

FILED
SAN MATEO COUNTY

MAY 10 2012

Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

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8 Attorneys for Plaintiff,
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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN MATEO

12 VICTOR ORTEGA,

13 Plaintiff,

14 v.

15 PACIFIC PRODUCE, SARAH GARCIA;
16 DOES 1 through 50, inclusive,

17 Defendants.

Case No:

CIV 5 1 371 8

COMPLAINT FOR DAMAGES:

DEMAND FOR JURY TRIAL

[UNLIMITED CIVIL JURISDICTION]

BY FAX

PARTIES AND JURISDICTION

1. Plaintiff VICTOR ORTEGA (hereinafter "ORTEGA" or "Plaintiff") is an individual who now resides in San Francisco County, California.

2. Plaintiff is informed and believes and thereon alleges that Defendant PACIFIC PRODUCE (hereinafter "CORPORATE DEFENDANT") is a California corporation that regularly employs more than fifty individuals with its principal place of business in the County of San Mateo

3. Plaintiff is informed and believes and thereon alleges that Defendant SARAH GARCIA (hereinafter "GARCIA") in an individual who was, at all relevant times, plaintiff's supervisor and a shareholder of CORPORATE DEFENDANT).

4. Plaintiff is unaware of the true names and capacities of Defendants Does 1 through 50, inclusive, and Plaintiff will seek leave of court to allege said true names and capacities when the

1 same have been ascertained. Does 1 through 50 and all other defendants are collectively referred to
2 herein as "Defendants."

3 5. Jurisdiction is proper in this Court because alleged damages exceed the minimum
4 jurisdictional threshold. Venue is proper in this Court as Defendant does business in the County of
5 San Mateo. At all relevant times, events giving rise to causes of action in this Complaint occurred
6 in the County of San Mateo.
7

8 6. Plaintiff is informed and believes and thereby alleges that at all times herein
9 mentioned, all Defendants, including Does 1-50, inclusive, (i) jointly perpetrated the acts described
10 herein with their co-Defendants, (ii) were the successors in interest to, or agents, alter egos,
11 principals, co-tenants, partners, joint-venturers, joint employers, or co-conspirators of their co-
12 Defendants in doing the things herein alleged, and (iii) were acting within the scope of their
13 authority or in furtherance of a common scheme or design with the knowledge, permission, consent,
14 or ratification of their co-Defendants in doing the things herein alleged, and therefore are liable,
15 jointly and severally, for all damages and other relief or remedies sought by Plaintiff in this
16 Complaint.
17
18

19 GENERAL ALLEGATIONS

20 7. At all times herein mentioned, Plaintiff was an employee of the CORPORATE
21 DEFENDANT. GARCIA was a managing agent involved in creating policy and daily decision
22 making.
23

24 8. Plaintiff was hired by CORPORATE DEFENDANT October 2011 and his
25 ostensible job title was delivery driver. Plaintiff's rate of pay throughout his employment was
26 \$12.50 per an hour. Throughout Plaintiff's employment he was not provided with the opportunity
27 to take meal and rest breaks.
28

1 9. Plaintiff suffered a work injury on or about March 31, 2012. After reporting said
2 injury and requesting workers compensation information plaintiff was ordered to go see his
3 personal doctor and was not provided with any of the requested workers compensation information.

4 10. On or about April 2, 2012, Plaintiff again requested workers compensation
5 information and was informed that he could not return to work without first having a doctor's note.
6 CORPORATE DEFENDANT again refused to provide plaintiff with the required information.

7 11. Plaintiff attempted to see his personal doctor but was unable to do so because his
8 doctor informed him that he would have to see his employer' doctors for his work related injury.
9

10 12. On April 4, 2012 Plaintiff again requested workers compensation information. This
11 again was refused but on this occasion he was provided with a medical referral slip to go see a
12 physician at Pacific Occupations Health Clinic.
13

14 13. Plaintiff, on April 4, 2012, was released to return to work with work modifications.
15

16 14. On or about April 5, 2012, Plaintiff returned to work under a modified work status.
17

18 15. On April 6, 2012 Plaintiff, as per his work restrictions of not being able to carry
19 more than 30lbs in weight, requested for assistance. This assistance was denied for the first 5.5
20 hours of plaintiff's shift.

