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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

TIMOTHY J. BENTLEY,

Plaintiff,

v.

CONOCOPHILLIPS PIPE LINE COMPANY,

Defendant.

Cause No. CV-09-1-M-DWM

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Plaintiff Timothy J. Bentley (“Bentley”), for his claims against Defendant ConocoPhillips Pipe Line Company (“ConocoPhillips”), states and alleges as follows:

PARTIES

1. Bentley, a natural person, is a United States citizen domiciled in the state of Montana, and is therefore a citizen of Montana.

2. ConocoPhillips is a Delaware corporation with its principal place of business located in Houston, Texas, and is therefore a citizen of a state other than Montana.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter, pursuant to 28 U.S.C. § 1332(a), due to the diversity of citizenship between the parties, and the fact that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391, because the acts and omissions giving rise to this action occurred in this judicial district and division.

FACTUAL BACKGROUND

5. In early 2007, Bentley was working for another pipeline company, Kinder Morgan, in Seattle, Washington.

6. Bentley and his wife thought it might be nice to live in a smaller town. Bentley interviewed for a pipeline worker position with ConocoPhillips at its Spokane, Washington facility.

7. After the interview in Spokane, Bentley was contacted by Dave Floyd, a supervisor at ConocoPhillips' Missoula, Montana facility.

8. Bentley was not seeking a job in Missoula, Montana. Bentley had not interviewed nor inquired about any position in Montana, and in fact knew very little about Montana.

9. Although Bentley was not seeking employment in Montana, Floyd began to induce Bentley to come to work for ConocoPhillips in Missoula, Montana.

10. Floyd promised Bentley that if he came to work at the Missoula pipeline terminal, he would be paid more money.

11. Floyd promised Bentley that if he came to work at the Missoula pipeline terminal, he would be able to work a rotating schedule with another employee (such as a four-days-on/three-days-off schedule).

12. Floyd spoke to Bentley at length about all of the hunting and outdoor recreational opportunities in Montana. He told him that Floyd himself, as well as employees at ConocoPhillips' Montana facilities, are avid hunters. He told Bentley that employees were encouraged to hunt and enjoy what Montana has to offer. Floyd also promised Bentley he would be given a work schedule that would allow him to pursue hunting and other outdoor recreational opportunities.

13. It is customary in the pipeline industry that workers in Bentley's position have rotating schedules. Bentley was working a four-days-on/four-days-off schedule at Kinder Morgan in Seattle, and had worked an eight-days-on/six-days-off schedule with Kinder Morgan in Texas. Floyd induced Bentley to leave Kinder Morgan by, *inter alia*, offering a similar rotating schedule.

14. ConocoPhillips ultimately talked Bentley into quitting his job with Kinder Morgan and taking a job as an operator in Missoula, Montana in April 2007.

15. Bentley moved to Missoula and had to pay his own moving expenses.

16. When Bentley started work in Missoula under Floyd, Bentley worked a training shift that consisted of Mondays through Fridays, with every other weekend on call. Bentley was told he would be put on the rotating schedule he was promised after the training was successfully completed.

17. Bentley successfully completed his training and his probationary period of

employment.

18. Approximately six months after Bentley started working for ConocoPhillips, Floyd left and Steven Thomas replaced Floyd as Bentley's supervisor.

19. ConocoPhillips conducted little to no vetting of Thomas or investigation of his past history before placing Thomas in an important supervisory position.

20. ConocoPhillips provided little to no training or supervision of Thomas.

21. At Thomas' direction, Bentley and other operators regularly worked 70-hour weeks back-to-back and would often get only a few hours' sleep before being forced to start another 12-hour shift.

22. The work at ConocoPhillips involved operating dangerous machinery, and was rendered extremely hazardous due to the fact that the workers were sleep-deprived.

23. Bentley never received the rotating shifts he was promised.

24. Bentley told Thomas that the schedule Thomas was forcing upon Bentley was not what he had been promised when he was induced to come to work for ConocoPhillips.

