

Ophir J. Bitton (SBN: 204310)  
Lei Wei (SBN: 337624)  
BITTON & ASSOCIATES  
7220 Melrose Avenue, 2<sup>nd</sup> Floor  
Los Angeles, CA 90046  
Tel. No.: (310) 356-1006  
Fax No.: (818) 524-1224

Attorneys for Plaintiff,  
Sofia Garcia

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

SOFIA GARCIA, an individual,  
  
Plaintiff,

v.

EBS FOODS, LLC, a California Limited  
Liability Company; EDDIE NIEVES, an  
individual; and DOES 1 THROUGH 20,  
inclusive,  
  
Defendants.

**Case No.: 22ETCV30833**  
Unlimited Jurisdiction

**COMPLAINT**

- 1. WRONGFUL TERMINATION AND RETALIATION IN VIOLATION OF PUBLIC POLICY;**
- 2. DISCRIMINATION BASED ON PROTECTED STATUS – DISABILITY;**
- 3. FAILURE TO ACCOMMODATE;**
- 4. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS;**
- 5. FAILURE TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION AND/OR RETALIATION;**
- 6. NONPAYMENT OF MINIMUM WAGES;**
- 7. NONPAYMENT OF REGULAR WAGES;**
- 8. NONPAYMENT OF OVERTIME COMPENSATION;**
- 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)];**

- 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13
- 13. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.3];
  - 14. UNLAWFUL WITHHOLDING OF WAGES;
  - 15. WAITING TIME PENALTIES;
  - 16. CALIFORNIA PRIVATE ATTORNEY GENERAL ACT [California Labor Code §2698];
  - 17. NEGLIGENCE;
  - 18. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
  - 19. NEGLIGENT HIRING, SUPERVISION, AND RETENTION;
  - 20. FAILURE TO PROVIDE EMPLOYMENT RECORDS; AND
  - 21. UNFAIR BUSINESS PRACTICES.

11  
12  
13

**DEMAND FOR JURY TRIAL**

14  
15  
16  
17  
18

Plaintiff SOFIA GARCIA (“PLAINTIFF”) hereby files this Complaint against Defendants EBS FOODS, LLC (“EBS”), a California Limited Liability Company, EDDIE NIEVES (“NIEVES”), an individual, and DOES 1 THROUGH 20, inclusive (Collectively, “DEFENDANTS”). PLAINTIFF is informed and believes, and on the basis of that information and belief, alleges as follows:

19

**PARTIES**

20  
21

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

22  
23  
24  
25

2. PLAINTIFF is informed and believes, and on this basis alleges that Defendant EBS is, and at all times material hereto was, a California limited liability company organized and existing under the laws of the State of California and authorized to conduct business in the County of Los Angeles.

26  
27  
28

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

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

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

14                               **JURISDICTION AND VENUE**

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

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

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

22           8.       In or about 2001, PLAINTIFF was employed at a Jack in the Box franchisee's  
23 restaurant, located at 835 W. Carson St., Torrance, CA 90502, as a kitchen staff.

24           9.       Through bi-weekly direct deposits from EBS, PLAINTIFF was paid at \$15/hour,  
25 her most recent rate of pay.

26           10.      Except for Wednesday and Friday, PLAINTIFF was scheduled for work from 6  
27 P.M. to 2:30 A.M.

28           11.      Because it was a common policy that EBS would round up employees' hours

1 without their approval, PLAINTIFF, and other employees similarly situated, did not have a  
2 paystub accurately reflect their actual work hours and thus accumulated substantial unpaid hours  
3 and overtime.

4 12. PLAINTIFF was typically not provided compliant meal and rest breaks. When  
5 PLAINTIFF left the premise of her worksite during her meal and rest breaks, her supervisor Maria  
6 Madrigal (“Madrigal”) warned her that she was not allowed to do so. PLAINTIFF’s breaks were  
7 often interrupted because the kitchen was shorthanded.

8 13. EBS was aware of PLAINTIFF’s foot injury due to repetitive work that required  
9 her to stand up all day. On the Sunday before her last day at this position, she called Madrigal and  
10 reported once again that her foot was hurting.

11 14. Nevertheless, PLAINTIFF was subsequently removed from being scheduled for  
12 work starting around July 20, 2021 and she was essentially terminated.

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

20 16. On June 7, 2022, PLAINTIFF filed a complaint with the Department of Fair  
21 Employment and Housing (“DFEH”) and obtained a Right to Sue letter on the same day.  
22 PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and  
23 Right to Sue notices.

