

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Yolanda Orozco

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

BERCELY HERNANDEZ, an individual,

Plaintiff,

v.

C.H. LABORATORIES, INC., a California
Corporation; BRID A. NOLAN, an
individual; and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.: 22STCV32619

Unlimited Jurisdiction

COMPLAINT

- 1. CONSTRUCTIVE WRONGFUL
TERMINATION AND RETALIATION
IN VIOLATION OF PUBLIC
POLICY;**
- 2. DISCRIMINATION BASED ON
PROTECTED STATUS –
DISABILITY, RACE AND
NATIONAL ORIGIN;**
- 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. FAILURE TO PROVIDE MEAL
BREAKS;**
- 7. FAILURE TO PROVIDE REST
PERIODS;**
- 8. VIOLATION OF CALIFORNIA
FAMILY RIGHTS ACT (“CFRA”)
RIGHTS;**
- 9. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS [California
Labor Code §226(a)];**

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10. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.3];
 11. UNLAWFUL WITHHOLDING OF WAGES;
 12. WAITING TIME PENALTIES;
 13. CALIFORNIA PRIVATE ATTORNEY GENERAL ACT [California Labor Code §2698];
 14. NEGLIGENCE;
 15. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
 16. NEGLIGENT HIRING, SUPERVISION, AND RETENTION; AND
 17. UNFAIR BUSINESS PRACTICES.

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DEMAND FOR JURY TRIAL

Plaintiff BERCELY HERNANDEZ (“PLAINTIFF”) hereby files this Complaint against Defendants C.H. LABORATORIES, INC. (“C.H.”), a California Corporation, EMPLOYBRIDGE, LLC, a California Limited Liability Company, BRID A. NOLAN (“NOLAN”), 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:

PARTIES

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

2. PLAINTIFF is informed and believes, and on this basis alleges that Defendant C.H. 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.

3. PLAINTIFF is informed and believes, and on this basis alleges that Defendant

1 NOLAN is an individual conducting business in California and working in the County of Los
2 Angeles.

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

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

16 **JURISDICTION AND VENUE**

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

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

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

24 8. In or about July 2020, PLAINTIFF was employed as a packer and machine operator
25 by C.H. She was paid bi-weekly for \$14/hour.

26 9. Scheduled for work from 6 a.m. to 2:30 p.m., Monday to Friday, PLAINTIFF was
27 only given lunch breaks at 12 p.m., more than five hours after she clocked in, and given two 15
28 minutes rest breaks at 8 and 10 a.m.

1 10. While packing products at work, PLAINTIFF sustained injury to her right arm in
2 July and further fell and injured herself again in or about August 2021. Although she immediately
3 reported both injuries to DEFENDANTS, DEFENDANTS neither responded to PLAINTIFF nor
4 sent her to a doctor, but simply told her to find a masseur on her own.

5 11. When PLAINTIFF took two sick days off work due to the injuries, DEFENDANTS
6 intentionally did not pay her for the leave. DEFENDANTS did not accommodate PLAINTIFF and
7 still assigned her the same workload after she returned.

8 12. Moreover, PLAINTIFF was racially discriminated against due to her being
9 Hispanic. The daughter of C.H.'s owner was employed as the administrative secretary. Because
10 she did not like the smell of fish in Hispanic employees' lunch, C.H. threatened to take the kitchen
11 microwave away to prevent employees like PLAINTIFF from having lunch with fish.

12 13. In addition, PLAINTIFF once asked for a raise along with other employees,
13 however, C.H. told the employees C.H. "got to work them like slave, like negros."

14 14. The manager who brought both lunch and raise issues to C.H. was eventually
15 terminated.

16 15. Starting around August 9, 2021, PLAINTIFF fears of going back to work because
17 she does not want to endure the traumatic racial discrimination in the workplace.

