

FILED
Superior Court Of California,
Sacramento

10/08/2009

Prover

By _____, Deputy

Case Number:

34-2009-00059954

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DUPREE PIERRE BARBER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

Department
Assignments
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DUPREE PIERRE BARBER, an individual,

Plaintiff,

vs.

CORDOVA RECREATION AND PARK
DISTRICT, STEVE EBERT, SCOTT
LIMBAUGH, KEN MARKS, through the
COUNTY OF SACRAMENTO, and DOES
1 through 50, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES FOR:

1. Discrimination and Failure to Prevent Discrimination in Violation of California Government Code §§12920 and 12940(a);
2. Harassment and Failure to Prevent Harassment in Violation of California Government Code §§12940(j) and 12940(k); and
3. Retaliation and Failure to Prevent Retaliation in Violation of California Government Code §§12940(h) and 12940(k)

Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff DUPREE PIERRE BARBER (hereinafter "Plaintiff") is a resident of Sacramento County and at all times herein mentioned, was a resident of Sacramento County, in the State of California and at all relevant times herein mentioned was employed by CORDOVA RECREATION AND PARK DISTRICT.

2. Defendant CORDOVA RECREATION AND PARK DISTRICT (hereinafter

1 "CRPD") is, and at all times herein mentioned was a special district of the County
2 of Sacramento, in the State of California.

3 3. Defendant, COUNTY OF SACRAMENTO (hereinafter "COUNTY" or
4 "Defendant"), is, and at all times mentioned herein was, a region duly organized and
5 existing under the laws of the State of California.

6 4. Defendant STEVE EBERT (hereinafter "Ebert") is, and at all times herein
7 mentioned was an individual residing in and/or conducting business in the County of
8 Sacramento, in the State of California.

9 5. Defendant KEN MARKS (hereinafter "Marks") is, and at all times herein
10 mentioned was an individual residing in and/or conducting business in the County of
11 Sacramento, in the State of California.

12 6. Defendant SCOTT LIMBAUGH (hereinafter "Limbaugh") is, and at all times
13 herein mentioned was an individual residing in and/or conducting business in the County
14 of Sacramento, in the State of California.

15 7. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
16 as Does 1 through 50, inclusive, and therefore sues these Defendants by such fictitious
17 names. Plaintiff will amend this Complaint to allege their true names and capacities
18 when ascertained. Plaintiff is informed and believes and thereon alleges that each of the
19 fictitiously named Defendants is responsible in some manner for the Plaintiff's injuries
20 and occurrences herein alleged.

21 8. Plaintiff is informed and believes and thereon alleges that at all times herein
22 mentioned the Defendants, and each of them, were the agents, servants, and employees of
23 their Co-Defendants, and in doing the things hereinafter alleged were acting within the
24 course and scope of their authority as such agents, servants, and employees, and with the
25 permission and consent of their Co-Defendants.

26 9. The unlawful employment practices complained of herein occurred in the
27 County of Sacramento, State of California, as did the other acts complained of herein.

1 10. Plaintiff was hired on or around March 16, 2005 by Defendant. Plaintiff is an
2 exemplary employee who ably performs the duties of his position.

3 11. Plaintiff alleges that he was discriminated against at CRPD based on his race
4 in violation of California Government Code §§12920 and 12940(a). Plaintiff is African-
5 American. Plaintiff currently supervises a maintenance crew for Defendant CRPD. His
6 job title is Park Maintenance I. He is a full-time, permanent employee of Defendant
7 CRPD. Plaintiff supervised Defendant's employees Willie Benesh (hereinafter
8 "Benesh") and Larry Brown (hereinafter "Brown") until in or around March 2009. Mr.
9 Benesh is a native of the Fiji Islands. Mr. Brown is African-American.

10 12. Plaintiff's immediate supervisor is Ron Markham (hereinafter "Markham").
11 Defendant Ebert is Defendant CRPD's Superintendent, and Defendant's employee Dave
12 Edmonds is CRPD's Administrative Chief Executive Officer. All of these persons are
13 Caucasian.

14 13. In or around October 2007, Plaintiff contends that he complained to Mr.
15 Edmonds, Defendant Ebert's immediate superior, about the refusal of Defendant Ebert to
16 hire an African-American named James Wilcoxon for a year-round, hourly position with
17 Defendant. Mr. Wilcoxon was employed by CRPD as a part-time seasonal maintenance
18 worker. Plaintiff contends that Defendant Ebert hired all of the Caucasian part-time,
19 seasonal CRPD employees who worked with Mr. Wilcoxon as year-round, hourly or full-
20 time, permanent CRPD employees. Plaintiff contends that Defendant Ebert refused to
21 hire Wilcoxon for a similar position due to his race.

22 14. Plaintiff contends that from March 2005 until in or around October 2007
23 Defendant Ebert regularly told Defendant CRPD's African-American employees that "if
24 you don't like it here, I will help you leave." In or around September 2007 and October
25 2007, Plaintiff contends that he complained to Mr. Edmonds on at least three (3)
26 occasions about these allegedly harassing statements.

27 15. On or about November 1, 2007, Plaintiff contends that Defendant Ebert
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1 referred to Plaintiff as a "backstabber" and stated to Plaintiff that he would make certain
2 that Plaintiff would never be promoted to a Park Maintenance II position with CRPD.
3 Based upon these statements, Plaintiff contends that Mr. Edmonds told Defendant Ebert
4 about Plaintiff's complaint, and Defendant Ebert retaliated against Plaintiff as evidenced
5 by the statement above. To date, Plaintiff has not been promoted to Park Maintenance II,
6 despite his excellent work record, length of service and qualifications. Defendant
7 CRPD's Park Maintenance II position has a higher rate of pay than the Park Maintenance
8 I position.

