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9 JHALIL KING

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

06/12/2024

By: B. Singh Deputy

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SACRAMENTO

12 UNLIMITED JURISDICTION

13 JHALIL KING

14 Plaintiff,

15 vs.

16 APRIA HEALTHCARE LLC;
17 MSI HEALTH SOLUTIONS LLC;
18 ADONIA LOGISTICS LLC; and
19 DOES 1 through 25, inclusive,

20 Defendants.

Case No. **24CV011659**

COMPLAINT FOR DAMAGES

- (1) RACE DISCRIMINATION AND HARASSMENT IN VIOLATION OF FEHA
- (2) FAILURE TO PREVENT RACE DISCRIMINATION AND HARASSMENT IN VIOLATION OF FEHA
- (3) RETALIATION IN VIOLATION OF FEHA
- (4) RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5
- (5) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
- (6) FAILURE TO PAY WAGES AND RELATED PENALTIES IN VIOLATION OF THE LABOR CODE
- (7) FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7
- (8) FAILURE TO REIMBURSE BUSINESS EXPENSES IN VIOLATION OF LABOR CODE SECTION 2802
- (9) PAGA VIOLATIONS

JURY TRIAL DEMAND

COMES NOW PLAINTIFF JHALIL KING (hereinafter “Mr. King” or “Plaintiff”) and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff is informed and believes that Defendant MSI Health Solutions LLC (hereinafter “MSI”) is a registered New York limited liability company that does business in California.

2. Plaintiff is informed and believes that Defendant Adonia Logistics LLC (hereinafter “Adonia”) is a registered Wyoming limited liability company that does business in California.

3. Plaintiff is informed and believes that Defendant Apria Healthcare LLC (hereinafter “Apria.”) is a registered Delaware limited liability company that does business in California.

4. At all times relevant to this complaint, MSI, Adonia, Apria, and Does 1 through 25 (hereinafter collectively referred to as “Defendants”) jointly employed Plaintiff in the County of Sacramento, State of California.

5. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as DOES 1 through 25, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of said fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff’s injuries as herein alleged were proximately caused by Defendants.

6. Plaintiff is informed and believes, and based on such information and belief alleges, that at all times herein mentioned, each of the Defendants named herein was the agent and employee of the remaining Defendants and was acting within the course and scope of said agency and employment.

EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS

7. On April 19, 2024, Plaintiff filed a complaint for race discrimination, harassment and retaliation with the Department of Fair Employment and Housing and received a right to sue notice on the same day.

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FACTUAL ALLEGATIONS

8. In approximately February 2023, Jhalil King was hired by Adonia and MSI as a Medical Courier. In this position, Mr. King delivered and set up medical equipment for Apria. Mr. King was paid by MSI and Adonia as an independent contractor and reported to Apria each day. When he had questions about pay or benefits, he was instructed to go to his MSI/Adonia supervisor, who supervised those aspects of his employment. He wore an MSI uniform and held himself out to the public as an MSI employee. However, Apria provided him with his schedule and supervised his day-to-day activities.

9. Throughout his employment with Defendants, Mr. King was a top performer and received positive reviews of his work performance.

10. On or about October 6, 2023, an Apria driver drew a racist depiction of a monkey on a piece of paper and placed it on Mr. King's equipment. Mr. King reported the incident to Defendants, but no action was taken in response. A short time later, Mr. King's manager made monkey noises in front of him, which Mr. King found to be offensive. Mr. King reported this incident to Defendants, but no action was taken in response.

11. Mr. King typically worked from approximately 9am to 5pm, six to seven days per week, and was on-call Monday through Friday from approximately 8pm to 5am. He received numerous calls during his on-call shift and was required to respond to calls immediately. For each call, he was required to deliver and set up medical equipment for Apria. Due to the frequency of the calls and Defendants' expectation that he respond immediately, Mr. King was under the control of Defendants during the entirety of his on-call shifts. Although Adonia and MSI paid Mr. King for the time he spent delivering and setting up medical equipment, Defendants did not pay him for the time spent during his on-call shifts waiting for calls.

