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Assigned for All Purposes
Judge Randall Sherman
Dept. CX105

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

LUIS ALEXIS VILLANUEVA PEREZ,

Plaintiff,

vs.

SANCHO'S TACOS, INC.; DONALD
LANCASTER; and DOES 1 to 25,
inclusive,

Defendants.

CASE NO.: 30-2023-01336094-CU-OE-CXC

COMPLAINT FOR DAMAGES FOR:

- 1) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) **FAILURE TO PAY MINIMUM WAGES;**
- 3) **FAILURE TO PAY OVERTIME;**
- 4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) **FAILURE TO PROVIDE REST BREAKS;**
- 8) **FAILURE TO PROVIDE MEAL BREAKS;**
- 9) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 10) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 11) **FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 12) **FAILURE TO PROVIDE PAY RECORDS;**
- 13) **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA");**
- 14) **FAILURE TO ACCOMMODATE**

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-) PHYSICAL DISABILITY IN
-) VIOLATION OF FEHA;
-) 15) FAILURE TO ENGAGE IN
-) INTERACTIVE PROCESS TO
-) DETERMINE REASONABLE
-) ACCOMMODATION IN
-) VIOLATION OF FEHA;
-) 16) RETALIATION IN VIOLATION OF
-) FEHA;
-) 17) FAILURE TO PREVENT
-) DISCRIMINATION AND
-) RETALIATION IN VIOLATION OF
-) FEHA;
-) 18) WRONGFUL CONSTRUCTIVE
-) DISCHARGE IN VIOLATION OF
-) PUBLIC POLICY;
-) 19) VIOLATION OF BUSINESS AND
-) PROFESSIONS CODE SECTION
-) 17200
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-) JURY TRIAL DEMANDED

COMES NOW Plaintiff, LUIS ALEXIS VILLANUEVA PEREZ (hereinafter
“Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Orange in this judicial district because Defendants SANCHO’S TACOS, INC.; DONALD LANCASTER; and DOES 1 to 25, inclusive do business in the County of Orange, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Orange is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.
2. Plaintiff is a male resident of the State of California.
3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SANCHO’S TACOS, INC. is a California corporation, doing business in the County of Orange, State of California, and which employed Plaintiff.

1 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
2 DONALD LANCASTER is a resident of the State of California and is and was the owner
3 and/or managing agent of SANCHO'S TACOS, INC. DONALD LANCASTER is and was
4 involved in the day-to-day activities of the business, and personally controlled the wages,
5 hours, and working conditions of Plaintiff and other similarly situated aggrieved employees.
6 Defendants SANCHO'S TACOS, INC. and DONALD LANCASTER are collectively referred
7 to as "SANCHO's" or "Defendant(s)".

8 5. At all times mentioned herein and at all times material hereto, each of the defendants
9 named in this Complaint was the agent, employee, partner, and joint venturer of each of the other
10 defendants named and mentioned herein, and was acting within the course and scope of, and in
11 furtherance of, said agency, employment, partnership and joint venture described herein.
12 Plaintiff is further informed and believes, and upon such information and belief alleges, that at
13 all times herein mentioned, each of the Defendants gave consent to, ratified and authorized the
14 acts alleged herein and each of his, or its co-Defendants.
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16 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
17 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
18 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
19 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
20 for the conduct alleged herein. Upon discovering the true names and capacities of these
21 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
22 capacities of these fictitiously named defendants.
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24 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
25 that information and belief, alleges that at all times herein mentioned, each of the remaining
26 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
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1 under the authority of their agency, employment, or representative capacity, with the consent of
2 his/her codefendants.

3 **GENERAL ALLEGATIONS**

4 8. Plaintiff started working at SANCHO'S on or March 2022 as a cook. Plaintiff was
5 classified as an hourly, non-exempt employee. Plaintiff's employment ended on or around
6 March 2, 2023.

