

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO: 4:11cv450

ROBERT BARNHART

Plaintiff,

vs.

THE LAMAR COMPANY, L.L.C.,

Defendant.

THIRD AMENDED COMPLAINT

Plaintiff, ROBERT BARNHART (a citizen of Florida who resides in Leon County, Florida), hereinafter referred to as Barnhart or Plaintiff, sues the Defendant, The LAMAR COMPANY, L.L.C., (whose place of incorporation of its sole member, Lamar Media Group, is the State of Delaware), hereinafter referred to as Lamar or Defendant, and alleges:

1. This is an action for damages pursuant to a state law claim that exceeds the sum \$75,000, the minimum jurisdictional limits of this court, and exclusive of costs, interest, and attorney's fees. This Court has diversity jurisdiction pursuant to Title 28 U.S.C. § 1332 in that the Plaintiff is a citizen of Tallahassee, Leon County, Florida and the Defendant is deemed a citizen of the State of Delaware¹. The acts or omissions which caused the Plaintiff's injuries occurred solely within the Leon County Florida, and as such venue lies within the United States District Court for the Northern District of Florida pursuant to Title 28 U.S.C. §1391 (Tallahassee Division).

¹ The **sole member** of the Defendant is a corporation (Lamar Media Group) incorporated within the State of Delaware, and the Defendant's citizenship, for purposes of diversity jurisdiction, is diverse to that of the Plaintiff. Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C. 374 F.3d 1020 (11th Cir. 2004).

2. Plaintiff, Robert Barnhart, was at all times material hereto a resident of Leon County, Florida and employed by the Defendant at its Tallahassee branch. As such, the Plaintiff was an employee within the definition of Florida Statute, 448.101. The Plaintiff was hired by the Defendant at age 20 and worked continuously for the Defendant for seven years until the date of his termination on August 27, 2011.

3. Defendant Lamar's principle place of business is Baton Rouge, Louisiana. At all material times hereto, the Defendant employed in excess of ten (10) employees, and as such the Defendant met the criteria of an employer pursuant to Section 448.101, Florida Statutes. Lamar's Annual Report for December 21, 2010, provides that the Defendant Lamar has been actively engaged in the advertising business since 1902. At the end of 2010, Defendant Lamar owned and operated approximately 146,000 billboards in 44 states, Canada, and Puerto Rico. Similarly, as of December 2010, Defendant Lamar owned 108,000 logo advertising displays in 22 states and throughout Canada. Defendant Lamar's net revenues from all operations for the fiscal year ending December 31, 2010 were slightly more than one billion dollars. Lastly, the Defendant Lamar, at all time's material hereto, conducted business in Leon County Florida through an operating division of the Defendant Lamar.

4. This is an action for damages in excess of \$75,000 including injunctive relief prohibiting the Defendant from engaging in acts which endanger the public safety, for full reinstatement to the same or equivalent position, reinstatement of full fringe benefits and seniority rights, for lost wages both past and future, lost benefits both past and future, and compensatory damages allowable by law (including but not limited to emotional pain and suffering).

**VIOLATIONS OF FLORIDA PRIVATE WHISTLEBLOWER'S
ACT, SECTIONS 448.101 THROUGH 448.105, FLA. STAT.**

5. Plaintiff realleges and reincorporates the allegations contained in paragraphs 1 through 4 as if fully restated herein.

6. During the calendar year 2008 through the date of his termination, the Plaintiff's immediate supervisor was Chris Oaks. Mr. Oaks' was supervised, during the relevant time period, by Daniel Funderburgh. Both Mr. Oaks and Mr. Funderburgh were supervisors as defined in Florida Statute, 448.101.

7. Beginning in 2008 the Defendant Lamar's advertising revenues started to become adversely affected by the downturn in advertising as evidenced by Defendant Lamar's 11% decline in advertising revenues for the year ending December 2009.

