

Ophir J. Bitton (SBN: 204310)
BITTON & ASSOCIATES
7220 Melrose Avenue, 2nd Floor
Los Angeles, CA 90046
Tel. No.: (310) 356-1006
Fax No.: (818) 524-1224
Attorneys for Plaintiff,
Roberto Escobedo

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

ROBERTO ESCOBEDO, an individual,

Plaintiff,

v.

WALMART INC., a Delaware Corporation;
CARL DOUGLAS MCMILLON, an
individual; and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.: 23STCV26075
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. FAILURE TO PROVIDE MEAL BREAKS;**
- 7. FAILURE TO PROVIDE REST PERIODS;**
- 8. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226(a)];**
- 9. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.3];**
- 10. UNLAWFUL WITHHOLDING OF WAGES;**
- 11. WAITING TIME PENALTIES;**
- 12. CALIFORNIA PRIVATE ATTORNEY GENERAL ACT [California Labor Code §2698];**

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

**13. NEGLIGENCE;
14. NEGLIGENT HIRING,
SUPERVISION, AND RETENTION;
15. FAILURE TO PROVIDE
EMPLOYMENT RECORDS; AND
16. UNFAIR BUSINESS PRACTICES.**

DEMAND FOR JURY TRIAL

Plaintiff ROBERTO ESCOBEDO ("PLAINTIFF") hereby files this Complaint against Defendants WALMART INC. ("WALMART"), a Delaware Corporation, CARL DOUGLAS MCMILLON ("MCMILLON"), an individual, and DOES 1 THROUGH 20, inclusive (Collectively, "DEFENDANTS"). PLAINTIFF 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 WALMART is, and at all times material hereto was, a Delaware corporation organized, existing and registered under the laws of the State of California and conducting business in the County of Los Angeles.

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

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

5. PLAINTIFF is informed and believes and thereon alleges that each defendant named in this Complaint now is, and was at all times herein mentioned, the agent, servant,

1 employee, representative, alter ego, members of and/or engaged in a joint venture, partnership and
2 common enterprise of the other defendants herein, and was at all such times acting within the
3 course and scope of said agency and employment and with the consent and permission of each of
4 the other co-defendants, and each of the defendants herein ratified each of the acts of each of the
5 other co-defendants, and each of them.

6 **JURISDICTION AND VENUE**

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

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

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

14 8. Since approximately January 1, 2022, PLAINTIFF started working for
15 WALMART as a stocker at its West Covina location.

16 9. MCMILLON is the Chief Executive Officer of WALMART.

17 10. Through bi-weekly direct deposits, PLAINTIFF was paid at \$18.50/hour, his most
18 recent rate of pay.

19 11. Scheduled for approximately eight or nine hours a day, PLAINTIFF, and other
20 employees similarly situated, were not provided compliant, punctual meal and rest breaks.
21 WALMART would usually require all employees to finish a certain amount of work before
22 allowing them to leave their posts. PLAINTIFF almost daily had to take his meal break after six
23 hours into his shift. Likewise, due to his busy job duties, PLAINTIFF usually missed his rest
24 breaks.

25 12. As a result of his employment and the repetitive nature of his tasks, overtime
26 PLAINTIFF became injured. His injuries required PLAINTIFF to seek medical care, but at times
27 his supervisor, Christopher ("CHRISTOPHER"), would make it difficult for him to use his sick
28 leave for his appointments.

1 13. PLAINTIFF had to wait until his pain was so unbearable that he simply could not
2 work. Regardless, WALMART did not refer him to workers compensation, did not interact with
3 him or accommodate him.

4 14. On or around July 10, 2022, PLAINTIFF reported his injuries to another supervisor,
5 Isaac (“ISAAC”), and he was sent to a clinic. PLAINTIFF was advised he could resume work with
6 certain restrictions. WALMART initially complied with PLAINTIFF’S restrictions when he
7 returned. However, this was short lived.

8 15. PLAINTIFF’S supervisors began to assign him tasks outside of his restrictions.
9 Even more egregious, at times WALMART put him on the heaviest jobs, such as handling and
10 lifting pet items and chemicals.

11 16. PLAINTIFF informed CHRISTOPHER that he could not continue handling and
12 lifting the heavy stock, as it was against doctor’s orders and PLAINTIFF was afraid, he would
13 cause additional harm and further injury. CHRISTOPHER replied, “I’m going to send you home
14 if you can’t handle it,” in a very condescending manner.

15 17. On or around July 31, 2022, PLAINTIFF reported to work, and two hours into his
16 shift, he began to feel unwell. PLAINTIFF informed a supervisor, Paul (“PAUL”), that he was not
17 feeling well and could not continue to work. PLAINTIFF, worried about his job, asked PAUL, to
18 whom he should report this, and PAUL replied, “Don’t worry about it, go home, I’ll take care of
19 everything. Your health comes first.”