7 9. It is Plaintiff's position that all of SANCHO'S TACOS, INC entities, including
8 SANCHO'S Tacos Bakersfield LLC; SANCHO'S Tacos Claremont LLC; SANCHO'S Tacos
9 Laguna Niguel LLC; SANCHO'S Tacos Newport Beach LLC; SANCHO'S Tacos Oceanside
10 LLC; SANCHO'S Tacos San Clemente LLC; and SANCHO'S Tacos Worldwide are joint
11 employers under California law in that they each controlled the wages, hours, and working
12 conditions of Plaintiff and others. In addition, the above-named entities are an "integrated
13 enterprise" under the law. The integrated enterprise test sets forth four factors for assessing
14 whether multiple entities are considered a single entity for purposes of liability: (1) interrelation
15 of operations; (2) common management; (3) centralized control of labor relations; and (4)
16 common ownership or financial control. Even though one does not have to show proof of all
17 factors to prevail on an integrated enterprise claim, here all four factors are unequivocally met
18 as both companies have the exact same ownership and management, including Donald Lancaster
19 and Erika Young, who are listed as the officers/managing agents for the companies. Furthermore,
20 there is centralized control of labor relations and there is interrelation of operations between all
21 the above-named entities. As such, it is Plaintiff's position that SANCHOS TACOS, INC.
22 includes all of the above-mentioned entities and the labor code violations alleged against
23 SANCHO'S TACOS, INC. would also be applicable to the aforementioned entities.

24 10. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
25 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
26 Security Services USA, Inc., an onsite security provider. After about a year of employment,
27 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
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specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.

11. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of job title or job duties, at any of their locations in California during the relevant PAGA period. It is Plaintiff’s position that SANCHO’S has violated numerous Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for SANCHO’S at their various locations in the State of California during the relevant PAGA period.

12. SANCHO’S violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because SANCHO’S had a company policy wherein they would disproportionately round down the

1 number of hours worked, resulting in "time shaving" and further resulting in aggrieved
2 employees not being paid for all hours worked. Furthermore, and to the extent that Plaintiff and
3 others worked through their meal periods while "off the clock", they were not compensated for
4 all hours worked, which would be akin to a minimum wage violation. Furthermore, aggrieved
5 employees regularly performed work related task before clocking in and after clocking out,
6 including setting up and clean up.

7 13. Due to the above "off the clock" violations, SANCHO'S also violated Labor Code §510
8 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
9 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
10 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
11 entitled them to overtime compensation, however, SANCHO'S did not compensate its hourly,
12 non-exempt employees with the correct amount of overtime due to the "off the clock" work and
13 time shaving as described above. Furthermore, SANCHO'S failed to include bonuses/incentive
14 payments in calculating employees' regular rate of pay for use in deciphering the correct
15 overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into
16 employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v.
17 Loews case.

18 14. SANCHO'S also violated Labor Code § 226.7 and the appropriate Industrial Welfare
19 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
20 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
21 portion thereof, throughout their employment. SANCHO'S did not completely relieve Plaintiff
22 and others of all duty during said rest periods. SANCHO'S did not pay to Plaintiff and others
23 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one
24 or more statutory rest periods was not provided. It was not part of the company policy for
25 employees such as Plaintiff to take at least two rest breaks per shift. The concept of rest breaks
26 was not consistently implemented as it was not company policy. Moreover, it would not have
27 been possible for employees such as Plaintiff and others to take such rest breaks due to being
28 understaffed and due to a heavy workload, especially in the fast-paced restaurant industry. As

1 such, the culture as well as the policies and procedures of SANCHO'S did not lend itself to the
2 employees receiving consistent statutory rest breaks wherein they were relieved of all work
3 duties. The environment at SANCHO'S was not conducive to receiving multiple statutory rest
4 breaks under California law and timely, statutory rest breaks were not authorized or enforced.

5 15. SANCHO'S violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
6 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt
7 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
8 for every five (5) hours of work throughout their employment. SANCHO'S did not completely
9 relieve Plaintiff and other employees of all duty during said meal periods. SANCHO'S did not
10 pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular
11 rate of compensation for each workday that one or more statutory meal periods was not provided.
12 The hourly, non-exempt employees would often not be able to consistently receive any meal
13 breaks. Moreover, even if aggrieved employees were able to take meal breaks, the meal breaks
14 would be late and after the 5th hour worked or they would be interrupted. The latter was due to
15 the workload and due to being in a fast-paced restaurant environment. In fact, one look at
16 Plaintiff's time records would indicate that he consistently took meal breaks late due to the
17 workload and not having other employees to relieve him of his cooking duties. Like the rest
18 breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the
19 company culture and was not enforced by SANCHO'S. Consequently, it was the normal practice
20 and custom of SANCHO'S not to authorize, permit, and enforce timely statutory meal periods.
21 If SANCHO'S had Plaintiff sign a meal period waiver, it would not be valid and enforceable
22 since Plaintiff and others generally worked more than a 6-hour shift. If SANCHO'S had Plaintiff
23 sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal
24 periods, it would be invalid and unenforceable because the nature of Plaintiff's job as a cook
25 does not and did not prevent him from taking a meal period and the company could have hired
26 "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted
27 meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to
28 revoke such an agreement even if it was signed. As such, Plaintiff and others did not always
receive statutory, timely meal periods during their employment. To the extent that SANCHO'S

