

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

PAULO HENRIQUE DOS SANTOS,

CASE NO.

Plaintiff,

v.

AIDS HEALTHCARE FOUNDATION, INC.,

Defendant.

COMPLAINT

Plaintiff, PAULO HENRIQUE DOS SANTOS (“DOS SANTOS”), by and through his undersigned counsel, and sues Defendant, AIDS HEALTHCARE FOUNDATION, INC. (“AHF”), and alleges as follows:

NATURE OF CLAIMS

1. This is an action for damages that exceeds \$15,000.00 for sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 (“Title VII”) and the Florida Civil Rights Act of 1992 (“FCRA”), and for violation of Florida’s Private Whistleblower Act, §§448.101-448.105, Florida Statutes (“FWPA”).

JURISDICTION AND VENUE

2. Venue is proper in Broward County, Florida as the Defendant is a foreign not for profit corporation operating within Broward County, Florida, and the Defendant’s unlawful conduct giving rise to the claims asserted herein was committed in Broward County, Florida.

PARTIES AND COMPLIANCE WITH PROCEDURAL REQUIREMENTS

3. DOS SANTOS is a male *sui juris* and, at all times material to this action, was a resident of Broward County, Florida.

4. At all times material hereto, DOS SANTOS was an individual employed by AHF within the meaning of the FCRA, Title VII, and the FWPA.

5. AHF was, at all times material hereto, DOS SANTOS' "employer" within the meaning of the FCRA, Title VII, and the FWPA.

6. AHF acted through its agents, servants, representatives, and/or employees at all times material hereto.

7. DOS SANTOS complied with conditions precedent to jurisdiction under the FCRA and Title VII because he filed a Charge of Discrimination ("Charge") with the U.S. Equal Employment Opportunity Commission ("EEOC") and the Florida Commission on Human Relations ("FCHR") on December 20, 2018 alleging sexual harassment and retaliation against the Defendant.

8. DOS SANTOS filed this suit within ninety (90) days of receiving a Right to Sue Notice from the EEOC; 180 days have elapsed since the Charge was filed with both the EEOC and the FCHR has not issued a determination in that time period; and DOS SANTOS is filing this Complaint within the FCRA's four (4) year statute of limitations for the alleged discriminatory and retaliatory acts. True copies of DOS SANTOS' Charge and Right to Sue Notice are attached as **Exhibits 1 and 2**.

9. DOS SANTOS has complied with all applicable administrative prerequisites pursuant to the FCRA and Title VII and has performed all necessary conditions precedent under Florida law to the maintenance of this action prior to filing this Complaint.

GENERAL ALLEGATIONS

10. DOS SANTOS first became employed by Defendant in May 2015 as a registered nurse with the title RN Ryan White Disease Case Manager.

11. In 2017, DOS SANTOS was subjected to sexually harassing conduct by the then office manager, Luis Viera.

12. DOS SANTOS sent an email to the Human Resources Manager, Veronica Maggiori, complaining of the harassment. An investigation ensued, resulting in Mr. Viera being demoted. About two months later, Mr. Viera resigned.

13. After Mr. Viera's resignation, the position of office manager was given to Mr. Patrick Saint Fleur.

14. In or about October 2017, Mr. Saint Fleur subjected DOS SANTOS to sexual harassment.

15. Mr. Saint Fleur, on several occasions, made sexual advances, closed the office door and attempted to touch or grab DOS SANTOS in a sexually inappropriate manner.

16. DOS SANTOS rejected Mr. Saint Fleur's advances and made it clear to him that he did not appreciate the inappropriate touching and grabbing.

17. Mr. Saint Fleur stopped engaging in sexually harassing conduct, but the working relationship between Mr. Saint Fleur and DOS SANTOS thereafter became strained. Mr. Saint Fleur increasingly treated DOS SANTOS in a hostile and retaliatory manner based upon DOS SANTOS rejecting his sexual advances.

18. In October 2018, Mr. Saint Fleur was promoted to Regional Operations Manager, a position to which DOS SANTOS reported.

19. Mr. Saint-Fleur used his position to exact retribution on DOS SANTOS for previously resisting his sexual advances.

20. For the first time in over three (3) years of working for Defendant, DOS SANTOS was presented with a disciplinary action final warning, wherein Mr. Saint-Fleur alleged attendance and performance issues.

21. The allegations contained in the disciplinary action were false and misleading.

22. For example, the allegations were misleading because DOS SANTOS was disciplined for failing to achieve 200 billable units during the month of August, even though he had never been informed that he was expected to bill 200 units each month, and, with the exception of August, he had reached or exceeded 200 units in previous months.

23. DOS SANTOS consistently billed more units than other case managers even though his opportunities to bill units were more limited.

24. On or about October 23, 2018, DOS SANTOS complained to the Director of Human Resources, Mary Cadahia, about Mr. Saint Fleur's sexually harassing and retaliatory conduct.

25. On October 24, 2018, Ms. Cadahia met with DOS SANTOS, but, rather than attempting to conduct a thorough and impartial investigation, Ms. Cadahia criticized DOS SANTOS for not having complained sooner about the sexual harassment. Ms. Cadahia did not allow DOS SANTOS to provide examples of the sexually harassing conduct or to provide information as to witnesses who could corroborate his allegations.

26. Five (5) days later, on October 28, 2019, Ms. Cadahia informed DOS SANTOS that the "investigation" was complete, without saying what the results were of the investigation.

27. In November 2018, Mr. Saint Fleur and the RN National Director for Care Management Services, Karen Haughey, met with DOS SANTOS and informed him that, notwithstanding the fact that he had actually achieved the 200 billable unit goal set forth in the disciplinary action for the month of October, the goal had now changed to 300 billable units.

28. During the November 2018 meeting, Ms. Haughey was hostile, cutting DOS SANTOS off and falsely accusing him of being late every day and not working.

29. During the first two (2) weeks of November 2018, DOS SANTOS billed approximately 150 units, such that he was on pace to reach 300 had he worked the entire month;

however, DOS SANTOS took a previously scheduled and approved vacation in the last two (2) weeks of November, traveling to Brazil to visit family following the recent death of his mother.

30. After returning from vacation, on December 6, 2018, DOS SANTOS emailed Michael Weinstein, the President of AHF, describing the sexual harassment and retaliation he had been experiencing in the workplace.

31. DOS SANTOS never received a response to his email.

32. On December 7, 2018, one (1) day after sending the email to the President of the company, DOS SANTOS was informed by Mr. Saint Fleur and Human Resources Manager Sanyann Munroe that he was being terminated based on his purported failure to achieve the billable unit goals.

33. DOS SANTOS informed Ms. Munroe that he had, in fact, met his goals and she responded that she was just there to “do [her] job.”

34. The stated reason for DOS SANTOS’ termination is false and pretextual.

35. Defendant took no meaningful action to stop the harassment or otherwise provide DOS SANTOS with protection and, instead, terminated his employment because he complained of sexual harassment and retaliation

36. DOS SANTOS has retained the undersigned attorneys and has agreed to pay reasonable attorneys’ fees and costs in connection with representation in this action.

COUNT I
SEXUAL HARASSMENT IN VIOLATION OF THE FCRA

37. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates them herein.

38. This claim is authorized and instituted pursuant to the provisions of the FCRA for relief based upon the unlawful employment practices of the Defendant. Specifically, DOS SANTOS

complains of Defendant's violation of the FCRA's prohibition against discrimination in employment based upon an employee's sex.

39. During his employment with the Defendant, DOS SANTOS was subject to unwelcome sexual harassment.

40. The harassment was sufficiently severe or pervasive so as to alter the terms or conditions of his employment and it created an abusive working environment.

41. Defendant was aware of the harassment, yet it did nothing to protect DOS SANTOS after he complained of the harassment.

42. Defendant's actions were willful, knowing and voluntary, and otherwise done with malice and/or reckless indifference of DOS SANTOS' rights.

43. As Defendant engaged in discriminatory employment practices with malice and reckless indifference to Plaintiff's statutorily protected rights, Plaintiff is entitled to punitive damages, in addition to compensatory damages, and other remedies available under the FCRA.

