

LAW OFFICE OF THOMAS F. COLEMAN

FOR IMMEDIATE RELEASE
DECEMBER 6, 1991

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Appeal is Filed from Court Ruling Declaring Sexual Orientation Ordinance to be Invalid

Attorneys for Jim Delaney filed an appeal today seeking to overturn a decision by Los Angeles Superior Court Judge Diane Wayne in which she ruled that the City of Los Angeles did not have the authority to pass a law prohibiting sexual orientation discrimination in employment.

In his lawsuit against Superior Fast Freight, Delaney alleged that he had been subjected to years of sexual harassment and discrimination by coworkers and supervisors. He sought damages under a Los Angeles ordinance that outlaws sexual orientation discrimination by private employers.

Superior Fast Freight urged Judge Wayne to dismiss the case, arguing that the city's ordinance was preempted by state law. On August 26, 1991, Judge Wayne indicated her intention to dismiss the case. She ruled that all local ordinances, such as Los Angeles Municipal Code Section 49.72, are invalid. On October 9, 1991, Judge Wayne officially dismissed the case.

Los Angeles attorneys Thomas F. Coleman and John P. Spitals are representing Delaney on his appeal. The American Civil Liberties Union Foundation of Southern California will be filing an amicus brief in support of the appeal. Los Angeles City Attorney James Hahn and San Francisco District Attorney Arlo Smith will also file friend-of-the-court briefs to defend the legality of local anti-discrimination laws.

The decision by Judge Wayne has statewide ramifications. Several other cities have enacted sexual orientation anti-discrimination laws, including San Diego, Laguna Beach, Long Beach, West Hollywood, Santa Monica, San Francisco, Berkeley, Davis, Hayward, Oakland, and Sacramento. An appellate court will now decide the legality of these ordinances.

"Judge Wayne's ruling has deprived my client of his right to a jury trial. The ruling also undermines the rights of all employees in Los Angeles to be free from sexual orientation discrimination and harassment," Coleman said.

APPELLANT'S OPENING BRIEF WILL BE FILED ON ~~DECEMBER 11~~ APRIL 24
COURT OF APPEAL, SECOND DISTRICT, CASE # B063458

"In view of the Governor's veto of AB 101, Judge Wayne's ruling is like rubbing salt into a wound," Coleman added. AB 101 would have prohibited sexual orientation discrimination statewide.

"Governor Wilson said that a new state law was unnecessary because employees could use existing laws such as these local ordinances," Coleman observed. Unfortunately, the Governor's legal opinion has not impressed every judge in the state.

"Fortunately, this is not a matter of first impression," Spitals noted. Less than two years ago, San Francisco Superior Court Judge Ira A. Brown ruled that cities do have the authority to pass such laws. However, since that decision was not appealed, the Delaney case will be the first time the Court of Appeal will rule on the issue.

Delaney filed a lawsuit against his employer in 1990. The complaint was served on Dorothy Castro, an owner of Superior Fast Freight.

In his lawsuit, Delaney alleged that beginning in 1980, he became the victim of outrageous sexual comments and actions by his coworkers and supervisors. The conduct escalated in 1984 and became continuously and progressively worse, ultimately causing Delaney to have an emotional breakdown.

After repeated complaints to his supervisors fell on deaf ears, Delaney sought outside help from a radio talk show psychologist. He believed that if he vented his frustration publicly, management at Superior Fast Freight would finally do something to stop the harassment.

Delaney's plea for help backfired. When the company learned that Delaney had made threatening remarks on the radio, he was summarily terminated.

In Delaney's lawsuit, he cited numerous examples of sexual harassment and discrimination to which he was subjected. A copy of his complaint is attached.

Although Superior Fast Freight filed an answer in which it denied the allegations of sexual misconduct, several of Delaney's coworkers testified in their depositions that sexual harassment had, in fact, occurred.

"Superior Fast Freight has succeeded, at least temporarily, in denying Mr. Delaney his day in court," Coleman said. "The right to a jury trial is fundamental in our society and victims of sexual orientation discrimination and sexual harassment must not be denied that right."

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 20

DATE 08/26/91

HONORABLE Diane Wayne

JUDGE

I. R. MATTHEWS-DOTY DEPUTY CLERK

HONORABLE #6

JUDGE PRO TEM

V. GALLUCCI

CT ATT / Deputy Sheriff

NONE

Reporter / ERM (Parties and counsel checked if present)

8:30 am

C750189

Jim Delaney

Counsel for Plaintiff

MICHAEL P. CALOF (x)

vs

Superior Fast Freight

Counsel for Defendant

PAUL R. CAUSEY (x)

NO LEGAL FILE

NATURE OF PROCEEDINGS.

