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Via Certified U.S. Mail

October 30, 2024

Global Building Services, Inc.
Attn: Legal Department
27433 Tourney Road, Ste 280
Valencia, CA 91355

CT Corporation System
Attn: Amanda Garcia
(Agent for Service of Process)
330 N Brand Boulevard,
Glendale, CA 91203

Global Building Services, Inc.
Attn: Julio Belloso
27433 Tourney Road, Ste 280
Valencia, CA 91355

Julio Belloso
27433 Tourney Road, Ste 280
Valencia, CA 91355

Re: Guadalupe Martinez v. Global Building Services, Inc.
(Employment Matter)
LWDA-CM-

To the Above Addressed Parties:

Our office provides legal representation for Ms. Guadalupe Martinez (“Martinez”) regarding her employment with Global Building Services, Inc., and Julio Belloso¹ (collectively, “Employers” or “GBS”). We are writing in a good faith attempt to resolve employment claims Martinez, and possibly others similarly situated, have against GBS, without having to resort to litigation. This letter is also being mailed and uploaded to the California Labor & Workforce Development Agency, consistent with *Labor Code* § 2698 et seq. Further, a complaint is being filed with the Civil Rights Department of the Department of Fair Employment and Housing. As set forth in greater detail below, Martinez, and possibly others similarly situated, have several meritorious claims against GBS related to their employment, including, but not limited to:

- 1) Discrimination based on disability (as to Martinez only);
- 2) Failure to accommodate (as to Martinez only);
- 3) Failure to engage in the interactive process (as to Martinez only);

¹ See, California Code of Civil Procedure §588.1 and *Martinez v. Combs* (2010) 49 Cal.4th 35.

- 4) Failure to take reasonable steps to prevent discrimination and/or retaliation (as to Martinez only);
- 5) Misclassification;
- 6) Failure to pay minimum wage, regular wages, and overtime wages;
- 7) Failure to provide compliant meal and rest breaks;
- 8) Failure to provide accurate itemized wage statements;
- 9) Unlawful withholding of wages;
- 10) Negligence;
- 11) Negligent hiring, supervision, and retention; and
- 12) For unfair business practices.

Martinez's claims include relief under *California Business and Professions Code* § 17200 et. seq. and the Private Attorney General Act ("PAGA") as set forth in *Labor Code* §2698 et seq. as to Martinez and possibly others. These claims are briefly discussed below.

FACTS

Since in or around 2007, Martinez was employed by GBS as a Supervisor. Her job duties were mixed, including some supervisory and some non-supervisory tasks. These included, but were not limited to, cleaning, and watching over employees fulfill their tasks. Martinez could not fire or hire employees, nor report anyone without another supervisor's authority. In practice, Martinez ended up with very little supervisory authority. In fact, there were entire shifts and portions of shifts where her tasks were identical to other janitors. Through two direct deposits a month from GBS, Martinez was paid at \$17/hour, which was her most recent rate of pay.

Scheduled for work six days a week, Martinez typically started working from 11 p.m. to 7 a.m. Regardless of how many hours or days she worked, Martinez was always paid the same. Also, it was often that Martinez was asked to clock out for her meal breaks but to continue work. Martinez, and many other employees similarly situated in GBS, were typically not provided any meal and rest breaks. Worse yet, GBS instructed employees not to leave the facility during breaks.

On or around August 2022, Martinez suffered a workplace injury. She injured her right knee. Martinez reported her injuries to her supervisor, Dionicio ("Dionicio"), and GBS sent her to a clinic, and the doctor placed her on disability leave.

After providing a doctor's note to Dionicio, Martinez returned to work on August 17, 2023, but Martinez was only able to work two days because GBS did not accommodate her restrictions. Specifically, Martinez could not stand for long periods of time, yet she was not able to take her rest breaks. Instead, Martinez was ignored, and she decided for herself to see the doctor again. The doctor decided to place her on disability leave. Following her leave, Martinez returned to work again on or around November 10, 2023. She had the following restrictions: could not stand for

long periods of time and could not lift more than 10 pounds. GBS, again, did not accommodate her restrictions. She went to go see her doctor again, and her doctor decided to place her on disability leave again.

