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**MICHAEL J. DIAZ,**

Plaintiff,

v.

**MAHWAH HONDA; ALEX  
BRISCHLER; PEDRO GAUDENCIO;  
MATT O'DONNELL; JOHN DOES 1-10**  
(Fictitious Names Representing Unknown  
Persons); ABC CORPS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

Docket No. BER-L-

CIVIL ACTION

**COMPLAINT, JURY DEMAND,  
DESIGNATION OF TRIAL COUNSEL,  
CERTIFICATION, DEMANDS FOR  
DISCOVERY, AND DEMANDS FOR  
DISCOVERY**

Michael Diaz, by and through his attorneys, The Mark Law Firm, LLC, does hereby complain and alleged against Defendants as follows:

**PARTIES**

1. Plaintiff, **MICHAEL J. DIAZ** (hereinafter "Mr. Diaz") is a former employee of Defendant **MAHWAH HONDA**. Mr. Diaz is a citizen of the City of Englewood, in the County of Bergen, State of New Jersey.

2. Defendant **MAHWAH HONDA** (hereinafter “MH” or “the company”) is a business with a business address and operating at 345 NJ-17, in Mahwah, New Jersey and was at all relevant times Plaintiff’s employer.

3. Defendant **ALEX BRISCHLER** (hereinafter “Mr. Brischler”) was at all relevant times the General Sales Manager of MH, was Plaintiff’s direct supervisor, and had authority, control and/or engaged in unlawful conduct by discriminating and/or retaliating against Mr. Diaz, thereby resulting in Plaintiff’s unlawful termination. Mr. Brischler is a citizen of Mahwah, County of Bergen, State of New Jersey.

4. **PEDRO GAUDENCIO** (hereinafter “Mr. Gaudencio”) was at all relevant times the Head of Human Resources at Defendant MH, and had authority, control and/or engaged in unlawful conduct by discriminating and/or retaliating against Mr. Diaz thereby resulting in his unlawful termination.

5. **MATT O’DONNELL** (hereinafter “Mr. O’Donnell”) was at all relevant times the Desk Manager at Defendant MH, and had authority, control and/or engaged in unlawful conduct by discriminating and/or retaliating against Mr. Diaz thereby resulting in his unlawful termination.

6. **JOHN DOES 1-10** are individual persons who are currently unknown but had authority, control and/or engaged in conduct which damaged Mr. Diaz, discriminated and/or retaliated against him, ultimately resulting in the termination of his employment.

7. **ABC CORPS 1-10** are business entities which are currently unknown but had authority, control and/or engaged in conduct which damaged Mr. Diaz, discriminated and/or retaliated against him, ultimately resulting in the termination of his employment.

#### VENUE

8. Venue properly lies in Bergen County, New Jersey because Plaintiff is a citizen of Bergen County, New Jersey.

#### FACTS COMMON TO ALL COUNTS

9. In the Fall of 2020, Mahwah Honda hired Plaintiff Michael Diaz as a Sales Manager at its Route 17 dealership.

10. On January 25, 2021, just two months after being at Mahwah Honda, Mr. Diaz was demoted to Salesman, and Mr. Diaz's position as Sales Manager was subsequently given to Melvin Duran, another friend and former co-worker of Desk Manager Matt O'Donnell.

11. Mr. Diaz complained to Mr. O'Donnell and General Sales Manager Alex Brischler regarding the demotion, inquiring why he was being punished when his job performance had been excellent since he joined Mahwah Honda as a sales manager two months prior.

12. Mr. O'Donnell advised Mr. Diaz, "It is not a big deal, you will make tons of money as a salesman with less responsibility." Similarly, Mr. Brischler brushed Mr. Diaz off, simply advising that "we are going in a different direction."

13. Realizing that Mr. Diaz was justifiably upset over this abrupt and unreasonable demotion, Mr. O'Donnell advised Mr. Diaz "We don't want you to leave, if you want to go home for today that is fine."

14. Upon hearing this news, many of Mr. Diaz's co-workers and former subordinates expressed surprise and dismay over Mr. Diaz's demotion, with the consensus being that the demotion did not make sense and was political, as Mr. Diaz had been doing an excellent job.

15. Mr. Diaz returned to work the next day and was tipped off by his co-worker Max (Last name unknown) that "They got somebody else coming in to fill the Sales Manager job and you might know them." The Sales Manager position was subsequently filled by Mr. Diaz's former co-worker Melvin Duran.

16. In an effort to justify the demotion, Mr. Brischler and Mr. O'Donnell later advised Mr. Diaz that the reason for his demotion and replacement by Mr. Duran was because "the new guy speaks Spanish."

17. Mr. Diaz does not speak Spanish, yet Spanish was not a requirement of the managerial job at the time he was hired but he was demoted for same.

18. Mr. Diaz was now looking at a demotion to salesman and a substantial pay cut from approximately \$13,000-\$14,000 a month as Sales Manager to roughly \$9,000 per month as a Salesperson.

19. To wit, after his demotion, Mr. Diaz received a paycheck which he noticed was short by about \$200. He then spoke with Mr. Brischler to inquire as to why his paycheck was short. Mr. Diaz was told that he had been paid as a Sales Manager in error, and he should have been paid as a Salesman.

20. MH failed to provide Mr. Diaz with the requisite notice that it would deduct \$200 from his paycheck and did not offer him the opportunity to challenge its action.

21. Mr. Diaz objected to the \$200 deductions from his paycheck when speaking with Mr. Brischler because he was never notified of the deductions beforehand. Mr. Diaz requested that he be provided with documentation demonstrating the basis for these deductions from his wages, however same was never provided and MH continued to make these deductions from Mr. Diaz's regular pay despite Mr. Diaz's objections to same.