24 //

25 //

26 //

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

## 2

## 3

## 4

5  
6

7

8  
9  
0

- 1
- 2
- 3
- 4
- 5
- 6
- 7

8  
9  
0

- 1
- 2
- 3
- 4

5  
6  
7  
8

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

**SECOND CAUSE OF ACTION**

**DISCRIMINATION IN VIOLATION**

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

**(PLAINTIFF against EBS and DOE 1 through 10)**

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

26. PLAINTIFF was an employee of DEFENDANTS.

27. 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 injury and disability. However, DEFENDANTS otherwise expected PLAINTIFF to work through the pain without treatment or accommodation.

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

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

30. 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.

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

//

//

//

//

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO ACCOMMODATE – DISABILITY DISCRIMINATION**

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

4 **(PLAINTIFF against EBS and DOE 1 through 10)**

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

7 33. PLAINTIFF was employed as an employee by DEFENDANTS.

8 34. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF was  
9 injured, and PLAINTIFF's injury rendered PLAINTIFF disabled within the meaning for disability  
10 under FEHA.

11 35. DEFENDANTS herein were aware of PLAINTIFF's disability that limited  
12 PLAINTIFF's work activities.

13 36. PLAINTIFF was able to perform the essential duties of the position or a vacant  
14 alternative position to which PLAINTIFF could have been reassigned with reasonable  
15 accommodation for PLAINTIFF's disability.

16 37. However, DEFENDANTS failed to provide such reasonable accommodation for  
17 PLAINTIFF's disability. DEFENDANTS otherwise expected PLAINTIFF to work through the  
18 pain without treatment or accommodation.

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

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS**

25 **IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)**

26 **(PLAINTIFF against EBS and DOE 1 through 10)**

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

1 41. PLAINTIFF was an employee of DEFENDANTS.

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

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

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

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

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

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

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO TAKE REASONABLE STEPS**

19 **TO PREVENT DISCRIMINATION AND RETALIATION**

20 **IN VIOLATION OF GOVERNMENT CODE §12940 (k)**

21 **(PLAINTIFF against EBS and DOE 1 through 10)**

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

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

25 50. PLAINTIFF was subject to disability discrimination and retaliation in violation of  
26 public policy in the course of employment.

27 51. DEFENDANTS failed to take all reasonable steps to prevent discrimination and  
28 retaliation. DEFENDANTS ignored PLAINTIFF's complaints about disability discrimination and

as a result by not doing anything, had condoned, ratified and participated in the acts causing PLAINTIFF harm.

52. 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.

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

**SIXTH CAUSE OF ACTION**  
**NONPAYMENT OF MINIMUM WAGES**  
**(PLAINTIFF against all DEFENDANTS)**

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

55. *Labor Code* § 1194.2(a), in pertinent part, states, "[i]n any action... to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

56. PLAINTIFF performed work for DEFENDANTS.

57. 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.

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

59. 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.

//

//

1 **SEVENTH CAUSE OF ACTION**

2 **NONPAYMENT OF WAGES**

3 **(PLAINTIFF against all DEFENDANTS)**

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

6 61. PLAINTIFF performed work for DEFENDANTS.

7 62. DEFENDANTS owes PLAINTIFF wages at the regular rate for uncompensated  
8 work time under the terms of the employment.

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

12 **EIGHTH CAUSE OF ACTION**

13 **NONPAYMENT OF OVERTIME COMPENSATION**

14 **(PLAINTIFF against all DEFENDANTS)**

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

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

24 66. PLAINTIFF performed work for DEFENDANTS that PLAINTIFF worked  
25 overtime hours for more than eight (8) hours in a day and/or forty (40) hours in a week.

26 67. DEFENDANTS knew or should have known that PLAINTIFF had worked  
27 overtime hours.



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

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

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

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

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

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

25           83.     PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal  
26 breaks.

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

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

6                                 **ELEVENTH CAUSE OF ACTION**

7                                 **FAILURE TO PROVIDE REST PERIODS**

8                                 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

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

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

27 //

28 //

1 **TWELFTH CAUSE OF ACTION**

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

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

4 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

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

20 **THIRTEENTH CAUSE OF ACTION**

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

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

23 **(PLAINTIFF against all DEFENDANTS)**

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

26 98. *Labor Code* §§226 and 226.3 provides for civil penalties against anyone who  
27 violates *Labor Code* §226. *Labor Code* §226(a) requires employers to provide accurate itemized  
28 wage statements for each wage payment. Specifically, *Labor Code* §226.3 provides a penalty of

two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement in compliance with *Labor Code* §226.

99. 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, overtime, and meal and rest premiums, among other things.

100. 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 and 226.3.

#### **FOURTEENTH CAUSE OF ACTION**

#### **UNLAWFUL WITHHOLDING OF WAGES**

#### **(PLAINTIFF against all DEFENDANTS)**

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

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

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

104. Upon termination by DEFENDANTS, PLAINTIFF was entitled by law to receive all of PLAINTIFF's wages and paycheck(s) immediately. DEFENDANTS also unlawfully withheld the balance of earned wages, overtime, missed meal and rest break wages. Moreover, these wages were demanded thereafter.

