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For All Purposes

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Case Management Conference
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

HARVEY DEMP

Plaintiff,

v.

TULARE PUBLIC CEMETERY DISTRICT
CORP., and DOES 1 through 50, inclusive,

Defendants.

Case No. VCU301693

COMPLAINT FOR DAMAGES

1. **VIOLATION OF GOVERNMENT CODE SECTION 12940(j)(1), HARASSMENT BASED ON RACE AND COLOR**
2. **VIOLATION OF GOVERNMENT CODE SECTION 12940 ET SEQ., DISCRIMINATION BASED ON RACE AND COLOR**
3. **RETALIATION**
4. **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**
5. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

JURY TRIAL DEMANDED

Plaintiff, HARVEY DEMP alleges as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff, HARVEY DEMP (referred to herein as “Plaintiff” or “DEMP”) residing at all times alleged herein in Tulare County, California, was an employee of Defendants, TULARE PUBLIC CEMETERY DISTRICT CORP. (“TULARE PUBLIC CEMETERY

1 DISTRICT”) and DOES 1 through 20, inclusive, commencing employment on or about
2 September 14, 2021.

3 2. Plaintiff is informed and believes, and thereon alleges, that Defendant,
4 TULARE PUBLIC CEMETERY DISTRICT, is and at all times mentioned a public cemetery
5 district in Tulare County, California that is governed by a Board of Trustees consisting of five
6 members appointed by the Tulare County Board of Supervisors, and has and is doing business
7 in the State of California and has done business, and continues to do business, in Tulare County,
8 California. At all times alleged herein, TULARE PUBLIC CEMETERY DISTRICT was and is
9 an employer and/or joint employer along with DOES 1 through 20, inclusive, as defined in the
10 meaning of California Government Code section 12926(d) and the California Fair Employment
11 and Housing Act (FEHA).

12 3. The true names and capacities of the Defendants named herein as DOES 1
13 through 50, inclusive, whether an individual, corporate or otherwise, are unknown to the Plaintiff
14 who, therefore, sue such Defendants by fictitious names pursuant to Code of Civil Procedure
15 Section 474. Alternatively, such DOE Defendants are persons whose identities are known to
16 Plaintiffs, but about whom sufficient facts are not known that would support the assertion by
17 Plaintiffs of a civil claim at this time. When Plaintiffs obtain information supporting a claim
18 against any DOE Defendant, they will seek leave to amend this Complaint and will assert
19 appropriate charging allegations.

20 4. Plaintiff is informed and believes, and thereon alleges, that Defendants, and
21 each of them, are the agents and/or employees and/or parent, subsidiary or sister corporations of
22 each other and are responsible for the acts complained of herein and in so acting were functioning
23 as the owner, shareholder, principal, agent, servant, partner, joint venturer, alter-ego, employee,
24 proxy and/or managing agent of the co-Defendants herein, and in performing the acts mentioned
25 herein were acting, at least in part, within the course and scope of such authority and with the
26 permission and consent of the co-Defendants.

27 5. Plaintiff is informed and believes, and thereon alleges that the above Co-
28 Defendants, managing agents, and supervisors, aided, abetted, condoned, permitted, approved,

1 authorized and/or ratified the unlawful acts described herein, including by and through the
2 conduct of its supervisory, manager-level employees, David Faria and Clara Bernardo as alleged
3 herein.

4 6. Defendants TULARE PUBLIC CEMETERY DISTRICT and DOES 1 through
5 20, inclusive, are employers within the meaning of California Government Code section
6 12926(d) and, as such, was and is barred from unlawfully harassing and/or retaliating against an
7 employee on the basis set forth in California Government Code section 12920, *et seq.* and
8 California Government Code section 12940, *et seq.*

9 7. As an employee of TULARE PUBLIC CEMETERY DISTRICT, Plaintiff was
10 entitled to all of the benefits provided by Defendant's personnel policies, procedures, and
11 practices.