44. As a result of Defendant's violations of the FCRA, DOS SANTOS has been damaged.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays that this Court will:

- a. Order Defendant, AIDS HEALTH FOUNDATION, INC., to remedy the sexual harassment of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Paying prejudgment and post-judgment interest;
 - iii. Paying front pay in lieu of reinstatement;
 - iv. Paying for lost benefits including medical insurance, pension and retirement plan;
 - v. Providing any other relief that is appropriate.
- b. Enter an order against Defendant for compensatory damages;

- c. Enter an order against Defendant for punitive damages;
- d. Grant Plaintiff costs and a reasonable award of attorney's fees pursuant to the FCRA.

COUNT II
RETALIATION IN VIOLATION OF THE FCRA

45. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates them herein by reference.

46. During his employment with the Defendant, DOS SANTOS was subject to unwelcome sexual harassment.

47. The harassment was sufficiently severe or pervasive as to alter the terms or conditions of his employment and it created an abusive working environment.

48. Defendant reported the harassment and hostile work environment to Mr. Saint Fleur, who was committing the harassment, to the Human Resources Department, and to the President of AHF.

49. Defendant did nothing to stop the harassment or to protect DOS SANTOS after he complained of the harassment.

50. DOS SANTOS was subject to abusive behavior and false and misleading claims about his work from Mr. Saint Fleur after he complained and rebuffed his advances.

51. The day after DOS SANTOS reported being sexually harassed to the President of AHF, his employment was terminated.

52. The reason given for DOS SANTOS' termination is false and pretextual.

53. DOS SANTOS was terminated for complaining about and reporting the sexual harassment and subsequent retaliatory abuse he was experiencing in the workplace.

54. As a direct and proximate result of Defendant's unlawful and retaliatory conduct in violation of the FCRA, Plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, for which Plaintiff is entitled to an award of monetary damages and other relief.

55. Defendant's unlawful conduct and retaliation in violation of the FCRA was outrageous and malicious, was intended to injure the Plaintiff, and was done in conscious disregard of Plaintiff's protections granted by the FCRA, entitled Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays this Court will:

- a. Order Defendant, AIDS HEALTH FOUNDATION, INC., to remedy the unlawful retaliation of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Paying prejudgment and post-judgment interest;
 - iii. Paying front pay in lieu of reinstatement;
 - iv. Paying for lost benefits including medical insurance, pension and retirement plan;
 - v. Providing any other relief that is appropriate.
- b. Enter an order against Defendant for compensatory damages;
- c. Enter an order against Defendant for punitive damages;
- d. Grant Plaintiff costs and retaliation attorney's fees pursuant to the FCRA.

COUNT III
Violation of Title VII (Sex Discrimination)

56. This is an action for discrimination based on sex and in violation of Title VII.

57. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates the same herein.

58. This claim is authorized and instituted pursuant to the provisions of the Title VII for relief based upon the unlawful employment practices of the Defendant. Specifically, DOS SANTOS

complains of Defendant's violation of Title VII's prohibition against discrimination in employment based upon an employee's sex.

59. During his employment with the Defendant, DOS SANTOS was subject to unwelcome sexual harassment.

60. The harassment was sufficiently severe or pervasive as to alter the terms or conditions of his employment and it created an abusive working environment.

61. Defendant was aware of the harassment, yet it did nothing to protect DOS SANTOS after he complained of the harassment on multiple occasions.

62. As a result of Defendant's violations of Title VII, DOS SANTOS has been damaged.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays this Court will:

- a. Order Defendants to remedy the sex discrimination of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Reinstatement or, alternatively, paying front pay in lieu of reinstatement;
 - iii. Paying for lost benefits including medical insurance, pension and retirement plan;
 - iv. Paying prejudgment interest;
 - v. Providing any other relief that is appropriate.
- b. Enter an order against Defendants for compensatory damages;
- c. Enter an order against Defendants for punitive damages; and
- d. Grant Plaintiff costs and a reasonable award of attorney's fees pursuant to 42 U.S.C.A. § 2000e-5(k).

COUNT IV
Violation of Title VII (Retaliation)

63. This is an action for retaliation in violation of Title VII.

64. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates the same herein.

65. During his employment with the Defendant, DOS SANTOS was subject to unwelcome sexual harassment.

66. The harassment was sufficiently severe or pervasive as to alter the terms or conditions of his employment and it created an abusive working environment.

67. Defendant reported the harassment and hostile work environment to Mr. Saint Fleur, who was committing the harassment, to the Human Resources Department, and to the President of AHF.

68. Defendant did nothing to stop the harassment or to protect DOS SANTOS after he complained of the harassment.

69. DOS SANTOS was subject to abusive behavior and false and misleading claims about his work from Mr. Saint Fleur after he complained and rebuffed his advances.

70. The day after DOS SANTOS reported being sexually harassed to the President of AHF, his employment was terminated.

71. The reason given for DOS SANTOS' termination is false and pretextual.

72. DOS SANTOS was terminated for complaining about and reporting the sexual harassment and subsequent retaliatory abuse he was experiencing in the workplace.

73. As a result of Defendant's violations of Title VII, DOS SANTOS has been damaged.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays this Court will:

a. Order Defendants to remedy retaliation of Plaintiff by:

i. Paying appropriate back pay;

ii. Reinstatement or, alternatively, paying front pay in lieu of reinstatement;

- iii. Paying for lost benefits including medical insurance, pension and retirement plan;
 - iv. Paying prejudgment interest;
 - v. Providing any other relief that is appropriate.
- b. Enter an order against Defendants for compensatory damages;
 - c. Enter an order against Defendants for punitive damages; and
 - d. Grant Plaintiff costs and a reasonable award of attorney's fees pursuant to 42 U.S.C.A. § 2000e-5(k).

COUNT V
VIOLATION OF FWPA

74. This is an action for violation of the FWPA with damages in excess of \$15,000.

75. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates the same herein.

76. Plaintiff is within the protected class of individuals as defined under §448.01, Florida Statutes.

77. AHF is, and at all material times was an, "employer" as envisioned by §448.101, Florida Statutes.

78. During his employment with AHF, Plaintiff became aware of, objected to, and raised concerns about certain policies and practices of the Defendant, specifically Defendant's action or lack of action in response to a claim for sexual harassment as detailed in paragraphs 10-36 above, which violated state and federal laws, rules and regulations, including the FCRA and Title VII.

79. AHF's actions constituted prohibited employment practices pursuant to the FWPA.

80. As a result of AHF's violations of the FWPA, Plaintiff has been damaged.

81. Plaintiff is entitled to the recovery of reasonable attorney's fees and costs pursuant to Section 448.104, Florida Statutes.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays this Court will::

- a. Order Defendant, AIDS HEALTH FOUNDATION, INC., to remedy the unlawful violations by:
 - i. Paying actual damages suffered as a result of Defendant's violations of the FWPA;
 - ii. Paying all front and back pay, medical expenses, insurance benefits, pension benefits and all such other legal and equitable relief recoverable under the FWPA;
 - iii. Paying compensatory damages recoverable under the FWPA;
 - iv. Paying for all costs and attorney's fees incurred by Plaintiff in connection with the prosecution of this action; and
 - v. Providing any other relief that this Court may deem just, necessary, and proper.

DEMAND FOR JURY TRIAL

Plaintiff, PAULO HENRIQUE DOS SANTOS, hereby demands trial by jury on all claims triable by right of jury under state or federal law.

Dated this 31st day of July 2019.

GALLUP AUERBACH
Counsel for Plaintiff
4000 Hollywood Boulevard
Presidential Circle-Suite 265 South
Hollywood, Florida 33021
Telephone: (954) 894-3035
Facsimile: (954) 894-8015
E-mail: dgallup@gallup-law.com

By: /s/ Dana M. Gallup
DANA M. GALLUP
Florida Bar No.: 0949329

THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

PAULO HENRIQUE DOS SANTOS,
(08)

CASE NO. CACE-19-016029

Plaintiff,

v.

AIDS HEALTHCARE FOUNDATION, INC.,

Defendant.

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT**

Defendant, AIDS Healthcare Foundation, Inc., by and through its undersigned counsel, submits this Answer to the Complaint filed by Plaintiff Paulo Henrique Dos Santos.

