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7 Attorney for Plaintiff

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9  
10 IN AND FOR THE COUNTY OF RIVERSIDE

11 TONY SMITH

12 Plaintiff,

13 vs.

14 ACME CONTAINER CORPORATION, and  
15 Does 1 through 20, inclusive

16 Defendants

Case No:

**FIRST AMENDED COMPLAINT FOR  
DAMAGES: TORTIOUS DISCHARGE  
IN VIOLATION OF PUBLIC POLICY;  
VIOLATION OF LABOR CODE §6310;  
INTENTIONAL INFLECTION OF  
EMOTIONAL DISTRESS; PUNITIVE  
DAMAGES**

**JURY TRIAL DEMANDED**

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19 **COMES NOW** plaintiff TONY SMITH and alleges as follows:

20 1. Defendants Doe 1 through Doe 20, inclusive, are sued herein under fictitious names.  
21 Their true names and capacities are unknown to plaintiff. When their true names and capacities  
22 are ascertained, plaintiff will amend this complaint by inserting their true names and capacities  
23 herein. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named  
24 defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's  
25 damages as herein alleged were proximately caused by those defendants. Each reference in this  
26 complaint to "defendant," "defendants," or a specifically named defendant refers also to all  
27 defendants sued under fictitious names.  
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1 suspension and discharge were wrongful and arose as a direct result of, and in retaliation for, his  
2 raising safety concerns at a safety meeting conducted by defendants, as well as his reporting  
3 safety complaints to Cal/OSHA.

4 9. Accordingly, plaintiff is informed and believes, and thereon alleges that his suspension  
5 and discharge were for reasons extraneous to the employment contract and for the purpose of  
6 frustrating plaintiff's enjoyment of the benefits of that contract. Furthermore, the termination of  
7 plaintiff's employment was in contravention of the substantial public policy embodied in statutes  
8 such as Labor Code §§1102.5 and 6310.

9 10. As a direct, foreseeable and proximate result of defendants' wrongful acts, plaintiff has  
10 suffered, and continues to suffer, substantial losses of earnings and employment benefits,  
11 humiliation, embarrassment, mental and emotional distress and discomfort, all to his damage in  
12 an amount according to proof.

13 11. Defendants' acts as herein before described were committed maliciously, fraudulently  
14 or oppressively with the intent of injuring plaintiff, and/or with a willful and conscious disregard  
15 of plaintiff's right to work in an environment free from retaliation. Because these acts were  
16 carried out by managerial employees in a despicable, deliberate and intentional manner, plaintiff  
17 is entitled to recover punitive damages in a sum sufficient to punish and deter future such  
18 conduct. It is further alleged that the acts of defendant's Human Resources Manager Mary Jones  
19 as herein before described, were made in her capacity as managing agent of defendant ACME  
20 CONTAINER and/or were acts that were ratified by defendant ACME CONTAINER.

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22 **SECOND CAUSE OF ACTION**

23 (Violation of Labor Code §6310)

24 12. Plaintiff realleges and incorporates the allegations of Paragraphs 1 through 5 of this  
25 complaint, as well as plaintiff's First Cause of Action as if fully set forth herein.

26 13. The suspension and termination of plaintiff from his employment with defendants as  
27 alleged herein, constitutes a violation of Labor Code §6310 which prohibits an employer from,  
28 *inter alia*, suspending or discharging an employee in retaliation for making a safety complaint to

1 his or her employer and/or the agency which is commonly referred to as Cal/OSHA.

2 14. As a direct, foreseeable and proximate result of defendants' wrongful acts, plaintiff has  
3 been damaged in a manner and amount within the jurisdictional limits of this court, and as more  
4 specifically set forth in the Prayer of this amended complaint.

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6 **THIRD CAUSE OF ACTION**

7 (Intentional Infliction of Emotional Distress)

8 15. Plaintiff realleges and incorporates the allegations of Paragraphs 1 through 5 of this  
9 complaint, as well as plaintiff's First and Second Causes of Action as if fully set forth herein.

10 16. Defendants, acting on their own, and through their agents and employees, engaged in  
11 the acts heretofore described, deliberately and intentionally in order to cause plaintiff severe  
12 emotional distress; alternatively, plaintiff alleges that such conduct was done in reckless  
13 disregard of the probability of said conduct causing plaintiff severe emotional distress.

14 17. The foregoing conduct did, in fact, cause plaintiff to suffer extreme and severe  
15 emotional distress. As a proximate result of said conduct, plaintiff has suffered embarrassment,  
16 anxiety, humiliation, and emotional distress in an amount in excess of the minimum jurisdiction  
17 of this court, the precise amount to be proven at trial.

18 18. Defendants' acts as herein before described were committed maliciously, fraudulently  
19 or oppressively with the intent of injuring plaintiff, and/or with a willful and conscious disregard  
20 of plaintiff's right to work in an environment free from retaliation. Because these acts were  
21 carried out by managerial employees in a despicable, deliberate and intentional manner, plaintiff  
22 is entitled to recover punitive damages in a sum sufficient to punish and deter future such  
23 conduct. It is further alleged that the acts of defendant's Human Resources Manager Sharon  
24 Richards as herein before described, were made in her capacity as managing agent of defendant  
25 ACME CONTAINER and/or were acts that were ratified by defendant ACME CONTAINER.

26 **WHEREFORE**, based on the foregoing, plaintiff prays for relief against defendants, and  
27 each of them, as follows:

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**FIRST CAUSE OF ACTION**

- 1. For special damages including lost wages, lost employee benefits, bonuses, vacation benefits, and general damages in an amount in excess of the minimum jurisdictional limits of this court;
- 2. For punitive damages in a sum sufficient to deter;
- 3. For attorney fees under Code of Civil Procedure §1021.5, or as otherwise allowable by law;

**SECOND CAUSE OF ACTION**

- 4. For special damages including lost wages, lost employee benefits, bonuses, and vacation benefits;
- 5. Reinstatement to plaintiff's previous position with defendant, or a substantially similar position, with restoration of all seniority rights and/or benefits;

**THIRD CAUSE OF ACTION**

- 6. For special damages including lost wages, lost employee benefits, bonuses, vacation benefits, and general damages in an amount in excess of the minimum jurisdictional limits of this court;
- 7. For punitive damages in a sum sufficient to deter;

**AS TO ALL CAUSES OF ACTION**

- 8. For costs of suit incurred;
- 9. For prejudgment interest;
- 10. For such other and further relief as this court may deem just and proper, including attorney fees as authorized by law.

Dated: March 22, 1999

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**JAMES W. JOHNSTON**  
Attorney for Plaintiff,  
TONY SMITH

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Plaintiff hereby demands a jury trial on all issues.

Dated: March 22, 1999

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Attorney for Plaintiff,  
TONY SMITH