IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KARI LYNN REESE, Plaintiff, v. AIRTRAN AIRWAYS, INC., SOUTHWEST AIRLINES CO., and EXAMINATION MANAGEMENT SERVICES, INC., Defendants.	CIVIL ACTION FILE NO. _____ JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff Kari Lynn Reese and submits this Complaint for Damages against Defendants herein and in support thereof respectfully shows the Court as follows:

NATURE OF CAUSE OF ACTION

This is a civil action claiming monetary damages arising out of the violation of federal regulations in the administration and conduct of required drug testing of airline personnel resulting in violations of Georgia law and injury proximately caused by the manner in which such testing was conducted related to Plaintiff.

JURISDICTION

1.

This Court has jurisdiction over this action on the basis of diversity of citizenship, pursuant to 28 U.S.C. § 1332(a)(1), insofar as Plaintiff does not reside within the same state as any Defendant herein and the amount of damages in controversy in this matter exceeds $75,000.00. Defendants Southwest Airlines Co., AirTran Airways, Inc., and Examination Management Services, Inc. each maintain registered agents for service in Georgia and within this District and are within the Court's jurisdiction. Defendants also conduct substantial business and have sufficient contacts within Georgia to warrant the imposition of jurisdiction over them, pursuant to 15 U.S.C. §§ 1681 and 1692k(d) and 28 U.S.C. §§ 1331, 1337, and 1367. The Court's jurisdiction over Plaintiff's state law claims is proper pursuant to 28 U.S.C. § 1367. Plaintiff initially brought the claims herein on August 29, 2014 and that case was dismissed without prejudice upon motion and this Court's Order on June 17, 2016. Plaintiff's re-filing in the instant action is timely pursuant to applicable Federal Rules of Civil Procedure and Georgia law.

VENUE

2.

Venue is proper in this Court, pursuant to 28 U.S.C. § 1391, as the actions giving rise to this lawsuit occurred within the Northern District of Georgia.

PARTIES

3.

Plaintiff Kari Reese, known at all times relevant to the factual circumstances herein by her maiden name of Kari Walter, is a natural person residing in Lucas County, Ohio. She is employed as a flight attendant by Defendant Southwest Airlines Co. which acquired Defendant AirTran Airways, Inc. in 2010. At the time of the factual circumstances material to this case, employees of Defendant AirTran Airways, Inc., including Plaintiff, were in the process of being integrated as employees of Defendant Southwest Airlines Co. and were required to comply with all employment regulations and procedures promulgated by Defendant Southwest Airlines Co. At all times relevant to this action, Plaintiff was present within this District and subject to U.S. Department of Transportation (DOT) and Federal Aviation Authority (FAA) regulations, including procedures for employee drug testing, as a result of her employment.

4.

Defendant AirTran Airways, Inc. (hereinafter referenced as "ATA") is a foreign corporation incorporated in Delaware with its principal place of business at 2702 Love Field Drive, Dallas, Texas 75235. Defendant ATA has substantial contacts with and regularly transacts business within Georgia and this District, including the actions directly related to the subject matter of this lawsuit.

Defendant ATA maintains a registered agent for service in Georgia and may be served with process through Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092. At all times relevant to this action, Defendant ATA was subject to U.S. Department of Transportation (DOT) and Federal Aviation Authority (FAA) regulations, including procedures for employee drug testing.

5.

Defendant Southwest Airlines Co. (hereinafter referenced as "SWA") is a foreign corporation incorporated in Texas with its principal place of business at 2702 Love Field Drive, Dallas, Texas 75235. Defendant SWA has substantial contacts with and regularly transacts business within Georgia and this District, including the actions directly related to the subject matter of this lawsuit. Defendant SWA maintains a registered agent for service in Georgia and may be served with process through Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092. At all times relevant to this action, Defendant SWA was subject to U.S. Department of Transportation (DOT) and Federal Aviation Authority (FAA) regulations, including procedures for employee drug testing.

6.

Defendant Examination Management Services, Inc. (hereinafter referenced as "EMSI") is a foreign corporation incorporated in Nevada with its principal place of business at 3050 Regent Blvd., Suite 400, Irving, Texas 75063. Defendant EMSI has substantial contacts with and regularly transacts business within Georgia and this District, including the actions directly related to the subject matter of this lawsuit. Defendant EMSI maintains a registered agent for service in Georgia and may be served with process through CT Corporation System, 1201 Peachtree Street, Atlanta, Georgia 30361. As a drug testing vendor contractor for Defendants ATA and SWA, as well as other companies, Defendant was, at all times relevant to this action, subject to U.S. Department of Transportation (DOT) and Federal Aviation Authority (FAA) regulations, including procedures for drug testing conducted by its employees.

