believes, and on this basis alleges that Defendant
10 HOFER is an individual conducting business in California and working in the County of Los
11 Angeles.

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

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

25 **JURISDICTION AND VENUE**

26 8. Jurisdiction is proper because, upon information and belief, plaintiff worked for
27 defendants in the state of California, and all actions relevant to this Complaint occurred in the State
28 of California.

1 9. Venue is proper in Los Angeles County because, upon information and belief, at
2 least some of the transactions that are the subject matter of this Complaint occurred therein and/or
3 each defendant is found, maintains office, transacts business, and/or has an agent therein.

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

5 10. Since February 1, 2021, Priority Workforce, LLC, a staffing agency, transferred
6 PLAINTIFF to DON LEE FARMS for the position as a product packer.

7 11. Working every day from 7 AM to 3:30 PM with no breaks on weekends,
8 PLAINTIFF received a weekly paycheck at the rate of \$14.50/hour.

9 12. DON LEE FARMS employed more than 300 employees at the worksite where
10 PLAINTIFF was located. As an employer with 26 or more employees in the County of Los
11 Angeles, DON LEE FARMS failed to meet with the California minimum wage requirement and
12 pay PLAINTIFF as well as many other employees similarly situated at \$15/hour after July 1, 2020.

13 13. Further, PLAINTIFF was typically not provided with compliant meal and rest
14 breaks.

15 14. Other than wage and hour violations, DON LEE FARMS never reimbursed
16 PLAINTIFF for two knives used to open boxes necessary at work which she bought out of pocket
17 for DON LEE FARMS's behalf.

18 15. Due to an accident at work, PLAINTIFF's hand, back and right foot were injured,
19 and she was later sent to a clinic for medical evaluation. Although the doctor ordered work
20 restrictions for PLAINTIFF, DON LEE FARMS did not follow through or comply with the
21 doctor's order.

22 16. Instead, as a result of PLAINTIFF's pain and injuries, DON LEE FARMS would
23 bully her, call her a dramatic crybaby, and make fun of how slow she worked, and gave her warning
24 for taking too long of a rest break.

25 17. PLAINTIFF suffered from depression and anxiety due to these malicious taunts she
26 received.

27 18. Moreover, PLAINTIFF was not offered any health insurance card or medical
28 insurance information despite the fact that DON LEE FARMS took a deduction on her paystub for

1 health insurance every month. Thus, she could not use the purported healthcare services for which
2 she was forced by DON LEE FARMS to pay.

3 19. Starting on or around April 28, 2021, PLAINTIFF was placed on disability leave.
4 DON LEE FARMS never contacted her regarding future working schedule or assignment.

5 20. PLAINTIFF was also afraid of going back to work because the unfair treatment she
6 received at her employer.

7 21. On April 28, 2022, PLAINTIFF complied with *Labor Code* §2699.3(a) in that
8 PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development
9 Agency (“LWDA”) and DEFENDANTS of the specific provisions of the labor Code alleged to
10 have been violated, including the facts and theories to support the alleged violation. As of the date
11 of filing this complaint, (more than 60 calendar days after PLAINTIFF’s LWDA letters were
12 mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended
13 to investigate the alleged violations.

14 22. On April 28, 2022, PLAINTIFF filed a complaint with the Department of Fair
15 Employment and Housing (“DFEH”) and obtained a Right to Sue letter on the same day.
16 PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and
17 Right to Sue notices.

18 **FIRST CAUSE OF ACTION**

19 **CONSTRUCTIVE WRONGFUL TERMINATION**

20 **(PLAINTIFF against all DEFENDANTS)**

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

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

24 25. PLAINTIFF was subjected to working conditions that violated public policy and
25 the California Fair Employment and Housing Act (“FEHA”), in that DEFENDANTS took adverse
26 employment actions against PLAINTIFF because PLAINTIFF had sustained injuries while on the
27 job, made complaints about the work-related injuries, and sought an accommodation due to the
28 injuries and disability. Even worse, DEFENDANTS harassed PLAINTIFF for having work-related

injuries. *California Government Code* §12940 provides that it is against the law to discriminate against an employee due to disability 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), FEHA, the California and United States Constitutions, among other laws and regulations.

