

1 **SHALCHI BURCH LLP**
TRAVIS J. BURCH (SBN 216175)
2 TB@SHALCHIBURCHLLP.COM
ALI SHALCHI (SBN 239164)
3 AS@SHALCHIBURCHLLP.COM
23 Corporate Plaza Drive, Suite 150
4 Newport Beach, California 92660
Telephone: (949) 359-0334
5 Facsimile: (949) 326-0083

6 Attorneys for Plaintiff
Drew Tartala
7

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
11/30/2021
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**

10 DREW TARTALA, individually, and on behalf of
the State of California and Aggrieved Employees,
11 as a private attorney general,

12 Plaintiff,

13 vs.

14 ACTION URGENT CARE INC., a California
Corporation; and GENEVIEVE HISMATULLIN,
15 an individual

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

Case No.: **CGC-21-596837**

COMPLAINT FOR:

1. FEHA – RACIAL DISCRIMINATION [GOV. CODE SECTION 12940(a)];
2. FEHA – WORK ENVIRONMENT HARASSMENT DIRECTED AT PLAINTIFF [GOV. CODE SECTION 12923 and 12940(j)];
3. FEHA – WORK ENVIRONMENT HARASSMENT DIRECTED AT OTHERS [GOV. CODE SECTION 12923 and 12940(j)];
4. FEHA – RETALIATION [GOV. CODE SECTION 12940(h)];
5. RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;
6. RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6;
7. RETALIATION IN VIOLATION OF LABOR CODE SECTION 232.5;
8. COMMON LAW WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
9. FAILURE TO REIMBURSE BUSINESS EXPENSES [LAB. CODE SECTIONS 2800/2802];
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”) – LABOR CODE

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

**SECTION 2698 *ET SEQ.* FOR
VIOLATIONS OF LABOR CODE
SECTIONS 201, 202, 203, 204, 207,
208, 226(a), 226.3, 226.7, 510, 511,
512(a), 558, 558.1, 1174(d), 1194,
1198, 1198.5 1199, 2800/2802, 3550,
3551**

Plaintiff, Drew Tartala, individually, and on behalf of the State of California as an aggrieved employee pursuant to Labor Code Section 2698 *et seq.* (“PAGA”), hereby brings his complaint, demanding a trial by jury, against the above-named Defendants and states and alleges as follows:

THE PARTIES

1. At all times mentioned herein, Plaintiff, Drew Tartala, was an individual and a resident of the County of Santa Clara, California. At all relevant times, Plaintiff was employed by Defendant Action Urgent Care Inc. Plaintiff is, and at all relevant times was, an “aggrieved employee” as that term is defined in California Labor Code Section 2699, subdivision (c).

2. At all times mentioned herein, Defendant, Action Urgent Care Inc., was a California corporation, doing business in the State of California, County of San Francisco. At the time the causes of action arose, Defendant Action Urgent Care Inc. was Plaintiff’s employer.

3. At all times mentioned herein, Defendant Genevieve Hismatullin was an individual doing business in San Francisco and working as an officer or director or managing agent of Defendant Action Urgent Care Inc.

JURISDICTION AND VENUE

4. Defendants have sufficient contacts with California or otherwise purposefully avail themselves of the benefits in the State, so as to render the exercise of jurisdiction over each by a California Court consistent with traditional notions of fair play and substantial justice.

///

///

1 5. Venue is proper in this Court because Plaintiff suffered injuries and damages
2 alleged herein in San Francisco County. Additionally, aggrieved employees work for Defendant
3 Action Urgent Care Inc. in San Francisco and, Defendants transact business San Francisco County.

4 **PAGA EXHAUSTION AND FEHA RIGHT TO SUE**

5 6. Plaintiff has met all jurisdictional requirements in order to exhaust administrative
6 remedies prior to filing his PAGA claim herein. Specifically, he electronically filed a PAGA notice
7 of claims and theories of the Labor Code violations with Labor and Workforce Development
8 Agency (“LWDA”) and Division of Occupational Health and Safety (“Cal-OSHA”) at least 65
9 days prior to filing the instant action. Additionally, he sent the PAGA claim notice to the employer
10 via certified mail.