9 16. On or about April 29, 2008, Plaintiff contends that he found a toy doll with a
10 knife in its back inserted into the door handle of his work truck. Plaintiff contends that
11 the persons responsible for this incident are CRPD employees Gary Lawrence and/or
12 Defendant Marks and/or Defendant Limbaugh. These persons comprised CRPD's
13 irrigation crew. After discovering the doll, Plaintiff became involved in an argument
14 with Mr. Lawrence about the incident, during which Plaintiff blamed Mr. Lawrence for
15 the incident. Mr. Lawrence denied any involvement in the incident. Plaintiff contends
16 that he gave the doll to Defendant Ebert.

17 17. The following day, a meeting was held to discuss the incident. Plaintiff
18 contends that Defendant Ebert blamed Plaintiff for the incident and that Defendant
19 Limbaugh said that "in the past, when an incident like this occurred it was meant as a
20 welcoming gesture."

21 18. On or about June 9, 2008, Plaintiff filed a Complaint of Discrimination with
22 the California Department of Fair Employment and Housing.

23 19. On or about August 4, 2008, Plaintiff contends that CRPD's employee
24 Lawrence attempted to hit Plaintiff in the head with a steel door in Defendants' break
25 room. Plaintiff contends Mr. Lawrence took this action due to racial animus toward
26 Plaintiff and that the incident was videotaped by Defendant CRPD's break room security
27 cameras.

1 20. On or about September 23, 2008, Plaintiff contends that he was having a
2 conversation with Markham when Defendant Ebert entered the office and began making
3 derogatory comments about Plaintiff. Plaintiff stated to Defendant Ebert, "I have not
4 disrespected you one time, so can you show me the same respect I'm showing you ?" At
5 this point, Plaintiff contends that Defendant Ebert rose from the table on which he was
6 seated and came at Plaintiff with his fist balled up. Plaintiff had to tell Defendant Ebert
7 to "get out of my face" twice before Defendant Ebert sat back down. Plaintiff contends
8 that Plaintiff's race was a motivating factor in Defendant Ebert's behavior during this
9 meeting.

10 21. On or about October 3, 2008, Plaintiff filed a written complaint with CRPD
11 about the break room incident, the doll incident and the September 23, 2008 incident with
12 Defendant Ebert. From on or about January 9, 2009 until January 26, 2009, Plaintiff
13 took medical leave due to stress resulting from Defendants' allegedly discriminatory,
14 harassing and retaliatory acts.

15 22. In or around February or March 2009, Plaintiff contends that Defendant CPRD
16 employee Andrea White, at the request of Mr. Edmonds, asked Plaintiff, "Why don't you
17 resign ?" Plaintiff refused to do so, and continues to be employed by Defendant CRPD.

18 23. At various times during Plaintiff's employment, Plaintiff contends that he and
19 other non-Caucasian CRPD employees have been repeatedly denied formal training in
20 how to use chemical spraying equipment, the use of new landscape maintenance
21 equipment and in other subjects related to Plaintiff's employment.

22 24. Plaintiff contends that from the beginning of Defendant Ebert's tenure as
23 CRPD's Superintendent until in or around March 2009, CRPD's maintenance crews were
24 intentionally segregated by Defendant Ebert on the basis of race. Plaintiff contends that
25 it was Defendants' practice to assign newly hired part-time seasonal Caucasian
26 employees to Plaintiff's crew, have Plaintiff train the new hire, promote the new hire to
27 year-round, hourly status or full-time permanent status and then re-assign the employee
28 to an all-Caucasian crew.

1 25. At various times during Plaintiff's employment, Plaintiff contends that CRPD
2 employee Scott Norton regularly referred to Plaintiff as "Buckwheat", "my boy Driving
3 Miss Daisy", stated to Plaintiff on at least one occasion that "the KKK is going to whup
4 your black ass, boy", and made other racially harassing comments. Plaintiff contends
5 that Defendants were aware that Mr. Norton routinely made such comments and took no
6 action to prevent Mr. Norton from making these statements.

7 26. Plaintiff contends that Defendants denied Plaintiff salary increases and
8 promotions in order to give those benefits to less-qualified Caucasian employees of
9 Defendant. Plaintiff further contends Plaintiff's race was a motivating reason for and a
10 substantial factor in Defendant's decision to deny Plaintiff promotion to Park
11 Maintenance II and engage in other discriminatory behavior, and that Defendant's denial
12 of promotion to Plaintiff from on or about November 1, 2007 to present caused and
13 continues to cause Plaintiff's harm.

14 27. Plaintiff also contends that Defendant failed to prevent discrimination against
15 Plaintiff because of his race in violation of California Government Code §12940(k) by
16 taking reasonable steps necessary to prevent the discrimination. Plaintiff contends
17 Defendant's failure to prevent racial discrimination against Plaintiff was a substantial
18 factor in causing Plaintiff to be denied promotion, salary increases and training.

19 28. Plaintiff contends that he was subjected to severe and pervasive harassing
20 conduct by Defendant in violation of California Government Code §12940(j) because of
21 his race. The conduct has occurred on an regular basis during the entirety of Plaintiff's
22 employment with Defendants. The above-mentioned conduct took the form of Defendant
23 Ebert, Defendant Marks, Defendant Limbaugh and Plaintiff's co-employees Gary
24 Lawrence and Scott Norton regularly engaging in racially harassing behavior and making
25 racially insulting remarks toward Plaintiff from on or around March 16, 2005 to present.

