

Attorney Name (BAR NO. XXXXXX)
Member of
LAW FIRM NAME, A Law Corporation
Address
City, State ZIP Code
Telephone: XXX-XXX-XXXX

Attorneys for Plaintiff
Lesley Burton

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LESLEY BURTON, individually,

Plaintiff

vs.

SMALL WORLD PUBLISHING, INC., a
California corporation.

Defendant.

Case No. XX XXXX

COMPLAINT FOR EMPLOYMENT
REINSTATEMENT, COMPENSATORY
DAMAGES, INTEREST, ATTORNEY'S
FEES AND COSTS UNDER FMLA

DEMAND FOR JURY TRIAL

Plaintiff Lesley Burton ("Burton") complains of the defendant as follows:

JURISDICTION

1. This action involves application of the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. § 2601 *et seq.* This court has jurisdiction of this action pursuant to 29 U.S.C. § 2617 and 28 U.S.C. § 1331.

VENUE

2. The claims asserted in this action arose within this district and the alleged discrimination and damage occurred in this district. Venue of this action is proper pursuant to 29 U.S.C. § 2617 and 28 U.S.C. § 1391.

PARTIES

3. Burton is, and at all times material hereto was, a citizen of the State of California, residing in Orange County, California.

4. Burton is informed and believes, and upon that basis alleges, the defendant Small World Publishing, Inc. (“SWPI”) is and was at all times material hereto, a California corporation doing business in this district, having its principal place of business in Waltham, California.

5. Burton, is informed and believes, and upon that basis alleges, that Taylor Chang (“Chang”) is, and at all times material hereto was, an agent, employee and servant of the master, SWPI, and was acting within the course and scope of his agency or employment authority as such, with knowledge, express or implied, of SWPI. Chang, acting under authority of SWPI, denied Burton the requisite leave permitted under the FMLA, and caused Burton to be reassigned to a position requiring lesser skills and differing work hours in violation of the FMLA. Accordingly, adherence to the fiction that Chang was acting outside the scope of his authority would permit abuse of the corporate privilege and would sanction fraud and promote injustice. Burton has not named Chang as a defendant in this action to the extent prohibited by law.

GENERAL ALLEGATIONS

6. At all times material hereto, Burton was an employee of SWPI, employed primarily as an International Liaison, commencing in February 2000 until June 2002, reporting to the Acquisitions Supervisor of SWPI, Chang. The International Liaison position required both foreign language skills and advanced organizational skills, which are possessed by Burton.

7. On or about May 21, 2002, Burton received a call at SWPI from a local hospital informing Burton that her six year-old son, Tom Burton (“Tom”), had been in an accident. Burton immediately left SWPI traveling to the hospital and learning that, Tom, while suffering minor injuries from a fall, witnessed the traumatic and unfortunate death of his friend who fell in front of, and was struck by a car. Due to the trauma experienced by Tom, Burton was instructed to keep Tom off his feet a few days. On the same day, Burton called Chang and left a message that she required some time off to take care of Tom.

8. During Burton’s absence, Tom was under the psychiatric care of Dr. Robert Saltsman (“Dr. Saltsman”). Dr. Saltsman diagnosed Tom as having Post-Traumatic Stress Disorder and advised Burton that Tom should avoid stressful situations, requiring Burton to take Tom out of school and day-care and necessitating visits to Dr. Saltsman twice per week. A letter from Dr. Saltsman evidencing his treatment of Tom, dated August 10, 2002, is attached hereto as Exhibit A.

9. During Burton’s absence, which lasted approximately one month, Burton contacted Chang several times by voice mail, providing Chang with an update on Tom’s

health and requesting additional time off to care for Tom. During the same period, Chang also left Burton several messages. At one point during this period, Chang left a message informing Burton that she should either return to work or find another job.

10. On or about June 21, 2002, Burton returned to work. Upon her return, Burton was informed that she had been replaced in the position as International Liaison. Burton was instead offered the position of Manuscript Editor, and assigned to a different supervisor. Although the Managing Editor position was offered with similar pay and benefits, the position required neither Burton's foreign language skills or organizational skills. Further, the Managing Editor position required Burton to adhere to a schedule of 12:00 p.m. to 8:00 p.m., rather than the 9:00 a.m. to 5:00 p.m. schedule for the International Liaison position.

11. On or about July 15, Burton resigned from the Managing Editor position, citing the change in hours impacted her ability to care for Tom, as well as the difficulty in finding someone competent to deal with Tom's psychological needs until Burton got home. SWPI neither offered to adjust Burton's hours nor offered her a commensurate position with similar hours to the International Liaison position to enable her continued employment at SWPI.

12. Burton is informed and believes, and on that basis alleges, that in performing the actions alleged in paragraph 10 above, defendant failed to comply with the applicable statutes and regulations, and instead, performed these actions in such a way as to discriminate against Burton by reassigning her to a position requiring lesser skills and differing hours, constructively forcing her resignation.

