

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS FLORIDA

SERGIO VALDES, an individual,

Plaintiff,

v.

GREATER NAPLES FIRE RESCUE DISTRICT, a
political subdivision of the State of Florida

Defendant.

CIVIL ACTION

Case No. 2:16-cv- 417-FM-29CM

Judge:

Mag. Judge:

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, SERGIO VALDES ("VALDES"), by and through undersigned counsel, and states the following for his Complaint:

CAUSES OF ACTION

1. This is an action brought under the Family & Medical Leave Act (FMLA) and F.S. §440.205 for (1) interference in violation of the FMLA, (2) retaliation in violation of the FMLA, and (3) worker's compensation retaliation.

PARTIES

1. The Plaintiff, SERGIO VALDES ("VALDES") is an individual and a former resident of Florida who at all material times resided in Collier County, Florida, and who worked for the Defendant, GREATER NAPLES FIRE RESCUE DISTRICT (GNFRD) in Collier County, Florida.

2. Defendant, **GNFRD** is a political subdivision of the state of Florida with a principal place of business located in Naples, Florida. At all material times, **GNFRD** is an employer under the FMLA and F.S. §440.

3. At all material times, **GNFRD** employed greater than fifteen (50) employees.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this matter under 28 U.S.C. §1331.

5. This Court has supplemental jurisdiction over **VALDES**'s state law claims pursuant to 28 U.S.C. § 1367.

6. Venue is proper in the United States District Court for the Middle District of Florida because the Plaintiff resides in, and the Defendant conducts business in, and some or all of the events giving rise to Plaintiff's claims occurred in Collier County, Florida, which is within the Middle District of Florida. Venue is proper in the Fort Myers Division under Local Rule 1.02(b)(5) since Collier County is within the Fort Myers Division.

GENERAL ALLEGATIONS

7. **VALDES** was hired by Ochopee Fire District on May 2002 as a firefighter.

8. Ochopee Fire District merged with **GNFRD** on November 1, 2016.

9. **VALDES** has always performed his assigned duties in a professional manner.

10. **VALDES** always received good to very good performance reviews from his supervisors, he was well-qualified for his position and he was able to perform all of the essential functions of his position without a reasonable accommodation.

11. **VALDES** met all necessary performance standards and quantitative performance requirements during his employment with the **GNFRD**.

12. In the morning hours of October 27, 2016, **VALDES** was required to undergo a work physical, part of which required him fasting.

13. Later that day, **VALDES** began suffering from a medical emergency at work related to a previously unknown medical condition that was exacerbated by his work physical requiring fasting, which required the assistance of emergency medical personnel.

14. **VALDES** was transported to hospital due to his serious health condition, which was determined to be an impairment of his cardio-pulmonary system and endocrine system (diabetes), which when not in remission affects the major life activities of walking, talking, sleeping, working, cognitive processing and general ability to function.

15. **VALDES** has a history of these impairments that limits major bodily functions and several major life activities. **VALDES**'s impairments qualify as a disability as that term is defined under 28 C.F.R. §36.104(iii).

16. **VALDES** was regarded as disabled by **GNFRD** based upon his actual and his perceived impairment.

17. As a result of his serious health condition that appeared to be caused by work, **VALDES** required medical leave, which **GNFRD** knew about and granted.

18. **VALDES**'s physician issued him clearance to return to work without restrictions on December 28, 2016, which would conclude his FMLA leave.

19. However, **GNFRD** not only refused to allow **VALDES** to return to work from his FMLA leave on December 28, 2016, but it terminated his employment that same day, which was not discovered by **VALDES** until weeks later.

20. As a result of his termination, **VALDES** was left without health insurance, which was particularly damaging given the birth of his daughter just two days after his termination.

21. The **GNFRD**'s interference with **VALDES**'s FMLA rights was willful.
22. The **GNFRD** willfully retaliated against **VALDES** because he engaged in statutorily protected conduct, to wit: the exercising of his right to leave and right to reinstatement under the FMLA.

COUNT I – VIOLATION OF THE FAMILY & MEDICAL LEAVE ACT (“FMLA”)-INTERFERENCE

23. The Plaintiff hereby incorporates by reference Paragraphs 1-21 in this Count by reference as though fully set forth below.

24. **VALDES** qualified for FMLA leave under 29 U.S.C. § 2611(11); 29 CFR §§ 825.113(a); 825.800 since his mother began suffering from a serious health condition, the FMLA defining a serious health condition as an illness, injury, impairment, or physical or mental condition that involves treatment by a health care provider and **VALDES** worked more than 1,250 hours in the preceding 12 months of employment with the **GNFRD**.

25. **VALDES** informed the **GNFRD** of his likely need for leave due to his serious health condition.

26. The **GNFRD** was responsible for designating leave as FMLA-qualifying and for giving notice of the designation within five business days, absent extenuating circumstances, after it has enough information to make that determination, such as when it receives medical certification.

27. If the **GNFRD** were to have decided that **VALDES**'s expected absence was not FMLA-qualifying, it must have notified him of this fact in the Designation Notice under 29 CFR § 825.300(d)(1).

28. The **GNFRD** has never provided **VALDES** with any notice disqualifying him FMLA leave.

29. In fact, the **GNFRD** could only have determined that **VALDES** was eligible for leave under the FMLA and yet terminated his employment because of his request for federally protected medical leave and his request for reinstatement under the FMLA.