8. Beginning in the calendar year 2008 the Plaintiff would be notified that there were certain sign locations which were losing rental value and therefore concomitant rental revenue based upon trees blocking and obscuring the view of certain billboards. The Plaintiff received instructions from his immediate supervisor, Oaks, to survey certain billboards and report back to Oaks if trees were blocking the view of the billboard from the public. On many occasions trees were found to be blocking the view of Defendant Lamar's billboards, and on numerous occasions these trees were located on the private property of individuals, businesses or municipalities (primarily the City of Tallahassee) that had no business relationship with the Defendant Lamar.

9. The Plaintiff was first instructed to poison trees in approximately 2009 by Oaks. Oaks advised the Plaintiff that Oaks had received the tree poison from the former Operations Manager at Lamar's Tallahassee office. Oaks advised the Plaintiff that Oaks' predecessor had

returned from a billboard industry convention with the 55 gallon container of the tree poison. Prior to 2009 it was common knowledge among certain Lamar employees that the unlabeled 55 gallon drum contained tree poisoning. Prior to 2009 Oaks was the individual who was tasked with the job of poisoning trees which obscured Lamar billboard locations.

10. In 2009 the Plaintiff, who was at that time a long time Lamar employee (five years), was first instructed by his supervisor, Oaks, to start poisoning various trees that were too big to be pruned back or cut down. Oaks instructed the Plaintiff when poisoning trees to use a truck that had no logo bearing the name of the Defendant Lamar or any iteration thereof. The Plaintiff normally drove a truck with a standard Lamar logo on the side of the vehicle. The Plaintiff was instructed by his supervisor Oaks to load into the unmarked truck a machete owned by the Defendant Lamar. The Plaintiff was instructed by his supervisor Oaks to go to the back of the workshop where a 55 gallon plastic drum was kept by the Defendant Lamar. The 55 gallon plastic drum had no logo or other identifying information as to what was contained within the drum.

11. Oaks had instructed the Plaintiff that the 55 gallon plastic drum containing the tree poison was contained in a drum identified by a black Sharpie marker as containing "AC Cleaner".² Oaks then instructed the Plaintiff to obtain rubber kitchen gloves, a standard hospital style mask, and the Plaintiff was instructed by Oaks to wear non-descript clothing without any Lamar identifiers. Oaks also instructed the Plaintiff obtain some of the fluid labeled as "AC Cleaner" and place it into a small container. The Plaintiff was instructed by Oaks to travel to the

² The Defendant Lamar apparently had a relationship within the Florida Department of Environmental Protection, or similar agency, wherein the Defendant Lamar's Tallahassee Office and their employees who were tasked with dealing with hazardous chemicals or waste would be given at least twenty-four hours notice by Oaks of a "surprise inspections." During the Plaintiff's seven year employment at Defendant Lamar, Plaintiff was aware of only two inspections of the area where hazardous chemicals were stored. The last inspection occurred during the spring 2011. The day prior to both of the inspections, the marking on the drum was changed from "AC Cleaner" to "Roundup." In essence, a black Sharpie marker was used to change the writing on the drum.

locations where trees were blocking the view of Lamar billboards, park several blocks away from the location of the offending tree, use the Defendant Lamar's machete to hack at the root system, and then pour the "AC Cleaner" onto the roots of the trees. On all occasions Oaks had identified the specific trees that needed to be poisoned.

12. The Plaintiff had been present during conversations between Oaks and Funderburgh when they discussed the use of pesticides/herbicides to poison trees which obscured Defendant Lamar's billboards. The Plaintiff has photographs of trees which have been poisoned within the City limits of Tallahassee. Plaintiff recalls specifically poisoning seven trees from 2009 to the date of his termination.

13. On or about the week of July 8, 2011 the Plaintiff advised his supervisors Oaks and Funderburgh orally that he objected to and refused to further participate in the Defendant Lamar's business practices concerning both the pruning of trees without permits, cutting trees down without permits and the poisoning of trees too large to be pruned or cut down.³ On July 15, 2011 the Plaintiff again provided written objection to his continued participation of violation of statutes, rules and regulations concerning the illegal destruction of trees obscuring Lamar billboards. On August 15, 2011 the Plaintiff received written notice from Defendant Lamar that he had been terminated. The Plaintiff's termination as well as the prior threats of termination made during the month of July 2011 constituted Retaliatory Personnel Action as defined by Section 448.101, Florida Statutes.

14. The facts set forth above reveal that the Plaintiff objected orally and in writing to Defendant Lamar's violations of and lack of compliance with, "local, state, and federal laws regarding...[the] killing of trees." Although the Plaintiff is not a college graduate, nor is he a

³ Only three days (approximately July 18, 2011) after Lamar supervisors had received the Plaintiff's oral and written notice of his refusal to participate in the violation of statutory rules and regulations, the Plaintiff was advised that he may face termination.

lawyer, the Plaintiff at a minimum had a good faith belief that various laws, rules, and regulations were being violated and in fact the following laws, rules, and regulations were violated by Defendant Lamar:

- a. Criminal Mischief in violation of Florida Statute 806.13 (misdemeanor if value of tree destroyed less than \$1000.00 and felony Criminal Mischief if value of tree destroyed is greater than \$1000.00);
- b. Unauthorized Entry on Land at the Direction of Principal, Supervisor, Employer or Foreman in violation of Florida Statute 810.12;
- c. Unauthorized exposing and depositing of poison on land of another in violation of Florida Statute 828.08;
- d. Florida Statute 479.08;
- e. Environmental Management Act, Chapter 10, Article VII of the Leon County Code of Laws;
- f. Ordinance Number 11-O-14AA and its predecessors;
- g. Florida Department of Transportation rule Part III Vegetation Management at Outdoor Advertising Signs, 14-40.030

**RELIEF REQUESTED BY PLAINTIFF FOR VIOLATION OF FLORIDA
WHISTLEBLOWER ACT**

15. The Plaintiff requests that the Court award the following statutory relief pursuant to Florida Statute 448 as follows:

- a. An injunction restraining continued violation of this act.
- b. Reinstatement of the employee to the same position held before the retaliatory personnel action or to an equivalent light duty position consistent with the Plaintiff's prior work-related back injury.

- c. Reinstatement of full fringe benefits and seniority rights.
- d. Compensation for lost wages (past and future), benefits and other remuneration.
- e. Any other compensatory damages allowable at law.

16. As a direct and proximate result of the Defendants' actions, the Plaintiff suffered damages, including but not limited to attorney's fees, lost wages, humiliation, embarrassment, anxiety, mental pain and suffering, and mental anguish, emotional distress and all other compensatory damages allowable by law.


WHEREFORE, the Plaintiff ROBERT BARNHART, demands judgment against the Defendant, THE LAMAR COMPANY, L.L.C., for compensatory damages, lost wages, lost benefits, lost earning capacity, humiliation, embarrassment, anxiety, mental pain and suffering, mental anguish, emotional distress, attorney's fees, and costs, for violation of Florida Statute Section 448.101 et al, and such other relief as this court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury.

VERIFICATION

As authorized by § 92.525, Florida Statutes, under the penalties of perjury, I declare that I have read the foregoing Complaint and that the facts stated in it are true.


Robert Barnhart, Plaintiff

The Law Offices of
STEVEN R. ANDREWS, P.A.
822 North Monroe Street
Tallahassee, Florida 32303
(850) 681-6416 FAX: 681-6984
Counsel for Plaintiff

/s/ Steven R. Andrews
STEVEN R. ANDREWS
Fla. Bar No: 0263680
STEPHEN G. WEBSTER
Fla. Bar No: 0014054

Sean Culliton, Esq., LLC
150 John Knox Road
Tallahassee, Florida 32303
(850) 385-9455 FAX: 906-9455
Counsel for Plaintiff

/s/ Sean Culliton
SEAN CULLITON
Fla. Bar No.: 0986232

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been
furnished by electronic transmission this 21st day of March, 2012, to:

Deborah H. Oliver, Esq.
ADAMS AND REESE LLP
101 E. Kennedy Blvd., Suite 4000
Tampa, Florida 33602
(813) 402-2880/(813) 402-2887 (Facsimile)
Attorneys for Defendant

/s/ Steven R. Andrews
STEVEN R. ANDREWS