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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

16 U.S. EQUAL EMPLOYMENT
17 OPPORTUNITY COMMISSION,

18 Plaintiff,

19 vs.

20 HELADOS LA TAPATIA, INC.,
21 AND DOES 1-5, INCLUSIVE,

22 Defendants.

) Case No.

) **COMPLAINT**

-) • **CIVIL RIGHTS**
-) • **EMPLOYMENT DISCRIMINATION**

) **(42 U.S.C. §§2000e, et seq.)**

) **JURY TRIAL DEMAND**

1 **NATURE OF THE ACTION**

2 This is an action under Title VII of the Civil Rights Act of 1964, as
3 amended, and Title I of the Civil Rights Act of 1991 (“Title VII”), to correct
4 unlawful employment practices on the basis of national origin and race, and to
5 provide appropriate relief to Michael McLaughlin (referred to herein as “Charging
6 Party”) and a class of aggrieved non-Hispanic White, Black, and Asian applicants
7 who were adversely affected by such practices. As alleged with greater
8 particularity in paragraphs 16-29 of this Complaint, Plaintiff U.S. Equal
9 Employment Opportunity Commission (“Plaintiff” or “EEOC”) alleges that
10 Defendants Helados La Tapatia, Inc. and Does 1-5 (collectively referred to herein
11 as “Defendant”) subjected Charging Party to discrimination, including disparate
12 treatment and discharge, in violation of Title VII. EEOC further alleges Defendant
13 failed to hire and/or discouraged from applying qualified Black, White, and Asian
14 applicants on the basis of national origin and race because of Defendants’
15 preference for hiring Hispanics, in violation of Title VII. Defendant engaged in a
16 pattern or practice of hiring Hispanics and not hiring non-Hispanics based on
17 national origin and race.

18 **JURISDICTION AND VENUE**

- 19 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451,
20 1331, 1337, 1343 and 1345.
- 21 2. This action is authorized and instituted pursuant to §§ 706(f)(1) and
22 (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-
23 5(f)(1) and (3) (“Title VII”). This action is also authorized and instituted pursuant
24 to § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
- 25 3. The employment practices alleged to be unlawful were committed
26 and ratified within the jurisdiction of the United States District Court for the
27 Eastern District of California.

28 **PARTIES**

1 4. Plaintiff U.S. Equal Employment Opportunity Commission
2 (“Plaintiff,” “EEOC,” or the “Commission”) is an agency of the United States of
3 America charged with the administration, interpretation, and enforcement of Title
4 VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3)
5 of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

6 5. At all relevant times, Defendant has been a California corporation
7 doing business in Fresno County, California, and has continuously had at least
8 fifteen (15) employees.

9 6. At all relevant times, Defendant has continuously been an employer
10 engaged in an industry affecting commerce within the meaning of Sections 701(g)
11 and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

12 7. All of the acts and failures to act alleged herein were duly performed
13 by and attributable to all Defendants, each acting as a successor, agent, alter ego,
14 employee, indirect employer, joint employer, integrated enterprise and/or under the
15 direction and control of the others, except as specifically alleged otherwise. Said
16 acts and failures to act were within the scope of such agency and/or employment,
17 and each Defendant participated in, approved and/or ratified the unlawful acts and
18 omissions by the other Defendants complained of herein. Whenever and wherever
19 reference is made in this Complaint to any act by a Defendant or Defendants, such
20 allegations and reference shall also be deemed to mean the acts and failures to act
21 of each defendant acting individually, jointly, and/or severally.

22 8. Plaintiff is ignorant of the true names and capacities of each
23 Defendant sued as DOES 1 through 5, inclusively, and therefore Plaintiff sues said
24 defendant(s) by fictitious names. The EEOC reserves the right to amend the
25 complaint to name each DOE defendant individually or corporately as it becomes
26 known. Plaintiff alleges that each DOE defendant was in some manner responsible
27 for the acts and omissions alleged herein and Plaintiff will amend the complaint to
28 allege such responsibility when the same shall have been ascertained by Plaintiff.

