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JAN 21 2016

By: Megan J. Harris
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JOHN J. HOFFMAN, Acting Attorney General of
New Jersey, and CRAIG SASHIHARA, Director,
New Jersey Division on Civil Rights,

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: ESSEX COUNTY

Plaintiffs,

DOCKET NO. _____

v.

CIVIL ACTION

KEARNY AUTO SPA, LLC,
Defendant.

COMPLAINT

John J. Hoffman, as Acting Attorney General of New Jersey, having offices at 25 Market Street, Trenton, New Jersey, and 124 Halsey Street, Newark, New Jersey; and Craig Sashihara, as Director of the New Jersey Division on Civil Rights, having offices at 31 Clinton Street, Newark, New Jersey, 140 East Front Street, Trenton, New Jersey, 5 Executive Campus, Cherry Hill, New Jersey, and 1325 Boardwalk, Atlantic City, New Jersey, allege the following:

JURISDICTION AND PARTIES

1. Plaintiffs John J. Hoffman, Acting Attorney General of New Jersey (the "Attorney General"), and Craig Sashihara, Director of the New Jersey Division on Civil

Rights (the "Director"), are charged with administering and enforcing the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to 49 (the "LAD").

2. Pursuant to the foregoing duties, the New Jersey Division on Civil Rights (the "Division") took the Verified Complaint of [REDACTED] or "Complainant"), filed with the Division on May 15, 2013, and conducted an investigation into [REDACTED] allegations that her former employer, Kearny Auto Spa, and her direct supervisor at Kearny Auto Spa, Carlos Santiago, subjected her to unlawful discrimination on the basis of gender and sexual orientation. [REDACTED] also alleged that Kearny Auto Spa unlawfully retaliated against her, in the form of termination, when she complained of the discrimination.

3. The Division's investigation revealed sufficient evidence to credit [REDACTED] allegations. The Attorney General and the Director file this action, on the basis of the Division's investigative findings, seeking remedies for [REDACTED] in the form of damages, and for the State of New Jersey in the form of penalties, costs, and equitable relief.

4. Defendant Kearny Auto Spa is a car wash, auto detailing, and oil change business located at 946 Passaic Avenue in Kearny, New Jersey.

5. Kearny Auto Spa shares ownership with at least six other auto care businesses and places of employment located in New Jersey.

FACTUAL ALLEGATIONS

6. [REDACTED] who is female and openly lesbian, began working as an auto detailer at Kearny Auto Spa on July 17, 2012.

7. As an auto detailer, [REDACTED] responsibilities included waxing vehicles, hand drying vehicles, and cleaning vehicle interiors.

8. Throughout her employment at Kearny Auto Spa, [REDACTED] was the only female auto detailer.

9. [REDACTED]'s direct supervisor was Carlos Santiago ("Santiago"), who held the title of manager. [REDACTED] also reported to general or regional manager Alex Stukelman ("Stukelman").

10. [REDACTED] was terminated on June 19, 2013, purportedly for leaving work before her shift ended.

11. On numerous occasions between July 17, 2012 and June 19, 2013, [REDACTED] was subject to unwelcome and harassing sexual comments from Santiago, Stukelman, and two co-workers, Richard "Doe" (last name unknown) and Sebastian Hernandez ("Hernandez").

12. On several occasions, Santiago and Stukelman made crude comments regarding [REDACTED] sexual orientation, such as Santiago's statement to [REDACTED] that he would "take care of" [REDACTED] female partner, and Stukelman's repeated request that [REDACTED] describe how she and her partner have sex. Santiago and Stukelman routinely asked whether [REDACTED] planned to go home with female friends who brought their cars in for service. Santiago once replied to [REDACTED]'s complaint about her hand being irritated from cleaning chemicals with "What, did you stick your finger in the wrong hole?"

13. On one occasion, Santiago directed [REDACTED] to turn around so that he could look at her buttocks.

14. On six or more occasions, Hernandez asked [REDACTED] "When are you going to take me home with you?"

15. On at least two occasions, Hernandez left notes for ██████ in areas at the workplace, expressing his affection for ██████ and desire to have a romantic relationship with her.

16. Doe asked ██████ on at least two occasions “When are you going to let me have sex with you?”

17. During certain incidents, ██████’s co-workers witnessed the sexual comments that Santiago, Stukelman, Hernandez, and Doe directed to her. At least one of ██████’s co-workers regularly witnessed vulgar conversations about ██████ when she was not present.

18. ██████ repeatedly complained to Santiago about the unwelcome sexual comments and advances described above. Neither Santiago nor anyone else took action in response to ██████’s complaints.

