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

NANCY GAITAN, an individual,

Plaintiff,

v.

LONG BEACH MEMORIAL MEDICAL
CENTER, a Nonprofit Corporation;
MEMORIALCARE MEDICAL
FOUNDATION, a California Corporation;
and DOES 1 THROUGH 20, inclusive,

Defendants.

Case No.: 23STCV26315
Unlimited Jurisdiction

COMPLAINT

- 1. DISCRIMINATION BASED ON PROTECTED STATUS – DISABILITY;**
- 2. FAILURE TO ACCOMMODATE;**
- 3. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS;**
- 4. FAILURE TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION AND/OR RETALIATION;**
- 5. NONPAYMENT OF MINIMUM WAGES;**
- 6. NONPAYMENT OF REGULAR WAGES;**
- 7. NONPAYMENT OF OVERTIME COMPENSATION;**
- 8. FAILURE TO PROVIDE MEAL BREAKS;**
- 9. FAILURE TO PROVIDE REST PERIODS;**
- 10. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226(a)];**
- 11. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.3];**
- 12. FAILURE TO REIMBURSE EXPENSES;**
- 13. UNLAWFUL WITHHOLDING OF**

1 PLAINTIFF is informed and believes and thereon alleges that each defendant named as a DOE is
2 responsible for each and every act and obligation hereinafter set forth.

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

10 **JURISDICTION AND VENUE**

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

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

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

18 8. On or around June 26, 2021, PLAINTIFF was hired by LBMMC as an Inpatient
19 Phlebotomy Supervisor.

20 9. PLAINTIFF'S job duties were mixed, including some supervisory and some non-
21 supervisory tasks. Her non-supervisory tasks included, but were not limited to, drawing blood,
22 meeting patients, phlebotomy tasks, cleaning and organizing.

23 10. At other times PLANTIFF'S tasks included maintaining adequate staffing,
24 supervising job performance, performing competency evaluations of staff, counseling, and
25 adhering to compliance with regulations.

26 11. In practice, PLAINTIFF ended up with very little supervisory authority and much
27 less than 50 percent of her time was spent on supervisory duties. In fact, there were entire shifts
28 and portions where PLAINTIFF'S tasks were identical to other phlebotomists.

1 12. At the time of hiring, PLAINTIFF was informed she would be working eight hours
2 a day, Monday through Friday. However, this was not the case. PLAINTIFF had to answer work
3 calls at off hours and on the weekends and PLAINTIFF often was asked to work different
4 schedules to help out during the time when LBMMC was short-staffed.

5 13. On occasion, PLAINTIFF had to work from 4 a.m. to 5 p.m. due to LBMMC being
6 short-staffed. This would often cause PLAINTIFF to take late, short and/or interrupted lunch
7 breaks and miss her rest breaks altogether. At times she missed meal breaks. She did not get a
8 second meal break when working more than 10 hours.

9 14. During the first year of PLAINTIFF’S employment, she had to use her personal
10 cell phone for work. LBMMC did not reimburse her for the usage of the cell phone. Recently
11 LBMMC provided PLAINTIFF with a work cell phone.

12 15. On or around November 11, 2017, PLAINTIFF suffered a non-workplace ankle
13 injury. Due to the injury, PLAINTIFF had multiple surgeries and a tough recovery. Issues with
14 PLAINTIFF’S ankle continued through her employment with LBMMC to the present.

15 16. As a result, PLAINTIFF was often in pain, especially when working the floor and
16 PLAINTIFF had to take leave.

17 17. However, every time PLAINTIFF returned from medical leave PLAINTIFF
18 noticed that she was being treated differently by her supervisors, PATRIZIA RICHARDSON
19 (“RICHARDSON”) and SHASHANK PATEL (“PATEL”). PLAINTIFF felt she was being
20 nitpicked and intimidated by RICHARDSON and PATEL.