22. MH's illegal withholding of Mr. Diaz's pay represented a clear violation of New Jersey's Wage and Hour Law and Wage Theft Act, entitling Mr. Diaz to treble damages and attorney's fees in connection with this violation. (See N.J.S.A. § 34:11-4.10 (b) and (c), N.J.S.A. § 34:11-56a(1)(d); N.J.S.A. § 34:11-56a24 and N.J.S.A. §34:11-56a25).

23. Realizing it had acted unlawfully in illegally deducting pay from Mr. Diaz's paycheck, and after Mr. Diaz complained of the illegal withholding, only then did MH

single Mr. Diaz out, and required Mr. Diaz to sign an arbitration agreement, which was sent to him by email.

24. Mr. Diaz had never been required to sign an arbitration agreement in connection with his employment previously and did not desire to do so now. To Mr. Diaz's knowledge and based upon his conversations with co-workers, no other MH employees were required to sign an arbitration agreement.

25. Mr. Diaz ignored the numerous emails sent to him by Mr. Gaudencio to sign the Arbitration Agreement, however, on or about February 23, 2021, Mr. O'Donnell pulled Mr. Diaz into his office and told him if he did not sign the arbitration agreement, he would lose his job.

26. Mr. Diaz again complained, this time to Mr. Brischler, about the pressure and harassment to sign the arbitration agreement, and Mr. Brischler replied, "I don't know anything about that, I don't want you to arbitrate anything."

27. Mr. Diaz then complained to MH Human Resources Manager Pedro Gaudencio that felt he [Mr Diaz] was being pressured and harassed to sign the Arbitration Agreement. Despite same, Mr. Gaudencio re-sent Mr. Diaz the Arbitration Agreement by email at least a dozen times during the month of February.

28. Mr. Diaz had received conflicting responses if he had to sign the Arbitration Agreement, and he spoke to Mr. Brischler who told Mr. Diaz, "You have to," implying that his job depended on signing the Arbitration Agreement. Similarly, when Mr. Diaz

spoke with Mr. O'Donnell and objected to signing the arbitration agreement, Mr. O'Donnell replied "Well, I don't know where you're going to work then."

29. On or about February 24, 2021, Mr. Gaudencio approached Mr. Diaz and told him that he had emailed the Arbitration Agreement again, and that Mr. Diaz needed to sign the Arbitration Agreement. In response, again, Mr. Diaz told Mr. Gaudencio that he refused to do so.

30. For unknown reasons, after this conversation with Mr. Gaudencio, MH ceased any communication or pressure to have Mr. Diaz sign the Arbitration Agreement, and things remained quiet until Mr. Diaz was involved in a work accident on April 10, 2021.

31. On April 10, 2021, while traveling between dealerships for work, Mr. Diaz was involved in an auto accident when he was rear ended while sitting at a stop sign. Mr. Diaz was not found to be at fault.

32. Mr. Diaz sustained back, neck and shoulder injuries in the auto accident. Mr. Diaz promptly notified MH of the accident, the injuries and requested medical treatment.

33. MH and its HR department delayed in providing Mr. Diaz with Workers Compensation information, benefits and treatment.

34. Due to the pain from the accident, Mr. Diaz could not work, and took an approved leave of absence until April 14, 2021.

35. Since he was being denied compensation from the company, and continued to experience pain, Mr. Diaz contacted a Workers Compensation attorney who set up and sent Mr. Diaz for medical treatment with Fernando Barrese, D.C. Dr. Barrese placed Mr. Diaz out of work from April 15, 2021, to April 26, 2021.

36. Mr. Diaz provided Dr. Barrese's medical note excusing him from work to Mr. Guadencio and Mr. Brischler.

37. On April 30, 2021, Mr. Diaz was reexamined by Dr. Barrese who placed him out of work through May 28, 2021.

38. Finally, in early May 2021, MH decided to correctly set up Mr. Diaz for authorized medical treatment through the company's workers compensation doctor, Howard M. Baruch, M.D.

39. On May 14, 2021, Dr. Baruch examined and placed Mr. Diaz out of work for approximately 6-weeks.

40. On or about June 4, 2021, Dr. Baruch determined that Mr. Diaz should remain out of work for another 6 weeks in order to convalesce from his injuries. All such medical communication to keep Mr. Diaz out of work was given to Mr. Gaudencio and Mr. Brischler.

41. Despite Dr. Baruch's orders for Mr. Diaz to remain out of work due to his medical condition, Mr. Diaz received an email from Mr. Gaudencio who notified Mr. Diaz



that "The Doctor has changed his diagnosis, and you can work light duty. We should have a schedule for you in the next few days."

42. Despite Mr. Gaudencio's representations, Mr. Diaz had not received Dr. Baruch's "change" in medical recommendations and was still experiencing significant pain.

43. Then on June 10, 2021 Mr. Diaz received a follow up email from Mr. Gaudencio advising he was to return to work on light duty, and was told to report to work on Saturday, June 12, 2021.

44. Mr. Diaz found Mr. Gaudencio's requirement that he return to work to be unusual and questioned why the doctor changed his status and return-to-work status so that Mr. Diaz would be returned to work sooner.

45. Mr. Diaz contacted the doctor who said that his return was out of his hands but sympathized with him.

46. Nonetheless, Mr. Diaz did as he was instructed, and returned to work on June 12, 2021. Upon arriving at the Dealership, Mr. Diaz was placed in a back room answering phones.

47. Mr. Brischler retaliated against Mr. Diaz and did not place him on the floor, and there was no reason for Mr. Diaz's return because Mr. Brischler merely humiliated Mr. Diaz when he was placed in a back room to handle phones.

