

CONFIRMED FILE DATE: 12/20/2012

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FILED

Chris Daniel
District Clerk

DEC 20 2012

CAUSE NO. 2012 - 74883

Time: _____

IN THE DISTRICT COURT

By _____
Deputy

LESLE J. MARKLE,
Plaintiff

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v.

F.W. SERVICES, INC. d/b/a
PACESETTER PERSONNEL SERVICES,
SOUTHERN TEMPORARIES, INC. d/b/a
PACESETTER PERSONNEL SERVICES,
PACESETTER PERSONNEL
SERVICES, INC.,
KENNETH E. JOEKEL and
MARC PLOTKIN,
Defendants

OF HARRIS COUNTY, TEXAS

55 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

COMES NOW, Leslie J. Markle (hereinafter referred to as "Markle" or "Plaintiff"), Plaintiff in the above styled and numbered cause, and files this her Original Petition, complaining of F.W. Services, Inc. d/b/a Pacesetter Personnel Services, Southern Temporaries, Inc. d/b/a Pacesetter Personnel Services, Pacesetter Personnel Services, Inc., Kenneth E. Joekel, and Marc Plotkin (hereinafter referred to as "Defendants"), and for cause of action would show as follows:

INTRODUCTION

1. This action seeks legal relief, nominal, actual, compensatory and punitive damages, attorney's fees, expert witness fees, taxable costs of court, pre-judgment and post-judgment interest for violation of the Texas Commission on Human Rights Act and certain state torts suffered by Plaintiff in the course of her employment or after her employment with Defendants. Plaintiff complains that she was terminated and retaliated against regarding the terms and conditions of her employment because she engaged in protected activities in violation

of the Texas Commission on Human Rights Act and she was the victim of a number of other state torts. The stated reasons for Plaintiff's termination were a pretext.

DISCOVERY

2. Discovery in this case will be conducted under Level 3, Rule 190.1 of the Texas Rules of Civil Procedure.

PARTIES

3. Plaintiff Lesle J. Markle is a female citizen of the Texas, who is a resident of Houston, Harris County, Texas.

4. F.W. Services, Inc., d/b/a Pacesetter Personnel Services, is a Texas Corporation doing business in the State of Texas. Service of the Summons and this Petition may be made by serving its registered agent, Lawyer's Aid Service, Inc., 408 West 17th St., Suite 101, Austin, Texas 78701.

5. Southern Temporaries, Inc. d/b/a Pacesetter Personnel Services is a Texas Corporation doing business in the State of Texas. Service of the Summons and this Petition may be made by serving its registered agent, Lawyer's Aid Service, Inc., 408 West 17th St., Suite 101, Austin, Texas 78701.

6. Defendant Pacesetter Personnel Services, Inc. is a Texas Corporation doing business in the State of Texas. Service of the Summons and this Petition may be made by serving its registered agent, Lawyer's Aid Service, Inc., 408 West 17th St., Suite 101, Austin, Texas 78701.

7. Kenneth E. Joekel is a person who resides in Harris County. Service of the Summons and this Petition may be made by serving Defendant at 4538 Beech Street, Bellaire,

Harris County, Texas 77401 or his place of employment at 3203 W. Alabama, Houston, Harris County, Texas 77098.

8. Marc Plotkin is a person who resides in Harris County. Service of the Summons and this Petition may be made by serving Defendant at 15 Greenway Plaza, Houston, Harris County, Texas 77046 or his place of employment at 3203 W. Alabama, Houston, Harris County, Texas 77098.

9. Whenever in this Petition it is alleged that a Defendant or Defendants committed any act or omission, it is meant that the defendant's or defendants' officers, directors, vice-principals, agents, servants, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of defendant or was done in the routine normal course and scope of employment of the defendant's officers, directors, vice-principals, agents, servants, or employees unless otherwise stated in this Complaint. It is further alleged that F.W. Services, Inc., Southern Temporaries, Inc., Pacesetter Personnel Services, Inc., Kenneth E. Joekel, Marc Plotkin and any of the other related entities to defendants were acting in concert.

VENUE & JURISDICTION

10. Venue is proper in Harris County pursuant to § 15.002 of the Texas Civil Practice and Remedies Code because all or a substantial part of the acts or omissions giving rise to the claim occurred in Harris County, Texas and Defendant Joekel resides in Harris County. Venue is also proper in Harris County because Plaintiff resided there at the time of the defamation pursuant to § 15.017 of the Texas Civil Practice and Remedies Code. Finally, Defendants' breach of their agreements with Plaintiff occurred in Harris County.

11. This Court has jurisdiction over all claims in this action.

12. The amount in controversy is within the jurisdictional limits of this Court.

FACTS

13. Plaintiff is a female citizen of the United States.

14. Plaintiff was hired by F.W. Services, Inc. d/b/a Pacesetter Personnel Services on October 1, 2007. A number of related corporations do business under the Pacesetter Personnel Services ("PPS") moniker including Pacesetter Services, Inc. "PPS" refers herein to all the defendant corporations including but not limited to F.W. Services, Inc., Southern Temporaries, Inc. and Pacesetter Personnel Services, Inc. Plaintiff's employment was later transferred to one of the other PPS companies known as Southern Temporaries, Inc. d/b/a Pacesetter Personnel Services.