25. Bentley told Thomas that the lack of rest from over-work put him and his co-workers at risk of injury or death from being tired when operating dangerous machinery.

26. Thomas refused to provide Bentley with the rotating schedule he had been promised.

27. Thomas refused to make any changes to the work schedule despite the obvious safety issues.

28. In addition to being required to work significant overtime hours under dangerous conditions, Bentley was only paid his regular rate for the overtime, not the time-and-a-half

required by law.

29. Bentley called the failure to pay overtime to Thomas's attention, but Thomas again disregarded Bentley's concerns. Thomas told Bentley that he must work overtime at his regular rate of pay and that this was "just the way it is" at ConocoPhillips.

30. Despite the dangerous and difficult working conditions, Bentley performed well. Thomas signed Bentley's performance evaluation on April 14, 2008, which stated that Bentley was a "strong performer" and was "very valuable to [ConocoPhillips'] operations."

31. As Bentley continued to press for safer working conditions and appropriate overtime compensation, Thomas' treatment of Bentley deteriorated. On several occasions, Thomas tried to draw Bentley into an altercation, belittling him and getting in his face.

32. Upon information and belief, this was not the first time Thomas had harassed, belittled or threatened an employee under his charge, but ConocoPhillips did nothing to stop him or his mistreatment of subordinate employees.

33. On or about November 5, 2008, Bentley called Dixie Wilson, a corporate counselor with ConocoPhillips. Bentley told Wilson about the dangerous working conditions and failure to pay overtime. He told her about Thomas' aggressive behavior. Bentley told Wilson he was being harassed and retaliated against for reporting the dangerous working conditions and overtime issues.

34. Wilson agreed that Thomas was not handling the situation properly, and asked Bentley to sign a disclosure agreement so that she could discuss his concerns with Ken Halsor, a human resources manager at ConocoPhillips. Bentley signed the disclosure agreement.

35. When Halsor was informed of Bentley's attempts to address safety and overtime

concerns at the Missoula facility, upon information and belief, Halsor or others began to plan how best to terminate Bentley's employment.

36. On or about November 8, 2008, Bentley found out that Thomas had been informed of Bentley's discussions with Wilson, which had been relayed to Halsor. After that, Thomas became even more hostile toward Bentley.

37. On or about November 10, 2008, Bentley revoked his consent to disclosure with Wilson because he realized that the information had been disclosed to at least one unauthorized person.

38. On or about November 12, 2008, Halsor, along with two other ConocoPhillips personnel, flew up to Missoula from their offices in Texas and approached Bentley.

39. Halsor told Bentley that he had received a phone call from someone claiming to have heard Bentley threatening to harm himself or others at work.

40. Bentley never threatened to harm himself or others at work, and never spoke words that could even be reasonably construed as a threat of harm to himself or others. As such, Bentley asked Halsor for specifics, but Halsor refused to provide any.

41. Halsor then asked Bentley if he was aware of ConocoPhillips' firearms policy.

Upon information and belief, ConocoPhillips' firearms policy states:

All firearms and weapons, including but not limited to lawfully possessed shotguns, rifles, handguns, ammunition, explosives, incendiary devices, accelerants, gunpowder, crossbows, zip guns, stun guns, air or gas-powered guns, hoax bombs and illegal weapons (including illegal knives as defined by state law) are prohibited on Company property (unless expressly permitted by law and then only in accordance with the conditions set forth by the Company and local site management), on the person of a employee while conducting Company business, and in personally-owned vehicles while on

Company business.

Exempted from this policy are law enforcement officers, armored car personnel, and customers of retail convenience stores and gasoline stations who are licensed by the state to carry a concealed handgun. Local management, with the concurrence of the manager of Global Security, is authorized to grant other exceptions as needed (e.g., sporting activities, security personnel).

42. Despite the fact that the company firearms policy was inapplicable, Halsor used this as the basis to ask to search Bentley's truck, which Bentley had driven to work and which was parked outside in the parking lot.