11 7. Plaintiff provided PAGA notice on or about August 31, 2021. However, the LWDA
12 did not express any interest in investigating the matter. Consequently, Plaintiff and other aggrieved
13 employees were subject to violations of the following Labor Code Sections, entitling them to
14 penalties under PAGA: Labor Code Sections 201, 202, 203, 204, 207, 208, 226(a), 226.3, 226.7,
15 510, 511, 512(a), 558, 558.1, 1174(d), 1194, 1198, 1198.5 1199, 2800/2802, 3550, 3551.

16 8. Plaintiff timely obtained a Right to Sue Letter from the DFEH on November 18, 2021 in
17 order to pursue his FEHA claims herein.

18 **GENERAL ALLEGATIONS**

19 9. Plaintiff began working for Defendant Action Urgent Care Inc. on or about August
20 24, 2020. Defendant hired Plaintiff to work in the position of Full Cycle Recruiter and then
21 eventually as Human Resources Manager, and finally as Vice President of Human Resource
22 Operations.

23 11. Not long after joining Defendant Action Urgent Care Inc., Plaintiff noted that
24 Defendant was violating numerous Labor Code sections. Plaintiff would notify Defendant of
25 these violations and recommend a course correction. For example, Plaintiff flagged a possible
26 illegal unauthorized alternative week schedule and paying trainees below the minimum wage.
27 Sometimes, Defendant would agree, and other times, Defendant would ignore the issue.
28

1 12. Compounding the labor code violations, Plaintiff noted that Defendant was
2 engaged in violations of the Fair Employment and Housing Act. Notably, Defendant expressed
3 hiring preferences for healthy looking “slimmer” individuals while by passing “fat” people and
4 “old people”. And in other instances, Defendant expressed disinterest in hiring people of color
5 that were “dark complected” - specifically, Latino and African American applicants. At one point,
6 in passing over an African-American job applicant, Defendant Hismatullin stated that they would
7 pass over the applicant because they tried that “demographic” and “they don’t work out”. To the
8 extent, Defendant hired persons of color, they were disproportionately terminated before others.

9 12. By early 2021, Plaintiff became disillusioned with Defendant’s work culture and so,
10 he tendered his resignation. Defendant pledged to right the ship and offered Plaintiff an increase
11 in pay to sweeten the pot in addition to the promise to implement change. So, Defendant Action
12 Urgent Care Inc. offered, and Plaintiff accepted, a profit-sharing discretionary bonus and pay
13 raise.

14 13. Plaintiff believed based on statements made by Defendant Hismatullin that the bonus
15 would be paid in monthly increments. Over the course of June and July of 2021, Plaintiff made
16 five verbal attempts to collect his March, April, May, and June bonuses. None of these requests
17 resulted in payment. Nor did Defendant Hismatullin clarify that the bonuses were discretionary
18 and would only be available at the end of the calendar year. Instead, she started nitpicking Plaintiff
19 and heaping more and more work on him with unrealistic deadlines.

20 14. Plaintiff Tartala sought clarity on the bonus issues. On July 23, 2021, Plaintiff sent
21 an email requesting the bonuses. This request was ignored. On July 26, 2021, Plaintiff sent a
22 follow-up email requesting a response to the July 23 email. This request was ignored. On July 27,
23 2021, Plaintiff was told in a meeting with his supervisor that he would not be receiving the bonus
24 due to poor performance.

25 12. On July 29, 2021, Plaintiff sent a follow up email including his direct supervisor
26 and the Chief Executive Officer. Plaintiff was told again that he would not be receiving his
27 bonuses.
28

1 13. Plaintiff noted that the situation had become worse from when he initially tendered
2 his resignation after he requested clarity about his bonus. That fact, taken in conjunction with the
3 fact that he is African-American, made Plaintiff fear Defendant Hismatullin would ramp up the
4 toxicity levels at work and continue to heap more and more work upon him. So, he filed a written
5 complaint in part about the bonus, and in part about the continuing discrimination and labor code
6 violations.

7 14. After Plaintiff submitted his written complaint to the CEO, who is also the husband
8 of Defendant Hismatullin, he was placed on leave. After a month, Defendant Action Urgent Care
9 Inc. terminated Plaintiff on or about August 27, 2021.

10 15. Throughout his employment, Mr. Tartala, and all other aggrieved employees of
11 throughout California, were subjected to numerous violations of the California Labor Code,
12 including sections 201, 202, 203, 204, 207, 208, 226(a), 226.3, 226.7, 510, 511, 512(a), 558, 558.1,
13 1174(d), 1194, 1198, 1198.5 1199, 2800/2802, 3550, 3551.