1 argues that employees receive meal break premium pay for missed meal periods, that argument
2 is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
3 themselves, irrespective of whether an employee received the premium payment for a missed,
4 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
5 “section 226.7 does not give employers a lawful choice between providing *either* meal and rest
6 breaks or an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
7 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
8 violation; the employer has still committed a violation even if the remedy for the violation has
9 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
10 consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break
11 premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses
12 and/or incentive payments as well as overtime compensation.

13 16. Furthermore, during the relevant time period, and due to the above labor code violations,
14 SANCHO’S failed to pay Plaintiff and other similarly situated aggrieved employees all wages
15 due to them within any time period specified by California Labor Code section 204. SANCHO’S
16 was also in violation of California Labor Code section 226(a) by failing to include pertinent
17 information on the wage statements, including but not limited to, the correct hourly rate, all hours
18 worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned,
19 premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay
20 period, all employee identifying information, the correct and complete name and address of the
21 legal employer, and reimbursement for business expenses, among others. As such, SANCHO’S
22 did not provide Plaintiff and other similarly situated aggrieved employees with complete,
23 accurate itemized wage statements. During the relevant time period, SANCHO’S also failed to
24 keep accurate and complete payroll records showing the actual hours worked per day and the
25 wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

26 17. SANCHO’S also violated Labor Code § 203 because it willfully failed to pay Plaintiff
27 and other similarly situated aggrieved employees earned and due wages upon separation of
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1 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
2 These earned but unpaid wages include compensation for all hours worked, including minimum
3 wages, overtime compensation, and premium pay for missed meal and rest breaks. During the
4 relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-
5 related expenses and costs that were not reimbursed by SANCHO'S. These costs include, but
6 are not limited to, uniforms and use of personal cell phones for work purposes. Accordingly,
7 SANCHO'S was in violation of California Labor Code sections 2800 and 2802. Additionally,
8 SANCHO'S violated Labor Code Section 351 and 353 by taking some of the tips meant for
9 employees and also deducting the tips from aggrieved employees earned wages. SANCHO'S
10 also deducted the credit card fee from aggrieved employees' tips and did not timely provide the
11 credit card and even cash tips to aggrieved employees. As such, the aggrieved employees were
12 not given accurate tips to which they were entitled.

13 18. In addition, Plaintiff would also have individual claims for discrimination, retaliation,
14 failure to accommodate, failure to engage in the interactive process pursuant to the Fair
15 Employment and Housing Act (FEHA) in that Plaintiff was retaliated against after informing the
16 company that he had been involved in a serious car accident and had suffered serious injuries.
17 Plaintiff was in a car accident on February 27, 2023 and informed his employer that he would
18 not be able to make it to work in that he was being taken to the hospital. Following Plaintiff
19 informing his employer that he was injured, Plaintiff's work schedule was severely reduced to
20 just 1 day per week (from full time). SANCHO'S unequivocally retaliated against and punished
21 Plaintiff for his physical disabilities and his request for some time off. As such, Plaintiff was
22 forced to quit his employment and would also have claims for wrongful constructive discharge
23 in violation of public policy. Pursuant to California Government Code section 12960, Plaintiff
24 has exhausted his administrative remedies. Plaintiff filed a complaint with the Department of
25 Fair Employment and Housing ("DFEH"), alleging Cause of Actions in this Complaint. The
26 DFEH immediately issued to Plaintiff a right to sue letter.
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FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

19. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

20. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 4-2001/5-2001, California Code of Regulations, Title 8, Section 11040/11050.

21. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked.

22. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

26. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 4-2001/5-2001, codified at California Code of Regulations, Title 8, Section 11040/11050, subdivision 4.

28. Pursuant to IWC Wage Order no. 4-2001/5-2001, subdivision 2(K)/(H), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

29. During his employment, Plaintiff was regularly required as a matter of uniform policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours worked in violation of California Labor Code Section 1197 and the applicable California Industrial Wage Commission wage order(s).

