Team #1474

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF STETSON

Civil Action No. 13-X441-CIV-R

Nadira Kapur,

Plaintiff,

v.

Centro Lade Manufacturing, Inc.,

Defendant.

Defendant's Memorandum of Law in Support of Defendant's Motion for Summary Judgment

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QUESTIONS PRESENTED

I. Does an employee accompanying her mother to the Ayurveda Center for Holistic Treatment qualify as leave "to care" for a family member under the Family Medical Leave Act?

II. Does an employee's retaliation claim under the Family Medical Leave Act fail as a matter of law when the employee was terminated due to taking unqualified leave and the employer did not learn of the leave's true nature until the employee returned to work?

STATEMENT OF JURISDICTION

The United States District Court for the Middle District of Stetson has subject matter jurisdiction over Plaintiff's alleged claims for violation of the Family Medical Leave Act ("FMLA" or "Act") based on federal question jurisdiction pursuant to 28 U.S.C. § 1331. Venue is proper in this Court under Rule 1.02(c) of the Local Rules of the Middle District of Stetson, and pursuant to 28 U.S.C. § 1391(b)(2) as this is the judicial district in which a substantial part of the events giving rise to Plaintiff's alleged claims occurred.

STATEMENT OF FACTS

Plaintiff, Nadira Kapur, was terminated from her job with Defendant, Centro Lade Manufacturing, Inc., on September 24, 2013, following Plaintiff's two-week absence from work. (Compl. ¶¶ 10–12.) On February 15, 2014,

Plaintiff filed this action against Defendant. (*See generally* Compl.) In her complaint, Plaintiff improperly asserted claims under the FMLA's interference and retaliation provisions. (Compl. ¶¶ 22–23.) Plaintiff erroneously claims that accompanying her mother to the Ayurveda Center for Holistic Treatment ("ACHT") in Strawbridge, Stetson, constitutes qualified FMLA leave. (Compl. ¶¶ 8–10.)

In December 2012, Plaintiff' mother, Anila Verma, was diagnosed with breast cancer. (Compl. ¶ 8.) From December 2012 through October 2013, Ms. Verma received treatments, including surgery and chemotherapy. (Compl. ¶ 8.) On August 2, 2013, Plaintiff provided Defendant with notice that she required two weeks FMLA leave to care for Ms. Verma. (Compl. ¶ 9.) Plaintiff asserts that she cared for Ms. Verma by providing her transportation to the ACHT, taking notes for her later use, assisting her hygienic needs, and providing psychological comfort. (Compl. ¶ 10.) While at the ACHT, Ms. Verma received traditional Ayurvedic therapy; not conventional cancer treatment. (Compl. ¶ 11.) Defendant initially granted Plaintiff's FMLA request but later, upon learning more about Plaintiff's trip, concluded that ACHT was not a valid medical provider under the FMLA and accordingly terminated Plaintiff due to unauthorized absences. (Compl. ¶ 12; Answer ¶ 12.)

On October 15, 2013, nearly one month following Plaintiff's termination, Defendant posted a hiring notice on its company website. (Compl. ¶ 13.) This notice regarded Defendant's need to hire twenty-five additional workers to fill holiday orders. (Compl. ¶ 13.) While the notice encouraged former, experienced employees to apply, it did not grant preferable treatment to experienced applicants. (Compl. ¶ 13.) Nearly one week after receiving Plaintiff's application, Defendant declined to offer her a position. (Compl. ¶ 13.)

On June 30, 2014, following the parties' substantial completion of discovery, Plaintiff sought from this Court motions to extend the parties' discovery deadline, compel the discovery of nearly 200 personnel files, and determine that Plaintiff's leave fell within the FMLA's "to care for" provision. (Pl.'s Letter, June 30, 2014.) Defendant opposes Plaintiff's discovery motions as they seek the discovery of highly personal information about non-parties and useless testimony of an unqualified "expert" witness. (Def.'s Letter, July 15, 2014). Accordingly, on July 15, 2014, Defendant sought the denial of Plaintiff's pending motions as well as summary judgment on the FMLA claims currently pending against it. (Def.'s Motion, July 15, 2014).