14 16. Labor Code Section 207 holds that every employer shall keep posted conspicuously
15 at the place of work, if practicable, or otherwise where it can be seen as employees come or go to
16 their places of work, or at the office or nearest agency for payment kept by the employer, a notice
17 specifying the regular pay days and the time and place of payment. Defendant violated Section
18 207 because it failed to post conspicuously at the place of work, a notice of the regular pay days,
19 and times and place of payment and the aggrieved employees were deprived of the information in
20 accordance with Section 207.

21 17. Labor Code Section 208 requires that employers pay every employee who is
22 discharged at the place of discharge, and every employee who quits shall be paid at the office or
23 agency of the employer in the county where the employee has been performing labor. Here,
24 Defendant violated Section 208 because aggrieved employees were not paid at the time they were
25 discharged at the place they were discharged or were not paid at the Employer's office and in some
26 instances were paid through a Zelle smart phone app.

27 18. In relevant part, Labor Code Section 511(a) provides that "[u]pon the proposal of
28 an employer, the employees of an employer may adopt a regularly scheduled alternative workweek

1 that authorizes work by the affected employees for no longer than 10 hours per day within a 40-
2 hour workweek without the payment to the affected employees of an overtime rate of compensation
3 pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed
4 adopted only if it receives approval in a secret ballot election by at least two-thirds of affected
5 employees in a readily identifiable work unit. The regularly scheduled alternative workweek
6 proposed by an employer for adoption by employees may be a single work schedule that would
7 become the standard schedule for workers in the work unit, or a menu of work schedule options,
8 from which each employee in the unit would be entitled to choose.” Here, Defendant violated
9 Section 511 by imposing a four-day-ten-hour regular workweek without daily overtime after eight
10 hours, without following the strict specific procedures of a secret ballot election by at least two-
11 thirds of affected employees. Aggrieved employees were injured by Employer’s failure to comply
12 with the strictures of Section 511.

13 19. Labor Code Section 510 provides in pertinent part: “Eight hours of labor constitutes
14 a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours
15 in any one workweek and the first eight hours worked on the seventh day of work in any one
16 workweek shall be compensated at the rate of no less than one and one-half times the regular rate
17 of pay for the employee. Any work in excess of 12 hours in one day shall be compensated at the
18 rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess
19 of eight hours on the seventh day of a workweek shall be compensated at the rate of no less than
20 twice the regular rate of pay of an employee.” Labor Code Section 1194(a) states:
21 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the
22 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
23 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
24 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Here,
25 Defendant violated Sections 510 and 1194 by failing to pay the aggrieved employees the relevant
overtime rate.

26 20. Labor Code Section 1197 provides that the minimum wage for employees fixed by
27 the commission or by any applicable state or local law, is the minimum wage to be paid to
28 employees and the payment of a lower wage than the minimum so fixed is unlawful. This section

1 does not change the applicability of local minimum wage laws to any entity. Here, Defendant
2 violated Section 1197 and 1194 by failing to pay the aggrieved employees the relevant minimum
3 wage. Specifically, Defendant failed to pay trainees less than minimum wage, and for failing to
4 pay for time when aggrieved employees were required to take required medical tests.

5 21. Labor Code Section 226(a) states in pertinent part that every employer shall provide
6 an accurate itemized statement in writing with respect to each one of its employees showing: (1)
7 gross wages earned; (2) total hours worked by an employee, except for salaried exempt employees
8 under Section 515 or any applicable IWC order; (3) number of piece rate units earned and any
9 applicable piece rate units earned if employee is paid on a piece rate basis; (4) all deductions,
10 provided that all deductions made on written orders of the employee may be aggregated and shown
11 as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee was
12 paid; (7) the name of the employee and the last four digits of his or her social security number or
13 an employee identification number; (8) the name and address of the legal entity that is the
14 employer; and (9) all applicable hourly rates in effect during the pay period and corresponding
15 number of hours worked at each hourly rate by employee. Here, Defendant failed to provide
16 compliant wage statements during aggrieved employees' employment because they failed to pay
17 all wages due at all times during the aggrieved employees' employment by under paying aggrieved
18 employee the minimum wage, failing to pay employees the minimum wage when getting
19 mandatory testing, and failing to pay overtime wages for the aggrieved employees operating under
20 the illegal AWS. Thus, the wage statements inaccurate as to the both the applicable overtime rate
21 and hours worked and straight time and hours worked. It also was inaccurate as to the gross wages
22 and net wages earned because the wage statements did not accurately reflect the correct hours
worked at the proper rate.

