

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,
Mirko Sever

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

MIRKO SEVER, an individual,

Plaintiff,

v.

NATURES CLASSROOM INSTITUTE
ENVIRONMENTAL EDUCATION INC., a
Wisconsin Nonprofit Corporation;
NATURE'S CLASSROOM INSTITUTE
PROPERTY LLC, a Wisconsin Limited
Liability Company; GEOFFREY BISHOP,
an individual, and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.: 24STCV09072
Unlimited Jurisdiction

COMPLAINT

- 1. WRONGFUL TERMINATION AND RETALIATION IN VIOLATION OF PUBLIC POLICY;**
- 2. DISCRIMINATION BASED ON PROTECTED STATUS – DISABILITY;**
- 3. FAILURE TO ACCOMMODATE;**
- 4. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS;**
- 5. FAILURE TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION AND/OR RETALIATION;**
- 6. NONPAYMENT OF MINIMUM WAGES;**
- 7. NONPAYMENT OF REGULAR WAGES AND COMMISSIONS;**
- 8. NONPAYMENT OF OVERTIME COMPENSATION;**
- 9. FAILURE TO PROVIDE MEAL BREAKS;**
- 10. FAILURE TO PROVIDE REST PERIODS;**
- 11. WAITING TIME PENALTIES;**
- 12. NEGLIGENCE;**
- 13. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;**
- 14. NEGLIGENT HIRING, SUPERVISION, AND RETENTION; AND**

15. UNFAIR BUSINESS PRACTICES.

DEMAND FOR JURY TRIAL

Plaintiff MIRKO SEVER (“PLAINTIFF”) hereby files this Complaint against Defendants NATURES CLASSROOM INSTITUTE ENVIRONEMNTAL EDUCATION INC. (“NCI”), a Wisconsin Nonprofit Corporation, and NATURE’S CLASSROOM INSTITUTE PROPERTY LLC (“NCIP”), a Wisconsin Limited Liability Company, GEOFFREY BISHOP (“BISHOP”), 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 NCI is, and at all times material hereto was, a Wisconsin Nonprofit corporation organized and existing under the laws of the State of Wisconsin and registered and authorized to conduct business in the County of Los Angeles, and purposefully availing itself for Defendants’ benefit to the benefits and commerce of the State of California.

3. PLAINTIFF is informed and believes, and on this basis alleges that Defendant NCIP is, and at all times material hereto was, a Wisconsin Limited Liability Company organized and existing under the laws of the State of Wisconsin and conducting business in the County of Los Angeles, and purposefully availing itself for Defendants’ benefit to the benefits and commerce of the State of California.

4. PLAINTIFF is informed and believes, and on this basis alleges that Defendant BISHOP is an individual conducting business in California and periodically working in the County of Los Angeles and having the requisite minimal contacts with the State of California including,

1 visiting the State, directing PLAINTIFF's activities in the State of California over PLAINTIFF's
2 entire employment, servicing and overseeing customers in the State of California, and acting as
3 agent for service of process for NCI since February of 2024, among other things.¹

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

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

17 **JURISDICTION AND VENUE**

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

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

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

25 9. On or around January of 2017, PLAINTIFF was hired to develop the California
26 region for DEFENDANTS.

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28 ¹ In a Statement of Information for NCI filed with the California Secretary of State on February 26, 2024, BISHOP
is listed as the agent for service of process at 100 Right Drive, Loma Mar, California 94021.

1 10. PLAINTIFF’S job duties included selling NCI 3-to-5-day residential educational
2 programs to elementary and middle schools, visiting the schools and training teachers, going to
3 trade shows (including with BISHOP), working out of Defendants California office, which was
4 his home office, preparing invoices, sending e-mails, making calls and handling general
5 administrative tasks. In so doing, PLAINTIFF spent the majority of his working hours at the home
6 office.

7 11. PLAINTIFF’s home was DEFENDANTS physical facility in California. In fact,
8 NCI used the home office address with the secretary of state where it identified it as “Principal
9 Office in California,” and the address for its “Agent for Service of Process” (i.e., PLAINTIFF).
10 NCI also listed PLAINTIFF as its “Chief Financial Officer.”

11 12. PLAINTIFF was at all times of his employment for DEFENDANTS, compensated
12 with a base salary, commission, and home office reimbursement. No written commission
13 agreement was provided as required by California Law.

14 13. More concerning was the fact that PLAINTIFF worked 8 to 18 hours a day, five
15 days a week and sometimes more, but was paid a salary of \$1,000 every two weeks. BISHOP
16 oversaw and controlled all aspects of PLAINTIFF’s earning and wage conditions.

17 14. PLAINTIFF was also periodically paid commissions. However, there were months
18 when no commissions were paid, and his commissions were often not greater than his salary.

