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David W. Slayton,
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By A. Munoz, Deputy Clerk

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

EVANGELINA CRUZ, an individual,

Plaintiff,

v.

TAKAMI SUSHI & ROBATA
RESTAURANT, a California business entity
form unknown; ELEVATE LOUNGE, a
California business entity form unknown;
and DOES 1 THROUGH 20, inclusive,

Defendants.

Case No.: 25ST CV 14301
Unlimited Jurisdiction

COMPLAINT

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

Complaint

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**15. FAILURE TO PROVIDE
EMPLOYMENT RECORDS; AND
16. UNFAIR BUSINESS PRACTICES.**

DEMAND FOR JURY TRIAL

Plaintiff EVANGELINA CRUZ (“PLAINTIFF”) hereby files this Complaint against Defendants TAKAMI SUSHI & ROBATA RESTUARANT (“TAKAMI”), a California business entity form unknown, and ELEVATE LOUNGE (“ELEVATE”), a California business entity form unknown, 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 TAKAMI is, and at all times material hereto was, a California business entity form unknown organized and existing under the laws of the State of California and authorized to conduct business in the County of Los Angeles.

3. PLAINTIFF is informed and believes, and on this basis alleges that Defendant ELEVATE is, and at all times material hereto was, a California business entity form unknown organized and existing under the laws of the State of California and authorized to conduct business 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.

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

8 **JURISDICTION AND VENUE**

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

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

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

16 8. Starting around April 2023, PLAINTIFF was employed as a dishwasher and
17 cleaning staff by TAKAMI and ELEVATE.

18 9. TAKAMI and ELEVATE are a sushi restaurant doing business as a rooftop lounge
19 and restaurant in Downtown Los Angeles, employing around 10 employees.

20 10. Through bi-weekly checks from TAKAMI, PLAINTIFF was paid at \$17/hour,
21 which was her most recent rate of pay.

22 11. Scheduled for work from Wednesday to Sunday, PLAINTIFF typically started
23 working from 7:30 a.m. to 3:30 p.m.

24 12. It was often that PLAINTIFF would not be able to take her meal and rest breaks
25 because it was too busy, which often led to meal breaks being taken after the fifth hour on a
26 workday.

27 13. Like other employees similarly situated, PLAINTIFF was only given lunch and/or
28 rest breaks if it was not busy. Nonetheless, time was deducted that was actually productive time.

1 There were also times, PLAINTIFF would work off the clock.

2 14. Throughout her employment, PLAINTIFF's direct supervisor was Chef Osvaldo
3 ("Osvaldo").

4 15. Osvaldo made many comments about PLAINTIFF's age and gender that made
5 PLAINTIFF uncomfortable and which she found to be offensive.

6 16. Sometimes PLAINTIFF would ask Osvaldo simple questions about work, in which
7 he would react aggravated and make the comment, "pinche vieja pendeja" which translates
8 "fucking old bitch."

9 17. Comments similar to that one were always directed towards PLAINTIFF.

10 18. Due to the nature of her work, PLAINTIFF sustained injuries to her hands, arms,
11 and knee.

12 19. PLAINTIFF was not able to report her injuries because she was afraid of being
13 terminated.

14 20. One of her job duties was to throw away the garbage, and after her injury, she had
15 difficulties doing this task.

16 21. Although she did not complain of her pain, it was very evident to anyone around
17 her that she was in pain. In fact, one of the managers from the front lounge, Sam, stated that he
18 noticed her pain.

19 22. Nevertheless, PLAINTIFF was terminated shortly thereafter, on January 28, 2024,
20 because Osvaldo said he needed a man to handle her job.

21 23. Till this day, PLAINTIFF has not received her last paycheck of approximately 33
22 hours, and has been informed that a man has been hired to replace her.

23 24. On June 3, 2024, PLAINTIFF filed a complaint with the Department of Fair
24 Employment and Housing ("DFEH") and obtained a Right to Sue letter on the same day.
25 PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and
26 Right to Sue notices.

