

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA 2018 APR 12 AM 10:37

CASE NO.:

CHECK US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

KATHERINE FINDLAY
and other similarly situated individuals,

Plaintiff,

vs.

Case No.: 3:18-cv-481-J-39-PDB

THE TJX COMPANIES, INC.

Defendant.

COMPLAINT

Plaintiff, KATHERINE FINDLAY (“Plaintiff”), by and through the undersigned counsel, hereby sues Defendants, THE TJX COMPANIES, INC. (“Defendant”), and in support avers as follows:

GENERAL ALLEGATIONS

1. This is an action by the Plaintiff for damages exceeding \$15,000 excluding attorneys’ fees or costs resulting from Defendants’ violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (“FLSA”), Breach of Agreement, and interference with rights under the Family and Medical Leave Act (“FMLA”).
2. This Court has jurisdiction over Plaintiff’s FLSA claims pursuant to the 29 U.S.C. § 216.
3. Plaintiff was at all times relevant to this action, a resident of Clay County Florida, within the jurisdiction of this Honorable Court.
4. Defendant, THE TJX COMPANIES, INC., is a Foreign Profit Corporation conducting business in Clay County, Florida, where Plaintiff worked for Defendant and at all times material hereto was and is engaged in interstate commerce.

5. Venue is proper in Clay County because all of the actions that form the basis of this Complaint occurred within Clay County and payment was due and owing in Clay County.

6. Declaratory, injunctive, legal and equitable relief sought pursuant to the laws set forth above together with attorneys' fees, costs and damages.

7. All conditions precedent for the filing of this action before this Court have been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

8. On March 19, 2018, Plaintiff filed a timely charge of employment discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Florida Commission on Human Relations ("FCHR"), claiming discrimination based on disability. Plaintiff reserves the right to amend complaint to include such claims.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. Plaintiff performed work for Defendant from on or about October 25, 2016 through on or about February 8, 2018.

10. Plaintiff was hired by Defendant as an assistant store manager, but performed substantially the same work as non-exempt sales associates.

11. Plaintiff worked 6 days a week, approximately 50-60 hours per week.

12. Plaintiff would also work during her one hour lunch break, which was not compensated.

13. From the beginning of employment, Defendant was aware that Plaintiff had a son who has autism (Steven).

14. Throughout employment, Plaintiff would ask for days off to take care of Steven: to attend her son's Individualized Education Program (IEP) meetings and doctor's appointments.

15. Whenever Plaintiff would ask for days off to take care of Steven, her supervisor Kimberly "Kim" Branson would reply by saying that she also had a husband and kids at home to take care of, and would deny any requests.

16. Kim created a hostile work environment for Plaintiff, and was never accommodating to Plaintiff and her son's disability.

17. Plaintiff had accumulated 86 hours of paid sick time during her employment. Kim never allowed Plaintiff to use this paid time off to take care of Steven; instead Plaintiff had to take personal days off, which were unpaid, when she had to take care of her son.

18. On or about December 6, 2017, Plaintiff received her first write-up from her supervisor Kim. She was told that this was for poor work performance. On or about December 29, 2017, Plaintiff received a second write-up for the same proffered reasons.

19. On or about January 12, 2018, Plaintiff emailed her District Manager Marc Zoon, since the write-ups were unjust and she believed she was performing her job duties properly.

20. On or about February 1, 2018, Plaintiff spoke to Irene Antonacci, Marc's assistant, about starting the process of FMLA. Plaintiff wanted to take time off to take care of Steven who was extremely sick at the time.

21. The process was never completed since Plaintiff was terminated a week later, on or about February 8, 2018.

22. Since termination, Plaintiff has asked Defendant to pay her the bonuses she is entitled to, as written in her hiring agreement, which have not been received.

23. Plaintiff is also entitled to a payout for President Club; an additional bonus from the president of the company for exceeding the company's set goals, which Plaintiff's store won while she was working for the Defendant.

24. At all times material hereto, Defendant had or should have had full knowledge of all hours worked by Plaintiff, including those hours worked in excess of forty in a given work week.

25. Plaintiff was not paid at the proper overtime rate for all hours worked in excess of forty per week.

COUNT I

FLSA Violation against THE TJX COMPANIES, INC.

26. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 25 of this complaint as if set out in full herein.

27. This action is brought by Plaintiff to recover from the Defendant unpaid minimum wage and/or overtime compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of the FLSA.

28. At all times pertinent to this Complaint, Defendant had two or more employees who regularly handled goods and/or materials which had been sold and transported from across state lines of other states, and the Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.

29. Upon information and belief, at all times material hereto, Defendant's annual gross revenue exceeded \$500,000 per annum on its own, or as part of a joint enterprise with the other corporate Defendant named herein, or which are as of yet unknown but will be revealed through further discovery. To the extent that Defendant operated as part of a joint enterprise, it did so with corporate entities that performed related activities, under the common control of the individual Defendant, and for common business purposes related to the work performed by Plaintiff for Defendant.

30. By reason of the foregoing, the Defendant is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §§ 3 (r) and 3(s) of the FLSA, 29 U.S.C. § 203(r) and 203(s). Defendant's business activities involve those to which the FLSA applies. The Plaintiff's work for the Defendant likewise affects interstate commerce.

31. Plaintiff seeks to recover for unpaid wages accumulated from the date of hire and/or from three (3) years from the date of the filing of this complaint.

32. Defendant knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of minimum and/or overtime wages as required by the FLSA and remain owing Plaintiff these wages since the commencement of Plaintiff's employment with Defendant as set forth above. As such, Plaintiff is entitled to recover double damages.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- a. Adjudge and decree that Defendant has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- b. Award Plaintiff actual damages in the amount shown to be due for unpaid minimum and/or overtime wages, with interest; and
- c. Award Plaintiff an equal amount in double damages/liquidated damages; and
- d. Award Plaintiff the costs of this action, together with reasonable attorney fees; and
- e. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT II
Breach of Agreement Against
THE TJX COMPANIES, INC.

61. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 25 of this complaint as if set out in full herein.

62. Defendant breached its agreement with Plaintiff by failing to pay the amount due to Plaintiff for services provided and performed under their agreement, and by not properly paying Plaintiff for all work performed in violation of the laws of the United States and the State of Florida.

63. Plaintiff seeks to recover Attorney Fees pursuant to Fla. Statue 448.08.

64. Plaintiff suffered damages as a result of Defendant's breach of said agreement.

WHEREFORE Plaintiff seeks damages from Defendants for breach of agreement, exclusive of pre-judgment interest, costs, and attorneys' fees and any and all other relief that this Honorable Court deems just and proper.

COUNT III
Unpaid Wages

65. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 25 of this complaint as if set out in full herein.

66. Plaintiff performed work and provided services for Defendant as described above.

67. Defendant agreed to compensation Plaintiff for the work performed and the services provided.

68. As of the filing of this complaint, Defendant has failed to pay Plaintiff all compensation owed, including unpaid minimum wages, overtime wages, bonuses/commissions, and unused paid time off, in violation of the laws of the United States and the State of Florida.

69. Plaintiff has suffered, and continues to suffer, damages as a result of Defendant's failure to pay all compensation owed.

WHEREFORE Plaintiff seeks damages from Defendant for unpaid wages, exclusive of pre-judgment interest, costs, and attorneys' fees and any and all other relief that this Honorable Court deems just and proper.

COUNT IV
Quantum Meruit

70. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 25 of this complaint as if set out in full herein.

71. Plaintiff has conferred a benefit onto Defendant by performing and providing services for Defendant.

72. Defendant has knowledge of the services performed and provided and the benefit provided by Plaintiff.

73. Defendant accepted Plaintiff's services to Defendant.

74. Defendant retains an inequitable benefit from Plaintiff by not properly paying Plaintiff all compensation owed, in violation of the laws of the United States and the State of Florida.

75. Plaintiff seeks damages under *quantum meruit* that are the reasonable value of the services rendered to, provided to, and performed for Defendant.

WHEREFORE Plaintiff seeks a judgment under *quantum meruit* for damages for the reasonable value of the services performed and provided for Defendant, interest and costs, and other damages deemed just by this Honorable Court.

COUNT V
Unjust Enrichment

76. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 25 of this complaint as if set out in full herein.

77. Plaintiff has conferred a benefit upon Defendant for services performed and provided to Defendant.

78. Defendant has knowledge of the services performed and provided by Plaintiff.

79. Defendant voluntarily accepted the services performed and provided by Plaintiff.

80. Defendant unjustly benefits from the services performed and provided by Plaintiff by not properly paying Plaintiff all compensation owed, in violation of the laws of the United States and the State of Florida.

81. To the extent no adequate legal remedy exists, Plaintiff seeks damages for the value of the work performed to Defendant.

WHEREFORE Plaintiff seeks a judgment for unjust enrichment against Defendant, interest and costs, and other damages deemed just by this Honorable Court.

COUNT VI
Interference with Rights Under The FMLA

82. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 25 above as if set out in full herein.

83. Plaintiff is an individual entitled to protection under the FMLA.

84. Plaintiff is an employee within the meaning of the FMLA.

85. Plaintiff engaged in protected activity within the meaning of the FMLA.

86. Defendant's actions interfered with Plaintiff's lawful exercise of FMLA rights.

87. Defendant's actions constitute violations of the FMLA.

88. As a result of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer damages.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FMLA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, front pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;
- C. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- D. Require Defendant to reinstate Plaintiff to her position at the rate of pay and with the full benefits she would have, had she not been discriminated against by Defendant, or in lieu of reinstatement, award her front pay;
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT VII
Retaliation Under the FMLA

89. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 25 above as if set out in full herein.

90. Plaintiff is an individual entitled to protection under the FMLA.

91. Plaintiff is an employee within the meaning of the FMLA.

92. Plaintiff engaged in protected activity within the meaning of the FMLA.

93. Defendant retaliated against Plaintiff for exercising rights protected under the FMLA.

94. Defendant's actions constitute a violation of the FMLA.

95. As a result of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer damages.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

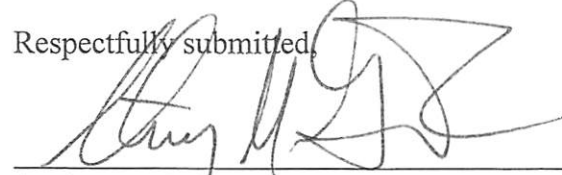
- A. Adjudge and decree that Defendant has violated the FMLA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, front pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;
- C. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- D. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- E. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated 4/5/18

Respectfully submitted,



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COPY

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KATHERINE FINDLAY

DEFENDANTS

THE TJX COMPANIES, INC.

(b) County of Residence of First Listed Plaintiff Clay County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

ANTHONY M. GEORGES-PIERRE, ESQ.
44 WEST FLAGLER STREET, SUITE 2200
MIAMI, FL 33130

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State: PTF 1, DEF 1
- Citizen of Another State: PTF 2, DEF 2
- Citizen or Subject of a Foreign Country: PTF 3, DEF 3
- Incorporated or Principal Place of Business In This State: PTF 4, DEF 4
- Incorporated and Principal Place of Business In Another State: PTF 5, DEF 5
- Foreign Nation: PTF 6, DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
FLSA, Breach of Agreement, Unpaid Wages, Quantum Meruit, Unjust Enrichment, FMLA
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/5/18

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

\$400

APPLYING IFP

JUDGE

39

MAG. JUDGE

PDB

02x027401

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Against TJX Companies Cites Alleged 'Hostile Work Environment,' Wage and Hour Missteps](#)
