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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

JOHN A. RHODES, Plaintiff, v. CHILDREN AND YOUTH SERVICES, INC., a Utah non-profit corporation dba UTAH BOYS RANCH, Defendant.	**COMPLAINT** Judge J. Thomas Greene DECK TYPE: Civil DATE STAMP: 06/30/2003 @ 15:10:38 CASE NUMBER: 2:03CV00581 JTG

Plaintiff, by and through his undersigned attorneys, complains of the above-named Defendant and alleges as follows:

JURISDICTION AND VENUE

1. This Complaint is filed pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to -2000e-17 ("Title VII") and the Fair Labor Standards Act of 1938 as amended, 29 U.S.C. §§ 201 to -219. Jurisdiction is specifically conferred upon this Court by 42 U.S.C. § 2000e-5(f)(3), 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

2. Venue lies in the Central Division of the United States District Court for the District of Utah pursuant to 42 U.S.C. § 2000e-5(f)(3), 29 U.S.C. § 216(b), and 28 U.S.C. § 1391(b) insofar as Defendant resides within the Central Division of the federal judicial District of Utah and a substantial part of the events or omissions giving rise to this action occurred within this Division.

DESCRIPTION OF THE PARTIES

3. Plaintiff John A. Rhodes ("Plaintiff") is an individual presently residing in Washington County, State of Utah. Plaintiff is licensed by the State of Utah as a clinical social worker. Plaintiff is a non-exempt employee within the meaning of the Fair Labor Standards Act.

4. Defendant Children and Youth Services, Inc. dba Utah Boys Ranch ("Defendant") is a Utah non-profit corporation with its principal place of business located in Salt Lake County, State of Utah. Defendant provides a residential, day, and foster care program for children and youth. Defendant is an "employer" as defined by 42 U.S.C. § 2000e(b) and 29 U.S.C. § 203(d).

GENERAL ALLEGATIONS

5. Plaintiff was employed by Defendant in the capacity of a clinical assistant and then a licensed clinical social worker from approximately July 12, 1999 through October 12, 2001.

6. Plaintiff's duties included general supervision, management of case files, and communication of Defendant's philosophy and methods to children and youth enrolled in Defendant's program.

7. Plaintiff accomplished his duties by following the policies and procedures Defendant required him to follow and apply in carrying out his duties for Defendant.

8. Plaintiff's duties also required him to travel, other than to and from work, to conduct and further Defendant's business.

9. Defendant required Plaintiff to remain on-call 24 hours per day, 7 days per week from approximately August 21, 2000 to October 12, 2001 and provided Plaintiff a pager for this purpose, which Plaintiff was required to wear at all times.

10. The on-call time requirements of Defendant restricted Plaintiff's personal activities and created a great burden on Plaintiff insofar as he, inter alia, (a) was required to wear the pager 24 hours per day, 7 days per week; (b) was required to respond to any call within approximately 15 minutes of the same; and (c) could not trade on-call time with other employees. As a result, Plaintiff's on-call time was compensable working on-call time within the meaning of the Fair Labor Standards Act.

11. During the term of Plaintiff's employment, he was compensated as follows: $14.71 per hour from approximately July 15, 1999 to June 30, 2000, and $17.31 per hour from approximately July 14, 2000 to October 31, 2001.

12. On or about September 7, 2001, Paul Keene, who was employed by Defendant in the capacity of academic director, physically restrained Plaintiff and made unwanted pelvic thrusts upon Plaintiff. Mr. Keene's actions simulated certain homosexual acts upon Plaintiff. Mr. Keene, during or shortly after his actions stated to Plaintiff: "You probably feel violated now."

13. These acts were performed in front of two other employees and caused great humiliation and embarrassment to Plaintiff.

14. On or about September 10, 2001, which was the next working day following the incident, Plaintiff notified Mr. Keene, via e-mail transmission, that his acts were unacceptable.

15. That same day (September 10), Plaintiff also reported the acts to Jim McMaster, who was Defendant's clinical director and Plaintiff's supervisor.

16. Upon information and belief, neither Mr. McMaster nor any other of Defendant's employees took any immediate action to investigate the incident or otherwise take remedial measures to ensure that it would not be repeated.

17. Upon information and belief, Mr. Keene was never disciplined as a consequence of his conduct.

18. On or about September 27, 28, and 29, Defendant holds its annual fundraiser, which it calls the "Scarecrow Festival." The week prior, during, and after the Scarecrow Festival are an important time for Defendant's economic viability. As such, this time is labor intensive and requires Defendant to operate with a full staff.

19. On approximately October 12, 2001, Defendant terminated Plaintiff's employment.

20. Defendant's termination of Plaintiff has caused and continues to cause emotional pain and suffering, inconvenience, mental anguish, injury to professional standing, and injury to character and reputation.

21. Prior to Plaintiff's termination, Defendant's Executive Director had previously and repeatedly announced in staff meetings that Defendant was not looking to terminate any staff or make any cutbacks in its workforce.

FIRST CAUSE OF ACTION
Violation of Title VII—Unlawful Retaliation

22. Plaintiff realleges and incorporates by reference the allegations set forth above.

23. Section 704(a) of Title VII makes it unlawful for any employer to discriminate against any individual because he has opposed any practice made unlawful by Title VII.

24. Plaintiff's reporting of the September 7 sexual acts perpetrated upon Plaintiff by Mr. Keene to his supervisor, Mr. McMaster, constituted opposition to an unlawful practice and Plaintiff's report was a reasonable means of reporting Mr. Keene's unlawful conduct.

