

Superior Court of California

County of Orange



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Attorneys for Plaintiff NORMA GARCIA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Judge Linda Marks

NORMA GARCIA,

Plaintiff,

vs.

ORANGE COUNTY ASSOCIATION OF
MENTAL HEALTH, a California non-
profit corporation; JEFFREY A. THRASH;
DARLENE POWELL; and DOES 1
through 50, inclusive,

Defendants.

Case No. 30-2017-00925354-CU-WT-CJC

COMPLAINT FOR DAMAGES

1. RETALIATION IN VIOLATION OF
FEHA, GOV'T CODE SECTIONS 12940,
et seq.
2. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
3. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS.
4. FAILURE TO PAY WAGES

[DEMAND FOR JURY TRIAL]

Plaintiff, Norma Garcia ("Plaintiff") hereby alleges

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. At times relevant to this Complaint, Plaintiff was an employee of Defendant
ORANGE COUNTY ASSOCIATION OF MENTAL HEALTH, a California non-profit
corporation ("Defendant" and/or "MHA"). Prior to the acts of discrimination and
wrongdoing alleged herein, Plaintiff had been a cashier of Defendant and her duties
included opening and closing the thrift store and food bank located at 2416 S. Main Street,
Santa Ana, CA 92707.

1 2. Defendant at relevant times was, and is, a California non-profit corporation, duly
2 formed and constituted, with its corporate headquarters and principal place of business
3 located at 822 Town & Country Road, Orange, CA 92868. It is in the business of
4 providing services to the homeless, included collecting social security checks on behalf of
5 the homeless, accepting donations to the homeless, making payments on behalf of the
6 homeless.

7 3. Defendant Jeffrey A. Thrash is the Chief Executive Officer of Defendant Orange
8 County Association of Mental Health and was employed by Defendant Orange County
9 Association of Mental Health at all relevant times alleged herein.

10 4. Defendant Darlene Powell was employed as Plaintiff's supervisor by Defendant
11 Orange County Association of Mental Health and was employed by Defendant Orange
12 County Association of Mental Health at all relevant times alleged herein.

13 5. Plaintiff alleges that the acts complained of herein took place in Orange County
14 in connection with Plaintiff's employment by Defendant. Jurisdiction and venue are proper
15 in this Court because all of the claims alleged herein arose within Orange County and all
16 defendants are doing or did business in Orange County, and/or their principal place of
17 business and homes was within Orange County.

18 6. The true names, identities, and capacities, whether individual, corporate,
19 associate, or otherwise, of Defendants Does I through 50, inclusive, are unknown to
20 Plaintiff, who therefore sues said defendants by such fictitious names. When the true
21 names, identities, or capacities of such fictitiously designated Defendants are ascertained,
22 Plaintiff will seek leave of this Court as necessary to amend this Complaint to insert said
23 true names, identities or capacities. Plaintiff is informed and believes and based thereon
24 alleges that each of the Defendants sued herein as a Doe is in some manner responsible for
25 the events and happenings herein alleged, thereby proximately causing the injuries and
26 damages to Plaintiff as herein alleged.

27 7. In acting as hereinafter alleged, Plaintiffs are informed and believe and based
28 thereon allege that all Defendants were acting as agents of each other, and that Defendants

1 authorized, expressly or impliedly, or thereafter ratified and affirmed all of the acts and
2 conduct of each other Defendant, which acts and failures to act were within the course and
3 scope of said agency, and/or direction and control.

4 8. Plaintiff alleges that as of June 15, 2016, she was successfully performing her
5 duties as cashier of Defendant MHA at 2416 S. Main St., Santa Ana, CA (hereinafter
6 "Facility"). Plaintiff made a complaint to the Orange County Department of Health prior to
7 her termination. Plaintiff alleges she was terminated from her employment at MHA for
8 her complaint to the Department of Health. She has diligently searched for alternate work
9 since her wrongful termination by Defendants but has been unable to obtain other
10 employment

11 9. Defendant operated the facility through Plaintiff, who was supervised by
12 Defendant Darlene Powell, and by network of volunteers, many of which are provided
13 through community service, workers compensation and other volunteers as well as
14 employees of the MHA. The front of the building is occupied by mental health counselors
15 and the Facility provides breakfast and lunch to the homeless and mentally ill. The back of
16 the building of the Facility is a thrift store.

17 10. Plaintiff complained the health department because the Facility is infested with
18 rodents with lunch area tables and floors are often covered in rat feces. Rodents were
19 found within the Facility on a daily basis and Defendant Powell cancelled the pest control
20 service for the Thrift Store portion approximately 3 years ago prior to June 2016.

