

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Jimmie Eatmon,

Case Type: Other Civil/Discrimination
Court File No: _____

Plaintiff,

v.

COMPLAINT

Rapid Recovery Incorporated,
a Minnesota corporation,

Defendant.

PLAINTIFF JIMMIE EATMON, AS AND FOR HIS COMPLAINT AGAINST ABOVE-NAMED DEFENDANT, STATES AND ALLEGES AS FOLLOWS:

PARTIES AND JURISDICTION

1. Plaintiff is an individual residing at all times relevant herein in Hennepin County, Minnesota.
2. Defendant is a Minnesota corporation with a registered office located in Ramsey County, Minnesota
3. Jurisdiction is proper pursuant to Minn. Stat. § 363A.33 Subd. 6.

FACTUAL ALLEGATIONS

4. Plaintiff began employment with Defendant as a tow-truck driver on or about January 15, 2008.
5. Plaintiff is an African-American male.
6. Throughout Plaintiff's employment with Defendant, Plaintiff never saw, received a copy of, signed, or had any knowledge of Defendant's employee handbook, driver duties policy, or review and vacations policy.

7. Throughout Plaintiff's employment with Defendant, Plaintiff was subject to discriminatory harassment, including but not necessarily limited to the following specific incidents:
- a. In or about May, 2008 Plaintiff discovered all black pornographic movies placed in his locker. Upon information and belief, these movies were placed in the locker by an employee of Defendant.
 - b. In or around June or July, 2008 Plaintiff's locker had been defaced. A keychain with the word "Mississippi" printed on it was wedged into the vents of the locker. Plaintiff's name on the locker was crossed out and in its place were written the words "black boy." The positioning of the keychain and words "Black Boy" were in such a way as the only interpretation could be to understand the words "Mississippi Black Boy" as a phrase.
 - c. During Plaintiff's employment Defendant's general manager, in the presence of Plaintiff and another employee, asked if someone would start her car. The other employee responded "why don't you ask Jimmie them people don't even need keys."
 - d. During Plaintiff's employment with Defendant he was shown a racist cartoon on a computer monitor.
 - e. Plaintiff was routinely subjected to various forms of racist behavior including not being referred to by name but simply "you people" or "them people" or similar phrases.
8. Plaintiff reported the incidents described in paragraph 7(a) and 7(b) to Defendant's management but nothing was done to remedy the situation, except that months after the incident described in paragraph 7(b) Plaintiff was asked by management if he know who

defaced Plaintiff's locker. Upon information and belief this action was taken only after another employee had filed a charge of discrimination against Defendant with the Minnesota Department of Human Rights.

9. The discrimination described in paragraph 7 caused Plaintiff to avoid Defendant's office/shop floor and take his breaks in his truck.
10. The discrimination described in paragraph 7 on Plaintiff caused mental anguish and suffering.
11. During Plaintiff's employment with Defendant, Plaintiff was promised a 90-day review and a raise because he was doing his job well. Plaintiff never received said review or raise, and, upon information and belief, other non-African-American employees doing the same or substantially the same work received raises.
12. During Plaintiff's employment with Defendant, Plaintiff was often not allowed to take breaks but nevertheless break time was deducted from Plaintiff's pay. Upon information and belief, non-African-American employees were allowed to take breaks.
13. In early February, 2009 Plaintiff was injured in a non-employment related injury. Plaintiff was released by his doctor to work "light-duty." Plaintiff was sent home on more than one occasion because Defendant claimed there was no light duty work available. Upon information and belief, non-African-American employees also injured and required to do light duty were given light duty work by Defendant.
14. In late February, 2009 Plaintiff was terminated by Defendant.
15. Plaintiff filed a charge of discrimination with the Minnesota Department of Human Rights, attached to and incorporated into this Complaint as Exhibit A. Plaintiff has withdrawn that charge, as evidenced by the document attached to and incorporated into this complaint as Exhibit B.

CAUSE OF ACTION I

HOSTILE WORK ENVIRONMENT

16. Paragraphs 1 through 15 are incorporated herein by reference.
17. Plaintiff is a member of a protected class, has been subjected to unwanted harassment based on his membership in that class, and this harassment has caused Plaintiff mental anguish and suffering, affected and interfered with Plaintiff's work performance, and affected and interfered with the terms, conditions, and privileges of Plaintiff's employment with Defendant. Defendant knew or should have known about said harassment and failed to take remedial action.
18. Plaintiff has been damaged by Defendant's actions in excess of \$50,000.00.

CAUSE OF ACTION II

UNFAIR DISCRIMINATORY PRACTICE

19. Paragraphs 1 through 18 are incorporated herein by reference.
20. Defendant, by its conduct, engaged in unfair discriminatory practices in violation of Minn. Stat. § 363A.08 Subd. 2(3).
21. Plaintiff has been damaged by Defendant's actions in excess of \$50,000.00.

