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Attorney for Plaintiff
Niko Hayes

FILED
Superior Court of California
County of Los Angeles

12/20/2023

David W. Slayton, Executive Officer / Clerk of Court

By: B. Jones Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NIKO HAYES,	) NO. 23LBCV01954
	)
Plaintiff,	) FIRST AMENDED COMPLAINT
	)
v.	) 1. Discrimination in Violation
	) of FEHA
HERITAGE ENVIRONMENTAL SERVICES,	) 2. Harassment in Violation of
INC., and DOES 1 to 100,	) FEHA
	) 3. Failure to Prevent Harassment,
Defendants.	) Retaliation, and Discrimination in
	) Violation of FEHA
	) 4. Rest Period Violations
	) 5. Meal Period Violations
	) 6. Overtime Violations
	) 7. Wage Statement Penalties
	) 8. Violation of Unfair Competition Law
	) 9. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Niko Hayes is a resident of Los Angeles County.
2. Defendant Heritage Environmental Services, Inc. is an Indiana corporation that is authorized to do business in California.
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."

1 5. Plaintiff is informed and believes that each of the Defendants was the agent or employee of
2 the other defendants and acted in the scope of agency or employment.

3 6. Plaintiff has worked for Defendants from April 2020 to present.

4 7. Plaintiff's job duties included providing trash-related services.

5 8. While working for Defendants, Plaintiff was a black worker who was routinely singled out
6 and targeted to do undesirable jobs and was excessively monitored in comparison to others.

7 9. Further, Plaintiff did not receive meal and rest breaks while hhe worked for Defendants and
8 was required to perform unpaid work off the clock.

9 10. On October 11, 2023 Plaintiff sent a PAGA notice to Heritage Environmental Services, Inc.
10 and uploaded the letter to the LWDA website. Since it has been more than 65 days, Plaintiff may
11 now request PAGA penalties.

12 11. Also, Plaintiff obtained a right-to-sue letter from the California Civil Rights Department on
13 October 8, 2023.

14
15 FIRST CAUSE OF ACTION

16 Discrimination in Violation of FEHA

17 Against All Defendants

18 12. Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

19 13. Plaintiff is part of a protected class as a black person, thus race and color apply.

20 14. As stated above, Plaintiff was targeted based on race.

21 15. Plaintiff membership in protected classes was a substantial motivating reason for the
22 discriminatory conduct.

23 16. The discriminatory conduct was spearheaded by Reyes Mesa, who was Plaintiff's
24 supervisor.

25 17. Reyes Mesa commanded Plaintiff to perform work that no one else was doing, and
26 purposefully asked Plaintiff to perform tasks that made his job significantly harder.

27 18. The above systematic conduct by Reyes Mesa led to a disparate impact to Plaintiff.

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

1 20. Since Reyes Mesa is a supervisor, there is strict liability. (Govt. Code, § 12926(d).)

2 21. As a result, Plaintiff is entitled to general damages, and attorney fees.

3
4 SECOND CAUSE OF ACTION

5 Harassment in Violation of FEHA

6 Against All Defendants

7 22. Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

8 23. Plaintiff was subjected to harassment based on race as explained above, and in violation of
9 Government Code section 12923.

10 24. Plaintiff was subject to harassment based on her membership in a protected class.

11 25. The harassment was severe and pervasive.

12 26. The harassment was done by Plaintiff's supervisor, Reyes Mesa.

13 27. An employer that does not remedy harassment problems of which it has actual or
14 constructive knowledge may be held liable for harassment despite the existence of a formal policy
15 against harassment. (Govt. Code, § 12940(k).)

16 28. The harassment by Reyes Mesa toward Plaintiff was based on race; Plaintiff was subjected
17 to abusive conduct by Reyes Mesa on a severe and persistent basis.

18 29. A reasonable person in Plaintiff's circumstances would have considered the work
19 environment hostile, intimidating, offensive, oppressive, and abusive.

20 30. Plaintiff considered the harassment hostile, intimidating, offensive, oppressive, and abusive.

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

22 32. As a result, Plaintiff is entitled to punitive damages, general damages, and attorney fees.

23
24 THIRD CAUSE OF ACTION

25 Failure to Prevent Harassment and Retaliation in Violation of FEHA

26 Against All Defendants

27 33. Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

28 34. Plaintiff is Defendants' employee.

1 35. As stated above, Plaintiff was subjected to harassment and discrimination in the course of
2 employment by Reyes Mesa.

3 36. Defendants did not take any steps to prevent the harassment and discrimination although
4 Defendants ratified the conduct.