12. Defendants failed to properly classify Mr. King as an employee; failed to pay him wages for all time worked; failed to pay him all overtime compensation due; failed to pay him minimum wages for all time worked; failed to provide him with accurate wage statements showing all hours worked and other information required by the Labor Code; failed to provide him rest breaks; and failed to pay him for all business expenses, including cell phone expenses

1 and expenses related to the use of his vehicle, as required by the Labor Code.

2 13. During his employment with Defendants, Mr. King made numerous complaints to
3 Defendants about the racist incidents described above as well as Defendants' failure to reimburse
4 him for all phone and vehicle related expenses, but Defendants ignored his complaints.

5 14. On February 21, 2024, Defendants terminated Mr. King's employment in retaliation
6 for his complaints about discrimination and harassment in the workplace and unlawful wage
7 practices.

8 **FIRST CAUSE OF ACTION**

9 **RACE AND DISCRIMINATION AND HARASSMENT IN VIOLATION OF FEHA**

10 15. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

11 16. Government Code section 12940 ("FEHA") makes it an unlawful employment
12 practice for an employer to discriminate against an employee in compensation or in terms,
13 conditions, or privileges of employment because of the employee's race.

14 17. Defendants, through their acts and omissions, knowingly and intentionally
15 discriminated against and harassed Plaintiff because of his race in violation of FEHA, by
16 engaging in the course of conduct more fully set forth in the preceding paragraphs of this
17 complaint. Defendants wrongfully and unlawfully imposed adverse employment actions upon
18 Plaintiff based on race, as described above, and by terminating Plaintiff's employment based on
19 his race, and for complaining about such discrimination.

20 18. Defendants' unlawful practices as outlined herein were in direct contravention of
21 FEHA, as more fully set forth in the preceding paragraphs of this complaint.

22 19. As a direct and proximate cause of Defendants' unlawful practices, Plaintiff
23 suffered damages as set forth in this complaint.

24
25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PREVENT DISCRIMINATION
IN VIOLATION OF FEHA**

27 20. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

28 21. Under FEHA, an employer has a duty to take all reasonable steps to prevent

1 discrimination and harassment in violation of FEHA. (Gov. Code, § 12940, subd. (k).)

2 22. Defendants violated their duty under FEHA by failing to take all reasonable
3 measures to prevent Defendants from creating a discriminatory environment.

4 23. Defendants knew or should have known about the discrimination. Despite such
5 knowledge, Defendants failed to take immediate and appropriate corrective action to prevent the
6 discrimination as alleged herein.

7 24. As a direct and proximate cause of Defendants' unlawful practices, Plaintiff suffered
8 damages as set forth in this complaint.

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10 **THIRD CAUSE OF ACTION**
RETALIATION IN VIOLATION OF FEHA

11 25. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

12 26. Under the FEHA, an employer is prohibited from retaliating against an employee
13 because the employee has opposed practices forbidden under FEHA or because the employee filed
14 a complaint, testified, or assisted in any proceeding under FEHA. (Gov. Code, § 12940, subd. (h).)

15 27. Plaintiff made numerous complaints to Defendants about discriminatory conduct in
16 the workplace. Following such complaints, Defendants retaliated against Plaintiff by terminating
17 his employment.

18 28. Defendants' unlawful practices as outlined herein were in direct contravention of
19 FEHA, as more fully set forth in the preceding paragraphs of this complaint.

20 29. As a direct and proximate cause of Defendants' unlawful practices, Plaintiff suffered
21 damages as set forth in this complaint.

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23 **FOURTH CAUSE OF ACTION**
RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5

24 30. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

25 31. Under California Labor Code § 1102.5(b), an employer may not retaliate against an
26 employee who discloses information, "to a person with authority over the employee or another
27 employee who has the authority to investigate, discover, or correct the violation or
28 noncompliance . . . if the employee has reasonable cause to believe that the information discloses

1 a violation of state or federal statute, or a violation of or noncompliance with a local, state, or
2 federal rule or regulation.”