12 8. During the time Plaintiff was employed with TULARE PUBLIC CEMETERY
13 DISTRICT, he was subjected to conduct which he reasonably and in good faith believed was
14 harassing and discriminatory as alleged herein. Plaintiff opposed the conduct and because of his
15 opposition to that conduct, faced discrimination, harassment and retaliation from Defendants.

16 9. Plaintiff is informed and believes, and thereon alleges, that TULARE PUBLIC
17 CEMETERY DISTRICT had an Employee Handbook which included a policy prohibiting
18 harassment and discrimination in the workplace. Although TULARE PUBLIC CEMETERY
19 DISTRICT is believed to have an express anti-harassment and discrimination policy, Defendants
20 regularly engaged in (and permitted) unwelcomed harassing and discriminatory conduct in the
21 workplace directed towards Plaintiff based on his ancestry, race and color.

22 10. Defendants' express, explicit, and or implicit approval of the inappropriate and
23 illegal conduct of its agent and employees as alleged herein, was exemplified by their failure to
24 appropriately investigate, address, discipline, and take immediate and appropriate action to stop
25 the illegal conduct directed towards Plaintiff. Defendants ratified the illegal conduct of its
26 supervisory/management employees, David Faria and Clara Bernardo, by knowingly and
27 willfully allowing the wrongful and illegal conduct to continue after Defendants became aware
28 of the conduct, and after Plaintiff had complained about the conduct on multiple occasions as

1 alleged herein, and because Defendants retaliated against Plaintiff after he complained/voiced
2 his opposition about the illegal conduct alleged herein.

3 11. On or about September 14, 2021, Plaintiff, an African American/black man,
4 became employed with Defendant, TULARE PUBLIC CEMETERY DISTRICT as a full time
5 Groundskeeper under the supervision of David Faria, Grounds Supervisor and Clara Bernardo,
6 District Manager. Plaintiff was the only African American/black man employed with Defendant.

7 12. During Plaintiff's employment with Defendant, Defendant's
8 supervisory/management employees frequently engaged in unwelcomed, unsolicited and
9 offensive, harassing and discriminatory conduct in the workplace towards Plaintiff on the basis
10 of his ancestry, race and color. The offensive, harassing and discriminatory conduct took a
11 variety of forms including but not limited to:

- 12 a. David Faria using the word nigger in the workplace;
- 13 b. David Faria using the word nigger in Plaintiff's presence at work;
- 14 c. David Faria calling Plaintiff a nigger while at work;
- 15 d. David Faria using the word "niggeritis" in a demeaning and degrading manner
16 while talking to Plaintiff at work; and
- 17 e. David Faria stating, he was going to hang Plaintiff from a tree.

18 13. The offensive and unlawful racially motivated conduct by David Faria took place
19 numerous times in the workplace and was observed by Defendant's District Manager, Clara
20 Bernardo who took no effective action to prevent and/or stop the unlawful race-based comments
21 and conduct by David Faria from continuing (the conduct continued after Clara Bernardo became
22 aware of the unlawful conduct by David Faria).

23 14. The unwelcomed, unsolicited, degrading, offensive, harassing and
24 discriminatory, unlawful conduct of Defendants also included David Faria on or about May 17,
25 2023, wrongfully accusing Plaintiff of drinking alcohol on the job after he found empty beer
26 cans at work in an area that Plaintiff and his coworker had worked. On or about May 18, 2023,
27 Plaintiff was informed by Clara Bernardo that he was being sent home from work, that he would
28 be paid for four hours of work that day and that she would be in contact with him. The next

1 day, on or about May 19, 2023, Clara Bernardo and David Faria met with Plaintiff at work and
2 wrongfully accused him of drinking alcohol (beer) at work and being under the influence of
3 alcohol at work, including at the meeting without requiring Plaintiff submit to a fitness for duty
4 examination or alcohol test and then wrongfully terminating Plaintiff on or about May 19, 2023
5 on the pretext he violated Tulare Public Cemetery District's Drug and Alcohol Policy.