21 18. Moreover, on several occasions RICHARDSON and PATEL would undermine
22 PLAINTIFF’S “supervisory” position in front of her staff. On or around September 2022, PATEL
23 was in a huddle with PLAINTIFF and their staff, and he made a comment about a previous night
24 shift and stated, “It’s being taken care of, if not I will hold Nancy responsible.” The comment made
25 PLAINTIFF feel uncomfortable, and she communicated these concerns to both RICHARDSON
26 and PATEL, but her concerns resulted in no action from either one of them.

27 19. PLAINTIFF was also held accountable for any issues that her staff suffered while
28 she was on leave. In fact, RICHARDSON would yell at her, “If you did your job, you’d know

1 what's going on." On one occasion, PLAINTIFF requested a leave of absence to heal her swollen
2 ankle. Upon her return, RICHARDSON gave PLAINTIFF a document with her duties and
3 instructed her to sign it, agreeing to perform the duties as listed in the document.

4 20. PLAINTIFF reported the incident to Human Resources ("HR") and the following
5 day RICHARDSON provided the document to PLAINTIFF again, but this time without the
6 signature lines. This was not the way she was treated prior to her medical leaves, and prior to
7 complaints about her ankle.

8 21. Around this time, PLAINTIFF also made a complaint to LBMMC regarding an
9 employee committing time clock fraud and other violations. PLAINTIFF dismissed the employee
10 and informed RICHARDSON.

11 22. A few moments later, RICHARDSON advised PLAINTIFF, that effective
12 immediately all staffing changes will require RICHARDSON'S approval before anything is done
13 and reinstated the offending employee. PLAINTIFF'S reports resulting in no action to cure, and
14 even resulted in her limited supervisory duties being revoked.

15 23. On or around October 10, 2022, PLAINTIFF fell at work causing injuries to her
16 knee, leg, and ankle. PLAINTIFF immediately notified LBMMC of the work injury and was seen
17 at LBMMC for medical evaluation.

18 24. Although the doctor ordered work restrictions for PLAINTIFF, LBMMC did not
19 follow through or comply with the doctors' order, as PLAINTIFF still had to stand for long periods
20 of time causing more damage to her injuries. Starting on or around October 20, 2022, PLAINTIFF
21 was placed on disability leave as a result.

22 25. On August 21, 2023, PLAINTIFF complied with *Labor Code* §2699.3(a) in that
23 PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development
24 Agency ("LWDA") and DEFENDANTS of the specific provisions of the labor Code alleged to
25 have been violated, including the facts and theories to support the alleged violation. As of the date
26 of filing this complaint, (more than 60 calendar days after PLAINTIFF'S LWDA letters were
27 mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended
28 to investigate the alleged violations.

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

SECOND CAUSE OF ACTION

FAILURE TO ACCOMMODATE – DISABILITY DISCRIMINATION

IN VIOLATION OF GOVERNMENT CODE §12940(m)

(PLAINTIFF against LBMMC and DOE 1 through 10)

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

36. PLAINTIFF was employed as an employee by DEFENDANTS.

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

38. DEFENDANTS herein were aware of PLAINTIFF'S disability that limited PLAINTIFF'S work activities.

39. PLAINTIFF was able to perform the essential duties of the position with reasonable accommodation for PLAINTIFF'S disability.

40. 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.

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

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

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THIRD CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS

IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)

(PLAINTIFF against LBMMC and DOE 1 through 10)

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

44. PLAINTIFF was an employee of DEFENDANTS.

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

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

47. 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.

48. However, DEFENDANTS failed to participate in a timely good-faith interactive process with PLAINTIFF to determine whether reasonable accommodation could be made. This failure accrued each time she returned from leave and after he workplace injury.

49. 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.

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

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1 **FOURTH 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 LBMMC and DOE 1 through 10)**

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

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

9 53. PLAINTIFF was subject to disability discrimination and retaliation in violation of
10 public policy in the course of employment.

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

15 55. 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 56. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
19 among other damages against DEFENDANTS.