25. As a result of Plaintiff's reporting the September 7 incident, he was terminated by Defendant.

26. Defendant's termination of Plaintiff constituted unlawful retaliation in violation of Section 704(a) of Title VII.

27. Defendant's termination of Plaintiff was willful and malicious and/or otherwise in reckless disregard and indifference to the federally protected rights of Plaintiff.

28. Pursuant to Section 706(g) of the Title VII, Defendant is liable to Plaintiff for the back pay of wages and benefits, including pre-judgment interest thereon, that Plaintiff would have received were it not for Defendant's unlawful discrimination.

29. Pursuant to the Civil Rights Act of 1991, 42 U.S.C. § 1981a(a)(1), Plaintiff is entitled to recover compensatory damages, including future pecuniary losses and compensation for emotional pain and suffering, inconvenience, mental anguish, injury to professional standing, and injury to character and reputation.

30. Pursuant to the Civil Rights Act of 1991, 42 U.S.C. § 1981a(a)(1), Plaintiff is entitled to recover punitive damages as a result of Defendant's intentional employment discrimination against him.

31. Section 706(k) of the Title VII allows the prevailing party, at the discretion of the Court, to recover its reasonable attorney fees and costs incurred in an action brought under Title VII.

32. As a result of Defendant's unlawful employment discrimination against Plaintiff, Plaintiff has been enforced to engage the services of legal counsel and has incurred and will continue to incur attorney fees and costs in pursuing his action against Defendant to vindicate his federally protected rights.

33. On or about December 12, 2001, Plaintiff filed a formal charge of discrimination with the Utah State Anti-Discrimination and Labor Division.

34. On or about June 16, 2003, Plaintiff received a "Notice of Right to Sue" letter from the United States Department of Justice, Civil Rights Division. A true and correct copy of the letter is attached hereto as Exhibit A.

35. Plaintiff has fulfilled all administrative requirements and jurisdictional prerequisites to bring the instant cause of action against Defendant.

WHEREFORE, Plaintiff demands judgment against Defendant on his First Cause of Action as follows:

A. For back pay of wages and benefits, including pre-judgment interest thereon, in an amount to be proven at trial;

B. For compensatory damages in an amount to be proven at trial;

C. For punitive damages equal to the maximum amount allowed by 42 U.S.C. § 1981a(b);

D. For reasonable attorney fees and costs incurred in this action; and

E. For such other and further relief as this Court deems just and equitable.

SECOND CAUSE OF ACTION
Violation of Fair Labor Standards Act

36. Plaintiff realleges and incorporates by reference the allegations set forth above.

37. Section 207 of the Fair Labor Standards Act provides that "no employer shall employ any of his employees who in any workweek is engaged in commerce . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

38. Plaintiff, as Defendant's employee, worked a total of 506.23 hours in excess of 40 hours per work week for which he was not compensated one and one-half times the regular rate at which he was employed.

39. Plaintiff, as Defendant's employee, was on-call for a total of 4,126.75 hours, for which he was not compensated.

40. Section 216(b) of the Fair Labor Standards Act further provides that any employer who violates Section 207 is liable to the employee for the amount of the employee's unpaid overtime compensation, and an additional equal amount as liquidated damages.

41. Because Defendant failed to compensate Plaintiff at one and one-half times Plaintiff's regular hourly wage for the 506.23 overtime hours worked by Plaintiff, Defendant is liable to Plaintiff for the sum of $9,756.54 in unpaid overtime compensation.

42. Because Defendant failed to compensate Plaintiff at one and one-half times Plaintiff's regular hourly wage for the 506.23 overtime hours worked by Plaintiff, Defendant is further liable to Plaintiff for an equal sum of $9,756.54 in liquidated damages.

43. Because Defendant failed to compensate Plaintiff at one and one-half times Plaintiff's regular hourly wage for the 4,126.75 compensable on-call hours worked by Plaintiff, Defendant is further liable to Plaintiff for the sum of $107,151.06 in unpaid overtime compensation.

44. Because Defendant failed to compensate Plaintiff at one and one-half times Plaintiff's regular hourly wage for the 4,126.75 compensable on-call hours worked by Plaintiff, Defendant is further liable to Plaintiff for an equal sum of $107,151.06 in liquidated damages.

45. Section 216(b) of the Fair Labor Standards Act further provides that, in addition to any damages awarded to an employee under the Act, the Court shall require a defendant to pay the employee's reasonable attorney fees and costs incurred in bringing an action to recover unpaid overtime compensation.

46. Because Defendant failed to pay overtime compensation to Plaintiff, Plaintiff has been forced to retain the services of legal counsel to pursue the instant action. Therefore, Plaintiff is entitled to recover from Defendant, attorney fees and costs incurred in Plaintiff's prosecution of this action.

47. Defendant, at all times relevant herein, was aware of all state and federal employment and labor laws, and knew or showed a reckless disregard for the matter of whether its conduct, in failing to compensate Plaintiff for his overtime work, was prohibited by the Fair Labor Standards Act.

WHEREFORE, Plaintiff demands judgment against Defendant on his Second Cause of Action as follows:

A For total unpaid overtime compensation in the amount of $116,907.60;

B For total liquidated damages in the amount of $116,907.60;

C For reasonable attorney fees and costs incurred in this action; and

D. For such other and further relief as this Court deems just and equitable.

DATED THIS 26 day of June 2003.

DURHAM JONES & PINEGAR

Bryan J. Pattison
Michael F. Leavitt
Attorneys for Plaintiff

Exhibits/
Attachments
to this document
have **not** been
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Please see the
case file.