26 29. Plaintiff contends that the work environment at CRPD is hostile, and contends
27 that a reasonable person in his position would have considered the environment to be
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1 hostile. Plaintiff contends that Defendant CRPD is strictly liable for Defendant Ebert's
2 acts of harassment toward Plaintiff. Plaintiff contends that Defendant CRPD is
3 vicariously liable for Defendants Limbaugh and Marks' acts of harassment toward
4 Plaintiff, and that Plaintiff's supervisor's and co-employees' conduct and Defendant's
5 response thereto were substantial factors in causing Plaintiff's denial of promotion from
6 on or around November 1, 2007 to present.

7 30. Plaintiff contends that he complained to Defendant's Park Administrator Dave
8 Edmonds in or around October 2007 concerning the refusal of Defendant's supervisor
9 Steve Ebert to hire an African-American named James Wilcoxon for a full-time, hourly
10 position with Defendant. Plaintiff contends that from March 2005 until in or around
11 October 2007 Defendant Ebert regularly told Defendant CRPD's African-American
12 employees that "if you don't like it here, I will help you leave." In or around September
13 2007 and October 2007, Plaintiff contends that he complained to Mr. Edmonds on at least
14 three (3) occasions about Defendant Ebert's above-mentioned allegedly harassing
15 statements. Plaintiff contends that his complaints were a motivating reason for
16 Defendant's decision to deny Plaintiff promotion on or around November 1, 2007.
17 Plaintiff contends that Defendant's conduct was a substantial factor in causing Plaintiff to
18 be denied promotion. Plaintiff contends that Defendant's retaliation took the form of
19 denying Plaintiff promotion from November 1, 2007 to present because of the above-
20 mentioned complaints.

21 31. Plaintiff also contends that Defendant failed to prevent retaliation against
22 Plaintiff because of his complaints to Mr. Edmonds and Mr. Markham about Defendant
23 Ebert's allegedly discriminatory hiring practices and allegedly harassing behavior by his
24 co-employees in violation of California Government Code §12940(k). Plaintiff contends
25 that Defendant CPRD failed to take reasonable steps necessary to prevent the retaliation,
26 and that Defendant's failure to take reasonable steps necessary to prevent retaliation
27 against Plaintiff was a substantial factor in Plaintiff's being denied promotion, salary
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1 increases, training and other benefits related to his employment.

2 32. On or about June 9, 2008, Plaintiff filed Complaints of Discrimination with the
3 California Department of Fair Employment and Housing (hereinafter referred to as
4 "DFEH"). (See Exhibit "A" attached hereto and incorporated by reference.)

5 33. On or about June 3, 2009, Plaintiff received letters from DFEH indicating that
6 the cases were closed and issuing right-to-sue notices. (See Exhibit "B" attached hereto
7 and incorporated by reference.)

8
9 **FIRST CAUSE OF ACTION**

10 **(Discrimination and Failure to Prevent Discrimination in Violation of California**
11 **Government Code §§12920, 12940(a), 12940(m) and 12940(k))**
12 **(As to Defendant Cordova Recreation and Park District)**

13 34. Plaintiff incorporates herein by reference Paragraphs 1 through 33 of his
14 Complaint as though fully set forth herein.

15 35. At all times mentioned in this Complaint, California Government Code Section
16 12920 was in full force and effect and was binding on Defendants. That Section provides:

17 "It is hereby declared as the public policy of this State that it is necessary to protect
18 and safeguard the right and opportunity of all persons to seek and hold employment
19 without discrimination or abridgement on account of *race*, religious creed, color,
national origin, ancestry, physical disability, mental disability, medical condition,
marital status, or age."

20 36. As alleged herein, Defendant violated Section 12920 by discriminating against
21 Plaintiff because of his race.

22 37. Additionally, at all times mentioned in this Complaint, California Government
23 Code Section 12940(a) was in full force and effect and binding upon Defendants. That
24 Section provides:

25 "It shall be an unlawful employment practice...for an employer, because of *race*,
26 religious creed, color, national origin, ancestry, physical disability, mental disability,
27 medical condition, marital status, sex, age, or sexual orientation of any person, to
28 refuse to hire or employ the person or to refuse to select the person for a training
program leading to employment, or to bar or to discharge the person from
employment or from a training program leading to employment, or to discriminate
against the person in compensation or in terms, conditions, or privileges of

employment.”

38. As alleged herein, Defendants violated this Section by denying and continuing to deny Plaintiff promotion to Park Maintenance II because of his race and engaging in other discriminatory behavior.

39. Plaintiff has performed his job in a satisfactory manner, and has no record of disciplinary problems during his employment with Defendant.

40. On or about November 1, 2007, Plaintiff contends he was wrongfully denied promotion by Defendant. On that date, Defendant’s supervisor Steve Ebert stated to Plaintiff that he would make sure Plaintiff was never promoted to Park Maintenance II.

41. Plaintiff contends that his race was a substantial factor in Defendant’s decisions to deny Plaintiff the above-mentioned promotion, to deny Plaintiff training related to his employment and to engage in other discriminatory conduct, and that the reasons given by CPRD for denying Plaintiff promotion and training are pretexts for discrimination. Such discrimination is in violation of the FEHA, and has resulted in damages and injury to Plaintiff as alleged herein.