30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

31. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount

1 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
2 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

3 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME**

8 **(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of**
9 **Regulations Title 8 Section 11040/11050; California Labor Code Section 510)**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

13 34. Pursuant to Industrial Welfare Commission Order No. 4-2001/5-2001, Cal. Code of
14 Regs., Title 8, Section 11040/11050, for the period of Plaintiff's employment, Defendants were
15 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
16 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
17 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
18 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
19 week.

20 35. Plaintiff was a non-exempt employee entitled to the protections of the California
21 Industrial Welfare Commission Order No. 4-2001/5-2001, California Code of Regulations,
22 Title 8, Section 11040/11050.

23 36. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
24 single workday or forty (40) hours in a single workweek on numerous occasions.

25 37. Plaintiff was entitled to the above overtime premiums.

26 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
27 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
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1 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
2 twelve (12) in a day.

3 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
4 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

5 40. Plaintiff worked at least one pay period in which he was not properly paid overtime
6 within the three (3) years prior to the initiation of this lawsuit.

7 41. Defendants know or should know the actual dates of overtime worked, the amount of
8 overtime worked, and the amount of unpaid overtime due.

9 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
10 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
11 Court.

12 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
13 Regulations, Title 8, Sections 11040/11050, Plaintiff is entitled to recover damages for the
14 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
15 reasonable attorney's fees and costs of suit.

16 44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial.

19 **FOURTH CAUSE OF ACTION**

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

21 **(California Labor Code Section 226)**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

25 46. Pursuant to California Labor Code Section 226, every employer must furnish each
26 employee an itemized statement of wages and deductions at the time of payment of wages.

27 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
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1 accurately reflected all information required by Labor Code Section 226, including but not
2 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
3 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
4 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
5 statements to Plaintiff in accordance with California Labor Code Section 226(a).

6 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
7 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
8 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
9 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
10 reasonable attorney's fees.

11 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
12 sustained damages, including loss of earnings, in an amount to be established at trial. As a
13 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
14 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
15 and attorney's fees pursuant to statute.

16 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

21 **(California Labor Code Section 204)**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

25 52. California Labor Code Section 204 establishes the fundamental right of all employees
26 in the State of California to be paid wages in a timely fashion for their work.

27 53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
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1 full amount of all owed wages when due as required by California Labor Code Section 204.

2 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
3 informed, believes, and thereon alleges, that all times relevant during the liability period,
4 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
5 including overtime hours, the minimum wage, and premium pay for missed meal and rest
6 breaks.

7 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
8 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
9 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
10 from Defendants' records or indirectly based on information from Defendants' records.

11 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.

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15 **SIXTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

17 **(California Labor Code Sections 201, 203)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

21 58. Pursuant to California Labor Code Section 201(a), an employer who discharges an
22 employee must immediately pay for all compensation due and owing.

23 59. Pursuant to California Labor Code Section 202, when an employee resigns, the
24 employer must pay all compensation due and owing within 72 hours of resignation, or on the
25 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

26 60. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
27 without abatement or reduction, any wages of an employee whose employment ends, the wages
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1 of the employee shall continue as a penalty from the due date at the same rate until paid or until
2 an action is commenced; however, the wages shall not continue for more than 30 days for
3 failure to pay an employee owed wages.

4 61. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
5 continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

6 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
7 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
8 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
9 preceding the filing of this lawsuit.

10 63. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
11 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
12 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

13 64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
15 trial.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO GIVE REST BREAKS**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

21 66. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 22 a. Title 8 of the California Code of Regulations Sections 11040/11050(12)(A), which
23 provides that every employer shall authorize and permit all employees to take rest
24 periods, which insofar as practicable shall be in the middle of each work period.

25 The authorized rest period time shall be based on the total hours worked daily at the
26 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
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1 b. Title 8 of the California Code of Regulations Sections 11040/11050(12)(B), which
2 provides that if an employer fails to provide an employee a rest period in
3 accordance with the applicable provisions of this order, the employer shall pay the
4 employee one (1) hour of pay at employee's regular rate of compensation for each
5 workday that the rest period is not provided;

6 c. Title 8 of the California Code of Regulations sections 11040/11050(20)(A), which
7 penalizes the employer \$50.00 for each initial violation, per employee, of any
8 provision of the Wage Order, and \$100.00 for each additional violation thereafter
9 per employee; and
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11 d. California Labor Code section 226.7, which states that (a) no employer shall require
12 any employee to work during any rest period mandated by an applicable order of
13 the Industrial Welfare Commission, and (b) if an employer fails to provide an
14 employee a rest period in accordance with an applicable order of the Industrial
15 Welfare Commission, the employer shall pay the employee one (1) additional hour
16 of pay at employee's regular rate of compensation for each work day that the rest
17 period is not provided.
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19 67. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
20 rest break after every four (4) hours of work or major fraction thereof, as required by California
21 law.

