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ATTORNEYS FOR PLAINTIFF

SUSAN LAURITZEN,

Plaintiff,

v.

FOLEY, INC., a New Jersey Corporation,
MICHAEL HELD; EDWARD J. FOLEY
III, SUSAN CONNELLY; JOHN AND
JANE DOES 1-100.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO.

L. 8038-08

CIVIL ACTION

COMPLAINT AND JURY DEMAND

Plaintiff Susan Lauritzen, by and through her attorneys, by way of Complaint
against the Defendants, says as follows:

PARTIES

1. Plaintiff Susan Lauritzen is natural person currently residing at 38 Orris Avenue, Piscataway, New Jersey.

2. Defendant Foley, Inc. ("Foley") is a corporation organized and existing under the laws of New Jersey, with its principal place of business at 855 Centennial Avenue, Piscataway, New Jersey. Foley is in the business of selling and leasing heavy construction machinery.

3. Defendant Michael Held at all relevant times was employed by Defendant Foley as the Vice President of Human Resources.

4. Defendant Edward J. Foley, III was at all relevant times employed by Defendant Foley as the Chief Executive Officer.

5. Defendant Susan Connelly was at all relevant times employed by Defendant Foley as the Vice President and Chief Operating Officers.

INTRODUCTION

6. Plaintiff Susan Lauritzen was terminated from her employment with Defendant Foley because she had discovered, reported, and complained about a systematic and longstanding fraud committed by the company against its own employees with respect to wages. Ms. Lauritzen, who was employed as Payroll Administrator, discovered that the company was purposefully, fraudulently and illegally altering its employees "swipe in" and "swipe out" times on its computerized time-clock system in order to deprive its employees of their earned pay.

7. Ms. Lauritzen discovered that this illegal scheme had victimized numerous employees for years, including herself.

8. Upon reporting this conduct to the Human Resources Manager, Ms. Lauritzen was advised that only employees affected for a *single month* would be reimbursed their unpaid wages, even though other employees had been fraudulently and illegal deprived of wages for years. Ms. Lauritzen also learned that the employee that had been making the fraudulent alterations on the time-clock computer system on behalf of the company would be allowed to continue to work in Human Resources and continue to work with payroll. Ms. Lauritzen expressed her amazement and shock to the Human Resources manager at this course of conduct by the company. Within approximately two weeks, Ms. Lauritzen was summarily terminated as a result of her protected conduct in reporting and complaining about the company's illegal and fraudulent scheme.

FACTUAL BACKGROUND

9. Ms. Lauritzen first began working with Defendant Foley in or about January 16, 2006 as a temporary worker assigned by a placement agency. Ms. Lauritzen's initial duties at Foley were to assist the Warranty Supervisor, Lisa Bayous, with warranty claims.

10. In or about May 30, 2006, Ms. Lauritzen became a full-time employee of Foley.

11. In or about July 5, 2006, Ms. Lauritzen was transferred to the Human Resources Department and began reporting to the Human Resources Manager, Ceil Mueller. Ms. Lauritzen's official title upon her transfer became Payroll Administrator. Ms. Lauritzen's job duties including filing, sorting & distributing payroll checks, providing support to mailroom, and providing switchboard support as needed. Ms. Lauritzen was also charged with updating information in Staff Files.

12. Beginning in or about the early Fall 2006, Ms. Lauritzen began to receive training on Foley's electronic time-clock system known as E-Time. Ms. Lauritzen was trained in this time-tracking system by fellow Human Resources employee Tricia Nagy.

13. Upon information and belief, Ms. Tricia Nagy worked with Foley for more than 25 years.

14. Under the E-Time system, all of Foley's hourly employees "swiped in" their work hours using key cards at designated computerized time clocks. Hourly employees' swipe in and swipe out times were thereby recorded on the company E-Time computer system.

15. Under the system as utilized by Foley, hourly employees were paid from the quarter hour as rounded up or down from the 8th minute. For example, if the E-Time clock showed that an employee swiped in at 1:06 pm, the employees would be paid from 1:00 pm. If the E-Time clock, however, showed that the employee swiped in at 1:09 pm, then the employee would be paid from *1:15 pm*.

16. Ms. Lauritzen's job duties on the E-Time system included collecting employee swipe data from the system for hourly employees, forwarding "swipe details" to the various Department Administrators, calculating overtime hours, and also inputting vacation and personal days into the E-Time system.

17. The only two computers within Foley that had access to the E-Times systems were those of Ms. Nagy and of Ms. Lauritzen.

