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FILED
ALAMEDA COUNTY

SEP 0 6 2019

By Oelra Turtus

Deputy

Attorneys for Price

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

) Case No.: RG 1 90 34 0 38 Raymond Price, Plaintiff. **COMPLAINT FOR DAMAGES:** Discrimination in Employment; VS. **Intentional Infliction of Emotional** Southwest Airlines, Co., a foreign Distress; Violation of Labor Code 96(k); corporation doing business in California, **Violation of Labor Code 1101(b)**; and DOES 1 through 20, Wrongful Termination in Violation of **Public Policy; Unfair Business** Defendants: **Practices** JURY TRIAL DEMANDED

Plaintiff Raymond Price alleges:

STATEMENT OF THE CASE

- 1. This is an action by Raymond Price ("Price"), an African American, who at the time of his wrongful termination was employed by defendant Southwest Airlines, Co., a foreign corporation doing business in California ("SWA"). Price was employed as a Ramp Manager by SWA at the Oakland Airport, in Alameda County, California.
- 2. Price was subjected to discrimination in the workplace based on his race and African American heritage, as more fully alleged hereinafter. SWA also violated California Labor Code ("Labor Code") provisions protecting workers' off-duty lawful activities and political activities.

- Price timely filed a complaint with the California Department of Fair
 Employment and Housing, based on the claims set forth herein. On or about April 17,
 2019, Price received a "Right to Sue" notice from said Department.
- 4. Price is seeking damages from SWA based on its intentional, wrongful, and malicious conduct, all as more fully described herein.

PRELIMINARY ALLEGATIONS

- 5. Price is informed and believes and alleges thereon that SWA is a foreign corporation qualified to do business in California.
- 6. The true names and capacities of defendants referred to herein as Does 1 through 20 are unknown to Price at this time but Price is informed and believes that they are in some way responsible for the acts complained of herein. Price will amend this Complaint to allege the true names and capacities of said fictitiously named defendants when ascertained.
- 7. Price is informed and believes, and thereon alleges, that at all material times each of the SWA's actions and conduct complained of were known to, authorized, and ratified by the each of the other defendants and SWA's supervisorial employees, senior management and agents. Price is informed and believes, and thereon alleges, that all conduct by SWA's agents and employees which was outside of the scope of their authority was known to, authorized, and ratified by other senior management employees and agents of SWA.

FACTUAL ALLEGATIONS

- 8. Price worked for SWA from the fall of 2014 until his employment was wrongfully terminated on or about March 1, 2019.
 - 9. Prior to his termination, Price's job performance was excellent.
- 10. In 2018, while <u>off-duty</u> from his job at SWA, Price made a video of a 'hip-hop' song, "Pocket Full of Change," which he had written and originally recorded prior to his employment by SWA. The lyrics of Pocket Full of Change, which are attached hereto as Exhibit A, include 2 uses of the term "nigga" as follows:
 - "...everybody knows me I'm like the president, I got a pocket full of change, my pockets stay on swole, enough to get every nigga up in the Super Bowl ..." and
 - " ... I'm never sellin out, I'm helpin niggas in need cause that's what I'm about..."

- 11. Price did not publish or broadcast "Pocket Full of Change" at SWA.
- 12. In a letter dated March 1, 2019 (the "Termination Letter") SWA terminated Price's employment solely based on his off-duty production of *Pocket Full of Change*, citing a violation of its policy against "*derogatory language including epithets or slurs*." The Termination Letter recites that although Price stated that he did not intend *Pocket Full of Change* to be " ... *circulated*, *the video was inadvertently posted on social media*"
- 13. Pocket Full of Change does not contain "derogatory language, epithets or slurs." On the contrary, in the context in which it is used, the language SWA objected to is a cultural trope within the African American community used when addressing other members of that community and expressing brotherhood, friendship and shared experience in what has been and still is a society burdened by its racist history. The language of Pocket Full of Change reflects a repurposing of a term that has historically been employed by racists, but in the context of Pocket Full of Change it expresses a purely positive message.
- 14. The action of SWA in terminating Price's employment is a form of cultural racism in which the everyday language of the African American community is used as a pretext for overt race-based discrimination in employment. Price was fired for expressing a usage closely identified with a distinct subgroup of contemporary African Americans, including, for example, young black men and women who, like Price, produce and/or listen to hip-hop music.
- 15. Pocket Full of Change contains lyrics which, in the context of contemporary race relations in the United States (for example, the controversies surrounding the Black Lives Matter movement and the Colin Kaepernick protest) are by their nature "political." California law protects employees from adverse employer actions which enforce policies that seek to control or influence political expression (see, e.g., Labor Code Sec. 1101et seq.). As noted by one prominent commentator:

"Hip-hop has redefined the word [i.e., nigga]. It can mean a number of things. It can be a term of admiration. It can be a term of recognition. Hip hop is inherently political, the language is political. It uses language as a weapon — not a weapon to violate or not a weapon to offend, but a weapon that pushes the envelope that provokes people, makes people think. Hip-hop culture, with its street rhythms and explicit lyrics, is more relevant

in advancing civil rights today than the peaceful messages of Rev. Martin Luther King Jr." (Todd Boyd, professor of critical studies at the University of Southern California and author of the book "The New H.N.I.C.: The Death of Civil Rights and the Reign of Hip Hop.")

The United States Supreme Court has recently stated:

Although the boundaries of what constitutes speech on matters of public concern are not well defined, this Court has said that speech is of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," [citation], or when it "is a subject of general interest and of value and concern to the public," [citation]. A statement's arguably "inappropriate or controversial character ... is irrelevant to the question whether it deals with a matter of public concern [citation]." Snyder v. Phelps, 562 U.S. 443 (2011)

FIRST CAUSE OF ACTION Discrimination in Employment Based on Race

- 16. Price realleges, as if fully set forth herein, paragraphs 1 through 15 of this Complaint.
- 17. Price's employment was wrongfully terminated by SWA because of his race and his expression of a cultural trope associated with his race. Such discrimination violates the Fair Employment and Housing Act ("FEHA"), various other California Codes, the California Constitution, and other statutes and common laws.
- 18. SWA was obligated by said laws to refrain from discharging Price on the bases complained of in the preceding paragraphs.
- 19. As the direct and foreseeable result of the aforesaid acts of SWA, Price has lost and will continue to lose income in an amount to be proven at the time of trial. Price has also incurred attorney fees. Price claims such amount as damages together with prejudgment interest pursuant to Civil Code Section 3287 and/or any other provision of law providing for prejudgment interest.
- 20. As a result of the aforesaid acts of SWA, Price has become mentally and physically upset, distressed, and aggravated. Price claims general damages for such physical and emotional distress and aggravation in a sum to be proven at trial.
- 21. Because the actions taken toward Price by SWA, and their agents, were done in a deliberate, cold, callous, malicious, despicable, and intentional manner in

order to injure and damage Price, in conscious disregard of Price's rights, Price requests an assessment of punitive damages against the SWA in an amount to be proven at the time of trial.

SECOND CAUSE OF ACTION Intentional Infliction of Emotional Distress

- 22. Price realleges, as if fully set forth herein, paragraphs 1 through 21 of this Complaint.
- 23. When SWA and their agents and employees, committed the acts complained of herein, they did so deliberately and intentionally to cause Price to suffer humiliation, mental anguish, physical harm, loss of his job and income, and emotional distress.
- 24. As a proximate consequence of the wrongful acts against Price by said SWA, Price has suffered lost earnings, emotional distress, and other general special damages.
- 25. Because the actions taken toward Price by SWA and their agents and employees, were done in a deliberate, cold, callous, malicious, despicable, and intentional manner in order to injure and damage Price, in conscious disregard of Price's rights, Price requests an assessment of punitive damages against defendant(s) in an amount to be proven at the time of trial.

THIRD CAUSE OF ACTION Violation of California Labor Code 96(k)

- 26. Price realleges, as if fully set forth herein, paragraphs 1 through 25 of this Complaint.
 - 27. California Labor Code Section 96(k) makes the following illegal:
 - "... demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer's premises."
- 28. Price was discharged for recording *Pocket Full of Change*, which was both lawful and away from SWA's premises, while Price was off-duty.
- 29. As a proximate consequence of the wrongful acts against Price by SWA, Price has suffered lost earnings, emotional distress, and other general and special damages, subject to proof.

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30. Because the actions taken toward Price by SWA was done in a deliberate, cold, callous, malicious, despicable, and intentional manner in order to injure and damage Price, in conscious disregard of his rights, Price requests an assessment of punitive damages against the SWA in an amount to be proven at the time of trial.