48. Mr. Bischler continued to retaliate and humiliate Mr. Diaz when he told Mr. Diaz that he would be paid only \$20 per hour for doing this new work.

49. The \$20 per hour represented a major pay cut for Mr. Diaz by almost 60% from his Sales Manager pay. Mr. Brischler's actions were deliberate and retaliatory.

50. Mr. Diaz was struggling upon his return to work due to ongoing pain, which was exacerbated by prolonged sitting.

51. After working through the pain for several days, Mr. Diaz could not go on any longer, and he told Desk Manager Jake Bender "this is not working for me, I need to see the doctor again."

52. Following his complaints of pain due to the auto accident, Mr. Bender advised Mr. Diaz that if he was in that much pain, he should leave for the day, and seek further treatment.

53. With Mr. Bender's authority, Mr. Diaz left work, called the company's Workers Compensation insurance carrier Broadspire and spoke to Workers Compensation adjuster Asifa Butts.

54. Ms. Butts approved Mr. Diaz for further authorized treatment.

55. On or about June 16, 2021, Mr. Diaz returned and was seen by Dr. Baruch for a reevaluation. During his evaluation with Dr. Baruch, Mr. Diaz advised that he was in significant pain, and could not sit at a desk for any period of time because it was

causing great pain to his back, and he could not continue to work at a desk at the dealership in such pain.

56. Dr. Baruch advised Mr. Diaz that he would keep Mr. Diaz out for a period of time to recover, and that he [Dr. Baruch] would require the company to provide an ergonomic chair when Mr. Diaz returned to the dealership. Dr. Baruch saw Mr. Diaz for approximately 90 seconds before leaving the room.

57. Thereafter, Mr. Diaz asked Dr. Baruch's nurse to bring the doctor back into the room because he had been very vague about Mr. Diaz's return to work date. Mr. Diaz advised Dr. Baruch "I am very unclear about what is going on" to which Dr. Baruch responded, "I am going to see about getting you an ergonomic chair."

58. Mr. Diaz replied, "No, I am unclear about whether or not you are sending me back to work. What is going on exactly?" Dr. Baruch then advised Mr. Diaz that "I've got to work some things out and speak with them."

59. By "them," Dr. Baruch was presumably referring to Mr. Diaz's employer and/or the Workers Compensation Insurance carrier. Dr. Baruch subsequently made a call on his cell phone and then again walked out of the room, still leaving Mr. Diaz confused regarding his return-to-work date.

60. As Dr. Baruch was leaving the room, it is believed Dr. Baruch was speaking with MH's Human Resources department about Mr. Diaz's continued leave of absence, his complaints of pain and also providing Mr. Diaz with an ergonomic chair.

61. Dr. Baruch did not come back into the room to speak to Mr. Diaz, but a nurse subsequently advised Mr. Diaz that his appointment was over, and same abruptly concluded.

62. Unlike prior times, when Mr. Diaz left Dr. Baruch's office, he was not given any instructions, was not given a return-to-work date, nor a re-evaluation date and therefore stayed out of work per Dr. Baruch's instructions.

63. Waiting for further instructions and guidance, Mr. Diaz reached out regularly to MH human resources Mr. Gaudencio and Mr. Brischler after June 16, 2021, texting them on a daily basis during the week following his June 16, 2021 appointment.

64. Mr. Diaz expected that, as had been the case previously on April 10, 2021, Mr. Gaudencio would provide him with a return-to-work and weekly schedule based upon his (Mr. Gaudencio's) communication(s) with the Workers Compensation doctor and/or insurance carrier.

65. Over the next several days Mr. Diaz attempted to communicate regularly with Mr. Brischler and Mr. Gaudencio, sending text messages on a daily basis, yet neither responded with any update on a return-to-work date, and in fact, often delayed and did not respond to Mr. Diaz at all.

66. After some time passed, Mr. Diaz sought clarification as to his return-to-work date when he called Mr. Gaudencio and placed a number of phone calls to Mr. Brischler. Mr. Diaz's calls went unanswered.

67. On the morning of June 23, 2021, after about a week of non-responsiveness from Mr. Gaudencio and Mr. Brischler, Mr. Diaz again attempted to contact Mr. Brischler, this time by calling the dealership and pretending to be a potential customer.

68. After briefly speaking with a receptionist, Mr. Diaz was connected with Mr. Brischler. As Mr. Brischler answered his office phone, Mr. Diaz stated "Alex, its Mike calling." Upon hearing this Mr. Brischler suggested there was a bad signal, that he could not hear the caller on the other end of the phone and then abruptly hung up on Mr. Diaz.

69. Immediately after being abruptly hung up on by Mr. Brischler, Mr. Diaz went to the dealership in person to speak to anyone who would talk to him and discuss his return-to-work date.

70. Upon arriving, Mr. Diaz spoke to Mr. Brischler and Mr. Gaudencio. Mr. Brishler denied receiving any of Mr. Diaz's calls or texts, and Mr. Gaudencio made an excuse that he did not receive any messages because he had purchased a new cell phone.

71. Nonetheless, Mr. Gaudencio represented to Mr. Diaz that he had looked into Mr. Diaz's leave and return to work date, and that "everything looks good, we should be bringing you back soon, probably today or tomorrow."

72. Mr. Diaz left the dealership, wondering why Mr. Gaudencio was being so vague with him, and believed he needed an actual return to work date. As such, later that same day, Mr. Diaz attempted to follow up, again texting Mr. Gaudencio and calling his cell phone.

73. Mr. Diaz then realized that his text messages to Mr. Gaudencio were not being sent via iMessage as they had in the past and that his calls to Mr. Gaudencio were going straight to voicemail. Accordingly, Mr. Diaz concluded that Mr. Gaudencio had blocked his phone number.