19 15. While PLAINTIFF worked from home, he was given no policies on meal and rest
20 breaks and usually worked while he ate and took little to no complaint rest breaks. Also, when
21 PLAINTIFF was at client locations, at times he had no opportunity for uninterrupted meal and rest
22 breaks.

23 16. DEFENDANTS did not provide performance evaluations. Nonetheless,
24 PLAINTIFF did an excellent job and built the California market so well, that BISHOP told
25 PLAINTIFF on numerous occasions that he would eventually replace BISHOP as the Executive
26 Director of NCI.

27 17. On numerous occasions, PLAINTIFF voiced his concern that educators
28 DEFENDANTS employed for the school programs were not all CPR certified and requested that

1 updated certificates be placed on a shared drive. PLAINTIFF also asked that he receive
2 confirmation of background checks of the educators being conducted, as he was told to represent
3 to clients that all of DEFENDANTS' educators cleared background checks. His complaints
4 seemed to upset BISHOP instead of concern him about the issues regarding people placed to
5 educate children and as such, his requests fell on deaf ears.

6 18. On or about January of 2023, PLAINTIFF disclosed to BISHOP that he was going
7 to therapy due to stress and anxiety. BISHOP seemed put off by this revelation. Shortly thereafter,
8 BISHOP began to avoid PLAINTIFF and treat him differently.

9 19. On May 26, 2023, DEFENDANTS terminated PLAINTIFF by simply stating, "We
10 have been thinking about it a lot and we must part ways." PLAINTIFF, being completely shocked
11 insisted on a reason why, to which DEFENDANTS responded that they had received several
12 complaints from staff members, claiming they get anxiety when they speak to PLAINTIFF.
13 DEFENDANTS provided no detail about these purported claims. PLAINTIFF found this odd since
14 the vast majority of communications with educators and facilities were via e-mail.

15 20. Although PLAINTIFF was terminated on May 26, 2023, he did not receive his final
16 pay until June 2, 2023. Nonetheless, his pay was deficient, as he was owed approximately \$26,000
17 in unpaid commissions, and other earning as a result of being misclassified.

18 21. On April 10, 2024, PLAINTIFF sent a letter by certified mail to the Labor and
19 Workforce Development Agency ("LWDA") and DEFENDANTS that complies with *Labor Code*
20 §2699.3(a).

21 22. On April 10, 2024, PLAINTIFF filed a complaint with the Department of Fair
22 Employment and Housing ("DFEH") and obtained a Right to Sue letter on the same day.
23 PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and
24 Right to Sue notices.

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1 **FIRST CAUSE OF ACTION**

2 **WRONGFUL TERMINATION**

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

4 **(PLAINTIFF against NCI, NCIP, and DOE 1 through 10)**

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

7 24. PLAINTIFF was employed by NCI and NCIP.

8 25. PLAINTIFF was wrongfully terminated and retaliated against by NCI and NCIP in
9 violation of public policy and the California Fair Employment and Housing Act ("FEHA") as a
10 result of complaining about safety protocols and having a disability.

11 26. DEFENDANTS took adverse employment actions against PLAINTIFF because
12 PLAINTIFF had informed DEFENDANTS that he was going to therapy due to stress and anxiety
13 and because he voiced his concern that educators DEFENDANTS employed were not all CPR
14 certified and wanted confirmation of background checks. Shortly thereafter, BISHOP began to
15 ignore and treat PLAINTIFF differently. *California Government Code* §12940 provides that it is
16 against the law to discriminate against an employee due to disability and medical condition, and
17 to retaliate against an employee for requesting an accommodation for disability and medical
18 condition regardless of whether the request was granted. These policies are also enumerated in
19 *Labor Code* §132(a), FEHA, the California and United States Constitutions, among other laws and
20 regulations.

21 27. DEFENDANTS' violations of public policy and FEHA described above were
22 substantial motivating reasons for the adverse employment actions taken against PLAINTIFF by
23 DEFENDANTS.

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

1 29. 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 30. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
6 among other damages against NCI and NCIP.

7 **SECOND CAUSE OF ACTION**

8 **DISCRIMINATION IN VIOLATION**

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

10 **(PLAINTIFF against NCI, NCIP, and DOE 1 through 10)**

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

13 32. PLAINTIFF was an employee of NCI and NCIP.

14 33. During PLAINTIFF's employment with NCI and NCIP, DEFANDANTS were
15 aware of PLAINTIFF'S disability and of the fact that PLAINTFF was going to therapy due to
16 stress and anxiety. However, after PLAINTFF informed DEFENDANTS of his disability,
17 PLAINTIFF noticed that he was being treated differently in adverse manner by BISHOP, and he
18 was ultimately terminated shortly thereafter.

