UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at LONDON
CIVIL ACTION NO. 10-CV-___

JESSE CHAPLIN, JR.	)	
	)	**Complaint**
Plaintiff	)	
	)	
vs.	)	
	)	
COBB-VANTRESS, INC.	)	
	)	**Electronically Filed**
Defendant	)	

** ** ** ** ** ** ** **

Plaintiff Jesse Chaplin, Jr. for his Complaint herein against defendant Cobb-Vantress, Inc., states as follows:

I

Nature of the Action

1. This is an action arising from the unlawful and wrongful termination of plaintiff's employment in violation of the Family Medical Leave Act and KRS 342.197. Plaintiff seeks recovery of damages for lost pay and benefits, compensatory damages for emotional distress and mental anguish, punitive damages, attorney's fees, costs and litigation expenses arising therefrom.

II

Jurisdiction and Venue

2. The United States District Court for the Eastern District of Kentucky has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1367 as it

raises a question of federal law and the issues of state law arise from a common nucleus of operative fact.

3. Venue is proper in this district and division, because the claims asserted herein arose in Wayne County, Kentucky.

III

Parties

4. Plaintiff Jesse Chaplin Jr. is a resident of the Commonwealth of Kentucky and resides presently in Clinton County, Kentucky.

5. Defendant Cobb-Vantress, Inc. is a corporation organized under the laws of the state of Delaware. Cobb-Vantress operates a poultry processing plant where it employed plaintiff in Wayne County, Kentucky.

IV

Facts Giving Rise to the Lawsuit

6. Jesse Chaplin Jr. began employment with defendant on or about November 23, 2004.

7. Chaplin was terminated from his employment by defendant on January 17, 2009.

8. At the time Chaplin's employment was terminated his job position was third shift supervisor.

9. At all times during his employment by defendant, Chaplin performed his job consistent with defendant's reasonable expectations as an employer.

10. On or about March 18, 2007, and again on October 5, 2008, Chaplin, in the course of his employment by defendant, sustained work-related injuries.

11. Chaplin timely notified defendant following the incidents in which he sustained work-related injuries on or about March 18, 2007, and October 5, 2008.

12. Commencing January 14, 2009, through January 21, 2009, Chaplin was incapacitated and unable to report to work for defendant because of a back condition related to and arising from the March 18, 2007, and October 5, 2008, incidents.

13. On January 15, 2009, because of the continuing and ongoing problems and incapacitation caused arising from the aforedescribed back problems, Chaplin was examined by Dr. Michael Cummings.

14. Dr. Cummings found Chaplin incapacitated from his job with defendant and, as a result, directed that he be excused from work by defendant through January 21, 2009, due to Chaplin's back condition.

15. Dr. Cummings set forth on a written note his findings regarding Chaplin and his directions that Chaplin be excused from work by defendant through January 21, 2009.

16. On January 15, 2009, Chaplin delivered to defendant a copy of Dr. Cummings' written note in accordance with defendant's procedures.

17. On January 16, 2009, DeWayne Hardwick, the plant manager for defendant and Chaplin's immediate supervisor, telephoned Chaplin at home and demanded that he report to work, notwithstanding Chaplin's incapacitation and Dr. Cumming's direction that Chaplin be excused from work through January 21, 2009.

18. In response to Hardwick's demands that he report to work, Chaplin informed him that he was incapacitated from working due to his back condition and further that Dr. Cummings had directed that he be excused from work through January 21, 2009.

19. In response to Chaplin's aforedescribed statements, Hardwick informed Chaplin that he must go and see Dr. Cummings and induce Dr. Cummings to revoke his instructions excusing Chaplin from work through January 21, 2009.

20. Chaplin informed Hardwick that he could not do so, because he was hurting and, in any event, Dr. Cummings would not again be available until the following Monday.

21. Hardwick then ordered Chaplin to go see another doctor and have such doctor issue an order countermanding that issued by Dr. Cummings that incapacitated Chaplin from work through January 21, 2009.

22. Chaplin informed Hardwick that he could not do so because he was hurt and because no doctor would issue such an order.

23. Hardwick, in response to this information, then stated his intention to terminate Chaplin's employment and directed Chaplin to report to defendant's plant the following day at 7:00 p.m.

24. On January 17, 2009, Hardwick advised Chaplin that his employment was terminated, asserting that Chaplin had exceeded defendant's permissible absences.

25. Hardwick further advised Chaplin on January 17, 2009, that defendant would oppose any claim for unemployment compensation benefits and taunted Chaplin that he would not "get a dime of unemployment."