21 11. There are extremely unhealthy breathing conditions in the sorting rooms and
22 backroom areas to include mold and other mites. Workers had difficulty breathing, skin
23 irritations and rashes, headaches, severe itching as well as other health issues. There is NO
24 ventilation provided at the Facility back rooms, trash, garbage and other combustibles are
25 piled 9 feet high with no provisions in case of fire.

26 12. Most of the fluorescent lights do not work. Hallways, escape routes and other
27 areas are very poorly lit resulting in an extremely unsafe work environment.

1 13. Electrical outlets, junction boxes and fixtures are broken, shorted out and
2 dangerous. Wires can be found sticking out of junction boxes, outlet strips are overloaded
3 and outlets do not work. Water from a leaking roof can often be found dripping from
4 electrical fixtures when raining.

5 14. The HVAC systems at the facility were not in working order. Darlene Powell
6 occupied an office at the Thrift store and at that time she had an air conditioning duct run
7 from one of the HVAC units in the front of the building but refused to repair or use units
8 for the volunteers in the Thrift store.

9 15. Fire and other safety issues can be found throughout the facility. Boxes and
10 garbage are stacked in an unsafe manor through most of the building.

11 16. Bathrooms and other common areas are unsanitary and a health risk. MHA
12 does not provide toilet paper or other personal hygiene items to volunteers or workers.
13 Volunteers have to provide their own toilet paper and hand soap for restroom facilities.
14 There are no paper towels to dry hands, toilet seat covers and the hot air dryers in both
15 restrooms do not work. Additionally, volunteers are forced to provide their own supplies to
16 clean the facility!

17 17. Volunteer workers serving community service were forced to work in these
18 conditions under the threat of being sent back to court for violation of their community
19 service obligations.

20 18. Plaintiff was not properly compensated for meal and rest breaks and often
21 forced to work without proper meal and rest breaks.

22 19. Plaintiff was forced to work overtime hours without compensation.

23 20. Plaintiff complained that claims were filed with the Social Security
24 Administration against MHA and Darlene Powell acting as Representative Payees
25 regarding disbursement of funds and funds being unlawfully withheld from their
26 recipients.

27 21. Plaintiff complained that the people who utilized MHA, including the mentally
28 ill and disabled, frequently inquired about their funds they did not receive. These people

1 were treated in an abusive and inhumane manner, often being threatened, yelled at and told
2 to leave. Records for these people were left throughout the facility with social security
3 numbers and other personal information readily available for anyone to steal. Darlene
4 Powell acted on behalf of MHA as the representative payee for SSI disbursements to the
5 mentally ill and other persons not able to do so for themselves. These persons claim their
6 rents are not being paid in a timely manner and sometime not at all. They are being denied
7 their food cards and funds for essential items. Ms. Powell has intentionally made herself
8 nearly impossible to contact and has been heard threatening the homeless and mentally ill.
9 Darlene Powell ordered Plaintiff and a court ordered volunteer to fraudulently
10 misrepresent themselves as the representative payee's.

11 22. On multiple occasions, donations and other items were removed from facility
12 and/or not arrived from donors. In one specific instance, most of a large donation of
13 household items disappeared between pick up from donor and delivery to MHA. The
14 pickup driver was identified as Darlene Powell's boyfriend and another person only
15 identified as a court ordered volunteer. When Plaintiff and other volunteers asked about
16 those items, plaintiff was told by Darlene Powell to "Get rid of those volunteers asking
17 about the missing product."

18 23. Plaintiff went to personally discuss some of these issues with Jeff Thrash. When
19 she arrived at his office she was told that he would not see her. Only after breaking down
20 in tears and stating that she would not leave until she could see him was she allowed to
21 meet with him.

22 24. Plaintiff was retaliated against and harassed by Darlene Powell for making the
23 aforementioned complaints to the Health Department and trying to resolve these issues
24 with Jeff Thrash.

25 25. When Darlene Powell found out about the plaintiff's complaints to the
26 Health Department she humiliated Plaintiff, abused Plaintiff in a manner so that the
27 workplace became intolerable for Plaintiff, who was vulnerable from a health and
28 psychological standpoint because she is dyslexic and has severe psychological problems.

1 26. Defendants, and each of them, engaged in a course of conduct to humiliate,
2 embarrass and create a hostile work environment and eventually wrongfully terminated
3 Plaintiff.

4
5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 27. Prior to the initiation of this lawsuit, Plaintiff filed a complaint against
7 Defendant MHA with the Department of Industrial Relations, Division of Labor Standard
8 Enforcement ("Department"), Case No. 18-96583 KV.

9 28. Prior to the initiation of this lawsuit Plaintiff filed a complaint with the
10 California Department of Industrial Relations ("Department") pursuant to section
11 12900, et seq. of the California Government Code, alleging the claims described in this
12 complaint. She is requesting the Department to forego any further investigation of her
13 claims in favor of an immediate right to sue letter.