74. Mr. Diaz had also attempted to contact his adjuster, Ms. Butts, to obtain clarification regarding his return-to-work date. Ms. Butt's however ceased responding to Mr. Diaz's inquiries in or about June of 2021, having stated to Mr. Diaz "if you have questions then go to your attorney."

75. Mr. Diaz reached out to his workers compensation attorney and requested that he contact Ms. Butts regarding his workers compensation treatment and return to work date. Despite several calls to Ms. Butts by that office between June 16, 2021 and June 30, 2021 however, no response was ever received from Ms. Butts.

76. On June 30, 2021, a week after he had just spoken to Mr. Gaudencio about being able to return to work, Mr. Brischler called Mr. Diaz, and without warning, abruptly advised Mr. Diaz: "You are fired for job abandonment."

77. There had been no prior communications from any one at the dealership or with the Workers Compensation carrier to advise Mr. Diaz that he was required to return to work.

78. Mr. Diaz was advised by a co-worker that Mr. Brischler was forced to fire Mr. Diaz by General Manager, Robert Cohen.

79. Mr. Diaz was targeted by Mr. Brischler and Mr. Gaudencio when they failed to set up his workers compensation claim properly, they ignored his return-to-work dates, ignored his calls, they lied to Mr. Diaz misrepresenting he would be returning to work, failed to accommodate Mr. Diaz with an ergonomic chair and failed to accommodate Mr. Diaz to allow for a continued leave of absence.

80. Following his termination, Mr. Diaz applied for unemployment, however MH contested same and falsely claimed that Mr. Diaz had violated a company policy.

81. The false statements to unemployment were disparaging and untruthful, causing a significant delay in Mr. Diaz's benefits, but MH also falsely claimed that Mr. Diaz violated a policy, which had never been addressed to Mr. Diaz prior.

82. Mr. Diaz appealed the denial of the benefits, and the unemployment hearing officer found in his favor, stating that no company policy had been violated and indeed, that MH had failed to even identify a relevant policy that may have been violated.

83. MH's conduct in this regard was clearly in bad faith and served to undermine Mr. Diaz's efforts to obtain the unemployment benefits to which he was entitled.

84. Based upon the foregoing facts, it is clear that Mr. Diaz was terminated in retaliation for having sought Workers Compensation benefits, for his objections to being forced to sign an arbitration agreement in the wake of a myriad of Wage and Hour Act violations, and due to his the company's refusal to comply with the law in its treatment

of a disabled employee, to wit, from the auto accident, rendering Mr. Diaz disabled, requiring an accommodation, in the form of a medical leave of absence and ergonomic chair.

### COUNT I

*(New Jersey Law Against Discrimination)*  
*(N.J.S.A. § 10:5-1 et seq. – Disability)*  
*(As Against All Defendants)*

85. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-84 as if fully set forth herein.

86. Defendants treated Plaintiff in a discriminatory manner due to Plaintiff's disability.

87. Plaintiff's termination, an adverse act, was committed by Defendant MH's upper management and/or supervisors.

88. Although Defendants knew or should have known of the discrimination suffered, Defendants failed to take any corrective measures to stop or prevent the discrimination in violation of the New Jersey Law Against Discrimination, N.J.S.A. § 10:15-1, et seq.

89. These illegal actions were committed against Plaintiff and the conduct complained of would not have occurred but for Plaintiff's disability.

90. As a result of Defendants' discriminatory conduct, Plaintiff has, and continues to suffer irreparable harm in the form of physical and bodily harm, severe



emotional distress, anguish, personal hardship, career and social disruption, psychological and emotional harm, economic loss, loss of employment opportunities, and other such harms and damages.

## COUNT II

*(New Jersey Law Against Discrimination, N.J.S.A. § 10:5-1 et seq. –  
Failure to Accommodate Disability)*

91. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-90 as if fully set forth herein.

92. By reasons of the facts and circumstances asserted above, Plaintiff was discriminated against because of his disability.

93. Mr. Diaz was disabled as defined in the New Jersey Law Against Discrimination N.J.S.A. § 10:5-1 et seq.

94. These illegal actions were committed against Mr. Diaz and the conduct complained of would not have occurred but for Plaintiff's disability

95. Although the Defendants knew or should have known of the discrimination imposed, Defendants failed to take any corrective measures to stop or prevent the discrimination in violation of the New Jersey Law Against Discrimination, N.J.S.A. § 10:15-1, et seq

96. Mr. Diaz requested a reasonable accommodation due to his disability, in the form of a reasonable medical leave of absence and an ergonomic chair, supported by her doctor's recommendation.

97. Defendants refused to provide the reasonable, legitimate accommodation to Plaintiff, and its failure to do so was an adverse employment action.

98. At all times, Defendants acted within the scope of their employment when they refused to accommodate Mr. Diaz.

99. Defendants failed to engage in the interactive process or comply with accommodation requests necessary for the continued employment of Mr. Diaz.

100. Defendants have engaged in behavior that violates the New Jersey Law Against Discrimination, N.J.S.A. § 10:15-1, et seq, and have thereby irreparably injured Mr. Diaz.

101. As a result of Defendants' discriminatory conduct, Plaintiff has, and continues to suffer irreparable harm in the form of physical and bodily harm, severe emotional distress, anguish, personal hardship, career and social disruption, psychological and emotional harm, economic loss, loss of employment opportunities, and other such harms and damages.

### **COUNT III**

*(New Jersey Law Against Discrimination, N.J.S.A. § 10:5-12(d)(1) et seq. – Retaliation)*

102. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-101 as if fully set forth herein

103. Defendant MH terminated Plaintiff's employment on June 30, 2021 in retaliation for Plaintiff having engaged in protected conduct when he requested a

reasonable medical leave of absence and workplace accommodation supported by a doctor's note.

