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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR )  
HUMAN RIGHTS, MARTI BUSCAGLIA, )  
EXECUTIVE DIRECTOR, *ex rel.* )  
DAVID PONTE-THOMAS, )

Complainant, )

v. )

ASCHR No. J-16-130

K & G ENTERPRISES, LLC, d/b/a )  
EVANGELO'S RESTAURANT, )

Respondent. )

ACCUSATION

Marti Buscaglia, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* David Ponte-Thomas, hereby alleges the following against Respondent K & G Enterprises, LLC:

1. Respondent is an Alaska limited liability company that owns and operates Evangelo's Restaurant, located at 2530 East Parks Highway in Wasilla, Alaska.

2. David Ponte-Thomas was employed by Respondent as a delivery driver beginning in June 2014. Mr. Ponte-Thomas performed well at his job and was considered by Respondent to be a valuable employee.

3. In September 2015, Mr. Ponte-Thomas suffered a hernia as a result of an on-the-job lifting injury. The hernia was surgically corrected in early October 2015, and Mr. Ponte-Thomas returned to work with no medical restrictions in mid-November.

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4. On or about December 16, 2015, Mr. Ponte-Thomas was again injured at work while lifting a box of prime rib, suffering another hernia. The surgery for this second injury was successfully completed on February 12, 2016.

5. On March 31, 2016, Mr. Ponte-Thomas received a note from his doctor stating that he could return to work with a 30-pound lifting restriction for the next two weeks, and clearing him for full duty without restriction after that.

6. Later that same day, on March 31, 2016, Mr. Ponte-Thomas went to Evangelo's Restaurant, gave the doctor's note to one of Respondent's owners, and asked to be put back on the schedule.

7. After receiving the release from Mr. Ponte-Thomas's doctor, Respondent refused to place Mr. Ponte-Thomas on the delivery driver schedule.

8. On April 1, 2016, Peder Stadem submitted his resume to Respondent. Mr. Stadem filled out an employment application on April 5, began working as a driver for Respondent by April 6, and was placed on the driver schedule effective April 10.

9. Mr. Ponte-Thomas was never scheduled for a delivery driver shift at Evangelo's Restaurant following his second injury in December 2015, nor has Respondent sought any information from Mr. Ponte-Thomas about his condition.

10. Respondent's refusal to place Mr. Ponte-Thomas back on the schedule effectively terminated his employment with Respondent.

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**FIRST CAUSE OF ACTION  
TERMINATION BECAUSE OF DISABILITY  
A VIOLATION OF AS 18.80.220(a)**

11. Paragraphs 1-10 above are realleged and incorporated herein.

12. Respondent employed David Ponte-Thomas as a delivery driver from June 2014 to April 2016.

13. Mr. Ponte-Thomas was qualified to perform all of the functions of his position with Respondent, and was performing well at his job.

14. Mr. Ponte-Thomas suffered two lifting injuries that, in both cases, required surgical intervention and recuperation to correct.

15. After Mr. Ponte-Thomas's second lifting injury, Respondent terminated Mr. Ponte-Thomas's employment.

16. Respondent treated Mr. Ponte-Thomas as a person with a disability when it terminated Mr. Ponte-Thomas's employment.

17. Respondent's termination of Mr. Ponte-Thomas's employment constitutes a violation of AS 18.80.220(a).

18. Because of Respondent's termination of Mr. Ponte-Thomas's employment, Mr. Ponte-Thomas has suffered harm in the form of lost wages and benefits.

**PRAYER FOR RELIEF**

Wherefore the Executive Director asks for the following relief:

1           1.       That the Commission issue an order declaring that Respondent K & G  
2 Enterprises, LLC, violated AS 18.80.220(a) by terminating Mr. Ponte-Thomas's  
3 employment because of disability.  
4

5           2.       That the Commission order Respondent to adopt and disseminate a policy  
6 of nondiscrimination under the Alaska Human Rights Law.  
7

8           3.       That the Commission order Respondent to obtain training of at least four  
9 hours in length for its managers and supervisors on the provisions of the Alaska Human  
10 Rights Law that prohibit discrimination in employment, with an emphasis on the prohibition  
11 against discrimination based on disability.  
12

13           4.       That the Commission order Respondent to eliminate from Mr. Ponte-  
14 Thomas's personnel records all documents and entries relating to the facts and  
15 circumstances that led to Mr. Ponte-Thomas's filing of the above-captioned charge and any  
16 of the related events occurring thereafter.  
17

18           5.       That the Commission order Respondent to refrain from penalizing Mr. Ponte-  
19 Thomas in any way in future considerations for employment and, if rehired, for transfers,  
20 promotions, or upgrading because Mr. Ponte-Thomas complained about discrimination or  
21 because he filed a complaint with the Commission.  
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23           6.       That the Commission order Respondent to refrain from advising or informing  
24 any other employer or potential employer of Mr. Ponte-Thomas of the facts or  
25 circumstances involved in this case.  
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7. That the Commission order Respondent to pay back wages, including any lost benefits, to Mr. Ponte-Thomas, plus interest at the applicable legal rate, the exact amount of which will be proven at hearing.

8. That the Commission order Respondent to pay the statutory maximum amount of front pay, including benefits, to Mr. Ponte-Thomas, the exact amount of which will be proven at hearing.

Dated this 26<sup>th</sup> day of January 2018 at Anchorage, Alaska.

ALASKA STATE COMMISSION  
FOR HUMAN RIGHTS

*Signature Redacted*

Marie Kyle  
Human Rights Advocate  
Alaska Bar No. 1705029