23 22. Labor Code Section 204(a) states in pertinent part all wages earned by any person
24 in any employment are due and payable twice during each calendar month on days designated in
25 advance by the employer as the regular paydays. The "Minimum Wages" section of the applicable
26 Wage Order further states "every employer shall pay to each employee, on the established payday
27 for the period involved, not less than the applicable minimum wage for all hours worked in the
28 payroll period." Additionally Labor Code Section 210 imposes penalties when all wages are not

1 paid during the course of the employees' employment. Here, the aggrieved employees are entitled
2 to penalties from the Defendant for not paying all minimum wage hours for trainees, and for unpaid
3 minimum wages for aggrieved employees that were not paid for taking mandatory medical tests.
4 Additionally, late pay penalties will be paid for aggrieved employees erroneously subjected to the
5 illegal AWS and that were not paid the overtime hours they were entitled to be paid.

6 23. Labor Code Section 1174 and the relevant Wage Order(s) obligate an employer to
7 keep accurate information which requires paying required minimum, regular, and overtime wages
8 and by recording accurate meal periods. Every employer is required to keep accurate information
9 with respect to each employee including the following time records showing the beginning and
10 end of each work period and meal periods and total hours worked. Here, Defendant failed to
11 maintain accurate records because they do not properly record all the hours worked daily because
12 of the off the clock work, and maintain the records with the proper wages.

13 24. Labor Code Section 512(a) states in relevant part that an employer may not employ
14 an employee for a work period of more than five hours per day without providing the employee
15 with a meal period of not less than 30 minutes. An employer may not employ an employee for a
16 work period of more than 10 hours per day without providing the employee with a second meal
17 period of not less than 30 minutes . . .” Labor Code Section 226.7(a) states that no employer shall
18 require any employee to work during any meal or rest period mandated by an applicable order of
19 the Industrial Welfare Commission. Here, Defendant violated these Sections by denying aggrieved
20 employees with taking compliant meal breaks.

21 25. Labor Code Section 226.7(a) states that no employer shall require any employee to
22 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
23 Commission. The “Rest Period” section of the applicable IWC Wage Order states that every
24 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
25 shall be in the middle of each work period. The authorized rest period shall be based on the total
26 hours worked daily at the rate of ten minutes net rest time per four hour or major fraction thereof.
27 If an employer fails to provide an employee a rest period in accordance with the applicable
28 provision of the order, the employer shall pay the employee one (1) hour at the employee's regular

1 rate of compensation of each workday that the rest period is not provided. Aggrieved employees
2 were deprived of compliant rest breaks.

3 26. Defendant failed to comply with Labor Code Section 2802 and the applicable IWC
4 Wage Order by failing to reimburse aggrieved employees for necessary business-related expenses
5 incurred in direct consequence of the discharge of their duties. The aggrieved employees were
6 required to use their personal cell phones to upload applications for time keeping and other
7 Defendant related requirements, including but not limited to Signal, GroupMe, and ADP.
8 Additionally, Defendant required certain aggrieved employees to purchase scrubs and other
9 uniforms/or equipment. Additionally, certain aggrieved employees, such as Plaintiff Tartala were
10 not reimbursed for gas or mileage incurred when required to drive to clinics or pick up supplies
11 and go to meetings. Finally, certain aggrieved employees were working from home, but were
12 never compensated a reasonable amount for reasonable costs for utilities, Wi Fi and/or internet
13 usage, or home office supplies. Additionally, Defendant required tuberculosis testing and the
14 aggrieved employees had to pay for such costs. Many aggrieved employees use their person
15 laptops for work. Other aggrieved employees were required to purchase scrubs for their personal
16 protective gear. Defendant failed to reimburse aggrieved employees for the costs incurred by
17 employees in direct consequence of the discharge of his or her duties.

