

FILED

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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U.S. DISTRICT COURT
HARTFORD, CT.

GINA UBERTI,

Plaintiff,

vs.

BATH AND BODY WORKS, LLC,

Defendant.

Case No.:

3:09-cv-01714-WE

OCTOBER 15, 2009

Jury Trial Demanded

COMPLAINT

Plaintiff, Gina Uberti, by and through her attorneys, Sabatini and Associates, LLC, complaining of the defendant, respectfully alleges:

PARTIES

1. Plaintiff Gina Uberti is a Connecticut citizen residing in the Town of East Haven.
2. Defendant, Bath and Body Works, LLC, is a limited liability company organized and existing under the laws of the State of Delaware.
3. Defendant's principal place of business is located at 7 Limited Parkway, Reynoldsburgh, Ohio 43068.

JURISDICTION AND VENUE

4. The Court has jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343 and this action is brought pursuant to: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e and the Civil Rights Act of 1991.
5. This Court has personal jurisdiction over the Parties and venue is proper under

28 U.S.C. §1391(b) in that a substantial part of the events or omissions giving rise to the claim occurred in the State of Connecticut.

GENERAL ALLEGATIONS

6. Plaintiff's religion is Wicca
7. A follower of the Wicca religion is called a Wiccan.
8. Plaintiff is a Wiccan.
9. On or about January 15, 2001, plaintiff commenced her employment with the defendant.
10. At all times material, Defendant employs fifteen (15) or more individuals.
11. Plaintiff began her employment with the defendant as a store manager at the defendant's store located in Milford, Connecticut.
12. Approximately three to three and one-half years after being hired, defendant promoted the plaintiff to district sales manager.
13. When the plaintiff became a district sales manager and until her termination, plaintiff worked from her home office located at 19 Farview Avenue, East Haven, Connecticut.
14. Plaintiff performed her job well and for an approximate eight year time period never received a written warning for any type of policy/procedure violation or job performance issue.
15. Plaintiff received numerous positive job evaluations.
16. Plaintiff received bonuses.
17. Upon information and belief, defendant hired Sandra Scibelli in 2008.
18. Sandra Scibelli became plaintiff's regional manager.

19. Prior to Sandra Scibelli, plaintiff's regional manager was Scott Kerby.

20. Prior to Scott Kerby, plaintiff's regional manager was Julie Shimmel who was the manager that promoted the plaintiff.

21. Samhain is considered by most Wiccans to be the most important of the four "greater Sabbats" (festivals). It is generally observed on October 31st in the Northern Hemisphere starting at sundown. It is the start of the New Year for Wiccans, Many Wiccans including the plaintiff travel to Salem, Massachusetts to celebrate the New Year.

22. Samhain is a religious holiday observed by Wiccans including the plaintiff.

23. For approximately the last six years of plaintiff's employment with the defendant, the plaintiff has taken one (1) week off from at or around October 31 to observe the religious holiday.

24. In 2008, plaintiff requested the week of October 31st off and the request was granted by the defendant by and through Scott Kerby.

25. On or about November 4, 2008, plaintiff had a telephone conversation with Sandra Scibelli.

26. During the telephone conversation, Sandra Scibelli expressed disappointment that the plaintiff had chosen the week of October 31 for her vacation and unable to be reached by employees.

27. Sandra Scibelli questioned plaintiff's judgment in taking that specific week off in light of a job project named "Signature Restage" that was in the process of being rolled out.

28. Plaintiff explained to Sandra Scibelli that her vacation had been approved almost one year in advance by Scott Kerby.

29. Plaintiff further explained to Sandra Scibelli that it was a religious holiday for her.

30. Sandra Scibelli asked the plaintiff what religious holiday took place during the last week of October.

31. Plaintiff informed Sandra Scibelli that she was a Wiccan and explained to her what that meant, her religious belief system, that a Wicca religious holiday took place on October 31, and that the religious holiday marks the beginning of the new year.

32. In response to plaintiff's religious disclosure, Sandra Scibelli stated to the plaintiff the following: "that is the most ridiculous thing I have ever heard, let me ask you where your priorities should have been?"