42. Additionally, at all times mentioned in this Complaint, California Government Code §12940(k) was in full force and effect and binding on Defendants. That Section provides:

“It shall be an unlawful employment practice...for an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent *discrimination* and harassment from occurring.”

Plaintiff contends that Defendant failed to prevent discrimination on the basis of race against Plaintiff. Plaintiff contends Defendant failed to take all reasonable steps necessary to prevent discrimination against Plaintiff, and that Defendant’s failure to take reasonable steps necessary to prevent discrimination was a substantial factor in causing Plaintiff’s failure to be promoted and receive training necessary for promotion.

43. As a proximate result of Defendant’s conduct, Plaintiff has lost wages and

benefits, has lost earning capacity and has incurred other out-of-pocket losses.

44. As a proximate result of Defendant's willful, knowing and intentional discrimination, Plaintiff has suffered and continues to suffer humiliation, emotional distress and mental and physical pain and anguish, all to his damage in a sum according to proof at time of trial.

45. As a further proximate result of Defendant's conduct and the consequences proximately caused by it, Plaintiff has suffered medical and related expenses in an amount according to proof at time of trial.

46. The above described actions were done with malice, fraud, oppression and in reckless disregard of Plaintiff's rights and were despicable in character and warrant the imposition of punitive damages in a sum sufficient to punish and deter Defendant.

47. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this Complaint when the amounts are more fully known.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

SECOND CAUSE OF ACTION

(Harassment and Failure to Prevent Harassment in Violation of California

Government Code §§12940(j) and 12940(k))

(As to All Defendants)

48. Plaintiff incorporates herein by reference Paragraphs 1 through 47 of his Complaint as though fully set forth herein.

49. At all times mentioned in this Complaint, California Government Code Section 12940(j) was in full force and effect and was binding on Defendants. That Section provides in relevant part:

"It shall be an unlawful employment practice... for an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of *race*, religious creed, color, national origin, ancestry, physical disability, mental

1 disability, medical condition, marital status, sex, age or sexual orientation, to
2 harass an employee, an applicant, or a person providing services pursuant to a
3 contract.

4 50. Plaintiff alleges that he was subjected to severe, pervasive and unwanted
5 harassing conduct by Defendants on the basis of his race. This conduct occurred and
6 continues to occur during Plaintiff's employment with Defendant.

7 51. As an example, on or about April 29, 2008, Plaintiff contends that Defendant
8 Marks and/or Defendant Limbaugh and/or Defendant CRPD's employee Gary Lawrence
9 inserted a doll with a knife in its back into the door handle of Plaintiff's work vehicle.
10 Plaintiff became involved in an argument with Defendant's employee Gary Lawrence
11 about the incident, as Plaintiff believed that the doll could only have been placed on the
12 door handle by either Mr. Lawrence and/or Defendants Marks and Limbaugh.

13 52. On or about August 4, 2008, Plaintiff was seated near the door of Defendant
14 CRPD's break room as Defendant's employee Lawrence was exiting through the break
15 room's heavy steel door. Plaintiff contends that Mr. Lawrence attempted to hit Plaintiff
16 in the head with the break room door, only narrowly missing Plaintiff.

17 53. On or about September 23, 2008, Plaintiff was discussing a large project with
18 Defendant CPRD employee Ron Markham. During this meeting Plaintiff contends
19 Defendant Ebert entered the office and began making derogatory comments about
20 Plaintiff. Plaintiff stated to Defendant Ebert, "I have not disrespected you one time, so
21 can you show me the same respect I'm showing you ?" At this point, Plaintiff contends
22 that Defendant Ebert rose from his seat and came at Plaintiff with his fist balled up.
23 Plaintiff contends he had to tell Defendant Ebert to "get out of my face" twice before
24 Defendant Ebert sat back down. Plaintiff contends that Plaintiff's race was a motivating
25 factor in Defendant Ebert's behavior during this meeting.

26 54. On several occasions during Plaintiff's employment, Plaintiff contends
27 Defendant Ebert and Mr. Markham denied Plaintiff and other non-Caucasian CPRD
28 employees, including but not limited to Plaintiff, Mr. Benesh and Mr. Brown, formal,
certificated training in the use of chemical spraying equipment and heavy landscaping

1 equipment. Upon being asked by Plaintiff as to why he was not permitted to participate
2 in these trainings, Defendant Ebert stated to Plaintiff, in the presence of Mr. Benesh and
3 Mr. Brown, "I only hired you for labor."

4 55. At various times during Plaintiff's employment, Plaintiff contends that
5 Defendant Limbaugh intentionally turned off the timers of the sprinkler systems in the
6 parks assigned to Plaintiff's supervision. Plaintiff contends that Defendant Limbaugh
7 committed these acts with the intention of killing the grass in Plaintiff's parks so that
8 Plaintiff would be disciplined and/or terminated by Defendants, and that his actions were
9 motivated in substantial part by racial animus toward Plaintiff.

10 56. At various times during Plaintiff's employment, Plaintiff contends that
11 Defendant Marks refused Plaintiff's repeated requests to spray insecticide as necessary in
12 the parks under Plaintiff's supervision. Plaintiff contends that Defendant Marks refused
13 Plaintiff's requests with the intention of making it more difficult for Plaintiff to maintain
14 the parks under his supervision. Plaintiff contends that Defendant Marks' actions were
15 motivated in substantial part by racial animus toward Plaintiff.