18. After taking on her payroll duties, Ms. Lauritzen began to be approached by an employee named Latir Ndure who would request to see his swipe the detail for the week. Mr. Ndure would inquire about the number of hours he worked for that particular pay period, and

would occasionally remark that he through his swipe in or swipe out times as shows by the E-Time clock were incorrect. Ms. Lauritzen would simply respond, "This is what the clock is showing on my computer."

19. In or about mid-2007, Ms. Lauritzen began to notice that on several occasions her own swipe detail appeared to be short by 15 minutes to a ½ hour on the day the payroll was to be processed. Ms. Lauritzen began printing out her swipe detail on Tuesdays before she left work so that she could compare it on Wednesday mornings before payroll was processed.

20. On or about Wednesday, August 1, 2007, Ms. Lauritzen noticed that her swipe detail was short by ½ hour from the day before. Ms. Lauritzen printed out a copy and compared it to the print out from the day before and saw that it was clearly missing a half hour of her actual work time.

21. Ms. Lauritzen sat at her computer and tried to figure out how the Wednesday detail could possible be missing her time shown on a prior detail. When Ms. Lauritzen selected the Audit Trail Command a screen popped up on the computer showing that her original swipe time was removed and a new one was added in its place on two separate days.

22. On July 26, 2007, Ms. Lauritzen's original swipe in was at 7:53 am. She should have been paid with a 7:45 start time. However, Ms. Lauritzen's time swipe was altered to show she swiped in at 7:54, which changed her pay time to start from 8:00 am. On July 31, Ms. Lauritzen swiped in at 6:37 am, but her time was altered to 6:39am. As a result, instead of being paid from 6:30 am, she was being paid from 6:45am.

23. Ms. Lauritzen thereby discovered that the E-Time system allowed employee swipe in and swipe out times to be fraudulently altered and changed by the company without the affected employees ever knowing that this had occurred.

24. Ms. Lauritzen immediately showed the printouts of the changes made to her swipe in times to her manager, Ms. Mueller. Ms. Mueller told Ms. Lauritzen that she would speak to Trish Nagy to purportedly “find out what happened.”

25. Shortly afterward, Ms. Mueller called Ms. Lauritzen into her office where Ms. Nagy was already present. Ms. Nagy said she was “sorry” for what she had done, but claimed that she had made an error when she was supposedly making adjustments to her own time due to her smoke breaks.

26. When Ms. Nagy left the office, Ms. Lauritzen told Ms. Mueller that in using the E-Time systems the operator has to select the employee’s name and that there is no way to mistakenly be in someone else’s swipe detail, as the name appears in three different locations on the computer screen.

27. Ms. Mueller came over to Ms. Lauritzen’s computer to confirm that this was indeed the case. Ms. Lauritzen told Ms. Mueller that she would accept Ms. Nagy’s apology but could not believe her explanation. Ms. Lauritzen further stated that she believed that Ms. Nagy would not engaged in this conduct again given that Ms. Lauritzen now knew that swipe details could be altered and how to find this information on the computer.

28. Ms. Lauritzen went on vacation from June 12 through June 30, 2008. On her first day back from vacation, Ms. Lauritzen went into the E-Time system to “run the clocks” and collect swipe detail. Ms. Lauritzen received an error message stating that “employee’s need

discard," which means that the prior pay period of June 18 through June 24 was not "archived" into the E-Time system. Ms. Lauritzen proceeded to check hourly swipe details for any errors or omissions before archiving. Ms. Lauritzen accessed the audit trail command while checking employee times and discovered that employees Karen Foley and Jason Eppa had their time altered.

29. Karen Foley's actual swipe out on June 23 was 5:39 pm, which would have paid her to 5:45pm. The time was altered to 5:37 pm, which now paid her to 5:30 pm. Jason Eppa's time was altered on June 18. His actual swipe in was altered from 6:53 am to 6:54 am, which subtracted 15 minutes of his pay time.

30. Ms. Lauritzen decided to check the audit trail command for non-union hourly employees for that current pay week, which was June 25 through July 1. Ms. Lauritzen discovered employee Sylvia Lioski had her swipe detail altered on June 25 and June 27 subtracting 30 minutes from her pay time plus overtime. Employee Alison Conroy had her time altered on June 25 subtracting 15 minutes of pay time plus overtime. Employee Tracie Ciancio had her time altered on June 26, subtracting 15 minutes of pay time. Employee Tinamarie Giraud had her time altered on June 25, subtracting 15 minutes of pay time and overtime.

