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 (Fee Exempt, Gov. Code, § 6103)

FILED
Superior Court Of California,
Sacramento
07/08/2015
 cleurgans
 By _____, Deputy
 Case Number:
34-2015-00181490

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 DEPARTMENT OF FAIR EMPLOYMENT)
 AND HOUSING, an agency of the State of)
 California,)
 14 Plaintiff,)
 15 vs.)
 16 SAC EXPRESS, INC., a California)
 Corporation; and DOES ONE through TEN,)
 17 inclusive,)
 18 Defendants.)
 19
 20 CHRISTOPHER ROBELLO,)
 21 Real Party in Interest.)
 22

Case No.
 COMPLAINT FOR COMPENSATORY
 DAMAGES AND INJUNCTIVE RELIEF
 FOR EMPLOYMENT DISCRIMINATION
 [Gov. Code, § 12940, subds. (a), (k)]
 JURY TRIAL DEMANDED
 (Civil Unlimited)

23 Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (DFEH) alleges the
 24 following against Defendants SAC EXPRESS, INC. ("SEI"), and Does ONE through TEN, inclusive,
 25 on behalf of the DFEH and real party in interest CHRISTOPHER ROBELLO ("Mr. Robello" or "real
 26 party in interest"):



1 **INTRODUCTION**

2 1. Defendant SAC EXPRESS, INC. ("SEI") engaged in unlawful employment
3 discrimination against real party in interest CHRISTOPHER ROBELLO by unlawfully terminating
4 him because of his religion and need and request for religious accommodation, in violation of the
5 California Fair Employment and Housing Act (FEHA), Government Code section 12940,
6 subdivisions (a), (k), and (l), and Government Code section 12926, subdivisions (l), (o), and (q).

7 **PARTIES**

8 2. The DFEH is the state agency charged with enforcing the FEHA. (Gov. Code, §
9 12930.) The FEHA entitles all persons to seek, obtain, and maintain employment free from
10 discrimination, including the right to accommodation of religious belief or observance. (Gov. Code,
11 § 12940 et seq.) The DFEH's enforcement of the FEHA is an exercise of the public policy of the
12 State of California to protect the civil rights of all Californians to seek, obtain, and hold employment
13 without discrimination or abridgment on account of any protected basis. (Gov. Code, §§ 12920,
14 12921.) The DFEH is empowered to file civil complaints in its own name on behalf of the person
15 claiming to be aggrieved as the real party in interest under Government Code section 12965,
16 subdivision (a).

17 3. Real party in interest, Mr. Robello, at all times herein, was a "person" within the
18 meaning of Government Code section 12925, subdivision (d), and an "employee" under Government
19 Code sections 12926, subdivision (c), and 12940, subdivisions (a) and (k). At all times relevant
20 herein, Mr. Robello was working within the County of Sacramento, California.

21 4. SEI at all times relevant herein, was an "employer" within the meaning of
22 Government Code section 12940, subdivisions (a), (k), and (l), and Government Code section 12926,
23 subdivision (d). At all times relevant to this complaint, SEI was a business entity operating under
24 the laws of the State of California, and conducting business in the County of Sacramento, California.

25 5. DOES ONE through TEN, inclusive are sued pursuant to Code of Civil Procedure
26 section 474. The DFEH is ignorant of the true names or capacities of the defendants sued as DOES
27



1 ONE through TEN. The DFEH will amend this complaint to allege their true names and capacities
2 when the same are ascertained.

3 6. The DFEH is informed, believes, and alleges that at all times mentioned herein, each
4 defendant is and was, in doing the things complained of herein, the agent of their co-defendants, was
5 acting within the scope of that agency, and that each defendant is jointly and severally liable to the
6 real party in interest for the damages alleged.

7 **PROCEDURAL BACKGROUND AND VENUE**

8 7. The DFEH realleges and fully incorporates herein by reference, each allegation
9 contained in paragraphs 1 through 6, inclusive, as if fully set forth herein.

10 8. This action arises under the FEHA, specifically, Government Code section 12940,
11 subdivisions (a) and (k).

12 9. Venue is proper in this court in that Sacramento County is the county in this state in
13 which the unlawful practices alleged herein were committed, in which the records relevant to SEI's
14 unlawful practices are maintained and administered, and in which SEI maintains a place of business.

15 10. Mr. Robello filed with the DFEH a verified written complaint of discrimination
16 against SEI, pursuant to Government Code section 12960, alleging that SEI had committed unlawful
17 employment practices against him, in violation of the FEHA, within the preceding year. The
18 complaints were properly served on SEI.

19 11. The harm that is the subject of this complaint occurred in the County of Sacramento.

20 12. All conditions precedent to the filing of this civil complaint were fulfilled, including
21 the requirement that the DFEH require all parties to participate in mandatory dispute resolution in
22 the DFEH's internal dispute resolution free or charge in an effort to resolve the dispute without
23 litigation.