15. PPS is a large temporary labor provider based in Houston, Texas, with over 70 offices nation-wide. For over 35 years, PPS has provided temporary labor assistance and outsourced administrative services to clients in a range of businesses from construction and manufacturing to general offices and institutions. PPS also provides payroll and benefit services for businesses.

16. Plaintiff was hired on October 1, 2007 as Director, Human Resources. Plaintiff during her tenure with PPS had sales and marketing oversight duties in addition to her human resources duties. Plaintiff had an employment contract. Plaintiff reported to Kenneth E. Joekel ("Joekel"), President and CEO and Marc Plotkin ("Plotkin"), Executive Vice-President.

17. Plaintiff was wrongfully retaliated against and terminated on February 2, 2012. Plaintiff was highly compensated and had a substantial benefits and bonus package.

18. During the summer of 2011, Plaintiff was working to get PPS's employment practices liability insurance renewed. The insurance company wanted an EEO-1. PPS had never

previously done one. Plaintiff was first instructed to ignore the request and then was later instructed to create one that was not a true reflection of the company demographics. Plaintiff expressed her opposition to this.

19. Plaintiff also worked on trying to standardize PPS employment policies during this time frame. Plaintiff had become concerned that PPS engaged in a number of practices that violated employment laws and led to discriminatory practices. Plaintiff's efforts in this area met with resistance from both Joekel and Plotkin. Plaintiff expressed her objections and opposition to PPS's discriminatory practices.

20. In 2011, Plaintiff met twice with the Equal Employment Opportunity Commission "EEOC" in connection with Charges of Discrimination that were filed against PPS companies through the San Antonio, Texas EEOC office.

21. Plaintiff was informed at those meetings that certain illegal and improper employment practices were going on in some of PPS's locations. Certain words were being used as code words on temporary worker staffing requests to accommodate customer requests that were discriminatory and not based on a *bona fide* occupational need. For example, some code that was being used included "blue eyes" and "no sunscreen" to discriminate against African Americans temporary workers. "Work all day" was code for Hispanic workers over other races and national origins. "Heavy lifting" was code for no women workers. "Energetic" was code for very young as opposed to older workers.

22. In addition, the company ran advertisements for sales staff positions seeking only women who were physically attractive. One ad which ran in Atlanta in January of 2012 stated: "Hot motivated Sales girl needed!!! (Atlanta)." The ad went on to say:

"We need a self motivated fired up ready to make money nice looking sales girl who wants to make money. We supply temporary help to the construction

industry. You mainly deal with men so women do better. A picture not required but requested. We are not fly by night. This is a legit job. We have been open 40 years. Come join a winning team!"

23. Plaintiff attempted to discuss ways to rectify this discrimination going forward with both Joekel and Plotkin and also expressed her opposition to discriminatory and illegal employment practices. Plaintiff was again rebuffed and told what the customer wants the customer gets, to let it go, and that's the way this business works. The more Plaintiff tried to work on ways to fix some of the illegal employment practices and the more Plaintiff opposed discrimination, the more strained the working relationship became with her and her two bosses.

24. Defendants engaged in corporate espionage as a matter of normal business practices. Defendants or their agents examined competitor's trash and hire private detectives to spy on competitors and employees as a regular practice.

25. In the later part of 2011, Plaintiff learned that Joekel and Plotkin had a private investigator put a GPS tracking device on her car and also had her followed by investigators. The use of such a tracking device is a violation of the Texas Penal Code §16.06. Plaintiff had not consented to such actions.

26. Joekel instructed Plaintiff to make false representations to various third-parties to further Joekel's personal interests. Joekel instructed Plaintiff to put his mistress on PSS' health plans and to use a false address for that individual. Joekel also instructed Plaintiff to give false information regarding certain assets of PPS to various creditors and also during settlement of an estate. When Plaintiff objected to making false statements and false representations, Joekel became upset and told Plaintiff her job required that she had to do as he instructed.

INVASION OF PRIVACY

27. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

28. The defendant intentionally intruded on Plaintiff's solitude, seclusion, or private affairs by illegally having a tracking device put on her car and having Plaintiff followed during her off hours without consent.

29. The intrusion would be highly offensive to a reasonable person and is illegal under the Texas Penal Code.

30. Plaintiff suffered an injury as a result of the defendant's intrusion.

CIVIL CONSPIRACY

31. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

32. Defendants were a member of a combination of two or more persons;

33. The object of the combination was to accomplish

(1) an unlawful purpose, or

(2) a lawful purpose by unlawful means.

34. The members had a meeting of the minds on the object or course of action.

35. One of the members committed an unlawful, overt act to further the object or course of action.

36. Plaintiff suffered injury as a proximate result of the wrongful act.

BREACH OF CONTRACT

37. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

38. Plaintiff had an enforceable employment contract that limited Defendants' right to discharge Plaintiff at will. There was privity between Plaintiff and Defendants.