6 15. Venue is proper in Tulare County because, among other reasons, the employment
7 relationship between Plaintiff and Defendant arose and was performed in Tulare County,
8 California.

9 16. Plaintiff has exhausted his administrative remedies according to law. On
10 September 11, 2023, Plaintiff filed a complaint with the California Civil Rights Department
11 (CRD) which alleges the violations of the Fair Employment and Housing Act which are the
12 subject of this legal action.

13 17. On September 11, 2023, Plaintiff received a Right to Sue Letter from the CRD
14 with respect to Defendants, allowing him to proceed with this legal action.

15 18. Plaintiff has complied with all prerequisites to jurisdiction of this Court under
16 California Government Code section 12900, *et seq.*, and has, therefore, exhausted his
17 administrative remedies.

18 19. The conduct of Defendants, and each of them as described and alleged herein was
19 despicable and the acts herein alleged were willful, maliciously, fraudulently and oppressively
20 engaged in with the wrongful intention of causing injury to the Plaintiff, with an improper and
21 evil motive amounting to malice and/or in conscious disregard of Plaintiff's rights. Plaintiff is
22 thus entitled to recover punitive damages in an amount according to proof.

23 **FIRST CAUSE OF ACTION**
24 **VIOLATION OF GOVERNMENT CODE SECTION 12940 (j)(1)**
25 **HARASSMENT BASED ON RACE AND COLOR**
26 **(Against Defendants TULARE PUBLIC CEMETERY DISTRICT and DOES 1 through**
27 **45, inclusive)**

28 20. The allegations or paragraphs 1 through 19, inclusive, are re-alleged and
incorporated herein by this reference.

1 21. California Government Code section 12940 (j)(1) provides in pertinent part as
2 follows:

3 It shall be an unlawful employment practice ...

4 (j)(1) For an employer, labor organization, employment agency,
5 apprenticeship training program or any training program leading to
6 employment, or any other person, because of race, religious creed,
7 color, national origin, ancestry, ...to harass an employee

8 **Harassment** of an employee, an applicant, or a person providing
9 services pursuant to a contract by an employee, other than an agent
10 or supervisor, shall be unlawful if the entity, or its agents or
11 supervisors, knows or should have known of this conduct and fails
12 to take immediate and appropriate corrective action.

13 22. Defendants, and each of them are employers within the meaning of Government
14 Code section 12940 (j)(4)(A) and Government Code section 12926(d) and as such are prohibited
15 from harassing against its employees on the basis of race and color.

16 23. During the course of Plaintiff's employment, Defendants engaged in a pattern of
17 discrimination and harassment based on Plaintiff's ancestry, race and color, as alleged herein.
18 Defendants' discriminatory actions against Plaintiff, as alleged above, constitute unlawful
19 discrimination and harassment based on Plaintiff's ancestry, race and color in violation of
20 California Government Code section 12940, et seq.

21 24. Plaintiff, at all times, had the right to work in an environment free of employment
22 discrimination and harassment on the basis of his ancestry, race and color.

23 25. The aforesaid behavior, conduct, comments and retaliation by the Defendants and
24 their agents, representatives, and employees, created a work environment that was intimidating,
25 hostile, oppressive and offensive to Plaintiff and which deprived Plaintiff of the benefit of a
26 discrimination-free work environment all in violation of California Government Code section
27 12940 et seq.

28 26. Defendants further violated Plaintiff's rights in that they, amongst other acts or
omissions to act:

 a. Failed to provide Plaintiff with employment conditions and a relationship
where he could safely work, free from verbal, direct, and indirect harassment;

1 Government Code section 12940(a) by, amongst other things (as alleged herein), making
2 discriminatory and harassing comments to Plaintiff at work based on his ancestry, race and
3 color, and using the 'N' word in his presence at work while other similarly situated employees
4 outside of the protected class (non-African Americans) were treated more favorably as alleged
5 herein.