26. DEFENDANTS intentionally created and/or knowingly permitted these working conditions.

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

28. PLAINTIFF resigned because of these working conditions, and the employment relationship was actually severed involuntarily by DEFENDANTS' acts, against PLAINTIFF's will.

29. PLAINTIFF's protected activities described above were substantial motivating factors for DEFENDANTS' adverse employment actions taken against PLAINTIFF.

30. As a substantial result of DEFENDANTS' intentional acts in violation of public policy and FEHA, 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.

31. 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.

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

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

43. PLAINTIFF's disability was a substantial motivating reason for DEFENDANTS' conduct that caused the constructive wrongful termination against PLAINTIFF.

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

45. 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.

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

FOURTH CAUSE OF ACTION

HARASSMENT IN VIOLATION

OF CALIFORNIA GOVERNMENT CODE §12940, ET SEQ

(PLAINTIFF against all DEFENDANTS)

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

48. PLAINTIFF was an employee of DEFENDANTS.

49. PLAINTIFF was subjected to harassing conducts because PLAINTIFF's disability.

50. The harassing conducts were severe or pervasive.

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS

IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)

(PLAINTIFF against all DEFENDANTS)

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

65. PLAINTIFF was an employee of DEFENDANTS.

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

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

68. 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.

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

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

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

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80. PLAINTIFF performed work for DEFENDANTS.

81. PLAINTIFF was paid less than the minimum wage by DEFENDANTS for hours worked. Thus, PLAINTIFF was deprived of PLAINTIFF's regular rate of pay and even minimum wage.

82. PLAINTIFF was at all times relevant a non-exempt hourly employee of DEFENDANTS.

83. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived of regular time wages and liquidated damages in amounts to be proven at trial, and PLAINTIFF is entitled to recovery of such amounts from DEFENDANTS, plus interest, penalties, attorney's fees and costs.

NINTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

(PLAINTIFF against all DEFENDANTS)

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

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

86. DEFENDANTS failed to timely pay PLAINTIFF all minimum wages that are due and payable for each pay period.

87. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties.

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(PLAINTIFF against all DEFENDANTS)

94. Furthermore, an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. The wage orders

and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

95. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in a non-exempt position.

96. PLAINTIFF's employment with DEFENDANTS entitled PLAINTIFF to meal breaks.

97. PLAINTIFF was at times not given meal breaks and at other times meal breaks which were not compliant with labor laws.

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

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(PLAINTIFF against all DEFENDANTS)

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

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

101. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in a non-exempt position.

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

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

104. An employer who fails to provide rest periods as required by an applicable Wage Order must pay the employee one (1) additional hour of pay at the employee's regular rate of pay for each workday that a rest period was not provided. The exact amount of missed rest break wages owed to PLAINTIFF shall be proved at trial, and PLAINTIFF is entitled to recovery of such amounts from DEFENDANTS, plus interest, penalties and attorney's fees and costs.

TWELFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

(PLAINTIFF against all DEFENDANTS)

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

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

107. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage statements, willfully or intentionally. DEFENDANTS also failed to account for accurate withholdings, hours, wage rates, and meal and rest premiums among other things. Although PLAINTIFF was not offered any health insurance card or medical insurance information, DON LEE FARMS falsely took a deduction on PLAINTIFF's paystub for health insurance every month.

108. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties promulgated under *Labor Code* §§226.

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

1 **THIRTEENTH CAUSE OF ACTION**

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

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

4 **(PLAINTIFF against all DEFENDANTS)**

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

7 111. *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.

13 112. 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, and meal and rest premiums, among other things. Although
16 PLAINTIFF was not offered any health insurance card or medical insurance information, DON
17 LEE FARMS falsely took a deduction on PLAINTIFF's paystub for health insurance every month.

