

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JACK "JAY" PALMER, JR.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:11-CV-217-MHT
)	
INFOSYS TECHNOLOGIES LIMITED)	JURY DEMAND
INCORPORATED and)	
INFOSYS LIMITED)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

STATEMENT OF THE PARTIES

1. Plaintiff Jack "Jay" Palmer, Jr. is over the age of nineteen years and is a resident citizen of Lowndes County, Alabama. At all material times, the Plaintiff was employed by Infosys as a Principal-Enterprise Solutions.
2. Defendants Infosys Technologies Limited Incorporated is a foreign corporation with its headquarter in Bangalore, India and their principal place of business located at 34760 Campus Drive, Fremont, CA 94555. Infosys' Registered Agent in Alabama is C T Corporation System, 2 North Jackson St., Suite 605, Montgomery, AL 36104. In June 2011, Infosys Technologies Limited Incorporated changed its name to Infosys Limited.
5. At all relevant times, each individual involved with Plaintiff was an agent, representative and/or employee of Infosys. In committing the acts alleged herein, the individuals acted within the scope of their agency and/or employment and

were acting with the consent, permission, authorization and knowledge of Infosys and perpetrated and/or aided and abetted the unlawful, improper, and fraudulent acts described herein.

JURISDICTION AND VENUE

8. This Complaint was originally filed in the Circuit Court for Lowndes County, Alabama. Infosys timely removed the case to this Court.

STATEMENT OF FACTS

9. Infosys provides information technology and consulting services worldwide including the United States. Infosys employs over 15,000 foreign nationals in the United States, a substantial number of which are working in the United States on H-1B visas.
10. Under the law, this visa category applies to people who perform services in a specialty occupation. Infosys is an H-1B dependent corporation and is one of the biggest “users” of the H-1B program.
11. In 2009, the United States put increased restrictions and limitations on the number of H-1B visas that companies, including Infosys, could receive.
12. In March of 2010, Plaintiff was invited to Bangalore, India for planning meetings. During one of the meetings, Infosys management discussed the need to, and ways to, “creatively” get around the H-1B limitations and process and to work the system in order to increase profits and the value of Infosys’ stock. The decision was made by management to start using the B-1 visa program to get around the H-1B restrictions.

13. Under the law, the B-1 visa category applies to temporary business visitors who come to the United States to conduct activities of a commercial or professional nature, such as, consulting with business associates, negotiating a contract, or attending business conferences. Individuals on B-1 visas are prohibited, by law, from working in full time jobs in the United States.
14. During the course of his employment, Plaintiff learned that Infosys was sending lower level and unskilled foreigners to the United States to work in full-time positions at Infosys' customer sites in direct violation of immigration laws. Plaintiff also learned that Infosys was paying these employees in India for full-time work in the United States without withholding federal or state income taxes. Plaintiff also learned that Infosys overbilled its customers for the labor costs of these employees.
15. In order for a foreign Infosys' employee to obtain a B-1 visa, an American employee of Infosys had to write a "welcome letter" basically stating that the employee was coming to the United States for meetings rather than to work at a job.
16. Plaintiff's managers in the U.S. and India asked Plaintiff to write "welcome letters." Plaintiff was concerned about the accuracy of the letters and the legality of these employees working in the United States and contacted Infosys' Human Resources Department. Infosys' Human Resources Department confirmed that Infosys' foreign employees could not work in the United States on B-1 visas.
17. Plaintiff refused to write the false "welcome letters."