CAUSE OF ACTION III

DISCRIMINATORY DISCHARGE

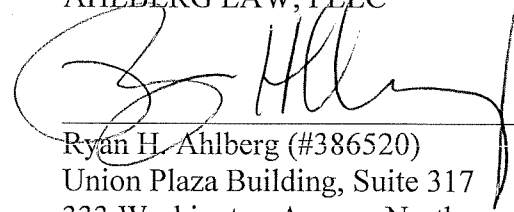
22. Paragraphs 1 through 21 are incorporated herein by reference.
23. Defendant, by its conduct, engaged in an unfair discriminatory practice in violation of Minn. Stat. §363A.08 Subd. 2(2).
24. Plaintiff has been damaged by Defendant's actions in excess of \$50,000.00.

WHEREFORE, the Plaintiff requests judgment against Defendant as follows:

1. As to Cause of Action I, for judgment in favor of Plaintiff against Defendant for compensatory damages, damages for mental anguish and suffering, punitive damages and attorney's fees in an amount greater than FIFTY THOUSAND AND ^{NO}/100 DOLLARS (\$50,000) pursuant to Minn. Stat. § 363A.29 Subd. 4.
2. As to Cause of Action II, for judgment in favor of Plaintiff against Defendant for compensatory damages, damages for mental anguish and suffering, punitive damages and attorney's fees in an amount greater than FIFTY THOUSAND AND ^{NO}/100 DOLLARS (\$50,000) pursuant to Minn. Stat. § 363A.29 Subd. 4.
3. As to Cause of Action III, for judgment in favor of Plaintiff against Defendant for compensatory damages, damages for mental anguish and suffering, punitive damages and attorney's fees in an amount greater than FIFTY THOUSAND AND ^{NO}/100 DOLLARS (\$50,000) pursuant to Minn. Stat. § 363A.29 Subd. 4.
4. For Plaintiff's costs and disbursements, including reasonable attorneys fees, incurred herein.
3. For such other and further relief as the Court deems just and equitable.

Dated: December 4th, 2009

AHLBERG LAW, PLLC



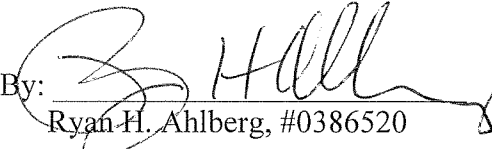
Ryan H. Ahlberg (#386520)
Union Plaza Building, Suite 317
333 Washington Avenue North
Minneapolis, MN 55401
(612) 373-7081
Attorney for Plaintiff

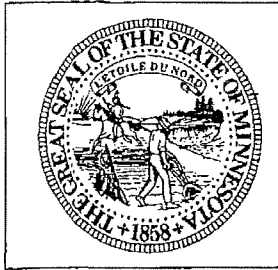
ACKNOWLEDGEMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. §549.211, Subd. 2:

1. This pleading is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
2. The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
3. The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after reasonable opportunity for further investigation or discovery; and
4. The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Dated: December 4th, 2009

By: 
Ryan H. Ahlberg, #0386520



CHARGE OF DISCRIMINATION

Department of Human Rights
 Sibley Square at Mears Park
 190 5th St E, Suite 700
 Saint Paul, MN 55101
 651/296-5663
 Toll-Free 1-800/657-3704
 TTY 651/296-1283

DEPARTMENT OF HUMAN RIGHTS USE ONLY

Case Number: 53591

Acknowledged by:

Richard Jones (H)

Date Filed:

APR - 9 2009

Date Docketed:

APR 13 2009

Any person claiming to have been discriminated against because of race, color, creed, religion, national origin, sex, sexual orientation, marital status, disability, age, public assistance status or familial status, as provided for in Chapter 363A of the Minnesota Statutes in the areas of employment, real property, public accommodations, public services, education, credit or business contracts may file a charge within one year after the alleged discriminatory act with the Minnesota Department of Human Rights at the above address.

1. CHARGING PARTY

Jimmie Eatmon
 4455 Monroe St. NE
 Columbia Heights, MN 55421

2. RESPONDENT

Rapid Recovery Inc.
 14 E. Acker St.
 St Paul, MN 55117

3. The discrimination was because of:

Race, Disability

4. The discrimination was in the area of:

Employment

5. Describe the discriminatory act, setting forth in statutory language the violation of Minnesota Statutes, Section 363A:

I am a black male who was employed by the above-named Respondent from January 15, 2008 to February 23, 2009, most recently as a tow driver.

