

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Upinder Kalra

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Judith Duran

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

JUDITH DURAN, an individual,

Plaintiff,

v.

MARRIOTT INTERNATIONAL, INC., a
California Corporation; REMINGTON
LODGING & HOSPITALITY, LLC, a
California Limited Liability Company;
ANTHONY G. CAPUANO, an individual;
STEPHANIE LINNARTZ, an individual;
MONTGOMERY J. BENNETT, an
individual; and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.: 22STCV30859

Unlimited Jurisdiction

COMPLAINT

- 1. CONSTRUCTIVE WRONGFUL
TERMINATION AND RETALIATION
IN VIOLATION OF PUBLIC
POLICY;**
- 2. DISCRIMINATION BASED ON
PROTECTED STATUS –
DISABILITY;**
- 3. FAILURE TO ACCOMMODATE;**
- 4. FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS;**
- 5. FAILURE TO TAKE REASONABLE
STEPS TO PREVENT
DISCRIMINATION AND/OR
RETALIATION;**
- 6. FAILURE TO PROVIDE MEAL
BREAKS;**
- 7. FAILURE TO PROVIDE REST
PERIODS;**
- 8. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS [California
Labor Code §226(a)];**
- 9. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS [California
Labor Code §226.3];**
- 10. UNLAWFUL WITHHOLDING OF
WAGES;**
- 11. WAITING TIME PENALTIES;**

Complaint

Judith Duran v. Marriott International, Inc., et al.

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12. CALIFORNIA PRIVATE ATTORNEY GENERAL ACT [California *Labor Code* §2698];
 13. NEGLIGENCE;
 14. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
 15. NEGLIGENT HIRING, SUPERVISION, AND RETENTION;
 16. FAILURE TO PROVIDE EMPLOYMENT RECORDS; AND
 17. UNFAIR BUSINESS PRACTICES.

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DEMAND FOR JURY TRIAL

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Plaintiff JUDITH DURAN (“PLAINTIFF”) hereby files this Complaint against Defendants MARRIOTT INTERNATIONAL, INC. (“MARRIOTT”), a California Corporation, REMINGTON LODGING & HOSPITALITY, LLC, a California Limited Liability Company, ANTHONY G. CAPUANO, an individual, STEPHANIE LINNARTZ, an individual, MONTGOMERY J. BENNETT, an individual, and DOES 1 THROUGH 20, inclusive (Collectively, “DEFENDANTS”). PLAINTIFF is informed and believes, and on the basis of that information and belief, 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 MARRIOTT is, and at all times material hereto was, a California corporation 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 REMINGTON LODGING & HOSPITALITY, LLC is, and at all times material hereto was, a California limited liability company organized and existing under the laws of the State of California and authorized to conduct business in the County of Los Angeles.

4. PLAINTIFF is informed and believes, and on this basis alleges that Defendant ANTHONY G. CAPUANO is an individual conducting business in California.

licenses lodging to hotels like Beverly Hills Marriott, which employed around more than 100 employees at this location.

13. REMINGTON LODGING & HOSPITALITY, LLC was responsible on issuing paychecks to PLAINTIFF throughout her employment.

14. Through bi-weekly direct deposits, PLAINTIFF was paid at \$17.63, her most recent hourly rate.

15. With a work schedule from 8:30 a.m. to 5 p.m., PLAINTIFF, and many other similarly situated employees, only received a 30-minute lunch break at 12:30 p.m. without any rest breaks during the workday, and leaving the premise was not permitted.

16. In or about 2020, PLAINTIFF developed pain in her sciatic nerve and received a doctor's note restricting her from lifting more than 15 pounds. However, despite she provided the note to her supervisor Maria Hernandez ("HERNANDEZ"), Hernandez never followed the restriction but ordered PLAINTIFF to do heavy work such as lifting mattress and pushing heavy cart.

17. Due to the working environment created by Marriott, PLAINTIFF had no other options but was forced to leave her job thereafter.

18. On August 1, 2022, PLAINTIFF complied with *Labor Code* §2699.3(a) in that PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and DEFENDANTS of the specific provisions of the labor Code alleged to have been violated, including the facts and theories to support the alleged violation. As of the date of filing this complaint, (more than 60 calendar days after PLAINTIFF's LWDA letters were mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended to investigate the alleged violations.

19. On August 1, 2022, PLAINTIFF filed a complaint with the Department of Fair Employment and Housing ("DFEH") and obtained a Right to Sue letter on the same day. PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and Right to Sue notices.

