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 Shakespeare Domenech

SHAKESPEARE DOMENECH,	:	NEW JERSEY SUPERIOR COURT
	:	HUDSON COUNTY: LAW DIVISION
Plaintiff,	:	DOCKET NO.
	:	
v.	:	CIVIL ACTION
	:	
	:	COMPLAINT AND JURY DEMAND
ALARIS HEALTH, LLC, ALICIA-MARIE	:	
COTE, JOHN DOES 1-10, and ABC CORP.	:	
1-10, said names being fictitious,	:	
	:	
Defendants.	:	
	:	
	:	

Plaintiff Shakespeare Domenech (“plaintiff”), by way of this Complaint and Jury Demand against the defendants Alaris Health, LLC and Alicia-Marie Cote (“defendants”) hereby says:

I. Nature of Action, Jurisdiction and Venue

1. This is an action seeking legal relief for (1) a violation of the Conscientious Employee Protection Act (“CEPA”); (2) a violation of the New Jersey Law Against Discrimination (“LAD”) (retaliation); (3) a violation of the LAD (disability discrimination); (4) aiding and abetting under the LAD against defendant Alicia-Marie Cote.

2. This court has jurisdiction due to the nature of the action and the amount in controversy. Additionally, plaintiff has satisfied all prerequisites to bringing these claims.

3. Venue is appropriate in this court because plaintiff resides in Hudson County.

II. Parties

4. Plaintiff Shakespeare Domenech was hired as a Clinical Community Physician Marketing Director in December 2017.

5. Defendant Alaris Health and/or ABC Corp. 1-10 is subject to suit under CEPA and the New Jersey Law Against Discrimination.

6. Defendant Alaris Health maintains an office at 206 Bergen Avenue, Kearny, New Jersey 07032.

7. At all times referred to in this complaint, employees of the corporate defendant Alaris Health and/or ABC Corp., including defendant Alicia-Marie Cote and John Does 1-10, were acting within the scope of their employment at the workplace during working hours. Moreover, the corporate defendant ratified, embraced and added to their conduct.

III. Factual Allegations

8. In December 2017, plaintiff Shakespeare Domenech was hired as a Clinical Community Physician Marketing Director.

9. Plaintiff had a favorable job performance in this role.

10. As a result of the pandemic, plaintiff could not visit doctors' offices, recreation centers, community centers, hospitals and other locations.

11. Defendant Alaris Health sent plaintiff a new job description when the COVID-19 pandemic began.

12. Plaintiff was pressured to sign the new job description by his supervisor, Alicia-Marie Cote, and asked to help on other assignments including admissions and liaison work.

13. Even though plaintiff's nursing license had expired, Ms. Cote, along with Chad Giampino directed that plaintiff act as a nurse at Alaris Health at Belgrove where there were active COVID-19 cases.

14. Plaintiff objected to that assignment because he cares for his elderly, immunosuppressed father.

15. Plaintiff was then asked to go to Alaris Health at Rahway to do nursing care.

16. Plaintiff reported to Rahway and discovered that personal protective equipment ("PPE") was not being provided.

17. Plaintiff objected to this assignment to the Director of Nursing on the grounds that his nursing license had expired, and defendant Alaris Health was failing to provide PPE.

18. On March 29, 2020, plaintiff informed Ms. Cote he was calling out sick.

19. Plaintiff was tested for COVID-19 on March 30, 2020, and tested positive on April 3, 2020.

20. Plaintiff immediately advised Ms. Cote that he was COVID-19 positive.

21. Plaintiff took a medical leave of absence a result of the diagnosis.

22. A COVID-19 infection is a disability under the LAD.

23. When plaintiff informed Ms. Cote of his test results, she snapped at him with a comment that she "doesn't get to take days off from work."

24. Fortunately, plaintiff recovered from the infection.

25. By e-mail dated May 15, 2020, plaintiff advised that he wanted to return to work.

26. Plaintiff requested to be able to work from home to avoid reinfection and to protect his elderly father.

27. Plaintiff believed that he could perform his job remotely and, consistent with Governor Murphy's Executive Order, it would be consistent with the public policy of that Order for him to work remotely.

28. On May 19, 2020, Ms. Cote responded that plaintiff would not be permitted to work from home but could take FMLA to protect his father.

29. Plaintiff could not financially take another leave of absence, so he decided that he would return. On May 20, 2020, plaintiff received results for negative COVID-19 and visited a primary care physician whom cleared him for return to work.

30. A letter was sent to Ms. Cote with all other related documents to facilitate plaintiff's return to in-person work.

31. Ms. Cote had previously texted plaintiff that upon his return, he would report to Rahway.

32. Plaintiff followed this direction and reported to Rahway but was sent home on the grounds that he was not approved to return to work.

33. Plaintiff's e-mail account was later terminated.

34. Plaintiff inquired many times whether he had a job with the company and never received back any communication.

35. Plaintiff was either terminated or constructively terminated.

36. Plaintiff was the subject of a retaliatory termination in violation of the Conscientious Employee Protection Act and the New Jersey Law Against Discrimination.

37. Additionally, defendant Alaris Health violated the LAD through its refusal to permit plaintiff to return to work in retaliation for his usage of a disability leave of absence for his COVID-19 infection and/or discriminatory based on a perception that he was still infected.

COUNT I
(Conscientious Employee Protection Act (“CEPA”))

38. Plaintiff realleges and incorporates herein the above paragraphs.

39. As detailed above, plaintiff complained about a lack of PPE, objected to performing nursing care with an expired nursing license, and complained about not being able to work remote consistent with the Governor’s Executive Order.

40. Defendant has retaliated against plaintiff because plaintiff did one or more of the following under N.J.S.A. 34:19-3:

a. Disclosed, or threatened to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believed:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care

(c) Objected to, or refused to participate in an activity, policy or practice which plaintiff reasonably believed:

- (1) is in violation of a law, or a rule or regulation promulgated pursuant to law or;
- (2) is fraudulent or criminal; or
- (3) is incompatible with a clear mandate of a public policy concerning health, safety, or welfare or protection of the environment.

41. The above actions of defendant demonstrate that it is in violation of CEPA.

42. As a direct and proximate result of the actions of defendant, plaintiff has suffered mental anguish, physical discomfort, pain and suffering, and shame and embarrassment. Furthermore, plaintiff has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy plaintiff's life. Moreover, plaintiff has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiff's damages have been experienced in the past, and they will continue into the future.

43. Furthermore, plaintiff has been required to retain an attorney to assist plaintiff in asserting plaintiff's claims and protecting plaintiff's rights.

COUNT II
(Retaliation under the New Jersey Law Against Discrimination)

44. Plaintiff realleges and incorporates herein the above paragraphs.

45. The foregoing facts and circumstances demonstrate that defendant has violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, by retaliating against plaintiff because of his usage of a disability leave when he was COVID-19 positive.

46. As a direct and proximate result of the actions of defendant, plaintiff has suffered mental anguish, physical discomfort, pain and suffering, and shame and embarrassment. Furthermore, plaintiff has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy plaintiff's life. Moreover, plaintiff has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiff's damages have been experienced in the past, and they will continue into the future.

47. Furthermore, plaintiff has been required to retain an attorney to assist plaintiff in asserting plaintiff's claims and protecting plaintiff's rights.

COUNT III
(Disability Discrimination under the Law Against Discrimination)

48. Plaintiff realleges and incorporates herein the above paragraphs.

49. The foregoing facts and circumstances demonstrate that defendant has violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, by treating plaintiff in a disparate fashion and discriminating against plaintiff based upon plaintiff's disability of a COVID-19 diagnosis and/or perceived disability of continued COVID-19 infection.

50. As a direct and proximate result of the actions of defendant, plaintiff has suffered mental anguish, physical discomfort, pain and suffering, and shame and embarrassment. Furthermore, plaintiff has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy plaintiff's life. Moreover, plaintiff has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiff's damages have been experienced in the past, and they will continue into the future.

51. Furthermore, plaintiff has been required to retain an attorney to assist plaintiff in asserting plaintiff's claims and protecting plaintiff's rights.

COUNT IV
(Aiding and Abettor Liability under the Law Against Discrimination)

52. Plaintiff realleges and incorporates herein the above paragraphs.

53. The foregoing facts and circumstances demonstrate that defendant Cote has violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, by aiding and abetting or otherwise assisting the commission of or attempting to commit acts of retaliation and discrimination against plaintiff based upon plaintiff's disability leave of absence, disability, and/or perceived disability.

54. As a direct and proximate result of the actions of defendant Cote, plaintiff has suffered mental anguish, physical discomfort, pain and suffering, and shame and embarrassment. Furthermore, plaintiff has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy plaintiff's life. Moreover, plaintiff has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Plaintiff's damages have been experienced in the past, and they will continue into the future.

55. Furthermore, plaintiff has been required to retain an attorney to assist Plaintiff in asserting plaintiff's claims and protecting plaintiff's rights.

WHEREFORE, as to each and every count, plaintiff demands judgment on each and all of these counts against the defendants jointly and severally, as follows:

- A. Compensatory damages;
- B. Damages for lost wages and benefits, back pay and front pay;
- C. Damages for humiliation, mental and emotional distress;
- D. Statutory damages, if applicable;
- E. Punitive damages and or liquidated damages where permitted by law;
- F. Attorneys' fees and costs of suit;
- G. Lawful interest – including pre-judgment interest on lost wages;
- H. Lawful interest – including pre-judgment interest on any wages not paid in a timely manner; and
- I. Such other, further and different relief as the Court deems fitting, just and proper.

Plaintiff hereby reserves the right to amend this Complaint to supplement or modify the factual obligations and claims contained herein, based upon information received from the defendant, witnesses, experts, and others in the course of discovery in this matter.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 4:35-1(a) and (b), plaintiff respectfully demands a trial by jury on all issues in the within action so triable.

DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4, RONALD J. WRONKO is hereby designated as trial counsel on behalf of plaintiff.

DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS

Pursuant to R. 4:10-2(b), demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment.

If so, please attach a copy of each, or in the alternative state, under oath and certification: (a) policy number; (b) name and address of insurer; (c) inception and expiration date; (d) names and addresses of all persons insured thereunder; (e) personal injury limits; (f) property damage limits; and (g) medical payment limits.

RONALD J. WRONKO, LLC
Attorney for plaintiff

By /s/ Ronald J. Wronko
Ronald J. Wronko

Dated: January 6, 2021

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, the undersigned certifies that to the best of his knowledge, the within matters in controversy are not the subject of any other action pending in any other Court or of a pending arbitration proceeding nor is any action or arbitration proceeding contemplated nor are other parties required to be joined in this action.

By /s/ Ronald J. Wronko

Ronald J. Wronko

Dated: January 6, 2021