43. Neither Halsor, nor anyone else at ConocoPhillips, called law enforcement.

44. Neither Halsor, nor anyone else at ConocoPhillips, asked to search Bentley's person.

45. Neither Halsor, nor anyone else at ConocoPhillips, asked to search Bentley's storage area at work.

46. Instead, knowing that it was hunting season, and knowing that the Missoula facility had explicitly or implicitly authorized firearms to be stored in vehicles parked at the facility, Halsor asked to search only Bentley's truck.

47. Neither Halsor, nor anyone else at ConocoPhillips, took steps to search any other vehicle in the parking lot. They did not even search the vehicle of Steve Thomas, which was adorned with a personalized license plate "22308" referring to his two favorite choices of rifle calibers: .223 and .308.

48. ConocoPhillips' personnel had no real concerns that Bentley was a threat to himself or others. If they did, and if they would have followed appropriate procedures, they

would have contacted local law enforcement, searched Bentley's person, and/or searched Bentley's storage area at work. Rather, the entire incident was orchestrated to terminate Bentley for reporting unsafe working conditions and the unlawful failure to pay overtime.

49. Bentley did not want Halsor and the other ConocoPhillips personnel to search his vehicle. Having just been to a Christian weekend retreat with his wife, Bentley had personal items in his truck that he did not want others to see.

50. Bentley wanted to protect his privacy, but he also did not want to jeopardize his job. Bentley asked Halsor what would happen if he denied permission to search his truck.

51. Halsor told Bentley that if he refused a search, the most he would be subject to was a possible suspension. Halsor's representations to Bentley made sense to Bentley because it was not inconsistent with ConocoPhillips' personnel policy for disciplining employees.

52. Upon information and belief, ConocoPhillips' personnel policy for disciplining employees is known by the acronym "OWST." OWST stands for the graduated disciplinary process for addressing undesirable employee behavior: oral warning, written warning, suspension, and termination.

53. Believing that he would be subjected to the graduated disciplinary process -- based on ConocoPhillips' written personnel policy and Halsor's representations to him -- Bentley refused the search request.

54. When Bentley refused the search, Halsor told him he was suspended without pay and for an indefinite period of time. Bentley left ConocoPhillips' premises.

55. On November 16, 2008, Bentley called Thomas and asked if he should report to work the following Monday. Thomas told Bentley that he was still suspended.

56. The next day, November 17, 2008, Bentley received a letter from Halsor, informing Bentley that he had been terminated. The letter referenced the ConocoPhillips' firearms policy and the search policy.

57. When Bentley received his final pay statement from ConocoPhillips, it showed that ConocoPhillips had subtracted 17.31 hours that Bentley had worked during his final pay period. It also shows that Bentley worked 16 hours of overtime for which he was not correctly paid time and a half. ConocoPhillips improperly failed to pay Bentley in at least these amounts. Upon information and belief, ConocoPhillips improperly failed to pay Bentley all of his regular wages and overtime while he was working at ConocoPhillips.

58. As a result of ConocoPhillips' wrongful conduct, Bentley has suffered injury and damages.

COUNT ONE – WRONGFUL INDUCEMENT

59. Bentley repeats and realleges Paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. ConocoPhillips induced, influenced, persuaded, and engaged Bentley to change his place of employment by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, and other conditions of employment.

61. ConocoPhillips' wrongful conduct constituted a violation of Section 39-2-303, Montana Code Annotated..

62. As a consequence of ConocoPhillips' statutory violation, Bentley suffered damages.

COUNT TWO – NEGLIGENT MISREPRESENTATION

63. Bentley repeats and realleges Paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. ConocoPhillips was required to exercise reasonable care or competence in obtaining or communicating information to Bentley before he accepted its offer of employment.