16 57. These are only some of the numerous instances of harassing conduct that
17 Plaintiff contends Defendant Ebert, Defendant Limbaugh, Defendant Marks, Mr.
18 Lawrence and Mr. Norton engaged in during Plaintiff's employment with Defendant.

19 58. During the period from in or around October 2007 to present, Plaintiff
20 complained to Defendants repeatedly about the racially harassing behavior of Plaintiff's
21 co-employees. Plaintiff contends Defendants took no effective action to remedy the
22 above-mentioned behavior. Plaintiff contends he repeatedly complained to his
23 supervisor, Mr. Markham, about Defendant Limbaugh's and Defendant Marks' actions.
24 Plaintiff contends that Mr. Markham took no effective action to address Plaintiff's
25 concerns, and stated to Plaintiff, Mr. Benesh and Mr. Brown on several occasions,
26 "Steve's my boss, there's nothing I can do."

27 59. Plaintiff considered the work environment to be hostile, and contends that a
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1 reasonable person would have considered the environment to be hostile. Plaintiff
2 contends that Defendant is strictly liable for the participation of Defendant Ebert in
3 harassing Plaintiff, and that the harassing conduct was a substantial factor in causing
4 Plaintiff to be denied promotion to Park Maintenance II, salary increases and training.

5 60. Plaintiff also contends that Defendant CRPD failed to prevent harassment of
6 Plaintiff based on his race in violation of California Government Code §12940(k) by
7 taking reasonable steps necessary to prevent the harassment of Plaintiff. Plaintiff
8 contends that Defendant's failure to prevent harassment of Plaintiff based on his race was
9 a substantial factor in causing Plaintiff to be denied promotion, salary increases and
10 training.

11 61. As a proximate result of Defendants' willful, knowing and intentional
12 harassment, Plaintiff has suffered and continues to suffer humiliation, emotional distress
13 and mental and physical pain and anguish, all to his damage in a sum according to proof
14 at time of trial.

15 62. As a further proximate result of Defendants' conduct and the consequences
16 proximately caused by it, Plaintiff has suffered medical and related expenses in an
17 amount according to proof at time of trial.

18 63. The above described actions were done with malice, fraud, oppression and in
19 reckless disregard of Plaintiff's rights and were despicable in character and warrant the
20 imposition of punitive damages in a sum sufficient to punish and deter Defendants.

21 64. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.
22 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays
23 leave of Court to amend this Complaint when the amounts are more fully known.

24 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

25
26 **THIRD CAUSE OF ACTION**

27 **(Retaliation and Failure to Prevent Retaliation in Violation of California**

1 **Government Code §§12940(h) and 12940(k))**

2 **(As to Defendant Cordova Recreation and Park District)**

3 65. Plaintiff incorporates herein by reference Paragraphs 1 through 64 of his
4 Complaint as though fully set forth herein.

5 66. At all times mentioned in this Complaint, California Government Code
6 §12940(h) was in full force and effect and was binding on Defendants. That Section
7 provides:

8 “It shall be an unlawful employment practice...for any employer, labor
9 union, employment agency, or person to discharge, expel or otherwise
10 discriminate against any person because the person has opposed any
practices forbidden under this part or because the person has filed a
complaint, testified, or assisted in any proceeding under this part.”

11 Plaintiff contends that he was retaliated against because he complained to Defendant
12 CRPD’s Park Administrator Dave Edmonds and Plaintiff’s supervisor Ron Markham
13 about Defendant Ebert’s refusal to hire an African-American for an open and available
14 year-round, hourly position and Defendant Ebert’s statements to Defendant CRPD’s
15 African-American employees that if they didn’t like working for Defendant CRPD, he
16 would help them leave, as well as Plaintiff’s complaints about Plaintiff’s co-employees’
17 alleged racial harassment of Plaintiff. Plaintiff contends that his complaints about
18 Defendant Ebert’s refusal to hire Mr. Wilcoxon, Defendant Ebert’s allegedly harassing
19 statements to Defendant CRPD’s African-American employees and the allegedly
20 harassing behavior of Plaintiff’s co-employees were substantial factors in Defendant’s
21 decisions to deny Plaintiff promotion, salary increases and training that would increase
22 Plaintiff’s chances of receiving promotion and salary increases and to engage in other
23 retaliatory conduct.

24 67. Additionally, at all times mentioned in this Complaint, California Government
25 Code §12940(k) was in full force and effect and binding on Defendants.
26 That Section provides:

27 “It shall be an unlawful employment practice...for an employer, labor
28 organization, employment agency, apprenticeship training program, or any

training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”

Plaintiff contends that Defendant failed to prevent retaliation against him because of Plaintiff's complaints about Defendant Ebert's refusal to hire Mr. Wilcoxson and Defendant's employees' allegedly discriminatory and harassing behavior, in violation of California Government Code §12940(k). Plaintiff contends that Defendant failed to take reasonable steps necessary to prevent retaliation, and that Defendant's failure to take reasonably necessary steps to prevent retaliation against Plaintiff was a substantial factor in causing Plaintiff being denied promotion, salary increases and training.

68. As a proximate result of Defendant's conduct, Plaintiff has lost wages and benefits and has lost earning capacity and has incurred other out of pocket losses, all to his damage in a sum according to proof at time of trial.

69. As a proximate result of Defendant's willful, knowing and intentional discrimination, Plaintiff has suffered and continues to suffer humiliation, emotional distress and mental and physical pain and anguish, all to his damage in a sum according to proof at time of trial.