104. By the acts and practices as more fully described above, Defendant MH and its agents and/or employees subjected Plaintiff to retaliation in violation of N.J.S.A. § 10:5-1 et seq. wherein they wrongfully terminated his employment in retaliation for having requested a reasonable medical leave of absence supported by a doctor's note.

105. As a direct and proximate result of the Defendant MH's unlawful conduct in violation of the New Jersey Law Against Discrimination, Plaintiff has suffered and continues to suffer financial and economic damages as well as severe mental anguish and emotional distress, including but not limited to, anxiety, panic, humiliation, embarrassment, stress, loss of self-esteem and self-confidence, and emotional pain and suffering.

106. Defendant MH and its agents and/or employee's unlawful conduct constitutes a willful and wanton violation of the New Jersey Law Against Discrimination, was outrageous and malicious, was intended to injure Plaintiff, and was done with reckless indifference to Plaintiff's civil rights, entitling Plaintiff to an award of punitive damages.

**COUNT IV**

*(New Jersey Law Against Discrimination, N.J.S.A. § 10:5-12(e) et seq. –  
Aiding and Abetting)*

107. Plaintiff repeats and realleges each of the above-mentioned allegations in paragraphs 1-106 as if fully set forth herein.

108. Defendants aided and abetted one another in violating the LAD, N.J.S.A. § 10:5-12(e) et seq.

109. Defendants Alex Brischler and Pedro Gaudencio interfered with Plaintiff's exercise and enjoyment of rights under the LAD, N.J.S.A. § 10:5-12(e) et seq.

110. Defendants Alex Brischler and Pedro Gaudencio are therefore individually liable to Plaintiff for their violations of the LAD, N.J.S.A. § 10:5-12(e) et seq.

111. As a result of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer economic loss, emotional distress, harm to career, harm to reputation, and other such damages compensable under the New Jersey Law Against Discrimination.

**COUNT V**

*(New Jersey Conscientious Employee Protection Act –  
N.J.S.A. § 34:19-1 – CEPA)  
(As Against All Defendants)*

112. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-111 as if fully set forth herein.

113. Plaintiff engaged in protected conduct as set forth in the New Jersey Conscientious Employee Protection Act., N.J.S.A. §34-19-1, et seq., in that he objected to, threatened to disclose and/or refused to participate in conduct which he reasonably believed was (1) in violation of a law or regulation promulgated under law, and (2) in violation of a clear mandate of public policy affecting public health, safety or welfare.

114. Plaintiff reasonably suspected that MH's deductions from his wages without his consent constituted a violation of N.J.S.A. 34:11-4.4.

115. Plaintiff reasonably believed that MH's subsequent attempts to coerce him into signing an arbitration agreement were for the purpose of circumventing his right to bring potential claims in before a jury in State Court.

116. Plaintiff reasonably believed such conduct was: in violation of laws, rules and/or regulations; criminal; and/or incompatible with a clear mandate of public policy.

117. Plaintiff's disclosures, complaints and/or objections submitted to Defendants' is protected by New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. §34:19-3c(1).

118. Plaintiff was discharged by Defendants in retaliation for his submitting complaints regarding Defendants' contravention of public policy with respect to Defendants' Wage and Hour violations and subsequent attempts to coerce Plaintiff into signing an arbitration agreement.

119. Defendants' conduct was in violation of CEPA, N.J.S.A. §34:19-1, et. seq.

120. Defendants engaged in, participated in, condoned, ratified, perpetuated and/or aided and abetted the aforesaid CEPA violations.

121. Defendants' conduct and actions were malicious and/or undertaken with a wanton and willful disregard of and for Plaintiff.

### **COUNT VI**

*Violation of the New Jersey State Wage and Hour Law –  
(N.J.S.A. § 34:11-56a et seq.)  
(As Against All Defendants)*

122. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-121 as if fully set forth herein.

123. As discussed in previous paragraphs, the Defendants acted willfully, negligently, and/or fraudulently in withholding Plaintiff's regular wages.

124. Plaintiff is a party to whom wages are owed pursuant to the New Jersey State Wage and Hour Law, N.J.S.A. § 34:11-56a25.

125. The Defendants are employers within the meaning of the New Jersey State Wage and Hour Law, N.J.S.A. § 34:11- 56a1(g).

126. Defendants failed to pay Plaintiff his full wages within the time mandated by the New Jersey Wage and Hour Law.

127. The alleged actions were outrageous and beyond all bounds of human decency, justifying the imposition of punitive damages against all Defendants.

128. The acts alleged herein were performed with malice and reckless indifference to the Plaintiff's protected rights.

129. The willful indifference and actual participation of Defendant MH creates liability against the company for the illegal actions of its owner and employees.

130. As a result of the Defendants' intentional and outrageous actions toward the Plaintiff, as detailed in the previous paragraphs of this Complaint, the Plaintiff has suffered, and continues to suffer, embarrassment, humiliation, monetary, emotional, reputational, and other personal injuries.

## COUNT VII

### *Violation of New Jersey Wage Payment Act – (N.J.S.A. § 34:11-4.1, et seq.)*

131. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-130 as if fully set forth herein.

132. Defendants were an employer within the meaning of the New Jersey Wage Payment Act, N.J.S.A. § 34:11-4.1(a).

133. Plaintiff was an employee within the meaning of N.J.S.A. § 34:11-4.1(b).

134. Defendants knowingly and unlawfully deducted from, withheld and/or diverted Plaintiff's wages without Plaintiff's authorization, as outlined hereinabove and in so doing, Defendants have thereby violated the provisions of N.J.S.A. § 34:11-4.4 and N.J.S.A. § 34:11-4.14.