18 16. On August 2, 2022, PLAINTIFF complied with *Labor Code* §2699.3(a) in that
19 PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development
20 Agency ("LWDA") and DEFENDANTS of the specific provisions of the labor Code alleged to
21 have been violated, including the facts and theories to support the alleged violation. As of the date
22 of filing this complaint, (more than 60 calendar days after PLAINTIFF's LWDA letters were
23 mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended
24 to investigate the alleged violations.

25 17. On August 2, 2022, PLAINTIFF filed a complaint with the Department of Fair
26 Employment and Housing ("DFEH") and obtained a Right to Sue letter on the same day.
27 PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and
28 Right to Sue notices.

1 **FIRST CAUSE OF ACTION**

2 **CONSTRUCTIVE WRONGFUL TERMINATION**

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

4 **(PLAINTIFF against C.H. and DOE 1 through 10)**

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

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

8 20. PLAINTIFF was subjected to working conditions that violated public policy and
9 the California Fair Employment and Housing Act (“FEHA”), in that DEFENDANTS took adverse
10 employment actions against PLAINTIFF because PLAINTIFF had sustained injuries while on the
11 job, made complaints about the work-related injuries, and sought an accommodation due to the
12 injuries and disability. DEFENDANTS also discharged PLAINTIFF because workplace race and
13 national origin discrimination against PLAINTIFF. *California Government Code* §12940 provides
14 that it is against the law to discriminate against an employee due to disability, race, and national
15 origin, and to retaliate against an employee for requesting an accommodation for disability
16 regardless of whether the request was granted. These policies are also enumerated in *Labor Code*
17 §132(a), FEHA, the California and United States Constitutions, among other laws and regulations.

18 21. DEFENDANTS intentionally created and/or knowingly permitted these working
19 conditions.

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

22 23. PLAINTIFF resigned because of these working conditions, and the employment
23 relationship was actually severed involuntarily by DEFENDANTS’ acts, against PLAINTIFF’s
24 will.

25 24. PLAINTIFF’s protected activities described above were substantial motivating
26 factors for DEFENDANTS’ adverse employment actions taken against PLAINTIFF.

27 25. As a substantial result of DEFENDANTS’ intentional acts in violation of public
28 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.

26. 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.

27. 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 C.H. and DOE 1 through 10)

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

29. PLAINTIFF was an employee of DEFENDANTS.

30. 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.

31. Moreover, PLAINTIFF constantly endured severe race and national origin based discrimination at work. DEFENDANTS knew of such discrimination against PLAINTIFF but failed to take immediate and appropriate corrective action.

32. PLAINTIFF's disability, race and national origin were the substantial motivating reasons for DEFENDANTS' conduct that caused the wrongful termination against PLAINTIFF.

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO ACCOMMODATE – DISABILITY DISCRIMINATION**

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

10 **(PLAINTIFF against C.H. and DOE 1 through 10)**

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

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

14 38. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF was
15 injured, and PLAINTIFF's injury rendered PLAINTIFF disabled within the meaning for disability
16 under FEHA.

17 39. DEFENDANTS herein were aware of PLAINTIFF's disability that limited
18 PLAINTIFF's work activities.

19 40. PLAINTIFF was able to perform the essential duties of the position or a vacant
20 alternative position to which PLAINTIFF could have been reassigned with reasonable
21 accommodation for PLAINTIFF's disability.

22 41. However, DEFENDANTS failed to provide such reasonable accommodation for
23 PLAINTIFF's disability. DEFENDANTS otherwise expected PLAINTIFF to work through the
24 pain without treatment or accommodation.

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

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

FOURTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS

IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)

(PLAINTIFF against C.H. and DOE 1 through 10)

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

45. PLAINTIFF was an employee of DEFENDANTS.

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

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

48. 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.

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

50. 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.

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

FIFTH CAUSE OF ACTION

FAILURE TO TAKE REASONABLE STEPS

TO PREVENT DISCRIMINATION AND RETALIATION

IN VIOLATION OF GOVERNMENT CODE §12940 (k)

(PLAINTIFF against C.H. and DOE 1 through 10)

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

3 53. PLAINTIFF was employed as an employee by DEFENDANTS.