SUMMARY OF THE ARGUMENT

Defendant's current motion addresses two issues: (1) whether Plaintiff's leisure trip with her mother constitutes leave "to care for" a family member under

the FMLA and (2) whether a retaliation claim premised on unqualified FMLA leave fails as a matter of law.

Accompanying a family member with a serious medical condition to a spa specializing in holistic procedures does not qualify as leave to care for that individual under the FMLA. Courts have properly found that ongoing treatment from a licensed health care provider relating to an existing illness is needed to trigger FMLA protections. Treatments provided by the ACHT were both unrelated to breast cancer and not prescribed by a licensed health care provider. Additionally, public policy supports a narrow interpretation of the FMLA's care provision as a contrary interpretation promotes abuse of the Act. Accordingly, Plaintiff's claims fail as a matter of law because vacations involving Ayurvedic massage, meditation, and dieting do not constitute FMLA leave.

To establish a prima facie retaliation claim, Plaintiff must show that she engaged in statutorily protected activity. The FMLA's retaliation provision makes it unlawful for an employer to retaliate against employees for exercising rights granted by the FMLA. A retaliation action premised on taking unqualified, or merely potentially qualified, leave is not support by the statute's text. Additionally, no legislative history or commentary exists supporting the judicial creation of such an action. As Plaintiff's retaliation action is not tied to a violation of any FMLA protected right, her claims must fail as a matter law.

ARGUMENT

Summary judgment will be granted if discovery shows no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Accordingly, the moving party who successfully demonstrates: (1) the lack of a genuine issue of material fact and (2) its entitlement to judgment as a matter of law should be granted summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). Defendant is entitled to summary judgment as FMLA jurisprudence does not support the claims asserted by Plaintiff.

I. Plaintiff accompanying Ms. Verma to the ACHT does not qualify as leave to care for a family member under the FMLA because the leave was merely a spa trip.

The FMLA's general purpose is to "entitle employees to take reasonable leave" in four limited circumstances. 29 U.S.C. § 2601(b)(2) (2012) (The only relevant circumstance is leave to care for family members with serious health conditions.). The Act was created to protect employees by allowing leave associated with serious personal or familial medical reasons without the threat of hostile employment consequences; however, its drafters intended for these protections not to be abused.

To qualify for FMLA leave in this case: (1) Plaintiff's mother had to have a serious health condition when leave was requested and (2) the mother must have

required care from Plaintiff. 29 U.S.C. § 2612(a)(1)(C) (2012). Federal regulations further provide that leave to care for a family member is FMLA protected when the family member "is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety." 29 C.F.R. § 825.124 (2013). It is undisputed that Plaintiff's mother suffers from a serious health condition and receives ongoing medical treatments from qualified healthcare providers. However, a trip that was unrelated to necessary treatment abuses the FMLA and is thus unprotected by the Act's plain language.

A. Treatments provided by the ACHT were unrelated to Ms. Verma's serious health condition and not ordered or given by a Stetson-licensed health care provider.

1. The massage, meditation, and dieting received by Ms. Verma are not recognized treatments for breast cancer.

Employees qualify for FMLA leave to care for ill family members when those family members receive treatments related to serious health conditions. *See* 29 C.F.R. § 825.115 (2013). In *Tayag v. Lahey Clinic Hospital, Inc.*, the First Circuit observed that trips, which include no medical treatment for an ill family member, are best described as "healing pilgrimages" and do not avail an employee to FMLA leave. 632 F.3d 788 (1st Cir. 2011). The court noted that the trip may have been spiritually helpful for the employee's husband but since it was not related to any conventional medical treatment, the employee was not eligible for FMLA leave. *Id.* at 790–93. As the spiritual healing pilgrimage in *Tayag* was

not comprised of medical care within meaning of the FMLA, the employee's leave to assist her husband was unprotected by the Act. *Id.* at 791. Accordingly, the court held that no FMLA violation occurred when the employee was terminated following her seven-week accompaniment of her husband on his spiritual healing trip to the Philippines. *Id.*