18 27. Labor Code Section 3550(a) states that every employer shall post and keep posted
19 in a conspicuous location frequented by employees, and where the notice may be easily read by
20 employees during the hours of the workday, a notice that states the name of the current
21 compensation insurance carrier of the employer, or when such is the fact, that the employer is self-
22 insured, and who is responsible for claims adjustment. Additionally, 3550(d) states that the form
23 and content of the notice required by this section shall advise employees that all injuries should be
24 reported to their employer. The notice shall be easily understandable. It shall be posted in both
25 English and Spanish where there are Spanish-speaking employees. The notice shall include the
26 following information how to get emergency treatment; events, injuries and illnesses covered by
27 workers' compensation; and the injured employee's right to receive medical care; the rights of the
28 employee to receive temporary disability indemnity, permanent disability indemnity, supplemental
job displacement, and death benefits, as appropriate; to whom injuries should be reported; the

1 existence of time limits for the employer to be notified of an occupational injury; the protections
2 against discrimination provided pursuant to Section 132a; the Internet Web site address and contact
3 information that employees may use to obtain further information about the workers' compensation
4 claims process and an injured employee's rights and obligations, including the location and
5 telephone number of the nearest information and assistance officer. Defendant violated Labor
6 Code Section 3550 by failing to post a notice where it may easily be read by employees during the
7 workday, and one that contained the notice with the required specified information in both Spanish
8 and English. Plaintiff Tartala, and other aggrieved employees, were deprived of proper compliant
9 posting of the aforementioned requisite information in Section 3550 in Spanish and English.

10 28. Labor Code Section 3551 requires every employer to provide every employee at
11 the time of employment, or by the end of the first pay period, a written notice of all the information
12 contained in Labor Code Section 3550. The notice is required to be easily understandable and in
13 English and Spanish. In addition, Section 3551 also requires the employer to provide notice to the
14 employee how to obtain appropriate medical care for a job injury; the role and function of the
15 primary treating physician; and a form that the employee may use as an optional method of
16 notifying the employer of the name of the employee's personal physician or personal chiropractor.
17 Defendant violated Labor Code Section 3551 by failing to provide Plaintiff Tartala and other
18 aggrieved employees, with written notice containing all of the information required under Labor
19 Code Section 3550, failed to provide such information by the end of the first pay period, failed to
20 provide the information in both English and Spanish, and failed to provide notice to the employees
21 how to obtain medical care for a job injury, what the primary treating physician's role is.
22 Additionally, the Defendant failed to provide a form that the employee could use to notify the
23 employer of their own personal physician or chiropractor.

24 **FIRST CAUSE OF ACTION**

25 **(FEHA Racial Discrimination – Government Code Section 12940(a))**

26 **(Plaintiff Against Defendant Action Urgent Care Inc.)**

27 29. Plaintiff realleges and incorporates by references all the preceding paragraphs as
28 through fully set forth herein.

1 30. Defendant Action Urgent Care Inc. is an entity covered by the FEHA and
2 employed Plaintiff at all relevant times herein.

3 31. Defendant Action Urgent Care Inc. placed Plaintiff Tartala on leave and
4 eventually terminated him. Plaintiff is African-American and his race was a substantial
5 motivating reason for his being placed on leave and subsequent termination.

6 32. Plaintiff was harmed and Defendant's conduct was a substantial factor in causing
7 his harm. Such harm includes loss of earnings and employment benefits, humiliation, emotional
8 distress, and mental pain and anguish all in an amount to be determined at trial according to proof.
9 Plaintiff also incurred and continues to incur attorney's fees and legal expenses in an amount to
10 be determined.

11 33. Defendant's conduct described herein was intended to cause injury. Defendant's
12 conduct was willful and consciously disregarded Plaintiff's rights and subjected him to unjust
13 hardship so as to constitute malice, oppression or fraud under California Civil Code Section 3294,
14 thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish
15 or set an example of Defendant. Defendant discriminated against Plaintiff to send a message to
16 other African-Americans employees that they too would be victimized if they did not toe the line.

17 **SECOND CAUSE OF ACTION**

18 **(FEHA Work Environment Harassment Directed At Plaintiff – Government Code Section** 19 **12923 and 12940(j))**

20 **(Plaintiff Against Defendants Action Urgent Care Inc. and Genevieve Hismatullin)**

21 34. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though
22 fully set forth herein.