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

//

1 **FIFTEENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(PLAINTIFF against all DEFENDANTS)**

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

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

11 108. PLAINTIFF’s employment with DEFENDANTS ended.

12 109. DEFENDANTS failed to pay PLAINTIFF all wages when due since PLAINTIFF’s  
13 termination until the date of filing this Complaint.

14 110. DEFENDANTS willfully failed to pay PLAINTIFF final wages in full.

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

20 **SIXTEENTH CAUSE OF ACTION**

21 **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

22 **LABOR CODE § 2698**

23 **(PLAINTIFF against all DEFENDANTS)**

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

26 113. PLAINTIFF and the other non-exempt employees are “aggrieved employees” as  
27 defined by *Labor Code* §2699(c) in that they are all current or former employees of  
28

1 DEFENDANTS, and one or more of the causes of action in this complaint was committed against  
2 PLAINTIFF and the aggrieved employees.

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

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

9 **SEVENTEENTH CAUSE OF ACTION**

10 **NEGLIGENCE**

11 **(PLAINTIFF against all DEFENDANTS)**

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

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

19 118. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

20 119. DEFENDANTS' breach was and is the actual and proximate cause of  
21 PLAINTIFF's harm.

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

24 **EIGHTEENTH CAUSE OF ACTION**

25 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

26 **(PLAINTIFF against all DEFENDANTS)**

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

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

7           123. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

8           124. DEFENDANTS' breach was and is the actual and proximate cause of  
9 PLAINTIFF's harm.

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

14                                   **NINETEENTH CAUSE OF ACTION**

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

16                                   **(PLAINTIFF against all DEFENDANTS)**

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

19          127. DEFENDANTS hired PLAINTIFF's supervisors.

20          128. PLAINTIFF's supervisors became unfit and incompetent to perform the work for  
21 which PLAINTIFF's supervisors were hired.

22          129. DEFENDANTS knew or should have known of PLAINTIFF's supervisors became  
23 unfit and incompetent to perform the work, and PLAINTIFF's supervisors created a particular risk  
24 to others.

25          130. PLAINTIFF's supervisors' unfitness and incompetence harmed PLAINTIFF.

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

1 **TWENTY CAUSE OF ACTION**

2 **FAILURE TO PROVIDE EMPLOYMENT DOCUMENTS**

3 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

1           136. On June 7, 2022, PLAINTIFF requested DEFENDANTS to produce PLAINTIFF's  
2 personnel file, all W2 information, all wage related documents, and all signed documents.

3           137. DEFENDANTS failed to provide PLAINTIFF with complete employment records.

4           138. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered  
5 damage.

6           139. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and  
7 penalties promulgated under *Labor Code*.

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

10                                   **TWENTY-FIRST CAUSE OF ACTION**

11                                   **UNFAIR BUSINESS PRACTICES**

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

13                                   **(PLAINTIFF against all DEFENDANTS)**

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

16           142. DEFENDANTS, themselves or through their supervisors, in an effort to exploit,  
17 harass, and discriminate against their employees for profit or otherwise, have engaged in the  
18 following unlawful, unfair, deceptive, and misleading business practices, amongst others outlined  
19 in this complaint:

- 20                   a. Wrongfully terminating and retaliating against employees with disabilitY-  
21                   based reasons;
- 22                   b. Discriminating against employees based on disability;
- 23                   c. Failing to accommodate;
- 24                   d. Failing to properly supervise and train its employees;
- 25                   e. Failing to pay minimum, regular, overtime wages earned and owed to  
26                   employees;
- 27                   f. Failing to provide proper meal breaks and rest periods, or to pay premium  
28                   wages for missed meal and rest periods to PLAINTIFF; and,

g. The foregoing wrongful activities have caused harm, fear, pressure, and humiliation to the employee(s) at DEFENDANTS.

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

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

145. Pursuant to provisions of §17203 et seq. of the California Business and Professions Code, 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.

146. Pursuant to the provisions of §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 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,

1 deceptive, and misleading business practices described as in unfair business practices cause of  
2 action;

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

5 9. Punitive and exemplary damages;

6 10. Pre-judgment interest;

7 11. Costs of lawsuit herein incurred;

8 12. Attorneys' fees; and

9 13. For an award of such other and further equitable and legal relief as this Court may  
10 deem appropriate.

11  
12  
13  
14 Dated: September 19, 2022

BITTON & ASSOCIATES

15  
16 

17 \_\_\_\_\_  
18 Ophir J. Bitton, Esq.  
19 Lei Wei, Esq.  
Attorneys for Plaintiff,  
Sofia Garcia

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: September 19, 2022



Ophir J. Bitton, Esq.

Lei Wei, Esq.

Attorneys for Plaintiff,

Sofia Garcia