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**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

ALAN GAMINO,

Applicant

vs

MACYS INC DBA BLOOMINGDALES LLC

Defendants

CASE # ADJ17287003
ADJ17287502

**PETITION FOR DISCRIMINATION
BENEFITS PURSUANT TO LABOR CODE
SECTION 132(a)**

TO THE WORKERS' COMPENSATION APPEALS BOARD:

COMES NOW Applicant and the Attorney of Record, WORKERS DEFENDERS LAW GROUP, and claiming benefits against the employer MACYS INC DBA BLOOMINGDALES LLC for discrimination benefits pursuant to California Labor Code Section I 32(a) alleges as follows:

I

On 01/24/2023, Applicant, while employed by MACYS INC DBA BLOOMINGDALES LLC (hereinafter – “Employer”), as an SALE PERSON sustained injury to his psych, and other body systems as a result of STRESS AND STRAIN due to repetitive movement over period of time, while in the course and scope of his employment.

II.

On or about 02/08/2023 Applicant filed claim for workers compensation benefits, and was receiving medical treatment. On 5/23/2023 in retaliation for filing a claim, Applicant was terminated in an apparent violation of Section 132A of the labor code under the bogus claim of “job abandonment” while being attending his industrial doctor.

III.

1 APPLICANT IS ENTITLED TO MULTIPLE BENEFITS

2 Upon the Board's Finding of wrongful discrimination, Applicant is entitled to a 50% penalty
3 assessed against benefits paid or due up to \$10,000.

4 In addition, Applicant demands back wages and other benefits. The Board may order back
5 and front wages until reinstatement. *BARNS vs. WCAB* (1994) 59 CCC 156; *Eubanks v. WCAB*
6 (1994) 59CCC223; *United Airlines v. WCAB* (1998) 63 CCC 1445. This can include payment of
7 the Employer's portion of the Unemployment tax, reimbursement of group health benefits, seniority
8 and cost of living increases, and increased retirement benefits.

9 If an Award of increased retirement benefits would violate ERIS provisions, the Board can
10 order, instead, a dollar Award for the lost value of the enhanced retirement benefits.`

11 *Eubanks v. WCAB, supra*:

12 "The employee's retirement account must be brought up-to-date if possible.

13 Otherwise, she is to receive the amount of money which would have been credited
14 for her retirement."

15 Finally, pursuant to the Supreme Court's decision in *Currie v. WCAB* (2001) 66 CCC 208,
16 24 Cal. 4111 1109, Applicant must be awarded all pre-judgment interest on all back pay due
17 Applicant. The Court stated that:

18 "... the Award must include all pre-Award interest on all back pay from the date it
19 accrued pursuant to CC Section 3287(a). Interest is recoverable on each salary or
20 pension payment from the date it fell due.

21 "CC Section 3287(a) states 'Every person who is entitled to recover damages
22 certain, or capable of being made certain by calculation, and the right to recover
23 which is vested in him on a particular day, is entitled also to recover interest thereon
24 from that day.' "

25 The Supreme Court's Holding in that case was:

26 "We agree that CC Section 3287(a) applies to back pay Awards made under LC
27 Section 132a ... without the pre-judgment interest, the back pay remedy may lose a
28 significant portion of its value, and the Employee is left 'less than fully reimbursed'
including:

WHEREFORE, Applicant requests that he be awarded benefits under Labor Code Section 132a,
including:

- 1 ▪ Increased compensation;
- 2 ▪ Reinstatement;
- 3 ▪ Reimbursement for lost wages and work benefits caused by said Defendant's act such work
- 4 benefits to include, but not limited to, cost-of-living increases, accrued vacation and sick
- 5 leave benefits, the Employer's portion of the Unemployment tax, enhancement of retirement
- 6 benefits;
- 7 ▪ And pre-Award interest on all back pay.

8 Dated: 6/13/2023

9
10 Respectfully Submitted:
11 WORKERS DEFENDERS LAW GROUP

12 _____
13 BY NATALIA FOLEY, ESQ
14 Attorney for Applicant



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8 **WORKERS' COMPENSATION APPEALS BOARD**
9 **STATE OF CALIFORNIA**

10 ALAN GAMINO,

11 Applicant

12 vs

13 MACYS INC DBA BLOOMINGDALES LLC

14 Defendants
15

CASE # ADJ17287003
ADJ17287502

VERIFICATION

16 I, NATALIA FOLEY, declare as follows

17 I am one of the attorneys for Applicant in this action. I have read the enclosed PETITION
18 FOR DISCRIMINATION BENEFITS PURSUANT TO LABOR CODE SECTION 132 (A) and
19 know its contents.

20 All facts alleged in the PETITION FOR DISCRIMINATION BENEFITS PURSUANT TO
21 LABOR CODE SECTION 132 (A) CASE are true of my own personal knowledge or with respect
22 to those facts which are alleged upon information and belief, I am informed of the same and believe
23 the same to be true.

24 I declare under penalty of perjury that the foregoing is true and correct and that this
25 declaration was executed at Anaheim, California.

26 Respectfully submitted,

27 Dated:

28 Respectfully Submitted:
LAW OFFICES OF NATALIA FOLEY.

BY NATALIA FOLEY, ESQ
Attorney for Applicant



1 E-Filer: NATALIA FOLEY, ESQ
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5 **PROOF OF SERVICE**

6 *State Of California*
7 *County of Los Angeles*

8 I am employed in the county of Los Angeles, State of California.
9 I am over the age of 18 years and not a party to the within action; my business address is:
751 S Weir Canyon Rd Ste 157-455
Anaheim CA 92808

10 I am readily familiar with the firm's business practice of processing correspondence for mailing. In the
11 ordinary course of business, the correspondence would be deposited with the United States Postal Service on
12 that same day with postage thereon fully prepaid at my business address above. 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 the date of deposit for mailing as listed.

13 On 6/13/2023 I served the foregoing documents described as:

14 **PETITION FOR DISCRIMINATION**
15 **BENEFITS PURSUANT TO LABOR CODE SECTION 132(a)**

16 on the interested parties in this action, by placing a true copy thereof in a sealed envelope with postage
thereon fully prepaid, in the United States Mail at my address stated above, addressed as follows:

17 WCAB (AHM)
18 1065 N PACIFIC CENTER DR STE 170
ANAHEIM CA 92806


Mr. Edison Andrade
Sedgwick
PO Box 14450
Lexington, KY 40512

20 ALAN GAMINO
21 8220 W Norton Ave Apt 3
West Hollywood CA 90046

Jillelynn Roderick, Esq
Fellman & Associates
5777 W. Century Blvd., Suite 1195
Los Angeles, CA 90045

22
23 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct.

24 Executed on: 6/13/2023 at Los Angeles, CA

25 
26 By IRINA PALEES,
27 Legal Assistant to Attorney
28 Natalia Foley, Esq