18 113. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
19 damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties
20 promulgated under *Labor Code* §§226 and 226.3.

21 **FOURTEENTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE EXPENSES**

23 **(PLAINTIFF against all DEFENDANTS)**

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

26 115. In California, employers must cover employees' expenses. Pursuant to *Labor Code*
27 §2802(a) an employer is required to "indemnify him or her employee for all necessary expenditures
28 and losses incurred by the employee in direct consequence of the discharge of his or her duties, or

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.

4 116. PLAINTIFF was required to purchase tools out-of-pocket necessary to perform job,
5 and PLAINTIFF did make such purchases for the benefit of DEFENDANTS.

6 117. DEFENDANTS did not reimburse PLAINTIFF for such expenses.

7 118. Therefore, DEFENDANTS are liable and PLAINTIFF is entitled to reimbursement
8 of expenses and other costs pursuant to *Labor Code* §2802(a).

9 **FIFTEENTH CAUSE OF ACTION**

10 **UNLAWFUL WITHHOLDING OF WAGES**

11 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

19 122. Although PLAINTIFF was not offered any health insurance card or medical
20 insurance information, DON LEE FARMS took a deduction on her earned wage for health
21 insurance every month.

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

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

3 **SIXTEENTH CAUSE OF ACTION**

4 **WAITING TIME PENALTIES**

5 **(PLAINTIFF against all DEFENDANTS)**

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

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

13 127. PLAINTIFF’s employment with DEFENDANTS ended.

14 128. DEFENDANTS failed to pay PLAINTIFF all wages when due since PLAINTIFF’s
15 termination until the date of filing this Complaint.

16 129. DEFENDANTS willfully failed to pay PLAINTIFF final wages in full.

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

22 **SEVENTEENTH CAUSE OF ACTION**

23 **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

24 **LABOR CODE § 2698**

25 **(PLAINTIFF against all DEFENDANTS)**

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

1 132. PLAINTIFF and the other non-exempt employees are “aggrieved employees” as
2 defined by *Labor Code* §2699(c) in that they are all current or former employees of
3 DEFENDANTS, and one or more of the causes of action in this complaint was committed against
4 PLAINTIFF and the aggrieved employees.

5 133. PLAINTIFF is a proper representative to bring a civil action on behalf of
6 PLAINTIFF and other current and former employees of DEFENDANTS pursuant to the
7 procedures specified in *Labor Code* §2699.3.

8 134. As such, PLAINTIFF and the aggrieved employees are entitled to civil penalties
9 pursuant to *Labor Code* §558 and §2699(a), (f) and (g), cost, expenses, and attorneys’ fees for
10 violation of *Labor Code* Sections listed in this complaint.

11 **EIGHTEENTH CAUSE OF ACTION**

12 **INTENTIONAL MISREPRESENTATION**

13 **(PLAINTIFF against all DEFENDANTS)**

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

16 136. DEFENDANTS represented to PLAINTIFF that a fact was true. DEFENDANT
17 represented to PLAINTIFF that PLAINTIFF is covered by health insurance.

18 137. DEFENDANTS’ representation was false.

19 138. DEFENDANTS knew that the representation was false when DEFENDANTS
20 made it, or that DEFENDANTS made the representation recklessly and without regard for its truth.

21 139. DEFENDANTS intended that PLAINTIFF rely on the representation.

22 140. PLAINTIFF reasonably relied on DEFENDANTS’ representation.

23 141. PLAINTIFF was harmed.

24 142. PLAINTIFF’s reliance on DEFENDANTS’ representation was a substantial factor
25 in causing PLAINTIFF’s harm.

26 143. As a substantial result of DEFENDANTS’ negligent acts, PLAINTIFF was harmed.
27 The exact amount of damage to PLAINTIFF shall be proved at trial.

