



Defendants castigated her for speaking in her native tongue (Pakistani).

The story, regrettably, does not end there. Through the end of 2012, Plaintiff continued to pay to Defendants the monthly health insurance premium necessary to keep her and her two younger daughters covered. Defendants gladly accepted the payments and did not continue the health insurance, which remained retroactively cut off as of July 31, 2012. Defendants also refused to pay Plaintiff the remaining wages to which she was entitled, and they also contested her unemployment benefits. They did all this cognizant of the fact that Plaintiff's 28 year-old daughter had just died.

Because there is a no cause of action for unmitigated human cruelty, Plaintiff must avail herself to the other, several statutes which proscribe Defendants' conduct. Those statutes, along with the necessary factual undergirding, are set forth below.

### **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”), Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*) (“Title VII”), 42 U.S.C. § 1981 (“Section 1981”), the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. §§ 1161-1168, (“COBRA”); and applicable state law.

3. This Court may properly maintain personal jurisdiction over Defendants because Defendants' contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants 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.

4. 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 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of civil rights. The Court may also maintain supplemental jurisdiction over state law claims set forth herein pursuant to 28 U.S.C. § 1367(a) and Rule 18(a) of the Federal Rules of Civil Procedure because they are sufficiently related to the claim(s) within the Court's original jurisdiction that they form part of the same case or controversy.

5. Venue is properly laid in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2). This is because both Defendants are residents of the Commonwealth of Pennsylvania and this judicial district, because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district, and because this Court maintains personal jurisdiction over both Defendants.

### **PARTIES**

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

7. Defendant ACE is a corporation, and all at all relevant times has been incorporated under the laws of the Commonwealth of Pennsylvania. Among other activities, ACE is in the business of providing outpatient psychological services. It maintains several offices in

Pennsylvania: including, but not limited to, Shillington, Reading (2 offices) and Pottsville. Its principal place of business is in Shillington, Berks County, PA.

8. Defendant Hunsberger is a female, adult individual and citizen of the United States. She is the president of ACE.

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

#### **FACTUAL BACKGROUND**

10. Plaintiff is originally from Pakistan. She moved to the United States in 1991, and became an American citizen in or about 1998.

11. Plaintiff earned her Master's degree in social work from Temple University in or about 2006.

12. Hunsberger hired Plaintiff as a therapist for ACE in or about February 2009, and she worked primarily out of the Pottsville office. Her usual hours were 9-5, M-F. She was paid an hourly wage.

13. Beginning June 2012, Plaintiff took an approved FMLA leave of absence to care for her eldest daughter, Farwa, who was being treated for cancer at Memorial Sloan Kettering Cancer Center in New York City.

14. On Tuesday, August 7, 2012 Plaintiff returned to work, but was not restored to her prior position. Rather, she was placed in a non-salary, fee-for-service capacity.

15. On Friday, August 10, 2012, Plaintiff was fired.

16. Hunsberger arrived at the Pottsville office at about 11:30 a.m. Hunsberger met with Plaintiff and Pottsville office supervisor Victoria Calabretta. In Hunsberger's presence, Calabretta said "Dure, you know this is America, we speak English, you are not in your country anymore, you need to speak English. When you don't speak English I am very uncomfortable."

17. Hunsberger then stated, "That's it" and terminated Plaintiff's employment. Plaintiff was then given a letter of termination with a litany of phony allegations against her.

18. On September 29, 2012, the daughter for whom Plaintiff took FMLA to provide care, died at Plaintiff's home in Cressona, PA. Farwa Hussain was 28 years of age.

**COUNT ONE**  
**VIOLATIONS OF THE FAMILY AND MEDICAL LEAVE ACT OF 1993**  
**(against both Defendants)**

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

20. ACE is an "employer" as defined by the FMLA, pursuant to 29 U.S.C. § 2611(4)(A)(I).

21. Hunsberger is also an "employer" under the FMLA in that she acts, directly or indirectly, in the interest of ACE to any of ACE's employees, pursuant to 29 U.S.C. § 2611(4)(A)(ii)(I).

22. Plaintiff was an “eligible employee” within the meaning of FMLA (29 U.S.C. § 2611(2)(A)) as she had been employed by ACE for at least 12 months and for at least 1,250 hours during the previous 12-month period.

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

24. Plaintiff was entitled upon return from her leave caring for Farwa, pursuant to 29 U.S.C. § 2614(a)(1)(A), to be restored to the position of employment held by her when her leave commenced.

25. In failing to explain to Plaintiff her FMLA benefits and leave rights, and/or in failing to grant Plaintiff FMLA leave, and/or in failing to restore Plaintiff to her position, and/or by terminating Plaintiff because she exercised her right to take temporary FMLA leave to take care of Farwa, ACE and Hunsberger deliberately and purposefully violated 29 U.S.C. §§ 2615(a)(1) & (a)(2).