Similarly, in *Marchisheck v. San Mateo County*, the Ninth Circuit determined that even if an employee's son had a serious medical condition, she had no specific plans to seek medical attention for him while traveling to the Philippines so the FMLA's protections were not triggered. 199 F.3d 1068 (9th Cir. 1999). Accordingly, the employee's act of taking her son to a foreign country and leaving him with relatives did not constitute caring for him under the FMLA. *Id.* at 1078. The court noted that 29 C.F.R. § 825.116, now codified as § 825.124(a), contemplates that caring for a family member with a serious health condition involves some level of participation in the ongoing treatment of that condition. *Id.* at 1076. The court stated that if the employee's son suffered from a serious medical condition, then traveling with him did not amount to caring for him if he received no treatment at the destination. *Id.*

Ayurveda does not involve the necessary treatment to invoke FMLA protection. Ayurveda, a form of naturopathic medicine, attempts to achieve harmony between the mind, body, and forces of nature. *See Definition of*

Naturopathic Medicine, Naturopathic Physicians, http://www.naturopathic.org/content.asp?contentid=59 (last visited Sept. 12, 2014). Ayurveda combines a number of approaches, such as changes in lifestyle, cleansing or detoxifying, massage, exercise, and meditation. *Id.* Overall, Ayurveda merely aims to strengthen and purify the body and mind through increasing spiritual awareness. *Id.*

At no point from the time that Plaintiff's mother was diagnosed with cancer in December 2012, until they departed for their trip on September 9, 2013, did she need or request time away from work to care for her mother. (Compl. ¶¶ 8–9.) It was not until ***this trip*** was planned that Plaintiff applied for FMLA leave. (Compl. ¶ 9.) Similar to *Tayag* and *Marchisheck*, no medical treatment of any kind was received by the mother for her cancer while on the trip. (Compl. ¶ 11.) Plaintiff's mother only received therapy and guidance related to the general effects of chemotherapy. (Compl. ¶ 11.) Just as the court in *Tayag* determined that a "healing pilgrimage" does not fall under the scope of the FMLA and the court in *Marchisheck* stated that some form of treatment related to the serious condition is required to invoke the protections of the FMLA, a vacation to an Ayurvedic spa falls outside of the purview of the FMLA. Accordingly, Plaintiff's trip to the ACHT does not constitute an adequate reason to request leave under the FMLA.

2. The Ayurvedic treatments performed at the ACHT were not given by a Stetson-licensed health care provider as required by the FMLA.

According to the FMLA, "[t]he term 'health care provider' means-- **(A)** a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or **(B)** any other person determined by the Secretary to be capable of providing health care services." 29 U.S.C. § 2611(6) (2012) (emphasis in original); *see also* 29 C.F.R. § 825.125 (requiring that health care providers be licensed in the state where they practice). As it currently stands, only seventeen states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico grant licenses to alternative, naturopathic practitioners such as Ayurvedic clinicians. *See Licensed States & Licensing Authorities*, Naturopathic Physicians, http://www.naturopathic.org/content.asp?contentid=57 (last visited Sept. 12, 2014). Stetson is not one of the seventeen states that grant licenses to Ayurvedic practitioners.

The health care provider ("provider") diagnosing a condition requiring FMLA leave or providing treatment for that condition must be licensed in the state where the treatment or diagnosis occurs. *See Gutierrez v. 78th Judicial Dist. Court*, 1:07-CV-1268, 2009 WL 1507415 (W.D. Mich. May 29, 2009) (finding that while the plaintiff's FMLA claim failed for other reasons, not providing the

employer with certification from a valid, Michigan-licensed provider would also cause plaintiff's FMLA claim to fail). Similarly, in *Tayag*, the employee's FMLA claim for leave to care for her husband while on a "healing pilgrimage" was properly denied because he did not receive treatment from a FMLA-defined provider while on the trip. 632 F.3d at 790–93. Furthermore, a proper provider had not prescribed the trip as treatment for his underlying medical condition. *Id*.

