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in Pleadings

IN THE CIRCUIT COURT OF THE  
11<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2010 16103 CA 10

NIURKA SANCHEZ,

Plaintiff,

v.

OCEAN BANK,  
a Florida banking corporation,

Defendant.

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**AMENDED COMPLAINT AND JURY TRIAL DEMAND**

Plaintiff NIURKA SANCHEZ, through undersigned counsel and for her Amended Complaint, sues Defendant OCEAN BANK, a Florida banking corporation, and alleges as follows:

1. This is an action seeking equitable relief and damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs, interest, and attorney's fees, for unlawful national origin discrimination and retaliation in violation of the Florida Civil Rights Act of 1992, §760.01., *et seq.* ("FCRA"), and for unlawful retaliation in violation of the Florida Whistleblower's Act, §448.101, *et seq.* ("FWA").

2. Plaintiff is a female of Cuban descent, is *sui juris*, is, and during the relevant period hereto was, a resident of Miami-Dade County, Florida, and was formerly employed by Defendant.

3. Defendant was and is a Florida banking corporation that at all times relevant hereto conducted banking operations in Miami-Dade County, Florida. At all

relevant times, Defendant was, and still is, an "employer" as defined under the FCRA and the FWA.

4. Plaintiff was employed by Defendant for approximately 25 years from February 27, 1984 until January 30, 2009, when her employment with Defendant was involuntarily terminated under the guise of a reduction in force.

5. Throughout her employment with Defendant, Plaintiff performed her job duties and responsibilities fully and properly, and was never disciplined.

7. Plaintiff was terminated from her position of Private Banking Officer-Wealth Management, purportedly as part of a company-wide lay off. However, Plaintiff was subjected to unlawful discrimination and retaliation by Defendant under the following facts:

(a) Over the 14-year period immediately preceding her termination, Plaintiff as a Private Banking Officer Plaintiff had developed and was responsible for an asset portfolio of approximately \$60 million. During this time frame, Plaintiff managed this approximate \$60 million portfolio competently and in accordance with all federal Bank Secrecy Act ("BSA") requirements.

(b) Commencing in early 2008, A. Alfonso Macedo, an individual of Venezuelan descent and the son of the major shareholder of Defendant's Venezuelan holding company, became President of Defendant. As a result, the culture of Defendant began to change to one favoring employees and officers of Venezuelan national origin.

(c) In late September and October 2008, after Plaintiff had returned from a trip to Venezuela with Diane Mantellini, Vice President and Manager of Defendant's Wealth Management Department, during which trip Plaintiff had added another \$1.2 million

account to her already large portfolio, Defendant's management, at the direction of Mr. Macedo and without any justifiable business reason, began to remove from Plaintiff's responsibility the client accounts of her portfolio and redistributing the accounts to Defendant's officers and employees of Venezuelan descent.

(d) In or about August 2008, and immediately before the time period when Plaintiff's accounts began to be distributed to other employees of Venezuelan descent, Plaintiff had brought to the attention of Defendant's management, pursuant to her duties under the BSA, federal banking laws and other regulations certain suspicious activity in connection with certain foreign transactions with Defendant involving certain politically exposed person ("PEP") Venezuelan nationals. Plaintiff, as she was required by federal banking law and regulation, and Defendant's own internal policies, sought to file appropriate and required documentation to report certain transactions and activity and lack of cooperation. However, during a personal meeting with Mr. Macedo (Defendant's President) to discuss the suspicious transactions and to obtain approval to what she believed was another suspicious transaction and Plaintiff's reporting of them, Mr. Macedo informed Plaintiff that what she had done was "improper and that she should not have reported the transactions because one of the parties involved was an intimate friend" of Mr. Macedo's family "who would customarily engage in transactions of this sort". Notwithstanding Mr. Macedo's position, Plaintiff insisted to Mr. Macedo that she had an obligation under applicable banking laws and regulations, as well as Defendant's own internal policies, to report the respective transactions. Plaintiff further verbally informed Mr. Macedo that she had grown increasingly suspicious with the activity in the account as large amounts of dollars had been flowing from another bank owned by Defendant's

principals into the suspects accounts with Defendant and that the funds were being routinely transferred to off- shore banks with conflicting information without the supporting documentations.

