

1 DAVID S. RATNER (SBN 316267)
2 SHELLEY A. MOLINEAUX (SBN 277884)
3 RATNER MOLINEAUX, LLP
4 1990 N. California Blvd., Suite 20
5 Walnut Creek, CA 94596
6 Tel: (925) 239-0899
7 david@ratnermolineaux.com
8 shelley@ratnermolineaux.com

Per local Rule, This case is assigned to
Judge Fannin, Jill C, for all purposes.

6 Attorneys for Plaintiff
7 JASON MCNEIL

SUMMONS ISSUED

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF CONTRA COSTA**

10 JASON MCNEIL, individually,
11 Plaintiff,

Case No. C23-00005

COMPLAINT FOR DAMAGES

12 v.

13 LEHMER’S CONCORD BUICK GMC, a
14 California corporation; CARL ROGERS, an
15 individual; and DOES 1 through 50, inclusive.
16 Defendants.

- 1. Retaliation, Cal. Lab. C. § 98.6
- 2. Hostile Work Environment Harassment, Cal. Gov. Code § 12940(j)
- 3. Racial Discrimination, Cal. Gov. Code § 12940
- 4. Failure to Prevent Discrimination and Harassment, Cal. Gov. Code § 12940
- 5. Wrongful Termination in Violation of Public Policy

DEMAND FOR JURY TRIAL

17
18
19 1. Plaintiff JASON MCNEIL (“McNeil”), individually, brings this action against Defendants
20 LEHMER’S CONCORD BUICK GMC, (“Lehmer’s”), a California corporation, CARL ROGERS
21 (“Rogers”), an individual, and DOES 1 through 50, inclusive.

PARTIES

22
23 2. Plaintiff is, and at all times relevant to this action was, a resident of Concord, California.
24 The events giving rise to this action arose in Concord, California.

25 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant Lehmer’s is a
26 California corporation and is authorized to do business in California.

27 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant Rogers is an
28

1 individual residing in California.

2 5. Plaintiff does not know the true names of Defendants Does 1 through 50, inclusive, and
3 therefore sues them by those fictitious names. The names, capacities, and relationships of Defendants Does
4 1 through 50, inclusive, will be alleged by amendment to this Complaint when the same are known to
5 Plaintiff.

6 6. The true names and capacities, whether individual, corporate, associate or otherwise, of
7 defendants Does 1 through 50 (“Does”), inclusive and each of them, are not known to Plaintiff at this time.
8 Such Does are legally responsible for the events and happenings described herein and for the damages
9 proximately caused thereby. Plaintiff will seek the leave of the Court to amend this complaint to set forth
10 the true names and capacities of any such Does when they have been ascertained.

11 7. On information and belief, at all times mentioned herein, defendants, inclusive and each of
12 them, including without limitation any Does, were acting in concert and participation with each other; were
13 joint participants and collaborators in the acts complained of; and were the agents and/or employees of one
14 another in doing the acts complained of herein, each acting within the course and scope of said agency
15 and/or employment.

16 8. Lehmer’s, Rogers, and Does 1 through 50, inclusive, are collectively referred to hereafter
17 as “Defendants”.

18 ***JURISDICTION AND VENUE***

19 9. This Court has jurisdiction over Defendants Lehmer’s and Rogers because at all times
20 relevant, they were authorized to transact, and are transacting business in California.

21 10. Venue is proper in this Court pursuant to Code of Civil Procedure § 395, because the acts,
22 events and omissions complained of herein occurred in Contra Costa County, California.

23 ***EXHAUSTION OF ADMINISTRATIVE REMEDIES***

24 11. On or about December 8, 2022, Plaintiff obtained a Right to Sue Letter from the Civil
25 Rights Department attached hereto as Exhibit A.

26 ***GENERAL ALLEGATIONS***

27 12. Jason McNeil, a 49-year-old, African American male, began working for Lehmer’s
28 Concord Buick GMC in April 2015 as a Sales Consultant until his wrongful termination on September

1 16, 2022.

2 13. For many years, beginning upon hiring through early 2022, Carl Rogers, General Sales
3 Manager, seemingly enjoyed coming up from behind Mr. McNeil while he was working to scare him.
4 Mr. McNeil had asked Mr. Rogers to stop this behavior.