65. ConocoPhillips supplied false information to Bentley. ConocoPhillips failed to exercise reasonable care or competence in obtaining or communicating information it knew or should have known was not true. ConocoPhillips' representations of material facts were without reasonable grounds for believing that such representations were true.

66. ConocoPhillips' representations induced Bentley to accept its offer of employment and, as such, the representations were intended to be relied upon.

67. Bentley was unaware of the falsity of the representations and, as a result, justifiably relied upon the false information supplied.

68. As a result of ConocoPhillips' negligent misrepresentations, Bentley suffered damages.

COUNT THREE – CONSTRUCTIVE FRAUD

69. Bentley repeats and realleges Paragraphs 1 through 68 of this Complaint as if fully set forth herein.

70. ConocoPhillips breached a duty to Bentley to provide truthful and accurate information so as to allow him to make an informed decision as to whether to resign his position with another employer and accept ConocoPhillips' offer.

71. ConocoPhillips' breach misled Bentley to his detriment.

72. ConocoPhillips' breach resulted in an advantage to ConocoPhillips.

73. As a result of ConocoPhillips' constructive fraud, Bentley suffered damages.

COUNT FOUR – NEGLIGENCE

74. Bentley repeats and realleges Paragraphs 1 through 73 of this Complaint as if fully set forth herein.

75. ConocoPhillips owed a duty to Bentley to provide truthful and accurate information about the position it was offering and the working conditions at the Missoula facility.

76. ConocoPhillips owed a duty to Bentley to adequately supervise its employees and oversee the activities of its agents, so as to ensure prospective employees were not being fed false or misleading information.

77. ConocoPhillips owed a duty to Bentley to know the applicable law and pay him for his work in accordance with applicable law.

78. ConocoPhillips owed a duty to Bentley to schedule his work, and the work of his fellow co-workers, so as to provide sufficient time for rest and avoid the creation of a hazardous working environment.

79. ConocoPhillips owed a duty to Bentley to appropriately hire, train, and supervise its supervisory employees, including Steve Thomas, so as to prevent harassment and retaliation against subordinate employees.

80. ConocoPhillips owed a duty to Bentley to enact and enforce policies and procedures to prevent harassment and retaliation in the workplace.

81. ConocoPhillips owed a duty to Bentley not to disseminate confidential

information to unauthorized persons.

82. ConocoPhillips owed a duty to Bentley to enforce its firearms policy in a fair and balanced manner, and not as a pretext to discharge Bentley.

83. ConocoPhillips owed a duty to Bentley to listen to his valid concerns about safety and overtime issues, rather than retaliate against Bentley for voicing his concerns.

84. ConocoPhillips owed a duty to Bentley not to violate his constitutional rights to privacy and to bear arms.

85. ConocoPhillips breached its legal duties to Bentley.

86. As a result of ConocoPhillips' negligence, Bentley suffered damages.

COUNT FIVE – BREACH OF CONTRACT

87. Bentley repeats and realleges Paragraphs 1 through 86 of this Complaint as if fully set forth herein.

88. ConocoPhillips promised Bentley that he would be paid for the hours he worked, that he would be paid overtime consistent with applicable law, and that he would be provided a rotating schedule that would allow sufficient time off to hunt, recreate, and rest.

89. Bentley accepted the position offered by ConocoPhillips and fulfilled his part of the bargain.

90. ConocoPhillips breached its contractual obligations to Bentley when it refused to provide the promised rotating schedule.

91. ConocoPhillips breached its contractual obligations to Bentley when it refused to allow sufficient time off, thereby creating a hazardous working environment.

92. ConocoPhillips breached its contractual obligations to Bentley when it refused to

pay overtime, in violation of applicable law.

93. ConocoPhillips breached its contractual obligations to Bentley when it refused to pay him for all the hours that he worked.

94. As a result of ConocoPhillips' breaches of contract, Bentley suffered damages.

COUNT SIX – BREACH OF THE IMPLIED COVENANT

95. Bentley repeats and realleges Paragraphs 1 through 94 of this Complaint as if fully set forth herein.

96. In every contractual relationship is an obligation of good faith and fair dealing.

97. ConocoPhillips breached the implied covenant of good faith and fair dealing when it refused to provide the promised rotating schedule.