MOTION OF DEFENDANT, SUPERIOR FAST FREIGHT, FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, FOR SUMMARY ADJUDICATION OF ISSUES;

The motion comes on for hearing and is argued.

The Court grants defendant's motion as to the 1st cause of action - Rojo v. Kliger, 52 C3rd 65 and 78 interprets Government Code Section 12993 (c) as preempting all local (not common law) anti discrimination laws such as LAMC 49.72.

Defendant's motion is granted as to the 3rd and 4th causes of action - These causes of action allege physical injuries and hence, exclusive jurisdiction is with WCB, Labor Code 3602 and Cole v. Fair Oaks 43 Cal 3rd 148. Cases cited by defendant are inopposite - Warner concerned activity by employees not employers. Alioto was held to concern an area (i.e. lease contracts not covered by the state laws.

Moving party to give notice and prepare a judgment for the court's signature.

MCLAUGHLIN AND IRVIN LAWYERS

PAUL R. CAUSEY

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Handwritten signature

MICHAEL P. CALOF, INC.

Counsel at Law

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Encino, Calif. 91436

(818) 966-0732

MINUTES ENTERED

B063458

NILSSON, ROBBINS, DALGARN,
BERLINER, CARSON & WURST
JOHN P. SPITALS
201 North Figueroa Street, 5th Floor
Los Angeles, California 90012-2628
(213) 977-1001

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COUNTY CLERK

THOMAS F. COLEMAN
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Los Angeles, California 90065
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JIM DELANEY,)	Case No. C 750 189
)	
Plaintiff,)	
)	
v.)	
)	<u>NOTICE OF APPEAL</u>
SUPERIOR FAST FREIGHT, and)	
DOES 1 through 50, inclusive,)	
)	
Defendants.)	

FILE RECEIVED
CK # 35161

NOTICE IS HEREBY GIVEN THAT Plaintiff JIM DELANEY appeals from the judgment of Judge Diane Wayne in favor of Defendant SUPERIOR FAST FREIGHT and against Plaintiff JIM DELANEY entered herein on October 9, 1991 and from the whole thereof.

DATED: December 6, 1991

By John P. Spitals
John P. Spitals
Attorney for Plaintiff

NILSSON, ROBBINS, DALGARN,
BERLINER, CARSON & WURST
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PROOF OF SERVICE

I am a citizen of the United States, and am employed in the County of Los Angeles in the office of a member of the bar of this Court at whose directions this service was made. I am over the age of 18, and not a party to the within action. My business address is: 201 North Figueroa Street, Fifth Floor, Los Angeles, California 90012.

On December 6, 1991, I served the foregoing document described as:

NOTICE OF APPEAL

on the interested parties in this action, addressed as follows:

Paul Raymond Causey
Mark R. Attwood
McLaughlin and Irvin
801 South Grand Avenue
Third Flook
Los Angeles, CA 90017-4621

XXX (BY MAIL) and placing a true copy thereof in a sealed envelope and personally placing such envelope with postage fully prepaid for collection and mailing on the above-referenced date following the ordinary business practices of this office. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, would be deposited with the United States Postal Service at Los Angeles on the above-referenced date. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (BY TELECOPIER) and causing a true copy thereof to be sent by telecopier to the interested parties listed above.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on December 2, 1991 at Los Angeles, California.



Lucinda Festa

NILSSON, ROBBINS, DALGARN,
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CALOF
Suite 555

for Plaintiff

ORIGINAL FILED

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COUNTY CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

11 JIM DELANEY,)

12 Plaintiff,)

13 vs.)

14 SUPERIOR FAST FREIGHT, and)
15 DOES 1 through 50, inclusive,)

16 Defendants.)

CASE NO. C 759 189

FIRST AMENDED COMPLAINT
FOR DAMAGES

- 1. DISCRIMINATION-LOS ANGELES MUNICIPAL CODE SECTION 49.72
- 2. DISCRIMINATION-LABOR CODE SECTIONS 1101 AND 1102
- 3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
- 4. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

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18 Plaintiff, Jim Delaney, alleges:

19
20 GENERAL ALLEGATIONS

21
22 1. Plaintiff, Jim Delaney (hereafter referred to as
23 "Delaney"), was an employee with the defendant, Superior Fast
24 Freight, holding the position of a computer operator.

25 2. The defendant, Superior Fast Freight (hereafter referred
26 to as "SFF"), is a California corporation licensed to do business
27 in the State of California with its principal place of business
28 in the county of Los Angeles.

1 3. The true names and capacities of Does 1 through 50,
2 inclusive, are currently unknown to plaintiff, who, therefore,
3 sues said defendants by such fictitious names. Plaintiff will
4 seek leave of court to amend his complaint to set forth the true
5 names and capacities when ascertained.