135. Plaintiff faced retaliation for his complaints regarding Defendants Wage and Hour violations.

136. Pursuant to N.J.S.A. § 34:11-4.10(c), Plaintiff is entitled to recover the full amount of wages due, as well as any wages lost due to retaliatory action by Defendants, plus liquidated damages in the amount of 200% and attorneys fees.

### **COUNT VIII**

*(Common Law Wrongful Discharge –  
Pierce v. Ortho. Pharmaceutical, 84 N.J. 58 (1980))*

137. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1 to 136 as if fully set forth herein.

138. Defendants' conduct violated the clear mandate of public policy of terminating an employee for objecting to violations of law and illegal conduct.

139. Defendants' conduct violated the clear mandate of public policy of terminating an employee for having been involved in a workplace accident and/or sustaining a workplace injury.

140. Plaintiff complained on numerous occasions that Defendants were engaged in violations of the New Jersey Wage. Plaintiff also declined to sign an arbitration agreement in the face of continuing pressure and coercion by his employer.

141. The illegal conduct of Defendants, as outlined hereinabove, was a clear violation of New Jersey Wage and Hour Law and New Jersey LAD.



142. As a result of Plaintiff's complaints regarding unlawful conduct and discrimination by Defendants, Plaintiff became the target of retaliation ultimately leading to the termination of Plaintiff's employment on June 30, 2021.

143. The above-described action of Defendants constitutes a wrongful discharge of Plaintiff's employment in violation of a clear mandate of public policy.

### COUNT IX

*(Violation of Workers Compensation Retaliation –  
N.J.S.A. 35:15-39.1)*

144. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-143 as if fully set forth herein.

145. Plaintiff sustained injuries as a result of a workplace injury that occurred on April 10, 2021. Plaintiff immediately reported his work accident and resultant injuries to his employer Mahwah Honda.

146. Shortly after the aforesaid accident, Plaintiff was authorized for workers compensation treatment in connection with the workplace accident that occurred on April 10, 2021. Mr. Diaz received workers compensation treatment for approximately 8-10 weeks.

147. Plaintiff returned to work briefly on June 12, 2021 and was given light duty work. Mr. Diaz was placed out of work again by the workers compensation doctor beginning on June 14, 2022 due to continued to pain and physical limitations in his work.

148. At the time of Mr. Diaz's unlawful termination on June 30, 2021, he had not be given a return to work date by the workers compensation doctor and was still undergoing medical treatment in connection with his work injuries.

**COUNT X**

*(Post-employment Retaliation)*

149. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-148 as if fully set forth herein.

150. Plaintiff's employment with MH was unlawfully terminated on June 30, 2021.

151. Plaintiff subsequently received a notice that he was ineligible for unemployment benefits because MH had falsely represented that Plaintiff was terminated for having violated a company policy.

152. Plaintiff subsequently appealed that determination, and it was determined that no company policy had been violated and that Plaintiff was entitled to receive unemployment benefits.

153. MH was unable to even identify a company policy that had allegedly been violated. MH's conduct in contesting Mr. Diaz's application for unemployment benefits was clearly in bad faith and part of an effort to retaliate against Mr. Diaz.

154. As a result of Defendants post-employment retaliation against Plaintiff, Plaintiff's receipt of unemployment benefits was delayed by approximately 4 months,

thereby damaging Plaintiff and causing him to endure significant financial hardship.

**COUNT XI**

*(John Does & ABC Companies)*

155. Plaintiff hereby repeats and realleges each of the above-mentioned allegations in paragraphs 1-154 as if fully set forth herein.

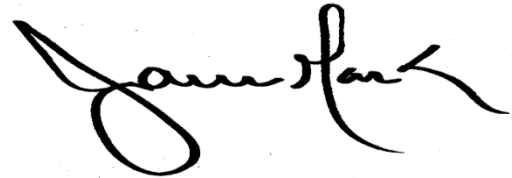
156. Although the Plaintiff believes that the acts complained of were performed or caused by the named Defendants, the Plaintiff cannot be certain that the named Defendants are the only person(s) or entity(ies) liable for the acts complained of as set forth herein. Therefore, the Plaintiff has named John Does 1 -10, fictitious persons and/or ABC Companies legal entities as Defendant(s) to this action.

157. As such, the terms "Defendant" or "Defendants" as used in all of the above Counts and paragraphs should therefore be defined and read as "Defendant(s) and/or John Doe(s)".

**WHEREFORE**, Plaintiff demands judgment against Defendants, jointly, severally and alternatively, for Damages including: Front pay and back pay; Compensatory, Liquidated, Consequential, Ancillary and Punitive damages; Damages for emotional distress, loss of reputation and other personal injury: Payment or reimbursement of all fringe benefits; Pre- and post- judgement interest: enhancement for gross tax

consequences; Reasonable costs and Attorney's fees under common law and statute:  
Costs of suit and any other relief this Court deems just.

*THE MARK LAW FIRM, LLC*  
Attorneys for Plaintiff Michael J. Diaz



Dated: June 7, 2022

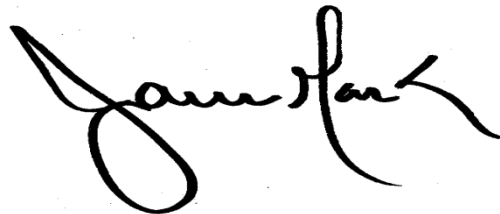
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Jamison M. Mark, Esq.  
jmark@newjerseyattorneys.com

**NOTICE OF TRIAL DESIGNATION**

**PLEASE TAKE NOTICE** that pursuant to Rule 4:25-4 and 4:5-1(c) Jamison M. Mark, Esq. is hereby designated as trial counsel in the above captioned matter for the Mark Law Firm, LLC, attorneys for Plaintiff MICHAEL DIAZ.

