

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Dennis Landin

Ophir J. Bitton (SBN: 204310)  
Lei Wei (SBN: 337624)  
BITTON & ASSOCIATES  
7220 Melrose Avenue, 2<sup>nd</sup> Floor  
Los Angeles, CA 90046  
Tel. No.: (310) 356-1006  
Fax No.: (818) 524-1224  
Attorneys for Plaintiff,  
ALBERTO GONZALEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

ALBERTO GONZALEZ, an individual,  
  
Plaintiff,

v.

TACOS SUPER "GALLITO", a California  
business entity form unknown; ALLSTAFF  
HR, INC., a California Corporation; and DOES  
1 THROUGH 20, inclusive,

Defendants.

**Case No.: 21STCV42735**  
Unlimited Jurisdiction

**COMPLAINT**

- 1. FAILURE TO PAY OVERTIME  
AND DOUBLE TIME WAGES;**
- 2. FAILURE TO PROVIDE MEAL  
BREAKS;**
- 3. FAILURE TO PROVIDE REST  
PERIODS;**
- 4. FAILURE TO PROVIDE  
ACCURATE ITEMIZED  
STATEMENTS [California Labor  
Code §226(a)];**
- 5. FAILURE TO PROVIDE  
ACCURATE ITEMIZED  
STATEMENTS [California Labor  
Code §226.3];**
- 6. UNLAWFUL WITHOLDING OF  
WAGES;**
- 7. WAITING TIME PENALTIES;**
- 8. CALIFORNIA PRIVATE  
ATTORNEY GENERAL ACT  
[CALIFORNIA LABOR CODE  
§2698];**
- 9. VIOLATION OF CALIFORNIA'S  
UNFAIR COMPETITION LAW  
(Cal. Bus. & Prof. C. §§17200-17208)**

**DEMAND FOR JURY TRIAL**

1 Plaintiff ALBERTO GONZALEZ (“PLAINTIFF”) hereby files this Complaint against  
2 TACOS SUPER “GALLITO” (“GALLITO”), a California business entity form unknown;  
3 ALLSTAFF HR, INC. (“ALLSTAFF”), a California Corporation (collectively,  
4 “DEFENDANTS”) and DOES 1 THROUGH 20, inclusive. PLAINTIFF is informed and believes,  
5 and on the basis of that information and belief, alleges as follows:

6 **PARTIES**

7 1. PLAINTIFF is, and at all times material hereto was, an individual residing in the  
8 County of Los Angeles in the State of California.

9 2. PLAINTIFF is informed and believes, and on this basis alleges that Defendant  
10 GALLITO is, and at all times material hereto was, a California business entity form unknown  
11 organized and existing under the laws of the State of California and authorized to conduct, and at  
12 all relevant times was conducting, business in the County of Los Angeles.

13 3. PLAINTIFF is informed and believes, and on this basis alleges that Defendant  
14 ALLSTAFF is, and at all times material hereto was, a California corporation organized and  
15 existing under the laws of the State of California and authorized to conduct, and at all relevant  
16 times was conducting, business in the County of Los Angeles.

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

23 5. PLAINTIFF is informed and believes and thereon alleges that each defendant  
24 named in this Complaint now is, and was at all times herein mentioned, the agent, servant,  
25 employee, representative, alter ego, members of and/or engaged in a joint venture, partnership and  
26 common enterprise of the other defendants herein, and was at all such times acting within the  
27 course and scope of said agency and employment and with the consent and permission of each of  
28

1 the other co-defendants, and each of the defendants herein ratified each of the acts of each of the  
2 other co-defendants, and each of them.

### 3 **JURISDICTION AND VENUE**

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

7 7. Venue is proper in Los Angeles County because each DEFENDANT either is  
8 found, maintains office, transacts business, and/or has an agent therein and/or at least some of the  
9 transactions that are the subject matter of this Complaint occurred therein.

### 10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 8. In or around 2009, PLAINTIFF obtained employment at agency ALLSTAFF and  
12 was positioned to work at GALLITO.

13 9. PLAINTIFF is informed and believes, and on this basis alleges that the conditions  
14 of his employment and the pay policies he was subjected to, were controlled by DEFENDANTS  
15 and each of them.

16 10. PLAINTIFF typically worked from 2 A.M. to around 4 P.M. daily for about 80  
17 hours per week on average. After the coronavirus pandemic hit, PLAINTIFF's work schedule was  
18 reduced to approximately 65 hours per week.

19 11. PLAINTIFF's most recent hourly rate was \$17/hour.

20 12. Every Thursday, PLAINTIFF received his weekly checks for 40 hours' worth of  
21 compensation. On Fridays, PLAINTIFF typically received cash purportedly for his overtime that  
22 week.