**WHEREFORE**, Plaintiff requests the relief set forth below:

a) Defendants 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) Defendants 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) Defendants pay an additional amount as liquidated damages, pursuant to 29 U.S.C. § 2617(1)(A)(iii);
- d) Equitable relief, including but not limited to back pay/front pay, pursuant to 29 U.S.C. § 2617(B);
- e) Fees and costs of this action, including attorneys' fees, pursuant to 29 U.S.C. § 2617(3);
- f) All other such legal or equitable relief deemed necessary, just, and appropriate.

**COUNT TWO**  
**DISCRIMINATION IN VIOLATION OF TITLE VII (against ACE only)**  
**& SECTION 1981 (against both Defendants)**

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

27. Plaintiff has satisfied the procedural and administrative requirements for proceeding under Title VII. In particular:

- a. On or about April 29, 2013 Plaintiff filed a timely written charge of discrimination and retaliation with the U.S. Equal Employment Opportunity Commission ("EEOC");
  - b. The EEOC assigned it charge number 530-2013-02192;
  - c. On or about June 2, 2014, the EEOC issued a Dismissal and Notice of Rights;
  - d. The instant action is timely because it was initiated within ninety (90) days of the receipt of the aforementioned Notice;
  - e. Plaintiff has fully exhausted her administrative remedies.
28. In the manner set forth above, by terminating Plaintiff's employment because of her

race and/or national origin and/or ethnicity and/or ancestry and/or color, Defendants engaged in knowing, purposeful and unlawful discrimination in violation of Title VII and Section 1981.

29. In the manner set forth above, Defendants engaged in discriminatory practices with malice and reckless indifference to Plaintiff's federally-protected right to be free from employment discrimination based on her race and/or national origin and/or ethnicity and/or ancestry and/or color.

30. As a result of the illegal discharge, Plaintiff suffered damages including but not limited to denial of employment, lost wages, lost benefits, lost promotions, lost bonuses, lost training, and lost experience.

31. As a result of the illegal discharge, Plaintiff has suffered emotional pain, anguish and suffering, humiliation, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

**WHEREFORE**, Plaintiff prays that this Court enter an order providing that:

- a) Defendants are to be permanently enjoined from discriminating against Plaintiff on any basis forbidden by Title VII, Section 1981, and other applicable federal and state law;
- b) Defendants are to promulgate and/or adhere to a policy prohibiting discrimination in the workplace, and ensure this policy is fairly and adequately enforced;
- c) Defendants are to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendants'



illegal actions, including but not limited to back pay, front pay, interest, salary, pay increases, bonuses, insurance, benefits, training, promotions, lost 401K or retirement benefits, and seniority;

d) Plaintiff is to be awarded compensatory damages for the mental anguish, emotional distress, pain and suffering caused by Defendants' actions;

e) Plaintiff is to be awarded punitive damages in an amount believed by the Court or trier of fact to be appropriate to punish Defendants for their willful, deliberate, malicious, reckless and outrageous conduct, and to deter Defendants or other employers from engaging in such misconduct in the future;

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;

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 Defendants.

**THIRD CAUSE OF ACTION  
COBRA VIOLATIONS  
(against Defendant ACE only)**

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

33. The Consolidated Omnibus Budget Reconciliation Act, generally referred to by the acronym “COBRA,” was enacted by Congress during 1985, and signed into law by President Reagan in 1986. See Pub. L. 99-272, 100 Stat. 82.

34. Among other things, COBRA requires “qualifying employers” (generally defined as those persons or entities who or which employed twenty or more full-time equivalent employees during the previous calendar year) to offer “qualified employees” (and members of the employee’s immediate family) the option to continue coverage under the employer’s group health insurance plan whenever a “qualifying event” causes the employee to lose such coverage. See 29 U.S.C. § 1161.

35. ACE is a covered employer as defined by COBRA, and Plaintiff was a qualified employee, per 29 U.S.C. § 1161.

36. Plaintiff’s involuntary termination of August 10, 2012 constituted a “qualifying event.” See 29 U.S.C. § 1162(2)

37. Accordingly, under COBRA, ACE was required to have offered continuing health care coverage to Plaintiff and her immediate family for at least eighteen months past the date of her discharge. See 29 U.S.C. § 1162(2)(A)(i). ACE was also required under COBRA to provide notice of the option to purchase this coverage. See 29 U.S.C. 1166. Plaintiff then had 60 days after the date of the notice was sent to decide on whether to purchase this coverage. See 29 U.S.C. § 1165(a)(1)(C)(ii).

38. If the COBRA notice sent to the former employee is insufficient, or if the former

employee is not provide 60 days to the make the purchase decision, the former employee is afforded a private right of action. See 29 U.S.C. § 1132(c)(1).

39. ACE violated Plaintiff's COBRA rights by not providing a sufficient notice to Plaintiff that included the information required by 29 C.F.R. § 2590.606-4. ACE also violated Plaintiff's COBRA rights by not allowing 60 days for her to make the purchase decision.

40. Despite never receiving sufficient notice of her COBRA rights, Plaintiff did timely pay ACE more than \$2,800 in post-employment COBRA premiums.

41. ACE, despite collecting these post-employment COBRA premiums, never continued Plaintiff's health insurance or that of her immediate family.