VIOLATIONS IN RELATION TO DISCRIMINATION, RETALIATION AND HARASSMENT

1. Discrimination

The California Fair Employment and Housing Act (FEHA) prohibits harassment and discrimination in employment because of mental and physical disability, medical condition, denial of medical and family care leave. (*Government Code* §§ 12940, 12945, 12945.2) Under FEHA, physical disabilities, mental disabilities, and mental conditions are defined broadly and include both actual disabilities and conditions, and situations where an employer perceives that an employee has a disability or condition. (*Cal. Gov. Code* § 12926.1(b)) A physical disability is “[a]ny physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following: (a) affects one or more of neurological, immunological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, and limits a major life activity; (b) If it makes achievement of a major life activity difficult then it is a limit on a major life activity. “Major life activity” is broadly construed and includes physical, mental, and social activities as well as working. As such, employers may not consider an employee’s disability, for example, in making employment decisions.

It is clear that Martinez was discriminated against due to her disability among other things, which resulted in retaliation. Martinez’s on-the-job injury rendered her disabled as a matter of law and for FEHA purposes, and GBS’s decision to discriminate Martinez was completely situated on this physical condition.

GBS’s conduct described above were done with malice, fraud, and oppression and with conscious disregard for Martinez’s rights and with the intent, design, and purpose to cause harm. Martinez, therefore, would be entitled to punitive or exemplary damages in addition to the regularly prescribed damages.

2. Failure to Accommodate

Under FEHA, it is unlawful for an employer to fail to make a “reasonable accommodation for the known physical or mental disability of an applicant or employee.” *California Government Code* § 12940(m). In labor cases, stress has been found to be a recognized disability (see, e.g. *Baker v. Workmen’s Compensation Appeals Board*, 18 Cal.App.3d 852, Cal. Ct. App. 1971; and *Albertson’s Inc. v. Workers’ Compensation Appeals Board*, 131 Cal.App.3d 308, Cal. Ct. App. 1982).

In this case, turning a deaf ear to the complaints and revelations of Martinez’s injuries in no way constitutes an accommodation, but retaliation and discrimination.

3. Failure to Engage in the Interactive Process

It is unlawful for an employer to fail to engage in a “timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.” *California Government Code* § 12940(n). In fact, upon learning of the employee’s disability, the employer must engage in a good faith interactive process with the employee (see, e.g. *Jensen v. Wells Fargo Bank*, 84 Cal. App. 4th 245, Cal. Ct. App. 2000). This requirement is an ongoing one. Similarly, the employer has an ongoing duty to engage the employee when the employee returns from a disability leave.

Here, GBS knew or should have known of Martinez’s disability, however they took no steps to engage in the interactive process. Neither did GBS engage in the interactive process on an ongoing basis. Instead of engaging Martinez in an interactive process, GBS continued to discriminate against her due to the disability. GBS’s actions show their unwillingness to engage in any appropriate interactive process.

4. Failure to Take Reasonable Steps to Prevent Discrimination and/or Retaliation

It is an unlawful employment practice in California for an employer to fail to take all reasonable steps necessary to prevent discrimination from occurring.” [Gov. Code §12940 (k)] This is considered a statutory tort action. (*Trujillo v. North Co. Transit Dist.* (1988) 63 CA 4th 280, 286, 73 CR2d 596, 600.) For such violations an employer shall be liable for such legal or equitable relief as may be appropriate including without limitation (a) back pay [Gov. C. §12970(a)(1); see also 42 USC §2000e-5; Gov. C. §12965]; (b) reinstatement [Gov. C. §12970(a)(1)]; (c) front pay [Gov. C. §12970(a)(3); see also *Peralta Comm. College Dist. v. Fair Employment & Housing Comm’n.* (1990) 52 C3d 40, 52, 276 CR 114, 121]; (d) Injunctive relief [Gov. C. §12970(a)]; (e) Compensatory damages for pain and suffering [Gov. C. §12970(a)(3)]; (f) Administrative fine [Gov. C. §12970(c)]; (g) Reasonable attorney fees and court costs [Gov. C. §12987(a)(3)]; and (h) Punitive damages.

