

**IN THE TWENTIETH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA  
IN AND FOR LEE COUNTY  
CIVIL DIVISION**

JOHN MATTHEW DOUGHERTY,  
a Florida resident.

Plaintiff,

v.

Case No. 15-CA-002095

FORT MYERS BROADCASTING CO.,  
a Florida for-profit corporation,

Defendant.

\_\_\_\_\_ /

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, John Matthew Dougherty, ("Plaintiff") hereby sues the Defendant, Fort Myers Broadcasting Co. ("Defendant"), and alleges as follows:

**JURISDICTION AND PARTIES**

1. This is an action for damages for an amount exceeding the jurisdiction of this court, exclusive of court costs and attorneys fees.
2. Plaintiff John Matthew Dougherty is a resident of Fort Myers, Lee County, in the State of Florida. He was employed as a news anchor and investigative reporter with Defendant, and his work brought Defendant high ratings.
3. Defendant Fort Myers Broadcasting Co. operates a television broadcasting business at 2824 Palm Beach Boulevard, Fort Myers, Florida 33916. At all times material hereto, Defendant was and is a Florida corporation, duly authorized to conduct business under the laws of the State of Florida and conducting business throughout the State of Florida, including in Lee County, Florida.

**FACTS**

4. On July 10, 2014, Plaintiff John Matthew Dougherty entered into an employment contract with Defendant Fort Myers Broadcasting Co. (the "Contract") (**Exhibit "A"**-the entirety of this Contract is incorporated here as if fully set forth). The contract term was three

years, ending July 13, 2017, for Plaintiff to be employed as an investigative reporter and anchor.

5. Termination of the contract by Defendant was permitted only upon certain express terms as delineated in section “7. Termination” of the Contract, of which the terms relevant to this action are if Plaintiff "(1) willfully and grossly neglects to perform his/her duties or otherwise fails to perform his/her duties to the employer’s satisfaction; (2) the employee fails or refuses to comply with the oral or written policies or directives of the employer and/or its management; (4) the employee acts contrary to that which is in the best interest of the employer, its employees and/or customers, and/or the public at large.”
6. Defendant’s news director Russ Kilgore is in a supervisory position for Defendant and at all times hereto acted on behalf of and at the direction of Defendant. On June 25, 2015, Defendant’s WINK News assignments manager directed Plaintiff to investigate a call from a man who purchased a storage unit at an auction of Public Storage on Colonial Boulevard. Inside were approximately 100 boxes containing abandoned patient medical records of Dr. Gerardo A. Gamez from Associates in Neurological Care of Lee County.
7. Plaintiff and his photographer arrived at the storage facility, interviewed the storage unit owner and a manager on tape after Plaintiff called the Florida Department of Health (“DOH”) to report the abandoned medical files as a HIPAA issue. Plaintiff’s investigation revealed that inside of the boxes were detailed patient-medical histories (including doctors’ notes, test results, medical diagnoses, prescription details) and files with private personal information (social security numbers, billing/credit card information, copies of driver’s licenses).
8. On June 25 and 26, 2015, Plaintiff reported via e-mail to Russ Kilgore and other employees about his findings and stated that a “DOH investigator is overseeing the transfer and taking inventory inside. Every patient who has a file in a box that was opened must be called and notified of what happened.”
9. Subsequently, Russ Kilgore informed Plaintiff that Dr. Gamez was his family physician, directed Plaintiff and the producers to “kill the story”. For the next few weeks, Russ Kilgore directed Plaintiff in texts, e-mails and verbally to conceal what he discovered regarding the over 100 boxes of private medical documents abandoned by Dr. Gamez, not

to speak to any State or Federal investigator regarding this information and that Russ Kilgore was meeting with Dr. Gamez' attorneys to insure the story did not go public.

10. In July, 2015, Russ Kilgore threatened that Plaintiff violated HIPAA and that he would be in trouble if he spoke about this story and directed him to turn in his computer so Mr. Kilgore could delete any tape of the story to protect Dr. Gamez from a DOH investigation. A few days after taking Plaintiff's computer, Russ Kilgore returned it with the tape deleted therefrom.
11. Plaintiff informed Defendant and Russ Kilgore that he had conversations with the DOH investigators during his investigation of the story and they informed him the Federal DOH was alerted and would request the photos, videos, notes and anything on the story as evidence. Mr. Kilgore responded that everything Plaintiff had must be confiscated and destroyed by Defendant before federal subpoenas are issued. In a July 1, 2015 text from Mr. Kilgore he stated: "Matt-I also need you to gather up all your notes, put them all in one big seal-able envelope and get it to me." On July 2, 2015 Mr. Kilgore texted "Matt, I need you to take any and all material you have on the medical records/storage auction story to Rich or Molly before close of business today. ... I also need you to turn in your lap-top so we can make sure what is on your laptop is no longer in existence." Mr. Kilgore also directed Plaintiff not to speak to anyone, not even a lawyer, and to confess in writing to doing something wrong so Defendant could protect Dr. Gamez. During all of these directions, Defendant was meeting with Dr. Gamez' lawyers while directing Plaintiff to not talk to a lawyer.
12. On July 10, 2015, Plaintiff researched the HIPAA issue and informed Mr. Kilgore that he did not violate HIPAA because he is not a medical provider. Mr. Kilgore became enraged and responded that Plaintiff was in trouble.
13. On July 23, 2015, the last day of the sweeps ratings, Defendant demoted Plaintiff as an anchor, dropped his salary and relegated him to a reporter. Then Russ Kilgore insisted that Plaintiff sign written statements for Dr. Gamez' lawyers. Plaintiff's talent agent contacted Defendants to discover what if anything that they were accusing Plaintiff of that caused them to demote him and say he is in trouble. Defendant never provided an explanation to her. She directed Plaintiff to get counsel to protect himself.

14. The moment Plaintiff obtained his own counsel was the moment he was terminated. On July 27, 2015, Plaintiff's counsel contacted Russ Kilgore by letter explaining that Plaintiff did not do anything wrong with respect to the abandoned medical records story and that he would not violate the law or interfere with a DOH investigation nor conceal his knowledge of the abandoned medical records.
15. Russ Kilgore responded by calling Plaintiff's counsel phone at about 11:15 a.m., screaming at Plaintiff's counsel that Plaintiff was terminated effective that day. Immediately after that call, Russ Kilgore had an employee contact Plaintiff demanding that Plaintiff appear in his office.
16. Plaintiff did not appear in his office because Mr. Kilgore already terminated him and Plaintiff understood Mr. Kilgore was volatile. Namely, that morning an employee informed Plaintiff that Mr. Kilgore said he had two loaded .38 caliber guns in his car to intimidate some movers in another hostile encounter Mr. Kilgore had a few days before.
17. Later that day, on July 27, 2015, Plaintiff's counsel wrote to and spoke with the General Manager Joe Schwartzel and confirmed that Russ Kilgore terminated Plaintiff that day. That day and on July 28, 2015, Mr. Schwartzel confirmed that Plaintiff was terminated and that he did not want Plaintiff in the station again.
18. Although Defendants terminated Plaintiff on July 27, 2015 and prohibited him from appearing at the station, on July 29, 2015 Defendants had their counsel sent a letter falsely stating that because Plaintiff "failed to report to work to perform his assigned duties" on July 28 and 29, 2015 then he was terminated on July 29, 2015. That false letter further proves Defendant's motive to damage Plaintiff's career solely because he retained counsel to inform that he refused to lie for Defendant or become complicit with Defendant's plan to lie and conceal evidence from a Federal investigation.
19. On August 3, 2015, Defendant's Russ Kilgore emailed Plaintiff demanding that he return two company computers provided to him to the station by August 4, 2015.
20. In direct contrast to the preceding direction that he return to the station with the computers, on July 31, 2015, Defendants published an email to all employees that "Matt Dougherty is no longer an employee of Fort Myers Broadcasting Company/WINK News. Please remember our standard security procedures", to imply that his termination was not amicable and he was a security risk.

21. After being notified of that e-mail, Plaintiff organized a third party to return the computers.
22. Journalism ethics includes that a journalist should recuse himself from a story if he has conflict. Defendant Kilgore refused to remove himself from the story upon realizing that the abandoned medical records belonged to his family doctor and instead met with the doctor's counsel to help the doctor conceal his HIPAA violations and prevent the story from becoming public.
23. Journalism ethics mandate that a reporter be truthful and present accurate news to the public. Defendants instead killed a story that was of great public interest to help a doctor Defendants knew violated the law and Defendants destroyed evidence of Plaintiff's truthful and accurate investigative report by deleting the video files and directing him to conceal the story from any State or Federal investigation so the doctor would not get into trouble. Furthermore, Defendants retaliated against Plaintiff by terminating him when he informed that he would not violate any laws by concealing the truth from any state or federal investigation.

#### **COUNT I – VIOLATION OF**

#### **FLORIDA'S PRIVATE SECTOR WHISTLEBLOWER ACT- FLA. STAT. § 448.102**

24. Paragraphs 1 to 23 are re-alleged and incorporated here as if fully set forth.
25. Medical records have been the focus of constitutional, statutory, and regulatory protections. Art. I, § 23, Fla. Const. *See also* §§ 395.3025 and 456.057, Fla. Stat. (2003); Health Insurance Portability and Accountability Act [HIPAA], 42 U.S.C.A. § 210 *et seq.* (1996); 10 U.S.C.A. § 1102 (2004); 38 U.S.C.A. § 7332 (2004); 42 C.F.R. §§ 405.2138, 405.2139, 417.106, 417.486 (2004); Wanda E. Wakefield, J.D., Annotation, *Physician-Patient Privilege as Extending to Patient's Medical or Hospital Records*, 10 A.L.R. 4th 552 (1981). "The simple fact remains-[Florida's] legislature has mandated greater protection for a person's medical records than other types of property. That protection is found under the statutory headings of "confidentiality" and "patient's records." *See* §§ 395.3025 and 456.057, Fla. Stat. (2003)." *Limbaugh v State*, 887 So 2d 387,401 [Fla Dist Ct App 2004).
26. Federal HIPAA and Florida Statute §456.057 mandate that medical providers prevent the dissemination of patient private medical information and records. Florida Statute

§456.0575 mandates medical providers notify patients if there is a breach of their medical privacy.

27. Plaintiff as a journalist is aware of those medical privacy laws and his duty to the public as a journalist to report accurate and truthful news that protects the public. Plaintiff is also aware that it is unlawful to conceal evidence or knowledge of an unlawful act from a state or federal agency investigation.
28. Plaintiff is an employee as defined under Fla. Stat. Section 448.101(2).
29. Defendant is an employer as defined under Fla. Stat. Section 448.101(3). Defendant employed the Plaintiff.
30. Plaintiff disclosed, or threatened to disclose, to appropriate state or federal governmental agencies, an activity, policy or practice of the Defendant in violation of a law, rule or regulation, namely, Defendant's failure to notify DOH of a violation of patient privacy laws. Plaintiff, in writing, brought the activity, policy, or practice to the attention of the Defendant and afforded the Defendant a reasonable opportunity to correct the activity, policy, or practice but Defendant refused to do so.
31. Plaintiff objected to, or refused to participate in, any activity, policy, or practice of the Defendant employer which is in violation of a law, rule, or regulation. Particularly, he refused to agree with Defendant to conceal from the DOH his discovery of Dr. Gamez' unlawful conduct that violated patient privacy laws enacted to protect the public, and such privacy laws he reasonably believed were being violated
32. In retaliation, Defendant engaged in an adverse employment action by terminating Plaintiff's employment.
33. Because of Defendant's retaliation, Plaintiff suffered damages of the loss of his employment, salary, benefits, health insurance and damage to his career and good reputation.
34. The Plaintiff has complied with all conditions precedent to the maintenance of this action.

**WHEREFORE**, Plaintiff demands judgment against Defendant for all recoverable damages, past and future lost wages, benefits and other remuneration, reasonable attorney's fees, court costs and expenses pursuant to Fla. Stat. Section 448.104, interest, and such other relief the Court deems just and proper and further demands trial by jury in this matter.

**COUNT II – UNPAID WAGES**

- 35. Paragraphs 1 to 23 are re-alleged and incorporated here as if fully set forth.
- 36. This is a Count for Unpaid Wages.
- 37. As alleged herein, Defendant has failed to pay wages owed to the Plaintiff.
- 38. Pursuant to Fla. Stat. Section, 448.08, the Plaintiff is entitled to recover reasonable attorney's fees and costs.

***WHEREFORE***, Plaintiff demands judgment for all recoverable damages including but not limited to, lost wages, interest, both pre-judgment and post-judgment interest, attorney's fees, court costs, interest and any other relief the Court deems just and proper and further demands trial by jury in this matter.

**COUNT III - BREACH OF CONTRACT**

- 39. Paragraphs 1 to 23 are re-alleged and incorporated here as if fully set forth.
- 40. Pursuant to the Contract, Plaintiff was to provide services as an investigative reporter and news anchor. Plaintiff duly provided those services.
- 41. Pursuant to the Contract, Defendant was obligated to pay for Plaintiff's services for Salary Year 1: \$51,000, Year 2: \$53,000, and Year 3: \$55,000 with a \$1,500.00 annual clothing allowance and employee benefit plans such as pension, bonus, vacation, health insurance, and automobile allowance and overtime pay.
- 42. Defendant materially breached the Contract by terminating Plaintiff after the first year without a basis, and continues to be in breach of the Contract, by not paying Plaintiff his salary, overtime and denying his other contractual benefits for a period of two years. Defendants have also refused to pay disbursements due of \$749.09, which includes a \$293.09 clothing reimbursement from June 29 and 20, 2015 and \$452.00 due from a Cuba expense report from March, 2015.
- 43. Plaintiff has been damaged, and continues to be damaged, by Defendant's non-payment and loss of income and benefits.

***WHEREFORE***, Plaintiff demands judgment for all recoverable damages including but not limited to, loss of salary, lost income, lost opportunity to earn income and costs, interest, both pre-judgment and post-judgment interest, attorney's fees, court costs, and any other relief the Court deems just and proper and further demands trial by jury in this matter.

#### **COUNT IV - DECLARATORY JUDGMENT**

44. Paragraphs 1 to 23 are re-alleged and incorporated here as if fully set forth.
45. This is a Count for Declaratory Judgment pursuant to Chapter 86, Florida Statutes.
46. A controversy has arisen between the Plaintiff and Defendant based upon the following facts, detailed hereinabove as well:
  - a. On or about July 10, 2014, the parties signed an employment contract.
  - b. Pursuant to the Contract, the Plaintiff, as employee, was to be paid as above stated until July 10, 2017, but Defendant demoted Plaintiff in July, 2015 then terminated him because Plaintiff refused to conceal evidence of unlawful conduct by a third party doctor whom Defendant's news director used as his family physician.
  - c. Based on this material breach by Defendant, Plaintiff brought suit against the Defendant for breach of the employment contract.
47. The Plaintiff is in doubt of his rights under the aforementioned contract and contends that:
  - a. All professional limitations placed on the Plaintiff by the Contract that become effective once the Plaintiff is no longer an employee of the Defendant are void as a matter of law based on Defendant's material breach of the employment contract.
  - b. The non-compete clause is void as a matter of law based on Defendant's material breach of the employment contract.
  - c. The scope of time covered by the non-compete clause found in the employment contract is excessive, unreasonable, arbitrary and against public policy.
  - d. The geographic area covered by the non-compete clause found in the employment contract is excessive, unreasonable, arbitrary, and against public policy.
  - e. The limitation on Plaintiff's capacity to perform the same work previously performed on behalf of the Defendant for another employer is excessive, unreasonable, arbitrary, against public policy, and void as a matter of law.
  - f. The limitations placed on the Plaintiff by the employment contract are vague and are therefore void as a matter of law.
48. The Plaintiff is in need of a determination of his rights under the Contract and requires a determination thereof by this Honorable Court.