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1 **NINETEENTH CAUSE OF ACTION**

2 **NEGLIGENT MISREPRESENTATION**

3 **(PLAINTIFF against all DEFENDANTS)**

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

6 145. DEFENDANTS represented to PLAINTIFF that a fact was true. DEFENDANT
7 represented to PLAINTIFF that PLAINTIFF is covered by health insurance.

8 146. DEFENDANTS' representation was not true.

9 147. DEFENDANTS had no reasonable grounds for believing the representation was
10 true when DEFENDANTS made it.

11 148. DEFENDANTS intended that PLAINTIFF rely on this representation.

12 149. PLAINTIFF reasonably relied on DEFENDANTS' representation.

13 150. PLAINTIFF was harmed.

14 151. PLAINTIFF's reliance on DEFENDANTS' representation was a substantial factor
15 in causing PLAINTIFF's harm.

16 152. As a substantial result of DEFENDANTS' negligent acts, PLAINTIFF was harmed.
17 The exact amount of damage to PLAINTIFF shall be proved at trial.

18 **TWENTIETH CAUSE OF ACTION**

19 **NEGLIGENCE**

20 **(PLAINTIFF against all DEFENDANTS)**

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

23 154. DEFENDANTS owe, and at all times relevant owed, a duty to their employees to
24 provide a safe, non-discriminating, non-retaliatory and harassment-free work environment, to
25 make sure that its supervisors take action against employees practicing workplace discrimination,
26 retaliation, and harassment, to make sure supervisors and managers look after the safety of
27 employees during their watch, to pay employees proper wages when due, and to provide them with
28 proper wage statements.

1 155. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

2 156. DEFENDANTS' breach was and is the actual and proximate cause of
3 PLAINTIFF's harm.

4 157. As a substantial result of DEFENDANTS' negligent acts, PLAINTIFF was harmed.
5 The exact amount of damage to PLAINTIFF shall be proved at trial.

6 **TWENTY-FIRST CAUSE OF ACTION**

7 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

8 **(PLAINTIFF against all DEFENDANTS)**

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

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

17 160. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

18 161. DEFENDANTS' breach was and is the actual and proximate cause of
19 PLAINTIFF's harm.

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

24 **TWENTY-SECOND CAUSE OF ACTION**

25 **NEGLIGENT HIRING, SUPERVISION, AND RETENTION**

26 **(PLAINTIFF against all DEFENDANTS)**

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

1 164. DEFENDANTS hired PLAINTIFF's supervisors.

2 165. PLAINTIFF's supervisors became unfit and incompetent to perform the work for
3 which PLAINTIFF's supervisors were hired.

4 166. DEFENDANTS knew or should have known of PLAINTIFF's supervisors became
5 unfit and incompetent to perform the work, and PLAINTIFF's supervisors created a particular risk
6 to others.

7 167. PLAINTIFF's supervisors' unfitness and incompetence harmed PLAINTIFF.

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

11 **TWENTY-THIRD CAUSE OF ACTION**

12 **FAILURE TO PROVIDE EMPLOYMENT DOCUMENTS**

13 **(PLAINTIFF against all DEFENDANTS)**

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

16 170. *Labor Code* §226(b) states that "(b) An employer that is required by this code or
17 any regulation adopted pursuant to this code to keep the information required by subdivision (a)
18 shall afford current and former employees the right to inspect or receive a copy of records
19 pertaining to their employment, upon reasonable request to the employer. The employer may take
20 reasonable steps to ensure the identity of a current or former employee. If the employer provides
21 copies of the records, the actual cost of reproduction may be charged to the current or former
22 employee."

23 171. *Labor Code* §432 provides that "If an employee or applicant signs any instrument
24 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
25 request."