22 68. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
23 regulations, and wage orders alleged in this cause of action along with any allowable interest,
24 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
25 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
26

27 69. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
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1 fees as well as interest under Labor Code section 218.6.

2 70. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
4 trial.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO GIVE MEAL BREAKS**

7 **(Plaintiff against all named defendants and all DOE defendants)**

8 71. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 70, inclusive, of this Complaint as though fully set forth herein.

10 72. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 11 a. California Labor Code section 512(a), which requires that employees be given a 30-
12 minute uninterrupted meal break after five (5) hours of work, and a second
13 uninterrupted meal break after ten (10) hours of work;
14
- 15 b. California Labor Code section 226.7, which states that (a) no employer shall require
16 any employee to work during any meal period mandated by an applicable order of
17 the Industrial Welfare Commission, and (b) if any employer fails to provide an
18 employee a meal period in accordance with an applicable order of the Industrial
19 Welfare Commission, the employer shall pay the employee one (1) additional hour
20 of pay at the employee's regular rate of compensation for each workday that the
21 meal period is not provided;
22
- 23 c. California Industrial Welfare Commission Order No. 4/5 section 11(B), as codified
24 under Title 8 of the California Code of Regulations Section 11040/11050, which
25 states that if an employer fails to provide an employee a meal period in accordance
26 with the applicable provisions of the Wage Order, the employer shall pay the
27 employee one (1) hour of pay at the employee's regular rate of compensation for
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1 each workday that the meal period is not provided;

2 d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3), as
3 codified under Title 8 of the California Code of Regulations Section 11040/11050,
4 which requires an employer to maintain records documenting its employees' meal
5 periods;

6 e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A), as
7 codified under California Code of Regulations Section 11040/11050, which
8 penalizes the employer \$50.00 for each initial violation, per employee, of any
9 provision of the Wage Order, and \$100.00 for each additional violation thereafter
10 per employee; and

11 f. California Labor Code section 1171 and 1173, which have given the California
12 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4
13 and 5) as enforceable law.
14

15 73. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
16 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
17 take a second relieved meal break after ten (10) hours of work, as required by California law.
18 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
19 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq. requires
20 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
21 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
22 work duty. California Labor Code section 226.7 provides that employers may not require their
23 employees to work through their meal periods. California Labor Code section 226.7 and
24 California Code of Regulations section 11040/11050 requires that if the employer fails to
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1 provide the employee with an uninterrupted meal period, the employer must pay the employee
2 one (1) hour of pay for each work day that the meal period is not given.

3 74. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
4 regulations, and wage orders alleged in this cause of action along with any allowable interest,
5 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
6 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

7 75. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

9 76. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

14 **(Plaintiff against All Named Defendants and all DOE defendants)**

15 77. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 76, inclusive, of this Complaint as though fully set forth herein.

17 78. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct
19 consequence of the discharge of his or her duties."
20

21 80. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
22 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
23 of completing his job duties, which were not reimbursed by Defendant. These expenses
24 include, but are not limited to, uniforms and use of personal cell phones for work purposes.

25 81. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
26 and attorney's fees and costs, under Labor Code section 2802.

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Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 535, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802)

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1 current and former hourly, non-exempt employees who worked for SANCHO's in the State of
2 California during the applicable PAGA Period.

3 88. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
4 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
5 numerous provisions of the California Labor Code as alleged in this Complaint.

6 89. Plaintiff therefore has exhausted all administrative remedies required of him under
7 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
8 this cause of action and pursue penalties in a representative action for Defendants' violations of
9 the Labor Code.

10 90. California Labor Code section 2699 et seq. imposes penalties upon culpable
11 Defendants for violating the Labor Code.

12 91. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
13 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
14 seeking individual penalties/victim specific relief or underpaid wages for himself or other
15 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
16 this Complaint for individual wages but is not seeking wages through the PAGA action.

17 92. Specifically, Plaintiff seeks penalties under California Labor Code
18 section 2699, for the following:

19 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
20 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any
21 other Labor Codes/Industrial Welfare Commission Order (No. 4/5) violated based on the
22 facts alleged in this Complaint.

23 93. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
24 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
25 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional
26 limits of this Court.

