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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

THOMAS THOMPSON,)

Plaintiff,)

v.)

CIVIL ACTION NO. 95-193-A

SPRINT UNITED MANAGEMENT)
COMPANY, individually and)
as agent for SPRINT INTERNATIONAL)
INCORPORATED,)

Defendant.)

PLAINTIFF'S AMENDED COMPLAINT

I. NATURE OF THE ACTION

1. Plaintiff Thomas Thompson, formerly employed by Defendant Sprint United Management Company, brings this action to recover lost wages, medical expenses, costs, and attorney's fees under the provision of the Family and Medical Leave Act of 1993 (29 U.S.C. §§ 2601 et seq., hereinafter referred to as "FMLA").

2. In addition to the claim for damages stated above, Mr. Thompson asks the Court to order reinstatement of his employment by Defendant, removal of unlawful disciplinary actions in his employment file, and restoration of full medical benefits to himself and his family. This request is made pursuant to the Court's power to order equitable relief under § 2617 (a)(1)(B) of FMLA.

II. JURISDICTION

3. Jurisdiction over Mr. Thompson's FMLA claim is conferred on this Court by FMLA (29 U.S.C. § 2617), by 28 U.S.C. § 1337 (relating to any Act of Congress regulating commerce), and by 28 U.S.C. § 1331 (relating to civil actions arising under laws of the United States).

4. Venue is proper in this Court: Defendant conducts business operations at 12490 Sunrise Valley Drive in Reston, Virginia, within the territorial jurisdiction of this Court.

III. PARTIES

5. Plaintiff Thomas Thompson resides in Reston, Virginia, with his spouse and two daughters.

6. Mr. Thompson has been married to Frankie Thompson (formerly Frankie Thrash) since December 23, 1992.

7. Mr. and Mrs. Thompson's twin daughters, Tiletha and Takea, were born on March 19, 1991.

8. Mr. Thompson, Mrs. Thompson, and their two daughters are referred to collectively in this Complaint as the "Thompson family".

9. Upon information and belief, Defendant is a corporation conducting substantial business activities in the Commonwealth of Virginia.

10. Upon information and belief, Defendant provided Mr. Thompson's services to Sprint International, Inc. pursuant to a service agreement.

11. Upon information and belief, Defendant acted in the interest and authority

of Sprint International, Incorporated at all relevant times in regard to Mr. Thompson.

12. Upon information and belief, Defendant is a wholly-owned subsidiary of Sprint Corporation.

13. Upon information and belief, Sprint International Incorporated is a wholly-owned subsidiary of Sprint Corporation.

14. Upon information and belief, Defendant employed more than fifty (50) employees at its work site in Reston, Virginia at all times during 1993.

IV. FACTUAL ALLEGATIONS

A. MR. THOMPSON'S EMPLOYMENT BY DEFENDANT

15. Mr. Thompson's employment by Defendant began on March 18, 1991.

16. Mr. Thompson's employment by Defendant ended on January 12, 1994.

17. Mr. Thompson worked for Defendant as a Copy Center Administrator.

18. Mr. Thompson worked at Defendant's Reston, Virginia facility.

19. Mr. Thompson's employment by Defendant was full-time.

20. Mr. Thompson's regular work day generally began at 7:30 a.m., and ended at 4:30 p.m.

21. Mr. Thompson earned approximately \$11.98 per regular hour of work when his employment by Defendant was terminated.

22. Prior to November, 1993, Mr. Thompson regularly worked more than forty (40) hours per week.

23. Mr. Thompson earned approximately \$ 18 per overtime hour worked.

24. Mr. Thompson generally worked his overtime hours by working past the scheduled ending time of his shift.

25. From the time Mr. Thompson's employment began, Mr. Thompson received regular raises in pay.

26. Mr. Thompson received raises in pay on a yearly basis.

27. Mr. Thompson's yearly raises were in the amount of approximately 4.3 per cent of his salary.

28. Raises were generally given to Mr. Thompson on or about March 26 of each year.

29. Mr. Thompson worked in excess of 1,250 hours for Defendant between January 11, 1993 and January 11, 1994.

30. Pursuant to Mr. Thompson's employment by Defendant, Defendant provided health coverage through a Health Maintenance Organization operated by Kaiser Permanente [referred to herein as "Kaiser Permanente HMO"].

31. Pursuant to Mr. Thompson's employment by Defendant, membership in Kaiser Permanente HMO was provided to the Thompson family.

32. Membership in Kaiser Permanente HMO was provided to the Thompson family at a cost to Mr. Thompson of approximately \$ 500 per month.

33. During the Fall of 1993, Mrs. Thompson was employed on a full-time basis byu Volt Temporary Services in Herndon, Virginia.

34. During the Fall of 1993, Mrs. Thompson also was employed part-time by the Fairfax County Public Schools.

35. From 1993 to January, 1994, Mr. and Mrs. Thompson hired Kindercare of Reston, Virginia ("Kindercare") to provide child care for Tiletha and Takea while Mr. and Mrs. Thompson were at work.

B. SERIOUS HEALTH CONDITION OF TILETHA THOMPSON

36. Tiletha Thompson has suffered from chronic asthma since her birth.

37. Chronic asthma is a respiratory ailment which involves constriction of the breathing tubes (bronchii), wheezing, and other symptoms.

38. Asthma can cause episodes of acute respiratory distress, and in some cases death.

39. Tiletha's asthma condition increases the severity and duration of upper respiratory infections.

40. Tiletha's asthma condition is subject to "acute flares" on an intermittent basis.

41. Treatment for acute flares of Tiletha's asthma has required doctor visits on a regular basis since her birth.

42. Treatment of Tiletha's asthma has required emergency room visits several times per year since her birth.

43. Treatment of Tiletha's asthma has required administration of prescription medication on a regular basis since her birth.

C. NECESSITY FOR INTERMITTENT LEAVE DUE TO SERIOUS HEALTH CONDITION OF TILETHA THOMPSON

44. When acute flares of Tiletha's asthma occur, Kindercare does not permit her to attend day care.

45. When Tiletha has a fever, Kindercare does not permit her to attend day care.

46. When Tiletha is ill, her condition requires administration of "nebulized" medication four to six times per day.

47. Nebulized medication is inhaled medicine which is administered to the patient with the assistance of an electrical breathing apparatus called a "nebulizer".

48. Administration of nebulized medication to Tiletha must be done by an adult who has been instructed in how to use the machine.

49. Mr. Thompson has been instructed by Tiletha's doctors on how to administer nebulized medication.

50. The Thompson family has purchased a nebulizer machine for use at home in treating Tiletha.

51. When Tiletha is ill, administration of nebulized medication generally results in immediate improvement in her breathing.

D. MR. THOMPSON'S USE OF FMLA LEAVE DURING NOVEMBER, 1993

52. During 1993, Mr. Thompson missed several days of work due to Tiletha's asthma.

53. Prior to November 11, 1993, Mr. Thompson told his supervisors several

times that Tiletha had chronic asthma.

54. Upon information and belief, Defendant was aware prior to November 11, 1993, that Tiletha's asthma condition required treatment by medical professionals.

55. On November 11, 1993, Tiletha was in need of home care for her asthma condition.

56. On November 11, 1993, Mr. Thompson stayed home from work in order to care for Tiletha.

57. On November 11, 1993, Mr. Thompson notified Defendant by telephone that he was staying home in order to care for Tiletha.

58. On November 11, 1993, Mr. Thompson explained to Defendant the seriousness of Tiletha's condition.

59. On November 11, 1993, Mr. Thompson explained to Defendant that Tiletha's condition required him to remain at home that day.

60. Defendant did not request certification of the reason for Mr. Thompson's absence from work on November 11, 1993.

61. On November 15, 1993, Tiletha was in need of home care for her asthma condition.

62. On November 15, 1993, Mr. Thompson stayed home from work in order to care for Tiletha.

63. On November 15, 1993, Mr. Thompson notified Defendant by telephone that he was staying home in order to care for Tiletha.

64. On November 15, 1993, Mr. Thompson explained to Defendant the

seriousness of Tiletha's condition.

65. On November 15, 1993, Mr. Thompson explained to Defendant that Tiletha's condition required him to stay home that day.

66. Defendant did not request certification of the reason for Mr. Thompson's absence from work on November 15, 1993.

67. The hours of work Mr. Thompson missed on November 11 were charged by Defendant as "unscheduled vacation" time.

68. The hours of work Mr. Thompson missed on November 15 were charged by Defendant as "unscheduled vacation" time.

69. Upon information and belief, Defendant considers "unscheduled vacation" to be a violation of Defendant's policy regarding attendance.

70. Upon information and belief, it is Defendant's practice to base corrective action against employees on use of "unscheduled vacation".

71. As alleged further below, Defendant based corrective action against Mr. Thompson on "unscheduled vacation" charged to him in November, 1993.

E. MR. THOMPSON'S COMMUNICATIONS WITH DEFENDANT'S HUMAN RESOURCES DEPARTMENT REGARDING FMLA LEAVE

72. During October and November 1993, Mr. Thompson spoke to several members of Defendant's Human Resources department about Tiletha's illness.

73. During 1993, Iris Johnson was employed by Defendant in Defendant's Human Resources Department.

74. During 1993, Ms. Katie Lee Miles was employed by Defendant in Defendant's Human Resources Department.

75. During October or November, 1993, Mr. Thompson spoke to Ms. Johnson about Mr. Thompson's attendance at work.

76. Mr. Thompson told Ms. Johnson that he needed to stay home with Tiletha on days when Tiletha was sick.

77. Ms. Johnson told Mr. Thompson that he should request leave under the Family and Medical Leave Act ("FMLA") leave in order to care for Tiletha.

78. During October or November 1993, Mr. Thompson spoke to Katie Lee Miles about Tiletha's asthma.

79. Ms. Miles told Mr. Thompson that he should request FMLA leave to care for Tiletha.

80. Ms. Miles told Mr. Thompson that Defendant employer should not have charged as "unscheduled vacation" any days of work which Mr. Thompson had missed in order to care for Tiletha.

81. Ms. Miles told Mr. Thompson that FMLA prohibited Defendant from charging as "unscheduled vacation" any days of work which Mr. Thompson had missed in order to care for Tiletha.

82. Ms. Johnson told Mr. Thompson that FMLA leave could be taken on an intermittent basis, if needed.

83. Ms. Miles told Mr. Thompson that FMLA leave could be taken on an intermittent basis, if needed.

84. On or about November 17, 1993, Mr. Thompson obtained a copy of the Defendant's form "Application for Family/Medical Leave" (referred to in this Complaint as the "Application").

85. Mr. Thompson obtained the Application from Ms. Johnson.

86. Mr. Thompson completed the Application on or about November 17, 1993.

87. Mr. Thompson submitted the completed Application to Ms. Johnson.

88. Mr. Thompson submitted the Application to Defendant on or about November 17, 1993.

89. A copy of the completed Application submitted by Mr. Thompson is attached to this Complaint as Exhibit 1.

90. Exhibit 1 indicates the reason for requested leave as follows: "in order to care for spouse, child, or parent ('covered relation') with a serious health condition".

91. On Item 9 of Exhibit 1, which states "Are you requesting leave on an intermittent or reduced leave schedule?", there is an "X" in the box marked "Yes".

F. CERTIFICATION OF TILETHA'S CONDITION PROVIDED TO DEFENDANT

92. During November 1993, Ms. Johnson instructed Mr. Thompson to obtain medical documentation of Tiletha's asthma condition.

93. During November 1993, Mr. Thompson met with Dr. Janet Gallagher.

94. Dr. Gallagher is a pediatrician employed by Kaiser Permanente HMO.

95. Dr. Gallagher was Tiletha's primary care physician during 1993.

96. During the November, 1993, meeting with Dr. Gallagher, Mr. Thompson

requested certification from Dr. Gallagher of Tiletha's medical condition.

97. Mr. Thompson gave Dr. Gallagher a blank copy of Defendant's form "Certification of Physician or Practitioner (Family Medical Leave Act)" (referred to in this complaint as "the Certification form").

98. Upon information and belief Dr. Gallagher completed the Certification Form.

99. Upon information and belief Dr. Gallagher signed the Certification Form.

100. Mr. Thompson submitted the completed Certification Form to Defendant.

101. Mr. Thompson submitted the completed Certification Form on or about November 29, 1993.

102. A copy of the Certification Form submitted by Mr. Thompson is attached to this Complaint as Exhibit 2.

103. Exhibit 2 refers to Mr. Thompson as the "employee".

104. Exhibit 2 refers to Tiletha Thrash Thompson as the "patient".

105. Exhibit 2 states Tiletha's diagnosis as "asthma".

106. Exhibit 2 form states the probable duration of Tiletha's condition as "unknown".

107. Exhibit 2 indicates the prescribed treatment as "Nebulizer treatments every 4 hours when sick".

108. Exhibit 2 states, in part: "Dad needs to be home on an as-needed basis when his daughter is ill".

***G. DISCRIMINATORY ACTIONS BY DEFENDANT BASED ON MR. THOMPSON'S
USE OF FMLA LEAVE***

109. Carol Hauck was Mr. Thompson's direct supervisor during 1993.

110. Several times during November and December, 1993, Mr. Thompson and Ms. Hauck discussed Mr. Thompson's overtime hours.

111. Ms. Hauck told Mr. Thompson that he would no longer be permitted to work beyond the scheduled ending time of his shift.

112. Ms. Hauck told Mr. Thompson that, if work remained to be done at the close of Mr. Thompson's work shift, Defendant would send the work out to be done on a "contract" basis.

113. Ms. Hauck told Mr. Thompson that the change in Defendant's policy regarding Mr. Thompson's overtime resulted from Mr. Thompson's absences from work.

114. Ms. Hauck told Mr. Thompson that the change in Defendant's policy regarding Mr. Thompson's overtime resulted from Mr. Thompson's need for leave to care for Tiletha.

115. Beginning approximately November, 1993, Defendant substantially reduced the number of overtime hours Mr. Thompson was authorized to work.

116. Beginning approximately November, 1993, the number of overtime hours actually worked by Mr. Thompson was substantially reduced.

117. Defendant declined to authorize Mr. Thompson to work overtime on several occasions when work remained to be done at the close of Mr. Thompson's work shift.

118. Upon information and belief, Defendant paid for copying work to be done

on a "contract" basis on occasions when Mr. Thompson was not permitted to work overtime.

119. Upon information and belief, Defendant incurred greater costs by sending work out on a "contract" basis, than by permitting the work to be done by Mr. Thompson after the end of his scheduled work shift.

120. Besides the statements by Ms. Hauck alleged in Paragraphs 113 and 114 above, Defendant gave Mr. Thompson no other reason for sending work out on a "contract" basis, on days when Mr. Thompson was willing to complete the work at the end of his shift.

H. DISCRIMINATION AGAINST MR. THOMPSON ON THE BASIS OF SEX AND MARITAL STATUS

121. Several times during November and December, 1993, Mr. Thompson spoke to Ms. Hauck and to Clark Henson regarding his need to stay at home to care for Tiletha.

122. Mr. Henson was Mr. Thompson's manager during Mr. Thompson's employment by Defendant.

123. Ms. Hauck asked Mr. Thompson why Mrs. Thompson could not stay home with Tiletha on days when Tiletha was ill.

124. Mr. Henson asked Mr. Thompson why Mrs. Thompson could not stay home with Tiletha on days when Tiletha was ill.

125. Ms. Hauck and Mr. Henson discouraged Mr. Thompson from using FMLA leave to care for Tiletha.

126. Ms. Hauck and Mr. Henson indicated that Mr. Thompson's spouse should

have primary responsibility for caring for Tiletha and Takea when the girls were ill.

127. Ms. Hauck and Mr. Henson indicated that, as the girls' mother, Mrs. Thompson should have primary responsibility for caring for Tiletha and Takea when the girls were ill.

128. Upon information and belief, Defendant investigated whether Mrs. Thompson was eligible for FMLA leave with her employer.

129. Upon information and belief, Defendant was aware during November and December, 1993, that Mrs. Thompson's eligibility for leave was not relevant to Mr. Thompson's statutory rights for leave under FMLA.

130. Upon information and belief, Defendant took Mr. Thompson's gender into account when determining whether or not to authorize use of FMLA leave during November, 1993.

131. Upon information and belief, Defendant took Mr. Thompson's gender into account when determining whether or not to authorize use of FMLA leave on January 11, 1994.

I. DEFENDANT'S POLICY REGARDING NOTIFICATION OF NEED FOR LEAVE

132. Several times during November and December, 1993, Mr. Thompson spoke with Carol Hauck regarding the procedure for Mr. Thompson's use of FMLA leave.

133. Several times during November and December, 1993, Mr. Thompson spoke with Clark Henson regarding the procedure for Mr. Thompson's use of FMLA leave.

134. Mr. Thompson discussed with Ms. Hauck and Mr. Henson the means by

which Mr. Thompson was to notify Defendant when Tiletha was ill.

135. Mr. Thompson indicated to Ms. Hauck that Tiletha's asthma was unpredictable in nature.

136. Mr. Thompson indicated to Mr. Henson that Tiletha's asthma was unpredictable in nature.

137. Mr. Thompson was told that, on days when Tiletha's condition required use of FMLA leave by Mr. Thompson, Mr. Thompson should notify Defendant as soon as possible.

138. Mr. Thompson was told that he should notify Defendant by telephone on days when he needed to use FMLA leave.

139. Mr. Thompson was told that he should first call Ms. Hauck on days when he needed to use FMLA leave.

140. Mr. Thompson was told that he should call Mr. Henson on days when he needed to use FMLA leave, if Ms. Hauck was not available.

***J. DEFENDANT'S REQUEST FOR ADDITIONAL INFORMATION
REGARDING TILETHA'S CONDITION***

141. On or about December 14, 1993, Mr. Thompson's supervisors called a meeting with Mr. Thompson.

142. The purpose of the meeting was to discuss Mr. Thompson's request for FMLA leave.

143. A meeting was held on or about December 14, 1993, in Defendant's offices.

144. The following allegations 145-155 refer to the morning meeting of December 14, 1994.

145. Mr. Thompson was present.

146. Ms. Jalé Osgood was present.

147. Mr. Clark Henson was present.

148. Ms. Carol Hauck was present.

149. During the meeting, Mr. Henson asked Mr. Thompson to submit further medical information regarding Tiletha's medical condition.

150. Mr. Henson said that Defendant needed more information about the expected frequency of Mr. Thompson's need for FMLA leave.

151. Mr. Thompson stated that he would obtain additional information regarding the expected frequency of Tiletha's illness.

152. Mr. Thompson stated that he would obtain the additional information from Dr. Gallagher.

153. Mr. Thompson stated that FMLA permitted Defendant to request a second medical opinion regarding Tiletha's condition.

154. Mr. Thompson offered to permit Tiletha to be examined by any doctor of Sprint's choosing, if Defendant needed further confirmation of Tiletha's medical condition.

155. Mr. Henson stated that a second medical opinion would not be necessary.

156. On December 14 or 15, 1993, Mr. Thompson received a memorandum by electronic mail from Carol Hauck.

157. A partial copy of the memorandum Mr. Thompson received is attached hereto as Exhibit 3.

158. Exhibit 3 purports to contains notes of the meeting of December 14.

159. Exhibit 3 purports to be written by Carol Hauck.

160. Exhibit 3 states, in part: "You stated that you felt you and your spouse were not able to provide the child sufficient time necessary to improve her condition, but you are able to primarily maintain and address the immediate needs of her condition. The FMLA plan can provide you with this time".

161. Exhibit 3 states, in part: "your FMLA leave is needed on an 'intermittent' basis, to be scheduled in advance whenever possible".

162. Exhibit 3 states, in part: "We determined that your spouse is not eligilbe [sic] for FMLA coverage with her current employer".

163. Exhibit 3 states, in part: "In support of the need of your time and attention, overtime will not be an option to meet the needs of our business demands."

***K. WRITTEN WARNING BY DEFENDANT ON
DECEMBER 14, 1993***

164. In the afternoon of December 14, 1993, Carol Hauck called a second meeting with Mr. Thompson.

165. The purpose of the meeting was to counsel Mr. Thompson regarding attendance.

166. The meeting was held in the afternoon of December 14, 1993.

167. The following allegations 168-181 refer to the meeting on the afternoon of December 14, 1993.

168. The meeting was held in Jalé Osgood's office
169. Mr. Thompson was present.
170. Ms. Hauck was present.
171. Ms. Osgood was present.
172. Ms. Hauck presented to Mr. Thompson a memorandum dated December 14, 1993.

173. The memorandum presented by Ms. Hauck was a written corrective action concerning unacceptable attendance.

174. A copy of the corrective action presented to Mr. Thompson is attached to this Complaint as Exhibit .

175. Exhibit 4 lists four instances of lateness charged to Mr. Thompson.

176. Exhibit 4 lists two instances of "unscheduled vacation" charged to Mr. Thompson.

177. The "unscheduled vacation" days cited are November 11, 1993 and November 15, 1993.

178. Exhibit 4 states, in part:

"Any further absenteeism, tardiness, or early departures from work that are not pre-scheduled and approved a minimum of two business days in advance, may result in further corrective action up to and including termination. This requirement does not apply to absenteeism covered under the Family and Medical Leave Act which you are pursuing."

179. Mr. Thompson refused to sign Exhibit 4 when it was presented to him by Ms. Hauck.

180. Mr. Thompson told Ms. Hauck that he disagreed with the contents of Exhibit 4.

181. Mr. Thompson told Ms. Hauck that Defendant should not have based disciplinary action on days of work which he missed in order to care for Tiletha.

***L. FURTHER DOCUMENTATION OF TILETHA'S CONDITION
PROVIDED TO THE DEFENDANT***

182. During December 1993, Mr. Thompson met with Dr. Gallagher to request additional documentation of Tiletha's condition.

183. Dr. Gallagher gave Mr. Thompson a letter dated December 28, 1993.

184. Mr. Thompson submitted the letter to Ms. Jalé Osgood.

185. Mr. Thompson submitted the letter to Defendant on or about December 29, 1993.

186. A copy of the letter submitted by Mr. Thompson is attached to this complaint as Exhibit 5.

187. Exhibit 5 states that:

"Normal, healthy children have about six to eight viral upper respiratory infections per year. The difference in Tiletha's case is that each one may result in seven to twenty one days of symptoms requiring medication four to six times per day. Preventive medication may change that but since that has just begun, it is not possible to accurately predict

how often Mr. Thompson may need to use FMLA time."

188. The letter submitted by Mr. Thompson is signed by Dr. Janice Gallagher.

189. Defendant did not request further documentation of Tiletha's health condition after Mr. Thompson submitted Exhibit 5 to Defendant.

M. FINAL WRITTEN CORRECTIVE ACTION OF DECEMBER 23, 1993

190. On December 23, 1993, Clark Henson called a meeting with Mr. Thompson.

191. The purpose of the meeting was to counsel Mr. Thompson regarding his attendance.

192. A written memorandum regarding Mr. Thompson's attendance was presented to Mr. Thompson.

193. The memorandum was titled "Final Written Corrective Action".

194. A copy of the memorandum presented to Mr. Thompson on December 23 is attached to this Complaint as Exhibit 6.

195. Exhibit 6 lists November 11, 1993 and November 15, 1993 as attendance violations.

196. Mr. Thompson refused to sign Exhibit 6 when it was presented to him.

197. Mr. Thompson told Mr. Henson that he disagreed with the contents of Exhibit 6.

198. Mr. Thompson disagreed with the contents of Exhibit 6 because it was based in part on his uses of FMLA leave on November 11 and November 15, 1993.

199. Mr. Thompson told Mr. Henson that Tiletha's asthma condition was

unpredictable in nature.

200. Mr. Thompson stated that he was doing the best he could to notify Defendant of days when Tiletha was ill.

N. ILLNESS OF TILETHA THOMPSON ON JANUARY 11, 1994

201. The following allegations 202 through 240 refer to events of January 11, 1994.

202. On January 11, 1994, Mr. Thompson was awakened by Tiletha at approximately 4:00 a.m.

203. Tiletha told Mr. Thompson that she was feeling sick.

204. Mr. Thompson observed that Tiletha had a fever, and that her breathing was noisy and labored.

205. Mr. Thompson was concerned about Tiletha's difficulty breathing and decided to take her to the doctor that day.

206. Mr. Thompson observed that Tiletha's sister, Takea, had cold symptoms that morning.

207. Mr. Thompson had cold symptoms that morning.

208. At approximately 7:00 a.m., Mr. Thompson called his supervisor, Carol Hauck.

209. Mr. Thompson left a voice mail message for Ms. Hauk at Defendant's office in Reston.

210. Mr. Thompson's message stated that his daughter was sick.

211. Mr. Thompson's message stated that he would not be able to come to work that day, January 11.

212. Before the start of his scheduled work shift on January 11, Mr. Thompson

called Clark Henson at Defendant's office in Reston.

213. Mr. Thompson spoke with Mr. Henson by telephone on the morning of January 11.

214. Mr. Thompson told Mr. Henson that Tiletha was sick.

215. Mr. Thompson told Mr. Henson that he was going to take Tiletha to the doctor that day, January 11.

216. During the telephone conversation with Mr. Henson, Mr. Thompson stated that he would not be able to come to work that day, January 11.

217. Mr. Henson stated that it was "okay" for Mr. Thompson to miss work that day.

218. Mr. Henson stated that Mr. Thompson should take the time he needed for Tiletha's care.

219. During the telephone conversation with Mr. Thompson on the morning of January 11, Mr. Henson did not request certification of Tiletha's condition.

220. On January 11, 1994, Tiletha Thompson was treated by Martha Zeer.

221. On January 11, 1994, Takea Thompson was treated by Martha Zeer.

222. Martha Zeer is a pediatric nurse.

223. Ms. Zeer was employed by Kaiser Permanente HMO at all times relevant herein.

224. On January 11, 1994, Ms. Zeer diagnosed Tiletha with asthma, flu symptoms, and fever.

225. Ms. Zeer instructed Mr. Thompson to administer nebulizer treatments to Tiletha every four hours on January 11, 1994.

226. Ms. Zeer gave Mr. Thompson a written "Verification of Treatment" form

regarding Tiletha.

227. The "Verification of Treatment" form provided to Mr. Thompson is attached to this Complaint as Exhibit 7.

228. Exhibit 7 indicates Tiletha's diagnosis as "asthma/flu symptoms/fever".

229. Exhibit 7 states that "Dad needs to stay home with girls for 2-3 day [sic] until no fever".

230. In the afternoon of January 11, 1994, Mr. Thompson left a voice mail message to Carol Hauck at Defendant's office in Reston.

231. Mr. Thompson's voice mail message indicated that he had been advised to keep the girls at home for two days.

232. Mr. Thompson's voice mail message indicated that Mr. Thompson would be absent from work for two more days.

233. On the afternoon of January 11, Mr. Thompson called Mr. Henson at the Defendant's office in Reston.

234. Mr. Thompson spoke with Mr. Henson by telephone during the afternoon of January 11, 1994.

235. During the conversation with Mr. Henson, Mr. Thompson stated that Tiletha had been diagnosed with asthma.

236. During the conversation with Mr. Henson, Mr. Thompson stated that Tiletha had been diagnosed with flu symptoms.

237. During the conversation with Mr. Henson, Mr. Thompson stated that Tiletha had been diagnosed with fever.

238. During conversation with Mr. Henson, Mr. Thompson stated that he would be unable to come to work for two more days.

239. Mr. Henson stated that Mr. Thompson should take the time he needed to care for Tiletha.

240. Mr. Henson did not request any additional certification of Tiletha's illness from Mr. Thompson during the afternoon conversation with Mr. Thompson.

241. No other employee of Defendant requested additional certification of Tiletha's illness of January 11, 1994.

O. TERMINATION OF MR. THOMPSON'S EMPLOYMENT BY DEFENDANT

242. On January 12, 1994, Ms. Hauck called Mr. Thompson at home.

243. During the telephone conversation of January 12, 1994, Ms. Hauck stated that Mr. Thompson's employment by Defendant was terminated.

244. Mr. Thompson asked Ms. Hauck why he was being terminated.

245. Ms. Hauck responded that she could not give Mr. Thompson a reason for his termination.

246. Mr. Thompson requested that Defendant provide him with a letter stating the reason for his termination.

247. Ms. Hauck stated that Defendant could not provide a termination letter to Mr. Thompson.

248. On or about January 21, 1994, Mr. Thompson visited Defendant's offices in

Reston.

249. When Mr. Thompson visited Defendant's offices, Jalé Osgood provided him with a termination letter.

250. A copy of the termination letter provided to Mr. Thompson is attached to this Complaint as Exhibit 8.

251. Exhibit 8 purports to have been written on January 12, 1994.

252. Exhibit 8 states, in part: "as discussed in our phone conversation of this morning the reason for the termination of your employment is for absenteeism in violation of your Final Written Warning dated 12/23/93".

253. Exhibit 8 is signed by Jalé Osgood.

254. Mr. Thompson provided Defendant with a copy of Exhibit 7 (Verification of Treatment regarding Tiletha Thompson, January 11, 1994).

255. A copy of Exhibit 7 was provided to Defendant on or about January 21, 1994.

256. In conjunction with Mr. Thompson's termination by Defendant, Defendant provided Mr. Thompson with information (herein, "COBRA information") regarding Mr. Thompson's option to purchase continued membership in Kaiser Permanente HMO for himself and his family.

257. Because Mr. Thompson had been unemployed as of January 12, 1994, the Thompson family was unable to afford the cost of the continued membership in Kaiser Permanente HMO.

258. Upon information and belief, the Thompson family's membership in Kaiser Permanente HMO was canceled on or about January 31, 1994.

259. As a result of the termination of Mr. Thompson's HMO coverage, Mr. Thompson and his family have been without health insurance from approximately January 31, 1994 until the present time.

P. MR. THOMPSON'S COMPLAINT TO THE LABOR DEPARTMENT

260. In January, 1994, Mr. Thompson filed a complaint with the Wage and Hour Division of the United States Department of Labor ("DOL").

261. Mr. Thompson's complaint alleged that his termination by Defendant violated FMLA.

262. James Koren, an investigator employed by DOL, conducted an investigation into Mr. Thompson's complaint.

263. After the investigation, Mr. Koren advised Mr. Thompson that Defendant had violated FMLA.

264. Pursuant to the DOL investigation, Mr. Koren wrote a memorandum summarizing his findings.

265. A copy of the memorandum written by Mr. Koren is attached to this Complaint as Exhibit 9.

266. Mr. Koren's memorandum indicates Mr. Koren's finding that Defendant violated FMLA by failing to restore Mr. Thompson to his position as a Copy Center Administrator.

267. Mr. Koren's memorandum indicates Mr. Koren's finding that Defendant violated FMLA by terminating Mr. Thompson's health coverage.

268. Mr. Koren's memorandum indicates Mr. Koren's belief that Defendant willfully

violated FMLA.

V. LEGAL CLAIMS

A. APPLICABILITY OF FMLA

269. The foregoing allegations are incorporated as though fully replead herein.

270. Beginning August 15, 1993, FMLA's provisions applied to Mr. Thompson's employment by Defendant.

271. The procedures and notification requirements regarding Mr. Thompson's use of FMLA leave were also governed by DOL's regulations interpreting FMLA. Final Rule, Family and Medical Leave Act of 1993, 60 Fed. Reg. 2179 (1995) (to be codified at 29 C.F.R. Part 825) (herein "DOL Regulations").

272. During all times relevant to this claim, Defendant has met the definition of "employer", found in § 2611 (4) of FMLA.

273. During all times relevant to this claim, Mr. Thompson has met the definition of "eligible employee", found in § 2611 (2) of FMLA.

274. During all times relevant to this claim, Tiletha's asthma constituted a "serious health condition" as defined by § 2611 (11) of FMLA.

275. The Thompson family's membership in the Kaiser Permanente HMO was an "employment benefit", as defined by §2611 (5) of FMLA.

276. Dr. Gallagher is a "health care provider", as defined by §2611 (6) of FMLA.

277. Martha Zeer is a "health care provider", as defined by § 2611 (6) of FMLA.

B. MR. THOMPSON'S USE OF FMLA LEAVE

278. Section 2612 (a) of FMLA entitled Mr. Thompson to take up to twelve (12) workweeks of leave in a twelve month period to care for Tiletha.

279. Section 2612 (b) of FMLA entitled Mr. Thompson to take leave on an intermittent basis.

280. Section 2613 of FMLA permitted Defendant to require that a request for leave be supported by certification issued by a health care provider.

281. Section 2601 (b) of FMLA states a Congressional purpose to provide leave for eligible medical reasons on a gender neutral basis.

282. Mr. Thompson was entitled to pursue FMLA leave free of discrimination based on gender.

283. At all times relevant to this Complaint, § 2615 of FMLA made it unlawful for Defendant employer to "interfere with, restrain, or deny the exercise of the attempt to exercise, any right provided" by §§ 2611-2619 of FMLA.

284. Section § 2614 (a)(1) of FMLA required Defendant to restore Mr. Thompson to his position as a Copy Center Administrator, after Mr. Thompson's use of FMLA leave.

285. Section 2614 (a)(2) of FMLA required Defendant to maintain the Thompson family's HMO membership, notwithstanding Mr. Thompson's use of FMLA leave, on the same terms as such membership was provided before Mr. Thompson's use of FMLA leave.

286. At all times relevant to this Complaint, § 825.220 of the applicable DOL regulations prohibited Defendant from discriminating against employees who exercise FMLA rights.

287. At all times relevant to this Complaint, § 825.220 (c) of the applicable DOL regulations provided, in part: "[e]mployers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under 'no fault' attendance policies".

288. Mr. Thompson used FMLA leave when he missed work on November 11, 1993.

289. Defendant did not request medical certification of Mr. Thompson's use of FMLA leave on November 11, 1993.

290. Mr. Thompson used FMLA leave when he missed work on November 15, 1993.

291. Defendant did not request medical certification regarding Mr. Thompson's use of FMLA leave on November 15, 1993.

292. Mr. Thompson used FMLA leave when he missed work on January 11, 1994.

293. Mr. Thompson submitted sufficient certification of the necessity for FMLA leave on January 11, 1994.

294. Under § 2613 of FMLA, the Certification Form submitted by Mr. Thompson on November 29, 1993 [Exhibit 3], constituted "sufficient certification" of Mr. Thompson's need for FMLA leave.

295. Under § 2613 of FMLA, the letter from Dr. Gallagher submitted by Mr. Thompson [Exhibit 1] constituted "sufficient certification" of Mr. Thompson's need for FMLA leave.

296. Under § 2613 of FMLA, the Verification of Treatment form submitted by Mr. Thompson [Exhibit 7] constituted "sufficient certification" of Mr. Thompson's need for FMLA leave.

297. Section 2613 of FMLA permitted Defendant to obtain an opinion from a second medical expert, if it questioned the validity of the certification provided to it by Mr. Thompson.

298. Defendant's failure to request a second opinion regarding Tiletha's condition, as provided for in § 2613 (c) of FMLA, constitutes an admission of the validity of the certification provided by Mr. Thompson.