3 32. Defendants wrongfully and unlawfully retaliated against Plaintiff for complaining
4 about Defendants’ discriminatory working environment and unlawful wage practices, as
5 described above. At the time Plaintiff made the complaints, he had reasonable cause to believe
6 that his complaints concerned a violation of state or federal law or regulations, and in fact
7 Defendants’ conduct did violate numerous laws as provided in FEHA and the Labor Code as
8 described in this Complaint.

9 33. Defendants’ unlawful practices as outlined herein were in direct contravention of
10 Labor Code § 1102.5, as more fully set forth in the preceding paragraphs of this complaint.

11 34. As a direct and proximate cause of Defendants’ unlawful practices, Plaintiff
12 suffered damages as set forth in this complaint.

13 **FIFTH CAUSE OF ACTION**
14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 35. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

16 36. Defendants’ termination of Plaintiff’s employment contravened the well-established,
17 fundamental, and substantial public policy of the laws of the United States and California law, as
18 embodied in FEHA, Labor Code 1102.5, and California common law, that an employer may not
19 retaliate against an employee for the employee’s disclosure of reasonably-based suspicions of
20 violations of state or federal statute, or a violation of or noncompliance with a local, state, or
21 federal rule or regulation.

22 37. Defendants wrongfully and unlawfully imposed adverse employment actions upon
23 Plaintiff, including terminating his employment because of his race and because he complained
24 about unlawful discrimination and harassment in the workplace, and Labor Code violations.

25 38. Defendants’ unlawful practices as outlined herein were in direct contravention of
26 fundamental public policies, as more fully set forth in the preceding paragraphs of this complaint.

27 39. As a direct and proximate cause of Defendants’ unlawful practices, Plaintiff
28 suffered damages as set forth in this complaint.

SIXTH CAUSE OF ACTION
FAILURE TO PAY WAGES

IN VIOLATION OF CAL. LABOR CODE §§ 201, 203, 510, 558 AND 1194

40. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

41. Section 510 of the California Labor Code and the applicable IWC Wage Order require an employer to pay its non-exempt employees for all hours worked and at an hourly rate of one-and-a-half times their normal hourly rate for any time worked in excess of eight hours (and up to 12 hours in a day), and for all hours worked in excess of 40 hours in a work week.

42. By their failure to pay overtime compensation and other wages, including on-call time, Defendants have violated and continue to violate the provisions the California Labor Code including but not limited to sections 510, 558, 1194, 1194.2, and continue to violate the applicable IWC Wage Orders, which require the payment of overtime compensation to non-exempt employees; the payment of wages for all time worked, including liquidated damages for failure to pay all hours at a rate equal to or above the California minimum wage rate; and the payment of all wages due at the time of termination of employment.

43. Labor Code § 201 requires that if an employer “discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 203 authorizes an employee to sue for penalties in an amount equal to the former employee’s daily wages for up to thirty (30) days if an employer willfully failed to pay any wages due to the employee at the time of separation from employment (or within 72 hours if the employee tenders a resignation).

44. As noted in the preceding paragraphs, Defendants failed to pay Plaintiff all of the wages and benefits, including wages, overtime, rest periods (or compensation in lieu thereof) to which he was entitled at the time of his employment separation. Defendants’ failure to pay Plaintiff wages was willful in nature as set forth in the applicable authority governing Labor Code § 203 and warrants the imposition of the thirty-day wage penalty.

45. California Labor Code § 226(a) provides that each employer must furnish each of its employees an accurate itemized statement in writing showing, among other things, the total hours worked by the employee and all applicable hourly rates in effect during the pay period and

1 the corresponding number of hours worked at each hourly rate by the employee. Section 226.1
2 provides that an employee injured by his employer's "knowing and intentional failure . . . to
3 comply with subdivision (a) is entitled to recover" actual damages or \$50, for the initial violation;
4 \$100 for each subsequent violation per employee per violation, not to exceed \$4,000; and an
5 award of costs and reasonable attorney's fees. Defendants failed to provide timely, accurate and
6 complete itemized wage statements to Plaintiff in accordance with Labor Code § 226(a),
7 including but not limited to failing to accurately reflect the total number of hours worked.