6 31. TULARE PUBLIC CEMETERY DISTRICT and DOES 1 through 20, inclusive
7 knew or should have known of the harassing and discriminatory actions of its employees, David
8 Faria and Clara Bernardo as alleged herein. Defendants failed to take immediate and appropriate
9 corrective action to stop the harassment and discrimination of Plaintiff.

10 32. Defendants engaged in a pattern and practice of discrimination against Plaintiff
11 on the basis of his ancestry, race and color. Such ridicule, harassment and discrimination
12 included loss of tangible job benefits, and creating a hostile work environment as alleged herein.

13 33. As a result of Defendant's unlawful discrimination and harassment against
14 Plaintiff on the basis of ancestry, race and color, Plaintiff has suffered and will continue to suffer
15 substantial losses as follows:

- 16 1. economic damages;
- 17 2. non-economic damages;
- 18 3. attorneys' fees and costs;
- 19 4. expert witness fees.

20 34. Plaintiff has incurred, and will continue to incur, legal expenses and attorney's
21 fees. Plaintiff is presently unaware of the precise amount of these fees and expenses and prays
22 leave of court to amend the complaint when the amounts are fully known.

23 **THIRD CAUSE OF ACTION**

24 **RETALIATION**

25 **(Against Defendants TULARE PUBLIC CEMETERY DISTRICT, and DOES 1 through
26 20, inclusive)**

27 35. The allegations of paragraphs 1 through 19, inclusive, are re-alleged and
28 incorporated herein by this reference.

1 44. The allegations set forth in paragraphs 1 through 19, are re-alleged and
2 incorporated herein by reference.

3 45. At all times mentioned herein, California Constitution Article I, §8, and Civil
4 Code §§51 and 52, Government Code section 12940 et seq., and the Fair Employment and
5 Housing Act were in full force and effect and were binding on the Defendants.

6 46. Plaintiff was terminated by Defendants due to the discrimination, harassment and
7 retaliation of Plaintiff by Defendants on the basis of Plaintiff's ancestry, race and color all in
8 violation of the California Government Code as alleged herein and in violation of Public Policy
9 of the State of California.

10 47. Plaintiff is informed and believes, and thereon alleges, that his termination from
11 Defendants TULARE PUBLIC CEMETERY DISTRICT and DOES 1 through 20, inclusive was
12 not based on any legitimate business reason and that Plaintiff performed his employment duties
13 in a satisfactory manner.

14 48. As a proximate result of Defendants discrimination, harassment and retaliation
15 against Plaintiff, Plaintiff has suffered and continues to suffer from the following substantial
16 losses in an amount according to proof:

- 17 1. economic damages;
- 18 2. non- economic damages;
- 19 3. attorneys' fees and costs; and
- 20 4. expert witness fees.

21 49. Plaintiff has incurred, and will continue to incur, legal expenses and attorneys'
22 fees. Plaintiff is presently unaware of the precise amount of these fees and expenses and prays
23 leave of court to amend the complaint when the amounts are fully known.

24 **WHEREFORE**, Plaintiff respectfully prays as follows:

25 1. For compensatory damages including, but not limited to, past and future lost
26 wages, lost employee benefits (with interest on said amounts), diminished employability, other
27 economic injury, and emotional distress damages, all in an amount according to proof;

28 2. For economic and non-economic damages, according to proof;

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3. For exemplary and punitive damages, according to proof;


4. For pre-judgment interest under Civil Code section 3288, as well as other applicable statutory authority;

5. For costs of suit, including reasonable attorneys' fees and expert witness fees pursuant to government code 12965(b); and

7. For such other and further relief as the Court may deem just and proper.

DATED: September 11, 2023

LAW OFFICES OF ERIC P. OREN, INC.

By: 
Eric P. Oren, Attorney for
Plaintiff, HARVEY DEMP

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