1 **FIRST CAUSE OF ACTION**

2 **WRONGFUL TERMINATION**

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

4 **(PLAINTIFF against TAKAMI and ELEVATE and DOE 1 through 10)**

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

7 26. PLAINTIFF was employed by TAKAMI and ELEVATE.

8 27. PLAINTIFF was wrongfully terminated and retaliated against TAKAMI and
9 ELEVATE in violation of public policy and the California Fair Employment and Housing Act
10 (“FEHA”) as a result of having a disability and because of her gender.

11 28. TAKAMI and ELEVATE took adverse employment actions against PLAINTIFF
12 because PLAINTIFF had sustained injuries while on the job which became obvious, and due to
13 her gender. *California Government Code* §12940 provides that it is against the law to discriminate
14 against an employee due to disability, medical condition, or gender and to retaliate against an
15 employee on the same grounds. These policies are also enumerated in *Labor Code* §132(a), FEHA,
16 the California and United States Constitutions, among other laws and regulations.

17 29. TAKAMI and ELEVATE’s violations of public policy and FEHA described above
18 were substantial motivating reasons for the adverse employment actions taken against PLAINTIFF
19 by TAKAMI and ELEVATE.

20 30. As a substantial result of TAKAMI and ELEVATE’s intentional acts in violation
21 of public policy and FEHA, PLAINTIFF was harmed. Specifically, PLAINTIFF lost income, and
22 endured emotional and mental damages, among other related damages. The exact amount of
23 damage to PLAINTIFF shall be proved at trial.

24 31. PLAINTIFF believes that TAKAMI and ELEVATE’s conducts described above
25 were done with malice, fraud and oppression and with conscious disregard for PLAINTIFF’S
26 rights and with the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF
27 is also entitled to punitive and exemplary damages.

28 32. In addition, PLAINTIFF is entitled to interest, attorney’s fees and costs, among

1 other damages against TAKAMI and ELEVATE.

2 **SECOND CAUSE OF ACTION**

3 **HARASSMENT – HOSTILE WORKING ENVIRONMENT**

4 **(PLAINTIFF against TAKAMI and ELEVATE and DOE 1 through 10)**

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

7 34. PLAINTIFF was, at all times relevant, an employee of TAKAMI and ELEVATE
8 and Osvaldo was PLAINTIFF’S supervisor.

9 35. PLAINTIFF was subjected to harassing conduct because of PLAINTIFF’s gender,
10 disability and age.

11 36. The harassing conduct was severe and/or pervasive.

12 37. A reasonable woman in PLAINTIFF’s circumstances would have considered the
13 work environment to be hostile, intimidating, offensive, oppressive, and/or abusive.

14 38. PLAINTIFF considered the work environment to be hostile, intimidating,
15 offensive, oppressive, and/or abusive.

16 39. A supervisor engaged in the conduct, and DEFENDANTS’ supervisors and/or
17 agents knew or should have known the conduct and failed to take immediate and appropriated
18 corrective action.

19 40. It is violation of Government Code § 12940 et seq. to harass an employee due to
20 gender and age among other things. Here, Osvaldo constantly harassed PLAINTIFF due to her
21 gender, disability, and age.

22 41. As a result of Osvaldo’s intentional acts and DEFENDANTS’ failure to properly
23 act to protect PLAINTIFF, in violation of public policy, PLAINTIFF was harmed. Specifically,
24 PLAINTIFF lost income, and endured emotional and mental damages, among other related
25 damages. The exact amount of damage to PLAINTIFF shall be proved at trial.