FACTS

7.

Plaintiff was and remains employed as a flight attendant with Defendants ATA/SWA and regularly flies various multi-day trips in this capacity. On February 23, 2014, while on an overnight layover in Austin, Texas between flights to Cancun, Mexico, she visited the emergency room at St. David's Hospital having felt ill for over a day. She was diagnosed with a urinary tract infection and given

prescriptions for Macrobid, an antibiotic, and Pyridium, an analgesic used to reduce bladder spasms. Previously, she had also been taking the antibiotic Bactrium.

8.

Plaintiff was unable to get these prescriptions filled before her next flight back to Cancun as she was required to report for work at 4:00 a.m. She filled and began taking the prescribed medication on her return to Austin later that day. On February 25, 2014, Plaintiff completed her trip and returned to Orlando, Florida. There she was informed that she had been selected for a random drug test pursuant to federal regulations for certain airline employees. 49 C.F.R. Part 40 *et seq.* Plaintiff followed Alfonso McDonald, who would conduct the test, to the airport Drug and Alcohol office where she was instructed to complete a required DOT Drug Testing Custody and Control form and Defendant SWA's Notice of Selection for FAA Mandated Random Drug Testing.

9.

Plaintiff informed Mr. McDonald that she had a temporary medical condition for which she was taking two medications one of which, Pyridium, would cause her urine to appear orange. She then completed the test, initialed the required post-test documents, and returned home.

10.

On February 28, 2014, Plaintiff took a personal day and visited St. Luke's Promedica Hospital in Maumee, Ohio as she felt that her urinary tract infection had worsened. While there she was diagnosed with a severe urinary tract infection and prescribed a different antibiotic, Cipro, and another course of Pyridium. Plaintiff was also diagnosed with vaginal prolapse and was instructed to make a urology appointment. The following Monday, March 3, 2014, Plaintiff saw a doctor at her family physician's office and was diagnosed with cystocele, a prolapsed bladder. Given this diagnosis she was returned to work but told to avoid lifting.

11.

Thereafter, Dr. Jerome Cooper, acting as a Medical Review Officer on behalf of Defendants ATA and SWA and to whom her February 25th drug test results had been forwarded, contacted Plaintiff by telephone. Dr. Cooper informed her that the results of the test had been cancelled because of the presence of oxidants in her urine and that she would likely be re-tested. Plaintiff told him that she had been taking two antibiotics, Macrobid and Bactrium, and Pyridium at the time of the test and, at his request, emailed him a photograph of the Pyridium bottle. That evening, Plaintiff commuted to Orlando where she would begin a multi-day trip the following day.

12.

On March 7, 2014, Plaintiff's flight crew had a three-hour stopover or "sit" in Atlanta, Georgia. Upon landing in Atlanta, she was informed that she would be required to take another drug test. Plaintiff reported to the Drug and Alcohol office and was told by Ms. Dale Hanke, an employee of Defendant EMSI, with which Defendants ATA and SWA contracted to conduct required employee drug testing, that she would be given a "random" test. Ms. Hanke instructed Plaintiff to complete the required DOT Drug Testing Custody and Control and Defendant SWA's Notice of Selection for FAA Mandated Random Drug Testing forms. The Notice of Selection stated that Plaintiff had been selected for a "random" test pursuant to which she was required to provide 1.5 ounces of urine, *in private*. Ms. Hanke then directed Plaintiff to remove her sweater vest because the test would be "observed" and referred to the procedure as an "Up Down, Turn Around" or "UDTA".

13.

In violation of both the applicable selection notice and DOT regulations, Plaintiff was then directed by Ms. Hanke to raise her shirt and bra above her breasts and underneath her armpits, lower her pants and underwear to her knees, and then turn around while Ms. Hanke watched. 49 C.F.R. Part 40.63(d)(1) and 40.67(i).

14.

Upon hearing these instructions, Plaintiff became visibly upset, given that random drug tests do not require observation and her ongoing urinary-related medical problems. She began to cry but, as she was aware that failure to complete a drug test constituted grounds for termination, attempted to comply with Ms. Hanke's direction. However, Plaintiff did not lower her underwear as she was upset and embarrassed that because of her medical issues she had to wear a protective pad which had become discolored from bladder leakage and the effect of the Pyridium. Ms. Hanke instructed Plaintiff that failure to do so would amount to refusal to take the test so while attempting to hold her shirt and bra above her breasts, Plaintiff lowered her underwear and well as her pants to her knees and tried to turn around. Plaintiff's pants and underwear fell to her ankles and remained as such as she tried to complete the observed "turn-around" procedure demanded by Ms. Hanke.

15.

Ms. Hanke then directed Plaintiff to urinate in a cup while she watched from approximately two feet away. This took several attempts and approximately fifteen minutes as Plaintiff's medical issues made it difficult for her to produce the required amount of urine. By then end of the whole testing procedure Plaintiff was emotionally distraught and humiliated.

16.

Despite her emotionally distraught state, Plaintiff felt that she had to continue working the remainder of the trip because if she called out of an active trip, she would accumulate "points" that could result in adverse employment action. Subsequently, Plaintiff contacted a union representative with regard to the improper handling of the drug test and, upon information and belief, union officials then spoke with Defendant SWA's Drug and Alcohol Team about the incident.

17.

On March 11, 2014, Plaintiff called Defendant SWA's Drug and Alcohol Division about its drug testing protocol. During this telephone call, Nancy Cleburn, a Senior Drug and Alcohol Specialist with Defendant SWA, joined the discussion. While Plaintiff had not previously identified herself, Ms. Cleburn asked if she was "Kari" and introduced herself. She admitted that the manner in which Plaintiff's drug test had been administered had been a "perfect storm" of errors and that Defendant Hanke had been "overzealous" and "went way too far". Ms. Cleburn said that Ms. Hanke and Defendant SWA's other contractor "collectors" would be re-trained. However, she also stated that had Plaintiff already taken Defendant SWA's merger training, she would have been made aware of the "UDTA" observation procedure routinely administered to Defendant SWA's employees and commonly referred to as the "hokey-pokey" and laughed.

18.

On March 18, 2014, Dr. Cooper contacted Plaintiff about her March 7th test. Plaintiff confirmed that she had been taking Cipro and Pyridium and emailed him a photograph of the Cipro bottle, as requested.

19.

On March 22, 2014, while in Orlando, Plaintiff was required to take a third test. In the Drug and Alcohol office she spoke with Ms. Cleburn by telephone and was told that the test to be administered by Lynn Black would be "directly observed" due to the cancellation of Plaintiff's March 7th test results.

20.

Despite Ms. Cleburn's involvement and earlier statement that "collectors" would be retrained, Ms. Black directed Plaintiff to raise her shirt and bra and lower her pants in the same manner as had Ms. Hanke. Plaintiff proceeded with the testing but insisted that she was only required to lower her pants and underwear to mid-thigh and raise shirt to her navel, pursuant to DOT regulations. Plaintiff was then observed by Ms. Black who squatted in front of Plaintiff and approximately six inches away while she attempted to urinate. Again, despite the assurance of employee re-training, during this part of the procedure and without consent, Ms. Black reached out and physically spread Plaintiff's legs wider by pushing against the inside of Plaintiff's left knee with the back of her right hand.

CAUSES OF ACTION

COUNT 1

INVASION OF PRIVACY

21.

Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

22.

Plaintiff possessed a reasonable expectation of privacy during the conduct of the drug test administered by Ms. Hanke given the standards set for such procedures by FAA regulation.

23.

Defendants, their agents, contractors, and/or employees, subjected Plaintiff to an unreasonable intrusion of her privacy by grossly exceeding the scope of the federal regulation for the administration of the drug test. 49 C.F.R. Part 40.67(i).

24.

As set forth above, Defendants had no right to compel Plaintiff to completely expose herself in the observation portion of the drug test and/or to insist and threaten that her failure to comply with Ms. Hanke's demand that she do so would result in adverse employment action due to the cancellation of her test.

25.

Defendants and their agents, contractors and/or employees acted intentionally and/or with gross or reckless disregard for and indifference to Plaintiff's rights, thereby showing conscious indifference to the consequences of their actions.

26.

The above-referenced conduct of Defendants and their agents, contractors, and/or employees constituted an invasion of Plaintiff's privacy in violation of Georgia law and directly and proximately damaged Plaintiff.

COUNT 2

NEGLIGENCE

27.

Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

28.

At all times material to the subject matter of this action, Plaintiff had a reasonable expectation that the mandatory drug testing procedures to which she was subjected would be conducted in compliance with federal regulations. 49 C.F.R. Part 40 *et seq.*

29.

