

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

JAMES MORELAND)	
)	Civil Action No. 1:12-cv-00100-SA-DAS
Plaintiff)	
)	
v.)	
)	
MARIETTA WOOD SUPPLY, INC.,)	
)	
Defendant.)	JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff, by and through his attorney, for his Complaint allege, upon knowledge as to himself and otherwise upon information and belief, as follows:

I. PRELIMINARY STATEMENT

1. This is a civil action brought pursuant to 42 U.S.C. § 2000 et seq., Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, for unlawful discrimination based on religious beliefs and retaliation suffered for engaging in protected activity.

2. This is an action to recover actual, nominal, compensatory/emotional and punitive damages for unlawful discrimination based upon religious beliefs. Additionally, Plaintiff seeks actual, nominal, compensatory/emotional and punitive damages because of the retaliatory action taken against him after he complained of the discriminatory treatment suffered at the workplace.

3. The relief Plaintiff seeks is supported by satisfactory proofs, including the public records, facts and other documentation referenced throughout the Complaint.

4. Aside from the damages previously stated, Plaintiff seeks the costs of litigation, including reasonable attorney's fees.

II. JURISDICTION

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3)(4), which confers original jurisdiction on federal district courts to redress the deprivation of rights, privileges and immunities as stated herein. It also has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

III. VENUE

6. Venue is proper in the United States District Court for the Northern District of Mississippi, Eastern Division, pursuant to 28 U.S.C. § 1391(b), because the claims arise in Prentiss County, Mississippi.

IV. IDENTIFICATION OF PARTIES.

7. Plaintiff, JAMES MORELAND, is an adult resident citizen of 95 County Road 5481, Baldwin, Mississippi 38824.

8. Defendant, MARIETTA WOOD SUPPLY, INC., is a Mississippi corporation doing business at 349 Highway 371, Marietta, Mississippi 38856. It may be served with process upon its registered agent, DANIEL TUCKER, located at 109 North College Street, Booneville, Mississippi 38829. The Defendant is an employer within the meaning of Title VII.

VI. STATEMENT OF FACTS

9. Plaintiff filed a charge with the Equal Employment Opportunity Commission (hereinafter "EEOC"), attached hereto as Exhibit "A," related to religion and retaliation claims and has received the right to sue letter dated April 27, 2012, attached hereto as Exhibit "B."

10. Plaintiff was employed by Defendant for four (4) years. Specifically, Plaintiff began his employment in 2008 and was terminated on January 23, 2012. Plaintiff was hired by Defendant to fill the position of a truck driver and he remained at that position until he was terminated.

11. Plaintiff had thirty-two (32) years of experience driving as truck and for thirty (30) of those years Plaintiff maintained a safe driving record.

12. Plaintiff had a pristine work record that was devoid of any written reprimands while employed by Defendant. Moreover, Plaintiff always accepted the work assigned to him and performed his duties without incident.

13. Plaintiff's employment with Defendant went relatively smooth until Plaintiff was assigned a new truck. Defendant had recently purchased a new truck and asked Plaintiff if he would like to drive the new truck. Instead of taking the new truck, which was nicer than the older trucks, Plaintiff passed on the truck because another driver employed by Defendant had expressed interest in driving the new truck.

14. Unlike Plaintiff who drove local deliveries, this driver drove inter-state deliveries as far away as Kentucky. Plaintiff, thus, agreed to let this driver take the new truck because it was the right thing to do. In turn, Defendant assigned Plaintiff another truck from their fleet.

15. The truck Defendant assigned Plaintiff had a jumbo sized "Jesus Saves" decal on the outside of the sleeper cabin. This decal was visible to the naked eye.

16. This decal was not standard issue for the truck. Instead, another employee had asked Defendant if they could place the "Jesus Saves" decal on the truck and Defendant agreed.

17. After he was told to drive the "Jesus Saves" truck, Plaintiff approached Lisa Pharr, Defendant's Vice President, and expressed his discomfort about the decal. Plaintiff specifically asked that the "Jesus Saves" decal be removed or he be permitted to cover it so it was no longer visible.

18. Though a Christian, Plaintiff does not believe his showboating his faith. He strongly objects to treating Jesus' name as if it was plastered on a marquee on the Vegas Strip.

19. Plaintiff's objections to the "Jesus Saves" truck are not rooted in an opposition to Jesus, but instead he sincerely believes that advertising one's faith in such a manner is not

appropriate. Furthermore, Plaintiff follows the dictates of Matthew 6, in which Christians are told pray privately in contrast to the hypocrites who use prayer and religion to grandstand. Plaintiff, thus, sincerely believes that driving a “Jesus Saves” truck runs afoul of his sincerely held Christian beliefs.

20. After Plaintiff complained to Mrs. Pharr, Mrs. Pharr told Plaintiff she would discuss the issue with Craig Pharr, her husband and Defendant’s president.

21. Rather than address my concern over the “Jesus Saves” truck, Mr. & Mrs. Pharr ignored Plaintiff’s complaint and never informed them of a decision as to his complaint. Instead, Plaintiff was assigned a delivery/order in which he had to drive the “Jesus Saves” truck. Defendant assigned Plaintiff this delivery despite the fact it was fully aware that Plaintiff had voiced a sincerely held objection to driving the truck.

22. Because Plaintiff did not wish to drive a truck that violated his sincerely held beliefs, Plaintiff covered the decal with black duct tape so it would not be visible. The truck was black and the duct tape did not damage the truck.

23. Plaintiff delivered at least two or three loads in the truck with the “Jesus Saves” decal covered by the duct tape. While Plaintiff was delivering a load Mrs. Pharr radioed Plaintiff and asked if he had covered the “Jesus Saves” decal. Plaintiff said that he did and Mrs. Pharr asked to meet with Plaintiff when he returned to Defendant’s main office.