*THE MARK LAW FIRM, LLC*  
Attorneys for Plaintiff Michael J. Diaz



Dated: June 7, 2022

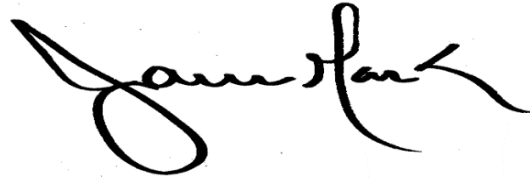
By: \_\_\_\_\_

Jamison M. Mark, Esq.  
jmark@newjerseyattorneys.com

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands, pursuant to R.4:35-1 trial by jury of all issues triable by jury.

*THE MARK LAW FIRM, LLC*  
Attorneys for Plaintiff Michael J. Diaz

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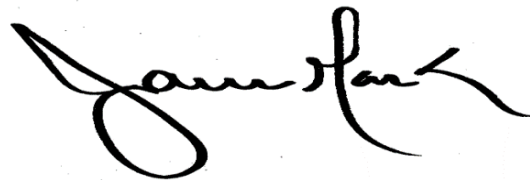
Jamison M. Mark, Esq.  
jmark@newjerseyattorneys.com

Dated: June 7, 2022

**DEMAND FOR INSURANCE INFORMATION**

Pursuant to New Jersey Court Rule 4:10-2(b), demand is made that Defendant's disclose to Defendant's attorney whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse for payments made to satisfy the judgment and provide Defendant's attorney with true copies of those insurance agreements or policies, including but not limited to, any and all declaration sheets. This demand shall include and cover not only primary coverage but also any and all EPLI, excess, homeowners, and umbrella policies.

*THE MARK LAW FIRM, LLC*  
Attorneys for Plaintiff Michael J. Diaz

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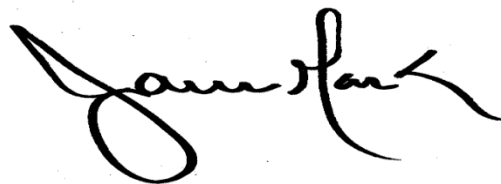
Jamison M. Mark, Esq.  
jmark@newjerseyattorneys.com

Dated: June 7, 2022

**DEMAND TO PRESERVE EVIDENCE**

Defendants Mahwah Honda is hereby directed and demanded to preserve all physical and electronic information pertaining in any way to the subject matter of this litigation, Plaintiffs' cause of action and or prayers for relief, as pertaining to any party, including but not limited to, electronic data storage, any footage, images, re-creations, e-data, cloud stored information, searchable data, emails, spreadsheets, files, memos, text messages and all and any online social or work related websites, entries on social networking sites, and any other information and or data in our documents or tangible evidence which may be relevant to any claim or defense in this litigation.

*THE MARK LAW FIRM, LLC*  
Attorneys for Plaintiff Michael J. Diaz

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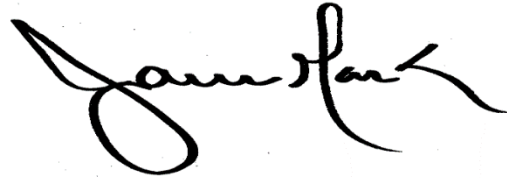
Jamison M. Mark, Esq.  
jmark@newjerseyattorneys.com

Dated: June 7, 2022

**CERTIFICATION**

Pursuant to R. 4:5-1, I hereby certify that the matter in controversy is not the subject of other actions pending in any other court or pending arbitration proceeding. I further certify that I have no knowledge of any contemplated pending arbitration proceeding regarding the subject matter of this action, and Pursuant to R. 4:28, I am not aware of any other parties who should be joined to this matter based upon the same transactional facts. Pursuant to R. 1:38-7(b), I certified that the confidential and personal identifies have been redacted from this document now submitted to the Court, and will be redacted from all documents submitted in the future.

*THE MARK LAW FIRM, LLC*  
Attorneys for Plaintiff Michael J. Diaz

A handwritten signature in black ink, appearing to read "Jamison M. Mark". The signature is fluid and cursive, with a large loop at the end.

Dated: June 7, 2022

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Jamison M. Mark, Esq.  
jmark@newjerseyattorneys.com



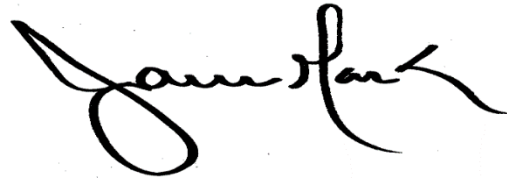
**NOTICE OF DEPOSITIONS**

Dear Sir/Madam:

**PLEASE TAKE NOTICE**, that pursuant to the provisions of R.1:9-2 and Rule 4:14-2, the undersigned attorney for Plaintiff **Michael Diaz** hereby demands that you produce for appearance for deposition at the Mark Law Firm, LLC at 675 Morris Avenue, Suite 102, Springfield, New Jersey 07081 as follows:

- 1) October 4, 2022, at 10:00 a.m.: Alex Brischler
- 2) October 5, 2022 at 10:00 a.m.: Pedro Gaudencio

*THE MARK LAW FIRM, LLC*  
Attorneys for Plaintiff Michael J. Diaz



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Jamison M. Mark, Esq.  
jmark@newjerseyattorneys.com

Dated: June 7, 2022

\*\*These depositions may be taken by remote video and audio/video recorded.