The lack of qualified medical treatment renders Plaintiff's desired leave unprotected by the FMLA. At no point was Plaintiff's mother advised by a licensed provider in Stetson to receive Ayurvedic treatment in relation to her breast cancer. Additionally, Ayurvedic clinicians are not validly licensed providers within Stetson as required by the FMLA. Plaintiff would not have missed two continuous weeks of work but for the taking of a trip that was unrelated to her mother's illness. Therefore, like in *Tayag*, where the First Circuit denied FMLA coverage for a healing pilgrimage, this Court can justifiably determine that the trip at issue was nothing more than a personal vacation and falls outside of the FMLA's scope. A healing pilgrimage that focuses solely on an ill family member's morale and state-of-mind should not qualify an employee to take FMLA leave when no valid provider is performing necessary treatments for an existing illness. Treatment for cancer was not the reason for the trip at issue, nor did a licensed provider within Stetson offer the procedures the mother

received. Accordingly, the companionship provided by Plaintiff falls outside of the FMLA's scope. This Court should therefore find, as a matter of law, that Plaintiff has not availed herself of FMLA protections.

B. Public policy supports a narrow view of when care provided by an employee to a family member justifies FMLA leave because a broad interpretation would allow for abuse of the Act.

To prevent abuse of a statute, it should not be read in such a way that allows for unanticipated and undesired activity by unqualified persons and should be interpreted based on legislative intent. *See Webster v. Reprod. Health Servs.*, 492 U.S. 490, 515 (1989) (stating that it is strongly presumed that Congress does not intend for its acts to create absurd results; thus, when interpreting federal law, courts avoid interpretations that would produce absurd results); *see also* John F. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2389 (2003) (declaring that courts provide statutory interpretations to avoid absurd results). Read narrowly, the FMLA offers leave to individuals suffering from debilitating medical conditions or those caring for close family members suffering from these conditions. 29 U.S.C. § 2601(b)(2) (2012). The initial purpose for enacting the FMLA was to provide employees a safe-haven from adverse effects of requesting leave. *Id.* While the enactment was primarily for employees, public policy supports creating restrictions and limitations on what leave is statutorily

protected. § 2601(b)(3) (noting that the FMLA is to "accommodate the legitimate interests of employers").

Employee abuse of the FMLA by claiming unprotected leave is a legitimate concern. *See Ballard v. Chicago Park Dist.*, 741 F.3d 838, 843 (7th Cir. 2014) (noting that an employer had legitimate abuse concerns of opportunistic employees taking vacations and claiming safety under the FMLA, but as the case concerned a portion of the FMLA allowing leave during hospice care, FMLA protection covered a "bucket-list" trip); *see also Gradilla v. Ruskin Mfg.*, 320 F.3d 951 (9th Cir.), *withdrawn per stips.*, 328 F.3d 1107 (2003) (providing that an employee's leave to care for his wife, who suffered from a heart condition, while on a trip to Mexico to attend her father's funeral fell outside the scope of the FMLA because the trip was unrelated to treatment of the wife's condition). Additionally, the *Ballard* court noted that when dealing with ***terminal illnesses***, the FMLA covers care despite the lack of active treatment. *Id.* at 842. Accordingly, the court refuted an employer's attempt to link FMLA qualified care to the participation in ongoing medical treatment. *Id.* Therefore, only in situations dealing with terminally-ill family members may care be extended and allowed to occur in trips unrelated to the treatment of the underlying serious medical condition.

Legitimate concerns of FMLA misuse warrant a narrow interpretation of the FMLA's care provision that ties care to ongoing medical treatments in cases not involving terminally-ill family members. Plaintiff's reliance on the decision reached in *Ballard* is unfounded as the case can be significantly differentiated from the facts presented here. *Ballard* dealt with a terminally-ill mother's "bucket-list" trip to Las Vegas; however, Plaintiff's mother was diagnosed with breast cancer just nine months prior to her spa trip and had only just begun receiving chemotherapy. (Compl. ¶¶ 8–9.) There is no indication that Plaintiff's mother is or was terminally ill. Public policy promotes setting boundaries on when leave under the FMLA is appropriate, as expanding coverage would disrupt the careful balance the Act reaches between the needs of employees to take reasonable time off work and the needs of employers to ensure their business endeavors remain productive. This case more closely resembles *Tayag*, *Gradilla*, and *Marchisheck*. Accordingly, this Court should find that Plaintiff's desired leave was not protected by the FMLA as a contrary holding would amount to abuse of the Act's well-intentioned provisions.

