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David W. Slayton,  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

EVERARDO ZAMORA, an individual,

Plaintiff,

v.

TACOS MEXICO, INC., a California  
Corporation; TONY MORENO, an  
individual; DANNY MORENO, an  
individual; HECTOR AMEZCUA, an  
individual; and DOES 1 THROUGH 20,  
inclusive,

Defendants.

**Case No.: 24STCV06292**

Unlimited Jurisdiction

**COMPLAINT**

- 1. 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. NONPAYMENT OF OVERTIME COMPENSATION;**
- 7. FAILURE TO PROVIDE MEAL BREAKS;**
- 8. FAILURE TO PROVIDE REST PERIODS;**
- 9. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226(a)];**
- 10. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.3];**
- 11. UNTIMELY PAYMENT OF WAGES;**
- 12. UNLAWFUL WITHHOLDING OF**

**WAGES;**  
**13. WAITING TIME PENALTIES;**  
**14. CALIFORNIA PRIVATE ATTORNEY**  
**GENERAL ACT [California Labor**  
**Code §2698];**  
**15. NEGLIGENCE;**  
**16. NEGLIGENT INFLICTION OF**  
**EMOTIONAL DISTRESS;**  
**17. FAILURE TO PROVIDE**  
**EMPLOYMENT RECORDS; AND**  
**18. UNFAIR BUSINESS PRACTICES.**

**DEMAND FOR JURY TRIAL**

Plaintiff EVERARDO ZAMORA (“PLAINTIFF”) hereby files this Complaint against Defendants TACOS MEXICO, INC. (“TM”), a California Corporation, TONY MORENO, an individual, DANNY MORENO, an individual, HECTOR AMEZCUA (“AMEZCUA”), 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 TM 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 TONY MORENO is an individual conducting business in California and working in the County of Los Angeles.

4. PLAINTIFF is informed and believes, and on this basis alleges that Defendant DANNY MORENO is an individual conducting business in California and working in the County of Los Angeles.

5. PLAINTIFF is informed and believes, and on this basis alleges that Defendant

AMEZCUA is an individual conducting business in California and working in the County of Los Angeles.

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

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

### **JURISDICTION AND VENUE**

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

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

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

10. Since around 2010, PLAINTIFF was employed as a kitchen worker by TM.

11. TM is a Mexican restaurant with multiple locations throughout Southern California. DANNY MORENO is named as the Chief Executive Officer and Director, and TONY MORENO is named as the President and Director of TM. AMEZCUA is the lessee of TM's property. PLAINTIFF is informed and believes and thereon alleges that in their capacity as President and

Chief Executive Officer created and implemented policy and controlled PLAINTIFF and PLAINTIFF's work conditions.

12. Through bi-weekly cash and direct deposits, PLAINTIFF was paid \$16.50/hour, which was his most recent hourly rate.

13. With a 12-hour work schedule from 8 a.m. to 8 p.m. four days a week on Monday, Thursday, Saturday and Sunday, PLAINTIFF was only paid at his regular rate for all hours worked.

14. Further, PLAINTIFF typically was not given any meal and rest breaks, nor was he allowed to leave the premises of work during his shifts.

15. In or about July 2023, PLAINTIFF's arm and shoulder were injured while lifting a heavy trash bin at work. Although he reported the injuries to TM, nothing was done about his complaints, and he was not accommodated for his injuries. One month later in or about August 2023, PLAINTIFF was terminated.

16. On January 30, 2024, 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.

17. On January 30, 2024, 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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25. 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 TM, AMEZCUA and DOE 1 through 10)**

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

27. PLAINTIFF was an employee of DEFENDANTS.

28. 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.

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

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

31. 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.

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

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**THIRD CAUSE OF ACTION**

**FAILURE TO ACCOMMODATE – DISABILITY DISCRIMINATION**

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

**(PLAINTIFF against TM, AMEZCUA and DOE 1 through 10)**

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

34. PLAINTIFF was employed as an employee by DEFENDANTS.

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

36. DEFENDANTS herein were aware of PLAINTIFF's disability that limited PLAINTIFF's work activities.

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

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

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

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

**FOURTH CAUSE OF ACTION**

**FAILURE TO ENGAGE IN INTERACTIVE PROCESS**

**IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)**

**(PLAINTIFF against TM, AMEZCUA and DOE 1 through 10)**

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

42. PLAINTIFF was an employee of DEFENDANTS.

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

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

45. 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.

