

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----X

NATHALIE COLON,

No. 23 Civ. 0055 (JCH)

Plaintiff,

AMENDED COMPLAINT

- against -

THE F.A. BARTLETT TREE EXPERTS CO.,
and JEFFREY GIBERSON, and
GARY PALOMBA, *in their individual and
professional capacities.*

Defendants.

-----X

Plaintiff Nathalie Colon hereby brings claims against Defendants The F.A. Bartlett Tree Experts Co. (the “Company,” or “FABTEC”) and Jeffrey Giberson and Gary Palomba (the “Individual Defendants”) (altogether, “Defendants”), by alleging and averring as follows:

NATURE OF THE CASE

1. FABTEC purports to be the world’s leading scientific tree and shrub care company, maintaining trees for residential and commercial customers from 100 offices worldwide.
2. FABTEC also claims that it “work[s] hard to operate as an organization that treats clients, employees, and competitors with integrity.” Unfortunately, FABTEC treated Plaintiff Nathalie Colon, its highly accomplished former Human Resources (“HR”) Manager of Benefits, with anything but integrity. Rather, FABTEC systematically and unlawfully discriminated and retaliated against Ms. Colon because of her race (Latinx/Hispanic), sex, disability status, and for seeking to enforce her Family Medical Leave Act (“FMLA”) rights, culminating in its decision to unlawfully fire Ms. Colon in December 2020.
3. Incredibly, despite unlawfully terminating Ms. Colon’s employment in 2020, FABTEC has continued its campaign of unlawful harassment, discrimination, and retaliation against

her to this day by filing meritless and frivolous counterclaims in this matter for alleged actions she purportedly took during her FABTEC employment. Not only were these claims brought only after Ms. Colon instituted this action (demonstrating their bad-faith basis), but the claims are directly contradicted and rendered frivolous based on FABTEC's own business records which were ultimately incorporated into Ms. Colon's 2020 W-2 income tax form from FABTEC.

4. Specifically, FABTEC claims — with absolutely no evidence and despite business records stating the complete opposite — that it unwittingly had to pay “thousands of dollars” in health insurance “contributions” in 2020 based on Ms. Colon's purportedly fraudulent conduct (improperly enrolling herself and certain family members in the Company-sponsored health plan). See Dkt. No. 13 (“Counterclaims”) at ¶ 46. Yet, Box 12, Code DD of Ms. Colon's 2020 W-2 form — which reports the amount paid by an employer and portion contributed by an employee for employer-sponsored health care coverage (see <https://www.irs.gov/affordable-care-act/form-w-2-reporting-of-employer-sponsored-health-coverage>) — unequivocally states that merely **\$28.62** (and not “thousands of dollars”) was spent in total in connection with Ms. Colon's FABTEC-sponsored health care coverage in 2020.

5. In fact, even though FABTEC first claimed that Ms. Colon engaged in fraud only after the Company unlawfully terminated her employment in December 2020 (in a clear attempt to gin up “after-acquired evidence” and a pretext to mask its unlawful termination decision), and claimed that it wrongfully made thousands of dollars in contribution payments on her behalf, at no point has ABTEC ever specified (or even approximated to some reasonable level of certainty) the actual amount that the Company supposedly wrongfully paid. This glaring omission was not an oversight or attempt to keep relevant information “close to the vest” during a legal dispute; rather FABTEC knew all along that it had no proof or ability to quantify that it suffered any actual damages because

of Ms. Colon's supposed fraud (or else it would have demanded repayment of such amount), and merely made these baseless and defamatory fraud allegations to deter Ms. Colon from vindicating FABTEC's violation of her rights.

6. Sadly, FABTEC has now resorted to abusing the legal process to further punish Ms. Colon for engaging in protected activity by filing objectively false and frivolous counterclaims that are directly contradicted by official business information and records (something which FABTEC has been unable to explain).

7. While FABTEC has tried to claim that it had to pay a higher amount in health insurance premiums to the company administering its health insurance plan, Cigna, due to Ms. Colon's fraudulently enrollment in its company-sponsored health care plan because the amount FABTEC must pay in insurance premiums is supposedly based on the number of employees enrolled in the plan each month, this is patently false. Rather, FABTEC sponsors a self-insured (or "self-funded") group health plan, meaning that it collects employee premiums via payroll and pays for each out of pocket health insurance claim as they are incurred instead of paying a fixed premium to the insurance carrier. See <https://www.sjia.org/i4a/pages/index.cfm?pageid=7533>.

8. In other words, FABTEC does *not* pre-pay for health insurance coverage. Any payments made by employees for their health coverage are still handled through FABTEC's payroll processes, but instead of being sent to an insurance company (here, Cigna) for premiums, the contributions are held by the employer until such time as claims become due and payable.

9. Importantly, Ms. Colon did not make any claims through FABTEC's health care plan in 2020.

10. Quite simply, there exists no evidence that FABTEC had to incur "thousands of dollars" in premiums because Ms. Colon fraudulently participated in the Company's health insurance

plan. And even if FABTEC's claims about how the amount in health insurance premiums it must pay is determined hold any water (which they do not), this still does not explain why Ms. Colon's 2020 W2 form only identified \$28 worth of health insurance costs incurred by and on behalf of her that year.