98. ConocoPhillips breached the implied covenant of good faith and fair dealing when it refused to allow sufficient time off, thereby creating a hazardous working environment.

99. ConocoPhillips breached the implied covenant of good faith and fair dealing when it refused to pay overtime, in violation of applicable law.

100. ConocoPhillips breached the implied covenant of good faith and fair dealing when it refused to pay him for all the hours that he worked.

101. As a result of ConocoPhillips' breaches of the implied covenant of good faith and fair dealing, Bentley suffered damages.

COUNT SEVEN – FAILURE TO PAY WAGES

102. Bentley repeats and realleges Paragraphs 1 through 101 of this Complaint as if fully set forth herein.

103. Bentley worked regular hours during his last pay period with ConocoPhillips for

which he did not receive payment.

104. The wages from these regular hours worked by Bentley were due to Bentley no later than Bentley's next regular pay period, which ended on November 30, 2008.

105. ConocoPhillips also subtracted \$384.77 from Bentley's last paycheck.

106. The amount of \$384.77 was due to Bentley no later than Bentley's next regular pay period, which ended on November 30, 2008.

107. ConocoPhillips' refusal to pay Bentley for all of the regular hours he worked and for the \$384.77 it subtracted from his last paycheck is in violation of Section 29-3-205, Montana Code Annotated, and other applicable law.

108. As a result of ConocoPhillips' statutory violation, Bentley suffered damages.

COUNT EIGHT – FAILURE TO PAY OVERTIME

109. Bentley repeats and realleges Paragraphs 1 through 108 of this Complaint as if fully set forth herein.

110. Bentley worked hours of overtime, for which he was only compensated at his regular hourly wage rate, not 1 ½ times the hourly wage rate.

111. ConocoPhillips' refusal to pay overtime constitutes a violation of Section 29-3-405, Montana Code Annotated, and other applicable law.

112. As a result of ConocoPhillips' statutory violation, Bentley suffered damages.

COUNT NINE – WRONGFUL DISCHARGE

113. Bentley repeats and realleges Paragraphs 1 through 112 of this Complaint as if fully set forth herein.

114. ConocoPhillips discharged Bentley effective November 14, 2008.

115. ConocoPhillips discharged Bentley in retaliation for Bentley's reporting a violation of public policy.

116. ConocoPhillips discharged Bentley without good cause after Bentley had completed his probationary period of employment.

117. ConocoPhillips discharged Bentley in violation of its own written personnel policy.

118. As a result of ConocoPhillips' wrongful discharge, Bentley has incurred damages.

COUNT TEN – PUNITIVE DAMAGES

119. Bentley repeats and realleges Paragraphs 1 through 118 of this Complaint as if fully set forth herein.

120. ConocoPhillips unlawful acts and omissions were malicious, fraudulent, willful, wanton and/or oppressive.

121. ConocoPhillips' conduct warrants the imposition of punitive damages.

WHEREFORE, Bentley prays for judgment against ConocoPhillips as follows:

1. For reasonable compensatory damages.
2. For punitive damages to punish ConocoPhillips for its malicious conduct.
3. For reasonable attorneys' fees incurred in this action.
4. For costs of suit incurred in this action.
5. For statutory penalties arising from ConocoPhillips' failure to pay wages and overtime.
6. For such other and further relief as the Court deems proper.

DATED this 2nd day of January, 2009.

BOONE KARLBERG P.C.

By: /s/ Scott M. Stearns
Scott M. Stearns
Thomas J. Leonard
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all fact issues in the above-entitled case.

DATED this 2nd day of January, 2009.

BOONE KARLBERG P.C.

By: /s/ Scott M. Stearns
Scott M. Stearns
Thomas J. Leonard
Attorneys for Plaintiffs