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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD A. KITA
2839 Countryside Drive
Lancaster, PA 17601

Plaintiff,

v.

GULF COAST TRANSPORT, INC.
450 North Aston Drive
Sunnyvale, TX 75182

Defendant.

CIVIL ACTION

NO. 08-2817



JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Plaintiff Richard A. Kita (hereinafter referred to as "Plaintiff" unless otherwise indicated) hereby complains as follows against Defendant Gulf Coast Transport, Inc. (hereinafter referred to as "GCT" or "Defendant"):

I. INTRODUCTION

1. Plaintiff has initiated the instant action to redress violations by Defendant of the Family and Medical Leave Act of 1993. Plaintiff was a highly successful sales executive for Defendant but was fired shortly after advising his supervisors that his elderly mother's deteriorating health required some of his attention, and some time off.

Rather than explain to Plaintiff his rights under the Family and Medical Leave Act of 1993 and allow him the time and space needed, Defendant decided to cut him loose in the name of profit. Defendant's heartless actions violated both the letter and spirit of our nation's family-fortifying statute, and Plaintiff seeks to hold the employer accountable to the maximum amount allowed by the statute.

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II. JURISDICTION AND VENUE

2. The instant action is initiated pursuant to the Family and Medical Leave Act, 29 U.S.C. §§ 2601 *et seq.* (“FMLA”). This Court may properly maintain personal jurisdiction over Defendant because Defendant’s contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

3. The United States District Court for the Eastern District of Pennsylvania has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. § 1331 because it arises under the laws.

4. Venue is properly laid in this District pursuant to 28 U.S.C. §§ 1391(b)(2) and (c) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this judicial district and because Defendant is subject to personal jurisdiction in the Eastern District of Pennsylvania.

III. PARTIES

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

6. Plaintiff is an adult individual and citizen of the United States and the Commonwealth of Pennsylvania with an address as set forth above.

7. Defendant, a corporation, at all relevant times has been incorporated under the laws of the State of Texas with its principal place of business in Sunnyvale, Texas. Defendant is in the

business of providing trucking services to Fortune 500 companies.

8. At all times relevant herein, Defendant acted through its several agents, servants, and employees (including but not limited to those named elsewhere in this Complaint), each of whom acted in the course and scope of their employment for Defendant at all times relevant herein. Defendant is therefore fully responsible for the illegal and discriminatory acts and omissions of the aforesaid employees pursuant to the principle of *respondeat superior*.

IV. FACTUAL BACKGROUND

9. Plaintiff was hired by GCT on or about August 25, 2003. His initial job title was regional sales manager. Approximately a year later, he was promoted to the title of vice-president of corporate accounts.

10. GCT's main offices are in Sunnyvale, TX. Plaintiff maintained a home office and he initially reported to GCT's owner Steve Wooten.

11. In or about July 2006, Plaintiff began reporting to John Furlong.

12. Plaintiff was terminated on or about November 24, 2006.

13. Prior to being terminated, Plaintiff substantially increased new business. In his first full month (September 2003), monthly new business was zero dollars. By the following September (2004), monthly new business was \$446,000. Total new business for his first full year (2004) was \$3,000,000.

14. In his second full year (2005), Plaintiff increased new business to \$7,500,000 and he was named "President's Employee of the Year." In September 2005, Plaintiff received the maximum 4% salary increase along with a note from Wooten which read:

Good News. We are doing salary adjustments as of 09/01/2005. We had budget 4% as the amount for each department to distribute.

Because of your outstanding work I have put you in for the maximum of 4%. I truly appreciate your dedication to Gulf Coast and I look for many more years together.

New Salary effective 09/01/2005. \$93,600.00

Keep up the good work. I am excited about the Goodyear possibilities.

15. In or about late May/early June 2006, Furlong was hired as vice-president of sales and Plaintiff began directly reporting to him.

16. Plaintiff attended a combined sales and operations meeting in Sunnyvale, TX in mid-July 2006. No issues regarding his performance were raised at this time as his territory numbers were in accord with the prior year's. In fact, at this time his sales numbers were slightly ahead of 2005 - despite the loss of some major accounts due to Defendant's operational problems.

17. At approximately that same time, Plaintiff's brother was hospitalized and fell into a coma that lasted for 7 weeks. Plaintiff's brother passed away on August 25, 2006.

18. Plaintiff's mother (88 years of age in 2006) lived next door to Plaintiff's brother in Wildwood Crest, NJ. The passing of Plaintiff's brother required Plaintiff to assume more responsibility for her care.

19. In October 2006, Plaintiff's mother fell and was hospitalized. This required Plaintiff to request time off, and both Wooten and Furlong knew of the situation. She was hospitalized for approximately one week, and thereafter required daily care at home.