4 54. PLAINTIFF was subject to disability discrimination and retaliation in violation of
5 public policy in the course of employment.

6 55. DEFENDANTS failed to take all reasonable steps to prevent discrimination, and
7 retaliation. DEFENDANTS ignored PLAINTIFF's complaints about disability discrimination and
8 as a result by not doing anything, had condoned, ratified and participated in the acts causing
9 PLAINTIFF harm.

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

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

15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL BREAKS**

17 **(PLAINTIFF against all DEFENDANTS)**

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

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

23 60. *Labor Code* §512 further provides that "An employer may not employ an employee
24 for a work period of more than 10 hours per day without providing the employee with a second
25 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
26 hours, the second meal period may be waived by mutual consent of the employer and the employee
27 only if the first meal period was not waived."

28 61. *Labor Code* §516 provides that the Industrial Welfare Commission may adopt or

1 amend working condition orders with respect to meal periods for any workers in California
2 consistent with the health and welfare of those workers.

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

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

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

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

19 66. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal
20 breaks.

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

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

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

6 77. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage
7 statements, willfully or intentionally. DEFENDANTS also failed to account for accurate
8 withholdings, hours, wage rates, overtime, meal and rest premiums, and sick leaves, among other
9 things.

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

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

15 **NINTH CAUSE OF ACTION**

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

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

18 **(PLAINTIFF against all DEFENDANTS)**

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

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

27 82. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage
28 statements, willfully or intentionally. DEFENDANTS also failed to account for accurate

1 withholdings, hours, wage rates, overtime, meal and rest premiums, and sick leaves, among other
2 things.

3 83. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
4 damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties
5 promulgated under *Labor Code* §§226 and 226.3.

6 **TENTH CAUSE OF ACTION**

7 **VIOLATION OF CFRA RIGHTS**

8 **(PLAINTIFF against all DEFENDANTS)**

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

11 85. PLAINTIFF was eligible for medical leave.

12 86. PLAINTIFF requested or took leave for PLAINTIFF's own serious health
13 condition that made PLAINTIFF unable to perform the functions of PLAINTIFF's job with
14 DEFENDANTS.

15 87. PLAINTIFF provided reasonable notice to DEFENDANTS of PLAINTIFF's need
16 for medical leave, including its expected timing and length.

17 88. DEFENDANTS refused to grant PLAINTIFF's request for medical leave.

18 89. PLAINTIFF was harmed.

19 90. DEFENDANTS' decision and conduct were substantial factors in causing
20 PLAINTIFF's harm.

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

23 **ELEVENTH CAUSE OF ACTION**

24 **UNLAWFUL WITHHOLDING OF WAGES**

25 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

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

14 **TWELFTH CAUSE OF ACTION**

15 **WAITING TIME PENALTIES**

16 **(PLAINTIFF against all DEFENDANTS)**

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

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

24 99. PLAINTIFF’s employment with DEFENDANTS ended.

25 100. DEFENDANTS failed to pay PLAINTIFF all wages when due since PLAINTIFF’s
26 termination until the date of filing this Complaint.

27 101. DEFENDANTS willfully failed to pay PLAINTIFF final wages in full.

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

6 **THIRTEENTH CAUSE OF ACTION**

7 **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

8 **LABOR CODE § 2698**

9 **(PLAINTIFF against all DEFENDANTS)**

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

12 104. PLAINTIFF and the other non-exempt employees are "aggrieved employees" as
13 defined by *Labor Code* §2699(c) in that they are all current or former employees of
14 DEFENDANTS, and one or more of the causes of action in this complaint was committed against
15 PLAINTIFF and the aggrieved employees.