70. As a further proximate result of Defendant's conduct and the consequences proximately caused by it, Plaintiff has suffered medical and related expenses in an amount according to proof at time of trial.

71. The above described actions were done with malice, fraud, oppression and in reckless disregard of Plaintiff's rights and were despicable in character and warrant the imposition of punitive damages in a sum sufficient to punish and deter Defendant.

72. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this Complaint when the amounts are more fully known.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

1. For general and special damages according to proof at time of trial;

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2. For incidental and consequential damages according to proof at time of trial;
3. For punitive damages in an amount sufficient to punish and deter Defendants;
4. For prejudgment interest at the highest possible rate from the earliest possible date;
5. For costs of suit and reasonable attorney's fees herein incurred; and
6. For such other costs and further relief as the Court may deem just and proper.

BEYER, PONGRATZ & ROSEN

Dated: 10/7/09

By: Eric D. Hitchcock
Eric D. Hitchcock
Attorney for Plaintiff

BEYER, PONGRATZ & ROSEN
3230 Ramos Circle
Sacramento, CA 95827
(916) 369-9750

EXHIBIT A

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFE # E-200708-E-1745-00-eEEOC # 37AA809521

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.)

BARBER, DUPREE P. (MR.)

ADDRESS

10444 COLOMA ROAD #10

TELEPHONE NUMBER (INCLUDE AREA CODE)

916-363-6123

CITY	STATE	ZIP	COUNTY	COUNTY CODE
RANCHO CORDOVA	CA	95670	SACRAMENTO	067

**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME

CORDOVA RECREATION AND PARK DISTRICT

ADDRESS

2197 CHASE DRIVE

TELEPHONE NUMBER (INCLUDE AREA CODE)

916-362-1841

CITY	STATE	ZIP	COUNTY	COUNTY CODE
RANCHO CORDOVA	CA	95670	SACRAMENTO	067

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

☒ RACE ☐ SEX ☐ DISABILITY ☐ RELIGION ☐ NATIONAL ORIGIN/ANCESTRY ☐ DENIAL OF FAMILY/MEDICAL LEAVE ☐ SEXUAL ORIENTATION
☐ COLOR ☐ AGE ☐ MARITAL STATUS ☐ MEDICAL CONDITION (cancer or genetic characteristics) ☐ OTHER (SPECIFY)

NO. OF EMPLOYEES/MEMBERS

20

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) MAY 29, 2008

RESPONDENT CODE

93

THE PARTICULARS ARE:

- I. Throughout my employment I was harassed and discriminated against because of my race (African American). Beginning November 1, 2007 to the present, I am being denied a promotional opportunity. On March 16, 2005, I was hired for the position of Parts Maintenance I. I currently earn \$989 bi-weekly.
- II. On or about November 1, 2007, Steve Eberd, Superintendent, told me that he would make sure that I was never promoted to a Parts Maintenance II position.
- III. I believe that I was harassed and discriminated against because of my race, (African American) and that I was retaliated against for having complained about the harassment and discrimination. I base my belief on the following:
 - A. I am an African American male.
 - B. While working for Respondent only persons of Caucasian descent were provided with training.
 - C. Out of the 20 employees that work for Respondent only 6 are African American and I am the only permanent African American employee.
 - D. Mr. Eberd would hire his friends, who were non-African American, on a permanent basis and immediately promote them.
 - E. On or about November 1, 2007, Steve Eberd told me that he would make sure that I was never promoted to a Parts Maintenance II position.

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH # 200708-E-1745-00-eEEOC # 37AA807521

COMPLAINANT'S NAME(S) (Indicate Mr. or Ms.)

BARBER, DUPREE P. (MR.)

RESPONDENT'S NAME

CORDOVA RECREATION AND PARK DISTRICT

THE PARTICULARS ARE:

- F. Mr. Eberd would tell the African American employees on a regular basis that if they don't like it here that he will help them leave. In September and October of 2007, I complained to Dave Edmonds, Head Administrator, about Mr. Eberd's statements. Only after my third complaint did Mr. Edmonds tell Mr. Eberd to stop.
- G. On or about April 29, 2008, after being warned that two persons were going to set me up (names on file with DFEH), I found a toy doll with a knife in its back attached to the door of my pickup truck.
- H. On or about April 30, 2008, a meeting was held regarding the doll incident and Mr. Eberd blamed me for the incident. Mr. Scott Limbaugh, Irrigation Foreman, told me that back in the days when a person does that it shows that you are welcome here.
- I. The race harassment is both severe and pervasive. I have concerns whether I work in a safe environment.

TYPED AND MAILED FOR SIGNATURE JUNE 5, 2008

PAGE 2 OF 2

☒ I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

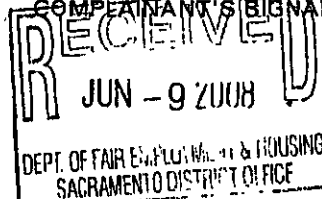
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated JUNE 7, 200819444 Coloma Rd #10At Rancho Cordova CA, 95670

City

Dupree Pierre Barber

COMPLAINANT'S SIGNATURE



DATE FILED:

STATE OF CALIFORNIA

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**
DFEH. E-200708-E-1745-01-e

EEOC #

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.)

BARBER, DUPREE P. (MR.)