**WHEREFORE**, in light of the foregoing, the Plaintiff, John Matthew Dougherty, prays that this Honorable Court decide the disputed issues of fact and law and enter a Declaratory Judgment determining that the professional limitations placed on the Plaintiff by the Contract are void as a matter of law and for further relief in the form of costs and attorneys fees incurred as a result of bringing this Declaratory Judgment action and demands trial by jury in this matter.

**DEMAND FOR JURY TRIAL**

The Plaintiff demands a trial by jury on all issues so triable.

Dated: August 13, 2015.

LAW OFFICES OF SUSAN CHANA LASK

/s/ Susan Chana Lask  
Susan Chana Lask, Esq. (\*PHV pending)

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## EMPLOYMENT AGREEMENT

This Employment Agreement is made and entered into on this day, by and between John Matthew Dougherty ("Employee") and Fort Myers Broadcasting Co., a Florida corporation ("Employer"), and the Employer's parents, subsidiaries, divisions, affiliates, successors, and assigns (collectively, "Third Party Beneficiaries").

In exchange for the following consideration and promises, including the employment and/or continued employment of the Employee by the Employer, the sufficiency of which is acknowledged, the parties agree as follows:

1. Term.

The term of this Agreement shall be for three (3) years beginning on July 14<sup>th</sup>, 2014 and ending on July 13<sup>th</sup>, 2017.

2. Employment.

The Employer agrees to employ the Employee as I-Team reporter / VJ / general assignment (as needed) & fill-in anchor effective on the date indicated above. Employee warrants that he/she is free to enter into and fully perform this Agreement and that he/she is not a party to an Agreement with another person or entity which would restrict his/her ability to perform the duties described herein.

3. Duties.

(a) The Employee promises to perform well and discharge faithfully all duties which may be assigned to him/her by the Employer from time to time in accordance with this Agreement, and the Employee shall devote his/her best artistic and other talents, efforts and abilities to the performance of his/her duties for the Employer. The Employee shall perform his/her duties subject to the Employer's direction and control and in accordance with the Employer's policies and practices. Except to the extent that this Agreement specifically conflicts with the provisions of the Employer's Employee Handbook, the Employee agrees to abide by the terms of that Handbook, as amended from time to time.

(b) The Employee's duties include, but are not limited to, the following: (1) participating in the Employer's announcements and programs, whether sustaining or commercial, live or recorded, by auditioning, preparing, rehearsing, and performing for such announcements and programs; (2) performing studio operations including, but not limited to, the operation of technical equipment; (3) writing, producing, editing, and/or directing programs and announcements on which the Employee is requested to appear; (4) making personal appearances and performing other promotional services to promote the Employer and/or its programs; and (5) rendering other broadcast services.

(c) The Employee shall perform such other duties as the Employer may request from time to time in connection with the present and/or future activities of the Employer or of any of its other subsidiaries or affiliates without additional compensation. The Employee will maintain such professional qualifications and licenses as are necessary to perform and discharge his/her duties.

(d) The Employer has sole discretion over the control of its programs and announcements and, as such, may from time to time change the scope and extent of the Employee's participation as well as the broadcast days, times, duration, titles, formats, content, elements, and other characteristics.