23 13. Nevertheless, the overtime payments were paid at PLAINTIFF's original hourly  
24 rate of \$16/hour with no premium pay. Therefore, PLAINTIFF was not paid for all overtime and  
25 double time hours worked.

26 14. During PLAINTIFF's shifts which usually consisted of more than 10 hours,  
27 PLAINTIFF routinely could not take a 30-minute meal break or compliant rest breaks. Most of the  
28

time, PLAINTIFF would have to eat some food quickly while continuing with his work.

15. On or about July 29, 2020, PLAINTIFF was terminated by Gallito.

16. On June 17, 2021, 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.

### **FIRST CAUSE OF ACTION**

#### **FAILURE TO PAY OVERTIME AND DOUBLE TIME WAGES**

##### **(PLAINTIFF against all DEFENDANTS)**

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

18. *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.

19. PLAINTIFF regularly worked for DEFENDANTS for more than eight (8) hours in a day and/or forty (40) hours in a week. On average, PLAINTIFF worked about 80 hours per week. Regardless of hours worked, PLAINTIFF was not paid overtime or double time.

20. DEFENDANTS knew or should have known that PLAINTIFF had worked overtime and double time hours.

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

3           22.     However, PLAINTIFF did not receive overtime or double time pay.

4           23.     As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived  
5 of wages and overtime in amounts to be proven at trial, and PLAINTIFF is entitled to recovery of  
6 such amounts from DEFENDANTS, plus interest, penalties and attorney's fees and costs.

7                               **SECOND CAUSE OF ACTION**

8                               **FAILURE TO PROVIDE MEAL BREAKS**

9                               **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

23          28.     Section 11(C) of the *IWC Wage Order(s)* provides that "Unless the employee is  
24 relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on  
25 duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only  
26 when the nature of the work prevents an employee from being relieved of all duty and when by  
27  
28

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 29. 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 30. 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 31. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal  
12 breaks.

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

15 33. Further, at times PLAINTIFF worked more than 10 hours in a shift; however,  
16 PLAINTIFF was not given or advised that PLAINTIFF may take a second meal break.

17 34. PLAINTIFF had been harmed and DEFENDANTS are liable to PLAINTIFF for  
18 one (1) hour of additional premium pay at the regular rate of compensation for each day in which  
19 the proper meal was not provided. The exact amount of missed meal break wages owed to  
20 PLAINTIFF shall be proved at trial. PLAINTIFF is also entitled to interest, penalties, and  
21 attorney’s fees and costs, among other damages.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REST PERIODS**

24 **(PLAINTIFF against all DEFENDANTS)**

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

36. 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)

37. PLAINTIFF's employment with DEFENDANTS entitled PLAINTIFF to rest breaks.

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

39. 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. PLAINTIFF is also entitled to interest, penalties, and attorney's fees and costs, among other damages.

#### FOURTH CAUSE OF ACTION

## FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

**(PLAINTIFF against all DEFENDANTS)**

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

41. *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).

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

1           43.     As a result of DEFENDANTS' aforementioned unlawful act, Plaintiff suffered  
2 damage.

3           44.     Plaintiff is therefore entitled to recover from DEFENDANTS damages and  
4 penalties promulgated under Labor Code §§226.

5           45.     PLAINTIFF is entitled to injunctive relief to ensure compliance with the  
6 aforementioned Labor Code provision.

7                               **FIFTH CAUSE OF ACTION**

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

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

10                              **(PLAINTIFF against all DEFENDANTS)**

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

13           47.     *Labor Code* §§226 and 226.3 provides for civil penalties against anyone who  
14 violates Labor Code §226. *Labor Code* §226(a) requires employers to provide accurate itemized  
15 wage statements for each wage payment. Specifically, Labor Code §226.3 provides a penalty of  
16 two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand  
17 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer  
18 fails to provide the employee a wage statement in compliance with Labor Code §226.

19           48.     DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage  
20 statements, willfully or intentionally. DEFENDANTS also failed to account for accurate  
21 withholdings, hours, wage rates, overtime, and meal and rest premiums, among other things.

22           49.     As a result of DEFENDANTS' aforementioned unlawful act, Plaintiff suffered  
23 damage.

24           50.     Plaintiff is therefore entitled to recover from DEFENDANTS damages and  
25 penalties promulgated under Labor Code §§226 and 226.3.

26                               **SIXTH CAUSE OF ACTION**

27                   **UNLAWFUL WITHHOLDING OF WAGES**

1 **(PLAINTIFF against all DEFENDANTS)**

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

4 52. *California Labor Code* §216 provides that it is a misdemeanor for an employer to  
5 “willfully refuse to pay wages due and payable after demand has been made” or “falsely deny the  
6 amount or validity thereof.”

