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on behalf of himself and similarly situated employees

FILED
Superior Court Of California,
Sacramento
06/22/2020
amocanu
By _____, Deputy
Case Number:
34-2020-00280999

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JAMES GERKE, individually and as an
aggrieved employee pursuant to the Private
Attorneys General Act (PAGA),

Plaintiffs,

vs.

G&E REAL ESTATE MANAGEMENT
SERVICES, INC.; NEWMARK KNIGHT
FRANK; Does 1 through 20, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES:

1. Violation of California Unfair Competition Law (Business & Professions Code § 17200 *et seq.* ;
2. Retaliation in Violation of Labor Code § 1102.5;
3. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff JAMES GERKE ("Plaintiff"), on behalf of himself and all other similarly situated
2 employees hereby files this Complaint against Defendants G&E REAL ESTATE MANAGEMENT
3 SERVICES, INC., a Delaware Corporation; NEWMARK KNIGHT FRANK, a business entity of
4 unknown form; Does 1 through 20 (collectively referred to as "Defendants"). Plaintiff alleges the
5 following:

6 **INTRODUCTION**

7 1. This complaint is brought by Plaintiff seeking individual damages and PAGA
8 penalties for failure to provide accurate wage statements, failure to provide compliant Wage Theft
9 Notices, requiring employees to sign illegal employment contracts, and derivative civil and statutory
10 penalties. Plaintiff seeks these damages and penalties, plus interest and attorney's fees, on behalf of
11 himself and similarly situated employees.

12 2. Plaintiff also seeks damages for his illegal and retaliatory termination following
13 complaints that he made to his employer regarding being asked to perform illegal fire pump testing
14 in violation of state regulations.

15 3. During all relevant times, Plaintiff and similarly situated employees worked for
16 Defendants as employees. Defendants issued wage statements to Plaintiff and similarly situated
17 employees that did not comply with California law because, among other things, they did not include
18 all hours worked, and the rate of pay.

19 **JURISDICTION AND VENUE**

20 4. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
21 violations of California Labor Code §§ 226, 226.3, 213, 2698 *et seq.*, Business and Professions Code
22 § 17200 *et seq.*

23 5. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
24 of the wrongful acts and violations of law asserted herein occurred within Sacramento County.

25 **PARTIES**

26 6. Plaintiff JAMES GERKE is over the age of eighteen (18) and is a resident of the State
27 of California and a former employee of Defendants.
28

1 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant G&E REAL
2 ESTATE MANAGEMENT SERVICES, INC. is now and/or at all times mentioned in this
3 Complaint a Delaware Limited Liability Company and the owner and operator of an industry,
4 business and/or facility licensed to do business and actually doing business in the State of California.

5 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant NEWMARK
6 KNIGHT FRANK is a business entity of unknown form and origin that is doing business in the State
7 of California.

8 9. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
9 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
10 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
11 were at all relevant times advised by skilled California employment law attorneys and knew the
12 requirements of the California Labor Code with respect to employee wage statements, requirements
13 regarding provision of Wage Theft Notices, and employment agreements.

14 10. Defendants proximately caused Plaintiff and similarly situated employees to be
15 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
16 Complaint.

17 11. Plaintiff is further informed and believes, and thereon alleges, that each of the
18 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
19 joint venturer of the remaining defendants and was acting within the course and scope of that
20 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
21 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
22 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
23 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
24 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
25 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
26 through 20, inclusive, when they have been determined.

1 12. On May 26, 2020, Plaintiff filed his Labor Code § 2699.3 Private Attorney General
2 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”).
3 The LWDA has not yet responded to the PAGA Notice.

4 **GENERAL ALLEGATIONS**

5 13. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 13 as
6 though fully set forth herein.

7 14. Plaintiff and similarly situated employees worked for Defendant(s) as non-exempt
8 employees in California. Plaintiff and similarly situated employees were paid on hourly basis.
9 Upon hire, Plaintiff and similarly situated employees were required to sign an employment
10 agreement with several unconscionable and illegal provisions. For example, the employment
11 contract states that any disputes regarding employment must be adjudicated without a jury in the
12 state of New York, although Plaintiff and similarly situated employees worked only in the State
13 of California. See **Exhibit A** (copy of employment agreement). This is in direct violation of
14 Labor Code section 925. The Agreement states that final wages will be withheld unless the
15 employee signs a “general unconditional release.” The illegality of the contract is a violation of
16 Labor Code section 432.5.