C. DEFENDANT'S VIOLATIONS OF FMLA

299. Defendant's refusal to permit Mr. Thompson to work overtime after mid-November, 1993, without legitimate business justification therefor, discriminated against Mr. Thompson on the basis of his exercise of FMLA rights.

300. Defendant's refusal to permit Mr. Thompson to work overtime after mid-November, 1993 constituted unlawful interference with, restraint, and denial of Mr. Thompson's rights under FMLA.

301. Defendant's Written Corrective Action of December 14, 1993, constituted unlawful interference with Mr. Thompson's rights under FMLA, because it was based in part on his use of FMLA leave on November 11 and 15, 1993.

302. Defendant's Written Corrective Action of December 23, 1993, constituted unlawful interference with Mr. Thompson's rights under FMLA, because it was based in part on Mr. Thompson's use of FMLA leave on November 11 and 15, 1993.

303. Defendant's termination of Mr. Thompson's employment on January 12, 1994, constituted unlawful interference with, restraint, and denial of Mr. Thompson's rights under FMLA.

304. Defendant's termination of the Thompson family's health benefits constituted unlawful interference with, restraint, and denial of Mr. Thompson's rights under FMLA.

305. Defendant's continuing failure to reinstate Mr. Thompson's employment, despite requests by Mr. Thompson and DOL, constitute unlawful interference with, restraint, and denial of Mr. Thompson's rights under FMLA.

306. Defendant's continuing failure to reinstate the Thompson family's health benefits, after repeated requests from Mr. Thompson and DOL, constitute unlawful interference with, restraint, and denial of Mr. Thompson's rights under FMLA.

307. Defendant unlawfully took Mr. Thompson's gender into account in deciding whether to grant Mr. Thompson's requests for leave.

308. Defendant's actions against Mr. Thompson resulted, in whole or in part, from an unlawful motive of discrimination based on sex and marital status.

309. Under FMLA, Mrs. Frankie Thompson's eligibility for leave was not a permissible criterion for the decision whether or not to grant Mr. Thompson's request for leave.

310. Defendant's actions as alleged herein were willful violations of FMLA.

VI. DAMAGE TO MR. THOMPSON

311. The foregoing allegations are incorporated as though fully replead herein.

312. As a direct and proximate result of Defendant's violations of law as alleged herein, Mr. Thompson sustained damage as alleged below.

313. Mr. Thompson has suffered, and continues to suffer, lost regular wages since

the date of his termination by Defendant.

314. Mr. Thompson has suffered, and continues to suffer, lost overtime wages since the date when Defendant began unlawfully to reduce his overtime hours.

315. After mitigation and setoff, Mr. Thompson has lost at least \$ 11,000 in wages as of the date of filing of this Complaint.

316. Mr. Thompson will likely continue to suffer lost wages until the date of judgment in this case.

317. In addition to wage losses alleged above, Mr. Thompson has sustained a loss of earning capacity as a result of Defendant's unlawful termination of his employment.

318. Prospective employers are less willing to hire Mr. Thompson, because he was terminated by Defendant.

319. As a result of Defendant's termination of his employment, Mr. Thompson has been unable to obtain permanent employment with comparable wages and benefits to the position he held with Defendant.

320. Mr. Thompson expects that his ability to obtain comparable employment will continue to be impaired by Defendant's unlawful termination of his employment.

321. Mr. Thompson therefore claims lost future wages expected to be incurred after the date of judgment in this case, extending for a reasonable time after the date of judgment.

322. In addition to the wage losses alleged above, Mr. Thompson has sustained medical expense damages and considerable mental suffering.

323. As a result of Defendant's unlawful acts, the Thompson family has been without health insurance since approximately January 31, 1994.

324. Mr. Thompson has suffered considerable mental anguish at being unable to provide health care for his family.

325. In addition to mental suffering, the Thompson family has incurred actual medical expenses of approximately \$7,224 since January 31, 1994.

326. Defendant has not reimbursed the Thompson family for any of the medical expenses it incurred since January 31, 1994.

327. Mr. Thompson therefore claims medical expense damages of at least \$7,224, plus any other medical expenses incurred or reasonably expected to be incurred as a result of Defendant's unlawful acts.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

328. That the Court take jurisdiction of this case.

329. That the Court order restoration of Mr. Thompson's employment by Defendant as a Copy Center Administrator, or an "equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment" as required by § 2614 of FMLA.

330. That the Court order restoration by Defendant of the Thompson family's membership in Kaiser Permanente HMO, on the same terms as such membership was provided to the Thompson family prior to Mr. Thompson's discharge by Defendant.

331. That the Court award damages to Mr. Thompson as provided for by § 2617 of FMLA, including:

- a. Lost wages;
- b. Medical expenses;
- c. Interest on the amounts described in subparagraphs (a) and (b) above.
- d. Liquidated damages equal to the amounts described in subparagraphs (a), (b), and (c) above.

332. That the Court award to Mr. Thompson a reasonable attorney's fee for prosecution of this action, as provided for by § 2617 of FMLA.

333. That the Court award costs of this action to Mr. Thompson as provided for by § 2617 of FMLA.

334. That trial of this case be by jury.

335. That the Court award to Mr. Thompson any other legal or equitable relief the Court deems appropriate.

Respectfully submitted,

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By: _____
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