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

9 54. Upon termination by DEFENDANTS, PLAINTIFF was entitled by law to receive  
10 all of PLAINTIFF’s wages and paycheck(s) immediately. Defendants also unlawfully withheld  
11 the balance of earned wages, overtime, missed meal and rest break wages, and expense  
12 reimbursements. Moreover, these wages were demanded thereafter.

13 55. As a result of DEFENDANTS’ aforementioned unlawful acts, PLAINTIFF  
14 suffered damage.

15 56. As such, DEFENDANTS are subject to the penalty under *Labor Code* §225.5.  
16 PLAINTIFF is entitled to such penalties plus interest as required by law, plus restitution of all  
17 wages earned but not paid. The exact amount of penalties will be proved at trial.

18 **SEVENTH CAUSE OF ACTION**

19 **WAITING TIME PENALTIES**

20 **(PLAINTIFF against all DEFENDANTS)**

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

23 58. *Labor Code* §203 provides that “if an employer willfully fails to pay, without  
24 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages  
25 of an employee who is discharged or who quits, the wages of the employee shall continue as a  
26 penalty from the due date thereof at the same rate until paid or until an action therefor is  
27 commenced; but the wages shall not continue for more than 30 days.”  
28

1           59.     PLAINTIFF is owed wages by DEFENDANTS and was not paid all of  
2 PLAINTIFF's final wages since PLAINTIFF's wrongful termination until the date of filing this  
3 Complaint.

4           60.     DEFENDANTS acted willfully in not paying DEFENDANTS final wages in full.

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

7           62.     As such, PLAINTIFF is entitled to recover from DEFENDANTS the statutory  
8 penalty wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty  
9 (30) day maximum pursuant to California Labor Code sections 203, plus interest and attorney's  
10 fees in the amount to be proven at trial.

11                               **EIGHTH CAUSE OF ACTION**

12                               **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

13                               **LABOR CODE § 2698**

14                               **(PLAINTIFF against all DEFENDANTS)**

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

17           64.     PLAINTIFF and the other non-exempt employees are "aggrieved employees" as  
18 defined by California Labor Code §2699(c) in that they are all current or former employees of  
19 DEFENDANTS, and one or more of the causes of action in this complaint was committed against  
20 PLAINTIFF and the aggrieved employees.

21           65.     As such, PLAINTIFF and the aggrieved employees are entitled to civil penalties  
22 pursuant to California Labor Code §558 and §2699(a), (f) and (g), cost, expenses, and attorneys'  
23 fees for violation of California Labor Code § 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),  
24 1174(d), 1194, 1197, 1197.1 and 1198.

25                               **NINTH CAUSE OF ACTION**

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

27                               **FOR UNFAIR BUSINESS PRACTICES**

**(PLAINTIFF against all DEFENDANTS)**

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

67. 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. Failing to pay all wages earned and owed to employees;
- b. Failing to pay overtime and double time wages earned and owed to employees;
- c. Failing to provide proper meal breaks and rest periods, or to pay premium wages for missed meal and rest periods to PLAINTIFF and other employees;
- and
- d. The foregoing wrongful activities have caused harm, fear, pressure, and humiliation to the employee(s) at DEFENDANTS.

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

69. Pursuant to the provisions of Section 17203 of the California Business and Professions Code, Plaintiff is entitled to restoration of unpaid wages, meal and rest periods premium wages, and interests DEFENDANTS have collected by the use of the unfair, deceptive, and misleading business practices described in this Complaint.

70. Pursuant to provisions of Section 17203 et seq. 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.

71. Pursuant to the provisions of Section 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. Special damages;
3. Civil and statutory penalties;
4. 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;
5. Injunctive relief prohibiting DEFENDANTS from engaging in the unfair, deceptive, and misleading business practices described as in unfair business practices cause of action;
6. Declaration that DEFENDANTS' business practices are unfair within the meaning to the statute described as in unfair business practices cause of action;
7. Pre-judgment interest;
8. All costs of lawsuit herein incurred;
9. Reasonable attorneys' fees where provided by law; and
10. For an award of such other and further equitable and legal relief as this Court may deem appropriate.

Dated: November 18, 2021

BITTON & ASSOCIATES



Ophir J. Bitton  
Lei Wei  
Attorneys for Plaintiff,  
ALBERTO GONZALEZ

1                                    **DEMAND FOR JURY TRIAL**

2                    PLAINTIFF hereby demands a trial of their claims by jury to the extent authorized by law.

3  
4    Dated: November 18, 2021

BITTON & ASSOCIATES

5                                    

6  
7                                    \_\_\_\_\_  
8                    Ophir J. Bitton  
9                    Lei Wei  
10                   Attorneys for Plaintiff,  
11                   ALBERTO GONZALEZ