16 105. PLAINTIFF is a proper representative to bring a civil action on behalf of
17 PLAINTIFF and other current and former employees of DEFENDANTS pursuant to the
18 procedures specified in *Labor Code* §2699.3.

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

22 **FOURTEENTH CAUSE OF ACTION**

23 **NEGLIGENCE**

24 **(PLAINTIFF against all DEFENDANTS)**

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

27 108. DEFENDANTS owe, and at all times relevant owed, a duty to their employees to
28 provide a safe, non-discriminating and non-retaliatory work environment, to make sure that its

1 supervisors take action against employees practicing workplace discrimination and retaliation, to
2 make sure supervisors and managers look after the safety of employees during their watch, to pay
3 employees proper wages when due, and to provide them with proper wage statements.

4 109. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

5 110. DEFENDANTS' breach was and is the actual and proximate cause of
6 PLAINTIFF's harm.

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

9 **FIFTEENTH CAUSE OF ACTION**

10 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

11 **(PLAINTIFF against all DEFENDANTS)**

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

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

20 114. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

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

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

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1 **SIXTEENTH CAUSE OF ACTION**

2 **NEGLIGENT HIRING, SUPERVISION, AND RETENTION**

3 **(PLAINTIFF against all DEFENDANTS)**

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

6 118. DEFENDANTS hired PLAINTIFF's supervisors.

7 119. PLAINTIFF's supervisors became unfit and incompetent to perform the work for
8 which PLAINTIFF's supervisors were hired.

9 120. DEFENDANTS knew or should have known of PLAINTIFF's supervisors became
10 unfit and incompetent to perform the work, and PLAINTIFF's supervisors created a particular risk
11 to others.

12 121. PLAINTIFF's supervisors' unfitness and incompetence harmed PLAINTIFF.

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

16 **SEVENTEENTH CAUSE OF ACTION**

17 **UNFAIR BUSINESS PRACTICES**

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

19 **(PLAINTIFF against all DEFENDANTS)**

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

22 124. DEFENDANTS, themselves or through their supervisors, in an effort to exploit,
23 harass, and discriminate against their employees for profit or otherwise, have engaged in the
24 following unlawful, unfair, deceptive, and misleading business practices, amongst others outlined
25 in this complaint:

- 26 a. Wrongfully constructively terminating and retaliating against employees with
27 disability, race and national origin based reasons;
28 b. Discriminating against employees based on disability, race and national origin;

- c. Failing to accommodate;
- d. Failing to properly supervise and train its employees;
- e. Failing to provide proper meal breaks and rest periods, or to pay premium wages for missed meal and rest periods to PLAINTIFF;
- f. Failing to provide CFRA required sick leaves; and,
- g. The foregoing wrongful activities have caused harm, fear, pressure, and humiliation to the employee(s) at DEFENDANTS.

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

126. 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.

127. 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.

128. 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;

- 1 5. Civil and statutory penalties (including under PAGA where applicable);
- 2 6. Restoration of all money PLAINTIFF lost that DEFENDANTS have collected by
- 3 the use of the unfair, deceptive, and misleading business practices described as in unfair business
- 4 practices cause of action;
- 5 7. Injunctive relief prohibiting DEFENDANTS from engaging in the unfair,
- 6 deceptive, and misleading business practices described as in unfair business practices cause of
- 7 action;
- 8 8. Declaration that DEFENDANTS' business practices are unfair within the meaning
- 9 described as in unfair business practices cause of action;
- 10 9. Punitive and exemplary damages;
- 11 10. Pre-judgment interest;
- 12 11. Costs of lawsuit herein incurred;
- 13 12. Attorneys' fees; and
- 14 13. For an award of such other and further equitable and legal relief as this Court may
- 15 deem appropriate.

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19 Dated: October 5, 2022

BITTON & ASSOCIATES

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Ophir J. Bitton, Esq.
Lei Wei, Esq.
Attorneys for Plaintiff,
Bercely Hernandez

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Dated: October 5, 2022



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