NATURE OF CLAIMS

1. This is an action for damages that exceeds \$15,000.00 for sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 ("Title VII") and the Florida Civil Rights Act of 1992 ("FCRA"), and for violation of Florida's Private Whistleblower Act, §§448.101-448.105, Florida Statutes ("FWPA").

ANSWER: Defendant admits that Plaintiff has asserted this action under Title VII, the FCRA, and FWPA but denies that it violated the aforementioned statutes and deny that Plaintiff is entitled to relief.

JURISDICTION AND VENUE

2. Venue is proper in Broward County, Florida as the Defendant is a foreign not for profit corporation operating within Broward County, Florida, and the Defendant's unlawful conduct giving rise to the claims asserted herein was committed in Broward County, Florida.

ANSWER: Defendant admits that venue is proper in Broward County, Florida and it is a foreign not for profit corporation operating within Broward County, Florida, but denies all remaining allegations contained in this paragraph.

PARTIES AND COMPLIANCE WITH PROCEDURAL REQUIREMENTS

3. DOS SANTOS is a male *sui juris* and, at all times material to this action, was a resident of Broward County, Florida.

ANSWER: Defendant admits that Plaintiff is male. Defendant is without present knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 3 and, therefore, denies the allegations.

4. At all times material hereto, DOS SANTOS was an individual employed by AHF within the meaning of the FCRA, Title VII, and the FWPA.

ANSWER: Defendant admits that Plaintiff was employed by Defendant for purposes of the FCRA, Title VII, and FWPA.

5. AHF was, at all times material hereto, DOS SANTOS' "employer" within the meaning of the FCRA, Title VII, and the FWPA.

ANSWER: Defendant admits that Plaintiff was employed by Defendant for purposes of the FCRA, Title VII, and FWPA.

6. AHF acted through its agents, servants, representatives, and/or employees at all times material hereto.

ANSWER: Defendant lacks information sufficient to interpret the phrase “acted through”, which is vague and ambiguous, and, therefore, denies the allegations contained in Paragraph 6.

7. DOS SANTOS complied with conditions precedent to jurisdiction under the FCRA and Title VII because he filed a Charge of Discrimination ("Charge") with the U.S. Equal Employment Opportunity Commission ("EEOC") and the Florida Commission on Human Relations ("FCHR") on December 20, 2018 alleging sexual harassment and retaliation against the Defendant.

ANSWER: Defendant is without present knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 7 and, therefore, denies the allegations.

8. DOS SANTOS filed this suit within ninety (90) days of receiving a Right to Sue Notice from the EEOC; 180 days have elapsed since the Charge was filed with both the EEOC and the FCHR has not issued a determination in that time period; and DOS SANTOS is filing this Complaint within the FCRA's four (4) year statute of limitations for the alleged discriminatory and retaliatory acts.

ANSWER: Defendant is without present knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 8 and, therefore, denies the allegations.

9. DOS SANTOS has complied with all applicable administrative prerequisites pursuant to the FCRA and Title VII and has performed all necessary conditions precedent under Florida law to the maintenance of this action prior to filing this Complaint.

ANSWER: Defendant is without present knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 8 and, therefore, denies the allegations.

GENERAL ALLEGATIONS

10. DOS SANTOS first became employed by Defendant in May 2015 as a registered nurse with the title RN Ryan White Disease Case Manager.

ANSWER: Defendant admits that Plaintiff first became employed with Defendant in May 2015 and held the job title Ryan White RN Disease Case Manager. Defendant lacks sufficient information to either admit or deny the remaining allegations and on that basis denies the remaining allegations.

11. In 2017, DOS SANTOS was subjected to sexually harassing conduct by the then office manager, Luis Viera.

ANSWER: Defendant denies the allegations in Paragraph 11.

12. DOS SANTOS sent an email to the Human Resources Manager, Veronica Maggiori, complaining of the harassment. An investigation ensued, resulting in Mr. Viera being demoted. About two months later, Mr. Viera resigned.

ANSWER: Defendant admits that Plaintiff asserted work-related complaints against Mr. Viera. All remaining allegations in Paragraph 12 are denied.

13. After Mr. Viera's resignation, the position of office manager was given to Mr. Patrick Saint Fleur.

ANSWER: Defendant denies the allegations in Paragraph 13.

14. In or about October 2017, Mr. Saint Fleur subjected DOS SANTOS to sexual harassment.

ANSWER: Defendant denies the allegations in Paragraph 14.

15. Mr. Saint Fleur, on several occasions, made sexual advances, closed the office door and attempted to touch or grab DOS SANTOS in a sexually inappropriate manner.

ANSWER: Defendant denies the allegations in Paragraph 15.

16. DOS SANTOS rejected Mr. Saint Fleur's advances and made it clear to him that he did not appreciate the inappropriate touching and grabbing.

ANSWER: Defendant denies the allegations in Paragraph 16.

17. Mr. Saint Fleur stopped engaging in sexually harassing conduct, but the working relationship between Mr. Saint Fleur and DOS SANTOS thereafter became strained. Mr. Saint Fleur increasingly treated DOS SANTOS in a hostile and retaliatory manner based upon DOS SANTOS rejecting his sexual advances.

ANSWER: Defendant denies the allegations in Paragraph 17.

18. In October 2018, Mr. Saint Fleur was promoted to Regional Operations Manager, a position to which DOS SANTOS reported.

ANSWER: Defendant admits that Mr. Saint Fleur was promoted to Regional Operations Manager on or about October 2018 but denies the remaining allegations.

19. Mr. Saint-Fleur used his position to exact retribution on DOS SANTOS for previously resisting his sexual advances.

ANSWER: Defendant denies the allegations in Paragraph 19.

20. For the first time in over three (3) years of working for Defendant, DOS SANTOS was presented with a disciplinary action final warning, wherein Mr. Saint-Fleur alleged attendance and performance issues.

ANSWER: Defendant admits that, on September 27, 2018 and December 7, 2018, Plaintiff received a Disciplinary Record. All other allegations in Paragraph 20 are denied.

21. The allegations contained in the disciplinary action were false and misleading.

ANSWER: Defendant denies the allegations in Paragraph 21.

22. For example, the allegations were misleading because DOS SANTOS was disciplined for failing to achieve 200 billable units during the month of August, even though he had never been informed that he was expected to bill 200 units each month, and, with the exception of August, he had reached or exceeded 200 units in previous months.

ANSWER: Defendant denies the allegations in Paragraph 20.

23. DOS SANTOS consistently billed more units than other case managers even though his opportunities to bill units were more limited.

ANSWER: Defendant denies the allegations in Paragraph 23.

24. On or about October 23, 2018, DOS SANTOS complained to the Director of Human Resources, Mary Cadahia, about Mr. Saint Fleur's sexually harassing and retaliatory conduct.

ANSWER: Defendant admits that Plaintiff made complaints regarding Mr. Saint Fleur on or about October 2018 and denies the remaining allegations in Paragraph 24.

25. On October 24, 2018, Ms. Cadahia met with DOS SANTOS, but, rather than attempting to conduct a thorough and impartial investigation, Ms. Cadahia criticized DOS SANTOS for not having complained sooner about the sexual harassment. Ms. Cadahia did not

allow DOS SANTOS to provide examples of the sexually harassing conduct or to provide information as to witnesses who could corroborate his allegations.

ANSWER: Defendant denies the allegations in Paragraph 25.

26. Five (5) days later, on October 28, 2019, Ms. Cadahia informed DOS SANTOS that the "investigation" was complete, without saying what the results were of the investigation.

ANSWER: Defendant denies the allegations in Paragraph 26.

27. In November 2018, Mr. Saint Fleur and the RN National Director for Care Management Services, Karen Haughey, met with DOS SANTOS and informed him that, notwithstanding the fact that he had actually achieved the 200 billable unit goal set forth in the disciplinary action for the month of October, the goal had now changed to 300 billable units.

ANSWER: Defendant admits that the 200 billable unit goal was increased to 300 billable units for the entire unit on or about November 2018 and denies the remaining allegations in Paragraph 27.

28. During the November 2018 meeting, Ms. Haughey was hostile, cutting DOS SANTOS off and falsely accusing him of being late every day and not working.

ANSWER: Defendant denies the allegations in Paragraph 28.

