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OF ORIGINAL FILED  
Los Angeles Superior Court

MAR 29 2012

John A. Swain, Executive Officer/Clerk  
By Dorothy Swain, Deputy  
DOROTHY SWAIN

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8 *Attorneys for Plaintiff*

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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES

12 REYMUNDO MARTINEZ,

13 Plaintiff,

14 v.

15 L.A. DESSERTS, INC (dba IVY AT THE  
16 SHORE and THE IVY) and DOES 1 to 20,  
inclusive

17 Defendants.

Case No. BC481758

COMPLAINT FOR DAMAGES

- (1) Employment Discrimination (Disability)  
[Cal. Gov. Code § 12940(a)]  
(2) Impermissible Non-Job Related Inquiry  
[Cal. Gov. Code § 12940(f)]  
(3) Failure to Accommodate Disability  
[Cal. Gov. Code § 12940(m)]  
(4) Failure to Engage in the Interactive  
Process [Cal. Gov. Code § 12940(n)]  
(5) Termination in Violation of Public Policy

DEMAND FOR JURY TRIAL

Judge: \_\_\_\_\_  
Dept: \_\_\_\_\_

1 PLAINTIFF Reymundo Martinez (“Martinez” or “Plaintiff”) alleges as follows:

2 **INTRODUCTION**

3 1. This action seeks remedies for unlawful discrimination that Martinez experienced  
4 in his position as a busser for L.A. Desserts, dba Ivy at the Shore or The Ivy, and Does 1 to 20,  
5 inclusive (collectively “The Ivy” or “Defendants”). In terminating Martinez, The Ivy  
6 discriminated against Martinez on the basis of disability.

7 **JURISDICTION AND VENUE**

8 2. Venue is proper in this Court because the illegal acts against the Plaintiff took  
9 place in the County of Los Angeles. Defendant, The Ivy also maintains an office in this county.

10 3. The amount in controversy herein is within the jurisdiction of this Court.

11 **PARTIES**

12 4. Plaintiff Martinez is, and at all times mentioned herein, was an individual with a  
13 physical disability and medical condition. Martinez is a resident of Los Angeles County,  
14 California. The Ivy employed Martinez in Los Angeles County, California, for approximately 5  
15 months, until January 26, 2011. At all times during his employment Martinez was fully qualified  
16 for his position and was performing his job duties well. The Ivy subjected Martinez to  
17 discrimination on the basis of his physical disability and medical condition.

18 5. Defendants are a for-profit business. Defendants operate at least two restaurants in  
19 Los Angeles County: The Ivy at 113 North Robertson Blvd., Los Angeles California, 90048, and  
20 Ivy at the Shore at 1535 Ocean Ave, Santa Monica, California, 90401.

21 6. The true names and capacities, whether individual, corporate, associate, or  
22 otherwise, and the true involvement of Defendants sued here as Does 1 through 20, inclusive, are  
23 unknown to Plaintiff who therefore sues these Defendants by fictitious names and will amend this  
24 Complaint to show the true names, capacities and involvement when ascertained. Plaintiff is  
25 informed and believes and alleges that each of the Defendants designated as a Doe is responsible  
26 in some manner for the events and happenings referred to here, and that Plaintiff's injuries and  
27 damages were proximately caused by these Defendants.

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1 FACTUAL ALLEGATIONS

2 7. On or about August 20, 2010, The Ivy hired Martinez as a busser.

3 8. At all times during his employment Martinez was fully qualified for his position  
4 and was performing his job duties well.

5 9. In or about December 2010, Martinez was diagnosed with a physical disability and  
6 medical condition. Martinez began taking medication to treat his physical disability and medical  
7 condition on or about January 15, 2011. The medication caused side effects. On or about  
8 January 17, 2011, Martinez requested the day off from work because of the side effects. On or  
9 about January 18, management called Martinez in to work, Martinez reported to work, and the  
10 side effects of Martinez's medical treatment prevented him from finishing the shift. Management  
11 deceived Martinez to take the rest of the week off.

12 10. On or about January 21, 2011, Martinez provided Human Resources with medical  
13 documentation from his doctor. The doctor requested that The Ivy "please facilitate patient  
14 request on work schedule change." Additionally, the doctor explained that Martinez could  
15 perform his functions despite his "chronic medical condition requiring on-going life long  
16 treatment." The doctor noted that Martinez may "experience side effects with medication."

17 11. The Ivy asked Martinez to identify the nature of his disability.

18 12. The Ivy did not accommodate Martinez's requests for accommodation.

19 13. The Ivy failed to engage in the interactive process.

20 14. On January 26, 2011, The Ivy terminated Martinez alleging he was unable to  
21 professionally carry out his duties. The termination letter was the first time Martinez received  
22 negative feedback regarding his work performance.

23 EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS

24 15. Plaintiff timely exhausted his administrative remedies by filing complaints against  
25 The Ivy with the California Department of Fair Employment and Housing (DFEH) and thereafter  
26 received right-to-sue notices.