21 16. While plaintiff was on the road making his deliveries with a new trainee that he was
22 provided he experienced pain in his back. After three hours of being on the road the trainee that
23 Plaintiff was provided quit his job because of the work load and the inability to take breaks. At this
24 time Plaintiff was unable to continue with his route due to the pain that he was in and also due to
25 the fact that the trainee he was provided to meet his modified work status had quit. Plaintiff called
26 into the warehouse and was ordered to return.
27
28

1 17. Upon Plaintiff's return plaintiff was angrily greeted by JENNIFER SMITH, an agent
2 of CORPORATE DEFENDANT. Ms. Smith shouted at plaintiff for failing to make deliveries
3 timely on that day. Plaintiff explained to Ms. Smith that he was injured and on modified work and
4 that his trainee quit due to the fact that they were unable to take breaks and because the work load
5 was too heavy. Plaintiff responded that it was illegal to work without breaks and that he was going
6 to finally report the company to the Labor Department for illegal work conditions which also
7 included CORPORATE DEFENDANT's failure to provide modified work.
8

9 18. While plaintiff and Ms. Smith were talking about illegal work conditions and late
10 deliveries, Defendant GARCIA approached plaintiff and said that Plaintiff should leave and that she
11 was going to call the police on him. GARCIA then grabbed and yanked at plaintiff causing injury
12 to his body and emotional distress. Plaintiff left the premises while GARCIA and Ms. Smith
13 followed and insulted plaintiff by calling him names.
14

15 19. The police arrived at the scene and GARCIA intentionally and maliciously lied to
16 the police by telling them that Plaintiff had struck her. The police reviewed the video footage and
17 determined that this was not correct. GARCIA then intentionally and maliciously lied to the police
18 by telling them that the plaintiff had threatened to kill her. As a result of these intentional and
19 malicious lies, Plaintiff was arrested and incarcerated for one full day.
20

21 20. Plaintiff suffered an anxiety attack at the police station and as a result he was
22 hospitalized. Plaintiff continues to suffer from extreme emotional distress and depression as a
23 result of the wrongful termination, the harassment, the assault and battery and the false
24 imprisonment.
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1 mental and emotional distress, and discomfort, all to his damage in an amount of the minimum
2 jurisdiction of this Court, the precise amount to be proven at trial.

3 27. Defendant committed the acts herein alleged maliciously, fraudulently, and
4 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
5 mode and motive amounting to malice, in conscious disregard of Plaintiff rights. Because the acts
6 taken towards Plaintiff were carried out by managerial employees acting in a despicable, deliberate,
7 cold, callous and intention manner in order to injure and damage him, Plaintiff is entitled to recover
8 punitive damages from Defendant in an amount according to proof.

9
10 Wherefore, Plaintiff requests relief as hereinafter prayed for.

11 **SECOND CAUSE OF ACTION**

12
13 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION (Govt. Code §12940(m))**
14 **(Against All Defendants)**

15 28. The allegations of paragraphs 1 through 27 are realleged and incorporated herein by
16 reference.

17 29. At all times herein mentioned FEHA was in full force and effect and was binding
18 upon Defendants. §12940(m) of FEHA makes it an unlawful employment practice for an employer
19 such as Defendant to fail to make reasonable accommodation for the known physical or mental
20 disability of an employee such as Plaintiff.

21
22 30. Defendant failed to make, or even inquire about a reasonable accommodation for
23 Plaintiff's known physical disability. Plaintiff believes numerous reasonable accommodations were
24 available to Defendant that would have allowed Plaintiff to perform the essential functions of his
25 position and recover from the treatment directly related to his medical condition and/or disability,
26 including, but not limited to, granting Plaintiff a modified work duty. Except for the need for a
27 temporary accommodation, Plaintiff was otherwise qualified and capable of performing the
28

1 essential functions of his job.

2 31. In taking the above actions, Defendant engaged in an unlawful employment practice,
3 as prohibited by California Government Code §12940(m).

4 32. As a direct, foreseeable, and proximate result of Defendants' discriminatory acts,
5 Plaintiff has suffered and continues to suffer substantial losses, including lost earnings, job benefits,
6 and medical expenses. In addition, Plaintiff has suffered and continues to suffer humiliation,
7 embarrassment, mental and emotional distress, discomfort, all to his damage in an amount in excess
8 of the minimum jurisdiction of this Court, the precise amount to be proven at trial.
9

10 33. Defendant committed the acts herein alleged maliciously, fraudulently, and
11 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
12 mode and motive amounting to malice, in conscious disregard of Plaintiff's rights. Because the acts
13 taken towards Plaintiff were carried out by managerial employees acting in a despicable, deliberate,
14 cold callous and intentional manner in order to injure and damage Plaintiff, Plaintiff is entitled to
15 recover punitive damages from Defendant in an amount according to proof.
16

17 Wherefore, Plaintiff requests relief as hereinafter prayed for.
18

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS (Govt. Code §19240(n))**
21 **(Against all defendants)**

22 34. The allegations of paragraphs 1 through 33 are realleged and incorporated herein by
23 reference.

24 35. At all times herein mentioned FEHA was in full force and effect and was binding
25 upon Defendant. §12940(n) of FEHA makes it an unlawful employment practice for an employer
26 such as Defendant to fail to engage in a timely, good faith interactive process with an employer
27 with a known physical or mental disability or known medical condition to determine effective
28

1 reasonable accommodations, if any.