13. Burton is informed and believes, and on that basis alleges, that, as a

proximate result of defendant's conduct. (1) Burton's right to extended leave to care for her seriously ill child was interfered with and impaired; (2) SWPI's replacement of Burton in the International Liaison position, and reassignment to a position requiring less skill and training, was in retaliation to Burton taking a leave of absence to care for her child and violated her right to the same or equivalent employment upon her return from leave; and (3) Burton's reassignment to a position of lesser skill and complexity and with significantly different working hours was perpetuated knowing that the change in position and working hours would cause a severe hardship to Burton, forcing her resignation.

14. As a proximate cause of defendant's conduct, Burton was not compensated during her leave of absence and was required to expend significant personal sums for Tom's medical necessities and her own physical and mental well-being. Additionally, as a proximate cause of defendant's conduct, Burton has been unemployed and has been and will continue to experience a loss of wages while being forced to expend significant personal sums in order to obtain reinstatement to the International Liaison position to which she is entitled, to provide food, shelter, and clothing for both she and Tom, and to provide the medical care necessary for Tom to assure his continued recovery. These expenditures and costs are consistent with those recoverable for violation of the FMLA.

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FIRST CLAIM FOR RELIEF

(Compensatory Damages Under the FMLA)

29 U.S.C. § 2617(a)

15. Burton realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 14, inclusive.

16. Burton is informed and believes, and on that basis alleges, that SWPI qualifies as an “employer” as that term is defined in the FMLA, 29 U.S.C. § 2611(4), and that Burton is an “eligible employee” as that term is defined in the FMLA, 29 U.S.C. § 2611(2).

17. Burton is informed and believes, and on that basis alleges, that there was an “entitlement to leave” as defined in the FMLA, 29 U.S.C. § 2612(1), and that Burton was denied her entitlement to leave as prescribed in FMLA.

18. Burton is informed and believes, and on that basis alleges, that Burton was entitled to restoration to her position as described in the FMLA, 29 U.S.C. § 2614(1), and that Burton was denied restoration to the same or equivalent position as prescribed in FMLA.

19. Burton is informed and believes and on that basis alleges that defendant is responsible under the FMLA, 29 U.S.C. § 2617(a).

20. As the result of Burton’s forced resignation, Burton has incurred, and is now incurring, a loss of wages and continuing child care and medical expenses, all within the meaning of the FMLA, 29 U.S.C. § 2617(a), in an amount to be proved at trial, but believed to exceed \$25,000. These costs include, without limitation, lost wages and medical expenses during Burton’s leave of absence, back pay from the effective date of termination, lost child care and medical expenses from the date of termination, and lost

employment benefits from the date of termination, the loss of front pay as of the date of this complaint, and any interest on the amount thereon as provided in the FMLA, 29 U.S.C. § 2617. The costs also include attorneys' fees that, as of the date of this complaint, exceed, \$10,000.

21. Burton is informed and believes, and on that basis alleges, that pursuant to 29 U.S.C. § 2617(a), defendant is liable to Burton for the costs described in the preceding paragraph.

SECOND CLAIM FOR RELIEF

(Declaratory Relief For Compensatory Damages Under the FMLA)

29 U.S.C. § 2617(a)

22. Burton realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 21 above.

23. An actual controversy now exists between Burton on the one hand, and defendants, on the other, in that Burton contends that defendant is liable under the FMLA, 29 U.S.C. § 2617(a), for all lost wages, benefits, and costs to be incurred by Burton and reinstatement of Burton to her previous position of International Liaison, in connection with the alleged employment discrimination perpetrated by SWPI. Burton is informed and believes, and on that basis alleges, that the defendant contends in all respects to the contrary.

24. A declaration of the rights and obligations of the parties, pursuant to FMLA, 29 U.S.C. § 2617(a), binding in any subsequent action or actions to recover

further costs incurred by Burton, is appropriate and in the interests of justice.

WHEREFORE, Burton prays for judgment against the defendant as follows:

AS TO THE FIRST CLAIM FOR RELIEF
FOR COMPENSATORY DAMAGES UNDER THE FMLA.

1. For compensatory damages and other costs incurred by Burton according to proof, but believed to exceed \$25,000, and reinstatement of Burton to her previous position of International Liaison.
2. For Burton's reasonable attorneys' fees.

AS TO THE SECOND CLAIM FOR RELIEF
FOR DECLARATORY RELIEF UNDER THE FMLA.

3. For a judicial declaration that the defendant is liable under the FMLA, 29 U.S.C. § 2617(a) for all past, present and future lost wages, employment benefits and other costs incurred by Burton in connection with Burton's termination of employment of SWPI, including, without limitation, reasonable attorneys' fees.

AS TO ALL CLAIMS

4. For a costs of suit herein; and
5. For such other and further relief as the Court deems just and proper.

Dated: October 7, 2002

LAW FIRM NAME, A Law Corporation
ATTORNEY NAME(s)

By: _____
Attorney Name, a member of
LAW FIRM NAME, A Law
Corporation,
Attorneys for Plaintiff
Lesley Burton

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE THAT Plaintiff Burton hereby demands trial by jury for the claims set forth in its complaint.

Dated: October 7, 2002

LEE & THOMPSON, A Law Corporation
DANIEL S. BEEBE
TERESA LEE

By: _____
Daniel S. Beebe, a member of
LEE & THOMPSON, A Law
Corporation,
Attorneys for Plaintiff
Lesley Burton