ADDRESS

10444 COLOMA ROAD #10

TELEPHONE NUMBER (INCLUDE AREA CODE)

916-363-6123

CITY

RANCHO CORDOVA

STATE

CA

ZIP

95670

COUNTY

SACRAMENTO

COUNTY CODE

067
**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME

LNU, KENNETH, AS AN INDIVIDUAL

ADDRESS

2197 CHASE DRIVE

TELEPHONE NUMBER (INCLUDE AREA CODE)

916-362-1841

CITY

RANCHO CORDOVA

STATE

CA

ZIP

95670

COUNTY

SACRAMENTO

COUNTY CODE

067

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

☒ RACE ☐ SEX ☐ DISABILITY ☐ RELIGION ☐ NATIONAL ORIGIN/ANCESTRY ☐ DENIAL OF FAMILY/MEDICAL LEAVE ☐ SEXUAL ORIENTATION
☐ COLOR ☐ AGE ☐ MARITAL STATUS ☐ MEDICAL CONDITION (cancer or genetic characteristics) ☐ OTHER (SPECIFY)

NO. OF EMPLOYEES/MEMBERS

20

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) **MAY 29, 2008**

RESPONDENT CODE

93

THE PARTICULARS ARE:

- I. Throughout my employment I was harassed and discriminated against because of my race (African American). Beginning November 1, 2007 to the present, I am being denied a promotional opportunity. On March 16, 2005, I was hired for the position of Parts Maintenance I. I currently earn \$989 bi-weekly.
- II. On or about November 1, 2007, Steve Eberd, Superintendent, told me that he would make sure that I was never promoted to a Parts Maintenance II position.
- III. I believe that I was harassed and discriminated against because of my race, (African American) and that I was retaliated against for having complained about the harassment and discrimination. I base my belief on the following:
 - A. I am an African American male.
 - B. While working for Respondent only persons of Caucasian descent were provided with training.
 - C. Out of the 20 employees that work for Respondent only 6 are African American and I am the only permanent African American employee.
 - D. Mr. Eberd would hire his friends, who were non-African American, on a permanent basis and immediately promote them.
 - E. On or about November 1, 2007, Steve Eberd told me that he would make sure that I was never promoted to a Parts Maintenance II position.

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH #

200708-E-1745-01-e

EEOC #

COMPLAINANT'S NAME(S) (Indicate Mr. or Ms.)

BARBER, DUPREE P. (MR.)

RESPONDENT'S NAME

LNU, KENNETH, AS AN INDIVIDUAL

THE PARTICULARS ARE:

- F. Mr. Eberd would tell the African American employees on a regular basis that if they don't like it here that he will help them leave. In September and October of 2007, I complained to Dave Edmonds, Head Administrator, about Mr. Eberd's statements. Only after my third complaint did Mr. Edmonds tell Mr. Eberd to stop.
- G. On or about April 29, 2008, after being warned that two persons were going to set me up (names on file with DFEH), I found a toy doll with a knife in its back attached to the door of my pickup truck.
- H. On or about April 30, 2008, a meeting was held regarding the doll incident and Mr. Eberd blamed me for the incident. Mr. Scott Limbaugh, Irrigation Foreman, told me that back in the days when a person does that it shows that you are welcome here.
- I. The race harassment is both severe and pervasive. I have concerns whether I work in a safe environment.

TYPED AND MAILED FOR SIGNATURE JUNE 5, 2008

PAGE 2 OF 2

☒ I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated

JUNE 7 2008

At

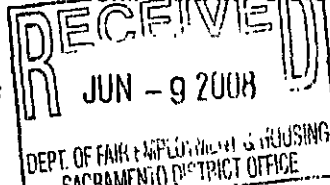
10444 Coloma Rd #10Rancho Cordova CA, 95670

City

Dupree Pierre Barber

COMPLAINANT'S SIGNATURE

DATE FILED:



STATE OF CALIFORNIA

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFE # E-200708-E-1745-02-e

~~EEOC~~ #

If dual filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.):

BARBER, DUPREE P. (MR.)

ADDRESS

10444 COLOMA ROAD #10

TELEPHONE NUMBER (INCLUDE AREA CODE)

916-363-6123

CITY

RANCHO CORDOVA

STATE

CA

ZIP

95670

COUNTY

SACRAMENTO

COUNTY CODE

067

**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME

LIMBAUGH, SCOTT, AS AN INDIVIDUAL

ADDRESS

2197 CHASE DRIVE

TELEPHONE NUMBER (INCLUDE AREA CODE)

916-362-1841

CITY

RANCHO CORDOVA

STATE

CA

ZIP

95670

COUNTY

SACRAMENTO

COUNTY CODE

067

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

☒ RACE ☐ SEX ☐ DISABILITY ☐ RELIGION ☐ NATIONAL ORIGIN/ANCESTRY ☐ DENIAL OF FAMILY/MEDICAL LEAVE ☐ SEXUAL ORIENTATION
☐ COLOR ☐ AGE ☐ MARITAL STATUS ☐ MEDICAL CONDITION (cancer or genetic characteristics) ☐ OTHER (SPECIFY) _____

NO. OF EMPLOYEES/MEMBERS

20

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOK PLACE (month, day, and year) MAY 29, 2008

RESPONDENT CODE

93

THE PARTICULARS ARE:

- I. Throughout my employment I was harassed and discriminated against because of my race (African American). Beginning November 1, 2007 to the present, I am being denied a promotional opportunity. On March 16, 2005, I was hired for the position of Parts Maintenance I. I currently earn \$989 bi-weekly.
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COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E-200708-E-1745-02-e

EEOC # _____

COMPLAINANT'S NAME(S) (Indicate Mr. or Ms.)