39. Plaintiff performed, tendered performance of, or was excused from performing her contractual obligations. Defendants breached the contract by wrongfully discharging Plaintiff; and Defendants' breach caused injury to Plaintiff. Plaintiff seeks all damages and attorney fees as allowed by Texas law.

FRAUD

40. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

41. The Defendants made representations to Plaintiff to induce her to accept employment;

42. The representations were material;

43. The representations were false;

44. When the Defendants made the representations, the Defendants:

(1) Knew the representations were false, or

(2) made the representations recklessly, as a positive assertion, and without knowledge of its truth;

(3) The defendants made the representations with the intent that Plaintiff act on it;

(4) Plaintiff relied on the representations; and

(5) The representations caused Plaintiff injury.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

45. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

46. Plaintiff is a person.

47. Defendants acted intentionally or recklessly.

48. The emotional distress suffered by Plaintiff was severe.

49. Defendants' conduct was extreme and outrageous.

50. Defendants' conduct proximately caused Plaintiff's emotional distress.

51. No alternative cause of action would provide a remedy for the severe emotional distress caused by the defendants' conduct.

DEFAMATION

52. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

53. Defendants have made false statements of fact about Plaintiff that were defamatory and untrue.

54. These statements were calculated to damage Plaintiff's reputation in a legally prohibited manner.

55. Defendant's conduct proximately caused Plaintiff injury and she seeks nominal, actual and pecuniary damages.

SABINE PILOT CLAIM

56. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

57. In the alternative, if the Court finds that Plaintiff was an at-will employee, Plaintiff brings a *Sabine Pilot* action. Plaintiff was terminated because she refused to engage in criminal conduct and commit fraud.

ADMINISTRATIVE PREREQUISITES

58. Plaintiff timely filed a Charge of Discrimination more than 180 days ago with the Texas Workforce Commission--Civil Rights Division via the EEOC joint filing agreement. The charge included a claim of discrimination based on retaliation as detailed in the claims contained in this petition. Accordingly, all administrative prerequisites have occurred to bring a claim of retaliation under the Texas Commission on Human Rights Act codified in the Texas Labor Code in Chapter 21.

RETALIATION

59. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

60. After Plaintiff complained to Defendants' and stated her opposition to Defendants' discriminatory conduct and prohibited employment practices, Defendants engaged in activities, including termination, in retaliation for Plaintiff's complaints, as outlined above in violation of the Texas Labor Code, including but not limited to § 21.055 of the Texas Labor Code.

61. As a result of Defendants' retaliatory actions, Plaintiff has suffered loss of wages, both in the past and in all probability will suffer in the future, as well as emotional pain, mental anguish, suffering, inconvenience, loss of enjoyment of life in the past, and in all probability she will continue to suffer in the future.

ATTORNEY'S FEES

62. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

63. Plaintiff is entitled to recover attorney's fees and costs for bringing this action pursuant to her breach of contract claim, her retaliation claim, and any other relevant claims.

DAMAGES

64. Each and every allegation contained in the foregoing paragraphs are realleged as if fully rewritten herein.

65. As a result of Defendants' actions as stated above, Plaintiff seeks the following relief: (1) back pay; (2) reinstatement, or if reinstatement is deemed not feasible, front pay; (3) loss of wages and benefits in the past and the future; (4) costs of court, expert fees and attorneys' fees; (5) mental anguish and emotional distress in the past and future and (6) pre-judgment and post-judgment interest as allowed by each statute.

66. Additionally, since Defendants' actions were committed with reckless indifference to Plaintiff's statutorily protected and common law rights, Plaintiff is entitled to recover punitive and or exemplary damages in an amount sufficient to deter Defendants and others similarly situated from this conduct in the future.

67. On the state torts claims, Plaintiff seeks damages as permitted under the laws of the State of Texas to include nominal and actual damages, punitive damages and any equitable relief that is available.

ALTERNATIVE PLEADINGS

68. To the extent facts and/or cause of action pled in this Petition are in conflict, they are pled in the alternative.

JURY DEMAND

69. Plaintiff demands a trial by jury on all of her claims, the jury fee having been deposited with the Clerk of the Court.


REQUEST FOR DISCLOSURE

70. Plaintiff requests that Defendants provide Plaintiff with the information described in Rule 194.2 (a)-(l) of the Texas Rules Civil Procedure at the offices of undersigned counsel with 50 days of service of this document.

PRAYER

WHEREFORE, Plaintiff Leslie J. Markle respectfully prays that upon final trial hereof, this Court grant her: appropriate backpay, front pay, including, but not limited to, her salary and lost pension, insurance and other benefits past and future; compensatory and punitive damages as allowed by law; mental anguish damages; reasonable attorney's fees both for the trial of this cause and any and all appeals as may be necessary; all expert witness fees incurred in the preparation and prosecution of this action; prejudgment and post-judgment interest as allowed by law; taxable court costs; nominal, actual and exemplary damages as allowed by state law, and any such additional and further relief that this Court may deem just and proper.

Respectfully submitted,

By: 
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