(e) Furthermore, Plaintiff also informed Mr. Macedo that she had been trying desperately to comply with BSA "Know Your Customer" ("KYC") requirements in regard to certain accounts involving Mr. Macedo's purported family friend, and that the account holder had been evasive in responding to Plaintiff's inquiries for which she had documented her suspicions in the KYC system and for which she believed she had fully complied with applicable bank reporting requirements. Upon information and belief, Defendant subsequently and illegally removed all evidence of Plaintiff's reporting compliance to cover up the suspicious and potentially illegal activity and transactions.

(f) In November 2008, because she felt that she was owed an official explanation of what was happening and felt at the time that she was being discriminated against in favor of Venezuelan-descent employees, Plaintiff met with Yuni Navarro, Defendant's Vice President of Human Resources and a Senior Manager. Ms. Navarro, instead of commencing an investigation into Plaintiff's internal complaints and speaking with Plaintiff's supervisors as Plaintiff specifically requested, informed Plaintiff that her 25 years of experience with Defendant were no longer "useful", that her seniority with Defendant was an obstacle, and that under the new Venezuelan administration, Plaintiff would have to start from scratch. Ms. Navarro further advised Plaintiff to leave things as they were and that Ms. Navarro was not planning on taking any further action into the matters.

(g) Plaintiff also advised her supervisor Ms. Mantellini that she believed that she was being subjected to discrimination based on national origin and retaliation. Ms. Mantellini, however, took no action on Plaintiff's internal complaint of discrimination.

(h) Shortly following the making of her internal complaints of discrimination and objecting to the suspicious activity of Defendant's transactions with certain Venezuelan nationals, Plaintiff eventually had her entire portfolio stripped from her and given to employees of Venezuelan descent and national origin, effectively preventing her from being able to perform her job.

(i) In retaliation for her complaints and objections to the illegal conduct, Plaintiff was involuntarily removed and stripped of her duties and responsibilities as a Private Banking Officer-Wealth Management and was demoted to Defendant's International Banking Center, where she attempted to continue to perform her job duties satisfactorily but with great difficulty, having been stripped of her portfolio that she had built over 14 years. Shortly after the demotion, Plaintiff was informed by Defendant that her duties would end on January 30, 2009, purportedly as a part of a company-wide lay-off. However, by that time, Plaintiff had already been stripped of her duties and her portfolio to the point where she was, in actuality, a non-functioning employee set up to be terminated, and her selection for the lay-off was merely a pretext and cover-up for the actual discrimination and retaliation she had endured.

8. Plaintiff timely filed an administrative complaint of discrimination with the Florida Commission on Human Relations ("FCHR"). More than 180 days has passed since this filing without the FCHR taking any action on Plaintiff's complaint. Plaintiff,

therefore, has exhausted all of her administrative remedies under the FCRA prior to the filing of this lawsuit.

9. Plaintiff has satisfied all conditions precedent to the bringing and maintenance of this action.

10. Plaintiff has retained the undersigned attorneys to represent her in this case and has agreed to pay them a reasonable fee for their services.

### **COUNT I – NATIONAL ORIGIN DISCRIMINATION UNDER FCRA**

11. Plaintiff re-alleges paragraphs 1 through 10 as if set forth fully herein.

12. Defendant's conduct toward Plaintiff and the adverse actions taken against her as alleged hereinabove was based on Plaintiff's national origin, Cuban-American, in that she suffered disparate treatment in favor of employees of Venezuelan descent. Such conduct constitutes unlawful national origin discrimination in violation of the FCRA.

13. As a direct and proximate result of Defendant's unlawful discrimination, Plaintiff has suffered damages, both in the past and continuing into the future, including but not limited to lost back pay and lost benefits, out-of pocket losses, and non-pecuniary compensatory damages such as emotional distress, mental anguish, humiliation, and loss of dignity

14. Plaintiff is entitled to recover her attorney's fees pursuant to §760.11, Fla. Stat.

15. Defendant engaged in its unlawful conduct willfully, wantonly, maliciously, and in reckless disregard for Plaintiff's rights under the law. Thus, Plaintiff is entitled to recover punitive damages under the FCRA.