BARBER, DUPREE P. (MR.)

RESPONDENT'S NAME

LIMBAUGH, SCOTT, AS AN INDIVIDUAL

THE PARTICULARS ARE:

- F. Mr. Eberd would tell the African American employees on a regular basis that if they don't like it here that he will help them leave. In September and October of 2007, I complained to Dave Edmonds, Head Administrator, about Mr. Eberd's statements. Only after my third complaint did Mr. Edmonds tell Mr. Eberd to stop.
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TYPED AND MAILED FOR SIGNATURE JUNE 5, 2008

PAGE 2 OF 2

I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

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dated

JUNE 7 2008

Dupree Pierre Barber

10444 Coloma Rd #10
Rancho Cordova CA 95670

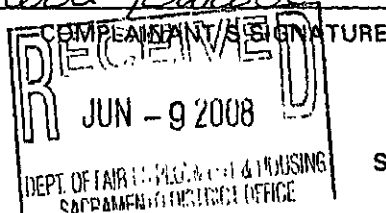
City

EH-300-01 (12/99)

S:LM:cm

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DATE FILED:



STATE OF CALIFORNIA

EXHIBIT B

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2000 "O" Street, Suite 120, Sacramento, CA 95811-5299
(916) 445-5523 TTY (800) 700-2320 Fax (916) 323-6092
www.dfeh.ca.gov



June 3, 2009

DUPREE BARBER
10444 COLOMA ROAD #10
RANCHO CORDOVA, CA 95670

RE: E200708E1745-00-e/37AA809521
BARBER/CORDOVA RECREATION AND PARK DISTRICT

Dear DUPREE BARBER:

NOTICE OF CASE CLOSURE

The consultant assigned to handle the above-referenced discrimination complaint that was filed with the Department of Fair Employment and Housing (DFEH) has recommended that the case be closed on the basis of: Complainant Elected Court Action.

Please be advised that this recommendation has been accepted and the case has been closed effective June 3, 2009.

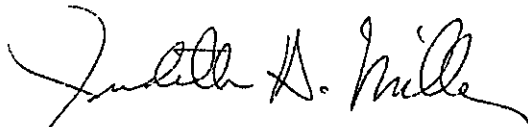
A Right-To-Sue Notice (DFEH-200-42) was issued on June 1, 2009. As the Right-To-Sue Notice stated, according to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. This is also applicable to DFEH complaints that are filed under, and allege a violation of Government Code section 12948 which incorporates Civil Code sections 51, 51.7, and 54. The civil action must be filed within one year from the date of the Right-To-Sue Notice. However, if the civil complaint alleges a violation of Civil Code section 51, 51.7, or 54, an attorney should be consulted about the applicable statutes of limitation. If a settlement agreement has been signed resolving the complaint, it is likely that your right to file a private lawsuit may have been waived.

Notice of Case Closure
Page Two

This case may be referred to the U.S. Equal Employment Opportunity Commission (EEOC) for further review. If so, pursuant to Government Code section 12965, subdivision (d)(1), your right to sue will be tolled during the pendency of EEOC's review of your complaint.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith A. Miller". The signature is fluid and cursive, with the first name "Judith" being the most prominent.

Judith A. Miller
District Administrator

cc: Case File

ANDREA WHITE
HUMAN RESOURCES MANAGER
CORDOVA RECREATION & PARK DISTRICT
2197 CHASE DRIVE
RANCHO CORDOVA, CA 95670

DFEH-200-08ae (06/06)
EMEDINAL

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2000 "O" Street, Suite 120, Sacramento, CA 95811-5299
(916) 445-5523 TTY (800) 700-2320 Fax (916) 323-6092
www.dfeh.ca.gov



June 3, 2009

DUPREE BARBER
10444 COLOMA ROAD #10
RANCHO CORDOVA, CA 95670

RE: E200708E1745-01-e
BARBER/(LNU), KENNETH, AS AN INDIVIDUAL

Dear DUPREE BARBER:

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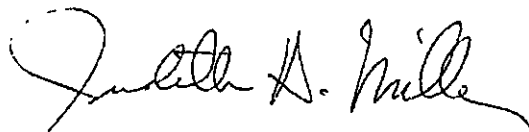
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Judith A. Miller
District Administrator

cc: Case File

CORIE A. STILLSON
EEO OFFICER, COUNTY OF SACRAMENTO
CORDOVA RECREATION AND PARK DISTRICT
700 H STREET, STE 5720
SACRAMENTO, CA 95814

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2000 "O" Street, Suite 120, Sacramento, CA 95811-5299
(916) 445-5523 TTY (800) 700-2320 Fax (916) 323-6092
www.dfeh.ca.gov



June 3, 2009

DUPREE BARBER
10444 COLOMA ROAD #10
RANCHO CORDOVA, CA 95670

RE: E200708E1745-02-e
BARBER/LIMBAUGH, SCOTT, AS AN INDIVIDUAL

Dear DUPREE BARBER:

NOTICE OF CASE CLOSURE

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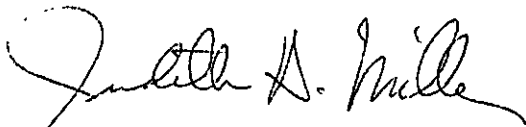
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EEO OFFICER, COUNTY OF SACRAMENTO
CORDOVA RECREATION AND PARK DISTRICT
700 H STREET, SUITE 5720
SACRAMENTO, CA 95814

DFEH-200-08ae (06/06)
EMEDINAL