20. By November 2006, Plaintiff and his sister decided they would attempt to move their mother closer to them in Lancaster, PA. Plaintiff advised Furlong and Wooten that this would

require some time off so that he may tend to his ailing mother and get her safely and carefully relocated.

21. In one of Furlong's responses he asked Plaintiff if he was looking for a new job. Plaintiff told Furlong that he wanted to stay with the company if the problem could be resolved. Furlong and Plaintiff corresponded a few times by email as to how he might tend to his mother's needs, and to his job responsibilities.

22. Plaintiff, Furlong and Wooten agreed to meet at the end of November 2006 to further discuss the situation. Although Plaintiff was authorized to purchase (and did purchase) airline tickets to arrive in TX the week after Thanksgiving, Plaintiff was fired by telephone the day after Thanksgiving.

23. Furlong told Plaintiff that GCT was eliminating "his operation in the Northeast and there would be no need to come to Texas."

24. Later, after Plaintiff advised his customers GCT was closing its Northeast operation and that his position was being eliminated. This was consistent with what Plaintiff had been told by Furlong.

25. Furlong then called and said, "what are you doing telling customers that we are closing our Northeast operation? We are just eliminating your position."

26. Plaintiff said, okay, that he would send a follow-up email out to customers clarifying the circumstances.

27. In the termination letter Plaintiff later received, however, Defendant explained the termination decision as being attributable to their need for someone to do the job "full time."

28. GCT officials later lied to the unemployment authorities in Pennsylvania, telling them

that Plaintiff had resigned.

29. In December 2006, Plaintiff and his sister were able to set up daily health care visits from a visiting nurse association for their mother, along with meals on wheels and a monitoring service. This allowed their mother to remain at the Jersey shore until she passed away on July 23, 2007.

COUNT ONE
VIOLATIONS OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993

30. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

31. Defendant's actions as aforesaid violated the FMLA.

32. Some of the objectives Congress sought to achieve in enacting the FMLA were to "balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity," and "to entitle employees to take reasonable leave for . . . for the care of . . . parent who has a serious health condition." 29 U.S.C. § 2601(b)(1).

33. Plaintiff was an "eligible employee" within the meaning of FMLA (29 U.S.C. § 2611(2)(A)) as he had been employed by Defendant for at least 12 months and for at least 1,250 hours during the 12-month period prior to his termination.

34. Plaintiff was FMLA-eligible as a home-based employee pursuant to 29 C.F.R. 825.111(a)(2) because his worksite was deemed to be Defendant's headquarters in Sunnyvale, TX - the office to which he reported and from which he received his assignments.

35. GCT is covered by the requirements of the FMLA pursuant to 29 U.S.C. §

2611(4)(A)(i).

36. As an eligible employee, Plaintiff was entitled up to 12 weeks of leave during any 12-month period wherein his mother suffered a serious health condition pursuant to 29 U.S.C. § 2612(a)(1)(C).

37. Plaintiff was entitled upon return from his leave, pursuant to 29 U.S.C. § 2614(a)(1)(A), to be restored by Defendant to the position of employment held by him when his leave commenced.

38. In failing to explain to Plaintiff his FMLA benefits and leave rights, in failing to grant Plaintiff FMLA leave, and by terminating Plaintiff for needing and/or exercising his right to take temporary FMLA leave to care for his mother, Defendant deliberately and purposefully interfered with Plaintiff's FMLA rights and violated 29 U.S.C. § 2615(a)(1).

WHEREFORE, Plaintiff requests the relief set forth below:

- A. Plaintiff requests that Defendant pay all wages, salary, employment benefits and other compensation denied to Plaintiff or lost by reason of the aforesaid violations, pursuant to 29 U.S.C. § 2617(A)(i)(I);
- B. That Defendant pay interest on any amount of damages awarded and that this interest be calculated at the prevailing rate, pursuant to 29 U.S.C. § 2617(1)(A)(ii);
- C. That Defendant be required to pay an additional amount as liquidated damages, pursuant to 29 U.S.C. § 2617(1)(A)(iii);
- D. Plaintiff also requests equitable relief, including employment and reinstatement, pursuant to 29 U.S.C. § 2617(B);

- E. Plaintiff also requests fees and costs of this action, including reasonable attorneys' fees and other costs of the action, pursuant to 29 U.S.C. § 2617(3);
 - F. Plaintiff is to be accorded equitable or injunctive relief as allowed by applicable law;
 - G. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorneys' fees as provided by applicable federal and state law;
 - H. This Court should grant any and all other such legal or equitable relief as it deems necessary, just, and appropriate;
 - I. This Court should maintain jurisdiction over the instant action to ensure full compliance with its Orders therein until such time it is satisfied that its Orders and dictates have been complied with in full by Defendant;
 - J. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law.
- Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

~~THE WEINSTEIN LAW FIRM~~

By:



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Dated: June 17, 2008