24 13. The amount of damages sought by this complaint exceeds the minimum
25 jurisdictional limits of this court.

26 14. When the State is the Plaintiff in Superior Court, verification of its complaint is not
27 required in order that the answer of the defendants be required to file a verified answer to the State's



1 complaint. (Code Civ. Proc., §446, subd. (a).) Consequently, an answer by general denial to this
2 complaint is not permitted; the defendants' answer must be fully responsive and it must be verified.
3 (Code Civ. Proc., §431.30, subd. (d).)

4 15. SEI and the DFEH signed a tolling agreement regarding the real party in interest's
5 complaint, extending the time that DFEH may file a civil superior court action up to and including
6 July 9, 2015.

7 **FACTUAL ALLEGATIONS**

8 16. The DFEH re-alleges and incorporates herein by reference each allegation contained
9 in paragraphs 1 through 15, inclusive, as if fully set forth herein.

10 17. SEI is a business that provides delivery services to other businesses. SEI regularly
11 employed in 2013 and 2014 approximately twelve drivers to drive its trucks and vans to complete
12 deliveries pursuant to its contractual obligations to other businesses.

13 18. In or about June 2014, SEI's management consisted of President Gerino Astudillo,
14 Secretary Elizabeth Gonzalez, and Operations Manager Daniel Astudillo.

15 19. Mr. Robello began working for SEI as a delivery driver in or about February of
16 2009.

17 20. Mr. Robello worked during the week, and only worked on a Saturday approximately
18 five times during his employment with SEI. Mr. Robello was never asked to work on Sundays by
19 SEI until May of 2014.

20 21. In or around May of 2014, President Gerino Astudillo conducted a meeting with Mr.
21 Robello and SEI driver John Blue. In the meeting, Gerino Astudillo told the real party in interest that
22 SEI employees would all have to be scheduled for an on-call rotation pattern where employees
23 would each work about one weekend every three months.

24 22. Mr. Robello refused to work on Sundays based on his sincerely held religious
25 beliefs.



1 23. Mr. Robello told Gerino Astudillo that he would not be able to work on Sundays
2 because he needed to go with his family to Mass due to his religious beliefs. Gerino Astudillo
3 scoffed in response and then said “we’ll have to make some changes.”

4 24. On or around June 5, 2014, SEI gave Christopher Robello a memo which read, “all
5 drivers will need to be put onto a Saturday / On Call rotation.”

6 25. On June 6, 2014, Mr. Robello’s supervisor, Daniel Astudillo, approached Mr.
7 Robello and asked Mr. Robello if he signed the memo. Mr. Robello asked Daniel Astudillo if the on-
8 call schedule changes were solely for Saturday deliveries or if drivers would also be required to
9 perform deliveries on Sundays as well. Daniel Astudillo said that SEI’s contract with Amazon
10 required drivers to make deliveries on Sundays, even though the memo only explicitly requires
11 drivers to make deliveries on Saturdays.

12 26. Mr. Robello informed Daniel Astudillo that Mr. Robello would not be able to
13 perform deliveries on Sundays due to religious reasons and then signed the memo. Where Mr.
14 Robello signed the memo, he wrote in parenthesis “Saturdays only.” After signing the memo, Mr.
15 Robello left for his route as he always did.

16 27. On June 9, 2014, as Mr. Robello attempted to clock-in, Daniel Astudillo told Mr.
17 Robello to go with him to the warehouse. Daniel Astudillo then gave to Mr. Robello his termination
18 paperwork, which falsely stated that Mr. Robello refused to work Saturdays.

19 28. SEI never conducted any anti-discrimination and harassment prevention training
20 while Mr. Robello was employed with SEI. SEI never disseminated any anti-discrimination policy
21 among its employees while Mr. Robello was employed with SEI.

22 **FIRST CAUSE OF ACTION**

23 **Employment Discrimination on the Basis of Religious Creed**
24 **(Gov. Code, § 12940, subd. (a))**

25 29. The DFEH re-alleges and incorporates, each allegation contained in paragraphs 1
26 through 28, as if fully set forth herein.

1 30. Government Code section 12940, subdivision (a), makes it unlawful “for an
2 employer, because of the...religious creed...of any person, to bar or discharge the person from
3 employment.” Government Code section 12926, subdivision (q), states, “Religious Creed,”
4 “religion”, “religious observance,” “religious belief,” and “creed” include all aspects of religious
5 belief, observance, and practice...” California Code of Regulations, title 2, section 11060, states,
6 “Religious creed discrimination may be established by showing...employment benefits have been
7 denied in whole or in part because of an...employee’s religious creed...[or] The employer...failed to
8 reasonably accommodate the applicant or employee’s religious creed despite being informed by
9 the...employee or otherwise having become aware of the need for reasonable accommodation.”