42. ACE's actions of taking Plaintiff's COBRA payments through December 2012, but not continuing her family's health care coverage also violated Plaintiff's COBRA rights.

**WHEREFORE**, Plaintiff requests the relief set forth below:

- a) ACE pay to Plaintiff a statutory penalty in the amount of \$110 per day, per family member covered, for each day ACE was in violation of COBRA. See 29 U.S.C. § 1132(c)(1), (c)(3); 29 C.F.R. § 2575.502c;
- b) Reimbursement of the COBRA premiums Plaintiff paid but which ACE never paid toward health insurance for Plaintiff and her immediate family;
- c) Other relief (including reimbursements for all out-of-pocket medical expenses Plaintiff and her family would have otherwise not incurred) as this Honorable Court deems

proper, pursuant to 29 U.S.C. § 1132(c)(1)(B));

d) Fees and costs of this action, including reasonable attorneys' fees and costs of the action, pursuant to 29 U.S.C. § 1132(g)(1).

**FOURTH CAUSE OF ACTION  
FRAUD  
(against Defendant ACE only)**

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

44. After terminating Plaintiff, Defendant ACE represented to Plaintiff that if she paid approximately \$500 per month, it would continue her family's health insurance coverage.

45. This representation was materially false, in that ACE had no intention of submitting that money to the insurer after terminating Plaintiff. In fact, Plaintiff later learned that her health insurance was cut off - and never reactivated - as of July 31, 2012.

46. Plaintiff however continued to pay the approximately \$500 per month from August 2012 through December 2012. All through that time Defendant ACE - despite its representations to Plaintiff - was collecting Plaintiff's monthly premium but not providing her with health insurance.

47. ACE made the aforesaid representations with actual knowledge of their falsity at the time they were made, or with reckless disregard of their truth or falsity.

48. Plaintiff justifiably relied on the material misrepresentations of ACE and continued to send into ACE the monthly insurance premiums.

49. As a result of ACE's fraudulent conduct that extended through December 31, 2012,

Plaintiff has sustained substantial monetary losses in excess of \$2,500.

**WHEREFORE**, Plaintiff respectfully prays that this Honorable Court enter judgment in their favor and against Defendant, for compensatory damages and punitive damages, and other amounts as this Court deems just.

**FIFTH CAUSE OF ACTION  
UNJUST ENRICHMENT  
(against Defendant ACE only)**

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

51. By collecting more than \$2,500 from Plaintiff for her COBRA benefits but not providing the continuing health insurance, ACE became unjustly enriched at Plaintiff's expense.

**WHEREFORE**, Plaintiff requests re-payment of her COBRA premiums, liquidated damages, interest, attorneys' fees, and other amounts as this Court finds just.

**SIXTH CAUSE OF ACTION  
BREACH OF CONTRACT  
(against Defendant ACE only)**

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

53. At the time of Plaintiff's hire, she and ACE entered into an employment agreement.

54. The agreement includes a provision allowing termination of employment without cause, so long as 60 days written notice is given.

55. The agreement also includes a provision allowing for termination of employment with

cause, so long as 30 days written notice is given.

56. Under either provision, Defendant did not provide the requisite notice to Plaintiff when she was abruptly fired on August 10, 2012.

**WHEREFORE**, Plaintiff requests 60 days of pay and benefits, plus interest, costs and other amounts as this Court finds just and allowable under state law.

**SEVENTH CAUSE OF ACTION  
VIOLATIONS OF THE WAGE PAYMENT AND COLLECTION LAW  
(against both Defendants)**

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

58. Both ACE and Hunsberger are employers as that term is defined in the Pennsylvania Wage Payment and Collection Law (“WPCL”). See 43 P.S. § 260.2a.

59. Plaintiff is due unpaid wages for two weeks in June 2012, and for one week in August 2012. These sums total approximately \$3,000.

60. Plaintiff has made repeated demands upon Defendants for payment of the wages due and owing.

61. Defendants have, repeatedly and without any legitimate basis, refused to pay the wages due and owing.

62. Defendants’ actions as aforesaid constitute violations of the WPCL.

63. In addition to wages due and owing, Plaintiff is entitled to liquidated damages in an amount equal to twenty-five (25) percent of the amount due and owing in accordance with 43 P.S. § 260.10.

64. In addition to the wages due and owing, and the 25% penalty, Plaintiff is entitled to an award of attorneys' fees associated with this action in accordance with 43 P.S. § 260.9a(f).

**WHEREFORE**, Plaintiff respectfully prays that this Honorable Court enter judgment in her favor and against Defendants, and order payment of the wages due and owing, the 25% penalty, attorneys' fees, and other amounts as this Court finds just.

**JURY DEMAND**

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 Amended Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

**WEINSTEIN LAW FIRM, LLC**

By: 

Marc E. Weinstein, Esquire  
One Northbrook Corporate Center  
1210 Northbrook Drive, Suite 280  
Trevose, PA 19053  
215.953.5200  
[meweinstein@comcast.net](mailto:meweinstein@comcast.net)  
Counsel to Plaintiff

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