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

47. 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.

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

**FIFTH CAUSE OF ACTION**

**FAILURE TO TAKE REASONABLE STEPS**

**TO PREVENT DISCRIMINATION AND RETALIATION**

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

**(PLAINTIFF against TM, AMEZCUA and DOE 1 through 10)**

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

50. PLAINTIFF was employed as an employee by DEFENDANTS.

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

52. DEFENDANTS failed to take all reasonable steps to prevent discrimination and retaliation. DEFENDANTS ignored PLAINTIFF's complaints about disability discrimination and

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

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

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

8 **SIXTH CAUSE OF ACTION**

9 **NONPAYMENT OF OVERTIME COMPENSATION**

10 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

22 58. DEFENDANTS knew or should have known that PLAINTIFF had worked  
23 overtime hours.

24 59. PLAINTIFF was at all times relevant a non-exempt hourly employee of  
25 DEFENDANTS.

26 60. PLAINTIFF was not paid for overtime hours worked.  
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61. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived of wages and overtime in amounts to be proven 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 MEAL BREAKS**

**(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

66. Section 11(C) of the *IWC Wage Order(s)* provides that "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

67. Section 11(D) of the *IWC Wage Order(s)* provides that "If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of

1 compensation for each workday that the meal period is not provided.”

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

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

8 70. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal  
9 breaks.

10 71. PLAINTIFF was at times not given meal breaks and at other times meal breaks  
11 which were not compliant with labor laws.

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST PERIODS**

19 **(PLAINTIFF against all DEFENDANTS)**

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

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

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

27 76. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to rest  
28 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.

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

78. 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.

### **NINTH CAUSE OF ACTION**

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

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

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

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

80. *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).

81. 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, meal and rest premiums, among other things.

82. 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.

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

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1           90.     DEFENDANTS failed to timely pay PLAINTIFF all overtime wages, meal and rest  
2 break premiums that are due and payable for each pay period.

3           91.     As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered  
4 damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties.

5                               **TWELFTH CAUSE OF ACTION**

6                               **UNLAWFUL WITHHOLDING OF WAGES**

7                               **(PLAINTIFF against all DEFENDANTS)**

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

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

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

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

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

23                               **THIRTEENTH CAUSE OF ACTION**

24                               **WAITING TIME PENALTIES**

25                               **(PLAINTIFF against all DEFENDANTS)**

26          97.     PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this  
27 Complaint by reference as though fully set forth herein.  
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1           98.     *Labor Code* §203 provides that “if an employer willfully fails to pay, without  
2 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages  
3 of an employee who is discharged or who quits, the wages of the employee shall continue as a  
4 penalty from the due date thereof at the same rate until paid or until an action therefor is  
5 commenced; but the wages shall not continue for more than 30 days.”

6           99.     PLAINTIFF’s employment with DEFENDANTS ended.

7           100.    DEFENDANTS failed to pay PLAINTIFF all wages when due since PLAINTIFF’s  
8 termination until the date of filing this Complaint.

9           101.    DEFENDANTS willfully failed to pay PLAINTIFF final wages in full.

10          102.    As a result of DEFENDANTS’ aforementioned unlawful act, PLAINTIFF suffered  
11 damage. PLAINTIFF is entitled to recover from DEFENDANTS the statutory penalty wages for  
12 each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum  
13 pursuant to *Labor Code* sections 203, plus interest and attorney’s fees in the amount to be proven  
14 at trial.

15                               **FOURTEENTH CAUSE OF ACTION**

16                               **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

17                               **LABOR CODE § 2698**

18                               **(PLAINTIFF against all DEFENDANTS)**

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

21          104.    PLAINTIFF and the other non-exempt employees are “aggrieved employees” as  
22 defined by *Labor Code* §2699(c) in that they are all current or former employees of  
23 DEFENDANTS, and one or more of the causes of action in this complaint was committed against  
24 PLAINTIFF and the aggrieved employees.