Here, as stated above, GBS failed to take such steps and instead promoted and ratified discrimination in the workplace. By unreasonably ignoring their employees’ discriminatory and harassing acts against Martinez while not taking any preventive or corrective measures to encounter the discrimination and harassment at the workplace, GBS failed to create a safe working environment for their employees.

VIOLATIONS IN RELATION TO WAGE AND HOUR

5. Misclassification

Martinez’s employment is governed by IWC Order No. 4-2001. Martinez’s actual job duties do not qualify her for any exemption set forth in the Wage Order. As such, she was misclassified as an exempt employee when she should have been non-exempt. GBS made it clear, they did not want Martinez to make any supervisory decisions. Moreover, her main job was that of a janitor.

6. Failure to Pay Minimum Wages, Regular Wages, and Overtime Wages

Under *Labor Code* § 510, an employee must be paid overtime after working eight (8) hours in a day and forty (40) hours in a week, and on the first eight (8) hours of the seventh consecutive day worked in a week. Overtime must be paid at one-and-a-half times the regular rate of pay. The overtime rate becomes two times the regular rate of pay for hours over twelve in a day, or over eight hours on the seventh consecutive day worked. The “regular rate of pay” is comprised of more than just the employee’s hourly rate of pay, it includes many kinds of monetary remuneration an employee earns for his labor, including commissions, spiffs, and bonuses. (29 *U.S.C.* 207(e)).

Specifically, *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.”

Martinez was not properly paid for all hours worked including regular owed as a non-exempt employee. Martinez would often work more than six (6) hours in a day and/or more than 20 hours in a week, yet not all her time was compensated for due to GBS not properly recording its employees’ full actual work hours. For example, Martinez, and other similarly situated were asked to clock out during their meal breaks but continue to work.

Also, employees were unable to take their rest breaks on time or at all because it was too busy. Since there were times when Martinez was not paid at all for work performed, she was deprived of minimum wages in that her regular wages were not paid. This, under both Federal and State laws, also entitles Martinez to liquidated damages equal to the sums earned but not paid. Martinez believes that others similarly situated experienced the same illegal wage practices by GBS.

7. Failure to provide compliant meal and rest breaks

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. [*Labor Code* §512(a)]. State law also requires employers to authorize rest period of specified minimum duration (generally 10 minutes of paid rest for every four hours of works). [8 *California Code Regulations* (“*Cal. C. Regs.*”) §§11010-11150 ¶2 and §11160 ¶1]. An IWC Wage order mandates that no employer may require an employee to work during any meal or rest period [*Labor Code* §226.7(a)]. An employer who fails to provide meal or rest periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s

regular rate of pay for each workday that a meal or rest period was not provided. [*Labor Code*. §226.7(b), 8 Cal. C. Regs. §§11010 et seq. ¶11].

Furthermore, an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. (*Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 962-963 [35 Cal.Rptr.3d 243]; see also *Jaimez v. Daiohs USA, Inc.*, supra, 181 Cal.App.4th at pp. 1304-1305 [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC* (S.D.Cal. 2010) 267 F.R.D. 625, 638 [indicating informal anti-meal-break policy “enforced through ‘ridicule’ or ‘reprimand’” would be illegal].) The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.)

In addition, employees must be relieved from all duties during their time of breaks. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement “obligates employers to permit-and-authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”

Martinez, and other employees similarly situated, were not provided compliant meal and rest breaks. GBS interfered with employees’ rights to take breaks by setting up unreasonable conditions before allowing employees to have lunch or take a rest. On a typical work day, Martinez was unable to take her only 15-minute rest break due to the workload. Moreover, employees were instructed not to leave the workplace during such breaks.

