

1 PAUL HAM, Bar No. 227395  
2 HAM LAW FIRM  
3 1300 Clay Street, Suite 600  
4 Oakland, CA 94612  
5 Telephone: (415) 713-5690  
6 Facsimile: (866) 374-9773  
7 E-Mail: paul.ham@hamfirm.com

**FILED**

APR 13 2009

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

9  
130  
NP

Attorney for Plaintiff

E-filing

ADR

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**C09-01601 MMC**  
Case No.

JOSE LECHUGA,

Plaintiff,

v.

LABORERS INTERNATIONAL UNION,  
LOCAL UNION 304,

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF  
AND DAMAGES

Jose Lechuga, Plaintiff, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under the National Labor Relations Act, 29 U.S.C. §§ 151 et seq., and under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 et seq., because Defendant Laborers International Union, Local Union 304 ("Local 304" or "Defendant") violated Plaintiff Jose Lechuga rights as a Local 304 member under 29 U.S.C. § 411 and because Defendant practiced unfair labor practices under 29 U.S.C. § 158.

2. Venue is proper because Plaintiff resides in this district; the alleged violations occurred in this district; and Local 304 maintains its offices in this district.

THE PARTIES

1  
2 3. Plaintiff Lechuga has been a dues paying member of Local 304 for over eighteen years.  
3 Mr. Lechuga relies upon income earned through his membership to Local 304 to support his family,  
4 which includes his wife and four children. The Lechuga family resides in Hayward, California.

5 4. Defendant Local 304 is a union of general laborers and construction workers and  
6 maintains its halls in Hayward, Oakland, and in Livermore, California.

GENERAL ALLEGATIONS

7  
8 5. Defendant has a system of dispatching work to its members by using a list. Defendant is  
9 required to dispatch work to its members on this list in order.  
10

11 6. Defendant does not treat its members equally but rather discriminates against certain  
12 members in how work is dispatched. Upon information and belief, part of Defendant's discriminatory  
13 practices includes accepting bribes or kickbacks to allow certain members to receive dispatches to the  
14 detriment of other members.

15 7. In addition to Mr. Lechuga, other members of Local 304 share similar suspicions. Based  
16 on his suspicions, Mr. Lechuga took the initiative of gathering signatures to petition an investigation of  
17 Defendant's activities with respect to how work is dispatched. Mr. Lechuga has collected over 100  
18 signatures of other Local 304 members who share his suspicions and concerns.  
19

20 8. In retaliation of Mr. Lechuga efforts, Defendant unilaterally banished him from entering  
21 any of its halls located in Hayward, Oakland, and Livermore, California. Attached Exhibit A is a letter,  
22 dated February 25, 2009, from Defendant to Mr. Lechuga, stating that he is no longer permitted access  
23 to any of its halls. Mr. Lechuga was neither served with written specific charges made against him by  
24 Defendant, provided a reasonable time to prepare his defense, nor given a full and fair hearing prior to  
25 his banishment.  
26

27 9. Defendant also sought injunctive relief with the Superior Court of California, Alameda  
28 County ("Superior Court"), based upon its allegation of workplace violence under Ca. Civ. Proc. Code §

1 527.8. Defendant did not allege that Mr. Lechuga committed a specific act of violence but rather relied  
2 upon allegations that he made credible threats of violence to seek a permanent injunction against him.  
3 A permanent injunction would have prohibited him from entering any of the Defendant's halls in  
4 Hayward, Oakland, and Livermore, California for up to three years.

5 10. An evidentiary hearing commenced before the Superior Court on March 25, 2009 on  
6 Defendant's petition. The Superior Court denied Defendant's petition (see attached Exhibit B, Minutes)  
7 and the Temporary Restraining Order against Mr. Lechuga expired.  
8

9 11. On March 26, 2009 (after the Superior Court's denial of Defendant's petition), Mr.  
10 Lechuga attempted to enter Defendant's hall in Hayward, California. Defendant's Business Manager,  
11 Jose Zapien, loudly screamed at Mr. Lechuga in front of approximately fifty members telling Mr.  
12 Lechuga that he would call the police if Mr. Lechuga did not immediately leave the hall. Mr. Lechuga  
13 left embarrassed and confused on what occurred.  
14

15 12. Mr. Lechuga, through counsel, attempted to communicate with Defendant, to seek  
16 assurances that he would be allowed to return. Defendant has not offered any assurances and continues  
17 to deny Mr. Lechuga access to any of its halls. Mr. Lechuga has not returned to any of Defendant's  
18 halls since March 26, 2009.