29. During the first two (2) weeks of November 2018, DOS SANTOS billed approximately 150 units, such that he was on pace to reach 300 had he worked the entire month; however, DOS SANTOS took a previously scheduled and approved vacation in the last two (2) weeks of November, traveling to Brazil to visit family following the recent death of his mother.

ANSWER: Defendant denies the allegations in Paragraph 29.

30. After returning from vacation, on December 6, 2018, DOS SANTOS emailed Michael Weinstein, the President of AHF, describing the sexual harassment and retaliation he had been experiencing in the workplace.

ANSWER: Defendant denies the allegations in Paragraph 30.

31. DOS SANTOS never received a response to his email.

ANSWER: Defendant denies the allegations in Paragraph 31.

32. On December 7, 2018, one (1) day after sending the email to the President of the company, DOS SANTOS was informed by Mr. Saint Fleur and Human Resources Manager Sanyann[sic] Munroe that he was being terminated based on his purported failure to achieve the billable unit goals.

ANSWER: Defendant admits that Plaintiff was terminated on December 7, 2018 and denies the remaining allegations in Paragraph 32.

33. DOS SANTOS informed Ms. Munroe that he had, in fact, met his goals and she responded that she was just there to "do [her] job."

ANSWER: Defendant denies the allegations in Paragraph 33.

34. The stated reason for DOS SANTOS' termination is false and pretextual.

ANSWER: Defendant denies the allegations in Paragraph 34.

35. Defendant took no meaningful action to stop the harassment or otherwise provide DOS SANTOS with protection and, instead, terminated his employment because he complained of sexual harassment and retaliation

ANSWER: Defendant denies the allegations in Paragraph 35.

36. DOS SANTOS has retained the undersigned attorneys and has agreed to pay reasonable attorneys' fees and costs in connection with representation in this action.

ANSWER: Defendant is without present knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 36 and, therefore, denies the allegations.

COUNT I
SEXUAL HARASSMENT IN VIOLATION OF THE FCRA

37. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates them herein.

ANSWER: Defendant incorporates Paragraphs 10-36 of its Answer.

38. This claim is authorized and instituted pursuant to the provisions of the FCRA for relief based upon the unlawful employment practices of the Defendant. Specifically, DOS SANTOS complained of Defendant's violation of the FCRA's prohibition against discrimination in employment based upon an employee's sex.

ANSWER: Defendant denies the allegations in paragraph 38.

39. During his employment with the Defendant, DOS SANTOS was subject to unwelcome sexual harassment.

ANSWER: Defendant denies the allegations in paragraph 39.

40. The harassment was sufficiently severe or pervasive so as to alter the terms or conditions of his employment and it created an abusive working environment.

ANSWER: Defendant denies the allegations in Paragraph 40.

41. Defendant was aware of the harassment, yet it did nothing to protect DOS SANTOS after he complained of the harassment.

ANSWER: Defendant denies the allegations in Paragraph 41.

42. Defendant's actions were willful, knowing and voluntary, and otherwise done with malice and/or reckless indifference of DOS SANTOS' rights.

ANSWER: Defendant denies the allegations in Paragraph 42.

43. As Defendant engaged in discriminatory employment practices with malice and reckless indifference to Plaintiff's statutorily protected rights, Plaintiff is entitled to punitive damages, in addition to compensatory damages, and other remedies available under the FCRA.

ANSWER: Defendant denies the allegations in Paragraph 43.

44. As a result of Defendant's violations of the FCRA, DOS SANTOS has been damaged.

ANSWER: Defendant denies the allegations in Paragraph 44.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays that this Court will:

- a. Order Defendant, AIDS HEALTH FOUNDATION, INC., to remedy the sexual harassment of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Paying prejudgment and post-judgment interest;
 - iii. Paying front pay in lieu of reinstatement;
 - iv. Paying for lost benefits including medical insurance, pension and retirement plan;
 - v. Providing any other relief that is appropriate.
- b. Enter an order against Defendant for compensatory damages;
- c. Enter an order against Defendant for punitive damages;
- d. Grant Plaintiff costs and a reasonable award of attorney's fees pursuant to the FCRA.

ANSWER: Defendant denies that Plaintiff is entitled to any relief.

COUNT II
RETALIATION IN VIOLATION OF THE FCRA

45. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates them herein by reference.

ANSWER: Defendant incorporates Paragraphs 10-36 of its Answer.

46. During his employment with the Defendant, DOS SANTOS was subject to unwelcome sexual harassment.

ANSWER: Defendant denies the allegations in Paragraph 46.

47. The harassment was sufficiently severe or pervasive as to alter the terms or conditions of his employment and it created an abusive working environment.

ANSWER: Defendant denies the allegations in Paragraph 47.

48. Defendant reported the harassment and hostile work environment to Mr. Saint Fleur, who was committing the harassment, to the Human Resources Department, and to the President of AHF.

ANSWER: Defendant denies the allegations in Paragraph 48.

49. Defendant did nothing to stop the harassment or to protect DOS SANTOS after he complained of the harassment.

ANSWER: Defendant denies the allegations in Paragraph 49.

50. DOS SANTOS was subject to abusive behavior and false and misleading claims about his work from Mr. Saint Fleur after he complained and rebuffed his advances.

ANSWER: Defendant denies the allegations in Paragraph 50.

51. The day after DOS SANTOS reported being sexually harassed to the President of AHF, his employment was terminated.

ANSWER: Defendant denies the allegations in Paragraph 51.

52. The reason given for DOS SANTOS' termination is false and pretextual.

ANSWER: Defendant denies the allegations in Paragraph 52.

53. DOS SANTOS was terminated for complaining about and reporting the sexual harassment and subsequent retaliatory abuse he was experiencing in the workplace.

ANSWER: Defendant denies the allegations in Paragraph 53.

54. As a direct and proximate result of Defendant's unlawful and retaliatory conduct in violation of the FCRA, Plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, for which Plaintiff is entitled to an award of monetary damages and other relief.

ANSWER: Defendant denies the allegations in Paragraph 54.

55. Defendant's unlawful conduct and retaliation in violation of the FCRA was outrageous and malicious, was intended to injure the Plaintiff, and was done in conscious disregard of Plaintiff's protections granted by the FCRA, entitled Plaintiff to an award of punitive damages.

ANSWER: Defendant denies the allegations in Paragraph 55.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays this Court will:

- a. Order Defendant, AIDS HEALTH FOUNDATION, INC., to remedy the unlawful retaliation of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Paying prejudgment and post-judgment interest;
 - iii. Paying front pay in lieu of reinstatement;
 - iv. Paying for lost benefits including medical insurance, pension and retirement plan;
 - v. Providing any other relief that is appropriate.

- b. Enter an order against Defendant for compensatory damages;
- c. Enter an order against Defendant for punitive damages;
- e. Grant Plaintiff costs and retaliation attorney's fees pursuant to the FCRA.

ANSWER: Defendant denies that Plaintiff is entitled to any relief.

COUNT III
Violation of Title VII (Sex Discrimination)

56. This is an action for discrimination based on sex and in violation of Title VII.

ANSWER: Defendant admits that Plaintiff is asserting a claim under Title VII but denies that he is entitled to any relief.

57. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates the same herein.

ANSWER: Defendant incorporates Paragraphs 10-36 of its Answer.

58. This claim is authorized and instituted pursuant to the provisions of the Title VII for relief based upon the unlawful employment practices of the Defendant. Specifically, DOS SANTOS complained of Defendant's violation of Title VII's prohibition against discrimination in employment based upon an employee's sex.

ANSWER: Defendant denies the allegations in Paragraph 58.

59. During his employment with the Defendant, DOS SANTOS was subject to unwelcome sexual harassment.

ANSWER: Defendant denies the allegations in Paragraph 59.

60. The harassment was sufficiently severe or pervasive as to alter the terms or conditions of his employment and it created an abusive working environment.

ANSWER: Defendant denies the allegations in Paragraph 60.

61. Defendant was aware of the harassment, yet it did nothing to protect DOS SANTOS after he complained of the harassment on multiple occasions.

ANSWER: Defendant denies the allegations in Paragraph 61.