18. On July 1, 2010, Plaintiff was asked to join a conference call in regards to his refusal to write the “welcome letters” during which call Plaintiff was chastised for not being “a team player.”
19. Plaintiff was then transferred to another project and different division. Plaintiff soon learned that Infosys was illegally employing B-1 visas holders on that project as well. Infosys also asked Plaintiff to rewrite the contract at this project. Plaintiff refused to rewrite the contract because he knew that the purpose was to try to cover-up Infosys overcharging this customer by using the lower income B-1 employees and charging the higher pay rate for specialized employees.
20. Plaintiff called Infosys’ corporate counsel, Jeff Friedel, and explained the details of these violations.
21. In September 2010, an Infosys manager from India came to the United States to talk to Plaintiff. The manager confirmed the violations, but stressed to the Plaintiff that it was important “to keep this quiet.”
22. Plaintiff became more worried about Infosys’ illegal conduct and about further pressure, harassment and retaliation for refusing to be a part of the illegal conduct.
23. On October 11, 2011, Plaintiff again called Infosys’ corporate counsel, Jeff Friedel, and told him again of all the violations. Friedel told Plaintiff to file a report with Infosys’ Whistleblower Team and he would handle the situation.
24. Infosys’ Whistleblower Team was established on or about April 9, 2003 by the Board of Directors of Infosys. The Board also adopted and published the “Whistleblower Policy of Infosys Technologies Limited.”

25. Infosys provided a copy of the “Whistleblower Policy of Infosys Technologies Limited” to its employees, including the Plaintiff.
26. The “Whistleblower Policy of Infosys Technologies Limited” provides, among other things the following:
 - A. That Infosys “supports the making of disclosures that reveal grave misconduct, i.e., conduct which results in a violation of law by the Company or in a substantial mismanagement of company resources, and if proven constitutes a criminal offense or reasonable grounds for the dismissal of the person engaging in such conduct”;
 - B. That “it is the policy of the Company to encourage employees, when they reasonably believe that Questionable Accounting/Audit Matters, or the reporting of fraudulent financial information to our shareholders, the government or the financial markets and/or grave misconduct has occurred or are occurring, to report those concerns to the Company’s management”;
 - C. That all Whistleblower reports made by employees “will be taken seriously and will be promptly investigated”;
 - D. That Infosys “strictly prohibits discrimination, retaliation or harassment of against any person who reports incidents of questionable accounting or auditing matters, or the reporting of fraudulent financial information, or of grave misconduct, based on the person’s reasonable belief that such misconduct occurred”; and
 - E. That any complaint by a Whistleblower that he has been subjected to discrimination, retaliation or harassment as result of him reporting a

violation “shall be promptly and thoroughly investigated” and if “substantiated, appropriate disciplinary action, up to and including discharge, will be taken”.

27. On October 11, 2010, Plaintiff reported the H-1B and B-1 violations to Infosys Whistleblower Team.
28. The Whistleblower Team failed and refused to promptly investigate Plaintiff’s report and still refuses to thoroughly and fairly investigate and correct the illegal conduct.
29. Since the filing of the Whistleblower report, Plaintiff has been subjected to constant harassment, threats and retaliation, including but not limited to the following:
 - A. He has received numerous threatening phone calls;
 - B. His email system has been changed so that his emails could be monitored;
 - C. Infosys has allowed and promoted a hostile work environment in which Plaintiff has had to endure racial taunts or slurs, including being called “a stupid American” and criticized for being a Christian;
 - D. Infosys has failed and refused to pay Plaintiff his bonuses and has refused to reimburse him for customary and substantial expenses;
 - E. Infosys knowingly allowed employees who have harassed Plaintiff to participate in performance evaluations of Plaintiff and decisions to withhold bonus payments to Plaintiff.
 - F. Plaintiff has been instructed not to report to job sites and told that people do not want to work with him since he reported the illegal activities;