19 FIRST CLAIM FOR RELIEF:  
20 PLAINTIFF'S REQUEST FOR TEMPORARY RESTRAINING ORDER,  
21 PRELIMINARY, AND PERMANENT INJUNCTIVE RELIEF

22 13. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 12, above, as  
23 if fully set forth herein.

24 14. The Bill of Rights under 29 U.S.C. § 411 afford Local 304 members rights to equality,  
25 freedom of expression and assembly, and prohibits any disciplinary action unless the member was (1)  
26 served with specific written charges; (2) provided a reasonable time to prepare a defense; and (3)  
27 provided a full and fair hearing.  
28

1 15. 29 U.S.C § 158 prohibits discrimination by Local 304 and requires it to treat its members  
2 fairly.

3 16. Mr. Lechuga, by seeking to investigate Defendant's dispatch practices, was exercising his  
4 rights as guaranteed under 29 U.S.C. § 411. Moreover, Mr. Lechuga was never served with written  
5 specific charges, provided a reasonable time to prepare his defense, nor given a full and fair hearing  
6 prior to his banishment by Defendant from its halls.

7 17. Defendant has and continues to discriminate against Mr. Lechuga by favoring certain  
8 members over others in how work is dispatched and by prohibiting access to its halls.

9 18. Defendant's attempt, under Ca. Civ. Proc. Code § 527.8, to prohibit entry by Mr.  
10 Lechuga of its the halls has already been rejected by the Superior Court, precluding Defendant from  
11 raising these issues before this Court under the doctrines of res judicata and/or collateral estoppel.  
12

13 19. Mr. Lechuga has and continues to suffer irreparable injury by not being permitted to enter  
14 Defendant's halls. Being there physically is essential to maintaining professional relationships where  
15 work may be obtained. Mr. Lechuga has and continues to face severe financial hardship because of  
16 Defendant's actions.  
17

18 **SECOND CLAIM FOR RELIEF:**  
19 **PLAINTIFF'S REQUEST FOR DAMAGES**

20 20. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 19, above, as  
21 if fully set forth herein.

22 21. Mr. Lechuga has and continues to suffer economic damages in the form of lost wages due  
23 to Defendant's actions. Defendant's banishment of Mr. Lechuga is retaliation against him for speaking  
24 with other Local 304 members and collecting signatures to petition an investigation. Defendant's  
25 actions against Mr. Lechuga - causing him to suffer economic damages - began prior to the date of  
26 Defendant's letter of banishment, dated February 25, 2009.  
27  
28

WHEREFORE, Plaintiff prays as follows:

A. That the Court enter temporary, preliminary, and permanent injunctions against Defendant to enjoin it from prohibiting access by Plaintiff of Defendant's halls located in Hayward, Oakland, and Livermore, California;

B. That the Court award monetary relief for Plaintiff and against Defendant caused by the Defendant's violations of Plaintiff's Bill of Rights under 29 U.S.C. § 411 and Defendant's unfair labor practices under 29 U.S.C. § 158, and award Plaintiff its costs incurred in this action, including attorney's fees; and

C. That the Court award such other and further relief as it deems appropriate.

Respectfully submitted this 13<sup>th</sup> day of April, 2009.



PAUL HAM, Bar No. 227395  
HAM LAW FIRM  
1300 Clay Street, Suite 600  
Oakland, CA 94612  
Telephone: (415) 713-5690  
Facsimile: (866) 374-9773  
E-Mail: paul.ham@hamfirm.com

Attorney for Plaintiff