19. Kearny Auto Spa did not have an anti-harassment or discrimination policy in place during the time of ██████’s employment.

20. Kearny Auto Spa did not provide anti-harassment or discrimination training to employees during the time of ██████’s employment.

21. In addition to continuously being subjected to unwelcome sexual comments and advances, ██████ was treated less favorably than her male co-workers in her hours and assignments.

22. On more than one occasion, Santiago stated to ██████ that men do a better job than she was doing. Santiago once said to ██████ “Since you act like a man, I’m going to treat you like a man,” dismissing ██████’s complaints about pain in her knee and directing her to continue work that placed pressure on the knee.

23. On several occasions, [REDACTED] arrived for her shift and was not permitted to clock in and begin working for approximately two hours. On those occasions, she was directed by Santiago or Stukelman to remain at the work site while not being paid.

24. Between March and June 2013, [REDACTED]'s hours were reduced. She was regularly turned away and not permitted to work when she arrived for her shift, or permitted to work for only two hours, despite being scheduled for a longer shift.

25. In June 2013, [REDACTED] was removed from auto detailing and assigned to wiping down car windows.

26. [REDACTED]'s male co-workers were not subjected to the same reduction in hours, shift irregularities, or demotion from auto detailing assignments.

27. On June 19, 2013, [REDACTED] was terminated. Defendant alleged that [REDACTED] was terminated because she left work before her shift was over, and that she had been warned about tardiness and leaving early.

28. [REDACTED] denies that she left early on June 19, 2013. Defendant does not have time records or other documentation to support its assertion that [REDACTED] left early on June 19, 2013, or that she did not arrive on time and complete her full shift on any other date.

29. During the Division's investigation, Kearny Auto Spa shifted its reason for terminating [REDACTED], stating that she was terminated for lack of skill. Kearny Auto Spa did not provide records or other evidence supporting its assertion that [REDACTED] performed below standards or that she was terminated for lack of skill.

30. [REDACTED] was terminated following her repeated complaints to Santiago of sexual harassment and the filing of a Verified Complaint with the Division.

31. Because Kearny Auto Spa shifted its proffered reasons for [REDACTED]'s termination and did not provide evidence supporting those reasons, the Division credited [REDACTED]'s allegation that she was fired in retaliation for her complaints of discrimination.

COUNT I

DEFENDANT SUBJECTED [REDACTED] TO A HOSTILE WORK ENVIRONMENT ON THE BASIS OF GENDER AND SEXUAL ORIENTATION IN VIOLATION OF N.J.S.A. 10:5-12a

32. Plaintiffs repeat the allegations set forth in the preceding paragraphs of this Complaint as though set forth fully herein.

33. Between July 17, 2012 and June 19, 2013, Defendant subjected [REDACTED] to severe and pervasive harassment on the basis of her gender and sexual orientation.

34. Defendant failed to maintain or enforce a policy against workplace harassment and failed to take action in response to repeated complaints from [REDACTED].

35. The harassment [REDACTED] suffered on the basis of her gender and sexual orientation created a hostile work environment, in violation of N.J.S.A. 10:5-12a.

36. Each instance of subjecting [REDACTED] to a hostile work environment on the basis of gender or sexual orientation is a separate violation of N.J.S.A. 10:5-12a and renders Defendant liable for all damages [REDACTED] suffered as a result.

37. Each instance of subjecting [REDACTED] to a hostile work environment on the basis of gender or sexual orientation is a separate violation of N.J.S.A. 10:5-12a and cause for the assessment of a civil monetary penalty pursuant to N.J.S.A. 10:5-14.1a and attorney's fees pursuant to N.J.S.A. 10:5-27.1.

38. The willful and egregious manner in which [REDACTED] was subjected to a hostile work environment is cause for the assessment of punitive damages.

COUNT II

DEFENDANT SUBJECTED ██████████ TO DIFFERENTIAL TREATMENT ON THE BASIS OF HER GENDER IN VIOLATION OF N.J.S.A. 10:5-12a

39. Plaintiffs repeat the allegations set forth in the preceding paragraphs of this Complaint as though set forth fully herein.

40. Between July 17, 2012 and June 19, 2013, Defendant subjected ██████████, on the basis of gender; to less favorable treatment in her work assignments and work hours than her male co-workers, in violation of N.J.S.A. 10:5-12a.

41. Each instance of subjecting ██████████ to differential treatment in the conditions of employment on the basis of her gender is a separate violation of N.J.S.A. 10:5-12a and renders Defendant liable for all damages ██████████ suffered as a result.