6 4. Plaintiff is informed and believes and thereon alleges
7 that at all times herein mentioned, each of the defendants named
8 as Does 1 through 50, inclusive, is the agent and/or employee of
9 the defendant, SFF, and at all times was acting within the course
10 and scope of such agency and employment.

11 5. Plaintiff, Delaney, had been a stellar employee in
12 character and performance with SFF for over 17 years. Plaintiff
13 began working for SFF in or about 1970 and worked through in or
14 about 1978 whereupon plaintiff resigned and went to court
15 reporter school.

16 6. On or about February 4, 1980, plaintiff was rehired by
17 SFF to perform the duties of a computer operator.

18 7. Plaintiff is a bisexual man whose sexual preference at no
19 time affected his performance at work.

20 8. Beginning in or about 1980, plaintiff became the victim
21 of outrageous, aggrevious, lewd, and sexual comments by his co-
22 workers and supervisors all directed toward the plaintiff and all
23 made during the course and scope of said employment. This
24 conduct escalated in or about 1984 by becoming continuously and
25 progressively worse. The following paragraphs illustrate the
26 type of comments and conduct made by plaintiff's co-workers and
27 supervisors toward the plaintiff.

28 9. Several male co-workers would often suggest that the

1 plaintiff perform sexual favors for them, including oral
2 copulation.

3 10. Several male co-workers would comment on plaintiff's
4 clothing and jewelry, asking the plaintiff "how many blow jobs he
5 had to give to get such nice jewelry."

6 11. Female co-workers would often refer to the plaintiff as
7 the "queen of the department" and/or "here comes Superior's sweet
8 one."

9 12. Plaintiff's supervisor, Gene Miller, would place fans on
10 plaintiff's desk and remark that he was "giving the plaintiff a
11 blow job."

12 13. Several employees would constantly suggest that the
13 plaintiff get on his knees and "show them what he (the plaintiff)
14 could do" and/or for the plaintiff to meet other workers in a
15 company vehicle to perform sexual activities with them.

16 14. While leaving work for the day, several co-workers would
17 often make lewd and suggestive comments as to plaintiff's sexual
18 preferences and question the plaintiff as to what turned him on
19 in bed.

20 15. Many co-workers would place sexual articles on
21 plaintiff's desk including condoms, false eyelashes, and finger
22 nails.

23 16. Several male co-workers would regularly approach the
24 plaintiff and wave their crotches in plaintiff's face.

25 17. Plaintiff was regularly harassed by his co-workers and
26 supervisors which comments would include references to
27 plaintiff's body, such as his genitalia, chest, buttocks, mouth
28 and lips.

1 18. At all times herein mentioned, the plaintiff would
2 reject these harassing sexual comments and would request that
3 they stop.

4 19. By and through the conduct of defendant, co-workers and
5 supervisors, the plaintiff, Delaney, was generally harassed;
6 creating an environment that made it extremely difficult to work
7 at SFF.

8 20. As a result of said harassment and discrimination,
9 plaintiff began to experience mental stress and anguish every day
10 he went to work due to the interactions he had with his co-
11 workers and supervisors.

12 21. In or about February 1989, plaintiff informed his
13 supervisors, Stephanie Ferrindino and Jim Syler, of said
14 harassment and discrimination and thereafter repeatedly asked
15 them to take care of the problem.

16 22. At no time did the defendant, SFF, take any steps in
17 order to prevent said discrimination and harassment from
18 occurring.

19 23. Thereafter, on or about September 14, 1989, the
20 plaintiff was wrongfully terminated from his employment with SFF
21 without good cause.

22 24. Plaintiff, Delaney, is informed and believes and thereon
23 alleges that from in or about 1987 through the present, the
24 defendant, SFF, was aware of its employees' comments and conduct
25 and knowingly and willingly permitted and ratified said conduct
26 by failing to take steps necessary to prevent further injury to
27 the plaintiff.
28

FIRST CAUSE OF ACTIONFOR DISCRIMINATION-LOS ANGELES MUNICIPAL CODE SECTION 49.72

25. Plaintiff realleges the allegations set forth in Paragraphs 1 through 24 and incorporates the same herein by reference.

26. From in or about 1984 and prior thereto, the defendant, SFF, became aware of certain discriminatory and harassing conduct on the part of its employees and supervisors toward the plaintiff, based solely upon his sexual orientation.

27. At no time during these months did the defendant, SFF, take any steps necessary to prevent this discrimination and harassment from occurring. Instead, the defendant permitted its employees to discriminate against the plaintiff with respect to his work conditions and other privileges.

28. Said conduct on the part of the defendant, SFF, constitutes unlawful employment practices pursuant to Los Angeles Municipal Code, Chapter IV, Article 12, Section 49.72.