Defendants, their agents, contractors, and/or employees, failed to conduct Plaintiff's drug test in compliance with federal regulations and Defendants failed to properly train and supervise their agents and/or employees in the proper and required administration of such testing. 49 C.F.R. Part 40 *et seq.*

30.

Defendants and their agents, contractors and/or employees knew or should have known that federal regulations set forth the precise manner in which such drug testing is to be conducted and had the obligation to properly train and supervise agents and/or employees involved in the conducting of such procedures.

31.

Defendants and their agents, contractors and/or employees acted negligently and/or with gross or reckless disregard for and indifference to Plaintiff's rights, thereby demonstrating a conscious indifference to the consequences of their actions.

32.

The above-referenced conduct of Defendants and their agents, contractors, and or employees constituted negligence in violation of Georgia law and directly and proximately damaged Plaintiff.

COUNT 3

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

33.

Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

34.

Defendants and their agents, contractors and/or employees filed to comply with procedures set forth within applicable federal regulations for the administration of drug testing when Plaintiff was compelled to almost completely expose herself, in violation of federal regulations, during the observation portion of the drug test conducted by Ms. Hanke despite the obvious and severe distress this caused Plaintiff. 49 C.F.R. Part 40.67(i).

35.

Defendants and their agents, contractors and/or employees were on notice that they had no right, authority, or legal justification to exceed the scope of federal regulations for the administration of drug testing.

36.

Defendants acted with gross or reckless disregard for Plaintiff's rights and their actions as described herein constitute severe and outrageous conduct such as would shock the conscience of a reasonable person and cause severe emotional distress.

37.

Defendants' actions did, in fact, cause Plaintiff severe emotional distress, as well as pecuniary loss as a direct result of the excessive and outrageous conduct to which she was subjected during the drug test by Defendants, their agents, contractors, and/or employees.

38.

The above-referenced conduct of Defendants, their agents, contractors, and/or employees directly and proximately damaged Plaintiff.

COUNT 4

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

39.

Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

40.

Defendants and their agents, contractors and/or employees intentionally subjected Plaintiff to humiliation and emotional distress by demanding that she expose herself, over her objection, during the observation portion of the drug test in excess of drug testing procedures set forth within applicable federal regulations. 49 C.F.R. Part 40.67(i).

41.

Defendants and their agents, contractors and/or employees were on notice that they had no right, authority, or legal justification to exceed the scope of federal regulations for the administration of drug testing.

42.

Defendants' actions were intentional and/or taken with such gross or reckless disregard for and indifference to Plaintiff's rights as to constitute severe and outrageous conduct such as would shock the conscience of a reasonable person and cause severe emotional distress. Defendants' actions were willful, wanton, and malicious, were directed toward Plaintiff, and demonstrated that Defendants had no regard for the consequences of such actions.

43.

The above-referenced conduct of Defendants and their agents, contractors, and/or employees, in fact, directly and proximately damaged Plaintiff causing her severe emotional distress and pecuniary losses.

COUNT 5

PUNITIVE DAMAGES

44.

Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

45.

Defendants and their agents, contractors, and/or employees, as set forth in Counts 1 – 4 above, acted intentionally and with malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to the consequences thereof, and/or with gross or reckless indifference to Plaintiff's rights, thereby showing a conscious indifference to the consequences of their actions, giving rise to causes of action Defendant for punitive damages, pursuant to O.C.G.A. § 51-12-5.1 or, in the alternative, damages for injury to the peace, happiness, or feelings of Plaintiff, for which damages may be awarded in a measure prescribed by the enlightened consciences of impartial jurors, pursuant to O.C.G.A. § 51-12-6.

JURY DEMAND

Plaintiff requests trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, on the basis of the above and foregoing, Plaintiff respectfully demands a Jury Trial, prays for judgment against the Defendants herein, and prays that this Court award the following relief:

(a) Awarding Plaintiff actual and punitive damages for Defendants' conduct as set forth in Counts One through Four herein;

(b) Awarding Plaintiff a jury trial on all claims so triable by a jury; and

(c) Awarding Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted, this 14th day of December, 2016.

/s/ David A. Cox
David A. Cox
Georgia Bar No. 192381

2870 Peachtree Road
183
Atlanta, Georgia 30305
404-276-0798
dacox@dacoxlaw.com

LOCAL RULE 5.1 CERTIFICATION

I certify that this pleading was prepared in Times New Roman (14 point) font, a font and point selection approved by L.R. 5.1.

This 14th day of December, 2016.

/s/ David A. Cox
David A. Cox