II. Plaintiff's retaliation claim fails as a matter of law because an employee does not engage in statutorily protected activity by taking FMLA leave that the employee is not entitled to receive.

To establish a prima facie FMLA retaliation claim, Plaintiff must show that: (1) she *engaged in statutorily protected activity*, (2) she suffered an adverse

employment decision, and (3) the decision was causally related to the protected activity. *Martin v. Brevard Cnty. Pub. Sch.*, 543 F.3d 1261, 1268 (11th Cir. 2008) (emphasis added); *see also Sanders v. City of Newport*, 657 F.3d 772, 778 (9th Cir. 2011) (stating that an employee's prima facie case includes showing that the employee was "entitled to leave under the FMLA."). Plaintiff's current claim fails as a matter of law as she attempts to assert a right not protected under the FMLA—taking unqualified leave. The plain language of the FMLA and important public policy considerations support the dismissal of Plaintiff's retaliation claims.

A. Plaintiff's retaliation claim fails as a matter of law because the FMLA's plain language does not establish retaliation actions premised on unqualified leave.

1. Neither the text of the FMLA nor its accompanying regulations establish a right for employees to take unqualified leave.

The FMLA provides eligible employees leave under four limited circumstances. *See* 29 U.S.C. § 2612 (2012) (the only relevant circumstance here is leave to care for a parent with a serious health condition). The Act further establishes two private causes of action—an interference action and a retaliation action. § 2615.

The FMLA's retaliation provision makes it unlawful for an employer to "discharge or in any other manner discriminate against any individual for

opposing any practice made unlawful by [the FMLA]." § 2615(a)(2). Regulations promulgated by the Department of Labor further explain that the FMLA prohibits employers from "discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights." 29 C.F.R. § 825.220(c) (2013). Additionally, employees seeking FMLA leave must provide "a qualifying reason" for the needed leave. § 825.301(b).

An employee must qualify for FMLA leave to assert a valid retaliation claim; potential qualification is insufficient. Nothing in the plain text of the FMLA protects an attempt to exercise a right not provided by the Act. 29 U.S.C. §§ 2612, 2615 (2012); 29 C.F.R. §§ 825.220(c), 825.301(b) (2013). Additionally, the Act provides employees with only two causes of action, each of which is tied to a violation of rights granted by the FMLA. 29 U.S.C. § 2615(a) (2012). Accordingly, courts hold that the FMLA provides relief only when an employee asserts a claim based on FMLA leave that the employee was actually entitled to take. *See*, *e.g.*, *Hurley v. Kent of Naples, Inc.*, 746 F.3d 1161 (11th Cir. 2014); *Campbell v. Gambro Healthcare, Inc.*, 478 F.3d 1282 (10th Cir. 2007). Appropriately, an employee's retaliation claim fails as a matter of law when that claim is premised on termination resulting from the employee's use of unqualified leave. *Hurley*, 746 F.3d at 1167.

An employee's retaliation claim fails when the employee does not demonstrate their leave to be FMLA qualified. In *Hurley*, an employee suffering from depression sought FMLA leave. *Id.* at 1163. The employee was terminated prior to taking leave and sued his past employer for retaliatory conduct. *Id.* at 1163. On appeal, the employee did not contend that the leave was qualified but rather that he could assert FMLA claims without actually qualifying for leave. *Id.* at 1166. The Eleventh Circuit rejected this argument as the plain text of the Act provides causes of action against employers who "deny the exercise of or the attempt to exercise, any *right* provided under [the FMLA]." *Id.* at 1167 (emphasis in original) (quoting § 2615(a)(1)). As "[n]othing in the statue speaks of 'potential rights'" the court remanded the case with instructions to grant judgment for the employer. 746 F.3d 1167–69.