11. Moreover, FABTEC has brought another equally frivolous and baseless counterclaim against Ms. Colon for purportedly violating her "fiduciary duty" as an employee when she surveyed a small subsection of FABTEC's workforce – certain administrative assistants – to gauge their interest in FABTEC providing health insurance coverage for certain fertility-related procedures. To be sure, this was an issue that had been debated and discussed internally at FABTEC for years, proven by a multitude of internal correspondence. It is simply ludicrous and strains credulity for FABTEC to assert that Ms. Colon, an HR and benefits employee, somehow only sought information about FABTEC employees' views on the types of medical procedures they wished FABTEC's insurance plan would cover in furtherance of some disloyal scheme and for her own personal gain. If an employer were to accuse a worker who engages in protected activity of breaching her fiduciary duties by merely performing work consistent with her job responsibilities, workers would be frightened to oppose unlawful employment practices.

12. Moreover, not only is FABTEC's counterclaim for breach of fiduciary duty belied by fact and reality, but it is legally meritless since FABTEC does not even attempt to articulate in any reasonably tangible fashion what actual damages it suffered from Ms. Colon's alleged failure to meet her fiduciary obligations – and indeed, the Company suffered no damages or harm.

13. As described herein, FABTEC's actions against Ms. Colon, including its continued unlawful retaliation against and punishment of Ms. Colon for engaging in protected activity and filing this suit by subjecting her to meritless and clearly retaliatory counterclaims, have violated the FMLA,

29 U.S.C. §§ 2601, et seq., Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (“Section 1981”), Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., (“Title VII”), the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101, et seq., the Connecticut Fair Employment Practices Act, CT General Statutes §§ 46a-51 et seq. (“CFEPA”), and the common law of defamation.

JURISDICTION, VENUE, AND PROCEDURAL REQUIREMENTS

14. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 as this matter is based on claims under the FMLA, Section 1981, Title VII, and the ADA.

15. The Court has supplemental jurisdiction over Plaintiff’s Connecticut law claims pursuant to 28 U.S.C. § 1367 as they relate to the other claims in this action and form part of the same case or controversy.

16. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b)(1) and (2), as Defendant FABTEC resides within the District of Connecticut, and a substantial part of the acts complained of herein occurred in this district.

17. Plaintiff timely filed charges of discrimination related to the facts and allegations in this matter with the Equal Employment Opportunity Commission (“EEOC”) and Connecticut Commission of Human Rights (“CHRO”) and filed this action with 90 days of receiving: (i) a Notice of Right to Sue from the EEOC on October 20, 2022; and (ii) receiving a Release of Jurisdiction from CHRO on December 12, 2022, satisfying the procedural prerequisites for the commencement of the instant action.

PARTIES

18. Plaintiff Nathalie Colon is an adult resident of the state of New York and worked at FABTEC between April 2018 and December 2020.

19. At all times relevant hereto, Defendant FABTEC was and is a Connecticut

corporation, and maintains its principal place of business at 1290 East Main Street, Stamford, Connecticut 06902.

20. Upon information and belief, Defendant FABTEC employs over 2,000 employees on a full-time equivalent basis and thus is subject to the FMLA.

21. At all times relevant hereto, Defendant Jeffrey Giberson was an adult resident of New York who held the position of Director of Human Resources at FABTEC.

22. At all times relevant hereto, Defendant Giberson was Plaintiff's supervisor and had supervisory authority over Plaintiff and control over the terms and conditions of her employment.

23. At all times relevant hereto, Defendant Gary Palomba was an adult resident of Connecticut who held the position of Controller at FABTEC.

24. At all times relevant hereto, Defendant Palomba was Plaintiff's supervisor and had supervisory authority over Plaintiff and control over the terms and conditions of her employment.

25. At all times relevant hereto, Defendants were Plaintiff's "employers" pursuant to all applicable statutes.

FACTUAL ALLEGATIONS

I. Plaintiff's Successful Career in the Human Resources Field

26. Plaintiff joined FABTEC in April 2018 with over thirteen years of experience in Human Resources.

27. Plaintiff attained a B.S. in Healthcare Administration from Universidad Metropolitana, a college in San Juan, Puerto Rico.

28. Plaintiff began her Human Resources career at Humana, where she managed the day-to-day administration of the company's employee benefits program.

29. Then, from 2011 to 2015, Plaintiff was the Human Resources Employee Benefits Administrator at HUB International.

30. Plaintiff was then Human Resources Relations Manager at AFLAC from 2015 to 2017.

31. Accordingly, Plaintiff joined FABTEC in 2018 with a plethora of relevant experience that would help her excel in her role as Human Resources Manager of Benefits.

II. Plaintiff's Successful Employment at FABTEC

32. Plaintiff was hired to be FABTEC's HR Manager of Benefits, a position that had been open for several years.

33. FABTEC offers 15 lines of medical benefit coverage to over 1,900 employees. Plaintiff was responsible for all employee benefits related issues, and for maintaining vendor relationships.

34. Plaintiff was the only Spanish-speaking HR employee, which was remarkable because 60% of FABTEC's workforce spoke Spanish.

35. During her tenure at FABTEC, Plaintiff received numerous of accolades and was recognized for her strong performance by peers, colleagues, supervisors, and business associates.

III. Plaintiff is Disparately Treated and Subjected to a Race-Based Hostile Work Environment Because She is a Latinx Woman

36. Throughout her employment at FABTEC, Mr. Giberson, Plaintiff's supervisor, created a hostile work environment for Plaintiff based on her race and ethnicity/national origin.