26 172. *Labor Code* §1198.5 provides that "The employer shall make the contents of those
27 personnel records available for inspection to the current or former employee, or his or her
28 representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days

1 from the date the employer receives a written request, unless the current or former employee, or
2 his or her representative, and the employer agree in writing to a date beyond 30 calendar days to
3 inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
4 employer's receipt of the written request. Upon a written request from a current or former
5 employee, or his or her representative, the employer shall also provide a copy of the personnel
6 records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days
7 from the date the employer receives the request, unless the current or former employee, or his or
8 her representative, and the employer agree in writing to a date beyond 30 calendar days to produce
9 a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the
10 employer's receipt of the written request."

11 173. On April 28, 2022, PLAINTIFF requested DEFENDANTS to produce
12 PLAINTIFF's personnel file, all W2 information, all wage related documents, and all signed
13 documents.

14 174. DEFENDANTS failed to provide PLAINTIFF with complete employment records.

15 175. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
16 damage.

17 176. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and
18 penalties promulgated under *Labor Code*.

19 177. PLAINTIFF is also entitled to injunctive relief to ensure compliance with the
20 aforementioned *Labor Code* provision.

21 **TWENTY-FOURTH CAUSE OF ACTION**

22 **UNFAIR BUSINESS PRACTICES**

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

24 **(PLAINTIFF against all DEFENDANTS)**

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

27 179. DEFENDANTS, themselves or through their supervisors, in an effort to exploit,
28 harass, and discriminate against their employees for profit or otherwise, have engaged in the

1 following unlawful, unfair, deceptive, and misleading business practices, amongst others outlined
2 in this complaint:

- 3 a. Wrongfully constructively terminating and retaliating against employees with
4 disabilities reasons;
- 5 b. Discriminating against employees based on disability;
- 6 c. Failing to accommodate;
- 7 d. Failing to properly supervise and train its employees;
- 8 e. Failing to pay minimum wages earned and owed to employees;
- 9 f. Failing to provide proper meal breaks and rest periods, or to pay premium
10 wages for missed meal and rest periods to PLAINTIFF;
- 11 g. Failing to provide reimbursement for business expenses; and,
- 12 h. The foregoing wrongful activities have caused harm, fear, pressure, and
13 humiliation to the employee(s) at DEFENDANTS.

14 180. PLAINTIFF is entitled to enforce all applicable penalty provisions of the California
15 Business and Professions Code §17202.

16 181. Pursuant to the provisions of §17203 of the California Business and Professions
17 Code, PLAINTIFF is entitled to restoration of lost wages, meal breaks and rest periods premium
18 wages, business expense reimbursement, interests, and profits DEFENDANTS have collected by
19 the use of the unfair, deceptive, and misleading business practices described in this Complaint.

20 182. Pursuant to provisions of §17203 et seq. of the California Business and Professions
21 Code, DEFENDANTS must be ordered to disgorge all the unlawful profits in the relevant statutory
22 to PLAINTIFF, which DEFENDANTS have received from improperly billing clients and cheating
23 of employees in terms of their hours reported as having been worked but not paid.

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

27 **PRAYER FOR RELIEF**

28 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, and DOES 1

through 20 inclusive, as follows:

1. General and compensatory damages in an amount to be subject to proof at trial to the extent permitted by law;
2. Liquidated damages (if applicable);
3. Special damages;
4. Emotional distress damages;
5. Civil and statutory penalties (including under PAGA where applicable);
6. 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;
7. Injunctive relief prohibiting DEFENDANTS from engaging in the unfair, deceptive, and misleading business practices described as in unfair business practices cause of action;
8. Declaration that DEFENDANTS' business practices are unfair within the meaning described as in unfair business practices cause of action;
9. Punitive and exemplary damages;
10. Pre-judgment interest;
11. Costs of lawsuit herein incurred;
12. Attorneys' fees; and
13. For an award of such other and further equitable and legal relief as this Court may deem appropriate.

Dated: June 28, 2022

BITTON & ASSOCIATES



Ophir J. Bitton, Esq.
Lei Wei, Esq.
Attorneys for Plaintiff,
Adriana Davila

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Dated: June 28, 2022



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