1 **CONDITIONS PRECEDENT**

2 9. More than thirty days prior to the institution of this lawsuit, Charging
3 Party Michael McLaughlin filed a charge of discrimination with the Commission
4 alleging violations of Title VII by the Defendant.

5 10. On July 31, 2018, the EEOC issued to Defendant a Letter of
6 Determination for Charging Party's Charge of Discrimination finding reasonable
7 cause to believe that Charging Party was discharged because of his race, White,
8 and national origin, non-Hispanic, in violation of Title VII. The EEOC made a
9 further like and related finding that there was reasonable cause to believe that a
10 class of individuals had been deterred by Defendant's recruitment and hiring
11 practices and were consequently not hired for open positions because of their race,
12 White, Black, and Asian, and national origin, non-Hispanic, in violation of Title
13 VII.

14 11. The EEOC invited Defendant to join with the Commission in
15 informal methods of conciliation to endeavor to eliminate the discriminatory
16 practices and provide appropriate relief.

17 12. The Commission engaged in communications with Defendant to
18 provide Defendant with the opportunity to remedy the discriminatory practices
19 described in the Letter of Determination.

20 13. The Commission was unable to secure through informal methods of
21 conciliation, including but not limited to an in-person conciliation conference,
22 from Defendant a conciliation agreement acceptable to the Commission.

23 14. On September 19, 2018, the Commission issued to Defendant a
24 Notice of Failure of Conciliation.

25 15. All conditions precedent to the initiation of this lawsuit have been
26 fulfilled.

27 **STATEMENT OF CLAIMS**

28

1 16. Since at least 2015, Defendant has engaged in unlawful employment
2 practices, including a pattern or practice of such unlawful employment practices, in
3 violation of Section 703(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) based on race
4 (non-Hispanic White, Black, and Asian), and national origin (non-Hispanic). These
5 unlawful employment practices include but are not limited to:

- 6 a. Deterring and failing to hire White (non-Hispanic), Black, and/or
7 Asian applicants for employment with Defendant;
- 8 b. Deterring and failing to hire non-Hispanic applicants for
9 employment with Defendant;
- 10 c. Favoring less-qualified Hispanic job applicants over all other non-
11 Hispanic applicants; and
- 12 d. Asking applicants if they spoke Spanish and not considering their
13 applications if they said they did not speak Spanish, even though
14 ability to speak Spanish was not necessary to perform jobs.

15 17. The class of aggrieved individuals include but are not limited to the
16 following:

- 17 a. Claimant Todd Vincent Ferreira, who is White non-Hispanic
18 applied with Defendant in or about November 2017, via
19 Indeed.com for a management/foreman position, but was never
20 contacted by Defendant and Defendant failed to hire him.
- 21 b. Claimant Kathleen Fookes-Killian, who is White non-Hispanic,
22 applied multiple times with Defendant between November 2016
23 and September 2017, via Indeed.com for different positions
24 including but not limited to the driver position, but was never
25 contacted by Defendant and Defendant failed to hire her.
- 26 c. Claimant Brandie Shelton, who is White non-Hispanic, applied
27 multiple times with Defendant in or about mid-2017 or May 2017,
28 via Indeed.com for the driver position. Although Ms. Shelton was

1 qualified for this position and had previous grocery store driving
2 experience, she was never contacted for an interview by Defendant
3 and Defendant failed to hire her.

4 d. Claimant Courtney Bess, who is Black, applied with Defendant in
5 or about November or December 2017, via Indeed.com for the
6 driver position, but was never contacted by Defendant and
7 Defendant failed to hire her.

8 e. Claimant William Waller, who is White non-Hispanic, applied
9 multiple times with Defendant in or about May 2017, June 2017,
10 August 2017, October 2017, via Indeed.com for the driver position.
11 Although Mr. Waller was qualified for this position due to his
12 previous delivery and sales experience, he was never contacted by
13 Defendant and Defendant failed to hire him.