2 36. Defendant failed to engage in any interactive process with Plaintiff for his known
3 medical condition and physical disability of his medical condition stated above and instead abruptly
4 terminated Plaintiff's employment when he was under medical care for said conditions.

5 37. In taking the above actions, Defendant engaged in an unlawful employment practice,
6 as prohibited by California Government Code §12940(n).

7 38. As a direct, foreseeable, and proximate result of Defendants' discriminatory acts,
8 Plaintiff has suffered and continues to suffer substantial losses, including lost earnings, job benefit,
9 and medical expenses. In addition, Plaintiff has suffered and continues to suffer humiliation,
10 embarrassment, mental and emotional distress, and discomfort, all to his damage in an amount in
11 excess of the minimum jurisdiction of this Court, the precise amount to be proven at trial
12

13 39. Defendant committed the acts herein alleged maliciously, fraudulently and
14 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
15 mode and motive amounting to malice, in conscious disregard of Plaintiff's rights. Because the acts
16 taken towards Plaintiff were carried out by managerial employees acting in a despicable, deliberate,
17 cold, callous, and intentional manner in order to injure and damage Plaintiff, he is entitled to
18 recover punitive damages from Defendant in an amount according to proof.
19

20 Wherefore, Plaintiff requests relief as hereinafter prayed for.
21

22 **FOURTH CAUSE OF ACTION**

23 **(UNLAWFUL RETALIATION)**

24 40. Plaintiff repeats and realleges the preceding and subsequent paragraphs
25 as though set forth herein.
26

27 41. CORPORATE DEFENDANTS and each of them, took adverse employment
28 actions against Plaintiff, as alleged herein, in retaliation for Plaintiff's opposition illegal labor

1 practices. Plaintiff repeatedly requested meal and rest periods. Defendants, and each of them,
2 refused and instead retaliated against plaintiff for demanding his rights by harassing him, failing
3 to accommodate his disability and terminating him.

4 42. As a direct, proximate and foreseeable result of CORPORATE
5 DEFENDANTS' acts and failures to act as alleged herein, Plaintiff has suffered and continues to
6 suffer substantial losses in earnings and employment benefits, injury to his career and reputation,
7 and extreme and enduring emotional distress including but not limited to humiliation, shock,
8 embarrassment, fear, anxiety and discomfort, all to his damage in an amount to be determined
9 according to proof at trial.

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11 43. CORPORATE DEFENDANTS committed the acts herein alleged despicably,
12 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and
13 acted with an improper and evil motive amounting to malice and in conscious disregard of
14 Plaintiff's rights. Because the acts taken toward Plaintiff were carried out by managerial
15 employees acting in a deliberate, cold, callous, despicable, and intentional manner in order to
16 injure and damage Plaintiff, he is entitled to punitive damages from CORPORATE
17 DEFENDANTS in an amount according to proof.

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19
20 Wherefore, Plaintiff requests relief as hereinafter prayed for.

21
22 **FIFTH CAUSE OF ACTION**

23
24 **(WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY)**

25 44. Plaintiff repeats and realleges the preceding and subsequent
26 paragraphs as though set forth herein.

27 45. At all times relevant to this complaint, the Fair Employment and Housing
28 Act ("FEHA") was in full force and effect and binding upon Defendants. FEHA prohibits

1 employers from discriminating against employees on account of disability and disqualifying
 2 employees from pursuing their chosen vocation on the basis of disability. Furthermore,
 3 Defendants violated numerous California Labor Codes and retaliated against Plaintiff for
 4 demanding meal and rest periods.

5 46. As a direct, proximate and foreseeable result of Defendants' acts and failures to act as
 6 alleged herein, Plaintiff has suffered and continues to suffer substantial losses in earnings and
 7 employment benefits, injury to his career and reputation, extreme emotional distress including
 8 but not limited to humiliation, shock, embarrassment, fear, anxiety and discomfort, all to his
 9 damage in an amount to be determined according to proof.

10 47. CORPORATE DEFENDANT committed the acts herein alleged despicably, maliciously,
 11 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and acted with
 12 an improper and evil motive amounting to malice and in conscious disregard of Plaintiff's rights.
 13 Because the acts taken toward Plaintiff were carried out by managerial employees acting in a
 14 deliberate, cold, callous, despicable, and intentional manner in order to injure and damage
 15 Plaintiff, he is entitled to punitive damages from defendants in an amount according to proof.

16 **SIXTH CAUSE OF ACTION**

17 **FALSE IMPRISONMENT**

18 **(Against all Defendants)**

19 48. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth
 20 herein.

21 49. Defendant intentionally and maliciously told lies (fraud and deceit) to law enforcement to
 22 restrain, confine and detain plaintiff without his consent.