26. Chaplin implored Hardwick not to fire him and informed Hardwick that his back injury might be work-related.

27. Nonetheless and notwithstanding the notice to defendant of Chaplin's serious health condition and that it was possibly work-related, Hardwick informed Chaplin that he was terminated and ordered him to leave the plant.

28. Chaplin had been employed by defendant for more than 12 months as of January 14, 2009.

29. Chaplin had worked more than 1250 hours for defendant in the 12 months preceding January 14, 2009.

30. Defendant operates numerous plants in the Monticello, Kentucky area and in close proximity to the plant at which defendant employed Chaplin.

31. Defendant employs greater than 50 persons within 75 miles of the plant at which defendant employed plaintiff.

32. Chaplin has been examined by Dr. Cummings related to his back problems, which incapacitated him from work from January 14 to January 21, 2009, on January 15, January 19, January 26, February 18, March 17, April 14, May 5 and June 9, 2009.

33. On or about February 10, 2009, Chaplin through legal counsel, Hon. Gary A. Little, advised defendant of the unlawfulness of Chaplin's termination and requested Chaplin's reinstatement.

34. Defendant did not reinstate Chaplin to employment.

35. By notice of determination issued February 18, 2009, the Kentucky Office of Employment and Training, Division of Unemployment Insurance, sustained Chaplin's claim for unemployment compensation benefits. Defendant did not appeal the notice of determination.

36. On or about March 2, 2009, Chaplin filed a claim for workers compensation benefits with the Kentucky Department of Workers' Claims.

37. Defendant has denied Chaplin suffered a work-related injury and has declined to reinstate him to employment as a means to maximize its leverage over Chaplin in getting resolved Chaplin's workers compensation claim against it.

38. Defendant is engaged in, among other things, the chicken-processing business. This requires defendant to ship and receive in interstate commerce

goods and supplies used and consumed in the course of its business and to ship in interstate commerce the goods its business produces.

39. Defendant has acted with oppression and malice toward Chaplin and with gross and/or reckless disregard for his rights.

V

Causes of Action

Count 1 – Interference With Exercise of Rights Under Family Medical Leave Act

40. Plaintiff incorporates herein paragraphs 1 through 39 as if fully set forth herein.

41. Because Chaplin had worked for defendant for greater than 12 months preceding January 14, 2009, because he had worked for defendant for greater than 1,250 hours in the 12 months preceding January 14, 2009, and because defendant employed more than 50 persons within 75 miles of the worksite where it employed Chaplin, Chaplin was, as of January 14, 2009, an "eligible employee" within the meaning of 29 U.S.C. § 2612(a)(1).

42. Defendant is engaged in a commerce affecting interstate commerce and is an "employer" within the meaning of 29 U.S.C. § 2611(4).

43. Chaplin's providing to defendant of the written notice from Dr. Cummings that he was incapacitated from working for defendant from the time period January 14 to January 21, 2009, and Chaplin's informing Hardwick that he could not report to work on account of Dr. Cummings'

directive was information sufficient to reasonably apprise defendant of Chaplin's request to take time off for a serious health condition. *Cavin v. Honda of America, Inc.,* 346 F.3d 713 (6th Cir. 2003).

44. Chaplin's treatment by Dr. Cummings for his back injury constitutes "continuing treatment" for a "serious health condition" under 29 U.S.C. § 2612(a)(1)(D) and 29 C.F.R. 825.113 because Chaplin was incapacitated from working for a period of more than three calendar days and was subjected by Dr. Cummings to a regimen of continuing treatment.

45. Chaplin was entitled to leave under the Family Medical Leave Act for treatment for a "serious health condition" within the meaning of 29 U.S.C. § 2612(a)(1)(D) and 29 C.F.R. 825.113.

46. Defendant unlawfully interfered with Chaplin's right to take FMLA leave by demanding that he have Dr. Cummings or another doctor remand or countermand Dr. Cummings' excuse incapacitating Chaplin from work from January 14 to January 21, 2009 and terminating Chaplin's employment upon his refusal to do so.

Count 2 – Retaliation for Exercise of Rights Granted by the Family Medical Leave Act

47. Plaintiff incorporates herein paragraphs 1 through 46 as if fully set forth herein.

48. Because Chaplin had worked for defendant for greater than 12 months preceding January 14, 2009, because he had worked for defendant for

greater than 1,250 hours in the 12 months preceding January 14, 2009, and because defendant employed more than 50 persons within 75 miles of the worksite where it employed Chaplin, Chaplin was, as of January 14, 2009, an "eligible employee" within the meaning of 29 U.S.C. § 2612(a)(1).