14 29. All conditions precedent to the institution of this lawsuit have been fulfilled.
15 This action is filed within one year of the date of the filing of her complaint with the
16 Department.

17
18 **FIRST CAUSE OF ACTION**

19 (Retaliation in Violation of Government Code section 12900, et seq.)

20 Against all Defendants

21 30. Plaintiff realleges and incorporates by reference paragraphs 1-29, inclusive,
22 of this Complaint as though fully set forth herein.

23 38. Government Code section 12900, et seq. makes it unlawful for an employer
24 to retaliate against an employee for availing herself of the protections against
25 whistleblower afforded by Government Code section 12900, et seq. Defendants, and each
26 of them, violated the provisions of Government Code section 12900, et seq. by retaliating
27 against Plaintiff.

1 39. As a proximate result of the conduct of Defendants, Plaintiff has suffered
2 and will continue to suffer damages in terms of lost wages, potential lost bonuses, lost
3 benefits and other pecuniary loss according to proof. Plaintiff has also suffered and will
4 continue to suffer physical and emotion injuries, including nervousness, humiliation,
5 depression, anguish, embarrassment, shock, pain, discomfort, fatigue, and anxiety.

6 40. In committing the foregoing acts, Defendants are guilty of fraud, oppression,
7 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
8 punitive damages in a sum appropriate to punish and make an example out of Defendants,
9 and each of them.

10 41. The acts of oppression, fraud, and or malice were engaged in by employees
11 of Defendants. Plaintiff alleges that Defendants had advance knowledge of the unfitness
12 of each employee who acted with oppression, fraud, and/or malice or ratified the wrongful
13 conduct for which an award of punitive damages is sought, and or was personally guilty of
14 oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
15 authorization, ratification or act of oppression, fraud, and or malice was committed by or
16 on the part of an officer, director, or managing agent of Defendants, thereby entitling
17 Plaintiff to punitive and exemplary damages against Defendants in accordance with
18 California Civil Code section 3294 in a sum appropriate to punish and make an example of
19 Defendant.

20 42. Government Code section 12900, et seq. provides for an award of reasonable
21 attorneys' fees and costs incurred by a prevailing plaintiff in an action brought under its
22 provisions. Plaintiff has employed and will continue employ attorneys for the initiation and
23 prosecution of this action. Plaintiff has incurred and will continue to incur attorneys' fees
24 and costs herein. Plaintiff is entitled to an award of reasonable attorneys' fees and costs.

1 **SECOND CAUSE OF ACTION**

2 (Wrongful Termination in Violation of Public Policy)

3 Against All Defendants

4 43. Plaintiff realleges and incorporates by reference paragraphs 1-42, inclusive,
5 of this Complaint as though fully set forth herein.

6 44. Plaintiff alleges that Defendant terminated her employment for her making a
7 complaint with the Health Department as well by making her working conditions so
8 intolerable which caused her severe mental and physical health .

9 45. Plaintiff alleges that Defendants terminated Plaintiff's employment in
10 violation of important and well- established public policies, as set forth in various state
11 statutes and Constitutional provisions including but not limited to Labor Code section
12 1102.5.

13 46. As a proximate result of the conduct of Defendants, Plaintiff has suffered
14 and will continue to suffer damages in terms of lost wages, potential lost bonuses, lost
15 benefits, and other pecuniary loss according to proof. Plaintiff has also suffered and will
16 continue to suffer physical and emotion injuries, including nervousness, humiliation,
17 depression, anguish, embarrassment, shock, pain, discomfort, fatigue, and anxiety.

18 47. In committing the foregoing acts, Defendants are guilty of fraud, oppression,
19 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
20 punitive damages in a sum appropriate to punish and make an example out of Defendant.

21 48. The acts of oppression, fraud, and or malice were engaged in by employees
22 of Defendants. Plaintiff alleges that Defendants had advance knowledge of the unfitness of
23 each employee who acted with oppression, fraud, and/or malice or ratified the wrongful
24 conduct for which an award of punitive damages is sought, and/or was personally guilty of
25 oppression, fraud, and or malice. That Defendant had advance knowledge and conscious
26 disregard, authorization, ratification or act of oppression, fraud, and/or malice was
27 committed by or on the part of an officer, director, or managing agent of Defendant,
28 thereby entitling Plaintiff to punitive and exemplary damages against Defendant in

1 accordance with California Civil Code section 3294 in a sum appropriate to punish and
2 make an example of Defendant.

3
4 **THIRD CAUSE OF ACTION**

5 (Intentional Infliction of Emotional Distress)

6 Against All Defendants

7 49. Plaintiff realleges and incorporates by reference paragraphs I-48, inclusive,
8 of this Complaint as though fully set forth herein.