23 35. Plaintiff was subjected to harassing conduct because is African-American, which is a class
24 protected under the FEHA. The harassing conduct was severe or pervasive. It included, but was
25 not limited to: suddenly increasing Plaintiff's work load to unmanageable proportions; falsifying
26 negative performance reviews of Plaintiff; and making racist comments about African-American
27 employees and applicants.
28

1 36. A reasonable person in Plaintiff's circumstances would have considered the work
2 environment to be hostile, intimidating, offensive, oppressive, or abusive. Plaintiff did consider
3 the work environment to be hostile, intimidating, offensive, oppressive, or abusive.

4 37. Defendant Hismatullin directly participated and engaged in the harassing conduct. Thus,
5 because a supervisor engaged in the conduct, Defendant Action Urgent Care Inc, is liable as well.

6 38. Plaintiff was harmed and Defendants' conduct was a substantial factor in causing
7 Plaintiff harm. Such harm includes loss of earnings and employment benefits, humiliation,
8 emotional distress, and mental pain and anguish all in an amount to be determined at trial
9 according to proof. Plaintiff also incurred and continues to incur attorney's fees and legal
10 expenses in an amount to be determined.

11 39. Defendants' conduct described herein was intended to cause injury. Defendants'
12 conduct was willful and consciously disregarded Plaintiff's rights and subjected him to unjust
13 hardship so as to constitute malice, oppression or fraud under California Civil Code Section 3294,
14 thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish
15 or set an example of Defendants. Defendants harassed Plaintiff to send a message to other
16 employees that they too would be victimized if they complained about working conditions.

17 **THIRD CAUSE OF ACTION**

18 **((FEHA Work Environment Harassment Directed At Others– Government Code Section 19 12923 and 12940(j))**

20 **(Plaintiff Against Defendants Action Urgent Care Inc. and Genevieve Hismatullin)**

21 40. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
22 though fully set forth herein.

23 41. Defendant Action Urgent Care Inc. employed Plaintiff Tartala. Plaintiff Tartala
24 witnessed harassing conduct against other by supervisor Defendant Hismatullin that took place
25 in his immediate work environment. The harassing conduct was severe or pervasive.

26 42. A reasonable African-American in Plaintiff's circumstances would have
27 considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive.
28 Plaintiff considered the work environment to be hostile, intimidating, offensive, oppressive, or

1 abusive toward obese people, people over 40 years old, African-Americans, and Mexican-
2 Americans.

3 43. Defendant Hismatullin was a supervisor and engaged directly in the harassment
4 toward African-Americans, obese persons, Mexican-Americans, and persons over 40 years old.
5 Because Defendant Hismatullin was a supervisor, Defendant Action Urgent Care Inc. is liable
6 as well.

7 44. Plaintiff was harmed and Defendants' conduct was a substantial factor in causing
8 Plaintiff harm. Such harm includes loss of earnings and employment benefits, humiliation,
9 emotional distress, and mental pain and anguish all in an amount to be determined at trial
10 according to proof. Plaintiff also incurred and continues to incur attorney's fees and legal
11 expenses in an amount to be determined.

12 45. Defendants' conduct described herein was intended to cause injury. Defendants'
13 conduct was willful and consciously disregarded Plaintiff's rights and subjected him to unjust
14 hardship so as to constitute malice, oppression or fraud under California Civil Code Section 3294,
15 thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish
16 or set an example of Defendants.

17 **FOURTH CAUSE OF ACTION**

18 **(FEHA Retaliation – Government Code Section 12940(h))**

19 **(Plaintiff Against Defendant Action Urgent Care Inc.)**

20 46. Plaintiff realleges and incorporates by reference all the preceding paragraphs as
21 through fully set forth herein.

22 47. Plaintiff reported FEHA violations, including discrimination against African-
23 Americans, Mexican-Americans, obese persons, and worker over forty years old. Plaintiff was
24 subjected to an adverse employment action by being put on administrative leave and then
25 terminated.

26 48. Plaintiff's complaint about possible FEHA violations was a substantial
27 motivating reason for Defendant's decision to place him on leave and terminate him.
28

49. Plaintiff was harmed and Defendant's conduct was a substantial factor in causing Plaintiff harm. Such harm includes loss of earnings and employment benefits, humiliation, emotional distress, and mental pain and anguish all in an amount to be determined at trial according to proof. Plaintiff also incurred and continues to incur attorney's fees and legal expenses in an amount to be determined.