FOURTH CAUSE OF ACTION Violation of Labor Code 1101, et seq.

- 31. Price realleges, as if fully set forth herein, paragraphs 1 through 30 of this Complaint.
 - 32. California Labor Code Section 1101(b) provides as follows:
 "1101. No employer shall make, adopt, or enforce any rule, regulation, or policy:
 (b) Controlling or directing, or tending to control or direct the political
- 33. The language and terminology of *Pocket Full of Change*, and the creation of the video of that song, which SWA deemed "derogatory" and which was used as justification for Price's termination, was, in the cultural context in which it was made, political speech and political activity within the meaning of Labor Code Section 1101(b).

activities or affiliations of employees."

- 34. As a proximate consequence of the wrongful acts against Price by SWA, Price has suffered lost earnings, emotional distress, and other general special damages, subject to proof.
- 35. Because the actions taken toward Price by SWA was done in a deliberate, cold, callous, malicious, despicable, and intentional manner in order to injure and damage Price, in conscious disregard of Price's rights, Price requests an assessment of punitive damages against the SWA in an amount to be proven at the time of trial.

FIFTH CAUSE OF ACTION Wrongful Termination in Violation of Public Policy

36. Price realleges, as if fully set forth herein, paragraphs 1 through 35 of this Complaint.

- 37. Price's employment by SWA was terminated in tortious violation of the public policies embedded in FEHA and Labor Code Sections 96(k) and 1101(b), and other laws, as hereinabove alleged.
- 38. As a proximate consequence of the wrongful acts against Price by SWA, Price has suffered lost earnings, emotional distress, and other general and special damages, subject to proof.
- 39. Because the actions taken toward Price by SWA, and their agents and employees, were done in a deliberate, cold, callous, malicious, despicable, and intentional manner in order to injure and damage Price, in conscious disregard of Price's rights, Price requests an assessment of punitive damages against SWA in an amount to be proven at the time of trial.

SIXTH CAUSE OF ACTION Unlawful Business Practices Cal. Bus. And Prof. Code 17200 et seq.

- 40. Price re-alleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 39 of this Complaint.
- 41. SWA is a "person" as that term is defined under Cal. Bus. & Prof. Code Section 17201.
- 42. Cal. Bus. & Prof. Code 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Cal. Bus. & Prof. Code Section 17200 applies to violations of labor laws and in the employment context.
- 43. At all times relevant hereto, by and through the conduct described herein, SWA has engaged in unfair and unlawful practices by terminating Price's employment based on his race for lawful off-duty conduct in violation of Cal. Bus. & Prof. Code 17200 et seq., and has thereby deprived Price of fundamental rights and privileges and caused him economic injury as hereinabove alleged.
- 44. By and through the unfair and unlawful business practices described herein, SWA has obtained valuable property, money, and services from Price and the public and has deprived Price of valuable rights and benefits guaranteed by law and contract, all to his detriment and to the benefit of SWA, so as to allow SWA to unfairly compete against competitors who comply with the law.

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- 45. All the acts described herein as violations of, among other things, FEHA and the Labor Code are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices in violation of Cal. Bus. & Prof. Code 17200 et seg.
- 46. Price is entitled to, and does, seek such relief as may be necessary to restore to him the money and property which SWA has acquired, or of which Price has been deprived, by means of the above described unfair and unlawful business practices.

WHEREFORE, Price prays for judgment against SWA, and each defendant, according to proof as follows:

- For a preliminary and permanent injunction against SWA to purge Price's
 employment records of all derogatory information and to preclude the dissemination
 of that information to prospective employers, employees or other persons;
- For a preliminary and permanent injunction against SWA to return Price to his
 employment at the position and location existing at the time of his termination, with
 all appropriate pay increases and promotions that would have accrued to him had
 he not been wrongfully terminated;
- 3. For general damages according to proof;
- 4. For special damages according to proof;
- 5. For Interest or compensatory damages at the legal rate from the date of injury or pursuant to Code of Civil Procedure Section 3291;
- 6. For other compensatory damages for emotional distress and other economic and non-economic losses;
- 7. For punitive and exemplary damages;
- 8. For statutory damages pursuant to the Labor Code;
- 9. For attorney fees as allowed by law;
- 10. For costs and expenses of suit incurred herein; and
- 11. For other just and proper relief.

Dated: September 5, 2019

Winton Strauss Law Group, P.C.

By: