

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JORGE FEIJOO,
Plaintiff,

v.

**COSTCO WHOLESALE
CORPORATION,**
Defendant.

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CA No. _____

JURY DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

1. PRELIMINARY STATEMENT

1.1. Plaintiff demands a jury for any and all issues triable to a jury. This action seeks compensatory and actual/economic damages; and costs and attorneys’ fees for the claims suffered by Plaintiff, JORGE FEIJOO, due to COSTCO WHOLESALE CORPORATION (referred to herein as “Defendant” or “Costco”) taking adverse employment actions against him ultimately resulting in the wrongful termination of his employment as explained herein.

1.2 This action arises under the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. Section 12112 and/or Americans with Disabilities Amendments Act of 2008 (ADA, ADAAA), Age Discrimination in Employment Act, as amended (ADEA) and the Texas Commission on Human Rights Act (TCHRA) (Chapter 21 of the Texas Labor Code).

2. JURISDICTION

2.1. Jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

3. VENUE

- 3.1. Venue of this action is proper in this court, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

4. PARTIES

- 4.1. Plaintiff is a former employee of Defendant and resides in St. Johns County, St. Augustine, Florida.
- 4.2. Defendant COSTCO WHOLESALE CORPORATION is an employer qualified to do business in Texas and employs more than 50 regular employees. Defendant COSTCO WHOLESALE CORPORATION can be served by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

5. STATEMENT OF FACTS

- 5.1 Plaintiff began working for Defendant as a Forklift Operator on November 19, 1992. He worked for Defendant for over twenty-seven (27) years until he was wrongfully terminated on April 14, 2020.
- 5.2 Plaintiff has a disability that severely limits his ability to hear. He suffers from tinnitus. As a result of his condition he is completely deaf in his right ear and 75% deaf in his left ear.
- 5.3 Despite Plaintiff's disability, he was able to perform all the essential functions of his job with reasonable accommodations. Plaintiff made Defendant aware of his disability and notified his managers when he had doctors' appointments which were routinely scheduled on Fridays. Plaintiff also informed his manager when he needed time off because of

doctor's appointments.

- 5.4 Just a few months prior to Plaintiff's termination, he told Defendant that he may retire when he turned 59 ½ years old, during a performance evaluation meeting.
- 5.5 Plaintiff noticed that he was being subjected to increasingly negative treatment. For example, Plaintiff was accused of being rude and was written up for that alleged behavior. However, in that instance, another employee was speaking to Plaintiff and he was unable to hear because of his disability. Plaintiff explained this to his superiors but was still subject to negative disciplinary action.
- 5.6 Plaintiff's schedule that he had for more than 10 years was also changed and he was put on a schedule that required him to work seven (7) days per week. Plaintiff worked several weeks straight without a day off.
- 5.7 Plaintiff complained to Kim Brown, District Manager, about the negative treatment he was experiencing at work. He also notified her that the change in his schedule interfered with his doctor's appointments where he received medical care relating to his disability.
- 5.8 Defendant did not engage in the interactive process to see if Plaintiff's requests to regain Friday's off for his doctor's appointments could be accommodated. Instead, Plaintiff was told by Mr. Polloreno, General Manager, that Defendant did not care about Plaintiff's doctor's appointments and that he needed to just schedule them around his new work schedule. Plaintiff even tried to present alternatives to try and get the accommodation that he needed, including offering to perform different jobs in the store so that he could regain his previous schedule.
- 5.9 On April 3, 2020, a seasonal worker who was recently hired (Chris, last name unknown), confronted Plaintiff while he was working. Part of Plaintiff's job duties included dropping

merchandise to get stocked using a forklift. Plaintiff was performing this duty when Chris confronted him angrily and told him to stop dropping merchandise because he did not want to continue stocking.

5.10 Chris repeatedly yelled and cursed at Plaintiff. When Plaintiff got down from the forklift, Chris pushed Plaintiff and then ran off as a manager approached. Plaintiff did not return physical contact after he was pushed by Chris.