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1 **FIRST CAUSE OF ACTION**

2 **CONSTRUCTIVE WRONGFUL TERMINATION**

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

4 **(PLAINTIFF against MARRIOTT, REMINGTON LODGING & HOSPITALITY, LLC**
5 **and DOE 1 through 10)**

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

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

9 22. PLAINTIFF was subjected to working conditions that violated public policy and
10 the California Fair Employment and Housing Act (“FEHA”), in that DEFENDANTS took adverse
11 employment actions against PLAINTIFF because PLAINTIFF had sustained injuries while on the
12 job, made complaints about the work-related injuries, and sought an accommodation due to the
13 injuries and disability. *California Government Code* §12940 provides that it is against the law to
14 discriminate against an employee due to disability and to retaliate against an employee for
15 requesting an accommodation for disability regardless of whether the request was granted. These
16 policies are also enumerated in *Labor Code* §132(a), FEHA, the California and United States
17 Constitutions, among other laws and regulations.

18 23. DEFENDANTS intentionally created and/or knowingly permitted these working
19 conditions.

20 24. These working conditions were so intolerable that a reasonable person in
21 PLAINTIFF’s position would have had no reasonable alternative except to resign.

22 25. PLAINTIFF resigned because of these working conditions, and the employment
23 relationship was actually severed involuntarily by DEFENDANTS’ acts, against PLAINTIFF’s
24 will.

25 26. PLAINTIFF’s protected activities described above were substantial motivating
26 factors for DEFENDANTS’ adverse employment actions taken against PLAINTIFF.

27 27. As a substantial result of DEFENDANTS’ intentional acts in violation of public
28 policy and FEHA, PLAINTIFF was harmed. Specifically, PLAINTIFF lost income, and endured

emotional and mental damages, among other related damages. The exact amount of damage to PLAINTIFF shall be proved at trial.

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

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

SECOND CAUSE OF ACTION
DISCRIMINATION IN VIOLATION
OF CALIFORNIA GOVERNMENT CODE §12940, ET SEQ
(PLAINTIFF against MARRIOTT, REMINGTON LODGING & HOSPITALITY, LLC
and DOE 1 through 10)

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

31. PLAINTIFF was an employee of DEFENDANTS.

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

33. PLAINTIFF's disability was a substantial motivating reason for DEFENDANTS' conduct that caused the constructive wrongful termination against PLAINTIFF.

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

35. PLAINTIFF believes that DEFENDANTS' conducts described above were done with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with

1 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
2 punitive and exemplary damages.

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

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO ACCOMMODATE – DISABILITY DISCRIMINATION**

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

8 **(PLAINTIFF against MARRIOTT, REMINGTON LODGING & HOSPITALITY, LLC**
9 **and DOE 1 through 10)**

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

12 38. PLAINTIFF was employed as an employee by DEFENDANTS.

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

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

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

21 42. However, DEFENDANTS failed to provide such reasonable accommodation for
22 PLAINTIFF's disability. DEFENDANTS otherwise expected PLAINTIFF to work through the
23 pain without treatment or accommodation.

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

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

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FOURTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS

IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)

**(PLAINTIFF against MARRIOTT, REMINGTON LODGING & HOSPITALITY, LLC
and DOE 1 through 10)**

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

46. PLAINTIFF was an employee of DEFENDANTS.

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

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

49. 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.

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

51. 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.

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TAKE REASONABLE STEPS**

3 **TO PREVENT DISCRIMINATION AND RETALIATION**

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

5 **(PLAINTIFF against MARRIOTT, REMINGTON LODGING & HOSPITALITY, LLC**
6 **and DOE 1 through 10)**

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

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

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

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

16 57. As a substantial result of DEFENDANTS' failure to engage in the interactive
17 process, PLAINTIFF was harmed. The exact amount of damage to PLAINTIFF shall be proved at
18 trial.

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

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL BREAKS**

23 **(PLAINTIFF against all DEFENDANTS)**

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

26 60. *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 61. *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 62. *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 63. 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 64. 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 65. 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 66. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in a
24 non-exempt position.

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

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(PLAINTIFF against all DEFENDANTS)

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

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

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

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

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

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

4 **(PLAINTIFF against all DEFENDANTS)**

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

7 77. *Labor Code* §226(a) requires employers to provide accurate itemized wage
8 statements for each wage payment. *Labor Code* §226(e) provides for a recovery of the greater of
9 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
10 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
11 aggregate penalty of four thousand dollars (\$4,000) (per employee).

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

15 79. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
16 damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties
17 promulgated under *Labor Code* §§226.

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

20 **NINTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 **IN VIOLATION OF LABOR CODE § 226.3**

23 **(PLAINTIFF against all DEFENDANTS)**

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

26 82. *Labor Code* §§226 and 226.3 provides for civil penalties against anyone who
27 violates *Labor Code* §226. *Labor Code* §226(a) requires employers to provide accurate itemized
28 wage statements for each wage payment. Specifically, *Labor Code* §226.3 provides a penalty of

two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement in compliance with *Labor Code* §226.