10 31. As alleged herein and in violation of Government Code section 12940, subdivision
11 (a), SEI barred and discharged real party in interest from employment because of his religious creed
12 and observance when SEI terminated his employment because he requested a religious
13 accommodation after indicating he could not work on Sundays, as his Catholic faith and beliefs
14 required.

15 32. As a direct result of SEI’s unlawful religious discrimination and failure to
16 accommodate, real party in interest suffered a loss of a discrimination-free work environment, out-
17 of-pocket expenses, lost wages and other benefits of employment in an amount to be proven at trial.

18 33. As a further and direct result of SEI’s unlawful practices, Mr. Robello suffered
19 emotional distress, depression, anxiety, frustration, damage to his self-esteem, and other injury in an
20 amount to be proven at the time of trial.

21 34. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to remedy such
22 injury, and the harm will go un-remedied until the court recognizes defendant’s unlawful conduct
23 and awards the damages and injunctive relief requested below.



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SECOND CAUSE OF ACTION
Failure to Take All Reasonable Steps to
Prevent Discrimination from Occurring in the Workplace
(Gov. Code, § 12940, sub. (k))

35. The DFEH re-alleges and incorporates each allegation contained in paragraphs 1 through 34, as if fully set forth herein.

36. Government Code section 12940, subdivision (k), declares it an unlawful employment practice for an employer to fail to take all reasonable steps necessary to prevent discrimination from occurring.

37. SEI failed, among other acts or omissions, to create an anti-discrimination policy and adequately train its managers and staff about the FEHA's prohibition of religious discrimination in the workplace. As a result of SEI's failure to train, and other acts or omissions, SEI discriminated on the basis of a protected class in terminating the real party in interest, and thus failed to take all reasonable steps necessary to prevent discrimination from occurring, violating Government Code section 12940, subdivision (k).

38. As a direct result of the unlawful employment practices of SEI, Mr. Robello suffered a loss of a discrimination-free work environment, out-of-pocket expenses, lost wages, and other benefits of employment in an amount to be proven at trial.

39. By failing to take all reasonable steps necessary to prevent discrimination from occurring, SEI engaged in unlawful employment practices prohibited by the FEHA. By its failure to admit its violations of law, SEI has demonstrated that it will continue to engage in unlawful employment practices against its employees unless enjoined from doing so and ordered to comply with the mandates of the FEHA.

40. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to prevent such harm, injury, and loss, which will continue until this court enjoins the defendant's unlawful conduct and grants other affirmative relief as requested below.

PRAYER FOR RELIEF

The DFEH prays that the court issue judgment in favor of the DFEH and real party in interest , and order SEI to do the following:

1. Cease and desist from discriminating against Mr. Robello and other employees on the basis of religion or need for religious accommodation;

2. Reinstate Mr. Robello to his former position, or, in lieu of reinstatement, pay Mr. Robello compensatory damages for front pay wages and other applicable employment benefits, according to proof at time of trial, together with interest at the legal rate;

3. Pay to Mr. Robello compensatory damages for back pay wages and other applicable employment benefits, according to proof, together with interest at the legal rate;

4. Pay to Mr. Robello any out-of-pocket expenses, attorney fees, and actual damages incurred as a result of defendants' unlawful employment practices, according to proof, together with interest at the legal rate;

5. Pay to Mr. Robello damages for his emotional distress, pain, and suffering resulting from SEI's unlawful conduct;

6. Pay to the DFEH its attorney fees and costs, according to proof, together with interest at the legal rate;

7. Within sixty days of the effective date of the Court's order, develop and implement an updated anti-discrimination policy governing SEI and employees, and disseminate this policy to all staff members and employees;

8. Within ninety days of the effective date of the Court's order, post (for a minimum period of three years) the written anti-discrimination policy in conspicuous locations throughout all business premises managed or operated by SEI;

9. Within ninety days of the effective date of the Court's order, distribute the anti-discrimination policy identified in DFEH's Prayer for Relief, paragraph 8, to all SEI staff and employees and to employees of all businesses managed or operated by SEI or its staff;



1 10. Within sixty days of the effective date of the Court's order, provide five hours of
2 discrimination prevention training, at SEI's expense, for all SEI employees and owners;

3 11. Within sixty days of the effective date of the Court's order, post DFEH notices
4 DFEH 162 and DFEH 162s, and a pregnancy disability leave rights poster in conspicuous locations
5 throughout all business premises managed or operated by SEI indefinitely;

6 12. Within sixty days of the effective date of the Court's order, post (for a minimum
7 period of three years), in a common area of all locations where notices to employees are posted, a
8 notice stating that defendants have violated the FEHA and specifying the remedies ordered by the
9 court;

10 13. Within ninety days of the effective date of the Court's order, provide proof to the
11 DFEH of defendants' compliance with all requirements of the Court's order; and

12 14. For such other relief as the court deems just and proper.


13 Dated: July 8, 2015

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

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