

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

JULI BRISKMAN
47393 River Crest Street
Sterling, Virginia 20165

Plaintiff,

v.

Case No. 2018-5335

AKIMA, LLC
13873 Park Center Road, Suite 400N
Herndon, VA 20171

Serve:
CT Corporation System
4701 Cox Road, Suite 285
Glen Allen, VA 23060

Defendant.

COMPLAINT

COMES NOW Plaintiff, JULI BRISKMAN, and brings this action against Defendant, AKIMA, LLC (“Defendant”). In support thereof, Plaintiff states as follows:

Introduction

1. Violations of the right to free speech, observed the Virginia General Assembly in 1798, “ought to produce universal alarm” because “free communication among the people” regarding “public characters and measures” is “justly deemed” the “only effectual guardian of every other right.” 4 Jonathan Elliot, *Debates on the Federal Constitution* 529 (2d ed. 1836).

2. Virginia has a long-standing commitment to standing up to would-be tyrants and speaking truth to power: the 1776 Virginia Declaration of Rights contained the first constitutional guarantee of the freedom of the press anywhere in the world, and James Madison authored the First Amendment to the United States Constitution. That protection continues to this

day in Article I, Section 12 of the Virginia Constitution, which still proclaims that the “freedoms of speech and of the press are among the great bulwarks of liberty.”

3. This case is about whether that right will remain viable for all Virginians in the twenty-first century. Government censorship no longer needs to rely on the heavy hand of the censor. Instead, around the world, autocrats are increasingly relying on private companies that have interests in government contracts and benefits to silence their employees for them. Companies in autocratic countries know that their ability to continue to do business with the government depends on not being seen as opposing the government, and so they fire employees that publically speak out against the government. And that process—the “autocratic capture” of the private sector—threatens the free-speech rights and financial security of those who speak out and silences activists by forcing them to choose between their livelihood and their political speech and activism.

4. The First Amendment prohibits government officials from using the “threatened imposition of government power or sanction” to shut down the expression of ideas and opinions. *Backpage.com, LLC, v. Dart*, 807 F.3d 229, 230 (7th Cir. 2015); *see also Okwedy v. Molinari*, 333 F.3d 339, 344 (2d Cir. 2003) (per curiam). Moreover, it would be unconstitutional for the federal government—or the Commonwealth’s—to condition government contracts on a contractor’s or its employees’ support or opposition to any politician’s agenda. *See Elrod v. Burns*, 427 U.S. 347, 359 (1976) (plurality).

5. This case presents this Court with an example of autocratic capture in the United States. Plaintiff chose in her private time and in her capacity as a private citizen to express her disapproval of President Trump by extending her middle finger. Although many will disagree with Plaintiff’s message and her means of expressing it, there can be no doubt that such speech is

at the very core of the First Amendment and the Virginia Constitution. *See, e.g., Cohen v. California*, 403 U.S. 15 (1971); *New York Times v. Sullivan*, 376 U.S. 254 (1964); *see also Elliot v. Commonwealth*, 593 S.E.2d 263, 269 (Va. 2004) (Article I, Section 12 of the Virginia Constitution is coextensive with the First Amendment to the United States Constitution).

6. Even though Plaintiff's speech was protected political speech and any potential retaliation by the government against Defendant would be unlawful, Defendant forced Plaintiff to resign because it feared governmental retaliation.

7. Defendant's pretextual justification for its actions, a claimed violation of its social-media policy for obscenity, was inconsistent with actions it took against another employee who used far more obscene language to discuss political ideologies and beliefs online but was not opposed to the present administration.

8. Plaintiff's expression of disapproval of the President is core political speech protected by both the United States Constitution and the Virginia Constitution, and it would have been unlawful for any government to retaliate against Defendant for Plaintiff's conduct. Defendant's decision to force the Plaintiff to resign out of fear of unconstitutional retaliation violated Virginia public policy because it risks exactly the harm that the United States Constitution and the Virginia Constitution seek to avoid: the silencing of Virginians out of fear of a government official's unlawful wrath.