5 14. In this same time frame, Mr. Rogers followed Mr. McNeil during break time/lunch time
6 and made comments about the food he would eat. He would come close to Mr. McNeil and comment that
7 his food was not good or that it was not keto friendly. This made Mr. McNeil feel insecure.

8 15. Between the years of 2015 and 2022, twice a month, Mr. Rogers informed his manager to
9 have a conversation with Mr. McNeil about his hair and inferred that it was keeping him from selling
10 cars and that customers were complaining about his hairstyle. Comments were made that Mr. McNeil's
11 hair is "stupid" and that this company has "white" customers and that they will never buy a car from Mr.
12 McNeil the way his hair is.

13 16. Throughout these same years, Mr. Rogers refers to Mr. McNeil as "puppy nuts" instead of
14 using his name at least twice a month the entirety of Mr. McNeil's employment. This humiliated Mr.
15 McNeil and demoralized him.

16 17. On January 5, 2018, upon coming into the sales office, Mr. McNeil was harassed by Mr.
17 Rogers about his dress-code saying that he looked like a "gay person" with his jacket being too small and
18 his black shoes looking "gay".

19 18. On July 24, 2019, as Mr. McNeil was purchasing a soda, Mr. Rogers approached and in a
20 loud manner exclaimed to Mr. McNeil, "How are you ever going to lose weight, you're going to have a
21 heart attack drinking that garbage!" Mr. McNeil felt humiliated in front of his other coworkers.

22 19. On May 28, 2020, former manager Peter Benjamin explained to Mr. McNeil that Mr.
23 Rogers was racist and doesn't like black people. He had heard him use the reference saying, "typical
24 niggers", when talking about the Oakland riot after the George Floyd protests.

25 20. On June 17, 2021, Mr. McNeil was working with a customer who had a question. He
26 approached Mr. Rogers who snatched the read sheet out of Mr. McNeil's hands and said, "What are you
27 stupid? Let me talk to him. Do I have to split your deal with someone else who is competent?"

28 21. On August 27, 2021, Mr. Rogers stood over Mr. McNeil's desk at 11:45 am and asked,

1 "What are you eating Jason?" Mr. McNeil asked him to please his respect his space and then afterwards
2 went to the sales office where Mr. Rogers spoke loudly for all the hear, including management, about
3 Mr. McNeil's food choice and that it wasn't healthy.

4 22. On December 10, 2021, after arriving at work on time, Mr. McNeil went into the sales
5 office and was confronted by Mr. Rogers who asked Mr. McNeil where he had been. Mr. McNeil
6 responded that he had been at work and could prove his hours and arrival times on his timesheet. Mr.
7 McNeil asked Mr. Rogers to check his timesheet, to which Mr. Rogers replied, "I don't believe you, you
8 cannot help any customers or get sales calls."

9 23. On December 16, 2021, Mr. Rogers found out that Mr. McNeil was having a private
10 holiday party that he was not invited to. Mr. Rogers made fun of the fact that he was not invited to the
11 party and spread around the dealership that he was not invited and spoke about it in front of a customer
12 on the showroom floor. Three days later on the 19th, Mr. Rogers explained that the dealership was
13 having a holiday party and because he wasn't invited to Mr. McNeil's party that Mr. McNeil wouldn't
14 be invited to the dealership's party. Mr. Rogers also spoke and spread this information around the
15 dealership making Mr. McNeil continue to feel humiliated.

16 24. On January 16, 2022, Mr. McNeil was asked to get lunch from Ramon 101 and when he
17 returned with the food and change, he was told the order was incorrect and that Mr. Rogers was owed
18 more change. Mr. McNeil double checked and pointed out that the order and change was correct. Mr.
19 Rogers then accused Mr. McNeil of stealing and said, "Hey moron, are you stupid? You keeping
20 money?"

21 25. On January 19, 2022, Mr. McNeil had a meeting with Owner Darren Anderson about the
22 abuse he was receiving from Mr. Rogers as Mr. Rogers was present in the meeting. Mr. Anderson
23 laughed and exclaimed, "Well we don't want you to build a case against us." Mr. Anderson told Mr.
24 Rogers to stop, however no paperwork was placed into Mr. McNeil's personnel file of his complaint and
25 there were no formal apologies issued.

26 26. On September 1, 2022, Mr. McNeil was called into the sales off by Mr. Rogers upon
27 immediately coming into work for the day. He explained that the only reason Mr. McNeil sold a lot of
28 cars throughout his tenure is because he was giving free deals from previous manager Mr. Benjamin

1 who was terminated by him. Mr. Rogers continued that if Mr. McNeil was not in the top three sales
2 category that he would have to have another talk.