33. Plaintiff replied by asking Sandra Scibelli what was so "ridiculous".

34. Sandra Scibelli stated: "Well, you will need a new career in your new year."

35. Plaintiff asked Sandra Scibelli what she meant about the aforementioned comment and Scibelli replied: "I will be damned if I have a devil-worshipper on my team".

36. On November 20, 2008, defendant terminated plaintiff's employment.

37. Any and all excuses offered by the defendant for the plaintiff's termination are a pretext for the true reason – religious discrimination.

38. Plaintiff's termination was discriminatory on the basis of her religion and religious beliefs.

39. Plaintiff filed charges on the following date: February 9, 2009 with the Equal Employment Opportunity Commission (EEOC).

40. Plaintiff received a right to sue letter (copy attached as Exhibit 1) on the

following date: September 4, 2009.

41. Plaintiff filed charges on the following date: February 9, 2009, with the Commission on Human Rights and Opportunities (CHRO).

42. Plaintiff received a release of jurisdiction (copy attached as Exhibit 2) on the following date: September 23, 2009.

FIRST COUNT

(Religious Discrimination In Violation Of Title VII of the Civil Rights Act)

1. Plaintiff repeats the allegations in paragraphs 1 through 41 above as if fully incorporated herein.

43. Defendant's actions and/or omissions violate Title VII of the Civil Rights Act as amended, which prohibits discrimination on the basis of religion.

44. Defendant, by and through its agents and/or employees, violated Title VII of the Civil Rights Act, in one or more of the following ways:

(a) In that defendant interfered with plaintiff's privilege of employment on the basis of plaintiff's religion;

(b) In that defendant discriminated against the plaintiff in such a way that it adversely affected her status as an employee including termination;

(c) In that defendant terminated plaintiff's employment on account of her religion;

(d) In that defendant treated the plaintiff adversely different from similarly situated non-Wiccan employees;

(e) In that defendant retaliated against the plaintiff in response to her religious accommodation; and

(f) In that defendant limited and classified the plaintiff by her religion in such a way that it deprived her of opportunities and recognition given to other similarly situated employees.

45. As a direct and proximate result of defendant's unequal treatment, discrimination, retaliation and termination, plaintiff has been deprived of her employment and equal employment opportunities because of her religion.

46. As a further direct and proximate result of defendant's discrimination of the plaintiff, plaintiff has been deprived of income and wages, and has been deprived of access of certain benefits to which she was entitled under defendant's employee benefit plan. Plaintiff has also lost payment of unused personal days, bonus earnings, pension benefits, and interest. Plaintiff has suffered further damage by the defendant's failure to pay for the corporate American Express charge account that the defendant provided to the plaintiff resulting in an interest, penalties and potential harm to the plaintiff's credit rating.

47. As a further result of defendant's termination of plaintiff, plaintiff has suffered severe humiliation, embarrassment, emotional distress, and harm to professional reputation.

48. Plaintiff has suffered and will continue to suffer injuries and losses as a result of defendant's wrongful and discriminatory acts.

49. Defendant's conduct towards the plaintiff was arbitrary, discriminatory and retaliatory all in violation of Title VII of the Civil Rights Act. The defendant exhibited ill will, malice, improper motive and indifference to the plaintiff's civil rights by terminating her employment on the basis of her religion.

SECOND COUNT

(Wrongful Termination In Violation Of C.G.S. Section 46a-60(a)(1))

1. Plaintiff repeats the allegations in paragraphs 1 through 48 above as if fully incorporated herein.

50. Defendant's actions and/or omissions violate C.G.S. Section 46a-60(a)(1), which prohibits discrimination on the basis of religion.

51. Defendant, by and through its agents and/or employees, violated C.G.S. Section 46a-60(a)(1), in one or more of the following ways:

(a) In that defendant interfered with plaintiff's privilege of employment on the basis of plaintiff's religion;

(b) In that defendant discriminated against the plaintiff in such a way that it adversely affected her status as an employee including termination;

(c) In that defendant terminated plaintiff's employment on account of her religion;

(d) In that defendant treated the plaintiff adversely different from similarly situated non-Wiccan employees;

(e) In that defendant retaliated against the plaintiff in response to her religious accommodation; and

(f) In that defendant limited and classified the plaintiff by her religion in such a way that it deprived her of opportunities and recognition given to other similarly situated employees.

52. As a direct and proximate result of defendant's unequal treatment, discrimination, retaliation and termination, plaintiff has been deprived of her employment

and equal employment opportunities because of her religion.

53. As a further direct and proximate result of defendant's discrimination of the plaintiff, plaintiff has been deprived of income and wages, and has been deprived of access of certain benefits to which she was entitled under defendant's employee benefit plan. Plaintiff has also lost payment of unused personal days, bonus earnings, pension benefits, and interest. Plaintiff has suffered further damage by the defendant's failure to pay for the corporate American Express charge account that the defendant provided to the plaintiff resulting in an interest, penalties and potential harm to the plaintiff's credit rating.

54. As a further result of defendant's termination of plaintiff, plaintiff has suffered severe humiliation, embarrassment, emotional distress, and harm to professional reputation.

55. Plaintiff has suffered and will continue to suffer injuries and losses as a result of defendant's wrongful and discriminatory acts.

56. Defendant's conduct towards the plaintiff was arbitrary, discriminatory and retaliatory all in violation of C.G.S. Section 46a-60(a)(1). The defendant exhibited ill will, malice, improper motive and indifference to the plaintiff's civil rights by terminating her employment on the basis of her religion.

FOURTH COUNT

(Negligent Infliction of Emotional Distress)

1. Plaintiff repeats the allegations in paragraphs 1 through 55 above as if fully incorporated herein.

57. The defendant's conduct, by and through its agents and/or employees, in

terminating the plaintiff created an unreasonable risk of emotional distress to the plaintiff.

58. Defendant's conduct during the termination process when it informed the plaintiff, by and through its agents and/or employees, that she was being terminated for alleged policy violations when it knew or should have known that the allegations were inaccurate and/or not uniformly enforced and/or not published throughout the company created an unreasonable risk of emotional distress to the plaintiff.

59. Plaintiff's emotional distress, caused by her termination, was foreseeable.

60. Plaintiff's emotional distress has been severe enough to cause her illness and/or bodily harm.

61. The cause of plaintiff's emotional distress is her wrongful termination.

FOURTH COUNT

(Intentional Infliction of Emotional Distress)

1. Plaintiff repeats the allegations in paragraphs 1 through 61 above as if fully incorporated herein.

62. Defendant's termination intended to inflict emotional distress upon the plaintiff.

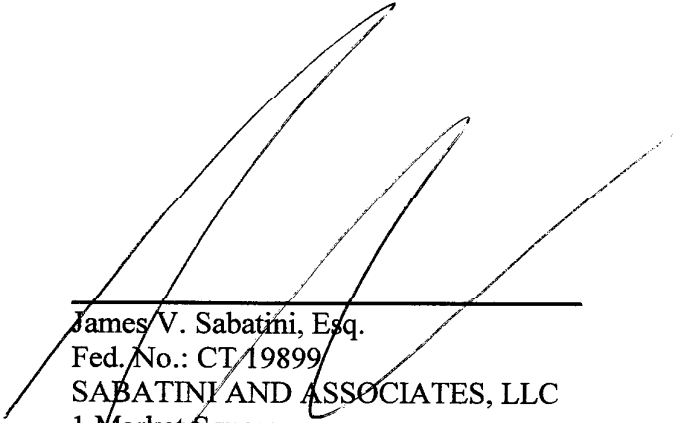
63. Defendant's conduct was extreme and outrageous creating an unreasonable risk of emotional distress to the plaintiff.

64. Defendant's misconduct caused the plaintiff to suffer severe emotional distress including but not limited to: stress, interference with appetite, and interference with sleep.

DEMAND FOR RELIEF

WHEREFORE, plaintiff prays for appropriate compensatory damages including:
compensatory damages; damages for back pay, front pay, bonuses, personal days, lost
pension benefits, emotional distress; consequential damages; liquidated damages;
punitive damages; reasonable attorneys' fees; costs; interest; job reinstatement;
prejudgment interest; for an injunction requiring the removal of any and all adverse
information contained in plaintiff's personnel file; ; punitive damages; for a trial by jury;
and for all other just and proper relief.

DATE: October 15, 2009



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