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Case #23CV421202
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Attorney for Plaintiff
Shante Kyer

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SHANTE KYER,	) NO. 23CV421202
	)
Plaintiff,	) FIRST AMENDED COMPLAINT
v.	) 1. Wrongful Termination in Violation
	) of FEHA
MGM DRYWALL, INC., and DOES 1 to 100,	) 2. Sexual Harassment in Violation of
	) FEHA
Defendants.	) 3. Failure to Prevent Harassment,
	) Retaliation, and Discrimination in
	) Violation of FEHA
	) 4. Rest Period Violations
	) 5. Meal Period Violations
	) 6. Work Expenditure Violations
	) 7. Waiting Time Penalty
	) 8. Wage Statement Penalties
	) 9. Violation of Unfair Competition Law
	) 10. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Shante Kyer is a resident of Solano County.
2. Defendant MGM Drywall, Inc. is a corporation based in Santa Clara County.
3. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names and capacities when ascertained.
4. The named and Doe defendants are collectively referred to as "Defendants."
5. Plaintiff is informed and believes that each of the Defendants was the agent or employee of

1 the other defendants and acted in the scope of agency or employment.

2 7. Plaintiff worked for Defendants from October 2022 to April 2023.

3 8. Plaintiff's job duties included painting and drywalling.

4 9. While working for Defendants, Plaintiff was the only black worker; she was disparately
5 treated by being assigned an inordinate number of menial tasks in comparison to others.

6 10. The situation worsened when Plaintiff's foreman, made repeated and unwelcome comments
7 about Plaintiff's sexual life, which is a violation of FEHA: "Harassment because of sex includes
8 sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related
9 medical conditions. Sexually harassing conduct need not be motivated by sexual desire." (Govt.
10 Code, § 12940(j)(4)(C).)

11 11. Once Plaintiff complained about the harassing conduct, the foreman reduced Plaintiff's
12 hours from five days a week to three days a week. Retaliation under FEHA makes it unlawful to
13 discharge, expel, or otherwise discriminate against any person because the person has opposed any
14 practices forbidden under FEHA or because the person has filed a complaint, testified, or assisted
15 in any proceeding under this part. (Govt. Code, § 12940(h).)

16 12. Then on April 6, 2022 Plaintiff was wrongfully terminated under the guise of an alleged
17 layoff, but new employees were hired very soon afterward.

18 13. Further, Plaintiff did not receive meal and rest breaks while she worked for Defendants.

19 14. Also, Plaintiff had to purchase tools to work for Defendants including a caulking gun and
20 hand masker, but Plaintiff was not reimbursed for these.

21 15. On August 16, 2023 Plaintiff sent a PAGA notice to MGM Drywall, Inc. and uploaded the
22 letter to the LWDA website. Since it has been more than 65 days, Plaintiff may now request PAGA
23 penalties.

24
25 FIRST CAUSE OF ACTION

26 Wrongful Termination in Violation of FEHA

27 Against All Defendants

28 16. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

17. Plaintiff is part of a protected class as a black person and as a woman.

18. As stated above, Plaintiff was targeted by her foreman initially because of race by assigning an inordinate number of menial tasks compared to other workers, and then based on gender by making inappropriate sexual comments.

19. When Plaintiff complained about the foreman's behavior, she was initially demoted and then wrongfully terminated as described above.

20. Plaintiff's complaint about the foreman's behavior was a substantial motivating factor.

21. Plaintiff was harmed as a result, and Defendants' acts were a substantial cause of harm.

22. As a result, Plaintiff is entitled to back pay, front pay, general damages, and attorney fees.

SECOND CAUSE OF ACTION

Sexual Harassment in Violation of FEHA

Against All Defendants

23. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

24. Plaintiff was subjected to harassment based on race and gender as described above, and this harassment created a work environment that was hostile, intimidating, offensive, oppressive and abusive; inappropriate sexual comments are not welcome in the workplace.

25. Plaintiff was subject to the harassment based on her membership in a protected class.

26. The harassment was severe and pervasive.

27. A reasonable woman in Plaintiff's circumstances would have considered the work environment hostile, intimidating, offensive, oppressive, and abusive.

28. Plaintiff considered the harassment hostile, intimidating, offensive, oppressive, and abusive, and made a complaint about it.

29. A supervisor, Plaintiff's foreman, engaged in the harassing conduct.

30. Plaintiff was harmed, and the harassing conduct was a substantial factor in causing harm.

31. As a result, Plaintiff is entitled to back pay, front pay, general damages, and attorney fees.

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1 THIRD CAUSE OF ACTION

2 Failure to Prevent Harassment and Retaliation in Violation of FEHA

3 Against All Defendants

4 32. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

5 33. Plaintiff was Defendants' employee.

6 34. Plaintiff was subjected to harassment, retaliation, and discrimination in the course of
7 employment as described above.

8 35. Defendants did not take any steps to prevent the harassment, retaliation, and discrimination.

9 36. Plaintiff was harmed, and Defendants' inaction was a substantial case of the harm.

10 37. As a result, Plaintiff is entitled to back pay, front pay, general damages, and attorney fees.

