

2008 WL 8151383 (Kan. Dist. Ct.) (Trial Pleading)
District Court of Kansas.
Douglas County

Maureen POULL, Plaintiff,
v.
AFFINITAS KANSAS, INC., Defendant.

No. 2008CV346.
June 11, 2008.

Petition

[Stephen D. Lanterman](#), #18844, [Michael S. Heptig](#), #23199, Sloan, Eisenbarth, Glassman, McEntire & Jarboe, L.L.C., 1000 Bank of America Tower, 534 South Kansas Avenue, Topeka, Kansas 66603-3456, Telephone: (785) 357-6311, Attorneys for Plaintiff.

Pursuant to K.S.A. Chapter 60

COMES NOW the plaintiff, Maureen Poull, by and through her attorneys, Stephen D. Lanterman and Michael S. Heptig of the law firm of Sloan, Eisenbarth, Glassman, McEntire & Jarboe, L.L.C, and for her claims for relief against the defendant, Affinitas Kansas, Inc., states and alleges as follows:

JURISDICTION AND VENUE

1. This is an employment case based upon and arising under the laws of the State of Kansas.
2. This court has subject matter jurisdiction over the plaintiffs claims.
3. All of the unlawful acts and practices set forth below were committed within the State of Kansas, and venue is proper in this court pursuant to [K.S.A. §60-604](#).

PARTIES

5. The plaintiff, Maureen Poull, is a citizen and resident of City of Lawrence, Douglas County, Kansas.
6. The defendant, Affinitas Kansas, Inc., is a corporation organized in Kansas, with an office located at 1 Riverfront Plaza Suite 102, in Lawrence, Kansas. Defendant may be served at its registered office at that same address.

FACTUAL ALLEGATIONS

7. Plaintiff was a licensed nurse with the State of Kansas.
8. Plaintiff began working for defendant at its Lawrence, Kansas office in December 2005.
9. Plaintiff was assigned to work on the defendant's accounts with Cox Communications in June 2006.

10. On or about February 21, 2008, Plaintiff received an inbound call from a Cox Communications customer in New Orleans, Louisiana.

11. During the course of the call, Plaintiff became aware that the customer was an **elderly** woman alleging that her two daughters were taking items from her home, taking money from her home, and depleting the funds in her bank accounts.

12. The customer declared to Plaintiff that she had switched bank accounts multiple times in an effort to secure her money, but that her daughters continued to deplete her funds.

13. After verifying the customer's proprietary network information (hereinafter "CPNI") as required, Plaintiff noticed that the customer's account information verified that she had in fact switched bank accounts multiple times in recent months, and that she had several overdraft charges on all of those accounts.

14. Based on the customer's statements, the verification of the account information provided her, and her past experience as a licensed nurse, Plaintiff suspected that the customer was being abused and **exploited**.

15. Being familiar with Kansas's mandatory reporting requirement for nurses, Plaintiff felt obligated to report the situation to Louisiana's Adult Protective Services.

16. Immediately after the phone call with the customer ended, Plaintiff accessed the Louisiana State Government's website to obtain the phone number for the Adult Protective Services reporting line.

17. Plaintiff called Adult Protective Services and provided the minimum amount of information required to make a report: the **elderly** customer's name, phone number, and address, and Plaintiff's first name.

18. Plaintiff did not reveal her last name nor did she identify her employer.

19. Immediately after making the report, Plaintiff reported the matter to her supervisor, Molly Hyskell (hereinafter "Ms. Hyskell").

20. Plaintiff explained to Ms. Hyskell that under the law, Plaintiff was compelled and authorized to report any suspected abuse or endangerment to the welfare of an individual.

21. On or about February 22, 2008, Plaintiff was met at her desk by Ms. Hyskell and asked to report to the office of Cheryl Culp (hereinafter "Ms. Culp"), the Human Resources manager at the Lawrence facilities.

22. While meeting with Ms. Culp and Ms. Hyskell, Plaintiff was advised that Defendant considered Plaintiff's actions to be "a grievous breach of confidentiality and a violation of FCC section 222."

23. Ms. Culp and Ms. Hyskell provided Plaintiff with a Disciplinary Action Form terminating her for her actions in reporting the **elder** abuse.