20 18. Following that conversation, PLAINTIFF left for the night and was not scheduled
21 to come in until August 3, 2022. A few hours before his shift, PLAINTIFF received a call from
22 ISAAC. ISAAC was clearly upset that PLAINTIFF left home early on July 31, 2022.

23 19. PLAINTIFF attempted to inform ISAAC that he had reported leaving early to
24 PAUL due to feeling unwell, but ISAAC did not want to hear his reasons, and instead terminated
25 PLAINTIFF for purportedly “abandoning his job” on August 3, 2022.

26 20. On July 18, 2023, PLAINTIFF complied with *Labor Code* §2699.3(a) in that
27 PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development
28 Agency (“LWDA”) and DEFENDANTS of the specific provisions of the labor Code alleged to

1 have been violated, including the facts and theories to support the alleged violation. As of the date
2 of filing this complaint, (more than 60 calendar days after PLAINTIFF's LWDA letters were
3 mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended
4 to investigate the alleged violations.

5 21. On July 18, 2023, PLAINTIFF filed a complaint with the Department of Fair
6 Employment and Housing ("DFEH") and obtained a Right to Sue letter on the same day.
7 PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and
8 Right to Sue notices.

9 **FIRST CAUSE OF ACTION**

10 **WRONGFUL TERMINATION**

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

12 **(PLAINTIFF against WALMART and DOE 1 through 10)**

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

15 23. PLAINTIFF was employed by DEFENDANTS.

16 24. PLAINTIFF was wrongfully terminated and retaliated against by DEFENDANTS
17 in violation of public policy and the California Fair Employment and Housing Act ("FEHA") as a
18 result of having a disability.

19 25. DEFENDANTS took adverse employment actions against PLAINTIFF because
20 PLAINTIFF had sustained injuries while on the job, made complaints about the work-related
21 injuries, and sought an accommodation due to the injuries and medical condition. *California*
22 *Government Code* §12940 provides that it is against the law to discriminate against an employee
23 due to disability and medical condition, and to retaliate against an employee for requesting an
24 accommodation for disability and medical condition regardless of whether the request was granted.
25 These policies are also enumerated in *Labor Code* §132(a), FEHA, the California and United
26 States Constitutions, among other laws and regulations.

1 26. DEFENDANTS' violations of public policy and FEHA described above were
2 substantial motivating reasons for the adverse employment actions taken against PLAINTIFF by
3 DEFENDANTS.

4 27. As a substantial result of DEFENDANTS' intentional acts in violation of public
5 policy and FEHA, PLAINTIFF was harmed. Specifically, PLAINTIFF lost income, and endured
6 emotional and mental damages, among other related damages. The exact amount of damage to
7 PLAINTIFF shall be proved at trial.

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

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

14 **SECOND CAUSE OF ACTION**

15 **DISCRIMINATION IN VIOLATION**

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

17 **(PLAINTIFF against WALMART and DOE 1 through 10)**

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

20 31. PLAINTIFF was an employee of DEFENDANTS.

21 32. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF was
22 injured, and PLAINTIFF's injury rendered PLAINTIFF disabled within the meaning for disability
23 under FEHA. DEFENDANTS herein were aware of PLAINTIFF's disability and medical
24 condition. However, DEFENDANTS otherwise expected PLAINTIFF to work through the pain
25 without treatment or accommodation.

26 33. PLAINTIFF's disability and medical condition were substantial motivating reasons
27 for DEFENDANTS' conduct in response to his disability and request for accommodation, which
28 ultimately caused the wrongful termination against PLAINTIFF.

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

35. 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.

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

THIRD CAUSE OF ACTION

FAILURE TO ACCOMMODATE – DISABILITY DISCRIMINATION

IN VIOLATION OF GOVERNMENT CODE §12940(m)

(PLAINTIFF against WALMART and DOE 1 through 10)

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

38. PLAINTIFF was employed as an employee by DEFENDANTS.

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

40. DEFENDANTS herein were aware of PLAINTIFF's disability that limited PLAINTIFF's work activities.

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

42. However, DEFENDANTS failed to provide such reasonable accommodation for PLAINTIFF's disability. DEFENDANTS otherwise expected PLAINTIFF to work through the pain without treatment or accommodation, and at times assigned him more strenuous tasks.

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

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

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS**

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

6 **(PLAINTIFF against WALMART and DOE 1 through 10)**

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

9 46. PLAINTIFF was an employee of DEFENDANTS.

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

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

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

18 50. However, DEFENDANTS failed to participate in a timely good-faith interactive
19 process with PLAINTIFF to determine whether reasonable accommodation could be made.
20 Further, DEFENDANTS failed to follow up and continually check-in with PLAINTIFF.

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

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

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TAKE REASONABLE STEPS**
3 **TO PREVENT DISCRIMINATION AND RETALIATION**
4 **IN VIOLATION OF GOVERNMENT CODE §12940 (k)**
5 **(PLAINTIFF against WALMART and DOE 1 through 10)**

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

8 54. PLAINTIFF was employed as an employee by DEFENDANTS.