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1 paragraphs 1 through 98, inclusive, of this Complaint as though fully set forth herein.

2 100. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
3 current and former employees the right to inspect or copy records pertaining to their
4 employment, upon reasonable request to the employer...”

5 101. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
6 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
7 pertaining to a current or former employee shall comply with the request as soon as practicable,
8 but no later than 21 calendar days from the date of the request.” On information and belief,
9 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
10 via certified letter, return receipt requested, on March 28, 2023, and as required by law. Plaintiff
11 requested his pay records in accordance with California Labor Code section 226 on March 28,
12 2023, via certified mail. Defendant failed to provide Plaintiff with an opportunity to inspect or
13 copy his pay records within 21 days.

14 102. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
15 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
16 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
17 amount of \$750.00, along with costs and attorney’s fees.

18 103. Plaintiff seeks all available remedies for Defendants’ violations including, but
19 not limited penalties, and costs to the extent permitted by law and according to proof at the
20 time of trial.

21 **THIRTEENTH CAUSE OF ACTION**

22 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY**

23 **IN VIOLATION OF FEHA**

24 **(Plaintiff against Sancho’s Tacos, Inc. and all DOE Defendants)**

25 104. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 103, inclusive, of this Complaint as though fully set forth herein.

27 105. Defendants and DOES 1 to 25, inclusive, are covered employers under
28 California’s Fair Employment and Housing Act (FEHA).

106. California Government Code section 12926(m) has established a “broad

1 definition” of physical disability: disability protections under the Fair Employment and Housing
2 Act (“FEHA”) even extend to “perceived” physical disabilities. *Id.* Under the law of this state,
3 “working” is a major life activity. *See* section 12926.1(c).

4 107. Plaintiff’s injuries to his neck, back, shoulder and his cervical, thoracic, and
5 lumbar spine following his automobile collision, which were debilitating, and which limited a
6 major life activity, qualify as disabilities under FEHA, and Plaintiff was entitled to its protection.

7 108. Defendants knew of Plaintiff’s disabilities and violated California Government
8 Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability.

9 109. As a direct and proximate result of the aforementioned acts and omissions of
10 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
11 loss of income (past and future), loss of employment benefits (past and future), general and
12 compensatory damages (past and future), mental pain and anguish and emotional distress (past
13 and future), and will continue to suffer in the future, in an amount to be proved at the time of
14 trial.

15 110. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
16 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
17 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
18 their workers’ right to work in an environment in which personnel decisions and company
19 policies are made without regard to physical disability, so as to justify the imposition of punitive
20 damages to punish and set an example of said Defendants.

21 111. As a proximate result of the foregoing conduct, which violated the provisions of
22 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s
23 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
24 of trial.

25 **FOURTEENTH CAUSE OF ACTION**

26 **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF**

27 **FEHA**

28 **(Plaintiff against Sancho’s Tacos, Inc. and all DOE Defendants)**

112. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 111, inclusive, of this Complaint as though fully set forth herein.

2 113. California Government Code section 12940(p) provides that it is unlawful for an
3 employer to fail to make reasonable accommodation for the known physical disability of an
4 employee.

5 114. Defendants failed to make reasonable accommodation of Plaintiff's physical
6 disabilities of which Defendants were unequivocally aware.

7 115. As a direct and proximate result of the aforementioned acts and omissions of
8 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
9 loss of income (past and future), loss of employment benefits (past and future), general and
10 compensatory damages (past and future), mental pain and anguish and emotional distress (past
11 and future), and will continue to suffer in the future, in an amount to be proved at the time of
12 trial.

13 116. The foregoing conduct engaged in by Defendants and each of their directors,
14 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
15 ratified, and carried on with a conscious and willful disregard of their workers' right to receive
16 reasonable accommodations, so as to justify the imposition of punitive damages to punish and
17 set an example of said Defendants.

18 117. As a proximate result of the foregoing conduct, which violated the provisions of
19 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
20 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
21 of the trial.

22 **FIFTEENTH CAUSE OF ACTION**

23 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

24 **(Plaintiff against Sancho's Tacos, Inc. and all DOE Defendants)**

25 118. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 117, inclusive, of this Complaint as though fully set forth herein.

27 119. California Government Code section 12940(n) provides that it is unlawful for an
28 employer to fail to engage in a timely, good faith, interactive process with an employee to
determine effective accommodations for that employee's physical disability.

1 120. Defendants failed to engage in a timely, good faith, interactive process with
2 Plaintiff to determine effective reasonable accommodations for Plaintiff's known physical
3 disabilities.

