

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

<div style="text-align: center;">David Gardner, Plaintiff, v. Union Pacific Railroad Co., Defendant.</div>	<div style="text-align: center;">Case No. _____ COMPLAINT (JURY TRIAL DEMANDED)</div>
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Plaintiff David Gardner files this Complaint against Defendant Union Pacific Railroad Co. for damages resulting from its violation of the Americans with Disabilities Act, 42 U.S.C § 12101 *et seq.*, as amended (“ADA”).

PARTIES

1. Gardner is an individual who, during the events giving rise to his claims herein, resided and worked for Union Pacific in this district.
2. Union Pacific is a railroad carrier engaged in interstate commerce. It operates trains throughout this district, and is headquartered in Omaha, Nebraska.

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331.
4. This Court has personal jurisdiction over Union Pacific because Union Pacific maintains a significant business presence within this district, and Union Pacific’s acts and omissions giving rise to Gardner’s claim occurred in this district.
5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Gardner’s claims occurred in this district.

FACTUAL ALLEGATIONS

6. Gardner is a veteran with service-related PTSD.
7. Gardner was hired by Union Pacific in 2014.
8. In 2015, Gardner was being harassed by coworkers.
9. The harassment exacerbated Gardner's PTSD.
10. In May of 2015, Gardner took medical leave for his exacerbated PTSD.
11. Gardner worked hard to recover.
12. In January of 2016, he was cleared to return to work.
13. Gardner's return to work displeased the coworkers who had been harassing him.
14. The coworkers therefore filed a bogus complaint against Gardner.
15. Union Pacific did not adequately investigate the bogus complaint.
16. Instead, Union Pacific used the bogus complaint to justify removing Gardner from service and telling him that he not only needed to undergo a medical examination but also that he needed to release his medical records to it.
17. When Gardner did not satisfy its demands, Union Pacific terminated him.
18. The EEOC thoroughly investigated the foregoing and found that there is probable cause to believe Union Pacific violated the ADA.

CAUSES OF ACTION

COUNT I DISABILITY DISCRIMINATION

19. Section 12112(a) of the ADA prohibits employers from discriminating against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation,

job training, and other terms, conditions, and privileges of employment.

20. At all relevant times, Gardner was an individual with a disability under the ADA.

21. Gardner is a qualified individual under the ADA.

22. Union Pacific discriminated against Gardner on the basis of disability when it terminated him.

23. Because Union Pacific violated 42 U.S.C. § 12112, Gardner has suffered and will continue to suffer loss of income, emotional distress, and other damages in an amount to be determined by the trier of fact. Gardner is also entitled to attorneys' fees and costs incurred in connection with these claims.

24. Union Pacific committed the above-alleged acts with reckless or deliberate disregard for Gardner's rights. As a result, Gardner is entitled to punitive damages.

COUNT II IMPERMISSIBLE MEDICAL EXAMINATION

25. At all relevant times, Gardner was an individual with a disability under the ADA.

26. Section 12112(d)(1) of the ADA defines "discriminat[ing] against a qualified individual on the basis of disability" as including certain medical examinations and inquiries.

27. Section 12112(d)(4) of the ADA prohibits employers from "requir[ing] a medical examination and [from]. . . mak[ing] inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity"

28. Union Pacific discriminated against Gardner on the basis of disability by subjecting him to a medical examination and making inquiries into his private therapy medical records, in violation of 42 U.S.C. § 12112(d)(4).

29. Because Union Pacific violated 42 U.S.C. § 12112, Gardner has suffered and will continue to suffer loss of income, emotional distress, and other damages in an amount to be determined by the trier of fact. Gardner is also entitled to attorneys' fees and costs incurred in connection with these claims.

30. Union Pacific committed the above-alleged acts with reckless disregard or deliberate disregard for Gardner's rights and safety. As a result, Gardner is entitled to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Gardner prays for judgment against Union Pacific as follows:

31. That the practices of Union Pacific complained of herein be determined and adjudged to constitute violations of the ADA;

32. For an injunction against Union Pacific and its directors, officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;

33. For an award of damages arising from loss of past and future income, emotional distress, and other compensatory damages in an amount to be determined by the trier of fact;

34. For an award of pre-judgment interest, as provided by law;

35. For an award of Gardner's costs, disbursements and attorneys' fees

pursuant to law;

- 36. For all relief available under the ADA;
- 37. For such other and further relief available by statute; and
- 38. For such other and further relief as the Court deems just and equitable.

Dated: November 18, 2019

JONES GRANGER LAW FIRM



Marc A. Zito
TBA 22279400
mzit@jonesgranger.com
10,000 Memorial Drive, Suite 888
P.O. Box 4340
Houston, Texas 77210
(713) 668-0230
(713) 956-7139 Fax

THE MOODY LAW FIRM

s/ Nicholas D. Thompson
Nicholas D. Thompson
(admitted Pro Hac Vice)
nthompson@moodyrrlaw.com
500 Crawford Street, Suite 200
Portsmouth, VA 23704
(757) 673-9161 Work
(757) 477-0991 Cell
(757) 397-7257 Fax

ATTORNEYS FOR PLAINTIFF