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**FIRST CAUSE OF ACTION**

**Employment Discrimination (Disability)**

**Violation of Cal. Gov. Code § 12940(a)**

(By Plaintiff against all Defendants)

16. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

17. During the course of his employment with The Ivy, Plaintiff suffered from a serious physical disability and medical condition that requires ongoing treatment and limited major life activities. Plaintiff's condition falls under the definition of "disability" under California law.

18. The Ivy knew that Plaintiff had a physical disability and medical condition.

19. Plaintiff was able to perform the essential job duties with reasonable accommodation for his physical disability and medical condition. At all times during his employment, Plaintiff was otherwise qualified to do his job.

20. The Ivy discriminated against Plaintiff based on his physical disability and/or medical condition.

21. The Ivy subjected Plaintiff to differential treatment in the terms and conditions of his employment because of his physical disability and/or medical condition.

22. The Ivy terminated Plaintiff because of his physical disability and/or medical condition.

23. As a result of Defendants' conduct, Plaintiff has suffered damages including economic losses and emotional distress, in an amount to be determined at trial.

24. The Ivy's actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's rights.

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**SECOND CAUSE OF ACTION**

**Impermissible Non-Job Related Inquiry**

**Violation of Cal. Gov. Code § 12940(f)**

25. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

26. During the course of his employment with The Ivy, Plaintiff suffered from a serious physical disability and medical condition that requires ongoing treatment and limited major life activities. Plaintiff’s condition falls under the definition of “disability” under California law.

27. The Ivy knew that Plaintiff had a physical disability and/or medical condition.

28. Plaintiff was able to perform the essential job duties with reasonable accommodation for his physical disability and medical condition. At all times during his employment, Plaintiff was otherwise qualified to do his job.

29. The Ivy made non-job related inquires regarding the nature and severity of his disability and/or medical condition.

30. As a result of Defendants’ conduct, Plaintiff has suffered damages including economic losses and emotional distress, in an amount to be determined at trial.

31. The Ivy’s actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff’s rights.

**THIRD CAUSE OF ACTION**

**Failure to Accommodate Disability**

**Violation of Cal. Gov. Code § 12940(m)**

32. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

33. During the course of his employment with The Ivy, Plaintiff suffered from a serious physical disability and medical condition that requires ongoing treatment and limited major life activities. Plaintiff’s condition falls under the definition of “disability” under California law.

1 34. The Ivy knew that Plaintiff had a physical disability and medical condition.

2 35. Plaintiff was able to perform the essential job duties with reasonable  
3 accommodation for his physical disability and medical condition. At all times during his  
4 employment, Plaintiff was otherwise qualified to do his job.

5 36. The Ivy failed to reasonably accommodate Plaintiff.

6 37. As a result of Defendants' conduct, Plaintiff has suffered damages including  
7 economic losses and emotional distress, in an amount to be determined at trial.

8 38. The Ivy's actions were willful, malicious, fraudulent, and oppressive, and were  
9 committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's  
10 rights.

11 **FOURTH CAUSE OF ACTION**

12 **Failure to Engage in the Interactive Process**

13 **Violation of Cal. Gov. Code § 12940(n)**

14 39. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

15 40. During the course of his employment with The Ivy, Plaintiff suffered from a  
16 serious physical disability and medical condition that requires ongoing treatment and limited  
17 major life activities. Plaintiff's condition falls under the definition of "disability" under  
18 California law.

19 41. The Ivy knew that Plaintiff had a physical disability and medical condition.

20 42. Plaintiff was able to perform the essential job duties with reasonable  
21 accommodation for his physical disability and medical condition. At all times during his  
22 employment, Plaintiff was otherwise qualified to do his job.

23 43. Plaintiff attempted to obtain reasonable accommodations. Plaintiff was willing to  
24 participate in the interactive process to determine reasonable accommodation.

25 44. The Ivy failed to engage in a timely good-faith interactive process with Plaintiff to  
26 determine an effective reasonable accommodation.

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**JURY DEMAND**

54. Plaintiff demands a trial by jury.

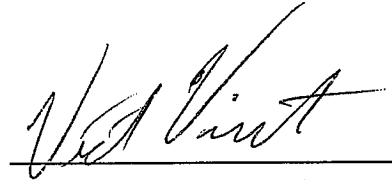
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

- 55. For general damages according to proof;
- 56. For special damages according to proof;
- 57. For punitive damages for each cause of action;
- 58. For the cost of suit;
- 59. For interest at the maximum legal rate on all sums awarded;
- 60. For reasonable attorney fees and expenses of this litigation;
- 61. For any additional and further relief this Court deems proper.

Dated: March 29, 2012

Respectfully submitted,



Thomas Saenz  
Victor Viramontes  
MEXICAN AMERICAN LEGAL DEFENSE  
AND EDUCATIONAL

*Attorneys for Plaintiff*