5 37. Plaintiff was harmed, and Defendants' inaction was a substantial case of the harm.

6 38. As a result, Plaintiff is entitled to general damages, and attorney fees.

7
8 FOURTH CAUSE OF ACTION

9 Rest Period Violations

10 Against All Defendants

11 39. Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

12 40. Pursuant to CACI No. 2761, Plaintiff worked for Defendants on one or more workdays for
13 at least 3.5 hours.

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

15 42. The rest periods were inhibited by Reyes Mesa; this was done with the knowledge, assent,
16 and approval by Defendants.

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

19 FIFTH CAUSE OF ACTION

20 Meal Period Violation

21 Against All Defendants

22 44. Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

23 45. Pursuant to CACI No. 2766A, Plaintiff worked for Defendants for one or more workdays
24 for periods lasting more than five hours.

25 46. Defendants did not provide the opportunity to take uninterrupted meal breaks of 30 minutes.

26 47. As stated above, Reyes Mesa impeded meal breaks with Defendants' tacit consent.

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

1 SIXTH CAUSE OF ACTION

2 Overtime Violations

3 Against All Defendants

4 49. Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

5 50. Pursuant to Labor Code section 1194 and CACI No. 2702, Plaintiff worked overtime hours
6 off the clock that were unpaid.

7 51. Defendants knew Plaintiff was performing work off the clock, but did not pay for it; the
8 work was done at the direction of Plaintiff's supervisor, Reyes Mesa, with Defendants' consent.

9 52. Therefore, Plaintiff is entitled to payment of the unpaid wages for off the clock work,
10 interest, attorney fees, and costs.

11
12 SEVENTH CAUSE OF ACTION

13 Wage Statement Penalties

14 Against All Defendants

15 53. Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

16 54. Pursuant to Labor Code section 226, wage statements must contain nine discrete items.

17 55. Plaintiff's wage statements did not comply with this statute since they intentionally did not
18 accurately list the total hours worked and did not include premium pay for missed breaks.

19 56. As a result, Plaintiff is entitled to wage statement penalties up to \$4,000 and attorney fees.
20

21 EIGHTH CAUSE OF ACTION

22 Violation of Unfair Competition Law

23 Against All Defendants

24 57. Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

25 58. The Unfair Competition Law prohibits unfair, unlawful, and fraudulent business practices.

26 59. This claim is being brought under the unlawful prong of the UCL.

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

28 61. Plaintiff is entitled to restitution for the above.

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

NINTH CAUSE OF ACTION

PAGA Penalties

Against All Defendants

63 Plaintiff incorporates by reference paragraphs 1 to 11 of the amended complaint.

64. Based on the PAGA letter sent on October 11, 2023, the following PAGA penalties apply.

65. The PAGA period is from October 11, 2022 through judgment or approval of a PAGA settlement, whichever is earlier.

66. For the minimum wage violations, the PAGA penalties in Labor Code section 1197.1 apply.

67. For the overtime violations, the PAGA penalties in Labor Code section 558 apply.

68. For the meal break violations, the PAGA penalties in Labor Code section 558 apply.

69. For the rest break violations, the PAGA penalties in Labor Code section 2699 apply.

70. For the wage statement violations, the PAGA penalties in Labor Code section 2699 apply.

71. Also, Plaintiff is entitled to attorney fees and costs under Labor Code section 2699.

PRAYER

First Cause of Action

1. General damages

2. Attorney fees

3. Other relief the court deems proper

Second Cause of Action

1. General damages

2. Attorney fees

3. Punitive damages

4. Other relief the court deems proper

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1 Third Cause of Action

- 2 1. General damages
3 2. Attorney fees
4 3. Other relief the court deems proper

5
6 Fourth Cause of Action

- 7 1. Premium pay at the correct regular rate of pay
8 2. Interest
9 3. Other relief the court deems proper

10
11 Fifth Cause of Action

- 12 1. Premium pay at the correct regular rate of pay
13 2. Interest
14 3. Other relief the court deems proper

15
16 Sixth Cause of Action

- 17 1. Payment of unpaid wages plus interest
18 2. Attorney fees and costs
19 3. Other relief the court deems proper

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21 Seventh Cause of Action

- 22 1. Wage statement penalties
23 2. Attorney fees and costs

24
25 Eighth Cause of Action

- 26 1. Restitution of unpaid wages and premium pay
27 2. Attorney fees
28 3. Other relief the court deems proper

- 1 Ninth Cause of Action
2 1. All applicable PAGA penalties
3 2. Attorney fees and costs
4 3. Other relief the court deems proper
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6 Date: December 20, 2023

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