Parties

9. At all times relevant herein, Plaintiff is a natural person and resident of the Commonwealth of Virginia.

10. At all times herein, Defendant is an Alaska Limited Liability Company, foreign registered to do business in Fairfax County, Virginia.

Jurisdiction and Venue

11. This Court has personal jurisdiction over Defendant pursuant to Virginia Code § 8.01-328.1 (1950), as amended, where Defendant transacted business in the Commonwealth of Virginia.

12. This Court has subject matter jurisdiction over this matter pursuant to Virginia Code § 17.1-513 (1950), as amended, as the recovery of fees sought is greater than \$100.00 and no other court may assert jurisdiction.

13. Venue is appropriate in this Court as Defendant is registered to do business in Fairfax County.

Factual Background

14. Plaintiff was employed by Defendant starting on or about April, 2017 until she was forced to resign on October 31, 2017.

15. During her employment, Plaintiff served as a Marketing Analyst. Plaintiff's responsibilities included internal marketing, internal communications, external marketing, and maintaining Defendant's social media platforms.

16. Defendant operates as a shared services organization for its subsidiaries that obtain government contracts, by providing its subsidiaries with human resources, benefits management, payroll, marketing and communications, and other administrative services.

17. On or about Saturday, October 28, 2017, Plaintiff, on her personal time while she was not at work, went on a bike ride on Lowes Island Boulevard in Sterling, Virginia.

18. While Plaintiff was riding her bike, she was passed by the presidential motorcade leaving the Trump Country Club located in Sterling, Virginia.

19. While the motorcade passed, Plaintiff extended her middle finger as an expression of disapproval of the President.

20. Unbeknownst to Plaintiff, a member of the presidential press corps in a vehicle driving behind her bicycle captured the moment and photographed her. The photograph does not show Plaintiff's face or any other identifying characteristics of Plaintiff, nor does it identify Plaintiff. The photograph of Plaintiff taken on October 28, 2017 is attached hereto as Exhibit 1.

21. Within hours of her bike ride, the photograph of Plaintiff was published and tweeted out by *Voice of America* reporter Steve Herman.

22. Plaintiff initially did not identify herself as the individual in the photograph. She ultimately decided to do so on Sunday, October 29, 2017.

23. At that time, Plaintiff updated her personal Facebook page and Twitter page with the photograph of herself, making the photograph her cover photo, or the background of her profiles, on these two social media networks with this image. She specifically did not update her LinkedIn profile, which mentioned her association with Akima.

24. Plaintiff subsequently began to receive media requests, but declined to be interviewed.

25. On Monday, October 30, 2017, upon returning to work, Plaintiff approached Jessica Hoke in Human Resources about the photograph.

26. On Monday evening, the photograph was a topic on the *Tonight Show with Jimmy Fallon*. Plaintiff sent Mr. Frazier, her direct supervisor, the clip of the segment following its airing.

27. The following day, on Tuesday, October 31, 2017, Plaintiff was asked to stay after an afternoon meeting. Ms. Hoke and Vice President of Defendant, Joe Boeckx, entered the

room, and along with Mr. Frazier, notified Plaintiff she was being terminated from her employment.

28. Plaintiff was notified that she was being terminated for the following reasons: (1) that the photograph could link her to Defendant and Defendant, as a government contractor, feared retaliation by the President or his administration; and (2) that the photograph amounted to obscene content on her Facebook page.

29. Mr. Boeckx indicated that this was a “social media tattoo” that jeopardized the Akima brand and its ability to do social media marketing, and that Plaintiff’s termination was a form of corporate protection. He repeatedly stressed during the meeting in which he terminated her that even a cursory search of Plaintiff’s Twitter or Facebook feed would link the photograph to Defendant. Finally, Mr. Boeckx also stated that the U.S. Government is the company’s customer, and that there could be no separation of her actions and its potential effect.

30. During the October 31, 2017 meeting, Plaintiff was promised four weeks of severance. She was also asked to resign, instead of having her file indicate that she was terminated. She was promised that if she resigned, Defendant would not object to her request for future unemployment compensation.

31. Plaintiff was asked to submit her resignation in writing to Ms. Hoke immediately in order for such terms to take effect, which she did in Ms. Hoke’s presence.