Throughout my employment, I was treated differently than the other drivers. I was the only black driver. Both co-workers and management never called me by name, they referred to me as "you people" or "them people" referring to blacks. In May 2008, I found black porno movies inside my locker. I was offended. I was the only one targeted. I complained to Respondent but nothing was done. Also in May 2008, I asked the general manager, Andrea (last name unknown "LNU"), about my three month review and pay increase. Andrea said I would be getting my review and a pay raise because I was doing my job very well. I never received a raise. I later learned that all the other drivers, including those with less seniority than me, had received pay raises. In July 2008, someone wrote "Mississippi black boy" on my locker. I reported this to Andrea but nothing was done about it. Respondent denied my requests to leave work early but would grant permission to other drivers who asked after I had. During the summer 2008, I avoided the shop area because of the open and blatant racist comments and jokes from co-workers which Respondent overlooked. One-time Andrea asked if someone would start her vehicle for her. Another driver told her to ask me because "them people don't even need keys." Everyone but me laughed. In January 2009, I complained to Andrea and Respondent's owner, Jared (LNU), that one hour was taken from my time for breaks but I was not

(Over)

getting my breaks. When I called dispatch to notify Respondent that I planned to take a break, I was immediately assigned another job. I overheard other drivers being allowed to take their breaks. On February 3, 2009, I was involved in an off-work vehicle accident. I injured my back. On February 17, 2009, my doctor released me to return to work on "light duty." I went to work and Jared told me that he had not received any documentation releasing me to return to work from my doctor. He sent me home. While I was talking to him, I saw the letter lying on his desk. I had my doctor resend the medical restriction letter. On February 20, 2009, Jared again sent me home claiming Respondent did not have any "light duty" work. I am aware of a non-black driver who injured his hand and worked light duty in the office in October and November 2008. On February 23, 2009, my doctor released me to work without restrictions. I started my shift at seven in the morning and at 3:30 pm called dispatch and asked for a lunch break. I told the Respondent that I needed to eat so I could take my medication. I had not had a previous break that day. Respondent requested I return to the garage. At the garage, Jared told me not to return to work until I was 100 percent recovered. I told him my condition will never return to 100 percent but I can do my job. Jared than said "if it's never going to be 100 percent, don't come back." I was terminated. I am aware that a mechanic and another driver have back conditions and take repeated days off from work for their back conditions. They both are non-black. On March 9, 2009, I learned that Respondent allowed one of the drivers, with less seniority to work "light duty." That driver is non-black. Respondent subsequently claimed that I refused a dispatcher position. That claim is false.

I believe that my race and perceived disability were factors in the Respondent's actions. I was treated differently than my non-black co-workers. Respondent was aware of the racial comments and harassing actions aimed at me in the shop and locker room but did nothing to stop these behaviors. Respondent claimed there was no light duty available to meet a medical accommodation request. I am aware of non-black drivers who were given light duty jobs. I feel that Respondent perceived my recent back injury as being a disability which would require time off and did not want to accommodate me in that situation as Respondent did with the white employees.

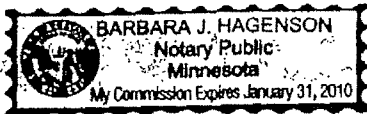
I therefore allege that the above-named Respondent has discriminated against me in the area of employment on the basis of race and disability in violation of Minnesota Statutes, Section 363A.08 Subd. 2(2)(3) and Subd. 6.

GG 0309

Subscribed and sworn to before me this

8 day of April 20 09

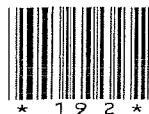
Barbara J. Hagenson
Notary Public



I swear or affirm that I have read this charge and that it is true to the best of my knowledge, information, and belief. I understand that the data contained on this form may be made public.

Summi J. East
(Signature of Charging Party)

91-11147 E-00060



REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION

You recently indicated a desire to withdraw your charge. In order to initiate such action, furnish the information below and return this form in the enclosed envelope. Since a request for withdrawal of a charge is subject to the approval of the Department, your request will be considered and acted upon when received by this office. Please note that the Department is still prepared to proceed with your case if you so desire.

MDHR REF: 53591
EEOC REF:26E200900301

Date: November 23, 2009

Charging Party: Jimmie Eatmon

Respondent: Rapid Recovery Inc

I am aware that Minnesota Statutes protect my right to file a complaint and have been advised that it is unlawful for any person covered by the Minnesota Human Rights Act to threaten, intimidate or harass me because I have filed a complaint. I have not been coerced into requesting this withdrawal.

I request the withdrawal of my charge because: I intend to file a private lawsuit in this matter.

Additionally, it is my intent by this withdrawal to close my companion EEOC charge and issue my right to sue.

Date: 12-2-09

Signature: Jimmie J Eatmon

For Department Use Only: Approve

Disapprove

Date: _____

By: _____

Velma J. Korb, Commissioner

Minnesota Department of Human Rights
Sibley Square at Mears Park
190 East 5th Street, Suite 700
St. Paul, Minnesota 55101
Attn: Liza O'Reilly