4 121. As a direct and proximate result of the aforementioned acts and omissions of
5 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
6 loss of income (past and future), loss of employment benefits (past and future), general and
7 compensatory damages (past and future), mental pain and anguish and emotional distress (past
8 and future), and will continue to suffer in the future, in an amount to be proved at the time of
9 trial.

10 122. The foregoing conduct engaged in by Defendants and each of their directors,
11 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
12 ratified, and carried on with a conscious and willful disregard of their workers' right to engage
13 in the interactive process and receive reasonable accommodations, so as to justify the imposition
14 of punitive damages to punish and set an example of said Defendants.

15 123. As a proximate result of the foregoing conduct, which violated the provisions of
16 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
17 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
18 of trial.

19 **SIXTEENTH CAUSE OF ACTION**

20 **RETALIATION IN VIOLATION OF FEHA**

21 **(Plaintiff against Sancho's Tacos, Inc. and all DOE Defendants)**

22 124. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 123, inclusive, of this Complaint as though fully set forth herein.

24 125. At all times herein mentioned, Government Code section 12940 et. seq. was in
25 full force and effect and was binding upon Defendants and each of them. Said statute imposes
26 certain duties upon Defendants concerning discrimination and retaliation against persons, such
27 as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
28 work/missing time from work in order to manage his work load and doctor's appointments due
to his physical disabilities. Said statutes were intended to prevent the type of injury and damage

1 set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of persons
2 intended to be protected by said statutes. As alleged above, Plaintiff was retaliated against and
3 was forced to quit his job a result of his physical disabilities and being forced to miss work as a
4 result of his physical disabilities.

5 126. As a direct and proximate result of Defendants' conduct, Plaintiff has been
6 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things.
7 As a result, Plaintiff has suffered such damages in an amount according to proof.

8 127. As a further direct and proximate result of the conduct of Defendants, and each
9 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
10 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
11 such damages in an amount according to proof.

12 128. In committing the foregoing acts, Defendants have been guilty of oppression,
13 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
14 punitive damages in a sum appropriate to punish and make an example out of the foregoing
15 Defendants.

16 129. The acts of oppression, fraud, and/or malice, were engaged in by employees of
17 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
18 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
19 wrongful conduct for which an award of punitive damages is sought, and/or was personally
20 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
21 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
22 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
23 to punitive and exemplary damages against each of the Defendants in accordance with California
24 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

25 130. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
26 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
27 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
28 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
award of attorneys' fees and costs.

SEVENTEENTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION
OF FEHA

(Plaintiff against Sancho's Tacos, Inc. and all DOE Defendants)

131. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 130, inclusive, of this Complaint as though fully set forth herein.

132. At all times herein mentioned, FEHA, California Government Code section 12940(k), was in full force and effect and was binding on Defendants. This statute states that it is an unlawful employment practice in California for an employer to "fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring."

133. During the course of Plaintiff's employment, Defendants failed to prevent their employees, including management, from engaging in intentional actions that resulted in Plaintiff being treated less favorably and eventually being constructively terminated because of Plaintiff's protected status (i.e. his physical disabilities and request for time off work due to his injuries and disabilities). During the course of Plaintiff's employment, Defendants failed to prevent their employees from engaging in unjustified employment practices against employees in such protected classes. During the course of Plaintiff's employment, Defendants failed to prevent a pattern and practice by its employees of intentional discrimination and retaliation on the basis of physical disability, and/or other protected status and/or protected activity.

134. Plaintiff believes and, on that basis, alleges that his physical disabilities and other protected status and/or protected activity in informing his employer about his disabilities and injuries and request for time off work was a substantial motivating factor in Defendants' employees' discriminating against him and retaliating against him.

135. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at the time of trial.

1 136. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
2 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
3 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
4 their workers' right to work in an environment in which personnel decisions and company
5 policies are made without regard to physical disability, so as to justify the imposition of punitive
6 damages to punish and set an example of said Defendants.

7 137. As a proximate result of the foregoing conduct, which violated the provisions of
8 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
9 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
10 of trial.

11 **EIGHTEENTH CAUSE OF ACTION**
12 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC**
13 **POLICY**

14 **(Plaintiff against Sancho's Tacos, Inc. and all DOE Defendants)**

15 138. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 137 inclusive, of this Complaint as though fully set forth herein.

17 139. At all times during his employment with Defendants, Plaintiff performed his
18 duties with the utmost diligence and competence.