8 46. Plaintiff is entitled by statute to recover reasonable attorneys' fees, costs of suit, and
9 interest and penalties on the unpaid amounts pursuant to Labor Code §§ 218.5 and 1194.

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**

12 47. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

13 48. During Plaintiff's employment with Defendants, Plaintiff was not able to take
14 uninterrupted rest breaks on most workdays because he was too busy and typically worked alone.

15 49. Labor Code section 226.7 prohibits employers from requiring employees to work
16 during any rest period mandated by the IWC Wage Orders. Section 226.7 also establishes a
17 penalty if an employer fails to authorize and permit employees a required rest period.

18 50. By their failure to authorize and permit Plaintiff to take paid 10-minute rest periods
19 for every four (4) hours or major fraction thereof worked per day, and failing to provide premium
20 pay compensation for such un-provided rest periods, as alleged above, Defendants willfully
21 violated the provisions of Labor Code section 226.7 and the applicable IWC Wage Orders.

22 51. As a proximate result of the unlawful acts of Defendants, Plaintiff has been deprived
23 of premium wages in an amount unknown at this time, but which will be shown according to proof
24 at the time of trial.

25 52. As a direct and proximate cause of Defendants' unlawful practices, Plaintiff suffered
26 damages as set forth in this complaint.

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EIGHTH CAUSE OF ACTION
UNREIMBURSED BUSINESS EXPENSES
(LABOR CODE SECTION 2802)

53. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

54. While discharging his duties for Defendants, Plaintiff incurred reasonable and necessary work-related expenses. Such expenses include but are not limited to expenses related to vehicle and phone usage.

55. Defendants have failed to indemnify or in any manner reimburse Plaintiff for all work related expenses. By requiring Plaintiff to pay expenses and cover losses incurred in direct consequence of the discharge of Plaintiff’s duties for Defendants and/or in obedience of Defendants’ direction or expectations, Defendants have violated Labor Code § 2802.

56. By unlawfully failing to indemnify Plaintiff, Defendants are liable for reasonable attorneys’ fees and costs under Labor Code § 2802(c).

57. As a direct and proximate cause of Defendants’ unlawful practices, Plaintiff suffered damages as set forth in this complaint.

NINTH CAUSE OF ACTION
PAGA VIOLATIONS
(LABOR CODE SECTION 2699)

58. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

59. As alleged above, Defendants failed to comply with the California Labor Code, including Sections 201, 202, 203, 218.5, 226, 226.3, 226.7, 226.8, 510, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1 and 2802. As such, Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a). Pursuant to Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiff brings this action against Defendants on behalf of himself and all other non-exempt employees who were misclassified by Defendants, and seeks recovery of applicable civil penalties as follows:

1 a. where civil penalties are specifically provided in the Labor Code for each
2 of the violations alleged herein, Plaintiff seeks recovery of such penalties;

3 b. where civil penalties are not established in the Labor Code for each of the
4 violations alleged herein, Plaintiff seeks recovery of the penalties
established in § 2699(e) of the Labor Code Private Attorneys General Act
of 2004, and in accordance with § 200.5 of the Labor Code.

5 60. On April 1, 2024, Plaintiff caused to be served written notice to the Labor and
6 Workforce Development Agency via its online portal and served Defendants via certified mail of
7 Plaintiff's intent to file a complaint pursuant to Labor Code § 2699 *et seq.*

8 61. The LWDA did not respond to the notice within the time provided by Labor Code §
9 2699.3.

10 **DAMAGES**

11 62. As a proximate result of Defendants' unlawful actions against Plaintiff, as alleged
12 above, Plaintiff has been harmed in that he has suffered loss of wages, benefits, and additional
13 damages. As a result of such discrimination and consequent harm, Plaintiff has suffered such
14 damages, all in an amount within the jurisdiction of this court, according to proof at time of trial.