29. As a proximate result of the discriminatory practices of the defendant, SFF, plaintiff has been injured and suffers general damages in an amount not yet determined. Plaintiff will amend his complaint when the same becomes known to him or on proof thereof at trial.

30. Plaintiff is informed and believes and thereon alleges that the defendant, SFF, was aware of said discriminatory and harassing conduct on the part of its employees and supervisors and was aware of the stress that it was creating on the plaintiff

1 in his work place. Defendant, SFF, effectively ratified the
2 outrageous and unlawful conduct of its employees which,
3 therefore, justifies the awarding of punitive damages. Moreover,
4 failure to take steps necessary to avoid this conduct was
5 willful, malicious, oppressive, outrageous, and in reckless
6 disregard of plaintiff's injuries, and further justifies the
7 awarding of exemplary damages.

8
9 SECOND CAUSE OF ACTION

10 FOR DISCRIMINATION-LABOR CODE SECTIONS 1101 AND 1102
11

12 31. Plaintiff realleges the allegations set forth in
13 Paragraphs 1 through 24 and incorporates the same herein by
14 reference.

15 32. From in or about 1987 to September 14, 1989, the date of
16 plaintiff's termination, the defendant, SFF, by and through its
17 supervisors and employees, harassed and discriminated against the
18 plaintiff, based upon plaintiff's sexual orientation.

19 33. At no time did the defendant attempt to prevent said
20 discrimination from occurring. In fact, plaintiff is informed
21 and believes and thereon alleges that the defendant had, in
22 effect, an unwritten policy of permitting discrimination and
23 harassment by its supervisors and employees toward its bisexual
24 and homosexual employees.

25 34. Said conduct on the part of the defendant, SFF, tended
26 to control and direct the political activities and affiliations
27 of the plaintiff with respect to his sexual orientation in
28 contravention of the laws of this state.

1 Municipal Code;

2 3. For punitive damages in an amount to be determined at
3 trial;

4

5 SECOND CAUSE OF ACTION

6

7 4. For general damages in an amount to be determined at
8 trial;

9 5. For any statutory damages recoverable under this Chapter;

10

11 THIRD CAUSE OF ACTION

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13 6. For general damages in an amount to be determined at
14 trial;

15 7. For punitive damages in an amount to be determined at
16 trial;

17

18 FOURTH CAUSE OF ACTION

19

20 8. For general damages in an amount to be determined at
21 trial;

22

23 FOR ALL CAUSES OF ACTION

24

25 9. For costs of suit herein incurred;

26 10. For reasonable attorneys' fees as provided for in Los
27 Angeles Municipal Code, Chapter IV, Article 12, Section 49.76;

28 11. For such other and further relief that this court may

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deem just and proper.

DATED: November 13 , 1990.

LAW OFFICES OF
MICHAEL P. CALOF, INC.

By: Michael P. Calof

MICHAEL P. CALOF
Attorney for Plaintiff

1 111 North Hill Street, Los Angeles, California defendant Superior
2 Fast Freight will move the court as follows:

3 1. For summary judgment on the Complaint in favor of
4 defendant and against plaintiff. Said motion will be made on the
5 grounds that the Complaint has no merit and there is no triable
6 issue as to any material fact with respect thereto.

7 2. Alternatively, if for any reason summary judgment
8 cannot be had, for an order adjudicating that the following
9 issues in this action are established without substantial
10 controversy as against plaintiff, and that no further proof
11 thereof shall be required at trial of this action, and that any
12 final judgment in this action, shall, in addition to any matters
13 determined at trial, be based upon the issues so established:

14 ISSUE NO. 1:

15 That plaintiff's First Cause of Action under Los
16 Angeles Municipal Code § 49.72 is preempted by
17 California Government Code § 12940 et seq., and

18 ISSUE NO. 2:

19 That plaintiff's Third and Fourth Causes of Action for
20 intentional and negligent infliction of emotional
21 distress are barred by the exclusivity provisions of
22 the Workers' Compensation Act.

23 This motion will be based on this notice, the complete
24 files and records of this action, the separate statement of
25 undisputed material facts required by CCP § 437c(b), the points
26 and authorities attached to this notice and served and filed

27 ///

28 ///

1 herewith, and the declarations of Paul R. Causey, John G. Greene
2 and Jeffrey A. Zolonz attached to this notice and served and
3 filed herewith.

4 DATED: July 23, 1991

MCLAUGHLIN AND IRVIN
PAUL RAYMOND CAUSEY
MARK R. ATTWOOD

6
7 By Paul R. Causey
8 Paul Raymond Causey
9 Attorneys for Superior Fast
10 Freight
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