WHEREFORE, Plaintiff demands judgment against Defendant for the following relief:

- A. A declaration that Defendant's conduct is in violation of the FCRA;
- B. An award to Plaintiff of her lost back pay and lost benefits;
- C. Reinstatement of Plaintiff into her prior or an equivalent position, or if reinstatement is not feasible, and award of front pay;
- D. An award to Plaintiff of her compensatory damages, including damages for emotional distress, mental anguish, humiliation, and loss of dignity;
- E. An award to Plaintiff of her reasonable attorney's fees, expenses and costs;
- F. An award to Plaintiff of pre- and post-judgment interest;
- G. An award of punitive damages under the FCRA; and
- H. Any and all further relief as the Court deems just and proper.

**COUNT II – RETALIATION UNDER THE FCRA**

16. Plaintiff re-alleges paragraphs 1 through 10 and 13 through 15 as if set forth fully herein.

17. Plaintiff engaged in protected activity under the FCRA by internally complaining about her national origin discrimination to Defendant, as alleged in paragraphs 7(f) and (g) above.

18. Defendant engaged in unlawful retaliation against Plaintiff for her protected activity under the FCRA by taking the actions set forth in paragraphs 7(h) and (i) above.

WHEREFORE, Plaintiff demands judgment against Defendant for the following relief:

- A. A declaration that Defendant's conduct is in violation of the FCRA;

- B. An award to Plaintiff of her lost back pay and lost benefits;
- C. Reinstatement of Plaintiff into her prior or an equivalent position, or if reinstatement is not feasible, and award of front pay;
- D. An award to Plaintiff of her compensatory damages, including damages for emotional distress, mental anguish, humiliation, and loss of dignity;
- E. An award to Plaintiff of her reasonable attorney's fees, expenses and costs;
- F. An award to Plaintiff of pre- and post-judgment interest;
- G. An award of punitive damages under the FCRA; and
- H. Any and all further relief as the Court deems just and proper.

### **COUNT III – RETALIATION UNDER THE FWA**

- 19. Plaintiff re-alleges paragraphs 1 through 10 as if set forth fully herein.
- 20. This is an action for violation of the FWA, specifically §448.102(3), Fla. Stat., which makes it unlawful for an employer to take any retaliatory personnel action against an employee because the employee has objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.
- 21. Plaintiff engaged in protected activity under the FWA by objecting to Defendant's unlawful national origin discrimination and by objecting to and refusing to remove her documentation reporting suspicious activity relating to Defendant's BSA violations and suspicious activity involving banking and money transfer transactions with certain Venezuelan nationals as more specifically alleged in paragraph 7 above.
- 22. Defendant engaged in unlawful "retaliatory personnel action" against Plaintiff in violation of §448.102(3), by taking the actions against Plaintiff as alleged in



paragraphs 7(g) and (h) above, including the unjustified termination of Plaintiff's 25-year employment with Defendant.

23. Plaintiff is entitled to recover her reasonable attorney's fees, court costs, and expenses pursuant to §448.104, Fla. Stat.

WHEREFORE, Plaintiff requests entry of judgment against Defendant for the following relief:

A. A declaration that Defendant's conduct violates Florida's Whistleblower Act;

B. An award to Plaintiff of her lost back pay and lost benefits;

C. Reinstatement of Plaintiff into her prior or an equivalent position, or if reinstatement is not feasible, and award of front pay;

D. An award to Plaintiff of all her compensatory damages, including all out-of-pocket losses and damages for emotional distress, humiliation, and loss of dignity;

E. An award of all pre- and post-judgment interest;

F. An award of all attorney's fees, court costs, and expenses incurred by Plaintiff; and

G. Any and all further relief as the Court deems just and proper.

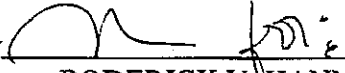
**DEMAND FOR JURY TRIAL**

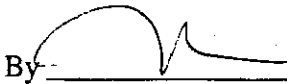
Plaintiff hereby demands trial by jury of all issues so triable.

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