26 42. PLAINTIFF believes that DEFENDANTS and its supervisory employee,
27 Osvaldo’s conducts described above were done with malice, fraud, and oppression and with
28 conscious disregard for PLAINTIFF’s rights and with the intent, design and purpose to cause

1 PLAINTIFF harm. As such, PLAINTIFF is entitled to punitive and exemplary damages.

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

4 **THIRD CAUSE OF ACTION**

5 **DISCRIMINATION IN VIOLATION**

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

7 **(PLAINTIFF against TAKAMI and ELEVATE and DOE 1 through 10)**

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

10 45. PLAINTIFF was an employee of TAKAMI and ELEVATE.

11 46. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF was
12 injured, and PLAINTIFF's injury rendered PLAINTIFF disabled within the meaning for disability
13 under FEHA. DEFENDANTS herein were aware of PLAINTIFF's disability and medical
14 condition. However, DEFENDANTS otherwise expected PLAINTIFF to work through the pain
15 without treatment or accommodation. Similarly, PLAINTIFF was treated differently and adversely
16 due to her age and gender.

17 47. PLAINTIFF'S disability, age, and gender were a substantial motivating reasons for
18 DEFENDANTS' conduct that caused the discrimination against PLAINTIFF.

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

21 49. PLAINTIFF believes that DEFENDANTS' conducts described above were done
22 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
23 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
24 punitive and exemplary damages.

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

FOURTH CAUSE OF ACTION

FAILURE TO ACCOMMODATE – DISABILITY DISCRIMINATION

IN VIOLATION OF GOVERNMENT CODE §12940(m)

(PLAINTIFF against TAKAMI and ELEVATE and DOE 1 through 10)

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

52. PLAINTIFF was employed as an employee by TAKAMI and ELEVATE.

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

54. DEFENDANTS herein were aware of PLAINTIFF’S disability that limited PLAINTIFF’S work activities.

55. 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.

56. 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.

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

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

FIFTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS

IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)

(PLAINTIFF against TAKAMI and ELEVATE and DOE 1 through 10)

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

60. PLAINTIFF was an employee of TAKAMI and ELEVATE.

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

62. DEFENDANTS knew that PLAINTIFF needed reasonable accommodation for PLAINTIFF so that PLAINTIFF would be able to perform the essential job requirements.

63. 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.

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

65. 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.

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

SIXTH CAUSE OF ACTION

FAILURE TO TAKE REASONABLE STEPS

TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION

IN VIOLATION OF GOVERNMENT CODE §12940 (k)

(PLAINTIFF against TAKAMI and ELEVATE and DOE 1 through 10)

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

68. PLAINTIFF was employed as an employee by TAKAMI and ELEVATE.

69. PLAINTIFF was subject to disability, age and gender discrimination and retaliation in violation of public policy in the course of employment.

70. DEFENDANTS failed to take all reasonable steps to prevent discrimination, and retaliation. DEFENDANTS ignored PLAINTIFF'S complaints about disability discrimination and

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

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

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

8 **SEVENTH CAUSE OF ACTION**

9 **NONPAYMENT OF MINIMUM WAGES**

10 **(PLAINTIFF against all DEFENDANTS)**

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

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

17 75. PLAINTIFF performed work for DEFENDANTS.

18 76. PLAINTIFF was paid less than the minimum wage by DEFENDANTS for hours
19 worked. Thus, PLAINTIFF was deprived of PLAINTIFF's regular rate of pay and even minimum
20 wages.

21 77. PLAINTIFF was at all times relevant a non-exempt hourly employee of
22 DEFENDANTS.

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

26 79. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived
27 of regular time wages and liquidated damages in amounts to be proven at trial, and PLAINTIFF is
28

entitled to recovery of such amounts from DEFENDANTS, plus interest, penalties, attorney's fees and costs.

EIGHTH CAUSE OF ACTION

NONPAYMENT OF WAGES

(PLAINTIFF against all DEFENDANTS)

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

81. PLAINTIFF performed work for DEFENDANTS.

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

83. 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.

NINTH CAUSE OF ACTION

NONPAYMENT OF OVERTIME COMPENSATION

(PLAINTIFF against all DEFENDANTS)

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

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

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

seven consecutive days, yet not all her time was compensated, for she was paid for her overtime hours at a regular rate.

