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Humberto Martinez

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, UNLIMITED JURISDICTION**

Humberto Martinez,

Case No.

Plaintiff,

**COMPLAINT**

v.

1. DISCRIMINATION IN VIOLATION OF THE  
UNIFORMED SERVICES EMPLOYMENT  
AND REEMPLOYMENT RIGHTS ACT OF  
1994
2. VETERAN OR MILITARY STATUS  
DISCRIMINATION IN VIOLATION OF  
GOVERNMENT CODE SECTION 12955

Newport Meat Southern California  
Inc.; a Delaware corporation; and  
DOES 1- 50, inclusive,

**JURY TRIAL DEMANDED**

Defendant.

**PARTIES**

1. Plaintiff HUMBERTO MARTINEZ ("Plaintiff" or "Humberto") is an individual who resides in the State of California.

2. Defendant NEWPORT MEAT SOUTHERN CALIFORNIA, INC. ("Defendant" or "Defendants" or "Newport") is a corporation that conducts business in the State of California, within the County of Orange.

3. Plaintiff is informed and believes and thereon alleges that each of the Defendants named herein has at all times relevant to this action been the officer, agent, employee and/or

1 representative of the remaining Defendants and has acted within the course and scope of such  
2 agency and employment, and with the permission and consent of the Defendants.

3 4. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as  
4 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names under  
5 California Code of Civil Procedure § 474. Plaintiff will amend this Complaint to allege their  
6 true names and capacities when the same are ascertained. Plaintiff is informed and believes and  
7 thereon alleges that each of the fictitiously named Defendants is legally responsible in some  
8 manner for the occurrences herein alleged and that the injuries of Plaintiff as herein alleged have  
9 been proximately caused by the aforementioned Defendants, and each of them.

10 5. Plaintiff is informed and believes and thereon alleges that each of the Defendants  
11 named herein has at all times relevant to this action been the officer, agent, employee and/or  
12 representative of the remaining Defendants and has acted within the course and scope of such  
13 agency and employment, and with the permission and consent of the Defendants.

#### 14 VENUE

15 6. Venue as to each Defendant is proper in this judicial district, pursuant to California  
16 Government Code § 12965. Defendant does business in the County of Orange

#### 17 FACTUAL ALLEGATIONS

18 7. On or around September 29, 2022, Plaintiff went for an interview at Defendant's  
19 Southern California office located at 1669 Hale Avenue Irvine CA 92606.

20 8. Plaintiff arrived for his 11 a.m. interview a few minutes early. Upon arrival, Plaintiff  
21 was greeted by a woman from the Human Resources ("HR") department, who explained to  
22 Plaintiff what the job position entailed. She stated that Plaintiff would be meeting one of  
23 Newport's managers, Armando Zavala.

24 9. The HR woman escorted Plaintiff over to a conference room in another building  
25 where they sat down and discussed the employment position. She explained that work is  
26 mandatory on Saturdays because Plaintiff would be at the "bottom of the totem pole and that the  
27 position was Union". Plaintiff mentioned to the HR woman that he was an active member of the  
28 military.

1 10. The HR woman then introduced Plaintiff to Mr. Zavala.

2 11. Plaintiff and Mr. Zavala went into a conference room to discuss the employment  
3 opportunity.

4 12. After Mr. Zavala echoed the HR woman's explanation of the job position, and added  
5 that the position paid \$25/hr, Plaintiff mentioned to Mr. Zavala that Plaintiff attended drill one  
6 weekend out of every month to fulfill his military duties.

7 13. Plaintiff further mentioned to Mr. Zavala that Plaintiff would be receiving "orders"  
8 that he can submit to Defendant so that Defendant can accommodate Plaintiff's military  
9 schedule.

10 14. Mr. Zavala responded that Defendant could not move forward with the position due  
11 to "Plaintiff's military service interference with the job", even though he thought that Plaintiff  
12 was a "great candidate for the position with strong customer service skills".

13 15. Mr. Zavala then proceeded to conclude the interview, and escorted Plaintiff out of the  
14 building.

15 **FIRST CAUSE OF ACTION**

16 **Discrimination in Violation of the Uniformed Services Employment and Reemployment**  
17 **Rights Act of 1994**

18 16. Plaintiff realleges and incorporates by reference each and every allegation contained  
19 in each and every aforementioned paragraph as though fully set forth herein.