9 55. PLAINTIFF was subject to disability and medical condition discrimination and
10 retaliation in violation of FEHA and public policy in the course of employment.

11 56. DEFENDANTS failed to take all reasonable steps to prevent discrimination, and
12 retaliation. DEFENDANTS ignored PLAINTIFF's complaints about disability and medical
13 condition discrimination and retaliation and as a result by not doing anything, had condoned,
14 ratified and participated in the acts causing PLAINTIFF harm.

15 57. As a substantial result of DEFENDANTS' failure to take reasonable steps to
16 prevent discrimination and retaliation, PLAINTIFF was harmed. The exact amount of damage to
17 PLAINTIFF shall be proved at trial.

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

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL BREAKS**
22 **(PLAINTIFF against all DEFENDANTS)**

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

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

28 61. *Labor Code* §512 further provides that "An employer may not employ an employee

1 for a work period of more than 10 hours per day without providing the employee with a second
2 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
3 hours, the second meal period may be waived by mutual consent of the employer and the employee
4 only if the first meal period was not waived.”

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

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

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

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

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

24 67. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal
25 breaks.

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

69. 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.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(PLAINTIFF against all DEFENDANTS)

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

71. 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)

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

73. 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.

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

75. 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.

///

///

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

(PLAINTIFF against all DEFENDANTS)

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

77. *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).

78. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage statements, willfully or intentionally. DEFENDANTS also failed to account for accurate withholdings, meal and rest premiums, among other things.

79. 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.

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

NINTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

IN VIOLATION OF LABOR CODE § 226.3

(PLAINTIFF against all DEFENDANTS)

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

82. *Labor Code* §§226 and 226.3 provides for civil penalties against anyone who violates *Labor Code* §226. *Labor Code* §226(a) requires employers to provide accurate itemized 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.

83. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage statements, willfully or intentionally. DEFENDANTS also failed to account for accurate withholdings, meal and rest premiums, among other things.

84. 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.

TENTH CAUSE OF ACTION

UNLAWFUL WITHHOLDING OF WAGES

(PLAINTIFF against all DEFENDANTS)

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

86. *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."

87. *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.

88. 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 missed meal and rest break wages, and expense reimbursements. Moreover, these wages were demanded thereafter.

89. 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
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

20

1

2.

3

4
56
7

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

3 98. 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 99. 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 **THIRTEENTH CAUSE OF ACTION**

10 **NEGLIGENCE**

11 **(PLAINTIFF against all DEFENDANTS)**

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

14 101. 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.

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

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

22 104. 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 **FOURTEENTH CAUSE OF ACTION**

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

26 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

17 116. On July 18, 2023, PLAINTIFF requested DEFENDANTS to produce
18 PLAINTIFF’s personnel file, all W2 information, all wage related documents, and all signed
19 documents.

20 117. DEFENDANTS failed to provide PLAINTIFF with complete employment record.

21 118. As a result of DEFENDANTS’ aforementioned unlawful act, PLAINTIFF suffered
22 damage.

23 119. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and
24 penalties promulgated under *Labor Code*.

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

27 ///

28 ///

1 **SIXTEENTH CAUSE OF ACTION**

2 **UNFAIR BUSINESS PRACTICES**

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

4 **(PLAINTIFF against all DEFENDANTS)**

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

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

- 11 a. Wrongfully terminating and retaliating against employees with disability and
12 medical condition-based reasons;
- 13 b. Discriminating against employees based on disability and medical condition;
- 14 c. Failing to accommodate;
- 15 d. Failing to properly supervise and train its employees;
- 16 e. Failing to provide proper meal breaks and rest periods, or to pay premium
17 wages for missed meal and rest periods to PLAINTIFF;
- 18 f. Failing to provide reimbursement for business expenses; and,
- 19 g. The foregoing wrongful activities have caused harm, fear, pressure, and
20 humiliation to the employee(s) at DEFENDANTS.

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

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

27 125. Pursuant to provisions of §17203 et seq. of the California Business and Professions
28 Code, DEFENDANTS must be ordered to disgorge all the unlawful profits in the relevant statutory

1 to PLAINTIFF, which DEFENDANTS have received from improperly billing clients and cheating
2 of employees in terms of their hours reported as having been worked but not paid.

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

6 **PRAYER FOR RELIEF**

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

9 1. General and compensatory damages in an amount to be subject to proof at trial to
10 the extent permitted by law;

11 2. Liquidated damages (if applicable);

12 3. Special damages;

13 4. Emotional distress damages;

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

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

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

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

23 9. Punitive and exemplary damages;

24 10. Pre-judgment interest;

25 11. Costs of lawsuit herein incurred;

26 12. Attorneys' fees; and

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

1
2 Dated: October 25, 2023

BITTON & ASSOCIATES

3
4 

5 _____
6 Ophir J. Bitton, Esq.
7 Attorneys for Plaintiff,
8 Roberto Escobedo
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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: October 25, 2023



Ophir J. Bitton, Esq.
Attorneys for Plaintiff,
Roberto Escobedo