50. Defendant's conduct described herein was intended to cause injury. Defendant's conduct was willful and consciously disregarded Plaintiff's rights and subjected him to unjust hardship so as to constitute malice, oppression or fraud under California Civil Code Section 3294, thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish or set an example of Defendant.

FIFTH CAUSE OF ACTION

(Retaliation in Violation of Labor Code Section 1102.5)

(Plaintiff Against Defendant Action Urgent Care Inc.)

51. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

52. During his tenure of being employed by Defendant, Plaintiff reported to a person with authority over him at least the following information, where he had reasonable cause that such information disclosed legal violations: (a) failure to pay employees full wages including the relevant minimum wage and overtime; and (b) discriminatory activity against African Americans, Hispanics, and older employees.

53. As a result of Plaintiff disclosing such information, Defendant retaliated against him and subjected him to adverse employment actions such as harassing him, and finally terminating him.

54. As a direct and proximate result of the unlawful conduct of Defendant, Plaintiff suffered a loss of earning and benefits and Plaintiff has also suffered emotional distress as a result of Defendant's actions.

55. Plaintiff is entitled to recover \$10,000 in statutory penalties per violation under Section 1102.5 (f).

56. Defendant's conduct described herein in was intended to cause injury to Plaintiff to send a message to other employees that they too would be terminated for complaining and voicing concern about Defendant's illegal and unethical business practices. Defendant's conduct was willful and consciously disregarded Plaintiff's rights and subjected him to unjust hardship so as to constitute malice, oppression or fraud under California Civil Code Section 3294, thereby entitling Plaintiff to punitive and exemplary damages in an amount appropriate to punish or set an example of Defendant.

SIXTH CAUSE OF ACTION

(Retaliation in Violation of Labor Code Section 98.6)

(Plaintiff Against Defendant Action Urgent Care Inc.)

57. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

58. At all relevant times, Labor Code Section 98.6 was in effect and binding upon Defendant. Labor Code Section 98.6 prohibits any person from retaliating, discriminating, or taking any adverse action against an employee for, among other activities, making a written or oral complaint that he or she is owed back wages, or exercising other rights under the Labor Code.

59. At all relevant times, Defendant engaged in prohibited and illegal practices that affected Plaintiff's employment. Defendant failed to pay wages.

60. When Plaintiff complained to Defendant about such abusive and illegal employment practices, they terminated him.⁶¹ As a result of Defendant's discrimination and retaliation and harassment, Plaintiff has suffered, and continues to suffer economic damages, including past and continuing loss of wages, and non-economic damages, including pain and suffering and emotional and mental distress, in a sum to be determined at trial.

62. Plaintiff is also entitled to recover statutory civil penalties of \$10,000 per violation in accordance with Labor Code Section 98.6.

///

///

/ / /

- 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

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

70. Defendant terminated Plaintiff's employment in violation of public policy. A substantial motivating factor in Defendant's termination of Plaintiff was: (a) reporting harassment of himself and other employees under FEHA; (b) complaining about the working conditions under Labor Code Section 232.5 and 1102.5; (c) advising Defendant they were engaging in an illegal AWS and underpaying minimum wage and overtime; (d) reporting discrimination of older employees, African-Americans, Mexican-Americans, and obese persons in violation of FEHA. .

71. Defendant's wrongful termination of Plaintiff was a substantial factor in causing Plaintiff economic damages and lost wages, both past and future, and suffering emotional and mental distress, all in a sum to be proven and determined at trial.

NINTH CAUSE OF ACTION

(Failure To Reimburse Business Expenses – Labor Code Sections 2800/2802)

(Plaintiff Against Defendant Action Urgent Care Inc.)

72. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

73. Labor Code Section 2802 states that employers must indemnify an employee for all necessary expenditures or losses incurred in direct discharge of his or her duties.

74. Plaintiff incurred gas and mileage expenses by driving to multiple locations and work sites per day. Defendant failed to reimburse these costs and expenses.

TENTH CAUSE OF ACTION

(Violation of Labor Code Section 2698, *et seq.* California Private Attorneys General Act)

(Plaintiff Against Defendant Action Urgent Care Inc.)