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

84. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties promulgated under *Labor Code* §§226 and 226.3.

TENTH CAUSE OF ACTION

UNLAWFUL WITHHOLDING OF WAGES

(PLAINTIFF against all DEFENDANTS)

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

86. *Labor Code* §216 provides that it is a misdemeanor for an employer to "willfully refuse to pay wages due and payable after demand has been made" or "falsely deny the amount or validity thereof."

87. *Labor Code* §225.5 provides a penalty of \$100 for an initial violation and \$200 for any subsequent violation of §216 plus 25% of the withheld amount.

88. Upon termination by DEFENDANTS, PLAINTIFF was entitled by law to receive all of PLAINTIFF's wages and paycheck(s) immediately. DEFENDANTS also unlawfully withheld the balance of earned wages, missed meal and rest break wages. Moreover, these wages were demanded thereafter.

89. As a result of DEFENDANTS' aforementioned unlawful acts, PLAINTIFF suffered damage. DEFENDANTS are subject to the penalty under *Labor Code* §225.5. The exact amount of penalties will be proved at trial, and PLAINTIFF is entitled to such penalties plus interest as required by law in addition to restitution of all wages earned but not paid.

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1 **ELEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(PLAINTIFF against all DEFENDANTS)**

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

6 91. *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 92. PLAINTIFF’s employment with DEFENDANTS ended.

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

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

15 95. 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 **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

22 **LABOR CODE § 2698**

23 **(PLAINTIFF against all DEFENDANTS)**

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

26 97. PLAINTIFF and the other non-exempt employees are “aggrieved employees” as
27 defined by *Labor Code* §2699(c) in that they are all current or former employees of
28

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

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

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

9 **THIRTEENTH CAUSE OF ACTION**

10 **NEGLIGENCE**

11 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

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

24 **FOURTEENTH CAUSE OF ACTION**

25 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

26 **(PLAINTIFF against all DEFENDANTS)**

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

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

7 107. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

8 108. DEFENDANTS' breach was and is the actual and proximate cause of
9 PLAINTIFF's harm.

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

14 **FIFTEENTH CAUSE OF ACTION**

15 **NEGLIGENT HIRING, SUPERVISION, AND RETENTION**

16 **(PLAINTIFF against all DEFENDANTS)**

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

19 111. DEFENDANTS hired PLAINTIFF's supervisors.

20 112. PLAINTIFF's supervisors became unfit and incompetent to perform the work for
21 which PLAINTIFF's supervisors were hired.

22 113. DEFENDANTS knew or should have known of PLAINTIFF's supervisors became
23 unfit and incompetent to perform the work, and PLAINTIFF's supervisors created a particular risk
24 to others.

25 114. PLAINTIFF's supervisors' unfitness and incompetence harmed PLAINTIFF.

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

1 **SIXTEENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE EMPLOYMENT DOCUMENTS**

3 **(PLAINTIFF against all DEFENDANTS)**

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

6 117. *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.”

13 118. *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.”

16 119. *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.”

1 120. On August 1, 2022, PLAINTIFF requested DEFENDANTS to produce
2 PLAINTIFF's personnel file, all W2 information, all wage related documents, and all signed
3 documents.

4 121. DEFENDANTS failed to provide PLAINTIFF with complete employment records.

5 122. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
6 damage.

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

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

11 **SEVENTEENTH CAUSE OF ACTION**

12 **UNFAIR BUSINESS PRACTICES**

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

14 **(PLAINTIFF against all DEFENDANTS)**

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

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

- 21 a. Wrongfully constructively terminating and retaliating against employees with
- 22 disability-based reasons;
- 23 b. Discriminating against employees based on disability;
- 24 c. Failing to accommodate;
- 25 d. Failing to properly supervise and train its employees;
- 26 e. Failing to provide proper meal breaks and rest periods, or to pay premium
- 27 wages for missed meal and rest periods to PLAINTIFF; and,
- 28 f. The foregoing wrongful activities have caused harm, fear, pressure, and

humiliation to the employee(s) at DEFENDANTS.

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

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

129. 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.

130. 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);

3. Special damages;

4. Emotional distress damages;

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

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

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

1 action;

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

4 9. Punitive and exemplary damages;

5 10. Pre-judgment interest;

6 11. Costs of lawsuit herein incurred;

7 12. Attorneys' fees; and

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

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12
13 Dated: September 21, 2022

BITTON & ASSOCIATES

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16 _____
17 Ophir J. Bitton, Esq.
18 Lei Wei, Esq.
19 Attorneys for Plaintiff,
20 Judith Duran
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Dated: September 21, 2022



Ophir J. Bitton, Esq.

Lei Wei, Esq.

Attorneys for Plaintiff,

Judith Duran