37. For instance, when Plaintiff asked Mr. Giberson if FABTEC was engaging in diversity efforts considering its almost all-white management team, Mr. Giberson responded: "what do you think, they want a zoo here?"

38. Mr. Giberson also insulted Plaintiff for having a "thick accent" whenever she incorrectly pronounced words in English, her non-native tongue.

39. Mr. Giberson also ridiculed the legitimacy of Plaintiff's college degree because she

earned it at a Puerto Rican college.

40. Moreover, if he ever needed Plaintiff to translate for a Spanish speaker, Mr. Giberson would offensively say to Plaintiff: “Do you talk Mexican?”

41. Mr. Giberson would pretend as if he did not understand what Plaintiff was saying, causing her to become frustrated so that he could loudly yell, “those Puerto Ricans sure are hot-heads!”

42. Mr. Giberson would also ask Plaintiff whether she carried a knife because that was what he claimed Puerto Ricans did in the 1990’s.

IV. Plaintiff is Retaliated Against for Engaging in Protected Activity

43. Towards the end of 2019, Plaintiff complained to Mr. Giberson about how Mr. Palomba told Payroll Supervisor Marilyn Brennan, who is in her mid-60’s, to “stop showing your age,” after she expressed concerns about an HR systems platform migration that was underway.

44. Ms. Brennan, who had worked at FABTEC for 25 years, instantly felt demoralized by Mr. Palomba’s berating and humiliating remarks.

45. When Plaintiff objected to Mr. Palomba’s ageist remark, Mr. Palomba insultingly gesticulated his middle finger at her.

46. Plaintiff complained to Mr. Giberson about Mr. Palomba’s abusive and harassing disturbing behavior, but nothing was done.

47. Mr. Giberson began instead to embark upon a campaign of unlawful discrimination and retaliation against Plaintiff for standing up to Mr. Palomba’s discriminatory and harassing behavior.

48. For example, on January 2, 2020, Mr. Giberson accused Plaintiff of insubordination for taking a vacation day, even though she had previously requested and confirmed this date with him in writing.

49. Further, in a barrage of high-handed and abusive text messages sent that day, Mr.

Giberson suddenly began to micromanage Plaintiff's work and interactions with Mr. Palomba.

50. Mr. Giberson also threatened to reprimand Plaintiff if she did not follow his order to ignore Ms. Brennan's complaint of discrimination based on Mr. Palomba's remarks. When Plaintiff objected, Mr. Giberson became unhinged and loudly yelled at her: "Get out! Get out of my office now!"

51. Mr. Giberson menacingly wagged his finger at her, stating in a belittling tone: "you are not Bartlett [material] ... you are lucky I am letting you keep your job ... I need you to know how to fall in line if you want to keep it."

V. Plaintiff is Subjected to a Gender-Based Hostile Work Environment

52. Approximately two weeks later, during a January 16, 2020, meeting in Mr. Palomba's office, Mr. Palomba stated to Mr. Giberson (referring to Plaintiff): "let's wait until she leaves, then us 'guys' can go on to do the real work, making real decisions." Mr. Palomba was implying that Plaintiff was intellectually inferior because of her sex.

53. When Plaintiff objected to Mr. Palomba's misogynistic remark, Mr. Palomba "doubled down" by making the sexually derogatory masturbating gesture to express how little he valued Plaintiff's opinion.

54. Mr. Palomba's actions were a direct violation of FABTEC's anti-harassment policy. Nevertheless, FABTEC did nothing to discipline Mr. Palomba for his inappropriate conduct.

55. A few days later, Plaintiff learned from a colleague that Mr. Palomba had been fired at a prior job for engaging in sexual harassment.

56. Then, a week later, on January 22, 2020, Mr. Giberson wore socks visibly emblazoned with the vulgar phrase: "There are Assholes Everywhere" during a professional conference attended by Plaintiff and several other colleagues.

57. When Plaintiff and two colleagues – Human Resources Manager of Administration, Bebe Fiore, and Human Resources Manager of Recruitment, Nicole Belhumeur – told Mr. Giberson that the message on his socks made them feel uncomfortable, he dismissively called them “girls” and insisted there was nothing wrong with his attire.

58. Mr. Giberson would later refer again to female FABTEC employees as “girls” in the fall of 2020 when he summoned Plaintiff and two female colleagues into his office by yelling: “Girls, everyone in my office now!”

59. Mr. Giberson’s offensive and boorish behavior caused Plaintiff and her female colleagues to experience a hostile work environment at FABTEC that targeted them based on their sex.

60. In one instance in January 2020, as Plaintiff and Ms. Belhumeur had lunch together in Plaintiff’s office, Mr. Palomba suddenly appeared in the doorway and interrupted their conversation with trivial, non-work-related small talk. When the two women refused to enthusiastically interact with him while eating their lunches, Mr. Palomba became irate and flung a dirty paper plate he was holding into the office, almost hitting Ms. Belhumeur and Plaintiff, and leaving crumbs all over the floor.

61. Mr. Palomba then laughed loudly, deriving pleasure from the frightened reactions his threatening behavior elicited from the two women, before walking away in a grandiose manner.

62. When Plaintiff reported Mr. Palomba’s aggressive and physically threatening behavior to Mr. Giberson, he ignored her concerns.

63. When Plaintiff suggested she file a formal complaint against Mr. Palomba with senior management for his serial sex-based harassment, Mr. Giberson became angry at Plaintiff.