11
12 FOURTH CAUSE OF ACTION

13 Rest Period Violations

14 Against All Defendants

15 38. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

16 39. Pursuant to CACI No. 2761, Plaintiff worked for Defendants on one or more workdays for
17 at least 3.5 hours.

18 40. However, Defendants did not authorize and permit Plaintiff to take 10-minute rest periods.

19 41. As a result, Plaintiff is entitled to one additional hour at the regular rate of pay for each day
20 a rest break was missed.

21
22 FIFTH CAUSE OF ACTION

23 Meal Period Violation

24 Against All Defendants

25 42. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

26 43. Pursuant to CACI No. 2766A, Plaintiff worked for Defendants for one or more workdays
27 for periods lasting more than five hours.

28 44. Defendants did not provide the opportunity to take uninterrupted meal breaks of 30 minutes.

1 45. As a result, Plaintiff is entitled to one additional hour at the regular rate of pay for each day
2 a rest break was missed.

3
4 SIXTH CAUSE OF ACTION

5 Work Expenditure Violations

6 Against All Defendants

7 46. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

8 47. Pursuant to Labor Code section 2802 and CACI No. 2750, Plaintiff incurred expenditures
9 as a direct consequence of her job duties for Defendants.

10 48. The expenditures were necessary and reasonable.

11 49. Defendants did not reimburse for the expenditures.

12 50. Plaintiff is entitled to reimbursement for the expenditures, and attorney fees.

13
14 SEVENTH CAUSE OF ACTION

15 Waiting Time Penalty

16 Against All Defendants

17 51. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

18 52. Pursuant to CACI No. 2704, once Plaintiff's employment with Defendants she was still
19 owed wages constituting unpaid premium pay.

20 53. Since Defendants willfully did not pay the unpaid wages, pursuant to Labor Code section
21 203 the waiting time penalty applies which is 30 days of Plaintiff's daily wages.

22
23 EIGHTH CAUSE OF ACTION

24 Wage Statement Penalties

25 Against All Defendants

26 54. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

27 55. Pursuant to Labor Code section 226, wage statements must contain nine discrete items.

28 56. Plaintiff's wage statements did not comply with this statute since they intentionally did not

1 accurately list the total hours worked and did not include premium pay for missed breaks.

2 57. As a result, Plaintiff is entitled to wage statement penalties up to \$4,000 and attorney fees.

3
4 NINTH CAUSE OF ACTION

5 Violation of Unfair Competition Law

6 Against All Defendants

7 58. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

8 59. The Unfair Competition Law prohibits unfair, unlawful, and fraudulent business practices.

9 60. This claim is being brought under the unlawful prong of the UCL.

10 61. Defendants violated the Labor Code and IWC Wage Order by not paying all wages due.

11 62. Plaintiff is entitled to restitution for the above.

12 63. Under Code of Civil Procedure section 1021.5, Plaintiff is entitled to attorney fees

13
14 TENTH CAUSE OF ACTION

15 PAGA Penalties

16 Against All Defendants

17 64. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

18 65. Pursuant to Labor Code section 2699, Plaintiff makes PAGA allegations on behalf of
19 herself and all aggrieved employees.

20 66. The PAGA penalties for the minimum wage violations are contained in Labor Code 1197.1.

21 67. The PAGA penalties for the overtime violations are contained in Labor Code 558 & 2699.

22 68. The PAGA penalties for the meal break violations are contained in Labor Code 558.

23 69. The PAGA penalties for the rest break violations are contained in Labor Code 2699.

24 70. The PAGA penalties for the wage statement violations are contained in Labor Code 2699.

25 71. The PAGA penalties for the waiting time penalties are in Labor Code 210 & 2699.

26 72. Further, Plaintiff is entitled to attorney fees and costs under Labor Code 2699.

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1 PRAYER

2 First Cause of Action

3 1. Back pay

4 2. Front pay

5 3. General damages

6 4. Attorney fees

7 5. Other relief the court deems proper

8

9 Second Cause of Action

10 1. Back pay

11 2. Front pay

12 3. General damages

13 4. Attorney fees

14 5. Other relief the court deems proper

15

16 Third Cause of Action

17 1. Back pay

18 2. Front pay

19 3. General damages

20 4. Attorney fees

21 5. Other relief the court deems proper

22

23 Fourth Cause of Action

24 1. Premium pay at the correct regular rate of pay

25 2. Interest

26 3. Other relief the court deems proper

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1 Fifth Cause of Action

2 1. Premium pay at the correct regular rate of pay

3 2. Interest

4 3. Other relief the court deems proper

5

6 Sixth Cause of Action

7 1. Reimbursement of work expenses

8 2. Attorney fees

9 3. Other relief the court deems proper

10

11 Seventh Cause of Action

12 1. Waiting time penalties

13

14 Eighth Cause of Action

15 1. Wage statement penalties

16 2. Attorney fees and costs

17

18 Ninth Cause of Action

19 1. Restitution of unpaid wages and premium pay

20 2. Attorney fees

21 3. Other relief the court deems proper

22

23 Tenth Cause of Action

24 1. All applicable PAGA penalties

25 2. Attorney fees and costs

26 3. Other relief the court deems proper

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1 Date: November 5, 2023

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3 *Adam Rose*

4 Adam Rose
5 Attorney for Plaintiff
6 Shante Kyer
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