62. As a result of Defendant's violations of Title VII, DOS SANTOS has been damaged.

ANSWER: Defendant denies the allegations in Paragraph 62.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays this Court will:

- a. Order Defendants to remedy the sex discrimination of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Reinstatement or, alternatively, paying front pay in lieu of reinstatement;
 - iii. Paying for lost benefits including medical insurance, pension and retirement plan;
 - iv. Paying prejudgment interest;
- b. Providing any other relief that is appropriate.
- c. Enter an order against Defendants for compensatory damages;
- d. Enter an order against Defendants for punitive damages; and
- e. Grant Plaintiff costs and a reasonable award of attorney's fees pursuant to 42 U.S.C.A.

§ 2000e-5(k).

ANSWER: Defendant denies that Plaintiff is entitled to any relief.

COUNT IV
Violation of Title VII (Retaliation)

63. This is an action for retaliation in violation of Title VII.

ANSWER: Defendant admits that Plaintiff is asserting a claim under Title VII but denies that he is entitled to any relief.

64. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates the same herein.

ANSWER:

65. During his employment with the Defendant, DOS SANTOS was subject to unwelcome sexual harassment.

ANSWER: Defendant denies the allegations in Paragraph 65.

66. The harassment was sufficiently severe or pervasive as to alter the terms or conditions of his employment and it created an abusive working environment.

ANSWER: Defendant denies the allegations in Paragraph 66.

67. Defendant reported the harassment and hostile work environment to Mr. Saint Fleur, who was committing the harassment, to the Human Resources Department, and to the President of AHF.

ANSWER: Defendant denies the allegations in Paragraph 67.

68. Defendant did nothing to stop the harassment or to protect DOS SANTOS after he complained of the harassment.

ANSWER: Defendant denies the allegations in Paragraph 68.

69. DOS SANTOS was subject to abusive behavior and false and misleading claims about his work from Mr. Saint Fleur after he complained and rebuffed his advances.

ANSWER: Defendant denies the allegations in Paragraph 69.

70. The day after DOS SANTOS reported being sexually harassed to the President of AHF, his employment was terminated.

ANSWER: Defendant denies the allegations in Paragraph 70.

71. The reason given for DOS SANTOS' termination is false and pretextual.

ANSWER: Defendant denies the allegations in Paragraph 71.

72. DOS SANTOS was terminated for complaining about and reporting the sexual harassment and subsequent retaliatory abuse he was experiencing in the workplace.

ANSWER: Defendant denies the allegations in Paragraph 72.

73. As a result of Defendant's violations of Title VII, DOS SANTOS has been damaged. WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays this Court will:

- a. Order Defendants to remedy retaliation of Plaintiff by:
 - i. Paying appropriate back pay;
 - ii. Reinstatement or, alternatively, paying front pay in lieu of reinstatement;
 - iii. Paying for lost benefits including medical insurance, pension and retirement plan;
 - iv. Paying prejudgment interest;
 - v. Providing any other relief that is appropriate.
- b. Enter an order against Defendants for compensatory damages;
- c. Enter an order against Defendants for punitive damages; and
- d. Grant Plaintiff costs and a reasonable award of attorney's fees pursuant to 42

U.S.C.A. § 2000e-5(k).

ANSWER: Defendant denies that Plaintiff is entitled to any relief.

COUNT V
VIOLATION OF FWPA

74. This is an action for violation of the FWPA with damages in excess of \$15,000.

ANSWER: Defendant admits that Plaintiff is asserting a claim under the FWPA but denies that he is entitled to any relief.

75. Plaintiff reasserts the general allegations as set forth above in paragraphs 10-36 and incorporates the same herein.

ANSWER: Defendant incorporates Paragraphs 10-36 of its Answer.

76. Plaintiff is within the protected class of individuals as defined under §448.01, Florida Statutes.

ANSWER: Defendant asserts that this allegation contains a legal conclusion for which no responsive pleading is required. To the extent a responsive pleading is required, Defendant denies the allegations in Paragraph 76.

77. AHF is, and at all material times was an, "employer" as envisioned by §448.101, Florida Statutes.

ANSWER: Defendant asserts that this allegation contains a legal conclusion for which no responsive pleading is required. To the extent a responsive pleading is required, Defendant denies the allegations in Paragraph 77.

78. During his employment with AHF, Plaintiff became aware of, objected to, and raised concerns about certain policies and practices of the Defendant, specifically Defendant's action or lack of action in response to a claim for sexual harassment as detailed

in paragraphs 10-36 above, which violated state and federal laws, rules and regulations, including the FCRA and Title VII.

ANSWER: Defendant denies the allegations in Paragraph 78.

79. AHF's actions constituted prohibited employment practices pursuant to the FWPA.

ANSWER: Defendant denies the allegations in Paragraph 79.

80. As a result of AHF's violations of the FWPA, Plaintiff has been damaged.

ANSWER: Defendant denies the allegations in Paragraph 80.

81. Plaintiff is entitled to the recovery of reasonable attorney's fees and costs pursuant to Section 448.104, Florida Statutes.

ANSWER: Defendant denies the allegations in Paragraph 81.

WHEREFORE, Plaintiff, PAULO HENRIQUE DOS SANTOS, prays this Court will:

- a. Order Defendant, AIDS HEALTH FOUNDATION, INC., to remedy the unlawful violations by:
 - i. Paying actual damages suffered as a result of Defendant's violations of the FWPA;
 - ii. Paying all front and back pay, medical expenses, insurance benefits, pension benefits and all such other legal and equitable relief recoverable under the FWPA;
 - iii. Paying compensatory damages recoverable under the FWPA;
 - iv. Paying for all costs and attorney's fees incurred by Plaintiff in connection with the prosecution of this action; and
 - v. Providing any other relief that this Court may deem just, necessary, and proper.

ANSWER: Defendant denies that Plaintiff is entitled to any relief.

DEMAND FOR JURY TRIAL

Plaintiff, PAULO HENRIQUE DOS SANTOS, hereby demands trial by jury on all claims triable by right of jury under state or federal law.

ANSWER: Defendant denies that any triable issues exist.

AFFIRMATIVE DEFENSES

As its first affirmative defense, Defendant alleges that any actions undertaken as to Plaintiff were taken in good faith, based on lawful and legitimate non-discriminatory, non-retaliatory business reasons.

As its second affirmative defense, Defendant alleges that Plaintiff's claims may be barred by the applicable statute of limitations due to Plaintiff's failure to timely file the Complaint following his receipt of the Dismissal and Notice of Rights.

As its third affirmative defense, Defendant alleges that Plaintiff's claims and/or damages claims are barred on the grounds that, even if any decision concerning Plaintiff was based, in part, on grounds of unlawful discrimination or retaliation (no decision was), Defendant would have reached the same decision based on other legitimate, non-discriminatory, non-retaliatory reasons.

As its fourth affirmative defense, Defendant alleges that Plaintiff's discrimination claim and/or any damages claims are barred by Defendant's exercise of reasonable care to prevent and promptly correct any alleged harassing behavior and/or Plaintiff unreasonably failed to take advantage of Defendant's preventative or corrective opportunities. Defendant took all steps necessary to address Plaintiff's sexual harassment allegations, including that, before Plaintiff asserted those allegations, it reassigned to another employee the account affiliated with the

referenced person. Defendant then promptly attempted to investigate Plaintiff's allegations but Plaintiff refused to participate in the investigation.

As its fifth affirmative defense, Defendant alleges that Plaintiff's claim for damages is barred, in whole or in part, to the extent that he failed to reasonably mitigate his damages, and Defendant is entitled to a set-off against Plaintiff's claim for damages in the amount that Plaintiff did or could have earned through reasonable efforts.

As its sixth affirmative defense, Defendant alleges that Defendant has made good faith efforts to prevent discrimination in its workplace and cannot be liable for punitive damages, to the extent that the challenged employment decisions were contrary to its efforts to comply with discrimination statutes. Specifically, Defendant maintains and informs its employees of its equal employment opportunity and anti-discrimination policies, which strictly prohibit discrimination, harassment, or retaliation of any kind.

As its seventh affirmative defense, Defendant alleges that all acts taken by it or anyone acting on its behalf were just, fair, privileged, with good cause, in good faith, without malice or intent to discriminate, and for lawful and legitimate, non-discriminatory, non-retaliatory reasons.