3 27. On September 16, 2022, Defendants wrongfully terminated Mr. McNeil citing low
4 production.

5 28. The previously described activities have cause Mr. McNeil severe emotional distress. Mr.
6 McNeil describes that he often cries, gets upset, feels belittled, hurt, demoralized, depressed, stressed
7 and helpless. Mr. McNeil experiences nightmares which has lead to lack of sleep and eating more out of
8 stress and causing severe physical ramifications.

9 29. Respondents discriminated against Mr. McNeil on the basis of his race in violation of Cal.
10 Gov. Code § 12940. Respondents harassed and retaliated against Mr. McNeil on the basis of his race
11 and for complaining about the discrimination, a protected activity, in violation of the above-referenced
12 statue. Respondents fired Mr. McNeil in violation of public policy. Respondents are also liable for
13 negligent and intentional infliction of emotional distress.

14 30. Rogers continuously criticized, undermined, and failed to support Plaintiff in his efforts to
15 work as a Sales Consultant. Rogers did not micromanage, criticize, or undermine Plaintiff's similarly
16 situated non-black coworkers.

17 31. Plaintiffs similarly situated non-black co-workers were given the autonomy and control to
18 work with customers without interference by Rogers.

19 32. Defendant Lehmer's failed to try and root out the cause of Rogers' behavior. Defendant
20 Lehmer's failed to address Rogers' discriminatory behavior toward Plaintiff and instead insisted Rogers
21 stop his behavior without any follow up or formal documentation.

22 33. Without any repercussions, Rogers continued to belittle, demean, and blame Plaintiff.

23 34. On information and belief, Defendants discriminated against Plaintiff because he is African
24 American.

25 35. On information and belief, Defendants retaliated against and, ultimately, terminated
26 Plaintiff after Plaintiff complained about Rogers' discriminatory treatment.

27 36. On information and belief, Defendants disregarded Plaintiff's concerns regarding the
28 discrimination and harassment he was experiencing.

1 37. On information and belief, Defendants fired Plaintiff in retaliation for his complaint of
2 illegal treatment based on race and based on the reporting of discrimination, a protected activity.

3 38. Plaintiff's manager made Plaintiff's office a hostile work environment by failing to address
4 his concerns about discrimination and harassment.

5 39. As of result of Defendants' actions, Plaintiff suffered emotionally and psychologically from
6 the discrimination and harassment he experienced by Defendants. As a result of the hostile work
7 environment and discrimination, Plaintiff has suffered embarrassment, humiliation, mental and emotional
8 pain and distress and discomfort.

9 40. Plaintiff made a formal complaint regarding the disparate and discriminatory treatment he
10 suffered by Defendants. Defendants took no action to address the concerns raised by Plaintiff.

11 41. On September 16, 2022, Defendants fired Plaintiff in retaliation for Plaintiff's complaints
12 about racial discrimination.

13 42. On September 16, 2022, Defendants fired Plaintiff because of Plaintiff's race.

14 43. If Plaintiff were not African American, he would not have been subjected to the same
15 discriminatory treatment he was forced to endure by Defendants.

16 ***FIRST CAUSE OF ACTION***

17 *Retaliation*

18 *Cal. Gov. Code § 98.6*

19 *(On behalf of Plaintiff against All Defendants and DOES 1-50)*

20 44. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
21 forth in this Complaint.

22 45. Cal. Lab. Code § 98.6 provides:

23 (a) A person shall not discharge an employee or in any manner discriminate,
24 retaliate, or take any adverse action against any employee . . . because the
25 employee . . . engaged in any conduct delineated in this chapter, including .
26 . . Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or
27 because the employee . . . or because of the exercise by the employee or
28 applicant for employment on behalf of himself, herself, or others of any
rights afforded him or her.

(b)(1) Any employee who is discharged, threatened with discharge,
demoted, suspended, retaliated against, subjected to an adverse action, or in

1 any other manner discriminated against in the terms and conditions of his or
2 her employment because the employee engaged in any conduct delineated in
3 this chapter, including . . . Chapter 5 (commencing with Section 1101) of
4 Part 3 of Division 2 . . . shall be entitled to reinstatement and reimbursement
5 for lost wages and work benefits caused by those acts of the employer.