24. Upon returning, Mrs. Pharr questioned Plaintiff about covering the “Jesus Saves” decal. Plaintiff restated his religious opposition to the decal and said he did not want to drive the truck with the decal visible.

25. Mrs. Pharr told Plaintiff that the duct tape would be removed so that the “Jesus Saves” decal would be visible. Plaintiff said he could not drive the truck if the decal was visible because it was contrary to his sincerely held religious beliefs. Mrs. Pharr gave Plaintiff the ultimatum of driving the truck with the “Jesus Saves” decal uncovered and visible or to go home.

26. At this time Plaintiff informed Mrs. Pharr that he would seek legal representation if he was forced to drive the truck in violation of his sincerely held religious beliefs.

27. Later that day Plaintiff met with Jimmy Pharr, one of the Defendant's founders, and Plaintiff reiterated his sincerely held religious beliefs. He further stated he could not drive the truck so long as it had the decal on it.

28. Defendant told Plaintiff to load his truck and then go home. Plaintiff asked if the decal would be removed from the truck he was assigned and Defendant told Plaintiff to go home for the weekend and he would have an answer on Monday. This was on Friday, January 20, 2012.

29. On Monday, January 23, 2012, Plaintiff reported for work and was terminated. He asked whether he was fired because of his work or his religious beliefs. Defendant stated Plaintiff was a good driver.

VII. ALLEGATIONS OF LAW

30. At all times relevant, Plaintiff was a Christian and a member of the Church of Christ.

31. At all times relevant Plaintiff had the sincerely held belief that it was inappropriate to showboat his faith and drive a truck with a "Jesus Saves" decal.

32. At all time relevant, Plaintiff made complaints about activities protected under the applicable anti-discrimination statutes.

33. At all times relevant, Plaintiff was qualified for the position of truck driver.

34. At all times relevant, Plaintiff suffered an adverse employment action when he was terminated by Defendant on or about January 23, 2012.

35. At all times relevant, Plaintiff was (i) replaced by someone outside of the protected class of religion, (ii) replaced by someone who held differing religious beliefs and/or (iii) otherwise discharged because of his religious beliefs.

36. At all time relevant, Plaintiff suffered an adverse employment action as a result of discrimination based on his sincerely held religious beliefs.

37. At all time relevant, Plaintiff engaged in protected activity when he notified Defendant of his religious opposition to driving a truck with a “Jesus Saves” decal and informed Defendant he would seek legal counsel if he was forced to drive the said truck.

38. At all time relevant, there was a causal link between Plaintiff’s protected activity and his termination.

39. At all time relevant, Defendant’s did not have a non-discriminatory/retaliatory reason to terminate Plaintiff.

40. At all time relevant, Plaintiff would not have been discharged by Defendant but for his complaints about protected activity.

41. At all time relevant, Plaintiff would not have been discharged by Defendant but for his sincerely held religious beliefs.

42. At all time relevant, Defendant’s decision to terminate Plaintiff was substantially motivated by his sincerely held religious beliefs.

44. At all time relevant, Defendant’s decision to terminate Plaintiff was substantially motivated by his decision to engage in protected activities.

45. As a result of Defendants’ actions, Plaintiff was unlawfully terminated because of his sincerely held religious beliefs.

46. As a result of Defendants’ actions, Plaintiff was unlawfully terminated because he complained about Defendant’s discriminatory practices regarding his religious beliefs.

47. The actions of Defendant are so outrageous such that punitive damages are due.

48. Plaintiff has suffered substantial mental anxiety and stress.

**VIII. FIRST CAUSE OF ACTION –42 U.S.C. § 2000 et seq.,
(Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 -
Religion)**

49. Paragraphs 1 – 48 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

50. The unlawful actions of Defendant, as alleged herein, constituted an unlawful discharged based on religious beliefs.

51. As a direct and proximate cause of Defendant’s actions, Plaintiff’s rights, as guaranteed by Title VII, were injured.

WHEREFORE Plaintiff prays for relief against all Defendants as set forth below.

**IX. SECOND CAUSE OF ACTION – 42 U.S.C. § 2000 et seq.,
(Title VII of the Civil Rights Act of 1964,
as amended by the Civil Rights Act of 1991 - Retaliation)**

52. Paragraphs 1 - 51 of the Complaint are incorporated herein by reference, the same as being plead in full.

53. The unlawful actions of the Defendant, as alleged herein, constituted retaliation against Plaintiff for engaging in protected activity.

54. As a direct and proximate cause of Defendant’s actions, Plaintiff’s rights, as guaranteed by Title VII, were injured.

WHEREFORE Plaintiff prays for relief against Defendant as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendants’ actions, as herein described, violated Plaintiff’s rights under the Title VII;
- c. Award Plaintiff nominal, actual, compensatory/emotional and punitive damages against Defendant for its discriminatory and retaliatory actions, as defined by Title VII;

- d. Award Plaintiff his costs of litigation, including reasonable attorney's fees and expenses, pursuant to 42 U.S.C. sec. 1988 and/or 20 U.S.C. sec. 1400 et seq.;
- e. Grant such other relief to which Plaintiff may be entitled or as this Court deems necessary and proper.

Respectfully submitted,

/s/ Joseph R. Murray, II, Esq.

Joseph R. Murray, II
MS Bar #101802
MURRAY LAW FIRM, PLLC
104 South Commerce Street
Ripley, MS 38663
(662) 993-8010 (telephone)
(662) 993-8011 (facsimile)
jrm@joemurraylaw.com