25          105.    PLAINTIFF is a proper representative to bring a civil action on behalf of  
26 PLAINTIFF and other current and former employees of DEFENDANTS pursuant to the  
27 procedures specified in *Labor Code* §2699.3.  
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1           106. As such, PLAINTIFF and the aggrieved employees are entitled to civil penalties  
2 pursuant to *Labor Code* §558 and §2699(a), (f) and (g), cost, expenses, and attorneys' fees for  
3 violation of *Labor Code* Sections listed in this complaint.

4                                   **FIFTEENTH CAUSE OF ACTION**

5                                   **NEGLIGENCE**

6                                   **(PLAINTIFF against all DEFENDANTS)**

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

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

14           109. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

15           110. DEFENDANTS' breach was and is the actual and proximate cause of  
16 PLAINTIFF's harm.

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

19                                   **SIXTEENTH CAUSE OF ACTION**

20                                   **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

21                                   **(PLAINTIFF against all DEFENDANTS)**

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

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

1 114. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

2 115. DEFENDANTS' breach was and is the actual and proximate cause of  
3 PLAINTIFF's harm.

4 116. As a result of this negligence, PLAINTIFF suffered and continues to suffer serious  
5 emotional distress in the form of suffering, anguish, fright, horror, nervousness, grief, anxiety,  
6 worry, shock, humiliation, shame, embarrassment, and depression. This was a foreseeable result  
7 of DEFENDANTS' negligence.

8 **SEVENTEENTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE EMPLOYMENT DOCUMENTS**

10 **(PLAINTIFF against TM, TONY MORENO, DANNY MORENO and DOE 1 through 10)**

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

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

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

23 120. *Labor Code* §1198.5 provides that "The employer shall make the contents of those  
24 personnel records available for inspection to the current or former employee, or his or her  
25 representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days  
26 from the date the employer receives a written request, unless the current or former employee, or  
27 his or her representative, and the employer agree in writing to a date beyond 30 calendar days to  
28 inspect the records, and the agreed-upon date does not exceed 35 calendar days from the

1 employer's receipt of the written request. Upon a written request from a current or former  
2 employee, or his or her representative, the employer shall also provide a copy of the personnel  
3 records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days  
4 from the date the employer receives the request, unless the current or former employee, or his or  
5 her representative, and the employer agree in writing to a date beyond 30 calendar days to produce  
6 a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the  
7 employer's receipt of the written request."

8 121. On January 30, 2024, PLAINTIFF requested DEFENDANTS to produce  
9 PLAINTIFF's personnel file, all W2 information, all wage related documents, and all signed  
10 documents.

11 122. DEFENDANTS failed to provide PLAINTIFF with complete employment records,  
12 among other things.

13 123. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered  
14 damage.

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

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

19 **EIGHTEENTH CAUSE OF ACTION**

20 **UNFAIR BUSINESS PRACTICES**

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

22 **(PLAINTIFF against all DEFENDANTS)**

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

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

- a. Wrongfully terminating and retaliating against employees with disability-based reasons;
- b. Discriminating against employees based on disability;
- c. Failing to accommodate;
- d. Failing to pay minimum, regular, overtime wages earned and owed to employees;
- e. Failing to provide proper meal breaks and rest periods, or to pay premium wages for missed meal and rest periods to PLAINTIFF; and,
- f. The foregoing wrongful activities have caused harm, fear, pressure, and humiliation to the employee(s) at DEFENDANTS.

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

129. 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.

130. 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.

131. 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 action;
8. Declaration that DEFENDANTS' business practices are unfair within the meaning described as in unfair business practices cause of action;
9. Punitive and exemplary damages;
10. Pre-judgment interest;
11. Costs of lawsuit herein incurred;
12. Attorneys' fees; and
13. For an award of such other and further equitable and legal relief as this Court may deem appropriate.

Dated: March 13, 2024

BITTON & ASSOCIATES



Ophir J. Bitton, Esq.  
Lei Wei, Esq.  
Attorneys for Plaintiff,  
Everardo Zamora

1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF hereby demands a trial of the claims by jury to the extent authorized by law.  
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6 Dated: March 13, 2024

BITTON & ASSOCIATES

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10 Ophir J. Bitton, Esq.  
11 Lei Wei, Esq.  
12 Attorneys for Plaintiff,  
13 Everardo Zamora  
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