6 46. Defendants were Plaintiff's employer, and Plaintiff was Defendants' employee.

7 47. Plaintiff made multiple complaints to Defendants about racially charged discriminatory
8 treatment and harassment by Rogers.

9 48. Defendants retaliated against Plaintiff by terminating Plaintiff's employment.

10 49. Plaintiff was harmed.

11 50. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

12 51. Pursuant to Cal. Lab. Code § 98.6(b)(3), Defendants are liable to Plaintiff for a civil
13 penalty of ten thousand dollars (\$10,000) for each violation.

14 52. The conduct of Defendants and each of them as described above was malicious,
15 fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiff's rights.
16 Defendants and each of them, and their agents/employees or supervisors, authorized, condoned, and
17 ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages
18 against each of said Defendants.

19 ***SECOND CAUSE OF ACTION***

20 *Hosile Work Environment Harassment*

21 *Cal. Gov. Code § 12940(j)*

22 *(On behalf of Plaintiff against All Defendants and DOES 1-50)*

23 53. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
24 forth in this Complaint.

25 54. Defendants, and each of them, either individually and/or through their agents, engaged in
26 the foregoing conduct, which constitutes a pattern and practice of hostile work environment harassment
27 in violation of Government Code sections 12940(j), which provides that harassment of employees is an
28 unlawful employment practice.

55. Plaintiff endured harassing conduct by Defendants and/or Defendants' managers, including

1 Rogers, that took place in Plaintiff's immediate work environment.

2 56. Plaintiff considered the work environment to be hostile or abusive towards people of color
3 and anyone who complained about discrimination.

4 57. Plaintiff's supervisor engaged in the conduct.

5 58. Defendants knew or should have known of the conduct and failed to take any corrective
6 action whatsoever, let alone immediate appropriate corrective action.

7 59. The above-described acts and conduct by Defendants proximately caused Plaintiff damages
8 and injury in an amount to be proven at trial.

9 60. The conduct of Defendants and each of them as described above was malicious, fraudulent,
10 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
11 of them, and their agents/employees or supervisors, authorized, condoned, and ratified the unlawful
12 conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of
13 said Defendants.

14 ***THIRD CAUSE OF ACTION***

15 *Racial Discrimination*

16 *Cal. Gov. Code § 12940*

17 *(On behalf of Plaintiff against All Defendants and DOES 1-50)*

18 61. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
19 forth in this Complaint.

20 62. Government Code section 12940(a) provides in relevant part:

21 It is an unlawful employment practice. . . (a) [f]or an employer, because of
22 the race . . . of any person . . . to discharge the person from employment . . .
23 or to discriminate against the person in compensation or in terms,
conditions, or privileges of employment.

24 63. Plaintiff was Defendant's employee and Defendants were Plaintiff's employer.

25 64. Defendant wrongfully discriminated against Plaintiff based on his race/color.

26 65. Plaintiff, is an African American and, was, an employee of Defendant, faced
27 discrimination based on his race and a hostile work environment during his time as an employee of
28 Defendant.

1 75. Plaintiff suffered and continues to suffer harm as a result of Plaintiff's discharge by
2 Defendants.

3 76. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

4 77. Under Government Code section 12940, Plaintiff is entitled to recover Plaintiff's economic
5 and noneconomic damages caused by Defendants' unlawful practices. Plaintiff is also entitled to
6 reasonable attorney's fees and costs pursuant to Government Code section 12965.

7 78. The conduct of Defendants and each of them as described above was malicious, fraudulent,
8 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
9 of them, and their agents/employees or supervisors, authorized, condoned, and ratified the unlawful
10 conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said
11 Defendants.

12 ***FIFTH CAUSE OF ACTION***

13 *Wrongful Termination in Violation of Public Policy*

14 *(On behalf of Plaintiff against All Defendants and DOES 1-50)*

15 79. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
16 forth in this Complaint.

17 80. Art. I, § 8, of the California Constitution provides that a person may not be disqualified
18 from pursuing a profession or employment because of race.

19 81. At all times herein mentioned in this complaint, California Government Code Section 12940
20 (a), was in full force and effect and were binding on the Defendants and the Defendants were subject to
21 their terms, and therefore Defendant was required to refrain from violations of public policy, including
22 discrimination based on age, gender and disability in violation of FEHA and in retaliation for complaining
23 of said discrimination.