14 f. Claimant Robert Frank, who is White non-Hispanic, applied with
15 Defendant in or about October or November 2017, via Indeed.com
16 for the delivery driver position, but was never contacted for an
17 interview by Defendant and Defendant failed to hire him.

18 g. Claimant Britney Roaseau, who is White non-Hispanic, applied
19 with Defendant via Indeed.com for multiple positions, but was
20 never contacted for an interview by Defendant and Defendant failed
21 to hire her.

22 h. Claimant Michael Simpson, who is White non-Hispanic, applied
23 multiple times with Defendant in or about July 2017, via
24 Indeed.com for multiple positions including but not limited to the
25 sales driver position. Although Mr. Simpson was qualified for all
26 of these positions due to his previous sales and driving experience,
27 he was never contacted by Defendant and Defendant failed to hire
28 him.

1 i. Claimant Gregory Stone, who is White non-Hispanic, applied
2 multiple times with Defendant in or about November and/or
3 December 2017, via Indeed.com for the delivery driver position,
4 but was never contacted for an interview by Defendant and
5 Defendant failed to hire him.

6 j. Claimant Christopher Michael Armack, who is White non-
7 Hispanic, applied multiple times with Defendant in or about March
8 and April 2018, via Indeed.com for the delivery driver, warehouse
9 and sanitation positions. Although Mr. Armack had 24 years of
10 prior work experience in these positions, he was never contacted by
11 Defendant and Defendant failed to hire him.

12 k. Claimant Troy Greenwood, who is White non-Hispanic, applied
13 multiple times with Defendant in or about 2017 and 2018 including
14 but not limited to May 2018, via Indeed.com for the warehouse and
15 delivery driver positions. Although Mr. Greenwood was qualified
16 for these positions due to his previous warehouse and delivery
17 driving experience, he was never contacted by Defendant and
18 Defendant failed to hire him.

19 18. These unlawful employment practices were also sufficiently frequent
20 to be Defendant's regular procedure or practice and constitute a pattern or practice
21 of resistance to the full enjoyment of rights protected under Title VII in violation
22 of Section 706, 42 U.S.C. § 2000e-5.

23 19. From 1995 to August 2017, approximately 97% of Defendant's
24 employees were Hispanic.

25 20. From January 2014 to March 2018, Defendant hired approximately
26 four hundred seventy-five employees; only one employee was Asian.

27 21. From January 2014 to March 2018, Defendant hired approximately
28 four hundred seventy-five employees; only two employees were Black.

1 22. From January 2014 to March 2018, Defendant hired approximately
2 four hundred seventy-five employees; no more than 12 employees were White,
3 non-Hispanic.

4 23. Defendant consistently maintained a largely homogenous Hispanic
5 workforce through all job categories and titles.

6 a. For instance, from 2006 to 2017, Defendant hired approximately
7 120 Route Sales Drivers for which it kept ethnicity data, of which
8 a minimum of 116 (roughly 96%) were Hispanic.

9 b. From 2006 to 2017, Defendant hired approximately 258
10 production workers and production supervisors for which it kept
11 ethnicity data, of which a minimum of 248 (roughly 96%) were
12 Hispanic.

13 24. Defendant also engaged in unlawful employment practices in
14 violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by terminating
15 Charging Party Michael McLaughlin based on his race (White non-Hispanic) and
16 national origin (non-Hispanic).

17 25. On or about January 11, 2016, Charging Party McLaughlin applied for
18 the position of Route Sales Driver with Defendant via Indeed.com. Charging Party
19 McLaughlin applied for the position because he had comparable work experience.

20 26. On or about January 22, 2016, Charging Party McLaughlin had his
21 first interview with Defendant's Route Sales Manager Salvador Alcantar III and
22 Defendant's COO Robert Molina. On or about January 22, 2016, Charging Party
23 McLaughlin had his second interview with Defendant's Owner/President Emilio
24 Sandoval. On or about January 25, 2016, Charging Party McLaughlin was offered
25 the position of Route Sales Driver by Defendant and he accepted.