As its eighth affirmative defense, Defendant alleges that Plaintiff's harassment claim and any associated damages claim is barred because Plaintiff unreasonably failed to timely notify Defendant of the alleged sexual harassment.

As its ninth affirmative defense, Defendant alleges that Plaintiff's claims are barred and/or limited by the after-acquired evidence doctrine, to the extent that discovery shows he engaged in misconduct prior to, during, after, or in connection with her employment, that otherwise would have resulted in her discharge if Defendant had then known of that conduct.

WHEREFORE, having answered the Complaint, the Defendant, Defendant respectfully requests that this Court enter judgment in its favor and award it such other and further relief as this Court deems just and proper.

DEFENDANTS' CLAIMS FOR ATTORNEYS' FEES & COSTS

Defendant has retained this law firm to defend the claims brought by the Plaintiff and has agreed to pay reasonable fees for the services rendered. Defendant demands judgment against Plaintiff for attorney's fees and costs incurred in defending this action pursuant to Fla. Stat. § 760.11(5) and Fla. Stat. § 448.104.

WHEREFORE, Defendant respectfully requests that the Court enter judgment in its favor and deny Plaintiff all relief requested in his Complaint and award Defendant its costs and attorneys' fees in connection with this matter.

Lewis Brisbois Bisgaard & Smith LLP
Attorneys for AIDS HEALTHCARE
FOUNDATION, INC.
110 SE 6th Street, Suite 2600
Fort Lauderdale, Florida 33301
Telephone: 954.728.1280
Facsimile: 954.728.1282

BY: /s/ Jonathan A. Beckerman
JONATHAN A. BECKERMAN, ESQ.
Florida Bar No.: 568252

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-service on this 25th of September, 2019 to Dana M. Gallup, Esq., Gallup Auerbach, 4000 Hollywood Boulevard, Suite 265 South, Hollywood, Florida 33021 through the Court's E-Filing Portal.

Lewis Brisbois Bisgaard & Smith LLP
Counsel for AIDS Healthcare Foundation,
Inc.
110 SE 6th Street, Suite 2600
Fort Lauderdale, Florida 33301
Telephone: 954-728-1280
Facsimile: 954-728-1282

BY: /s/ Jonathan A. Beckerman
JONATHAN A. BECKERMAN, ESQ.
Florida Bar No.: 568252

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
BROWARD DIVISION**

JAMES COLONEL,

Plaintiff,

v.

AIDS HEALTHCARE FOUNDATION, INC.,

A foreign not for profit corporation,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff, JAMES COLONEL (“Mr. Colonel” or “Plaintiff”), brings this action pursuant to the Family and Medical Leave Act, as amended, 29 U.S.C. § 2601, et seq. (“the FMLA”) to recover from Defendant for back pay, an equal amount as liquidated damages, other monetary damages, equitable relief, front pay, declaratory relief, and reasonable attorneys’ fees and costs.

JURISDICTION

2. The Court has jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. §1337 and the FMLA and the authority to grant declaratory relief under the FMLA, and pursuant to 28 U.S.C. § 2201 et seq.

PARTIES

3. At all times relevant hereto, Plaintiff was an employee of Defendant, and resided in Broward County, Florida.

4. Plaintiff worked for Defendant in Broward County, Florida, and the venue, therefore, for this case is the Broward Division of the Southern District of Florida.

5. At all times relevant hereto, Defendant was an employer covered by the FMLA, because it was engaged in commerce or in an industry affecting commerce who employed 50 or more employees within 75 miles of where Plaintiff worked, for each working day during each of 20 or more calendar workweeks, prior to seeking leave under the FMLA.

6. At all times relevant hereto, Plaintiff was an employee entitled to leave under the FMLA, based on the fact that he: (a) suffered from a serious health condition as defined by the FMLA which necessitated him taking FMLA leave; and (b) was employed by Defendant for at least 12 months and worked at least 1,250 hours during the relevant 12-month period prior to him seeking to exercise his rights to FMLA leave.

FACTUAL ALLEGATIONS

7. Mr. Colonel worked as a Pharmacist for AHF from May 01, 2013, until his unlawful termination on October 10, 2018.

8. In all respects, Mr. Colonel was an excellent employee, with no significant history of attendance, performance or disciplinary issues.

9. Unfortunately, Mr. Colonel began to experience severe symptoms related to a medical condition involving prostate for which he ultimately required surgery.

10. Following his diagnosis, Mr. Colonel required surgery for which he requested medical leave.

11. As a dedicated and responsible employee, Mr. Colonel informed Defendant immediately upon discovering that his medical condition required surgery.

12. Specifically, on September 1, 2018, Mr. Colonel notified his Supervisor, Maria Miniero (“Ms. Miniero”), advising her of his negative/unfavorable biopsy report, and his need for surgery in the near future, for which he would require two (2) weeks of medical leave.

13. Plaintiff was in the process of verifying the dates of his surgery with his medical team and was continuing to consult with his doctors to provide Defendant with dates certain for his upcoming leave.

14. Defendant notified Plaintiff to submit his FMLA forms once Plaintiff’s surgery was set and scheduled, and Plaintiff intended to do as requested.

15. Five (5) days following his request for medical leave on the foregoing dates, Mr. Colonel was placed on a Performance Improvement Plan (“PIP”) by Defendant.

16. On September 15, 2018, Mr. Colonel requested medical leave to attend to medical appointments scheduled in North Florida for October 15-17, 2018, to verify the dates for his upcoming surgery and plan of treatment.

17. He documented his request for same, as it was submitted via Defendant’s online payroll portal.

18. Sadly, on October 10, 2018, just five (5) days before what should have been protected FMLA leave, Defendant terminated Plaintiff’s employment.

19. Considering the temporal proximity between Mr. Colonel’s request for FMLA leave, the disciplinary action taken against him, and his termination shortly thereafter, it is evident Defendant took issue with his continued, and likely need for increased/upcoming absences and proceeded to unlawfully terminate his employment.

20. Such actions by Defendant constitute actionable interference and retaliation under the FMLA. *See* 29 C.F.R. 825.220(a)(2).

21. The temporal proximity between Plaintiff's request for FMLA and his termination creates a sufficiently close temporal nexus between the events.

22. Defendant interfered with Plaintiff's FMLA rights and retaliated against him for attempting to utilize what should have been proper and authorized FMLA leave.

23. Moreover, because Defendant acted with intent to interfere with, and otherwise retaliate against Plaintiff for his attempted use of what should have been protected FMLA leave, Defendant's actions likewise constitute FMLA retaliation.

24. Defendant purposefully and intentionally interfered with, and retaliated against, Plaintiff, for use of FMLA protected leave.

25. As a result of this illegal conduct, Plaintiff has suffered damages, including loss of employment, wages, benefits, and other remuneration to which he is entitled.

26. Defendant did not have a subjective or objective good faith basis for its actions, and Plaintiff is therefore entitled to liquidated damages.

UNLAWFUL INTERFERENCE & RETALIATION UNDER THE FMLA

27. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-26, above.

28. At all times relevant hereto, Plaintiff was protected by the FMLA.

29. At all times relevant hereto, Defendant interfered with and retaliated against Plaintiff based upon Plaintiff's attempt to exercise his FMLA rights and his termination upon return from same.

30. At all times relevant hereto, Plaintiff was protected from interference/retaliation under the FMLA.

31. At all times relevant hereto, and for purposes of the FMLA retaliation claim, Defendant acted with the intent to retaliate against Plaintiff because Plaintiff attempted to exercise his right to take approved FMLA leave.

32. As a result of Defendant's intentional, willful and unlawful acts by interfering with, and retaliating against, Plaintiff for exercising his rights pursuant to the FMLA, Plaintiff has suffered damages and incurred reasonable attorneys' fees and costs.

33. As a result of Defendant's willful violation of the FMLA, Plaintiff is entitled to liquidated damages.

WHEREFORE, Plaintiff demands judgment against Defendant for back pay, an equal amount as liquidated damages, other monetary damages, equitable relief, declaratory relief, reasonable attorneys' fees and costs, and any and all further relief that this Court determines to be just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

Dated this 28th day of March 2019.