24 82. Defendants were Plaintiff's employer, and Plaintiff was Defendants' employee.

25 83. Defendant terminated Plaintiff in violation of Plaintiff's rights and public policy.

26 84. Plaintiff is informed and believes and thereon alleges that his protected status (race/color)
27 and/or his protestation against being discriminated against based on said protected status as alleged above,
28

1 were, in part, factors in Defendants' decision to terminate Plaintiff's employment.

2 85. Plaintiff was harmed.

3 86. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

4 87. As a proximate result of Defendants' conduct, Plaintiff has suffered special damages in the
5 form of lost earnings, benefits and/or out of pocket expenses in an amount according to proof at the time
6 of trial. As a further direct and proximate result of Defendants' conduct, Plaintiff will suffer additional
7 special damages in the form of lost future earnings, benefits and/or other prospective damages in an
8 amount according to proof at the time of trial.

9 88. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss
10 of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation,
11 mental and emotional pain and distress and discomfort, all to his detriment and damage in amounts not
12 fully ascertained but within the jurisdiction of this court and subject to proof at the time of trial.

13 89. In violation of public policy, Defendants terminated Plaintiff because he is a black male,
14 despite the fact that Defendants knew that Plaintiff was experienced and able to perform the essential
15 functions of his position and had done so since 2015.

16 90. The conduct of Defendants as described above was malicious, fraudulent, or oppressive and
17 done with a willful and conscious disregard for Plaintiff's rights. Defendant and each of them, and their
18 agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each other.
19 Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

20
21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them, as
23 follows:

- 24 1. Compensatory damages including emotional distress damages and lost wages, benefits
25 and interest in a sum according to proof;
- 26 2. Interest on judgment, including prejudgment interest, at the legal rate;
- 27 3. Punitive damages in a sum according to proof;
- 28 4. Attorney's fees and costs; and

1 5. For any further legal and equitable relief, the Court deems proper.
2

3 Dated: January 3, 2023.

RATNER MOLINEAUX, LLP

4 
5

6 _____
7 David S. Ratner
8 Shelley A. Molineaux
9 *Attorneys for Plaintiff Jason McNeil*
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

December 8, 2022

Shelley Molineaux
1990 N. California Blvd, St 20
Walnut Creek, CA 94598

RE: Notice to Complainant's Attorney
CRD Matter Number: 202212-19080808
Right to Sue: McNeil / Lehmer's Concord Buick GMC et al.

Dear Shelley Molineaux:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

December 8, 2022

RE: Notice of Filing of Discrimination Complaint
CRD Matter Number: 202212-19080808
Right to Sue: McNeil / Lehmer's Concord Buick GMC et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,



Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

December 8, 2022

Jason McNeil
1441 Detroit Avenue, Apt 154
Concord, CA 94520

RE: Notice of Case Closure and Right to Sue
CRD Matter Number: 202212-19080808
Right to Sue: McNeil / Lehmer's Concord Buick GMC et al.

Dear Jason McNeil:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective December 8, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing



Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

1 **Additional Complaint Details:** Jason McNeil, a 49-year-old, African American male, began
2 working for Lehmers GMC Buick in April 2015 as a Sales Consultant until his termination on
September 16, 2022.

3 For many years beginning upon hiring through early 2022, Carl Rogers, General Sales
4 Manager, seemingly enjoyed coming up from behind Mr. McNeil while he was working to
5 scare him. Mr. McNeil had asked Mr. Rogers to stop this behavior. In this same time frame,
6 Mr. Rogers followed Mr. McNeil during break time/lunch time and made comments about the
food he would eat. He would come close to Mr. McNeil and comment that his food was not
good or that it was not keto friendly. This made Mr. McNeil feel insecure.

7 Between the years of 2015 and 2022, twice a month, Mr. Rogers informed his manager to
8 have a conversation with Mr. McNeil about his hair and inferred that it was keeping him from
9 selling cars and that customers were complaining about his hairstyle. Comments were made
that Mr. McNeil's hair is "stupid" and that this company has "white" customers and that they
will never buy a car from Mr. McNeil the way his hair is.

10 On January 5, 2018, upon coming into the sales office, Mr. McNeil was harassed by Mr.
11 Rogers about his dress-code saying that he looked like a "gay person" with his jacket being
too small and his black shoes looking "gay".