87. DEFENDANTS knew or should have known that PLAINTIFF had worked overtime hours.

88. 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.

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL BREAKS

(PLAINTIFF against all DEFENDANTS)

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

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

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

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

93. Section 11(C) of the *IWC Wage Order(s)* provides that "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by

1 written agreement between the parties an on-the-job paid meal period is agreed to. The written
2 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

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

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

11 96. Since PLAINTIFF was always busy with work, she was often not given meal
12 periods or proper meal periods.

13 97. At times PLAINTIFF would have to completely forego her meal breaks or would
14 take her lunch breaks later. At other times, it was interrupted or cut short.

15 98. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal
16 breaks.

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

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

24 **ELEVENTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST PERIODS**

26 **(PLAINTIFF against all DEFENDANTS)**

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

102. 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)

103. 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.

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

105. 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.

TWELFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(PLAINTIFF against all DEFENDANTS)

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

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

108. PLAINTIFF's employment with DEFENDANTS ended.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **NEGLIGENCE**

3 **(PLAINTIFF against all DEFENDANTS)**

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

11 111. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

12 112. DEFENDANTS' breach was and is the actual and proximate cause of
13 PLAINTIFF's harm.

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

16 **FOURTEENTH CAUSE OF ACTION**

17 **NEGLIGENT HIRING, SUPERVISION, AND RETENTION**

18 **(PLAINTIFF against all DEFENDANTS)**

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

21 115. DEFENDANTS hired PLAINTIFF'S supervisor Osvaldo.

22 116. PLAINTIFF'S supervisor became unfit and incompetent to perform the work for
23 which PLAINTIFF'S supervisor was hired.

24 117. DEFENDANTS knew or should have known of PLAINTIFF'S supervisor
25 becoming unfit and incompetent to perform the work, and PLAINTIFF'S supervisor created a
26 particular risk to others.

27 118. PLAINTIFF'S supervisor's unfitness and incompetence harmed PLAINTIFF.
28

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

FIFTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE EMPLOYMENT RECORDS

(PLAINTIFF against all DEFENDANTS)

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

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

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

123. *Labor Code* §1198.5 provides that “The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or

her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request."

124. On June 3, 2024, PLAINTIFF requested DEFENDANTS to produce PLAINTIFF'S personnel file, all W2 information, all wage related documents, and all signed documents.

125. DEFENDANTS failed and expressly refused to provide PLAINTIFF with her complete employment record.

126. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered damage.

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

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

SIXTEENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

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

(PLAINTIFF against all DEFENDANTS)

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

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

- a. Wrongfully terminating and retaliating against employees because of their gender, disability and age;
- b. Harassing employees because of their gender, disability and age;
- c. Retaliating against employees because of their gender, disability and age;

- d. Discriminating against employees based on their gender, disability and age;
- e. Failing to accommodate;
- f. Failing to properly supervise and train its employees;
- g. Failing to pay minimum, regular, overtime wages earned and owed to employees;
- h. Failing to provide proper meal breaks and rest periods, or to pay premium wages for missed meal and rest periods to PLAINTIFF; and,
- i. The foregoing wrongful activities have caused harm, fear, pressure, and humiliation to the employee(s) at DEFENDANTS.

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

132. 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 DEFENDANTS have collected by the use of the unfair, deceptive, and misleading business practices described in this Complaint.

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

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

PRAYER FOR RELIEF

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

- 1. General and compensatory damages in an amount to be subject to proof at trial to the extent permitted by law;
- 2. Liquidated damages (if applicable);

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

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19 Dated: May 15, 2025

BITTON & ASSOCIATES

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Ophir J. Bitton, Esq.
23 Attorneys for Plaintiff,
24 Evangelina Cruz

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Dated: May 15, 2025



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Evangelina Cruz