26 27. When Charging Party McLaughlin accepted the position, he was told
27 by Defendant's Route Sales Manager Alcantar that he was the first non-Hispanic
28 White individual or "gringo" to work for the company. Mr. Alcantar also told

1 Charging Party McLaughlin that he had to pull a lot of strings to get him hired.
2 Charging Party McLaughlin primarily communicated in English when Defendant
3 hired him.

4 28. Charging Party McLaughlin's first day of work for Defendant was
5 January 26, 2016. He was given training for seven days with three different Route
6 Supervisors and one Route Driver. No one who trained Charging Party
7 McLaughlin expressed a negative opinion concerning his job performance.
8 Charging Party McLaughlin was able to perform all the job requirements of Route
9 Sales Driver.

10 29. On or about February 3, 2016, Defendant's Route Sales Manager
11 Alcantar called Charging Party McLaughlin and told him to take the following day
12 off. On or about February 4, 2016, Mr. Alcantar called Charging Party
13 McLaughlin again to tell him that Defendant's Owner/President Sandoval was
14 terminating his employment because he did not speak Spanish.

15 30. The effect of the practices complained of in paragraphs 16-29 has
16 been to deprive Charging Party and a class of aggrieved non-Hispanic White,
17 Black, and Asian individuals of equal employment opportunities and otherwise
18 adversely affects their status as employees because their race, White non-Hispanic,
19 Black, or Asian, and their national origin, non-Hispanic.

20 31. The unlawful employment practices complained of in paragraphs 16-
21 29 above were intentional and caused Charging Party and a class of aggrieved
22 individuals to suffer emotional distress.

23 32. The unlawful employment practices complained of in paragraphs 16-
24 29 above were done with malice or with reckless indifference to the federally
25 protected rights of Charging Party and a class of aggrieved individuals. Such
26 practices as described above have been ongoing in giving preference to Hispanic
27 applicants and employees. This practice and preference systemically applied
28

1 throughout Defendant’s organization.

2 **PRAYER FOR RELIEF**

3 Wherefore, the Commission respectfully requests that this Court:

4 A. Grant a permanent injunction enjoining Defendant, its officers,
5 successors, assigns, and all persons in active concert or participation with each of
6 them, from engaging any employment practice which discriminates on the basis of
7 race and national origin;

8 B. Order Defendant to institute and carry out policies, practices, and
9 programs to ensure that it would not engage in further unlawful employment
10 practices in violation of Title VII;

11 C. Order Defendant to make Charging Party and a class of aggrieved
12 individuals whole by providing compensation for past and future pecuniary losses,
13 including appropriate back pay, job search expenses, and front pay with
14 prejudgment interest on any lost pay and benefits, in amounts to be determined at
15 trial;

16 D. Order Defendant to make Charging Party and a class of aggrieved
17 individuals whole by providing compensation for past and future non-pecuniary
18 losses resulting from the unlawful employment practices complained of above,
19 including emotional pain, suffering, inconvenience, mental anguish, humiliation
20 and loss of enjoyment of life, in amounts to be determined at trial;

21 E. Order Defendant to pay Charging Party and a class of aggrieved
22 individuals punitive damages for its intentional, malicious, and reckless conduct
23 described above in an amount to be determined at trial;

24 F. Award the Commission its costs of this action; and

25 G. Grant such further relief as the Court deems necessary and proper in
26 the public interest.
27

28 **JURY TRIAL DEMAND**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Attorneys Anna Y. Park, Connie K. Liem, and Lorena Garcia-Bautista US EEOC, 255 East Temple Street, Fourth Floor, Los Angeles, CA 90012 (213) 894-1083, E Mail: lado.legal@eoc.gov

DEFENDANTS

HELADOS LA TAPATIA, INC., AND DOES 1-5, INCLUSIVE

County of Residence of First Listed Defendant Fresno County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §§ 2000e-2(a)
Brief description of cause: Subjected class of aggrieved individuals to non-hire based on their race and/or national origin.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/22/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Anna Y. Park

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.