20 **FIFTH CAUSE OF ACTION**

21 **NONPAYMENT OF MINIMUM WAGES**
22 **(PLAINTIFF against all DEFENDANTS)**

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

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

1 59. At all times relevant, PLAINTIFF was employed by DEFENDANTS and was
2 either misclassified as exempt when her job duties and category should have made her non-exempt
3 or was simply not paid overtime and given other non-exempt benefits.

4 60. PLAINTIFF often worked more than eight hours in a day and/or forty hours in a
5 week, for which she should have been paid overtime wages. However, she was not compensated
6 for this time at all – not even minimum wage.

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

11 **SIXTH CAUSE OF ACTION**

12 **NONPAYMENT OF WAGES**

13 **(PLAINTIFF against all DEFENDANTS)**

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

16 63. At all times relevant, PLAINTIFF was employed by DEFENDANTS and was
17 either misclassified as exempt when her job duties and category should have made her non-exempt
18 or was simply not paid overtime and given other non-exempt benefits.

19 64. DEFENDANTS owes PLAINTIFF wages at the regular rate for uncompensated
20 work time under the terms of the employment.

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

25 **SEVENTH CAUSE OF ACTION**

26 **NONPAYMENT OF OVERTIME COMPENSATION**

27 **(PLAINTIFF against all DEFENDANTS)**

28 66. PLAINTIFF hereby realleges and incorporated all of the previous paragraphs of

1 this Complaint by reference as though fully set forth herein.

2 67. At all times relevant, PLAINTIFF was employed by DEFENDANTS and was
3 either misclassified as exempt when her job duties and category should have made her non-exempt
4 or was simply not paid overtime and given other non-exempt benefits.

5 68. *Labor Code* §510(a) provides that any work in excess of eight hours in one workday
6 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
7 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
8 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day
9 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In
10 addition, any work in excess of eight hours on any seventh day of a workweek shall be
11 compensated at the rate of no less than twice the regular rate of pay of an employee.

12 69. PLAINTIFF performed work for DEFENDANTS that PLAINTIFF worked
13 overtime hours for more than eight (8) hours in a day and/or forty (40) hours in a week and/or
14 seven consecutive days.

15 70. DEFENDANTS knew or should have known that PLAINTIFF had worked
16 overtime hours.

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

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL BREAKS**

23 **(PLAINTIFF against all DEFENDANTS)**

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

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

1 74. *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 75. *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 76. 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 77. 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 78. 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 79. Since PLAINTIFF was misclassified and/or she was often required to cover the
24 shifts of other employees when LBMMC was short staffed, she was not given meal periods or
25 proper meal periods.

26 80. At times PLAINTIFF would have to completely forego her meal breaks or would
27 take her lunch breaks later. At other times, it was interrupted or cut short.
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81. PLAINTIFF's employment with DEFENDANTS entitled PLAINTIFF to meal breaks.

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

83. 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.

NINTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(PLAINTIFF against all DEFENDANTS)

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

85. 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)

86. At all times relevant herein, PLAINTIFF should have been employed by DEFENDANTS in a non-exempt position.

87. 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.

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

89. 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.

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

(PLAINTIFF against all DEFENDANTS)

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

91. *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).

92. 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.

93. 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.

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

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

IN VIOLATION OF LABOR CODE § 226.3

(PLAINTIFF against all DEFENDANTS)

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

96. *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.

97. 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.

98. 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.

TWELFTH CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES

(PLAINTIFF against all DEFENDANTS)

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

100. In California, employers must cover employees' expenses. Pursuant to *Labor Code* §2802(a) an employer is required to "indemnify him or her employee for all necessary expenditures and losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer..." This includes, "all reasonable costs" as defined in *Labor Code* §2802(c). Further, *Labor Code* §2804 states the employee may not waive these rights.

101. PLAINTFF was required to use his personal cell phone for the extensive communication tasks necessary to perform job for the benefit of DEFENDANTS.