17 15. At the commencement of their employment, Plaintiff and similarly situated
18 employees received deficient wage theft notices in violation of Labor Code section 2810.5. The
19 notice is confusing because it does not clearly indicate which entity employs Plaintiff and
20 similarly situated employees nor who the correct Workers’ Compensation carrier is.

21 16. Additionally, during their employment Plaintiff and similarly situated employees
22 received incomplete and inaccurate wage statements, which is a violation of Labor Code section
23 226. Specifically, the wage statements received by Plaintiff and similarly situated employees do
24 not indicate the legal name of the employer, the address of the employer, nor the hours worked at
25 each hourly rate, nor the applicable rates.

26 17. Plaintiff also experienced illegal retaliation in violation of Labor Code section
27 1102.5. Specifically, Plaintiff possesses a California Office of State Fire Marshal issued Fire
28 Pump Test license, but the site at which he was employed did not possess a building site license

1 (Type-L). Because of this, it was illegal for Plaintiff to perform Fire Pump Testing at that
2 location. Plaintiff informed his employer of this fact and refused to perform the tests. In
3 retaliation by Defendants, Plaintiff was written up, placed on administrative leave, and then
4 involuntarily terminated, all because of his protest and refusal to perform illegal Fire Pump
5 Testing. This was in violation of Labor Code section 1102.5.

6 18. Defendants' uniform policy and practice not to provide Plaintiff and similarly
7 situated employees with compliant wage statements and Wage Theft Notices is evidenced by
8 Defendants' business records.

9 19. Defendants, as a matter of corporate policy, practice and procedure, intentionally,
10 knowingly and systematically required their employees to sign illegal employment agreements
11 with several unconscionable and illegal provisions.

12 **FIRST CAUSE OF ACTION**
13 **(Unfair Competition)**

14 20. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 19 as
15 though fully set forth herein.

16 21. Unfair competition shall mean and include any unlawful, unfair or fraudulent
17 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
18 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
19 Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

20 22. Defendants committed numerous violations of the California Labor Code
21 throughout the employment relationship.

22 23. Plaintiff is also informed and believes and thereon alleges that such actions and/or
23 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
24 Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products*
25 *Co.*, 23 Cal. 4th 163 (2000).

26 24. As a direct and legal result of Defendant's conduct, as alleged herein, pursuant to
27 the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
28 restitution as a result of its unfair business practices, including, but not limited to, public

1 injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§
2 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet
3 unascertained but subject to proof at trial, for four (4) years from the filing of this Action.
4

5 **SECOND CAUSE OF ACTION**
6 **(Retaliation in Violation of Labor Code section 1102.5)**

7 25. Plaintiff hereby incorporates by reference Paragraphs 1 through 30 of this
8 Complaint as if fully set forth herein and for a cause of action alleges as follows:

9 26. California Labor Code § 1102.5 prohibits retaliation against an employee for
10 disclosing information to a person with authority over the employee, where the employee has
11 reasonable cause to believe that the information discloses a violation of state or federal statute or
12 a violation or noncompliance with a state or federal rule or regulation. Labor Code § 1102.5
13 further prohibits retaliation against an employee for refusing to participate in an activity that
14 would result in a violation of state or federal statute or a violation or noncompliance with a state
15 or federal rule or regulation.

16 27. Plaintiff informed Defendants as to his concerns regarding their requiring him to
17 perform fire pump testing at his worksite in violation of regulations and based on guidance he
18 received directly from the State Fire Marshal's Office.

19 28. Following Plaintiff's notification to Defendants of the above-referenced concerns,
20 Plaintiff was retaliated against by disciplining him, then placing him on suspension, and
21 ultimately terminating his employment.

22 29. As a direct, foreseeable, and proximate result of Defendant's retaliatory actions,
23 Plaintiff has suffered and continues to suffer substantial losses in earnings and job benefits, all to
24 his damage herein in an amount not less than the minimal jurisdiction amount of this court, the
25 amount of which will be established at trial.

26 30. As a direct, foreseeable, and proximate result of Defendant's unlawful actions,
27 Plaintiff has suffered emotional distress, humiliation, shame, and embarrassment, all to the
28 Plaintiff's damage in an amount to be established at trial.

FOURTH CAUSE OF ACTION
(Civil Penalties Pursuant to PAGA § 2698 *et seq.*)

31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully set forth herein.

32. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the California Labor Code, including but not necessarily limited to, those Labor Code violations identified above.