Respectfully Submitted,

/s/ NOAH E. STORCH

Noah E. Storch, Esquire

Florida Bar No. 0085476

Richard Guadagnolo, Esquire

Florida Ba No. 109104

RICHARD CELLER LEGAL, P.A.

10368 West State Road 84, Suite 103

Davie, Florida 33324

Telephone: (866) 344-9243

Facsimile: (954) 337-2771

Email: noah@floridaovertimelawyer.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 0:19-cv-60819-RKA

JAMES COLONEL,

Plaintiff,

v.

**AIDS HEALTHCARE FOUNDATION, INC.
A foreign not for profit corporation**

Defendant.

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT**

Defendant, Aids Healthcare Foundation, Inc. ("Defendant" or "AHF"), by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to Plaintiff's Complaint ("Complaint") and states as follows:

INTRODUCTION

1. Defendant admits that the Plaintiff purports to bring a claim pursuant to the Family and Medical Leave Act, as amended, 29 U.S.C. 2601, et seq. ("FMLA") seeking to recover back pay, liquidated damages, "other monetary damages," equitable relief, front pay, declaratory relief, and reasonable attorneys' fees and costs. The Defendant denies that the Plaintiff is entitled to any such relief, recovery, or damages. The Defendant further denies that it has violated the FMLA. The Defendant denies any and all remaining allegations set out in paragraph 1 of Plaintiff's Complaint along with any inferences to be made therefrom.

JURISDICTION

2. The allegations set forth in paragraph 2 of Plaintiff's Complaint are admitted for jurisdictional purposes only.

PARTIES

3. The Defendant admits that at all times relevant hereto, the Plaintiff was an employee of the Defendant. The Defendant is without sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 3 and therefore denies said allegations.

4. The Defendant is without sufficient knowledge to admit or deny the allegations set forth in paragraph 4 and therefore denies said allegations.

5. Defendant admits that it is an employer covered by the FMLA. The Defendant denies any and all remaining allegations contained in paragraph 5 of Plaintiff's Complaint along with any inferences to be made therefrom.

6. The allegations set forth in paragraph 6 of Plaintiff's Complaint state legal conclusions to which no response is required. In so far as a response is required, said allegations are denied.

FACTUAL ALLEGATIONS

7. The Defendant admits that the Plaintiff worked for the Defendant from May 1, 2013 through October 10, 2018. The Defendant denies that the Plaintiff's termination was "unlawful." The Defendant denies any remaining allegations contained in paragraph 7 of Plaintiff's Complaint.

8. The allegations set forth in paragraph 8 of Plaintiff's Complaint are denied.

9. The Defendant is without sufficient knowledge to admit or deny the allegations set forth in paragraph 9 and therefore denies said allegations.

10. The Defendant is without sufficient knowledge to admit or deny the allegations set forth in paragraph 10 and therefore denies said allegations.

11. The Defendant denies that the Plaintiff was a “dedicated and responsible employee.” The Defendant is without sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 11 and therefore denies said allegations.

12. The allegations set forth in paragraph 12 of Plaintiff’s Complaint are denied.

13. The Defendant is without sufficient knowledge to admit or deny the allegations set forth in paragraph 13 and therefore denies said allegations.

14. The Defendant is without sufficient knowledge to admit or deny the allegations relating to what Plaintiff “intended,” as set forth in paragraph 14, and therefore denies said allegations. The Defendant denies the remaining allegations contained in paragraph 14 of Plaintiff’s Complaint along with all inferences to be made therefrom.

15. The allegations set forth in paragraph 15 of Plaintiff’s Complaint are denied.

16. The allegations set forth in paragraph 16 of Plaintiff’s Complaint are denied.

17. The Defendant is without sufficient knowledge to admit or deny the allegations set forth in paragraph 17 and therefore denies said allegations.

18. The Defendant admits that the Plaintiff was terminated on October 10, 2018. The Defendant denies any and all remaining allegations contained in paragraph 18 of Plaintiff’s Complaint along with any inferences to be made therefrom.

19. The allegations set forth in paragraph 19 of Plaintiff’s Complaint are denied.

20. The Defendant denies that it took any action against Plaintiff that violated the FMLA. The remaining allegations set forth in paragraph 20 of Plaintiff’s Complaint are denied.

21. The allegations set forth in paragraph 21 of Plaintiff’s Complaint are denied.

22. The allegations set forth in paragraph 22 of Plaintiff's Complaint are denied.

23. The Defendant denies that it took any action against the Plaintiff with an intent to interfere or retaliate against the Plaintiff. The Defendant denies any and all remaining allegations contained in paragraph 23 of Plaintiff's Complaint along with any inferences to be made therefrom.

24. The allegations set forth in paragraph 24 of Plaintiff's Complaint are denied.

25. The Defendant denies that it committed any illegal conduct with respect to Plaintiff. The Defendant denies any and all remaining allegations contained in paragraph 25 of Plaintiff's Complaint along with any inferences to be made therefrom.

26. The allegations set forth in paragraph 26 of Plaintiff's Complaint are denied.

UNLAWFUL INTERFERENCE & RETALIATION UNDER THE FMLA

27. The Defendant re-asserts and incorporates its responses to paragraphs 1-26 as if set forth fully herein.

28. The allegations set forth in paragraph 28 of Plaintiff's Complaint are admitted.

29. The allegations set forth in paragraph 29 of Plaintiff's Complaint are denied.

30. The allegations set forth in paragraph 30 of Plaintiff's Complaint are admitted.

31. The allegations set forth in paragraph 31 of Plaintiff's Complaint are denied.

32. The Defendant denies that it took any intentional, willful or unlawful act against Plaintiff to interfere with or retaliate against him. The Defendant denies any and all remaining allegations contained in paragraph 32 of Plaintiff's Complaint.

33. The Defendant denies that it willfully violated the FMLA. The Defendant denies any and all remaining allegations contained in paragraph 33 of Plaintiff's Complaint.

34. In response to the unnumbered "Wherefore" clause following Paragraph 33 of the Complaint, Defendant denies any allegations or implications made thereby, including any allegation that Defendant acted improperly and/or illegally against Plaintiff, or that Plaintiff is entitled to any relief from Defendant.

AFFIRMATIVE DEFENSES

1. As its first affirmative Defense, the Defendant asserts that Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. As its Second Affirmative Defense, the Defendant asserts that Plaintiff's claim for damages is barred, in whole or in part, to the extent that he failed to reasonably mitigate his damages.

3. As its Third Affirmative Defense, the Defendant asserts that any actions undertaken with regard to Plaintiff were taken for lawful and legitimate business reasons.

4. As its Fourth Affirmative Defense, the Defendant asserts that Plaintiff's claims and/or damages are barred on the grounds that even if any decision concerning Plaintiff was based, in part, on grounds of unlawful retaliation, and no decision was, Defendant would have reached the same decision based on other legitimate and non-retaliatory reasons.

5. As its Fifth Affirmative Defense, the Defendant asserts that any and all employment actions that were taken against Plaintiff were done so for *bona fide* reasons having nothing to do with Plaintiff's alleged request for FMLA leave, or any other statutory prohibition invoked by Plaintiff.

6. As its Sixth Affirmative Defense, the Defendant asserts that Plaintiff is not entitled to liquidated damages because Defendant has at all times acted in good faith and had reasonable grounds for believing that any acts or omissions were not in violation of the FMLA.

7. As its Seventh Affirmative Defense, the Defendant asserts that Plaintiff is not entitled to an award of liquidated damages because Plaintiff cannot establish that Defendant willfully violated the FMLA.

8. As its Eighth Affirmative Defense, the Defendant asserts that to the extent applicable, Plaintiff failed to comply with all prerequisites to obtaining leave under the FMLA.

9. As its Ninth Affirmative Defense, the Defendant asserts that Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

10. As its Tenth Affirmative Defense, the Defendant asserts that Plaintiff's claims are barred and/or limited by the after-acquired evidence doctrine to the extent that discovery shows he engaged in misconduct prior to, during, after, or in connection with his employment, that otherwise would have resulted in his discharge, if such conduct were then known to Defendant.

11. Defendant reserves its right to amend or add any additional defenses or counterclaims that may become known during the course of discovery.

DEMAND FOR JURY TRIAL

Defendant hereby demands trial by jury on all issues so triable.

