

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

JACK LOWE and DENNIS)	
REYNOLDS,)	Civil Action No.
)	
Plaintiffs,)	
)	
v.)	JURY TRIAL DEMANDED
)	
ATLAS LOGISTICS GROUP RETAIL)	
SERVICES (ATLANTA), LLC,)	
)	
Defendant.)	
)	
_____)	

COMPLAINT FOR DAMAGES

COME NOW, Plaintiffs, by and through undersigned counsel, and file this
their Complaint for Damages, and show the Court as follows:

NATURE OF THE ACTION

1.

Plaintiffs bring this action to obtain full and complete relief and to redress
the unlawful employment practices described herein.

2.

This action seeks declaratory relief, injunctive relieve, and compensatory and punitive damages for Defendant's violation of Plaintiffs' rights under the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. §2000ff *et seq.* (hereinafter "GINA") during Plaintiffs' employment with Defendant. More specifically, Defendant requested and required genetic information with respect to Plaintiffs in violation of GINA. Moreover, Defendant disclosed genetic information concerning Plaintiffs to a third party, also in violation of GINA.

JURISDICTION AND VENUE

3.

Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1331. Jurisdiction for this action is further authorized in this Court pursuant to section 207(a) of GINA, 42 U.S.C. § 2000ff-6(a), which incorporates by reference section 706(f)(3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-5(f)(3).

4.

The unlawful employment practices alleged in this Complaint were committed within this District. Venue is, therefore, appropriate in this Court, in accordance with 28 U.S.C. § 1391 and 42 U.S.C. § 2000ff-6(a) (the portion of

GINA incorporating the powers and procedures from Title VII found at 42 U.S.C. § 2000e-5(f)(3)).

PARTIES

5.

Plaintiffs are citizens of the United States of America, and are subject to the jurisdiction of this Court.

6.

Defendant Atlas Logistics Group Retail Services (Atlanta), LLC is qualified and licensed to do business in Georgia, and at all times material hereto has conducted business within this District.

7.

Defendant Atlas Logistics Group Retail Services (Atlanta), LLC may be served with process by delivering a copy of the summons and complaint to its registered agent, CT Corporation System, at 1201 Peachtree Street, NE / Atlanta, Georgia / 30361.

8.

Defendant Atlas Logistics Group Retail Services (Atlanta), LLC is now, and at all times relevant hereto, has been an employer engaged in an industry affecting commerce within the meaning of § 201(2)(B)(i) of GINA, 42 U.S.C. §

2000ff(2)(B)(i), which incorporates by reference of §§ 701(b), (g) and (h) of Title VII, 42 U.S.C. § 2000e(b), (g) and (h). Moreover, Defendant has employed fifteen or more employees for each working day for each of twenty or more calendar weeks in the years 2011, 2012 and 2013.

9.

Defendant has employed more than 200 employees for each working day for each of twenty or more calendar weeks in the years 2011, 2012 and 2013.

10.

At all times relevant hereto, Plaintiffs are or were employed by Defendant. Plaintiffs were therefore employees within the meaning of § 201(2)(A)(i) of GINA, 42 U.S.C. § 2000ff(2)(A)(i), which incorporates by reference of § 701(f) of Title VII, 42 U.S.C. § 2000e(f).

ADMINISTRATIVE PROCEDURES

11.

Both Plaintiffs timely filed their respective charges of discrimination against Defendant with the Equal Employment Opportunity Commission (“EEOC”).

12.

The EEOC issued separate “Notices of Right to Sue” to each Plaintiff on April 24, 2013, entitling an action to be commenced within ninety (90) days of receipt of that notice.

13.

This action has been commenced within ninety (90) days of receipt of the respective “Notices of Right to Sue”.

BACKGROUND

14.

The Genetic Information Nondiscrimination Act was passed in 2008 for the purpose of protecting the health of all Americans by encouraging individuals to participate in genetic tests. By outlawing discrimination based on genetic information and prohibiting the acquisition and disclosure of genetic information by employers – subject to narrow exceptions – Congress sought to eliminate the fear of discrimination by employers and health insurers that prevented individuals from participating in genetic testing. By encouraging genetic testing, Congress thereby sought three benefits: (1) people could make better medical decisions based on the results of their individual genetic tests, (2) preventive measures taken as a result of those tests would reduce health care costs, and (3) more people would

feel safe participating in genetic clinical trials, thus promoting the health of all Americans. 154 Cong. Rec. H2974-75, H2977 (daily ed. May 1, 2008) (statements of Rep. Biggert).

15.

In order to encourage genetic testing, Congress concluded it was necessary to not only prohibit discrimination based on genetic information, but also to prevent employers from acquiring genetic information with respect to employees in the first place. Therefore, Congress prohibited employers from purchasing, requiring or even simply requesting genetic information with respect to an employee or a family member of the employee, subject to narrow exceptions that are not relevant to this case. 42 U.S.C. § 2000ff-1(b).

16.