64. After extracting a perfunctory and insincere apology from Mr. Palomba to the effect that he was “sorry that [Plaintiff] did not know how to take a joke,” Mr. Giberson attacked Plaintiff for

being “too sensitive,” gratuitously inserting a gender stereotype into the discussion.

65. This ugliness culminated in Mr. Giberson issuing an intimidating threat and warning to Plaintiff to: “watch what you say because it will get back to me!”

66. Ultimately, Mr. Giberson forbid Plaintiff and her female colleagues from discussing internal department matters with senior management — especially FABTEC President, Jim Ingram — without his approval.

67. Ms. Fiore, a FABTEC employee of over 40 years, objected, stating: “I am not a child that can be told who I can or cannot talk to.” This comment enraged Mr. Giberson who yelled at her: “if you don’t comply, it’s insubordination and that’s final.”

68. In February 2020, Plaintiff complained to Mr. Ingram and Chief Financial Officer Carol Donnelly about Mr. Palomba’s harassment and physical aggression, Mr. Giberson’s appalling mishandling of her complaints, and Mr. Giberson’s failure to report Mr. Palomba’s sexually offensive remarks to senior management, which engendered an ongoing hostile work environment.

VI. The Retaliation Against Plaintiff Intensifies as Defendants Actively Sabotage Her

69. In March 2020, Mr. Giberson inexplicably denied Plaintiff’s request to take two paid vacation days by flippantly saying, “it’s not happening.”

70. When Plaintiff escalated this matter to Mr. Ingram, he dismissed her by saying that Mr. Giberson would “come around.”

71. One day in March 2020, Mr. Giberson, suddenly and without explanation, stood in and blocked the doorway to Plaintiff’s office in an intimidating fashion, while silently glaring at her for nearly a minute.

72. When Plaintiff politely asked him to let her pass, he said “no” and refused to move.

73. After several more moments of standing mere inches apart from each other without uttering a word, Mr. Giberson turned on his heels and stomped back to his office.

74. The next day, a shaken Plaintiff called out sick. Mr. Giberson took this opportunity to call an important meeting with 20 minutes notice, knowing that Plaintiff could not attend due to a conflicting medical appointment, effectively sabotaging her work.

75. Mr. Giberson even inaccurately documented Plaintiff's "absence" from the meeting in her personnel file.

76. A few days later, Plaintiff observed Mr. Giberson berate Ms. Fiore merely for asking questions about FABTEC's drug testing policy, screaming: "how many times are we going to talk about this -- get out of my office and figure it out!" Ms. Fiore responded, "just because you are upset, doesn't mean you can be rude and disrespectful to everyone else!"

77. Later in March 2020, Mr. Giberson scolded and berated Plaintiff in front of colleagues for "missing" an important conference call about which he failed to notify Plaintiff despite letting her peers know.

78. By being excluded from this and other similar meetings, Plaintiff was deprived of critical knowledge about the day-to-day operations of the new benefits system being implemented at the Company.

79. Mr. Giberson knew that these meetings were critical in ensuring the smooth flow of information that directly affected Plaintiff's essential job functions, reporting abilities, and overall performance.

VII. Plaintiff Engages in Further Protected Activity, Including By Making a Reasonable Workplace Accommodation Request

80. In April 2020, a white male FABTEC employee complained about being misled by FABTEC's HR department into thinking that FABTEC's insurance plan covered infertility-related services, which caused his wife to quit her job thinking these benefits were available and that she could undergo in vitro fertilization (IVF).

81. Plaintiff learned from Mr. Giberson that the male employee demanded that FABTEC pay the costs of the fertility treatment.

82. Then in May 2020, Plaintiff notified Mr. Giberson that she recently had a panic attack and was prescribed medication, and would need to have follow up doctor's visits, especially if her condition became more acute. Plaintiff also submitted a doctor's note that stated she had Attention Deficit Hyperactivity Disorder (ADHD) and Post-Traumatic Stress Disorder (PTSD). Plaintiff later submitted another doctor's note in June 2020 upon Mr. Giberson's request.

83. However, even though Mr. Giberson was aware of Plaintiff's disability and her need for reasonable time off from work to address her illness, he nonetheless issued a written discipline to Ms. Colon for failing to attend a May 8, 2020, meeting, even though Ms. Colon had to visit her doctor at that time, and Ms. Colon's work calendar (which she referred to before ever scheduling doctor's visits) suggested that this meeting had been cancelled. Thus, not only did Mr. Giberson ignore Ms. Colon's reasonable accommodation request, but he disciplined her for needing a reasonable work accommodation, i.e., to visit with her doctor to treat her mental health.

84. Within days, Plaintiff was retaliated against once again, this time by being issued an inaccurate and negative performance evaluation blaming her for certain data errors that were plainly not her fault, though Mr. Giberson teased that he would consider withdrawing the negative evaluation from Plaintiff's file if her "attitude" improved.

85. Ms. Fiore would later accept responsibility for the employee data errors that had been falsely attributed to Plaintiff. Mr. Giberson, however, failed to correct or amend Plaintiff's false performance evaluation.

86. Then, in June 2020, Plaintiff learned that FABTEC was in fact planning to compensate the white male employee who had mistakenly believed that FABTEC provided insurance coverage for

fertility treatment.

87. This preferential treatment upset Plaintiff who complained to Mr. Giberson that FABTEC was discriminating in favor of a white male employee by funding his wife's fertility treatment while inexplicably refusing to provide these benefits to the rest of the work force and its less well-off and sizable female and minority populations.

VIII. Plaintiff Escalates Her Concerns About the Company's Discriminatory Employee Benefits Decisions

88. In July 2020, Plaintiff took intermittent FMLA leave to take care of her mother as she underwent cancer treatment.

89. A few weeks later, Mr. Giberson began to deride Plaintiff for taking time off to care for her ill mother, including by making the following crude remarks: "Looking for holiday time already?"

90. Then, in August 2020, over Plaintiff's objection, FABTEC paid for the white male employee's wife's fertility treatment, while still denying the same benefit to the rest of its workforce, particularly its female employees most in need of fertility benefits.

91. Mr. Giberson continued to create a gender-based hostile work environment for Plaintiff and her female colleagues. For instance, in November 2020, Mr. Giberson told Plaintiff and Ms. Fiore that he did not care whether FABTEC's provided fertility benefits to middle-aged female workers like Plaintiff because "all of [his] swimmers are working just fine."

92. Around this time, Plaintiff notified Mr. Giberson that several employees had asked about whether FABTEC would offer fertility benefits.

93. When Plaintiff insisted that fertility benefits were important to many FABTEC employees such as herself, Mr. Giberson cruelly responded: "Forget about it, it's never going to happen. Bartlett is never going to sponsor you."

94. Days later, on November 25, 2020, Mr. Giberson announced to the staff that FABTEC

would not be providing fertility treatment benefits to employees.

IX. Mr. Giberson Unlawfully Terminates Plaintiff's Employment

95. In November 2020, Plaintiff notified Mr. Giberson that she would be submitting another FMLA leave request, this time in connection with providing care for her spouse, after she returned from a trip scheduled for later in the month.

96. Before Plaintiff could report back to work, she had to self-quarantine for 14 days upon her return because of COVID-19 guidelines, from December 2 to December 16, 2020.

97. Less than a week before she was scheduled to return to work, and just days after notifying Mr. Giberson about her second FMLA request, on December 10, 2020, and while Plaintiff was still under quarantine, Mr. Giberson terminated Plaintiff's employment.

98. Plaintiff told Mr. Giberson that she believed she was being fired unlawfully and in retaliation for her protected activities, and that the decision was discriminatory.

99. On December 12, 2020, Mr. Giberson sent Plaintiff correspondence stating that she had been fired for "continued performance issues" without any elaboration.

X. FABTEC and Mr. Giberson Defame Plaintiff

100. Mr. Giberson decided to augment the amorphous pretextual reason he cited for why he fired Plaintiff – i.e., "performance issues" – with a mendacious and disingenuous letter, dated January 22, 2021, which falsely accused Plaintiff of what is tantamount to insurance fraud and property theft.

101. Mr. Giberson accused Plaintiff of fraudulently enrolling her younger sister, Kimberly Gomez, in the Company's health insurance plan. However, this was untrue, and Mr. Giberson knew it.

102. Rather, Plaintiff, who was responsible for making sure that FABTEC's transition to a new data processing system did not impact any employee's benefits, and three other HR managers — Ms. Belhumeur, Ms. Fiore, and Mr. Giberson — put their heads together to come up with a way to

put an end to the significant disruptions in dependent coverage caused by the change in systems than began at the end of 2019. These were the same “system disruptions” about which Plaintiff was later wrongly criticized in her May 2020 negative review despite them being completely out of her control and continuing well after May 2020.

103. Plaintiff and her colleagues came up with a plan whereby Plaintiff would create a dummy account using her younger sister’s information in order to “test” the rules in place that were impacting dependent coverage. The hope was that this strategy would help determine the root cause of the system failures. Plaintiff’s sister was picked because she was within the appropriate age range for adult dependents (i.e., 19 to 26 years old).

104. This was not any type of fraudulent or nefarious scheme – and would have been incredibly bold for Plaintiff to try as it would surely be detectable ultimately and jeopardize her job and expose her to other liability.

105. In fact, Mr. Giberson approved this approach, and even told representatives from Cigna Health that Plaintiff had to “[g]erry rig” the ADP system to bypass the ongoing failures.

106. Plaintiff was also accused of fraudulently providing company health insurance to her spouse. This was untrue.

107. Rather, by 2020, Plaintiff and her spouse withdrew from coverage under FABTEC’s medical insurance plan.

108. However, Plaintiff’s spouse’s information remained in the ADP system and it too was used as a dummy account to “test” for system errors related to certain dependent coverage, just as Plaintiff’s younger sister’s credentials had been used.

109. Unfortunately, and unbeknownst to Plaintiff or her spouse prior to January 2021, a lone health care provider mistakenly processed claims involving Plaintiff’s spouse through

FABTEC's insurance plan.

110. It was ultimately determined that Plaintiff's spouse's claims were erroneously submitted by Heritage Health because its system had inadvertently defaulted to the outdated insurance coverage information it had on file from 2019 – i.e., when Plaintiff and her spouse were legitimately covered by FABTEC's health insurance plan.

111. This was a clear and obvious mistake and in no way an act of fraud or anything nefarious and would have occurred even if Plaintiff had not employed dummy accounts to test the problematic new system.

112. Mr. Giberson's manufacturing of a false narrative meant to impugn Plaintiff's reputation and character merely to create a pretext to justify his unlawful decision to fire Plaintiff constitutes further and post-termination retaliation.