30. **VALDES** engaged in activity protected by the FMLA when he requested leave due to his serious health condition and when he requested reinstatement, consistently informing the **GNFRD** of the same.

31. The **GNFRD** knew, or should have known, that **VALDES** was exercising his rights under the FMLA and was aware of **VALDES**'s need for FMLA-protected absence.

32. **VALDES** complied with all of the notice and due diligence requirements of the FMLA.

33. The **GNFRD** was obligated to provide **VALDES**, an employee who requested FMLA leave, up to 12 weeks of unpaid leave and then reinstatement to his former position or an equivalent position with the same pay, benefits, and working conditions when he returns to work under 29 U.S.C. § 2614(a)(1); 29 CFR § 825.215(a).

34. **GNFRD** failed to grant leave and to return **VALDES** to his former position or an equivalent position in violation of the FMLA.

35. A causal connection exists between **VALDES**'s request for FMLA-protected leave and his termination from employment with the Defendant.

36. **GNFRD** engaged in willful retaliation in violation of the FMLA by terminating **VALDES**'s employment because he engaged in activity protected by the FMLA.

37. As a result of the above-described violations of FMLA, **VALDES** has been damaged by the **GNFRD** in the nature of lost wages, salary, employment benefits and other

compensation and is therefore entitled to recover actual monetary losses, interest at the prevailing rate and liquidated damages. :

WHEREFORE, Plaintiff requests trial by jury of all issues so triable as of right, an award of damages for lost wages and benefits, prejudgment interest, and liquidated damages under 29 U.S.C. § 2617(a)(1)(A), reinstatement or such other legal or equitable relief as may be appropriate, and an award of reasonable attorney's fees and costs as authorized under 29 U.S.C. § 2617(3), and any other such damages as this honorable Court deems just.

COUNT II – VIOLATION OF THE FAMILY MEDICAL LEAVE ACT (“FMLA”)-RETALIATION

38. The Plaintiff hereby incorporates by reference Paragraphs 1-22 in this Count by reference as though fully set forth below.

39. **VALDES** informed the **GNFRD** of his likely need for leave for his serious health condition and demanded reinstatement.

40. **VALDES** engaged in activity protected by the FMLA when he requested leave due to his serious health condition and when he requested reinstatement, consistently informing the **GNFRD** of the same verbally and in writing.

41. **GNFRD** knew, or should have known, that **VALDES** was exercising his rights under the FMLA and was aware of **VALDES**'s need for FMLA-protected absence.

42. A causal connection exists between **VALDES**'s request for FMLA-protected leave and his termination from employment with the **GNFRD** because **VALDES** engaged in statutorily protected activity by requesting, and taking, FMLA leave.

43. **GNFRD** retaliated by altering the terms and conditions of **VALDES**'s employment by refusing to return him to work, thereby terminating **VALDES**'s employment because he engaged in the statutorily protected activity of requesting FMLA leave. **GNFRD**

refused to return **VALDES** to work because **VALDES** requested and took FMLA leave and terminated him because he engaged in this statutorily protected activity.

44. **GNFRD** engaged in willful and intentional retaliation in violation of the FMLA by terminating **VALDES**'s employment because he engaged in activity protected by the FMLA.

45. As a result of the above-described violations of FMLA, **VALDES** has been damaged by the Defendant in the nature of lost wages, salary, employment benefits and other compensation and is therefore entitled to recover actual monetary losses, interest at the prevailing rate and liquidated damages.

WHEREFORE, Plaintiff requests trial by jury of all issues so triable as of right, an award of damages for lost wages and benefits, prejudgment interest, and liquidated damages under 29 U.S.C. § 2617(a)(1)(A), reinstatement or such other legal or equitable relief as may be appropriate, and an award of reasonable attorney's fees and costs as authorized under 29 U.S.C. § 2617(3), and any other such damages as this honorable Court deems just.

**COUNT III – UNLAWFUL RETALIATION AND WRONGFUL DISCHARGE UNDER
F.S. § 440.205, WORKER’S COMPENSATION RETALIATION**

46. Plaintiff incorporates by reference Paragraphs 1-20 of this Complaint as though fully set forth below.

47. **VALDES** was injured on the job and required medical treatment.

48. Just prior to his termination, **VALDES** required leave in order to receive treatment for his medical conditions that developed in the workplace.

49. **GNFRD** then terminated **VALDES** as a direct result of the same.

50. Prior to his worker's compensation injury, **VALDES** had received consistently good performance reviews and had not been subjected to discipline.

51. **VALDES**'s workplace injury and need for leave for his workplace injury are the direct and proximate causes of **GNFRD**'s termination of his employment.

52. As a direct and proximate result of **GNFRD**'s actions that violate Florida Statute § 440.105, **VALDES** has suffered damages, including but not limited to, a loss of employment opportunities, loss of past and future employment income and fringe benefits, humiliation, and non-economic damages for physical injuries, mental and emotional distress.

WHEREFORE, Plaintiff prays that this Honorable Court enter a Judgment in her favor and against the Defendant for an amount consistent with evidence, together with back pay, front pay, non-economic damages, the costs of litigation, interest, and reasonable attorneys' fees.

DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, **SERGIO VALDES**, by and through his undersigned attorneys, and demands a jury trial under Federal Rule of Civil Procedure 38 on all issues triable of right by a jury in this action.

Respectfully submitted,

Dated: July 21, 2017

/s/ Benjamin H. Yormak

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