49. Defendant is engaged in a commerce affecting interstate commerce and is an "employer" within the meaning of 29 U.S.C. § 2611(4).

50. Chaplin's providing to defendant of the written notice from Dr. Cummings that he was incapacitated from working for defendant from the time period January 14 to January 21, 2009, and Chaplin's informing Hardwick that he could not report to work on account of Dr. Cummings' directive was information sufficient to reasonably apprise defendant of Chaplin's request to take time off for a serious health condition. *Cavin v. Honda of America, Inc.,* 346 F.3d 713 (6th Cir. 2003).

51. Chaplin's treatment by Dr. Cummings for his back injury constitutes "continuing treatment" for a "serious health condition" under 29 U.S.C. § 2612(a)(1)(D) and 29 C.F.R. 825.113 because Chaplin was incapacitated from working for a period of more than three calendar days and was subjected by Dr. Cummings to a regimen of continuing treatment.

52. Chaplin was entitled to leave under the Family Medical Leave Act for treatment for a "serious health condition" within the meaning of 29 U.S.C. § 2612(a)(1)(D) and 29 C.F.R. 825.113.

53. The FMLA prohibits a covered employer from discriminating against an eligible employee by counting FMLA leave days under the employer's "no fault" attendance policies. *Bryant v. Dollar General,* 538 F.3d 394, 399 (6th Cir. 2009).

54. The FMLA prohibits defendant, as a covered employer, from discriminating against Chaplin, an eligible employee, by counting FMLA leave days under defendant's "no fault" attendance policy. *Bryant v. Dollar General, supra.*

55. The FMLA prohibits employers from considering an employee's use or attempted use of FMLA leave as a negative factor in employment decisions. *Bryant v. Dollar General*, 538 F.3d 394, 402 (6th Cir. 2009).

56. The FMLA prohibits defendant, as a covered employer, from considering Chaplin's use or attempted use of FMLA leave as a negative factor in employment decisions. *Id.*

57. Chaplin provided defendant with sufficient notice on January 15, 2009, of his need to take FMLA leave on account of a serious health condition that he was experiencing.

58. Defendant has used Chaplin's use and attempted use of FMLA leave as a negative factor in its decision to terminate Chaplin's employment.

59. Defendant has counted days used by Chaplin as FMLA leave days to claim that Chaplin has violated defendant's attendance policy.

60. Defendant has violated the FMLA by terminating Chaplin's employment in retaliation for his use of FMLA leave and discriminating against him for using and attempting to use FMLA leave on account of a serious health condition.

61. As a direct and proximate result of defendant's violation of the FMLA, Chaplin has suffered injury for which he is entitled to remedy under the FMLA.

Count 3 – Retaliation in Violation of KRS 342.197

62. Plaintiff incorporates herein paragraphs 1 through 61 as if fully set forth herein.

63. Chaplin sufficiently indicated to defendant of his need to pursue benefits under KRS Chapter 342.

64. Defendant discriminated against Chaplin in violation of KRS 342.197 by terminating his employment based on his need to pursue benefits under KRS Chapter 342.

65. Defendant has also violated KRS 342.197 by terminating Chaplin's employment as a means to deprive him of income and funds and gain for defendant an unfair advantage to resolve Chaplin's workers compensation claim.

66. As a direct and proximate result of defendant's unlawful termination of his employment in violation of KRS 342.197, Chaplin has suffered and is

reasonably certain to continue to suffer lost income and benefits, emotional distress and mental anguish, embarrassment and humiliation.

VI

Demand for Relief

WHEREFORE, plaintiff Jesse Chaplin, Jr. demands as follows against defendant:

(1) Entry of a judgment awarding him his lost pay and benefits, past and future, in such amount as proved by the evidence at trial and found by the jury;

(2) Entry of a judgment awarding him compensatory damages fairly and fully compensating him for the emotional distress and mental anguish that defendant has caused him;

(3) entry of a judgment assessing punitive damages against defendant to punish it for its wrongful conduct and to deter repetition of same;

(4) entry of a judgment awarding him costs, expenses, and attorney's fees incurred herein pursuant to the FMLA, and/or KRS 342.197 and Fed.R.Civ.Pro. 54;

(5) entry of an order reinstating him to employment or, in lieu thereof, an award of front pay; and,

(6) the grant of all other and further relief to which he is shown entitled.

Demand For Trial By Jury

Plaintiff demands pursuant to the Federal Rule of Civil Procedure 38 trial by jury on all issues herein so triable.

Respectfully submitted,

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