113. In addition, Mr. Giberson's efforts to file a false police report against Plaintiff and telling others that Plaintiff engaged in insurance fraud constitutes defamation and slander.

XI. FABTEC Continues Its Retaliatory Campaign by Filing Frivolous Counterclaims Against Plaintiff After She Engages in Protected Activity by Filing This Suit

114. On March 20, 2023, FABTEC served an Answer to Plaintiff's original January 13, 2023, Complaint in this action, and alleged two counterclaims against Plaintiff for Breach of Fiduciary Duty and Fraud. See Dkt. No. 13.

115. The alleged fraudulent conduct and breach of fiduciary duty occurred in 2020 while Plaintiff was a FABTEC employee; yet no claims were ever brought (nor even a demand for repayment of damages caused by these alleged unlawful acts) until after Plaintiff commenced this action.

116. Nevertheless, FABTEC's counterclaims are not only clearly retaliatory, but are frivolous and supported by no evidence.

117. As discussed *supra*, FABTEC's counterclaims, which are based on FABTEC's accusation that Plaintiff wrongfully enrolled her spouse and sister on her Company-sponsored health care plan in 2020 and that Plaintiff never paid health insurance premiums resulting in FABTEC paying "thousands of dollars in extra premiums" (Dkt. No. 13 at ¶ 65), are directly contradicted and rendered frivolous based on FABTEC's own business records concerning the total amount that was paid by and on behalf of Plaintiff for health insurance in 2020. The information contained in these records were ultimately incorporated into Ms. Colon's 2020 W-2 income tax form which states, in Box 12, under code DD, that only **\$28.62** was spent in total in connection with Ms. Colon's FABTEC-sponsored health care coverage in 2020.

118. In fact, while FABTEC first accused Ms. Colon of engaging in health insurance fraud shortly after Plaintiff's firing in December 2020 (in a transparent bid to manufacture "after-acquired evidence" and a pretext for unlawful discrimination and retaliation), FABTEC failed to, at any point, provide Plaintiff with an itemization or even approximation of the amount that the Company apparently unwittingly contributed towards Ms. Colon's health care coverage in 2020. This, in and of itself, underscores the dubious nature and lack of support for FABTEC's allegations as it would behoove a potential litigant – especially a sophisticated employer like FABTEC – to at least attempt to recoup any purported monetary damages caused by an adversarial party's wrongful actions before instituting costly and protracted legal action.

119. This omission is telling and indicative of how FABTEC has likely known all along that it had no proof of any actual damages caused by Ms. Colon's supposed fraudulent conduct, but merely made and has since perpetuated these baseless and defamatory allegations to threaten and deter Ms. Colon from engaging in further protected activity – a threat that came to fruition after Plaintiff initiated this suit.

120. FABTEC has been unable to provide an explanation for why Ms. Colon's 2020 W-2 form indicates that only \$28 was spent towards her Company-sponsored health insurance coverage despite the purported "thousands of dollars" in insurance premiums that FABTEC claims it erroneously paid on behalf of Ms. Colon. However, the Company, as discussed *supra*, has attempted to claim that it had to pay more in health insurance premiums to its insurance provider Cigna because of Ms. Colon's purported misconduct because the determination of the amount which FABTEC pays in insurance premiums to Cigna is supposedly based on the number of employees enrolled in its plan each month. However, FABTEC sponsors a self-insured group health plan, and therefore collects employee premiums via payroll and pays for each out of pocket health insurance claim as the claim incurs rather than pay a certain fixed premium to its insurance carrier.

121. To put it differently, FABTEC, as a self-insured company, does not pay insurance premiums based on the *number* of employees enrolled in its healthcare plan at any one time. Instead, FABTEC collects health insurance premium payments made by employees through its payroll processes and holds onto these contributions until such time that claims become due and payable rather than send or prepay the premiums to Cigna.

122. Notably, Ms. Colon did not make any claims through FABTEC's health care plan in 2020.

123. There simply is no evidence that FABTEC had to incur "thousands of dollars" in premiums because of Ms. Colon's alleged fraudulent conduct, nor does any explanation proffered by FABTEC hold water, rendering the counterclaims meritless.

124. Furthermore, FABTEC's equally frivolous and baseless counterclaim alleging that Ms. Colon somehow violated her "fiduciary duty" as an employee when she requested feedback from a small sampling of FABTEC's workforce – certain administrative assistants – about their interest in

Company-sponsored health insurance coverage for certain fertility-related procedures fares no better. To be sure, this issue of whether FABTEC should provide fertility-related benefits to its employees was not an idea that Ms. Colon came up with on her own and sought information about for her own personal gain but had been debated and discussed internally at FABTEC for years, as corroborated by a multitude of internal correspondence. Ms. Colon's actions were clearly not done for a "disloyal" purpose or to only benefit Ms. Colon at the Company's and her colleagues' expense.

125. Rather, to accuse an employee of breaching their fiduciary duties by simply carrying out a function of their responsibilities after said employee engages in protected activity has a profound "chilling" effect and is blatantly retaliatory and improper.

126. Additionally, FABTEC utterly fails to even attempt to articulate what actual or tangible damages it has suffered because of Ms. Colon's alleged failure to abide by her fiduciary obligations, vaguely claiming "loss of employee morale and good will" (Dkt. No. 13 at ¶ 61), which only serves to corroborate the meritless nature of and retaliatory motivation behind FABTEC's decision to institute this counterclaim against Ms. Colon.