42. Each instance of subjecting ██████████ to differential treatment in the conditions of employment on the basis of her gender is a separate violation of N.J.S.A. 10:5-12a and cause for the assessment of a civil monetary penalty pursuant to N.J.S.A. 10:5-14.1a and attorney's fees pursuant to N.J.S.A. 10:5-27.1.

COUNT III

DEFENDANT SUBJECTED ██████████ TO RETALIATION FOR EXERCISING HER LAD RIGHTS IN VIOLATION OF N.J.S.A. 10:5-12d

43. Plaintiffs repeat the allegations set forth in the preceding paragraphs of this Complaint as though set forth fully herein.

44. Between July 17, 2012 and June 19, 2013, ██████████ repeatedly complained to her supervisor of sexual harassment, exercising a right protected by the LAD. On May 15,

2013, she filed a complaint of discrimination with the Division, again exercising a right protected by the LAD.

45. On June 19, 2013, [REDACTED] was terminated wholly or partially in retaliation for her complaints of sexual harassment and discrimination, in violation of N.J.S.A. 10:5-12d.

46. Each instance of retaliation against [REDACTED] for exercising her rights under the LAD is a separate violation of N.J.S.A. 10:5-12d and renders Defendant liable for all damages [REDACTED] suffered as a result.

47. Each instance of retaliation against [REDACTED] for exercising her rights under the LAD is a separate violation of N.J.S.A. 10:5-12d and cause for the assessment of a civil monetary penalty pursuant to N.J.S.A. 10:5-14.1a and attorney's fees pursuant to N.J.S.A. 10:5-27.1.


DEMAND FOR RELIEF

ACCORDINGLY, Plaintiffs petitions this Court for judgment as follows:

- (a) Finding that Defendant committed the acts or omissions set forth in this Complaint;
- (b) Finding that such acts or omissions constituted violations of the LAD;
- (c) Awarding [REDACTED] lost wages, damages for mental and emotional distress, and any other costs associated with Defendant's unlawful conduct;
- (d) Assessing punitive damages against Defendant for the willful nature of its conduct in violation of the LAD;
- (e) Granting Plaintiffs appropriate equitable relief against Defendant to redress violations of the LAD;

- (f) Assessing Defendant a civil monetary penalty for each violation of the LAD in accordance with N.J.S.A. 10:5-14.1a;
- (g) Granting Plaintiffs attorney's fees, expenses, and costs in accordance with N.J.S.A. 10:5-27.1.
- (h) Affording ██████, Plaintiffs, and other affected parties any additional relief the Court may deem just and equitable.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
On behalf of Craig Sashihara,
Director of the New Jersey Division on Civil Rights

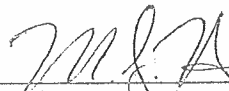
By: 
J. Harris
Deputy Attorney General

Dated: January 21, 2016

RULE 4:5-1(b)(2) CERTIFICATION

I certify that other than as specified herein, Plaintiffs in this matter have not initiated any other civil action in any court of this State against Defendant and are not now engaged in any arbitration proceeding against Defendant, nor is any other civil action or arbitration proceeding contemplated. With [REDACTED]'s consent, this complaint subsumes the Verified Complaint filed with the Division on May 15, 2013 against Kearny Auto Spa and Carlos Santiago, and there will be no administrative proceedings related to the Verified Complaint while this action is pending. I certify that Plaintiffs are not aware of any other party who should be joined in this action at the current time.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Megan J. Harris
Deputy Attorney General

Dated: January 21, 2016

JURY DEMAND

Pursuant to N.J.S.A. 10:5-13, Plaintiffs demand a jury trial for all claims brought under the LAD and any other issues triable by a jury.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____


Deputy Attorney General

Dated: January 21, 2016

DESIGNATION OF TRIAL COUNSEL
PURSUANT TO R. 4:5-1(c)

Deputy Attorney General Megan J. Harris is hereby designated as trial counsel for
this matter.

JOHN J. HOFFMAN
ATTORNEY GENERAL OF NEW JERSEY

By: 
Megan J. Harris
Deputy Attorney General

Dated: January 21, 2016

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to R. 4:10-2(b), demand is made upon Defendant, with the service of this Complaint, that it disclose to Plaintiffs whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse such Defendant for payments to satisfy any judgment rendered herein and provide Plaintiffs with those insurance agreements or policies, including, but not limited to, all and any declaration sheets. This demand shall include not only primary coverage, but also any excess, catastrophe, and umbrella policies.

JOHN J. HOFFMAN
ATTORNEY GENERAL OF NEW JERSEY

By:

Deputy Attorney General

Dated: January 21, 2016