

1 **MICHAEL A. CONGER, ESQUIRE (State Bar #147882)**
2 **LAW OFFICE OF MICHAEL A. CONGER**
3 P.O. Box 9374
4 16236 San Dieguito Road, Suite 4-14
5 Rancho Santa Fe, California 92067
6 Telephone: (858) 759-0200
7 Facsimile: (858) 759-1906

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/05/2014 at 03:14:52 PM
Clerk of the Superior Court
By Rachel Harmon, Deputy Clerk

8 Attorney for Plaintiff Steven L. Perkins

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 STEVEN L. PERKINS,

12 Plaintiff,

13 v.

14 CITY OF SAN DIEGO, and DOES 1-40,
15 Inclusive,

16 Defendants.

CASE NO: 37-2014-00041348-CU-CR-CTL

COMPLAINT FOR DISABILITY
DISCRIMINATION

17 1. Plaintiff Steven L. Perkins ("Perkins") is a resident of San Diego, California, and
18 a former employee of defendant City of San Diego.

19 2. Defendant City of San Diego ("the City") is a municipal corporation subject to the
20 Fair Employment and Housing Act ("FEHA").

21 3. The true names or capacities, whether individual, corporate, associate, or
22 otherwise, of defendants DOES 1 to 40, inclusive, are unknown to plaintiff, who therefore sues
23 said defendants by such fictitious names.

24 4. Plaintiff is informed and believes and thereon alleges that each of the defendants
25 designated herein as a DOE is responsible in some manner for the events and happenings herein
26 referred to, and caused injury and damages proximately thereby to plaintiff as herein alleged.
27 Plaintiff will seek leave of court to amend this complaint to set forth the true names and
28 capacities of such named defendants when their identities become known to him.

1 13. After the technician left, Perkins had a gastrointestinal episode caused by the 2003
2 colectomy and needed to immediately defecate. The only available restroom was located in the
3 same building as the testing facility near the elevator of that building. Because no testing facility
4 personnel were available for Perkins to notify that he needed to immediately use the restroom,
5 Perkins indicated to his supervisor, Greg Edwards, that he needed to use the restroom and would
6 be right back to commence the urine collection process. Mr. Edwards raised no issue.

7 14. Upon his return from the restroom minutes later, Mr. Edwards refused to allow
8 Perkins to take the drug test.

9 15. As a result of the City's refusal to allow Perkins to provide a urine sample, he was
10 terminated on April 7, 2014, for "refusing to provide a urine sample," a false statement. (See,
11 e.g., 49 C.F.R. §§ 40.63, 40.191.) At no time did Perkins refuse to provide a urine sample at any
12 time, including on April 1, 2014.

13 16. Perkins at all times complied with the City's Drug Testing Procedures, including
14 but not limited to Administrative Regulation 97.00, and with all directives of his employer.

15 17. Perkins has also exhausted all available administrative remedies.

16
17

FIRST CAUSE OF ACTION

18 **DISABILITY DISCRIMINATION—DISPARATE TREATMENT—IN VIOLATION OF**
19 **CALIFORNIA GOVERNMENT CODE SECTION 12940, SUBDIVISION (a)**

20 **(Against CITY OF SAN DIEGO and DOES 1-10)**

21 18. Perkins incorporates all previous paragraphs of this complaint as if fully set forth
22 here.

23 19. The City is and was an employer subject to the (FEHA).

24 20. Perkins was an employee of the City.

25 21. The City, and Perkins' supervisors, knew that Perkins had a disability (permanent
26 removal of 12 inches of his colon) which limited Perkins' ability to work without frequent
27 restroom breaks.

28 22. Perkins was able to perform the essential job duties with reasonable

1 accommodation of his physical disability.

2 23. The City discharged Perkins.

3 24. Perkins' disability, which required him to use the restroom to defecate before he
4 provided a urine sample, was a substantial motivating reason for the City's decision to discharge
5 Perkins. Indeed, the City told Perkins that he was terminated for leaving the testing area to use
6 the restroom, even though no rule or procedure prevented Perkins being able to defecate prior to
7 providing a urine sample. In other words, according to the City, Perkins should have soiled
8 himself rather than use the restroom.

9 25. Perkins was harmed.

10 26. The City's conduct was a substantial factor in causing Perkins' harm.

11
12 **SECOND CAUSE OF ACTION**

13 **DISABILITY DISCRIMINATION—FAILURE TO ACCOMMODATE—IN VIOLATION**
14 **OF CALIFORNIA GOVERNMENT CODE SECTION 12940, SUBDIVISION (m)**
15 **(Against CITY OF SAN DIEGO and DOES 11-20)**

16 27. Perkins incorporates all previous paragraphs of this complaint as if fully set forth
17 here.

18 28. The City is and was an employer subject to the FEHA.

19 29. Perkins was an employee of the City.

20 30. The City, and Perkins' supervisors, knew that Perkins had a disability (permanent
21 removal of 12 inches of his colon) which limited Perkins' ability to work without frequent
22 restroom breaks.

23 31. Perkins was able to perform the essential job duties with reasonable
24 accommodation of his physical disability.

25 32. The City failed to provide Perkins a reasonable accommodation for his physical
26 condition.

27 33. Perkins was harmed.

28 34. The City's refusal to provide reasonable accommodation was a substantial factor

1 in causing Perkins' harm.

2
3 **THIRD CAUSE OF ACTION**

4 **DISABILITY DISCRIMINATION—FAILURE TO ENGAGE IN INTERACTIVE**
5 **PROCESS—IN VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTION**
6 **12940, SUBDIVISION (n)**

7 **(Against CITY OF SAN DIEGO and DOES 11-20)**

8 35. Perkins incorporates all previous paragraphs of this complaint as if fully set forth
9 here.

10 36. The City is and was an employer subject to the FEHA.

11 37. Perkins was an employee of the City.

12 38. The City, and Perkins' supervisors, knew that Perkins had a disability (permanent
13 removal of 12 inches of his colon) which limited Perkins' ability to work without frequent
14 restroom breaks.

15 39. Perkins requested the City make reasonable accommodation for his physical
16 condition so that he would be able to perform the essential job requirements, including
17 submitting to random drug tests.

18 40. Perkins was willing to participate in an interactive process to determine whether
19 reasonable accommodation could be made so that he would be able to perform the essential job
20 requirements.

21 41. The City failed to participate in a timely good-faith interactive process with
22 Perkins to determine whether a reasonable accommodation could be made.

23 42. Perkins was harmed.

24 43. The City's failure to engage in a good-faith interactive process was a substantial
25 factor in causing Perkins' harm.

26 WHEREFORE, plaintiff prays for the following:

- 27 1. For general damages according to proof;
28 2. For special damages according to proof;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. For reinstatement to his job;
- 4. For pre-judgment interest;
- 5. For costs of the suit incurred by the plaintiff;
- 6. For reasonable attorney fees incurred by the plaintiff;
- 7. For appropriate injunctive relief; and
- 8. For such additional and further relief as this Court may deem just.

Dated: December 5, 2014

LAW OFFICE OF MICHAEL A. CONGER

By: 

Michael A. Conger
Attorney for Plaintiff

Jury trial demanded