24. The Disciplinary Action Form cited Plaintiff for not conducting herself with proper regard for the rights of others, not representing Affinitas positively, accessing a non-client internet website, using phone lines for non-business purposes, violating FCC Section 222, and breaching client information, all of which stem from Plaintiff's reporting of suspected **elder** abuse and neglect.

COUNT I *WRONGFUL TERMINATION*

25. Plaintiff incorporates all of the above paragraphs as though fully set forth in Count I.

26. Defendant terminated Plaintiff's employment because she allegedly violated 47 USC §222, which mandates that telecommunication carriers keep CPNI confidential, except as required by law.

27. K.S.A. 39-1431 mandates that certain individuals, including nurses, report suspected abuse, neglect and/or **exploitation** of individuals.

28. Plaintiff had reasonable cause to believe that an adult was being abused, neglected and/or **exploited** as defined in K.S.A. 39-1430.

29. K.S.A. 39-1432 prohibits employers from terminating an employee for making a report of suspected abuse in accordance with state law, whether such reporting is mandatory or otherwise.

30. As a result of the Defendant's illegal and intentional conduct, Plaintiff has suffered serious economic losses as well as physical and emotional pain and suffering.

31. Defendant's actions were malicious and were committed with reckless indifference to Plaintiff's rights and the laws of the states of Kansas and Louisiana.

WHEREFORE, plaintiff prays for an injunction against the defendant, enjoining the defendant and its employees from engaging in unlawful employment practices and for judgment against the defendant for damages in excess of \$100,000.00, consisting of back pay, front pay, prejudgment interest, emotional distress and mental anguish, attorneys fees, litigation expenses, and for such other and further relief that the Court deems proper.

COUNT II *TERMINATION AGAINST PUBLIC POLICY*

32. Plaintiff incorporates all of the above paragraphs as though fully set forth in Count II.

33. Termination of Plaintiff's employment was a violation of public policy.

34. The public policy of the State of Kansas is to prevent the abuse, neglect, and **exploitation** of individuals.

35. Plaintiff reported suspected abuse in an effort to prevent the abuse, neglect, and/or **exploitation** of an **elderly** woman.

36. In violation of public policy, Defendant terminated Plaintiff for reporting suspected **elder** abuse.

37. As a result of Defendant's illegal and intentional conduct, Plaintiff has suffered serious economic losses as well as physical and emotional pain and suffering.

38. Defendant's actions were malicious and were committed with reckless indifference to Plaintiff's rights.

WHEREFORE, plaintiff prays for an injunction against the defendant, enjoining the defendant and its employees from engaging in unlawful employment practices and for judgment against the defendant for damages in excess of \$100,000.00, consisting of back pay, front pay, prejudgment interest, emotional distress and mental anguish, litigation expenses, and for such other and further relief that the Court deems proper.

COUNT III RETALIATION

39. Plaintiff incorporates all of the above paragraphs as though fully set forth in Count III.

40. On or about February 21, 2008, Plaintiff engaged in activity protected under K.S.A. 39-4130 et seq when she made a report of suspected **elder** abuse.

41. On or about February 22, 2008, Plaintiff was discharged from employment with Defendant.

42. Defendant terminated Plaintiffs employment because of Plaintiff's involvement in activity protected under K.S.A. 39-4130 et seq, as shown by the Disciplinary Action Report, which cites the report of **elder** abuse as the reason for termination.

43. Defendant's termination of Plaintiff in retaliation for Plaintiffs involvement in protected activity is an unlawful employment practice under K.S.A. 39-4132.

44. As a result of the Defendant's illegal and intentional conduct, Plaintiff has suffered serious economic losses as well as physical and emotional pain and suffering.

45. Defendant's actions were malicious and were committed with reckless indifference to Plaintiffs rights.

WHEREFORE, plaintiff prays for an injunction against the defendant, enjoining the defendant and its employees from engaging in unlawful employment practices and for judgment against the defendant for damages in excess of \$100,000.00, consisting of back pay, front pay, prejudgment interest, emotional distress and mental anguish, attorneys fees, litigation expenses, and for such other and further relief that the Court deems proper.

Dated *11th* day of June, 2008.

Respectfully submitted:

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Attorneys For Plaintiff

REQUEST FOR TRIAL BY JURY

Pursuant to [K.S.A. 60-238](#), the plaintiff hereby requests a trial by jury on all claims triable to a jury.

Respectfully submitted:

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