- G. Infosys stopped accruing vacation time earned by Plaintiff and after Plaintiff complained to Human Resources about lost vacation time, he was threatened by his managers; and
 - H. Infosys has forced Plaintiff to work over 70 hours per week without appropriate compensation.
30. Plaintiff reported to Infosys corporate counsel, Jeff Friedel, that Infosys was committing other violations of the law, including violations of the H-1B visa program; failure to pay federal and state income taxes; falsification of I-9 forms; and the fraudulent and illegal documentation of aliens.
31. Jeff Friedel admitted by electronic mail and via phone calls that Infosys was and is guilty of Visa Fraud.
32. On numerous occasions, Plaintiff has reported the threats and retaliation to Infosys' Human Relations Department and corporate counsel and sought protection from such conduct.
33. Infosys has failed and refused to take appropriate steps to cease these illegal activities and to protect Plaintiff from discrimination, retaliation or harassment and from having to work in a hostile working environment.
- 33A. After the filing of this lawsuit, Infosys learned that Mr. Palmer had retained on his laptop emails, screenshots and other evidence of Infosys' criminal activities. Infosys also learned that Mr. Palmer was a cooperating material witness in ongoing Federal criminal investigations of Infosys led by the State Department and Department of Homeland Security and that the Agents had requested that Mr. Palmer secure the laptop until they could legally obtain it for evidence. Infosys

then increased its harassing, retaliatory, intimidating and outrage tactics against Mr. Palmer, including, among other things, the following:

- A. Infosys, through its criminal defense lawyer, threatened to discipline or fire Mr. Palmer if he did not turn the laptop, which the Federal investigators needed as evidence, over to Infosys;
- B. Infosys' employees tried to remotely access the laptop;
- C. Infosys put Mr. Palmer "on the bench" in April 2011, meaning he has not been assigned to any project which is causing Mr. Palmer to lose bonuses and other compensation;
- D. Infosys completely shut Mr. Palmer out of Infosys' system limiting his access to company information;
- E. On July 26, 2011, at U. S. Senator Charles Grassley's request, Mr. Palmer submitted a written statement to the Senate Judiciary Subcommittee on Immigration, Refugees and Border Security which was presented and filed at the Hearing on "The Economic Imperative for Enacting Immigration Reform." When Infosys learned that Mr. Palmer was cooperating with Senator Grassley, a strong supporter of Americans' right to work, and had submitted a statement regarding Infosys' illegal conduct, Infosys and Paul N. Gottsegen, Chief Marketing Officer of Infosys, issued public statements which were published across the world falsely accusing Mr. Palmer of being a liar and a fortune-hunter and falsely claiming Mr. Palmer's Senate Statement was "full of inaccuracies, exaggerations and falsehoods;"

F. Infosys told employees not to communicate with Mr. Palmer and otherwise alienated him from the company; and

G. Mr. Palmer has received death threats from Infosys employees and Infosys has failed to take any actions to protect or support Mr. Palmer as required by Infosys' Whistleblower Policy.

33B. Infosys has a pattern and practice of punishing employees who report criminal conduct and rewarding employees who go along with illegal activities. Among other things, certain Infosys employees who refused to cooperate with the Federal authorities investigating the crimes have since been promoted and received raises while Mr. Palmer and other Infosys Whistleblowers who reported crimes were subjected to harassment, retaliation and outrageous conduct.

COUNT I

(Breach of Contract)

34. Plaintiff re-alleges all prior paragraphs of the Complaint as if set out here in full.

35. In or about August 2008, Infosys hired Plaintiff as a Principal Consultant and agreed to pay Plaintiff a salary, bonuses and expense reimbursements.

36. Infosys breached and continues to breach the terms of the employment agreement by refusing to pay the Plaintiff his bonuses and expenses.

37. Infosys admits to owing Plaintiff these obligations, but Plaintiff's efforts to collect have failed, and Plaintiff has been damaged.

38. As a proximate result of Infosys' breach of agreement, Plaintiff was injured and damaged by not receiving his bonus and being personally obligated for the substantial expenses he incurred on behalf of Infosys.

WHEREFORE, Plaintiff demands judgment against Defendant Infosys for the amount owed plus interest and costs.