127. Due to FABTEC's continued retaliatory conduct against Ms. Colon through its filing of frivolous counterclaims, Ms. Colon has been damaged, including harm to her reputation, emotional distress, and legal fees and costs in defending against these baseless claims.

FIRST CAUSE OF ACTION
UNLAWFUL INTERFERENCE AND RETALIATION UNDER THE FMLA
(Against Defendants FABTEC and Giberson)

128. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if said paragraphs were fully set forth herein at length.

129. Section 2612(a)(D) of the FMLA states, in pertinent part: "an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period ... Because of a serious

health condition that makes the employee unable to perform the functions of the position of such employee.”

130. Section 2615(a) of the FMLA states, in pertinent part;

Interference with rights.

(1) Exercise of rights. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

(2) Discrimination. It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.

131. Plaintiff and FABTEC are subject to the FMLA, respectively, as an eligible employee and a covered employer.

132. Defendants FABTEC and Giberson interfered with Plaintiff’s FMLA rights and retaliated against Plaintiff for requesting and taking protected leave under the FMLA by terminating her employment while she was on FMLA leave and/or within days of her making an FMLA request, and continued to retaliate against Plaintiff by lodging baseless counterclaims against her in this action.

133. As such, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation under this law, including liquidated damages and attorneys’ fees and litigation costs.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF
THE ADA
(Against Defendant FABTEC)

134. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if said paragraphs were fully set forth herein at length.

135. On May 8, 2020, Plaintiff had a panic attack and was prescribed medication on an emergency basis, making her a “qualified individual with a disability” within the meaning of 42

U.S.C. § 12111 of the ADA.

136. On May 10, 2020, Plaintiff explained to Mr. Giberson that due to her panic attack, she was unable to attend a May 8, 2020, meeting. Mr. Giberson however, ignored Plaintiff's request for this reasonable accommodation, and reprimanded her for not attending the meeting.

137. On May 12, 2020, Plaintiff submitted a letter from her medical provider to Mr. Giberson which described her medical diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) and Post-Traumatic Stress Disorder (PTSD).

138. FABTEC and Giberson refused to engage in the interactive process and denied Plaintiff's request for a reasonable accommodation.

139. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses; severe emotional, psychological, and physical stress, distress, anxiety, pain, and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

140. Accordingly, as a result of FABTEC's unlawful conduct, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available under this law, including punitive damages and attorneys' fees and litigation costs.

THIRD CAUSE OF ACTION
DISCRIMINATION AND HOSTILE WORK ENVIRONMENT UNDER SECTION 1981
(Against Defendants FABTEC and Giberson)

141. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if said paragraphs were fully set forth herein at length.

142. Pursuant to 42 U.S.C. § 1981: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons

and property as is enjoyed by white citizens, and should all be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and to no other.”

143. Defendants FABTEC and Giberson engaged in unlawful employment practices prohibited by 42 U.S.C. § 1981, by discriminating against Plaintiff because of her race (Latinx/Hispanic) by treating her worse than non-Hispanic employees with respect to the terms and conditions of employment, including by unlawful firing her.

144. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses; severe emotional, psychological, and physical stress, distress, anxiety, pain, and suffering; the inability to enjoy life’s pleasures; and other non-pecuniary losses and special damages.

145. Accordingly, as a result of Defendants FABTEC’s and Giberson’s unlawful conduct, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available under this law, including punitive damages and attorneys’ fees and litigation costs.

FOURTH CAUSE OF ACTION
RETALIATION UNDER SECTION 1981
(Against Defendants FABTEC and Giberson)

146. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if said paragraphs were fully set forth herein at length.

147. As described above, Defendants FABTEC and Giberson retaliated and/or discriminated against Plaintiff for engaging in protected activities pursuant to 42 U.S.C. § 1981, including by terminating her employment, and continued to retaliate against Plaintiff by lodging baseless counterclaims against her in this action.

148. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages, including, but not limited to, economic and pecuniary losses; severe

emotional, psychological, and physical stress, distress, anxiety, pain, and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

149. Accordingly, as a result of Defendants FABTEC's and Giberson's unlawful conduct, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available under this law, including punitive damages and attorneys' fees and litigation costs.

FIFTH CAUSE OF ACTION
DISCRIMINATION AND HOSTILE WORK ENVIRONMENT UNDER TITLE VII
(Against Defendant FABTEC)

150. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

151. Based on the facts alleged herein, Defendant FABTEC has engaged in unlawful employment practices prohibited by Title VII by discriminating against Plaintiff because of and subjecting her to a hostile work environment based upon, her race (Latinx/Hispanic) and gender/sex (female).

152. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages, including, but not limited to, economic and pecuniary losses (past and future) – such as income, salary, bonuses, and other compensation that her employment entailed, severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering, the inability to enjoy life's pleasures, and other non-pecuniary losses and special damages.

153. Accordingly, as a result of the unlawful conduct of FABTEC set forth herein, Plaintiff has been damaged and is entitled to the maximum compensation available to her under this law, including, but not limited to, punitive damages.

SIXTH CAUSE OF ACTION
RETALIATION UNDER TITLE VII
(Against Defendant FABTEC)

154. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

155. Based on the facts alleged herein, FABTEC engaged in unlawful employment practices prohibited by Title VII by retaliating against Plaintiff for engaging in protected activity by complaining of discrimination based on her race (Latinx/Hispanic), and gender/sex (female), including by terminating her employment, and continued to retaliate against Plaintiff by lodging baseless counterclaims against her in this action.

156. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages, including, but not limited to, economic and pecuniary losses (past and future) – such as income, salary, bonuses, and other compensation that her employment entailed, severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering, the inability to enjoy life's pleasures, and other non-pecuniary losses and special damages.

157. Accordingly, as a result of the unlawful conduct of FABTEC set forth herein, Plaintiff has been damaged and is entitled to the maximum compensation available to her under this law, including, but not limited to, punitive damages.

SEVENTH CAUSE OF ACTION
DISCRIMINATION IN VIOLATION OF CFEPa
(Against Defendant FABTEC)

158. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

159. Connecticut Fair Employment Practices Act, Conn. General Statutes §§ 46a-60(b) provides that: It shall be a discriminatory practice in violation of this section:

For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability or physical disability, including, but not limited to, blindness.

160. Defendant FABTEC engaged in an unlawful discriminatory practice by discriminating against Plaintiff because of her gender/sex (female), ethnicity/race (Latinx/Hispanic), and disability (anxiety disorder/PTSD).

161. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses (past and future) – such as income, salary, benefits, bonuses, commission, and other compensation that his employment entailed; severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

162. Accordingly, as a result of Defendant FABTEC's unlawful conduct, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available under this law.

EIGHTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF CFEPa
(Against Defendants FABTEC and Giberson)

163. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if fully set forth herein.

164. Connecticut Fair Employment Practices Act, Conn. General Statutes §§ 46a- 60(b)(4) provides that it shall be an unlawful practice in violation of this section:

For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in

any proceeding under section 46a-82, 46a-83 or 46a-84;

165. As alleged herein, Defendants FABTEC and Giberson unlawfully retaliated against Plaintiff for opposing practices forbidden under the Connecticut Fair Employment Practices Act, specifically discrimination based on her gender/sex, ethnicity/race, and disability including by terminating her employment, and continued to retaliate against Plaintiff by lodging baseless counterclaims against her in this action.

166. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses (past and future) – such as income, salary, benefits, bonuses, commission, and other compensation that his employment entailed; severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

167. Accordingly, as a result of Defendants FABTEC's and Giberson's unlawful retaliatory conduct, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available under this law.

NINTH CAUSE OF ACTION
AIDING AND ABETTING DISCRIMINATION IN VIOLATION OF CFEPa
(Against Individual Defendants)

168. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if fully set forth herein.

169. Connecticut Fair Employment Practices Act, Conn. General Statutes §§ 46a- 60(b)(5) provides that, it shall be a discriminatory practice in violation of this section:

For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any act declared to be a discriminatory employment practice or to attempt to do so.

170. As described herein, Mr. Giberson and Mr. Palomba engaged in an unlawful discriminatory practice by aiding and abetting discrimination and retaliation against Plaintiff because of her gender/sex, ethnicity, and/or disability.

171. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses (past and future) – such as income, salary, benefits, bonuses, commission, and other compensation that his employment entailed; severe emotional, psychological, and physical stress, distress, anxiety, pain and suffering; the inability to enjoy life's pleasures; and other non-pecuniary losses and special damages.

172. Accordingly, as a result of the unlawful conduct of the Individuals Defendants, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available to her under this law.

TENTH CAUSE OF ACTION
DEFAMATION UNDER THE COMMON LAW OF CONNECTICUT
(Against Defendants FABTEC and Giberson)

173. Plaintiff repeats and realleges each and every paragraph above as if said paragraphs were fully set forth herein at length.

174. Connecticut law holds liable any person who publishes false statements that harm the Plaintiff, when such persons are not privileged to do so.

175. Where an employer or agent of an employer knowingly disseminates false information regarding performance or reasons for termination to others in the company, or places such information in an employee's personnel file, any privilege regarding such information is lost and an employee can recover for defamation.

176. In the January 22, 2020, letter to Plaintiff, Defendants Giberson and FABTEC

knowingly defamed Plaintiff by disseminating false information regarding performance or reasons for termination to others inside and outside the company regarding Plaintiff. FABTEC and Giberson had no privilege to do so.

177. Plaintiff's reputation was harmed by FABTEC's publication of false information.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests a judgment against Defendants:

A. Declaring that Defendants engaged in unlawful employment practices prohibited under federal and state laws by discriminating and retaliating against Plaintiff on the basis of her race, gender, disability, and interfering with and retaliating against her for invoking her right under the FMLA;

B. Awarding economic damages to Plaintiff;

C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation in an amount to be proven;

D. Awarding Plaintiff punitive damages;

E. Awarding Plaintiff liquidated damages;

F. Awarding Plaintiff attorney's fees, costs, and expenses incurred in the prosecution of the action; and

G. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy the Defendant's unlawful employment practices.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issue of fact and damages stated herein.

Dated: June 9, 2023

White Plains, New York

Respectfully submitted,

Parisis G. Filippatos

Tanvir H. Rahman (to be admitted *pro hac vice*)

FILIPPATOS PLLC

Attorneys for Plaintiff

199 Main Street, Suite 800

White Plains, NY 10601

Tel: 914-984-1111

Fax: 914-984-1111

pgf@filippatoslaw.com

trahman@filippatoslaw.com

By: /s/ Parisis G. Filippatos

Parisis G. Filippatos (PF-1593)