19 34. Moreover, PLAINTIFF began to seek therapy due to stress and anxiety during his
20 employment, and PLAINTIFF's injury rendered PLAINTIFF disabled within the meaning for
21 disability under FEHA. DEFENDANTS herein were aware of PLAINTIFF's disability and
22 medical condition. However, DEFENDANTS began to treat PLAINTIFF differently and ignore
23 him.

24 35. PLAINTIFF'S disability was a substantial motivating reason for DEFENDANTS'
25 conduct that caused the discrimination against PLAINTIFF, and ultimately his termination.

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

1 37. 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 38. In addition, PLAINTIFF is entitled to interest, penalties, attorney’s fees and costs,
6 among other damages against NCI and NCIP.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO ACCOMMODATE – DISABILITY DISCRIMINATION**

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

10 **(PLAINTIFF against NCI, NCIP, and DOE 1 through 10)**

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

13 40. PLAINTIFF was employed by NCI and NCIP.

14 41. During PLAINTIFF’S employment with NCI and NCIP, he began to seek therapy
15 due to stress and anxiety affecting his daily life, and this rendered PLAINTIFF disabled within the
16 meaning for disability under FEHA.

17 42. DEFENDANTS herein were aware of PLAINTIFF’S disability.

18 43. PLAINTIFF was able to perform the essential duties of the position with reasonable
19 accommodation for PLAINTIFF’S disability.

20 44. However, DEFENDANTS failed to provide such reasonable accommodation for
21 PLAINTIFF’S disability. DEFENDANTS otherwise began to ignore and treat PLAINTIFF
22 differently.

23 45. As a substantial result of DEFENDANTS’ failure to accommodate, PLAINTIFF
24 was harmed. The exact amount of damage to PLAINTIFF shall be proved at trial.

25 46. In addition, PLAINTIFF is entitled to interest, penalties, attorney’s fees and costs,
26 among other damages against NCI and NCIP.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS**

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

4 **(PLAINTIFF against NCI, NCIP, and DOE 1 through 10)**

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

7 48. PLAINTIFF was an employee of NCI and NCIP.

8 49. PLAINTIFF had a disability that was known to DEFENDANTS, which rendered
9 PLAINTIFF disabled within the meaning for disability under FEHA.

10 50. PLAINTIFF was willing to participate in an interactive process.

11 51. However, DEFENDANTS failed to participate in a timely good-faith interactive
12 process with PLAINTIFF.

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

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

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO TAKE REASONABLE STEPS**

20 **TO PREVENT DISCRIMINATION AND RETALIATION**

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

22 **(PLAINTIFF against NCI, NCIP, and DOE 1 through 10)**

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

25 55. PLAINTIFF was employed by NCI and NCIP.

26 56. PLAINTIFF was subject to disability discrimination and retaliation in violation of
27 public policy and in violation of FEHA in the course of employment.

28 57. DEFENDANTS failed to take any steps to prevent discrimination, and retaliation.

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

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

SIXTH CAUSE OF ACTION

NONPAYMENT OF MINIMUM WAGES

(PLAINTIFF against all DEFENDANTS)

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

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

62. At all times relevant, PLAINTIFF was employed by DEFENDANTS and was misclassified as exempt. In fact, he was not paid the requisite two times the minimum wage as a threshold requirement to be an exempt employee. Also, his job duties and category should have made him non-exempt most, if not all, of the time. As a result of being misclassified, PLAINTIFF was simply not paid overtime and given other non-exempt benefits.

63. PLAINTIFF regularly worked an average of approximately 60 hours a week, he was underpaid 20 hours a week on average, including the minimum wage portion and overtime portion. DEFENDANTS not only deprived PLAINTIFF of the overtime rate, but all wages for certain hours worked. Hence, DEFENDANTS failed to even pay minimum wages for some hours.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **NONPAYMENT OF WAGES**

3 **(PLAINTIFF against all DEFENDANTS)**

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

6 66. At all times relevant, PLAINTIFF was employed by DEFENDANTS and was
7 misclassified as exempt. In fact, he was not paid the requisite two times the minimum wage as a
8 threshold requirement to be an exempt employee. Also, his job duties and category should have
9 made him non-exempt most, if not all, of the time. As a result of being misclassified, PLAINTIFF
10 was simply not paid overtime and given other non-exempt benefits.

11 67. DEFENDANTS owes PLAINTIFF wages at the regular rate for uncompensated
12 work time under the terms of employment.

13 68. DEFENDANTS also owe PLAINTIFF at least \$26,000 in unpaid commissions.

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

18 **EIGHTH CAUSE OF ACTION**

19 **NONPAYMENT OF OVERTIME COMPENSATION**

20 **(PLAINTIFF against all DEFENDANTS)**

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

23 71. At all times relevant, PLAINTIFF was employed by DEFENDANTS and was
24 misclassified as exempt. In fact, he was not paid the requisite two times the minimum wage as a
25 threshold requirement to be an exempt employee. Also, his job duties and category should have
26 made him non-exempt most, if not all, of the time. As a result of being misclassified, PLAINTIFF
27 was simply not paid overtime and given other non-exempt benefits.