19 140. Plaintiff is informed and believes and thereon alleges that Defendants' decision
20 to discriminate against him and retaliate against him, as alleged herein, was motivated by
21 Plaintiff's physical disabilities and Plaintiff having to miss work/manage his workload due to his
22 disabilities. Plaintiff is further informed and believes and thereon alleges that any other reasons
23 proffered by Defendants were and are pretextual in nature. Defendants intentionally created the
24 aforementioned discrimination and retaliation and failed to reasonably accommodate Plaintiff's
25 physical disabilities, thereby not giving Plaintiff an opportunity to work in an environment free
26 of discrimination and retaliation.

27 141. The employment of Plaintiff was constructively wrongfully terminated in or
28 around March 2023 in violation of the fundamental public policy of the State of California with
respect to discriminating against an employee on account of his physical disability. Plaintiff was

1 forced to hire an attorney to assist him to end these illegal activities. Said conduct violated
2 statutory and constitutional expressions of public policy including, but not limited to, California
3 Government Code sections 12940 et seq., and the California Constitution, Article 1 section 8.

4 142. As set forth above, said actions by Defendants were wrongful and in violation
5 of the fundamental principles of the public policy of the State of California as reflected in its
6 laws, objectives and policies. Said statutes and constitutional expressions of public policy
7 include, but are not limited to, California Government Code sections 12940 et seq., and the
8 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at large,
9 and not just the private interests of the employers and employees whom they govern or protect.

10 143. As a direct and proximate result of the aforementioned acts and omissions of
11 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
12 loss of income (past and future), loss of employment benefits (past and future), general and
13 compensatory damages (past and future), mental pain and anguish and emotional distress (past
14 and future), and will continue to suffer in the future, in an amount to be proved at the time of
15 trial.

16 144. The foregoing conduct engaged in by Defendants and each of their directors,
17 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
18 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
19 an environment free of discrimination and retaliation based on physical disability and where
20 workers receive reasonable accommodations for their physical disabilities, and where workers
21 do not get retaliated against due to issues related to their physical disabilities, so as to justify the
22 imposition of punitive damages to punish and set an example of said Defendants.

23 **NINETEENTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

25 **(California Business and Professions Code Section 17200)**

26 **(Plaintiff against Sancho's Tacos, Inc. and all DOE defendants)**

27 145. Plaintiff re-alleges and incorporates by reference each and every allegation in
28

1 paragraphs 1 through 144, inclusive, of this Complaint as though fully set forth herein.

2 146. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
3 constitutes unfair and unlawful business practices under California Business and Professions
4 Code Section 17200, et seq.

5 147. Defendant's violations of the California labor laws and the Labor Code as well
6 as the FEHA constitutes a business practice because it was done repeatedly over a significant
7 period of time in a systematic manner that was detrimental to Plaintiff and other employees.

8 148. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
9 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
10 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
11 seq.

12 149. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
13 multiple damages as specifically provided in California Business and Professions Code section
14 17200 et seq.

15 150. For the four years preceding the filing of this action, Plaintiff has suffered
16 damages and request damages and/or restitution of all monies and profits to be disgorged from
17 Defendants in an amount according to proof at time of trial, but in excess of the
18 jurisdiction of this Court.

19 **PRAYER FOR RELIEF**

- 20
- 21 1. For compensatory damages including lost past and future wages, overtime,
22 commissions, and all other sums of money, including employment benefits, together
23 with interest on said amounts, and any other economic injury to Plaintiff, according to
24 proof;
 - 25 2. For special and consequential damages to the extent allowed by law;
 - 26 3. For general damages according to proof;
 - 27 4. For an award of punitive/exemplary damages against Defendant Sancho's Tacos, Inc. to
28 make an example of Defendant Sancho's Tacos, Inc.;

5. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount according to proof;
6. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
7. For damages and penalties against Defendants under Labor Code section 226 for Plaintiff in an amount subject to proof at trial;
8. For damages and penalties pursuant to Labor Code section 203 against Defendants in an amount subject to proof at trial;
9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
10. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
11. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
12. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
13. For the imposition of civil penalties and/or statutory penalties;
14. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698, FEHA, including Government Code section 12940 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
15. Costs and expenses of suit incurred herein;
16. For all interest as allowed by law;

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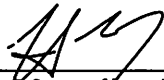
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17. For such other and further relief as the Court deems just and proper.

DATED: July 9, 2023 MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: July 9, 2023 MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff