

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHANIKA WEBB, on behalf of herself)	
and all others similarly situated,)	Civil Action No.
)	
Plaintiff,)	
)	
v.)	JURY TRIAL DEMANDED
)	
)	
CBeyond COMMUNICATIONS,)	
LLC,)	
)	
Defendant.)	

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Shanika Webb on behalf of herself and others similarly situated (hereinafter "Plaintiff"), and files this lawsuit against Defendant Cbeyond Communications, LLC (hereinafter collectively "Defendant"), and shows the following:

I. Nature of Complaint

1.

Plaintiff brings this action to obtain full and complete relief and to redress the unlawful employment practices described herein. As to Count I, Plaintiff

brings this action as the representative party for all similarly situated employees of Defendant.

2.

This action seeks declaratory relief, liquidated and actual damages for Defendant's failure to pay federally mandated overtime wages to Plaintiff and the Collective Class in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 *et seq.* (hereinafter "FLSA") during Plaintiff's employment with Defendant (hereinafter referred to as the "relevant time period").

3.

Plaintiff also brings this action for damages for Defendant's violations of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.* ("FMLA").

II. Jurisdiction and Venue

4.

The jurisdiction of this Court is invoked pursuant to 29 U.S.C. §216(b), and 28 U.S.C. §1331 and § 1337, and 28 U.S.C. §1343(4).

5.

Defendant Cbeyond Communications, LLC is a foreign corporation licensed and registered to do business in the State of Georgia, and the unlawful employment practices described herein occurred at 320 Interstate North SE., Atlanta, GA,

30339. Accordingly, venue in this Court is proper pursuant to 29 U.S.C. §216(b); LR 3, Northern District of Georgia.

III. Parties

6.

Plaintiff is a female citizen of the United States and a resident of the State of Georgia. Plaintiff is subject to the jurisdiction of this Court.

7.

Plaintiff worked for the Defendant from approximately October 1, 2007 through July 1, 2013 as a Retention Specialist.

8.

At times during the last three years, Cbeyond employed more than 35 Retention Specialists out of its office located at 320 Interstate North SE., Atlanta, GA, 30339.

9.

Defendant employed the named Plaintiff during the relevant time period.

10.

Plaintiff was an “employee” (as defined under FLSA §3(e), 29 U.S.C. §203(e)) for Defendants.

11.

Plaintiff performed non-exempt labor for the Defendant within the last three years.

12.

During the relevant time period, Plaintiff worked an amount of time that was more than forty (40) hours per workweek and was not paid the overtime wage differential.

13.

Cbeyond Communications, LLC is an “employer” within the definition of FLSA, 29 U.S.C. §203(d). At all times relevant to Plaintiff’s claims herein, Defendant was Plaintiff’s employer within the meaning of the FLSA, 29 U.S.C. § 203 (d).

14.

Defendant is governed by and subject to FLSA §7, 29 U.S.C. §204 and §207.

15.

Defendant Cbeyond Communications, LLC is an “enterprise engaged in commerce or in the production of goods for commerce” within the definition of 29 U.S.C. § 203(r) and (s).

16.

Defendant Cbeyond Communications, LLC's gross revenues exceed \$500,000 per year.

17.

Defendant Cbeyond Communications, LLC has employees engaged in commerce or in the production of goods for commerce, or has employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce.

18.

At the time Plaintiff requested and took a medical leave of absence, Plaintiff was an "eligible employee" under the FMLA, subject to the protections of the FMLA.

19.

As of the date Plaintiff requested and took her medical leave of absence, Plaintiff was employed by Defendant for at least 12 months. Plaintiff was also employed by Defendant for at least 1,250 hours of service during the 12-month period immediately preceding commencement of the leave.

20.

Plaintiff was employed at a worksite where Defendant employed at least 50 employees within a 75-mile radius for each working day during each of 20 or more calendar work weeks in the 2012 and 2013 calendar year.

21.

Defendant Cbeyond Communications, LLC at all relevant times hereto, has employed more than the requisite number of persons for the requisite duration under the FMLA to be considered a “covered employer” as defined by the FMLA, 29 U.S.C. § 2601 *et seq.* Defendant Cbeyond Communications, LLC is governed by and subject to the FMLA.

22.

Defendant Cbeyond Communications, LLC may be served with process by delivering a copy of the Summons and Complaint to its Registered Agent, Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092.

IV. Factual Allegations

23.

Plaintiff worked for the Defendants within the past three years.

24.

Plaintiff was hired for Defendant Cbeyond as a Mobile Specialist but was promoted to Retention Specialist.

25.

Plaintiff's primary job duty included fielding and returning telephone calls and electronic mail from Defendant's customers who wanted to drop their telecommunications service, including phone and/or internet.

26.

Plaintiff was responsible for responding to technical calls, responding to calls regarding better pricing at other telecommunications companies, asking current customers to stay with Defendant Cbeyond if the client's contract expired or the client found better pricing elsewhere, and inputting data into form contracts to send to Cbeyond customers.

27.

Plaintiff was paid a salary and additionally received commissions based on retentions, which varied from month to month.

28.

During the applicable statutory period, Plaintiff routinely worked in excess of forty (40) hours per work week without receiving overtime compensation for all

overtime hours worked while performing non-exempt work for Defendant as required by FLSA §7, 29 U.S.C. §207.

29.

Plaintiff routinely worked through her lunch break and did not take other breaks. Plaintiff also worked before and after her scheduled shift and occasionally performed work at home after the conclusion of her shift.

30.

Plaintiff received numerous awards for her work performance from Defendant Cbeyond.

31.

Throughout her employment with Defendant Cbeyond, Plaintiff has taken intermittent FMLA leave to care for her son.

32.

In or around September 2012, Plaintiff began working for a new director, Tom Gentle.

33.

Even when Plaintiff attempted to utilize FMLA leave, she was instructed to work from home on those days to meet her retention goals.

34.

Plaintiff's pay was docked on days when she took off to care for her son.

35.

In May 2013, Plaintiff began complaining to Danielle Feuillebois in Human Resources about Mr. Gentle and his behavior towards employees.

36.

On May 24, 2013, Plaintiff complained to Pamela White in Human Resources about Mr. Gentle's behavior.

37.

On May 29, 2013, Plaintiff wrote an email to Pamela White in Human Resources. In her email, Plaintiff complained that she was being retaliated against for taking FMLA leave.

38.

Plaintiff was terminated on July 1, 2013.

VII. Collective Class Allegations

39.

Plaintiff brings Count I of this Complaint on behalf of herself and all other similarly situated individuals pursuant to 29 U.S.C. § 216(b). Plaintiff and the similarly situated individuals are individuals who currently or formerly have been

employed by Defendant during the last three (3) years, and whose primary job duty includes responding to phone calls and customer retention (hereinafter the “Collective Class”).

40.

During the last three years, Plaintiff and the Collective Class routinely worked in excess of (40) hours per workweek without receiving overtime compensation for hours they worked over 40 hours in given work weeks while performing the duties of Retention Specialists, i.e. responding to phone calls and customer retention.

41.

Defendant was aware that Plaintiff and the Collective Class were working in excess of 40 hours in given workweeks without receiving overtime compensation.

42.

During the last three years, Defendant failed to keep accurate time records for all hours worked by Plaintiff and the Collective Class.

43.

During the last three years, the primary duty of Retention Specialists was the performance of non-exempt work, specifically included fielding telephone calls and electronic mail from Defendant’s customers who wanted to drop their

telecommunications service, including phone and/or internet.

44.

During the last three years, Plaintiff and the Collective Class regularly worked in excess of 40 hours in given workweeks, without receiving overtime compensation for all hours worked in excess of 40 hours in such weeks.

45.

Cbeyond's Retention Specialists, including Plaintiff, are entitled to overtime pay for the hours they worked over (40) in given workweeks. Defendant's practices violate the provisions of the FLSA, 29 U.S.C. § 201, et seq. including but not limited to 29 U.S.C. § 207. As a result of Defendant's unlawful practices, Plaintiff and the Collective Class have suffered lost wages.

V. Count I
Violation of the Overtime Wage Requirement of
the Fair Labor Standards Act (Plaintiff and Collective Class).

46.

Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint with the same force and effect as if set forth herein.

47.

Defendant has violated FLSA §7, 29 U.S.C. §207, by failing to pay overtime wages for time that Plaintiff and the Collective Class worked in excess of forty (40) hours in a workweek.

48.

The FLSA, 29 U.S.C. § 207, requires employers to pay employees one and one-half times the regular rate of pay for all hours worked in excess of (40) hours in a workweek.

49.

Defendant suffered and permitted Plaintiff and the Collective Class to routinely work more than forty (40) hours per week without overtime compensation.

50.

Defendant's actions, policies and/or practices violate the FLSA's overtime requirement by regularly and repeatedly failing to compensate Plaintiff and the Collective Class at the required overtime rate.

51.

Defendant knew, or showed reckless disregard for the fact that it failed to pay Plaintiff and the Collective Class overtime compensation in violation of the FLSA.

52.

Defendant failed to accurately report, record and/or preserve records of hours worked by Plaintiff and the Collective Class, and thus has failed to make, keep and preserve records with respect to each of their employees sufficient to determine their wages, hours and other conditions and practices of employment, in violation of the FLSA.

53.

Defendant's conduct was willful and in bad faith.

54.

Pursuant to FLSA §16, 29 U.S.C. §216, Plaintiff brings this lawsuit to recover overtime wage differential, liquidated damages in an equal amount, attorneys' fees, and the costs of this litigation.

VI. Count II
Termination in Interference With Rights Under
the Family and Medical Leave Act (Plaintiff Only).

55.

Plaintiff was qualified and eligible for a leave of absence.

56.

Plaintiff had been employed by Defendant for longer than 12 months prior to requesting a medical leave of absence and worked at least 1,250 hours of service for Defendant during the 12 months preceding her requested medical leave of absence.

57.

In requesting and taking FMLA leave, Plaintiff engaged in conduct protected under the FMLA, entitling her to all appropriate relief under the statute.

58.

Defendant terminated Plaintiff for taking medical leave.

59.

Defendant's conduct in terminating Plaintiff was in bad faith.

60.

In terminating Plaintiff for requesting medical leave, Defendant interfered with Plaintiff's rights under the FMLA in violation of the FMLA. Plaintiff is therefore entitled to all appropriate relief under the statute.

VI. Count III
Retaliation for Exercising Rights and
Engaging in Protected Conduct Under
the Family and Medical Leave Act (Plaintiff Only).

61.

As stated above, Plaintiff was required to take intermittent medical leave due to her son's health condition and complained about Defendant's FMLA practices.

62.

At the time Plaintiff took a medical leave, Plaintiff was qualified and eligible for a leave of absence.

63.

Plaintiff had been employed by Defendant for longer than 12 months prior to requesting a medical leave of absence and worked at least 1,250 hours of service for Defendant during the 12 months preceding her medical leave of absence.

64.

In taking medical leave for to care for her son and complaining about Defendant's FMLA practices, Plaintiff engaged in conduct protected under the FMLA, entitling her to all appropriate relief under the statute.

65.

Defendant terminated Plaintiff for taking medical leave and complaining about Defendant's FMLA practices.

66.

Defendant's conduct in terminating Plaintiff was in bad faith.

67.

In terminating Plaintiff for taking medical leave and complaining about Defendant's FMLA practices, Defendant retaliated against Plaintiff for exercising her rights and engaging in protected conduct under the FMLA in violation of the FMLA. Plaintiff is therefore entitled to all appropriate relief under the statute.

VIII. Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- (A) Grant Plaintiff a trial by jury as to all triable issues of fact;
- (B) Enter judgment awarding Plaintiff unpaid wages pursuant to the FLSA §7, 29 U.S.C. §207, FLSA § 6, 29 U.S.C. § 206(d), liquidated

damages as provided by 29 U.S.C. §216, pre-judgment interest on unpaid wages pursuant to 29 U.S.C. §216, and court costs, expert witness fees, reasonable attorneys' fees as provided under FLSA §16 and all other remedies allowed under the FLSA;

- (C) Grant conditional certification and provide notice of this action to all similarly situated individuals;
- (D) Enter judgment awarding Plaintiff back wages, liquidated damages, compensatory damages, reinstatement and/or front pay, and the costs of litigation, including court costs, expert witness fees, and reasonable attorneys' fees, and all other remedies allowed under the FMLA;
- (E) Grant declaratory judgment declaring that Plaintiff's rights have been violated and that Defendant willfully violated the FLSA; and
- (F) Award Plaintiff such further and additional relief as may be just and appropriate.

Respectfully submitted the 6th day of September, 2013.

BARRETT & FARAANY, LLP

/s/Abigail J. Larimer

Amanda A. Farahany

Georgia Bar No. 646135

Benjamin F. Barrett

Georgia Bar No. 039586

Abigail J. Larimer
Georgia Bar No. 999229
V. Severin Roberts
Georgia Bar No. 940504
Attorneys for Shanika Webb

1100 Peachtree Street NE
Suite 500
Atlanta, GA 30309
(404) 214-0120
(404) 214-0125 facsimile
amanda@bf-llp.com
ben@bf-llp.com
abigail@bf-llp.com
severin@bf-llp.com

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this document complies with the type-volume limitations set forth in Rule 5.1 of the Local Rules of the Northern District of Georgia, and has been typed in Times New Roman 14 point.

/s/ Abigail Larimer
Abigail Larimer
Georgia Bar No. 999229