5.11 Plaintiff was accused of getting into a fight at work, however, this was untrue as Plaintiff was the one pushed and did not return physical contact. Plaintiff was suspended and then terminated after over 27 years of employment.

6. CONDITIONS PRECEDENT

6.1 All conditions precedent to jurisdiction have occurred or been complied with.

6.2 Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”).

6.3 This lawsuit was filed within ninety (90) days of Plaintiff receiving his Notice of Right to Sue from the EEOC.

7. CAUSES OF ACTION

Disability/Perceived Disability Discrimination and Failure to Reasonably Accommodate (ADA and TCHRA)

7.1 Plaintiff incorporates by reference all the foregoing allegations in each of the paragraphs above as if fully set forth herein.

7.2 Plaintiff was a member of a protected class as a qualified employee with a disability/perceived disability.

7.3 Defendant was on notice Plaintiff suffered from a disability.

- 7.4 Plaintiff suffered from a disability/perceived disability but was still performing the essential functions of his job.
- 7.5 Plaintiff alleges Defendant violated the ADA and the TCHRA when Defendant took adverse actions against Plaintiff, including suspension and then terminating his employment.
- 7.6 Plaintiff also requested a reasonable accommodation that existed and was reasonable at the time requested.
- 7.7 Defendant failed to engage in the interactive process to see if Plaintiff could be accommodated as a qualified individual with a disability.
- 7.8 Defendant failed to provide the reasonable accommodation requested by Plaintiff.
- 7.9 Plaintiff was replaced by a non-disabled employee and/or treated less favorably than individuals outside of his protected class based on disability.

Retaliation
(ADA, ADEA and TCHRA/Texas Labor Code)

- 7.10 Plaintiff incorporates by reference all the foregoing allegations in each of the paragraphs above as if fully set forth herein.
- 7.11 Defendant intentionally retaliated against Plaintiff after making requests for accommodation in violation of the ADA and TCHRA.
- 7.12 Defendant intentionally retaliated against Plaintiff in violation of the ADA, ADEA and TCHRA after complaining to Defendant's management about disability and age discrimination.
- 7.13 Defendant intentionally retaliated against Plaintiff because of his opposition to discriminatory practices (disability/perceived disability and age) in violation of the Texas Labor Code, ADA and ADEA.

- 7.14 Plaintiff faced adverse actions when he was suspended and then terminated.
- 7.15 The adverse actions Plaintiff faced were causally connected to his engagement in protected activity.

Age Discrimination
(ADEA and TCHRA)

- 7.16 Plaintiff incorporates by reference each of the facts and allegations set forth above.
- 7.17 Defendant is an employer under the ADEA.
- 7.18 Plaintiff is a member of a protected class based on his age as he was 58 years old at the time of his suspension and termination.
- 7.19 Plaintiff was subjected to adverse actions when he was suspended and then terminated.
- 7.20 Plaintiff was treated less favorably than individuals outside his protected class based on age and/or Plaintiff was replaced by an individual outside of his protected class based on age.
- 7.21 Plaintiff suffered damage as a result of age discrimination when he was suspended and then terminated.

8. PRAYER

WHEREFORE, Plaintiff prays the Court order to award such relief including the following:

- 8.1.1 Award Plaintiff actual damages;
- 8.1.2 Order Defendant to pay Plaintiff back pay and front pay and benefits;
- 8.1.3 Award Plaintiff compensatory damages for mental anguish;
- 8.1.4 Award Plaintiff punitive damages to be determined by the trier of fact;
- 8.1.5 Grant Plaintiff pre-judgment and post-judgment interest;
- 8.1.6 Order Defendant to pay Plaintiff's costs and attorney's fees in this action; and,

8.1.7 Order and grant such other relief as is proper and just.

Respectfully Submitted,

/s/ Jacques P. Leeds

Jacques P. Leeds

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