31. Ms. Lauritzen printed out copies of these swipe details for the employees. At the time, HR Manager Mueller was away on vacation and due to a sudden family illness was not scheduled to return until July 14.

32. Ms. Lauritzen also conducted a random audit trail in the archived section on some past and present employees. Ms. Lauritzen included Latir Ndure in that search and discovered multiple instances where Ms. Ndure's swipe detail was altered to subtract his pay

time. Ms. Lauritzen also conducted an audit trail on the archived records for employees Tracy Trent, Diane Fonseca, Karen Foley, Karen Murphy, Erin Vollers, Charlotte Allen, and Donna Nelson. Each of these employees all had their swipe details altered to the effect of subtracting their pay time.

33. On or about July 10, 2008, Ms. Lauritzen arrived at work before Tricia Nagy. At 6:58 am, Ms. Nagy enter the office, and asked Ms. Lauritzen to exit the E-Time system so that she (Nagy) could send a report to a manager. Ms. Lauritzen logged out of the system and heard Ms. Nagy hit a few strokes on her computer keyboard. Ms. Nagy then announced she was finished and that Ms. Lauritzen could go back into E-Time.

34. Ms. Lauritzen was suspicious of Ms. Nagy's request and checked to see if Ms. Nagy actually swiped in at the E-Time clock or if she manually entered her own time on her computer. The E-Time swipe detail showed that Ms. Nagy did not swipe in but entered her time on the computer.

35. Ms. Lauritzen at this time also checked the swipe detail information of Ms. Nagy's nephew, Tyler Sena, who Ms. Nagy was bringing to work with her. Mr. Sena was working with the company as summer help in the Parts Department. Although Mr. Sena was not a member of the Union, he was working in a Union shop. The Union Shop employees were subject to a very strict start time policy of 7:00 am. There were occasions that Ms. Nagy would receive phone calls from the part department advising Ms. Nagy that her nephew was late and asking where he was. Ms. Lauritzen noted that on July 10, Ms. Nagy not only entered her time on the computer rather than doing so manually at the time-clock, but she had also done so on that day for Mr. Sena as well, who did not punch in.

36. On July 11, Ms. Lauritzen ran an audit report on the E-Time system for Tyler Sena in the archived data. The report showed that on the days that Mr. Sena had arrived at work late and did not punch in by 7:00 am, Ms. Nagy had actually altered the swipe times for her nephew to fraudulently reflect him arriving before 7:00 am. Ms. Lauritzen printed out a copy of this swipe detail to show Ms. Mueller.

37. On July 14, 2008, HR Manager Mueller returned to work from her vacation and Ms. Lauritzen asked to speak to her. Ms. Lauritzen advised Ms. Mueller that she had a legal and ethical responsibility to advise her of all the fraudulent conduct she had discovered had been going on with the payroll. Ms. Lauritzen advised Ms. Mueller that she had waited from Ms. Mueller to return to work because she did not want to go above her head with the information she was about to show her. Ms. Lauritzen then showed Ms. Mueller the copies of all the employee swipe detail that she had so far discovered had been altered.

38. Ms. Lauritzen also showed Ms. Mueller the audit she ran on Ms. Nagy's nephew, Tyler Sena, showing how Ms. Nagy was altering his time to make it appear as though he was arriving on time for work.

39. On or about July 16, 2008, Ms. Nagy informed Ms. Lauritzen that her nephew Tyler Sena had quit his job at Foley and that he got another job somewhere else.

40. On or about July 17, 2008, Ms. Mueller called Ms. Lauritzen into her office and advised that Ms. Nagy was being suspended for 3 days. Ms. Lauritzen asked about the status of the employees whose pay times have been altered and whether they would be paid back. Ms. Mueller indicated that the employees whose time was altered in June 2008 would be paid back. Ms. Lauritzen asked what about the other employees whose time was altered before

June 2008, and Ms. Mueller responded “No”. Ms. Lauritzen then asked specifically about Latir Ndure. Ms. Mueller responded that Mr. Ndure had “performance issues” and therefore would not be paid back and that his time was not approved. Ms. Mueller stated Ms. Nagy had admitted to altering the swipe details on the employees but had denied altering or doing anything to her nephew’s time.