WHEREFORE, the Defendant, AIDS HEALTHCARE FOUNDATION, INC., respectfully requests that judgment be entered in favor of the Defendant and against the Plaintiff, and that this Court dismiss the Plaintiff's Complaint and award the Defendant attorneys' fees and costs for defending this matter, along with any all other relief deemed just and proper.

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Dated: May 8, 2019

Respectfully submitted,

/s/ Rebecca Anguiano

Jonathan A. Beckerman

Florida Bar No.: 568252

E-mail: jabeckerman@littler.com

Rebecca Anguiano

Florida Bar No.: 99690

E-mail: ranguiano@littler.com

LITTLER MENDELSON, P.C.

Wells Fargo Center

333 SE 2nd Avenue, Suite 2700

Miami, FL 33131

305.400.7500 (Tel)

305.675.8497 (Fax)

ATTORNEYS FOR DEFENDANT

AIDS HEALTHCARE FOUNDATION, INC.

[Certificate of Service to Follow]

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 8th day of May 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in a manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Rebecca Anguiano

Rebecca Anguiano

SERVICE LIST

Noah E. Storch, Esquire
Florida Bar No. 0085476
Richard Guadagnolo, Esquire
Florida Ba No. 109104
RICHARD CELLER LEGAL, P.A.
10368 West State Road 84, Suite 103
Davie, Florida 33324
Telephone: (866) 344-9243
Facsimile: (954) 337-2771
Email: noah@floridaovertimelawyer.com

Attorneys for Plaintiff

Jonathan A. Beckerman
Florida Bar No.: 568252
E-mail: jabeckerman@littler.com
Rebecca Anguiano
Florida Bar No.: 99690
E-mail: ranguiano@littler.com
LITTLER MENDELSON, P.C.
Wells Fargo Center
333 SE 2nd Avenue, Suite 2700
Miami, FL 33131
Telephone: 305.400.7500
Facsimile: 305.675.8497

Attorneys for Defendant

SOPHONIE PIERRE,
Plaintiff,

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

vs.

CIVIL DIVISION

AIDS HEALTHCARE FOUNDATION, INC., CASE NO.
a California corporation

Defendant.
_____/

COMPLAINT

Plaintiff, SOPHONIE PIERRE, (“PIERRE”) by and through her undersigned counsel, files this her Complaint against Defendant, AIDS HEALTHCARE FOUNDATION, INC., (“AHF” and/or “DEFENDANT”), and in support thereof states as follows:

JURISDICTION

1. This is an action for damages in excess of \$15,000.00, declaratory and equitable relief.
2. Plaintiff is a resident of Broward County, *sui juris*, and was employed by Defendant in the capacity of pharmacy technician.
3. Defendant is a corporation doing business in Broward County, Florida and is otherwise *sui juris*.

VENUE

4. Venue is appropriate in Broward County, Florida because Defendant has an office there; and the acts which give rise to the filing of this action occurred within Broward County, Florida.

FACTS

5. This is a claim brought under the Florida Whistleblower’s Act, § 448.101, *et. seq.*, Fla.Stat.

6. Plaintiff was hired on June 13, 2016 to work for AHF as a pharmacy technician.
7. Plaintiff performed her duties with distinction throughout her employment.
8. Plaintiff worked without incident until Briana Moe was hired as her immediate supervisor in late April/early May of 2018 in the position of Pharmacist in Charge.
9. Briana Moe continuously made offensive comments that she sometimes attempted to pass off as humor.
10. Moe would joke about employees stealing controlled substances.
11. When Plaintiff complained to HR about Moe's behavior, she was told that she was "taking it the wrong way".
12. Moe called Plaintiff a loudmouth and said that Plaintiff "only had one level" when she speaks.
13. Moe also made a comment to an Indian employee after she returned from India, telling the employee that she "looked darker than usual".
14. On multiple occasions Plaintiff complained to HR about Moe's statement that there were missing controlled substances, as well as her ongoing usage of other employees' sign in to improperly process prescriptions.
15. After Plaintiff complained about Moe filling a prescription using another employee's credentials, Plaintiff was called into Moe's office wherein she advised Plaintiff that she would be removed from all inventory tasks and that another employee would be assigned to take over.
16. Moe continued to fill prescriptions using another employee's credentials.
17. On January 16, 2019 Plaintiff again complained about Moe's filling a prescription using another employee's credentials.

18. On January 29, 2019, under the pretext that she was abusing company time, Plaintiff was terminated from her employment with AIDS Healthcare Foundation. Defendant's reason for terminating Plaintiff was pretextual.

19. The accusation was that Plaintiff exceeded the two fifteen-minute breaks she receives in a workday. Plaintiff did not exceed the breaks. Even if she had, which she had not, multiple employees have exceeded the breaks on multiple occasions.

20. No employee had been terminated for exceeding breaks.

21. Plaintiff complained and refused to ignore or participate in the violations set forth herein on numerous occasions.

22. Plaintiff was retaliated against for complaining about Moe's violations of a law, rule or regulation.

23. Moe's actions violated The Department of Justice Pharmacist Manual regarding filling improper prescriptions and the laws relating to controlled substances.

24. Moe's actions were in violation of Title 21 Code of Federal Regulations 1306.05 manner of issuance of prescriptions.

25. Moe's actions were in contravention of § 465.015, Florida Statute.

26. Plaintiff's opposition to the unlawful conduct of Defendant constituted protected activity within the meaning of § 448.101, *et. seq.*, Fla.Stat.

27. As a direct and immediate result of Plaintiff's opposition to the unlawful practices of Defendant described above, Defendant altered the terms and conditions of Plaintiff's employment, including but not limited to, terminating her employment.

28. Due to Defendant's actions, Plaintiff has retained the Law Offices of Shawn L. Birken, P.A., to represent her in this action and is obligated to pay them a reasonable fee for services.

COUNT I

VIOLATION OF THE FLORIDA WHISTLEBLOWER ACT

29. Plaintiff realleges and reavers the allegations set forth in paragraphs 1 through 28 as if set forth fully herein.

30. Plaintiff continuously complained that Defendant's employee violated laws, rules and regulations.

31. As a direct and primary result of Plaintiff's complaints, Plaintiff suffered several adverse employment actions.

32. The deprivation of responsibilities, and the termination of Plaintiff's employment was in direct response to her opposition to unlawful practices of the Defendant and thus constituted a retaliatory personnel action within the meaning of § 448.101, Fla.Stat.

33. By retaliating against Plaintiff on account of her protected activity, Defendant violated § 448.102 (3), Fla.Stat.

34. As a direct result of Defendant's retaliatory termination of Plaintiff's employment, she has been damaged. She has lost income, perquisites of employment and has also suffered non-economic damages such as embarrassment, humiliation, loss of reputation and loss of enjoyment of life.

35. Pursuant to § 448.103, Fla.Stat., Plaintiff is entitled to recover for her damages and to secure injunctive relief against Defendant as well as reinstatement to her former position.

36. All conditions precedent to the bringing of this action have either been satisfied or waived.

37. Plaintiff has retained the Law Offices of Shawn L. Birken, P.A. to represent her in this litigation and is entitled to recover her attorneys' fees pursuant to § 448.104, Fla.Stat.

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

- a. For economic damages, including but not limited to lost wages, lost perquisites of employment and benefits and prejudgment interest;
- b. Injunctive relief requiring Defendant to cease and desist from its unlawful practices and ordering Defendant to reinstate Plaintiff to his previous employment;
- c. Judgment for Plaintiff's attorneys' fees and costs; and
- d. Order any other and further relief this Court deems to be just and proper.

TRIAL BY JURY

Plaintiff demands trial by jury on all issues so triable by right.

Dated: 30th day of August, 2019.

Respectfully submitted,

LAW OFFICES OF
SHAWN L. BIRKEN, P.A.
Attorneys for Plaintiff
100 SE 3RD AVE, SUITE 1300
Ft. Lauderdale, Florida 33394
TEL: (954) 990-4459/ FAX: (954) 990-4469
Primary E-Mail: sbirken@birken-law.com
Secondary E-Mail: acabello@birken-law.com

By: /s/Shawn L. Birken
SHAWN L. BIRKEN
Florida Bar No.: 418765