28 72. *Labor Code* §510(a) provides that any work in excess of eight hours in one workday

1 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
2 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
3 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day
4 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In
5 addition, any work in excess of eight hours on any seventh day of a workweek shall be
6 compensated at the rate of no less than twice the regular rate of pay of an employee.

7 73. PLAINTIFF was not paid overtime or double time pay, despite long hours worked.
8 This resulted in premium overtime and double time wages not being paid at all.

9 74. DEFENDANTS knew or should have known that PLAINTIFF had worked
10 overtime hours.

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

15 **NINTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL BREAKS**

17 **(PLAINTIFF against all DEFENDANTS)**

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

20 77. *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 78. *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 79. *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 80. 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 81. 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 82. 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 83. DEFENDANTS provided PLAINTIFF with no guidance or policies as to his meal
18 and rest breaks, which resulted in missed, interrupted, and otherwise non-complaint meal and
19 break periods.

20 84. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal
21 breaks.

22 85. PLAINTIFF was at times not given meal breaks and at other times meal breaks
23 which were not compliant with labor laws. PLAINTIFF at times we owed a second meal break
24 which he was never informed of and for which DEFENDANTS did not have a policy.

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

3 **TENTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REST PERIODS**

5 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

17 91. DEFENDANTS provided PLAINTIFF with no guidance or policies as to his meal
18 and rest breaks, which resulted in missed, interrupted, and otherwise non-complaint meal and
19 break periods.

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

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1 **ELEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(PLAINTIFF against all DEFENDANTS)**

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

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

11 95. PLAINTIFF’S employment with DEFENDANTS ended.

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

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

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

20 **TWELFTH CAUSE OF ACTION**

21 **NEGLIGENCE**

22 **(PLAINTIFF against all DEFENDANTS)**

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

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

3 101. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

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

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

8 **THIRTEENTH CAUSE OF ACTION**

9 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

10 **(PLAINTIFF against all DEFENDANTS)**

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

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

18 106. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

19 107. DEFENDANTS' breach was and is the actual and proximate cause of
20 PLAINTIFF'S harm.

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

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1 **FOURTEENTH CAUSE OF ACTION**

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

3 **(PLAINTIFF against NCI, NCIP, and DOE 1 through 10)**

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

6 110. NCI and NCIP hired BISHOP as Executive Director, and to supervise
7 PLAINTIFF's duties and employment.

8 111. PLAINTIFF's supervisor became unfit and incompetent to perform the work for
9 which PLAINTIFF'S supervisor was hired.

10 112. DEFENDANTS knew or should have known of PLAINTIFF's supervisor
11 becoming unfit and incompetent to perform the work, and PLAINTIFF'S supervisor created a
12 particular risk to others.

13 113. PLAINTIFF'S supervisor's unfitness and incompetence harmed PLAINTIFF.

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

17 **FIFTEENTH CAUSE OF ACTION**

18 **UNFAIR BUSINESS PRACTICES**

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

20 **(PLAINTIFF against NCI, NCIP, and DOE 1 through 10)**

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

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

- 27 a. Wrongfully terminating and retaliating against employees with disability and
28 medical condition-based reasons;

- b. Discriminating against employees based on disability and medical condition;
- 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. The foregoing wrongful activities have caused harm, fear, pressure, and humiliation to the employee(s) at DEFENDANTS.

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

118. 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, business expense reimbursement, interests, and profits NCI and NCIP have collected by the use of the unfair, deceptive, and misleading business practices described in this Complaint.

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

120. Pursuant to the provisions of §17203 of the California Business and Professions Code, this Court should issue an injunction prohibiting NCI and NCIP 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 NCI AND NCIP 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 NCI and NCIP from engaging in the unfair, deceptive,
- 6 and misleading business practices described as in unfair business practices cause of action;
- 7 8. Declaration that NCI and NCIP's business practices are unfair within the meaning
- 8 described as in unfair business practices cause of action;
- 9 9. Punitive and exemplary damages;
- 10 10. Pre-judgment interest;
- 11 11. Costs of lawsuit herein incurred;
- 12 12. Attorneys' fees; and
- 13 13. For an award of such other and further equitable and legal relief as this Court may
- 14 deem appropriate.

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16 Dated: April 10, 2024

BITTON & ASSOCIATES

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Ophir J. Bitton, Esq.
20 Attorneys for Plaintiff,
21 Mirko Sever

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Dated: April 10, 2024



Ophir J. Bitton, Esq.
Attorneys for Plaintiff,
Mirko Sever