20 17. Plaintiff was, at all material times, an employee covered by the Uniformed Services  
21 Employment and Reemployment Rights Act of 1994 ("USERRA"), which prohibits employers  
22 from discriminating against an employee on the basis of his or her current or former military  
23 status.

24 18. Defendants are, and at all material times were, employers and/or persons within the  
25 meaning of the USERRA and, as such, were barred from discriminating against employees on the  
26 basis of their military status or military reserve service.

1 19. Defendants discriminated against Plaintiff on the basis of his current military status in  
2 violation of the USERRA by engaging in a course of conduct including, but not limited to, the  
3 acts as set forth above.

4 20. As a result of Defendants' conduct against Plaintiff, Plaintiff has suffered, and  
5 continues to suffer, substantial losses incurred in seeking and performing substitute employment  
6 and in earnings, bonuses, deferred compensation and other employment benefits and has suffered,  
7 and continues to suffer embarrassment, harm to reputation, humiliation, emotional distress,  
8 physical harm, and mental anguish all to Plaintiff's damage in an amount according to proof.

9 21. Defendants committed the acts alleged herein maliciously, fraudulently and/or  
10 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive  
11 amounting to malice and/or in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled  
12 to recover punitive damages from Defendants in an amount according to proof.

13 22. As a result of Defendants' conduct as alleged herein, Plaintiff is entitled to reasonable  
14 attorneys' fees and costs of suit as provided by relevant provisions of law.

15 WHEREFORE, Plaintiff requests relief as hereinafter provided.

16 **SECOND CAUSE OF ACTION**

17 **Veteran or Military Status Discrimination – Failure to Hire**

18 **(California Government Code § 12955)**

19 23. Plaintiff incorporates by reference paragraphs 1 through 15 as though fully set  
20 forth herein.

21 24. At all times relevant to this Complaint, the Fair Employment and Housing Act  
22 ("FEHA") and its implementing regulations were in full force and effect and binding on the  
23 Defendant.

24 25. Pursuant to Government Code § 12955 it is unlawful for an employer to  
25 discriminate against job applicants or employees based on their military or veteran status.

26 26. Pursuant to Government Code § 12955(m) veteran or military status includes a  
27 perception that Plaintiff has either of those characteristics or that Plaintiff is associated with a  
28 person who has them, or is perceived to have, either of those characteristics.

27. As set forth above, during his interview Plaintiff told Defendant that Plaintiff attends drill one weekend out of every month to fulfill his military duties. Plaintiff also told Defendant that he receives military service orders that he can submit to Defendant so that Newport can accommodate his military service schedule. Thus, Plaintiff has an active military status covered by FEHA.

28. Defendant was aware of Plaintiff's military status.

29. Despite these facts, Defendant failed to provide or even offer Plaintiff with a single reasonable accommodation(s), including but not limited to adjusting Plaintiff's employment schedule to accommodate his military service schedule. To the contrary, Defendant told Plaintiff that due to his military status interfering with the job position, Defendant could not offer Plaintiff the employment opportunity.

30. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff has suffered damages including, but not limited to, a loss of income and benefits, and has further suffered emotional distress and other general damages.

31. In doing the things alleged herein, the Defendant's conduct was despicable, and the Defendant acted toward Plaintiff with malice, oppression, fraud, and with willful and conscious disregard of Plaintiff's rights, entitling Plaintiff to an award of punitive damages. The Defendant's conduct described herein was engaged in by managing agents for the Defendant and/or ratified by managing agents.

WHEREFORE, Plaintiff prays for relief as set forth below.

### **PRAYER FOR JUDGMENT**

Plaintiff prays for judgment as follows:

1. For special, general, and compensatory damages according to proof at trial;
2. For punitive damages according to proof at trial;
3. For reasonable attorneys' fees, expert witness fees, and other litigation expenses pursuant to California Government Code § 12965(b);

4. For all other relief the Court deems appropriate and just.
5. Total damages of not less than \$260,000.00, according to proof.

Dated: December 12, 2022



By: \_\_\_\_\_  
Jonathan J. Delshad  
Attorney for Plaintiff Humberto Martinez