32. Plaintiff was not asked to sign any other documents or paperwork during the October 31, 2017 meeting or at any time subsequently thereafter.

33. Following her forced resignation, Plaintiff was escorted to her desk by Ms. Hoke to retrieve her personal belongings before being escorted out of the secure portion of the building.

34. Plaintiff was notified that she was being forced to resign for violating Defendant's social media policy. A copy of Defendant's social media policy is attached hereto at Exhibit 2.

35. Defendant's social media policy defines "Covered Social Media Activity" as "social media activity that ... otherwise impacts the Company's business interests, or that of its parent, subsidiary, affiliated companies, contractors, customers, or competitors..." Exhibit 2, paragraph 3.2.

36. The policy goes on to provide that: "Covered Social Media Activity that contains discriminatory, obscene, malicious or threatening content, is knowingly false, creates a hostile work environment, or similar inappropriate or unlawful conduct will not be tolerated and will be subject to discipline up to and including termination of employment." Exhibit 2, paragraph 4.3.

37. Prior to Plaintiff's forced resignation, neither Plaintiff's personal Facebook page nor Twitter account indicated that she was employed by Defendant, or in any way associated with Defendant. Only her LinkedIn account identified herself as an employee of Defendant.

38. The photograph taken of Plaintiff neither identified Defendant by name, nor did it indicate any affiliation of Plaintiff as an employee of Defendant.

39. Prior to Plaintiff's forced resignation, and as part of her duties in overseeing Defendant's social media pages, she had been notified that the Senior Director of Operations had posted on his personal Facebook page "You're a fucking Libtard asshole" in response to political speech. A copy of the offensive speech is attached hereto as Exhibit 3. The employee's Facebook page identified him as a long-term employee of Defendant.

40. Plaintiff notified her superiors of this Employee's conduct and published actions. However, under information and belief, this Employee was not terminated for his obscene speech.

41. Plaintiff ultimately only received two weeks of severance, not the four weeks that was promised.

Count I: Wrongful Termination

42. Plaintiff incorporates paragraphs 1 through 41 as if fully set forth herein.

43. Plaintiff exercised her right to freely speak and publish her sentiments regarding President Trump and his administration while on a bike ride during her personal time.

44. Her Facebook and Twitter accounts, at the time of her forced resignation, did not identify her in any way as an employee of the Defendant.

45. Defendant forced Plaintiff to resign for the stated reason that the photograph of her would have an adverse effect on its ability to obtain government contracts.

46. Forcing Plaintiff to resign out of fear of unlawful retaliation by the government for constitutionally protected speech violates Virginia public policy. Both the United States Constitution and the Virginia Constitution express strong public policies that Virginians may speak on topics of public interest without fear of suffering the effects of governmental retaliation for political speech.

WHEREFORE, Plaintiff prays that the Court declare her forced resignation to be unlawful as contrary to Virginia public policy as expressed in the United States Constitution, the Virginia Constitution, and other laws and policies of the State of Virginia and grant her compensatory damages in an amount to be determined at a trial for damages to Plaintiff that are continuing to accrue and to be determined as of the date of judgment; attorney's fees and costs, and for other such relief as this Court deems proper.

Count II: Breach of Contract

47. Plaintiff incorporates paragraphs 1 through 46 as if fully set forth herein.

48. Defendant offered Plaintiff four weeks of severance payments as part of the terms of her forced resignation.

49. Plaintiff was told that if she accepted the offer, she could also indicate that she resigned from her position, as opposed to being terminated from her position, with Defendant. Additionally, Defendant assured Plaintiff that if she indicated she had resigned, Defendant would not dispute her request for subsequent unemployment compensation.

50. Plaintiff accepted the terms of Defendant's offer and submitted her resignation.

51. Plaintiff ultimately only received two (2) weeks of severance, and not the four (4) weeks that had been offered.

WHEREFORE, Plaintiff requests that she receive \$2,692.30 for unpaid severance, attorney's fees and costs, and prejudgment interest at the statutory rate.

Dated: _____

Respectfully submitted,
JULI BRISKMAN

BY COUNSEL:

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