8. Failure to Provide Accurate Itemized Statements

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).

Labor Code §226.3 provides in relevant part that any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount 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 deduction statement or fails to keep the record required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty

provided by law².

In this case, GBS did not provide Martinez with accurate and proper itemizations in her wage statements due to their failure to account for all withholdings, hours, wage rates, meal and rest break premiums among other things.

9. Unlawful Withholding of Wages

California Labor Code §216 provides that it is a misdemeanor for an employer to “willfully refuse... to pay wages due and payable after demand has been made” or “falsely den[y] the amount or validity thereof.” *California Labor Code* §225.5 provides a penalty of \$100 for an initial violation and \$200 for any subsequent violation of §216 plus 25% of the withheld amount.

This letter is a demand in conformity with §216. Failure to pay the wages (including commissions) owed here is an unlawful withholding of wages.

OTHER VIOLATIONS

10. Negligence

GBS owes a duty to its employees to provide them with a safe, non-discriminating, retaliatory and harassment-free work environment; to make sure that its supervisors take action against employees practicing workplace discrimination, retaliation, and harassment; to make sure supervisors and managers look after the safety of employees during their watch; to pay employees proper wages when due; and to provide them with proper wage statements. GBS breached this duty to Martinez as highlighted above. In so doing, GBS harmed Martinez, including causing her general and consequential damages.

11. Negligent Hiring, Supervision, and Retention

As stated above, GBS was negligent. This is included in its hiring and training of supervisors and persons of authority over Martinez. GBS harmed Martinez, including causing her general and consequential damages. This was a foreseeable result GBS’s negligence.

12. Violation of the Unfair Business Practices Act

For carrying out these and other unlawful, unfair, or fraudulent business acts and/or practices GBS has violated the *California Business and Professions Code* § 17200 et. seq. For such violations, GBS is entitled to the restoration of any money or property which GBS may have acquired by means of such unlawful, unfair, or fraudulent business acts and/or practices. (*California Business and Professions Code* § 17203).

² Section 226.3 is subject to private enforcement. *Brewer v. Premier Golf Properties* (2008) 168 Cal.App.4th 1243, 1252.

NOTICE OF PRESERVATION OF EVIDENCE

Please be further advised that you are hereby given notice to immediately take all steps necessary to prevent the destruction, loss, concealment, or alteration of any paper, document, or electronically stored information or other data or information generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes, etc.) and e-mail related to this matter. Because hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for ESI. If information exists in both electronic and paper form, you should preserve them both.

Adequate preservation of ESI required more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and employ proper techniques to safeguard all such evidence.

With regard to documents, tangible things, and ESI that are created or come into your custody, possession, or control subsequent to the date of delivery of this letter, potentially relevant evidence is to be preserved. You should take all appropriate action to avoid destruction of potentially relevant evidence.

REQUEST FOR EMPLOYEE FILE

Martinez also requests that GBS forward her personnel file, all W2 information, all signed documents pursuant to *Labor Code* § 432, all wage related documents in his file pursuant to *Labor Code* § 226(b) and all personnel files pursuant to *Labor Code* § 1198.5. In the event you refuse to provide her personnel file, please let us know when we may accompany Martinez to inspect the file pursuant to *Labor Code* § 1198.5. You are requested to produce these documents within the time prescribed by the law.

ATTORNEY'S FEES AND COSTS

The provisions provided in this letter entitle an employee to recover attorney's fees and costs in an action on such claims.

If you have any questions or concerns regarding the foregoing, do not hesitate to contact us. Otherwise, please respond to this letter by no later than **November 13, 2024**, and confirm that we will be receiving the files requested.

Regards,
BITTON & ASSOCIATES



OPHIR J. BITTON