## DEMAND FOR DOCUMENTS

PLEASE TAKE NOTICE the above-named Plaintiff, Michael Diaz demands that Defendants produce at The Mark Law Firm, LLC 675 Morris Avenue, Suite 102, Springfield, New Jersey 07081 the documents requested herewith for inspection by their attorneys, or a duly authorized representative of one or more of them within the time required by Court Rules, and for such period thereafter during regular office hours as may be necessary to complete such inspection:

1. All documents which evidence, relate or refer to any and all employee manuals, personnel policies or rules and regulations of Defendant YCS in effect from January 1, 2016 to the present, including but not limited to:
  - a. Personnel procedures and practices;
  - b. Employee performance review;
  - c. Anti-discrimination;
  - d. Disability Policies;
  - e. Work Place Injury Policies;
  - f. Accommodation Policies;
  - g. Leave of Absence Policies;
  - h. Termination of Employee Policies.
2. All documentation identifying (a) – (h) was provided to Plaintiff.
3. All documentation listed in (a) – (h) that was revised, please provide initial documents, and then each version of the revised copy.
4. The employee manual received by Plaintiff, and any evidence that she received same.
5. The complete personnel file or any filed maintained by Defendant MH for Plaintiff Michael Diaz.
6. The entire medical file maintained by MH for Plaintiff Michael Diaz.

7. The entire Workers Compensation filed maintained by MH for Plaintiff Michael Diaz, including, but not limited to, all communications between MH and the Workers Compensation doctor and/or adjuster.
8. Any and all job descriptions held by Plaintiff while employed with Defendant MH.
9. Any help wanted ads placed by Defendant MH from April 1, 2021 through April 1, 2022 for any position held by Plaintiff
10. Any and all application(s) and personnel file(s) for anyone hired into the same position held by Plaintiff for Defendant MH from April 1, 2021 to April 1, 2022.
11. Any and all documents which pertain to the motor vehicle accident that occurred on April 10, 2021 and resultant deductions from Plaintiff's wages.
12. Any and all job descriptions held by Plaintiff Michael Diaz while employed with Defendants.
13. All documents which evidence, relate or refer to any bonuses, commissions, reimbursement, deductions or agreed upon compensation between Plaintiff and Defendants.
14. Any and all reports, memos or form of written communication, or emails internally between employees of Defendants in which Plaintiff's employment was discussed between January 1, 2021 through August 1, 2021.
15. All documents related to any discipline, critique or concerns issued to Plaintiff during his employment with Defendants.
16. Any and all reports, memos or form of written communication, or emails internally between employees of Defendants in which Plaintiff's employment was discussed between July 1, 2020 through August 30, 2021.
17. Any emails messages or texts created between July 1, 2020 through August 30, 2021, in which any of the following terms are used:
  - a. "Wages"

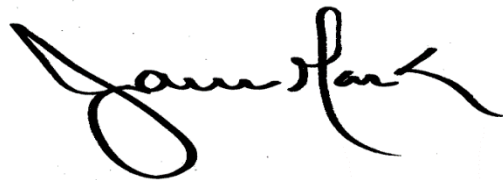
- b. "Michael Diaz"
- c. "Michael"
- d. "Diaz"
- e. "Arbitration"
- f. "Car Accident"
- g. "Workers Compensation"
- h. "Doctor"
- i. "Return to Work"
- j. "Complaint"
- k. "Work Accident"
- l. "Back Injury"

18. Any and all documents, compensation agreements, pay stubs, checks, cash receipts, vouchers, memos, payroll documents, W2, 1099, commission statements, or otherwise related to Plaintiff's compensation and benefits while employed by Defendants.
19. Any and all text messages and/or emails sent from Alex Brischler to Plaintiff between July 1, 2020 through August 30, 2021..
20. Any and all text messages and/or emails sent between July 1, 2020 through August 30, 2021, from Alex Brischler to anyone at Defendant MH identifying Plaintiff, Michael Diaz.
21. Any and all text messages and/or emails sent to Alex Brischler relating to Plaintiff between July 1, 2020 through August 30, 2021.
22. Any and all text messages and/or emails from Alex Brischler to any 3<sup>rd</sup> Party between July 1, 2020 through August 30, 2021 in which Plaintiff's name is mentioned in any manner.
23. Any and all text messages and/or emails from any 3<sup>rd</sup> Party to Alex Brischler from between July 1, 2020 through August 30, 2021 in which Plaintiff's name is mentioned in any manner.
24. Any and all text messages and/or emails sent from Pedro Gaudencio to Plaintiff between July 1, 2020 through August 30, 2021.

25. Any and all text messages and/or emails sent between July 1, 2020 through August 30, 2021, from Pedro Gaudencio to anyone at Defendant MH identifying Plaintiff, Michael Diaz.
26. Any and all text messages and/or emails sent to Pedro Gaudencio relating to Plaintiff between July 1, 2020 through August 30, 2021.
27. Any and all text messages and/or emails from Pedro Gaudencio to any 3<sup>rd</sup> Party between July 1, 2020 through August 30, 2021 in which Plaintiff's name is mentioned in any manner.
28. Any and all text messaged and/or emails from any 3<sup>rd</sup> Party to Pedro Gaudencio from between July 1, 2020 through August 30, 2021 in which Plaintiff's name is mentioned in any manner.

*THE MARK LAW FIRM, LLC*

Attorneys for Plaintiff Michael J. Diaz

A handwritten signature in black ink, appearing to read "Jamison Mark", written in a cursive style.

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Jamison M. Mark, Esq.

[jmark@newjerseyattorneys.com](mailto:jmark@newjerseyattorneys.com)

Dated: June 7, 2022