23 50. As a direct, proximate and foreseeable result of Defendants' acts and failures to act as
 24 alleged herein, Plaintiff has suffered and continues to suffer substantial losses in earnings and
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1 employment benefits, injury to his career and reputation, \$5000 in lost bail money, extreme
 2 emotional distress including but not limited to humiliation, shock, embarrassment, fear, anxiety
 3 and discomfort, all to his damage in an amount to be determined according to proof.

4 51. CORPORATE DEFENDANT committed the acts herein alleged despicably, maliciously,
 5 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and acted with
 6 an improper and evil motive amounting to malice and in conscious disregard of Plaintiff's rights.
 7 Because the acts taken toward Plaintiff were carried out by managerial employees acting in a
 8 deliberate, cold, callous, despicable, and intentional manner in order to injure and damage
 9 Plaintiff, he is entitled to punitive damages from defendants in an amount according to proof.
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 13 **SEVENTH CAUSE OF ACTION**

14 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
 15 **(Against All Defendants)**

16 52. The allegations of paragraphs 1 through 51 are realleged and incorporated herein by
 17 reference.

18 53. Defendant's conduct, as described herein, constitutes outrageous conduct in that it
 19 exceeded all bounds of common decency usually tolerated by a civilized society.

20 54. Defendant's violations of the FEHA were done in a deliberate violation of Plaintiff's
 21 rights and in callous disregard of the effect such violations would have on Plaintiff. Furthermore,
 22 Defendants intentional and malicious false imprisonment of plaintiff caused additional extreme
 23 anxiety and depression.
 24

25 55. As alleged above, Defendant, through its managers and agents, clearly sought to
 26 injure Plaintiff by denying any accommodation to him, forcing him to work alone and ignoring his
 27 medical restrictions and calling him names prior to falsely imprisoning him.
 28

NINTH CAUSE OF ACTION

**For Willful Violations of California Labor Code § 226.7 –
Failure to Afford Mandatory Breaks or Meal Periods as Required by
IWC Orders and Labor Code
(Against Corporate Defendant)**

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4 61. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though
5 set forth herein.

6
7 62. CORPORATE DEFENDANTS routinely failed to provide Plaintiff with a 30-
8 minute unpaid meal period within the first five (5) hours of work in compliance with
9 IWC Orders and Labor Code § 226.7. Defendants routinely failed to provide Plaintiff
10 with a second 30-minute meal period within the second five (5) hours of work in
11 compliance with IWC Orders and Labor Code § 226.7. As a result of Defendants'
12 failure, Plaintiff is entitled to recover an amount to be proved at trial, of not less than one
13 additional hour of pay at the regular rate of compensation for each workday that the meal
14 period was not provided, and any and all statutory penalties provided by law.
15

16 63. CORPORATE DEFENDANTS routinely failed to provide Plaintiff with a 10-
17 minute paid rest period for each four (4) hour period of work, in compliance with IWC
18 Orders and Labor Code § 226.7. As a result of Defendants' failure, Plaintiff is entitled to
19 recover an amount to be proved at trial, of not less than one additional hour of pay at the
20 regular rate of compensation for each workday that the rest period was not provided, and
21 any and all statutory penalties provided by law.
22

23 64. CORPORATE DEFENDANTS' policy and practice of denying Plaintiff meal and
24 rest periods constitutes a willful violation of California Labor Code § 226.7. Plaintiff has
25 sustained damages as a direct and proximate consequence of the Defendants' willful and
26 illegal conduct, to wit, he has been forced to work continuously throughout the day, every
27 day, without being allowed to take meal and rest periods.
28

1 65. Plaintiff has incurred, and will continue to incur attorney fees and costs in the
2 prosecution of this action. Plaintiff seeks attorneys' fees under all applicable provisions
3 of law. Wherefore, Plaintiffs prays judgment as set forth herein below.

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PRAYER FOR RELIEF

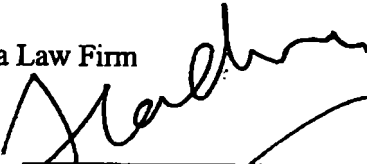
WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as follows:

1. General damages according to proof;
2. Economic Losses according to proof;
3. Punitive damages according to proof;
4. Prejudgment interest and costs of suit;
5. Waiting time penalties;
6. An hour of pay for every missed meal period;
7. An hour of pay for every missed rest break;
8. Costs of suit incurred herein;
9. Attorney Fees;
10. For such other and further relief as this Court may deem just and proper.

Date: May 9, 2012

Ladva Law Firm

By:



ASHWIN LADVA
Attorney for Plaintiff,
VICTOR ORTEGA


REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

Date: May 9, 2012

Ladva Law Firm

By:



LADVA LAW FIRM
Attorney for Plaintiff,
VICTOR ORTEGA