12 On July 24, 2019, as Mr. McNeil was purchasing a soda, Mr. Rogers approached and in a
13 loud manner exclaimed to Mr. McNeil, "How are you ever going to lose weight, you're going
14 to have a heart attack drinking that garbage!" Mr. McNeil felt humiliated in front of his other
coworkers.

15 On May 28, 2020, former manager Peter Benjamin explained to Mr. McNeil that Mr. Rogers
16 was racist and doesn't like black people. He had heard him use the reference saying,
"typical niggers", when talking about the Oakland riot after the George Floyd protests.

17 On June 17, 2021, Mr. McNeil was working with a customer who had a question. He
18 approached Mr. Rogers who snatched the read sheet out of Mr. McNeil's hands and said,
"What are you stupid? Let me talk to him. Do I have to split your deal with someone else
19 who is competent?"

20 On August 27, 2021, Mr. Rogers stood over Mr. McNeil's desk at 11:45 am and asked,
21 "What are you eating Jason?" Mr. McNeil asked him to please his respect his space and
then afterwards went to the sales office where Mr. Rogers spoke loudly for all the hear,
including management, about Mr. McNeil's food choice and that it wasn't healthy.

22 On December 10, 2021, after arriving at work on time, Mr. McNeil went into the sales office
23 and was confronted by Mr. Rogers who asked Mr. McNeil where he had been. Mr. McNeil
24 responded that he had been at work and could prove his hours and arrival times on his
timesheet. Mr. McNeil asked Mr. Rogers to check his timesheet, to which Mr. Rogers
25 replied, "I don't believe you, you cannot help any customers or get sales calls."

1 On December 16, 2021, Mr. Rogers found out that Mr. McNeil was having a private holiday
2 party that he was not invited to. Mr. Rogers made fun of the fact that he was not invited to
3 the party and spread around the dealership that he was not invited and spoke about it in
4 front of a customer on the showroom floor. Three days later on the 19th, Mr. Rogers
5 explained that the dealership was having a holiday party and because he wasn't invited to
6 Mr. McNeil's party that he wouldn't be invited to the dealership's party. Mr. Rogers also
7 spoke and spread this information around the dealership making Mr. McNeil continue to feel
8 humiliated.

9 On January 16, 2022, Mr. McNeil was asked to get lunch from Ramon 101 and when he
10 returned with the food and change, he was told the order was incorrect and that Mr. Rogers
11 was owed more change. Mr. McNeil double checked and pointed out that the order and
12 change was correct. Mr. Rogers then accused Mr. McNeil of stealing and said, "Hey moron,
13 are you stupid? You keeping money?"

14 On January 19, 2022, Mr. McNeil had a meeting with Owner Darren Anderson about the
15 abuse he was received from Mr. Rogers as Mr. Rogers was present in the meeting. Mr.
16 Anderson laughed and exclaimed, "Well we don't want you to build a case against us." Mr.
17 Anderson told Mr. Rogers to stop, however no paperwork was placed into Mr. McNeil's
18 personnel file of his complaint and there were no formal apologies issued.

19 On September 1, 2022, Mr. McNeil was called into the sales off by Mr. Rogers upon
20 immediately coming into work for the day. He explained that the only reason Mr. McNeil sold
21 a lot of cars throughout his tenure is because he was giving free deals from previous
22 manager Mr. Benjamin who was terminated by him. Mr. Rogers continued that if Mr. McNeil
23 was not in the top three sales category that he would have to have another talk.

24 On September 16, 2022, Mr. McNeil was terminated claiming low production.

25 The previously described activities have cause Mr. McNeil severe emotional distress. Mr.
26 McNeil describes that he often cries, gets upset, feels belittled, hurt, demoralized,
27 depressed, stressed and helpless. Mr. McNeil experiences nightmares which has lead to
28 lack of sleep and eating more out of stress and causing severe physical ramifications.

Respondents discriminated against Mr. McNeil on the basis of his race in violation of Cal.
Gov. Code § 12940. Respondents harassed and retaliated against Mr. McNeil on the basis
of his race and for complaining about the discrimination, a protected activity, in violation of
the above-referenced statue. Respondents fired Mr. McNeil in violation of public policy.
Respondents are also liable for negligent and intentional infliction of emotional distress.

1 VERIFICATION

2 I, **Shelley Molineaux**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On December 8, 2022, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Walnut Creek, CA