COUNT II

(Intentional Infliction of Emotional Distress)

39. Plaintiff re-alleges all prior paragraphs of the Complaint as if set out here in full.
40. Defendants' conduct subjected Plaintiff to harassment, retaliation, discrimination, loss of income and benefits and otherwise put him in a hostile work environment in which Plaintiff was forced to endure racial taunts or slurs.
41. Defendants' conduct was intentional or reckless.
42. Defendants' conduct was extreme and outrageous.
43. Defendants' conduct caused Plaintiff to suffer emotional distress so severe that no reasonable person could be expected to endure it.

WHEREFORE, Plaintiff demands judgment against the Defendant in such an amount of compensatory and punitive damages as the jury deems reasonable and may award, plus interest and costs.

COUNT III

(Hiring, Training Monitoring and/or Supervising Whistleblower Team)

44. Plaintiff re-alleges all prior paragraphs of the Complaint as if set out here in full.
45. Defendants negligently, wantonly and/or intentionally hired, trained, monitored and/or supervised its Whistleblower Team and the other individuals who dealt with Plaintiff at all relevant times herein.
46. Infosys Whistleblower Team failed and refused to follow the Whistleblower policy.

47. As a result, Plaintiff was injured and damaged as alleged herein.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, in such an amount of compensatory and punitive damages as the jury deems reasonable and may award, plus interest and costs.

COUNT IV

(Hiring, Training Monitoring and/or Supervising HR Employees)

48. Plaintiff re-alleges all prior paragraphs of the Complaint as if set out here in full.

49. Defendants negligently, wantonly and/or intentionally hired, trained, monitored and/or supervised its Human Resources Department and the other individuals who dealt with Plaintiff at all relevant times herein.

50. Infosys Human Resources Department failed and refused to protect Plaintiff from threats, intimidations and harassments; to protect Plaintiff from repeatedly threatening situations; to prevent retaliation of bonus and pay outs; to intervene after Plaintiff Defendants that he was being subjected to threats, intimidations and harassments that this conduct was causing emotional stress to Plaintiff; and to follow company policies in regards to whistleblower protections.

51. As a result, Plaintiff was injured and damaged as alleged herein.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, in such an amount of compensatory and punitive damages as the jury deems reasonable and may award, plus interest and costs.

COUNT V

(Negligent, Wanton and/or Intentional Misconduct)

52. Plaintiff re-alleges all prior paragraphs of the Complaint as if set out here in full.
53. Defendants were under a duty to protect Plaintiff from discrimination, retaliation and harassment.
54. Defendants knew that Plaintiff was subjected to discrimination, retaliation and harassment as result of his notifying Infosys of criminal violations by the company.
55. Defendants negligently, wantonly and/or intentionally breached their duty to Plaintiff by allowing and condoning the discrimination, retaliation and harassment.
56. As a result, Plaintiff was injured and damaged as alleged herein.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, in such an amount of compensatory and punitive damages as the jury deems reasonable and may award, plus interest and costs.

COUNT VI

(Legal Misrepresentation/Fraud)

57. Plaintiff re-alleges all prior paragraphs of the Complaint as if set out here in full.
58. Defendants, by and through its employees, Board of Directors and the “Whistleblower Policy of Infosys Technologies Limited” represented to Plaintiff that he should report criminal and other improper violations and that if he did so he would be protected from discrimination, retaliation and harassment.
59. The representations made by the Defendants were false and Defendants knew they were false.

60. Plaintiff relied upon the false representations when he reported the criminal violations to Infosys and to the Whistleblower Team.
61. Plaintiff repeatedly requested that Defendants protect him and remove him from the hostile working environment, but the Defendants refused to do so.
62. As a proximate consequence of the Defendant's fraud, Plaintiff was and continues to be injured and damaged.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, in such an amount of compensatory and punitive damages as the jury deems reasonable and may award, plus interest and costs.


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JURY DEMAND

THE PLAINTIFF DEMANDS TRIAL BY JURY.


KENNETH J. MENDELSON

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served on all parties of record via electronic filing or U.S. Mail on this the 15th day of February, 2012.

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