Similarly, Congress forbade employers from disclosing any genetic information concerning employees or their family members that the employers already possessed (again, subject to narrow exceptions not relevant here). 42 U.S.C. § 2000ff-5(b).

17.

This action is being brought because Defendant, an employer, has deliberately violated GINA's prohibitions against acquisition and disclosure of genetic information.

FACTUAL ALLEGATIONS

18.

On or about October 11, 2012, Defendant, acting through its managers, called Plaintiff Jack Lowe into a meeting. At this meeting, Defendant's managers instructed Mr. Lowe to provide a saliva sample so that his DNA could be compared to DNA found in some feces that had been discovered on the floor of Defendant's workplace. Defendant's managers told Mr. Lowe that if he did not submit the saliva sample, he would be disciplined. Under pressure from Defendant, Mr. Lowe submitted a saliva sample containing his DNA.

19.

Also in October 2012, Defendant's managers held a similar meeting with Plaintiff Dennis Reynolds. As with Mr. Lowe, Defendant required Mr. Reynolds to submit a saliva sample so that his DNA could be compared to the DNA found in feces that had been discovered on the floor of Defendant's workplace. Mr.

Reynolds submitted to Defendant's instruction and provided a saliva sample containing his DNA.

20.

Before calling Mr. Lowe and Mr. Reynolds into these meetings and instructing them to provide DNA samples, Defendant conducted a months-long investigation to determine who left feces on the floor of the workplace. Having failed to determine who had left the feces, Defendant held meetings to determine the next step in its investigation. After consulting scientific experts and attorneys, Defendant decided to seek saliva samples from employees who were suspected of leaving the feces in order to compare their DNA to DNA found in the feces.

21.

Mr. Lowe and Mr. Reynolds were not warned in advance of the aforementioned meetings that Defendant would be asking for a sample of their DNA. Nor did Defendant explain to Plaintiffs their rights under GINA before requesting and requiring them to provide the DNA sample. At the conclusion of the meetings, Defendant's managers instructed Plaintiffs not to tell anyone about the request for DNA samples.

22.

After obtaining the DNA samples from Plaintiffs, Defendant sent the samples to a third-party lab company and requested Plaintiffs' DNA be compared to the DNA found in the feces.

23.

After sending Plaintiffs' DNA samples to the third-party lab company, Defendant did not observe what the lab company did with the samples.

24.

The third-party lab company performed the requested analysis and determined that the DNA in the feces did not match either Plaintiff's DNA.

CLAIMS FOR RELIEF

UNLAWFUL ACQUISITION OF GENETIC INFORMATION

25.

Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

26.

Section 202(b) of GINA, 42 U.S.C. § 2000ff-1(b), prohibits employers from requiring, or even requesting, genetic information with respect to an employee.

27.

Defendant violated this prohibition by requesting and/or requiring Plaintiffs to submit a DNA sample and then requesting the third-party lab company analyze the sample to detect its genotype for the purpose of comparing it to the genotype found in the feces.

28.

By deliberately requesting and/or requiring genetic information with respect to Plaintiffs, Defendant has intentionally engaged in unlawful employment practices in violation of GINA.

29.

The unlawful employment practices described herein were done with malice or with reckless indifference to Plaintiffs' federally protected rights.

30.

As a direct and proximate result of Defendant's violation of GINA, Plaintiffs have suffered damages, for which Defendant is liable.

UNLAWFUL DISCLOSURE OF GENETIC INFORMATION

31.

Plaintiffs re-allege the preceding paragraphs as if set forth fully herein.

32.

Section 206(b) of GINA, 42 U.S.C. § 2000ff-5(b), prohibits employers from disclosing genetic information concerning an employee.

33.

Defendant violated this prohibition by submitting Plaintiffs' DNA to the third-party lab company for testing.

34.

By deliberately disclosing genetic information concerning Plaintiffs, Defendant has intentionally violated the requirements of GINA.

35.

The violations described herein were done with malice or with reckless indifference to Plaintiffs' federally protected rights.

36.

As a direct and proximate result of Defendant's violation of GINA, Plaintiffs have suffered damages, for which Defendant is liable.

WHEREFORE, Plaintiffs demand judgment as follows:

- (a) Trial by jury as to all issues;
- (b) Compensatory damages for pecuniary and non-pecuniary losses suffered by Plaintiffs as a result of Defendant's misconduct;

- (c) Punitive damages based on Defendant's willful, malicious, intentional, reckless and/or deliberate violations, including ratification, condonation and approval of said violations;
- (d) Prejudgment interest at the rate allowed by law;
- (e) Injunctive relief as allowed under GINA;
- (f) Reasonable attorney's fees and expenses of litigation;
- (g) Declaratory relief to the effect that Defendant Atlas Logistics Group Retail Services (Atlanta), LLC has violated Plaintiffs' statutory rights; and
- (h) All other relief to which they may be entitled.

Respectfully submitted the 22nd day of July, 2013.

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