102. DEFENDANTS did not reimburse PLAINTIFF for such expenses.

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

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

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

7 **FIFTEENTH CAUSE OF ACTION**

8 **NEGLIGENCE**

9 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

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

22 **SIXTEENTH CAUSE OF ACTION**

23 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

24 **(PLAINTIFF against all DEFENDANTS)**

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

27 119. 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.

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

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

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

11 **SEVENTEENTH CAUSE OF ACTION**

12 **NEGLIGENT HIRING, SUPERVISION, AND RETENTION**

13 **(PLAINTIFF against all DEFENDANTS)**

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

16 124. DEFENDANTS hired PLAINTIFF'S supervisors, RICHARDSON and PATEL.

17 125. PLAINTIFF'S supervisors became unfit and incompetent to perform the work for
18 which PLAINTIFF'S supervisor was hired.

19 126. DEFENDANTS knew or should have known of PLAINTIFF'S supervisors
20 becoming unfit and incompetent to perform the work, and PLAINTIFF'S supervisors created a
21 particular risk to others.

22 127. PLAINTIFF'S supervisors' unfitness and incompetence harmed PLAINTIFF.

23 128. DEFENDANTS' negligence in hiring, supervising and retaining of PLAINTIFF'S
24 supervisors was a substantial factor in causing PLAINTIFF'S harm. The exact amount of damage
25 to PLAINTIFF shall be proved at trial.

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1 **EIGHTEENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE EMPLOYMENT RECORDS**

3 **(PLAINTIFF against all DEFENDANTS)**

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

6 130. *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.”

13 131. *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.”

16 132. *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.”

1 133. On August 21, 2023, PLAINTIFF requested DEFENDANTS to produce
2 PLAINTIFF’S personnel file, all W2 information, all wage related documents, and all signed
3 documents.

4 134. DEFENDANTS failed and expressly refused to provide PLAINTIFF with her
5 complete employment record.

6 135. As a result of DEFENDANTS’ aforementioned unlawful act, PLAINTIFF suffered
7 damage.

8 136. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and
9 penalties promulgated under *Labor Code*.

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

12 **NINETEENTH CAUSE OF ACTION**

13 **UNFAIR BUSINESS PRACTICES**

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

15 **(PLAINTIFF against all DEFENDANTS)**

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

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

- 22 a. Retaliating against employees with disability and medical condition-based
23 reasons;
- 24 b. Discriminating against employees based on disability and medical condition;
- 25 c. Failing to accommodate;
- 26 d. Failing to properly supervise and train its employees;
- 27 e. Failing to provide proper meal breaks and rest periods, or to pay premium
28 wages for missed meal and rest periods to PLAINTIFF;

- 1 f. Failing to provide reimbursement for business expenses; and,
2 g. The foregoing wrongful activities have caused harm, fear, pressure, and
3 humiliation to the employee(s) at DEFENDANTS.

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

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

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

14 143. Pursuant to the provisions of §17203 of the California Business and Professions
15 Code, this Court should issue an injunction prohibiting DEFENDANTS from engaging in the
16 foregoing unfair, deceptive, and misleading business practices.

17 **PRAYER FOR RELIEF**

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

- 20 1. General and compensatory damages in an amount to be subject to proof at trial to
21 the extent permitted by law;
22 2. Liquidated damages (if applicable);
23 3. Special damages;
24 4. Emotional distress damages;
25 5. Civil and statutory penalties (including under PAGA where applicable);
26 6. Restoration of all money PLAINTIFF lost that DEFENDANTS have collected by
27 the use of the unfair, deceptive, and misleading business practices described as in unfair business
28 practices cause of action;

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

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

6 9. Punitive and exemplary damages;

7 10. Pre-judgment interest;

8 11. Costs of lawsuit herein incurred;

9 12. Attorneys' fees; and

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

12
13 Dated: October 27, 2023

BITTON & ASSOCIATES

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17 Ophir J. Bitton, Esq.
18 Attorneys for Plaintiff,
19 Nancy Gaitan
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Dated: October 27, 2023



Ophir J. Bitton, Esq.
Attorneys for Plaintiff,
Nancy Gaitan