33. On or about May 26, 2020, Plaintiff sent written notice to the LWDA regarding Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. As of the date of the filing of this First Amended Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted his administrative remedies under PAGA and may proceed in this Court.

34. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and all Aggrieved Employees for all violations of the Labor Code from May 26, 2019, through trial on this matter.

35. Defendants' conduct, as alleged herein, violated various sections of the California Labor Code, including but not limited to, the following:

36. Labor Code section 432.5 prohibits employers from "require[ing] any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." As discussed above, during the period Claimants and similarly situated employees were employed by Defendant they were required to sign employment contracts that contained illegal provisions. This is in violation of the Labor Code.

37. Labor Code section 925 provides that "[a]n employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following: (1) Require the employee to adjudicate outside of California a claim arising in California; (2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California." During the

1 period Claimants and similarly situated employees were employed by Defendant they were
2 required to sign employment contracts that required them to adjudicate any claims in the State of
3 New York. This is in violation of the Labor Code.

4 38. Labor Code section 226 requires employers to furnish to employees with “an
5 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
6 the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
7 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
8 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
9 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
10 and only the last four digits of his or her social security number or an employee identification
11 number other than a social security number, (8) the name and address of the legal entity that is
12 the employer . . . and (9) all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee” For the
14 reasons stated above, Defendants failed to comply with these requirements with respect to
15 Claimant and similarly situated employees in violation of the Labor Code.

16 39. Labor Code section 2810.5 requires employers “[a]t the time of hiring” to
17 “provide to each employee a written notice . . . containing the following information: (A) The
18 rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,
19 commission, or otherwise, including any rates for overtime, as applicable. (B) Allowances, if
20 any, claimed as part of the minimum wage, including meal or lodging allowances. (C) The
21 regular payday designated by the employer in accordance with the requirements of this code. (D)
22 The name of the employer, including any “doing business as” names used by the employer. (E)
23 The physical address of the employer’s main office or principal place of business, and a mailing
24 address, if different. (F) The telephone number of the employer. (G) The name, address, and
25 telephone number of the employer’s workers’ compensation insurance carrier. (H) That an
26 employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave;
27 may not be terminated or retaliated against for using or requesting the use of accrued paid sick
28 leave; and has the right to file a complaint against an employer who retaliates. . . . (3) If the

1 employer is a temporary services employer, as defined in Section 201.3, the notice described in
2 paragraph (1) must also include the name, the physical address of the main office, the mailing
3 address if different from the physical address of the main office, and the telephone number of the
4 legal entity for whom the employee will perform work, and any other information the Labor
5 Commissioner deems material and necessary.” Defendants did not provide this notice with all the
6 required information to Claimant and similarly situated employees upon hire or when changes
7 occurred. This is in violation of the Labor Code.

8 40. Labor Code section 1102.5 prohibits retaliation against an employee for disclosing
9 information to a person with authority over the employee, where the employee has reasonable
10 cause to believe that the information discloses a violation of state or federal statute or a violation
11 or noncompliance with a state or federal rule or regulation. California Labor Code § 1102.5
12 further prohibits retaliation against an employee for refusing to participate in an activity that
13 would result in a violation of state or federal statute or a violation or noncompliance with a state
14 or federal rule or regulation. Claimant informed Defendants as to his complaints about
15 harassment and discrimination in the workplace, as well as complaints about wage and hour
16 violations, and filed a PAGA Notice with the LWDA. Following Claimant’s notification to
17 Defendants of the above-referenced concerns, Claimant was retaliated against and wrongfully
18 discharged. This is in violation of the Labor Code.

19 41. Pursuant to Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745, 761,
20 233 Cal. Rptr. 3d 502, 513 (Ct. App. 2018), reh’g denied (June 13, 2018), review denied (Aug. 8,
21 2018), Claimant intends to seek civil penalties for all violations of the California Labor Code,
22 whether he experienced them personally or not.

23 24 DAMAGES

25 WHEREFORE Plaintiff requests relief as follows:

- 26 1. A jury trial;
27 2. For penalties and liquidated damages under the California Labor Code according to
28 proof allowed by law;

3. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;
4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
5. For injunctive relief;
6. For an award of prejudgment and post-judgment interest; and
7. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: June 22, 2020

Castle Law: California Employment Counsel

By: 

Kent L. Bradbury

Timothy B. Del Castillo

Attorneys for Plaintiff JAMES GERKE

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Dated: June 22, 2020

By: Kent L. Bradbury
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Attorneys for Plaintiff JAMES GERKE