Plaintiff, like the employee in *Hurley*, has failed to demonstrate the violation of any statutorily protected right as the leave Plaintiff took was unqualified under the FMLA. Plaintiff incorrectly alleges that Defendant's refusal to rehire her was done in retaliation of her "exercising and/or attempting to exercise her rights" under the FMLA. (Compl. ¶ 23.) It remains Defendant's position that Plaintiff's desired leave was unqualified under the FMLA. (Answer ¶ 23.) Accordingly, the FMLA's plain text provides Plaintiff with no statutory rights to exercise as she sought, and ultimately took, unqualified leave.

Plaintiff's failure to take qualified FMLA leave precludes her ability to assert a valid retaliation claim. The FMLA's plain text speaks only of rights provided by its subsections. No provision of the Act establishes a right for employees to seek or take unqualified leave.

2. Courts are prohibited from establishing a statutory action when Congress has not provided a statutory remedy for an alleged harm.

The Constitution vests all federal legislative powers in Congress. U.S. Const. art. I, § 1. Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). The judicial task when interpreting statutes is to determine whether Congress displays an intent to create both a private right and remedy. *Alexander*, 532 U.S. at 286. An intent to create a remedy is determinative. *Id*. at 286. Without such an intent, a cause of action does not exist and courts may not create one, no matter how desirable that may be. *Id.* at 286–87.

Courts must not venture beyond Congressional intent when determining the existence of statutory causes of action. In *Alexander*, a non-English speaker brought suit to enjoin Alabama's English-only administration of its driver's license examinations as he alleged the test violated regulations promulgated under Title VI of the Civil Rights Act. *Id.* at 278–79. The Supreme Court noted that, before a private statutory cause of action may be established, Congress must

display the intent to create both a private right and a private remedy. *Id.* at 286. The Court refused to venture beyond the text of the statute and Congress's intent when addressing the existence of the plaintiff's desired claim. *Id.* at 287. Accordingly, the Court found neither textual support nor legislative intent to support the plaintiff's desired action. *Id.* at 293.

Neither FMLA text nor accompanying legislative history creates a private remedy for employees terminated for taking unqualified leave. The FMLA provides civil actions against employers only when their conduct violates § 2615 of the Act. 29 U.S.C. § 2617 (2012); *see also* 29 C.F.R. § 825.400 (2013) ("If an employer has violated one or more provisions of FMLA . . . an employee may receive one or more [remedy]."). Additionally, Congress only intended to provide civil actions for the enforcement of rights established by the FMLA. S. Rep. No. 103-3, at 3 (1993), *reprinted in* 1993 U.S.C.C.A.N. 3, 5. Therefore, neither legislative intent nor textual support exists for a judicially created action premised on unqualified leave. The recognition of such an action would directly conflict with the text of, and legislative intent behind, the FMLA. Accordingly, Plaintiff's retaliation claim, absent any legislative intent to create a remedy for the exercise of non-FMLA protected leave, fails as a matter of law.

Any assertion that Defendant is estopped from challenging the legitimacy of Plaintiff's unqualified leave is improper. Circuits are split on whether an

employer who initially grants an employee FMLA leave but later withdraws its approval may be estopped from challenging the validity of that leave. *See*, *e.g.*, *Dawkins v. Fulton Cnty. Gov't*, 733 F.3d 1084, 1089 (11th Cir. 2013) (suggesting that equitable estoppel may be applicable but holding that, regardless of its applicability, the claim at issue failed to meet its elements), *cert. denied*, 134 S. Ct. 2293 (2014); *Peters v. Gilead Scis., Inc.*, 533 F.3d 594, 598–99 (7th Cir. 2008) (same). *But see*, *e.g.*, *Murphy v. FedEx Nat'l LTL, Inc.*, 618 F.3d 893, 899–901 (8th Cir. 2010) (holding that equitable estoppel is applicable to FMLA cases); *Dobrowski v. Jay Dee Contractors, Inc.*, 571 F.3d 551, 554 (6th Cir. 2009) (same).

Equitable estoppel is not applicable to FMLA retaliation claims where an employer first grants a desired leave and then, once learning the true nature of that leave, terminates the employee due to unauthorized absences. The application of estoppel in such cases is improper because it contradicts the plain language of FMLA by creating causes of action premised on unqualified leave. 29 U.S.C. § 2617 (2012). Additionally, the application of equitable estoppel in retaliation cases would expand the rights of employees beyond those prescribed by Congress. S. Rep. No. 103-3. Such a broadening of the FMLA would best be left to Congress. However, should this Court determine that equitable estoppel is applicable to cases brought under the FMLA, it must also hold that Plaintiff fails

to demonstrate the facts necessary to estop Defendant from challenging the validity of Plaintiff's leave.

In *Dawkins*, the Eleventh Circuit stated the elements of equitable estoppel as:

> (1) the party to be estopped misrepresented material facts; (2) *the party to be estopped was aware of the true facts*; (3) the party to be estopped intended that the misrepresentation be acted on or had reason to believe the party asserting the estoppel would rely on it; (4) the party asserting estoppel did not know, nor should it have known, the true facts; and (5) the party asserting estoppel reasonably and detrimentally relied on the misrepresentation.

733 F.3d at 1089 (emphasis added). Furthermore, the Eleventh Circuit properly recognized this test as conjunctive in nature. *See id.* (stating that plaintiff's estoppel argument failed as each necessary element was not demonstrated). Currently, Plaintiff cannot demonstrate that Defendant was aware of the true facts when it initially granted Plaintiff's leave request. Defendant did not learn of the true circumstances underlying Plaintiff's leave until after Plaintiff returned to her job. (Compl. ¶ 12.) Accordingly, Plaintiff's estoppel claim fails.

B. Public policy warrants the dismissal of retaliation claims premised on unqualified FMLA leave because allowing such claims to survive summary judgment imposes strict liability against employers.

It is strongly presumed that Congress does not intend for its acts to create absurd results; thus, when interpreting federal law, courts avoid interpretations that would produce absurd results. *Webster v. Reprod. Health Servs.*, 492 U.S.

490, 515 (1989); *see also* John F. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2389 (2003) (stating that courts provide statutory interpretations to avoid absurd results).

Plaintiff's broadening of the FMLA to allow retaliation claims premised on unqualified leave creates expansive liability for employers. The Middle District of Florida has noted that retaliation claims tied to unqualified FMLA leave would create absurd results. *Morehardt v. Spirit Airlines, Inc.*, 174 F. Supp. 2d 1271 (M.D. Fla. 2001). In *Morehardt*, the court noted that adopting a cause of action premised on unqualified leave would allow employees to "randomly take leave to suit [their] own purposes, and simply advise the employer that [they were] taking leave under the FMLA, even though [they were] not entitled to leave under the Act." *Id.* at 1281. Additionally, the court observed that "[i]f the employer eventually fired the employee for taking [unqualified] leave the employee could then simply file suit and allege that the firing was in retaliation for the employee exercising his or her rights under the FMLA." *Id.*

Plaintiff's retaliation claim must fail as allowing such an action to proceed would create absolute liability for employers anytime an employee asserted their leave was protected by the FMLA regardless of how farfetched the employee's claim may be. This interpretation expands the FMLA beyond the applicability contemplated by Congress and effectively turns the FMLA's retaliation provision

into a strict liability action. Such an interpretation would also allow employees to abuse the FMLA by taking unqualified leave yet possessing the ability to sue their employer should they be justly terminated. Therefore, this court should avoid the unnecessary expansion of the FMLA as advocated by Plaintiff and grant Defendant's motion for summary judgment.

CONCLUSION

Plaintiff's claims fail because her leave was not covered by the FMLA and retaliation actions may not be premised on unqualified leave. For these reasons, Defendant respectfully requests that this Court grant Defendant's Motion for Summary Judgment.

Respectfully submitted,

/s/ 1474
Attorneys for Defendant