15 63. As a further proximate result of Defendants' unlawful actions against Plaintiff, as
16 alleged above, Plaintiff has been harmed in that Plaintiff has suffered humiliation, emotional and
17 physical distress, and has been injured in mind and body, all in an amount within the jurisdiction of
18 this court, according to proof at time of trial.

19 64. The acts and omissions of Defendants have caused and will continue to cause
20 irreparable harm to Plaintiff. Plaintiff has no immediate, adequate or speedy remedy at law to
21 redress the continuing retaliatory policies and practices of Defendants, and therefore seeks
22 affirmative and injunctive relief as follows:

23 a. For an injunction restraining Defendants from continuing or maintaining any
24 policy, practice, custom or usage which is discriminatory or retaliatory in nature against any
25 employee making a complaint when such employee reasonably believes that a violation of state or
26 federal law is being committed;

27 b. For an injunction restraining Defendants, along with their supervising
28 employees, agents, and all those subject to their control or acting in concert with them, from

1 causing, encouraging, condoning or permitting the practice of discrimination or retaliation and
2 willful violation of state or federal law;

3 c. For affirmative relief requiring Defendants to conduct training of all
4 employees regarding the harmful nature of discriminating against an employee or retaliating
5 against any employee when such employee reasonably believes that a violation of state or federal
6 law is being committed and makes complaints to the employer or any governmental regulatory
7 agency. The proposed plan of education and training should also include training and detection,
8 and correction and prevention of such retaliatory practices;

9 d. For affirmative relief requiring Defendants to develop clear and effective
10 policies and procedures for employees complaining of violations of state or federal law, so they
11 may have their complaints promptly and thoroughly investigated by a neutral fact finder and
12 informal as well as formal processes for hearing, adjudication and appeal of the complaints; and

13 e. For affirmative relief requiring Defendants to develop appropriate sanctions
14 or disciplinary measures for supervisors or other employees who are found to have committed
15 discriminatory or retaliatory acts, including warnings to the offending person and notations in that
16 person's employment record for reference in the event future complaints are directed against that
17 person, and dismissal where other measures fail.

18 65. Defendants and their managers, officers, supervisors or agents acted oppressively,
19 fraudulently, maliciously and in willful and conscious disregard of Plaintiff's rights, and with the
20 intention of causing, or in reckless disregard of the probability of causing injury and emotional
21 distress to Plaintiff. Defendants were informed of the oppressive, fraudulent and malicious
22 conduct of their employees, managers, officers, supervisors and agents, and ratified, approved and
23 authorized such conduct. Plaintiff is therefore entitled to an award of punitive damages in amount
24 conforming to proof at trial.

25 **PRAYER**

26 **Wherefore**, Plaintiff prays for judgment against each Defendant as follows:

27 1. For a money judgment representing compensatory damages including lost wages,
28 earnings, retirement benefits and other employee benefits, and all other sums of money, together

1 with interest on these amounts, according to proof;

2 2. For a money judgment for mental pain and anguish, and emotional distress,
3 according to proof;

4 3. For an award of punitive damages, according to proof;

5 4. For an award of unpaid wages, waiting time penalties, rest period penalties, wage
6 statement penalties, liquidated damages and other applicable penalties;

7 5. For an award of appropriate attorneys' fees and costs associated with this lawsuit
8 pursuant to FEHA, Labor Code §§ 218.5 and 1194; Code of Civil Procedure § 1021.5 and any
9 other applicable law;

10 6. For costs of suit;

11 7. For prejudgment and post-judgment interest; and

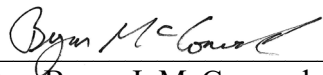
12 8. For any other relief that is just and proper.

13 **JURY TRIAL DEMAND**

14 Plaintiff demands trial by jury of all issues, except for attorneys' fees and costs.

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16 Date: June 12, 2024

McCORMACK LAW FIRM

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18 By: Bryan J. McCormack, Esq.
19 Attorney for Plaintiff
20 JHALIL KING
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