75. Plaintiff realleges and incorporates by reference all the preceding paragraphs as though fully set forth herein.

76. PAGA permits an “aggrieved employee” to bring a civil action on behalf of him or herself and on behalf of all other aggrieved employees to recover civil penalties for an employer’s violation of sections enumerated in Labor Code Section 2699.5. An “aggrieved employee” is defined in Labor Code Section 2699, subdivision (c), as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

1 77. Plaintiff and other aggrieved employees are “aggrieved employees” as defined by
2 California Labor Code Section 2699, subdivision (c) because they are all current or former
3 employees of Defendants and were subject to Defendants’ violations of various labor code
4 sections.

5 78. Plaintiff satisfied the requirements of Labor Code Section 2699.3 (a)(1)(A) and
6 (a)(1)(B). Additionally, the LWDA provided no notice it was investigating the violations within
7 65 days of postmark date of the notice provided in Section 2699.3 (a)(1)(A).

8 79. Plaintiff and other aggrieved employees were subject to violations of the following
9 Labor Code Sections, entitling them to penalties under PAGA: Labor Code Sections 201, 202,
10 203, 204, 207, 208, 226(a), 226.3, 226.7, 510, 511, 512(a), 558, 558.1, 1174(d), 1194, 1198,
11 1198.5 1199, 2800/2802, 3550, 3551. In particular, Defendant’s unlawful policies, practice, and
12 procedures comprising the violations include:

- 13 a. Defendant’s failure to post dates and locations of pay as (Labor Code Section
14 207).
- 15 b. Defendant’s failure to pay final pay checks at the proper location and time
16 (Labor Code Section 208).
- 17 c. Defendant’s failure to pay minimum wage, regular, and overtime wages
18 (Labor Code Sections 218, 510, 1194, 1197.1, 1198 and 1199(c) and the
19 “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable
20 Wage Order).
- 21 d. Defendant’s implementation of an illegal alternative workweek schedule
22 (Labor Code Section 511).
- 23 e. Defendant’s failure to provide compliant meal and rest breaks (Labor Code
24 Sections 226.7, 512, 1198, and the Meal Period and Rest Period sections of the
25 applicable IWC Wage Order).
- 26 f. Defendant’s failure to provide accurate itemized wage statements (Labor Code
27 Sections 226(a), 226.3, 1198 and the “Records” section of the applicable IWC
28 Wage Order).

- g. Defendant's failure to maintain accurate records (Labor Code Sections 1174 and the "Records" section of the IWC Wage Orders).
- h. Defendant's failure to timely pay wages during and upon termination of employment (Labor Code Sections 201, 202, 203, 204, 210, 256, and 1198).
- i. Defendant's underpayment of employees and failure to issue premium pay for missed meal and rest breaks (Labor Code Sections 558, 558.1, and 1197.1).
- j. Defendant's failure to post required workers' compensation information (Labor Code Section 3550).
- k. Defendant's failure to provide notice to employees of workers' compensation information posted (Labor Code Section 3551).
- l. Defendant's failure to reimburse business-related expenses (Labor Code Section 2802 and Tool and Equipment section of the applicable IWC Wage Order).

80. Accordingly, Plaintiff and the aggrieved employees are entitled to penalties against Defendants under Labor Code Section 2699 (f) as well as attorneys' fees and costs pursuant to Labor Code Section 2699 (g) and Code of Civil Procedure Section 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For general and special damages according to proof but not less than \$1,000,000.00;
2. For pre-judgment interest as permitted by law;
3. For all penalties permitted under the California Labor Code, including but not limited to Sections 98.6, 203, 210, 226, 1102.5, 1174.5, 1194.2 and 1197.1. and 2699(f);
4. For exemplary and punitive damages;
5. For attorney's fees under at least the following statutes: Labor Code Sections 218.5, 226, 1102.5, 1174, 1174.5, 1194, 226.7, 2800/2802, 2699(g), Government Code Section 1295(b), and Code of Civil Procedure Section 1021.5;
6. For the costs of the suite herein; and

1 7. For such other and further relief as this Court may deem just and proper, including
2 but not limited to reinstatement with backpay of Plaintiff Tartala.
3

4 DATED: November 29, 2021

SHALCHI BURCH LLP

5
6 By: 

Travis J. Burch, Esq.
Attorneys for Plaintiff
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28