41. Ms. Lauritzen expressed her shock to Ms. Mueller’s at the company’s course of conduct given the information provided regarding the fraudulent payroll administration. Ms. Mueller responded that Ms. Lauritzen’s “problem” was that she tended to see things only in ‘black or white’ and that she had internalized the issue. Ms. Lauritzen stated that Ms. Nagy was getting a slap on the wrist and should not be allowed to work in Human Resources and should be transferred. Ms. Mueller responded that this was “not going to happen.”

42. Ms. Lauritzen pointed to a Foley Company Values poster on the wall, the first value being “TRUST.” Ms. Lauritzen stated “you might as well throw that sign right out the window” because the “this Company is not who they say they are.” Ms. Mueller leaned across the table and said “You have a decision to make, do what you have to do Susan.” Ms. Mueller stated that the company got a lawyer involved and that Defendants Susan Connolly and Mike Held made the decision not to pay employees who were denied earned pay prior to June 2008. Ms. Lauritzen expressed her belief that this decision was morally wrong and illegal.

43. On or about July 28, 2008, Ms. Lauritzen received an email from Ms. Nagy instructing her to retro-pay the employees who had their swipe details altered in June 2008.

Ms. Lauritzen did not receive any instruction to repay employees who had their swipe details altered prior to June 2008.

44. On August 1, 2008, Ms. Lauritzen was called into Ms. Mueller's office and summarily terminated. Ms. Lauritzen was told that that every department was reducing its staff by one employee and that she was the one being eliminated from the Human Resources Department.

45. Ms. Nagy had nothing at all personally to gain from altering employee swipe details and depriving them of earned pay. Upon information and belief, in fraudulent altering the swipe details, Ms. Nagy was at all times acting under the instruction of and on behalf of Defendant Foley's upper management.

46. Defendant Foley's conduct in altering its employees' swipe details as a means of depriving its employees of earned pay is a violation of the federal Fair Labor Standard Act and the New Jersey Wage Law. Defendant Foley's conduct exposes it to civil liability to its employees, as well as penalties and sanctions, including potential criminal penalties.

47. Upon information and belief individual Defendants Michael Held, Edward J. Foley, III, and Susan Connelly were at all relevant times the decision-makers in terminating Ms. Lauritzen in retaliation for her reporting and complaining about Defendant Foley's illegal and fraudulent conduct.

COUNT I – VIOLATION OF CEPA

48. Plaintiff hereby incorporates and restates the allegations contained in the preceding paragraphs as if set forth at length herein.

49. Ms. Lauritzen was terminated by Defendants in violation of Conscientious Employee Protection Act, N.J.S.A. 34:19-1 *et seq.*

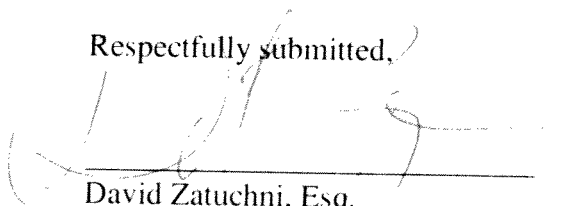
50. As a result of Defendants' unlawful conduct, Ms. Lauritzen was subjected to job detriment and substantial economic loss.

51. Also as a result of Defendants' unlawful conduct, Ms. Lauritzen has been subjected to significant mental anguish, embarrassment, stress, anxiety, and humiliation.

WHEREFORE, Plaintiff demands the following damages and relief:

- a. Judgment in favor of the Plaintiff and against the Defendants;
- b. Compensatory damages;
- c. Punitive damages;
- d. Attorneys fees;
- e. Costs of suit;
- f. Any other relief that this Court deems just and equitable.

Respectfully submitted,



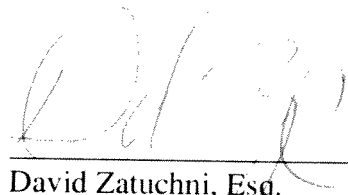
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Dated:

9/22/07

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that this matter in controversy is not the subject of other actions pending in any court or arbitration proceedings, or any such contemplated other actions or arbitration proceedings.



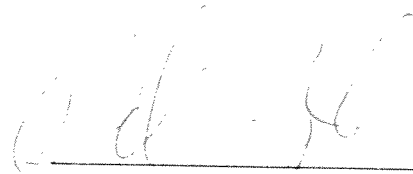
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Dated:

9/22/08

DESIGNATION OF TRIAL COUNSEL

David Zatuchni, Esq. is hereby designated as trial counsel in this matter.




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Dated:

10/2/08

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues and claims.



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9/22/08