9 50. The conduct of Defendants, and each of them, constitutes extreme and
10 outrageous conduct against the Plaintiff. Defendants engaged in this conduct with the
11 intention of causing emotional distress to Plaintiff, or, alternatively, in reckless disregard
12 of the probability of causing emotional distress to Plaintiff.

13 51. As a proximate result of the conduct of Defendants, Plaintiff suffered and
14 will continue to suffer damages in terms of lost wages, potential lost bonuses, lost benefits,
15 and other and emotion injuries, including nervousness, humiliation, depression, anguish,
16 embarrassment, shock, pain, discomfort, fatigue, and anxiety.

17 52. In committing the foregoing acts, Defendants are guilty of fraud, oppression,
18 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
19 punitive damages in a sum appropriate to punish and make an example out of Defendant.

20 53. The acts of oppression, fraud, and/or malice were engaged in by employees
21 of Defendants. Plaintiff alleges that Defendants had advance knowledge of the unfitness of
22 each employee who acted with oppression, fraud, and/or malice or ratified the wrongful
23 conduct for which an award of punitive damages is sought, and/or was personally guilty of
24 oppression, fraud and/or malice. The advance knowledge and conscious disregard,
25 authorization, ratification or act of oppression, fraud, and/or malice was committed by or
26 on the part of an officer, director, or managing agent of Defendant, thereby entitling
27 Plaintiff to punitive and exemplary damages against Defendant in accordance with
28

1 California Civil Code section 3294 in a sum appropriate to punish and make an example of
2 Defendant.

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4 **FOURTH CAUSE OF ACTION**

5 (Failure to Pay Wages)

6 (Against Defendant ORANGE COUNTY ASSOCIATION OF MENTAL HEALTH and
7 DOES 1-25)

8 54. Plaintiff realleges and incorporates by reference paragraphs I-53, inclusive, of
9 this Complaint as though fully set forth herein.

10 55. Defendants failed to provide and pay for meal periods in violation of Labor
11 Code §512.

12 56. Defendants failed to provide and pay for rest breaks in violation of Labor Code
13 §226.7.

14 57. Defendants failed to pay for overtime hours worked in violation of violation of
15 Labor Code §510 and 29 USC §207.

16 58. Defendants failed to pay all of Plaintiff's wages due immediately upon
17 discharge in violation of Labor Code §201.

18 59. Plaintiff is entitled to statutory penalties as a result of Defendants failure to pay
19 wages

20
21 Wherefore, Plaintiff prays for relief as follows:

22 a.) ON THE FIRST CAUSE OF ACTION:

- 23 1. For general damages in favor of Plaintiff, including emotional distress
24 damages, according to proof at the time of trial;
25 2. For special damages, including lost wages, potential lost bonuses, lost
26 benefits, and other pecuniary loss, according to proof at the time of trial;
27 3. For exemplary damages based on Defendant's willful, fraudulent. and/or
28 oppressive conduct as alleged;

4. For reasonable attorneys' fees incurred in this action pursuant to Government Code section 12900, et seq.;

b.) ON THE SECOND CAUSE OF ACTION:

1. For general damages in favor of Plaintiff, including emotional distress damages, according to proof at the time of trial;
2. For special damages, including lost wages, potential lost bonuses, lost benefits, and other pecuniary loss, according to proof at the time of trial;
3. For exemplary damages based on Defendant's willful, fraudulent, and/or oppressive conduct as alleged;
4. For reasonable attorneys' fees incurred in this action pursuant to Government Code section 12900, et seq.;

c.) ON THE THIRD CAUSE OF ACTION:

1. For general damages in favor of Plaintiff, including emotional distress damages, according to proof at the time of trial;
2. For special damages, including lost wages, potential lost bonuses, lost benefits, and other pecuniary loss, according to proof at the time of trial;
3. For exemplary damages based on Defendant's willful, fraudulent, and/or oppressive conduct as alleged;
4. For reasonable attorneys' fees incurred in this action pursuant to Government Code section 12900, et seq.;

d.) ON THE FOURTH CAUSE OF ACTION:

1. For general damages in favor of Plaintiff for unpaid wages;
2. For special damages, including lost wages, potential lost bonuses, lost benefits, and other pecuniary loss, according to proof at the time of trial;
3. For exemplary damages based on Defendant's willful, fraudulent, and/or oppressive conduct as alleged;

e.) ON ALL CAUSES OF ACTION:

1. For costs of suit;

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2. For such other and further relief as the court deems just and proper;

Dated: June 9, 2017

ALSTON, ALSTON & DIEBOLD

By: Michael Long
Michael Long / Donald A. Diebold
Attorneys for Plaintiff NORMA GARCIA