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

Civil Action No. 13-X441-CIV-R

NADIA KAPUR,

Plaintiff,

v.

CENTRO LADE MANUFACTURING, INC.,

Defendant.

Plaintiff's Memorandum of Law
in Support of Partial Summary Judgment

/s/ Team 1478

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QUESTIONS PRESENTED

I. Under the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2612(a)(1)(C), may an employee take leave to care for an ailing family member when the family member is not actively receiving medical treatment?

II. May an employee who attempted to exercise FMLA leave bring a retaliation claim against her employer, even if she was not originally entitled to the leave she requested?

STATEMENT OF JURISDICTION

This Court has jurisdiction over the claims in this suit pursuant to 28 U.S.C. § 1331, as they stem from Defendant's violations of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601, et seq. (Compl. ¶ 1.)

STATEMENT OF FACTS

This case comes to the Court as a result of Nadia Kapur's wrongful termination by Centro Lade Manufacturing, Inc. (CLM) for exercising her rights under the Family and Medical Leave Act. (Compl. ¶ 1.)

On September 24, 2013, CLM unjustifiably terminated Ms. Kapur and ended her ten-year career with the company. (Compl. ¶ 4, 6.) During her time at CLM, the company promoted her three times, and ultimately, after a special training course, promoted her to the highly specialized position of Clean Line Assembler. (Compl. ¶ 6.) Throughout her employment, Ms. Kapur always received positive

performance evaluations, and in the past three years, earned the highest rating of five, indicating she was an "excellent" performer. (Compl. ¶ 7.) But Ms. Kapur's long-standing, positive relationship with CLM came to a halt shortly after her mother, Ms. Anila Verma, was diagnosed with breast cancer. (Compl. ¶ 8.)

After her mother's diagnosis in December 2012, Ms. Kapur cared for her mother by taking her to appointments, feeding her, and bathing her as she underwent surgery and chemotherapy. (Compl. ¶ 8.) In August 2013, Ms. Verma's doctor indicated that she would need care while recovering from her most recent chemotherapy treatment. (Compl. ¶ 9.) At that time, Ms. Kapur notified CLM that she would need two weeks of leave to care for her mother starting September 9, 2013, and CLM granted her request. (Compl. ¶ 9.)

For two weeks, Ms. Kapur cared for her mother. (Compl. ¶ 10.) Ms. Kapur took her mother to the Ayurveda Center for Holistic Treament (ACHT) where she accompanied her mother to treatments, bathed her when she was weak, and stayed by her side to comfort and support her during her difficult recovery. (Compl. ¶ 10.)

While at ACHT, Ms. Verma received traditional Ayurvedic treatments to help her through the healing process. (Compl. ¶ 11.) She received therapeutic massages, meditation, prescribed meals, and counseling on the Ayurvedic diet. (Compl. ¶ 11.) Ms. Kapur assisted in caring for her mother from September 9 through September 22 and promptly returned to work on September 23, 2013.

(Compl. ¶ 10–12.) Upon her return, however, CLM notified Ms. Kapur that it did not consider ACHT a valid medical provider that would justify FMLA leave. (Compl. ¶ 12.) The next day, CLM terminated Ms. Kapur for unauthorized absences. (Compl. ¶ 12.)

On October 15, 2013, CLM posted a hiring notice encouraging former employees to apply for the position of Clean Line Assembler. (Compl. ¶ 13.) According to the notice, CLM hoped to fill twenty-five positions. (Compl. ¶ 13.) Ms. Kapur applied for one of the positions, but on October 21, 2013, CLM declined her application. (Compl. ¶ 13.) Shortly thereafter, Ms. Kapur filed suit against CLM for obstructing the exercise of her FMLA rights. (Compl. ¶ 22–23.)

SUMMARY OF THE ARGUMENT

Care Does Not Require Medical Treatment. The FMLA entitles an eligible employee to take up to twelve weeks of leave per year to care for a family member with a serious health condition. The Act makes no distinction regarding where that care may be provided or what it must entail. Congress intended the Act to be read broadly, and the Department of Labor has subsequently recognized that care may take many forms. Although some courts have held that leave to care for a family member must relate to medical treatment of the family member's condition, neither the Act nor the related regulations impose such a limitation. Accordingly, the Court should grant partial summary judgment in favor of Ms. Kapur and hold that

leave to care for a family member need not be related to ongoing medical treatment.

Retaliation Claim Survives as a Matter of Law. Even if the FMLA did not entitle Ms. Kapur to take the leave she requested, her claim that CLM refused to rehire her in retaliation for attempting to exercise her rights under the FMLA should survive for three reasons. First, the plain language of the statute guarantees a retaliation claim even for unsuccessful attempts to exercise FMLA leave. Second, Ms. Kapur had a reasonable, good faith belief that the Act entitled her to the leave she requested. And finally, ignoring an employee's good faith in exercising leave is against public policy. Therefore, the Court should hold that Ms. Kapur's retaliation claim survives as a matter of law.

ARGUMENT

I. This Court should grant partial summary judgment in favor of Ms. Kapur and hold that the care she provided her mother while on leave squarely falls within the protections of the FMLA.

Under the FMLA, an employee has the right to take up to twelve weeks of leave per year "[i]n order to care for the . . . parent of the employee, if . . . [the] parent has a serious health condition." 29 U.S.C. § 2612(a)(1)(C) (2014). Although the concept of "care" is not defined within the statute, the Department of Labor has promulgated regulations that provide insight as to its meaning. The regulations explain that a health care provider may certify that an employee is needed to care

for a family member when, "because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor." 29 C.F.R. § 825.124(a) (2014). Additionally, the legislative history indicates that Congress intended the phrase "to care for" to be read broadly, encompassing both physical and psychological care. S. REP. NO. 103-3, at 24 (1993), *reprinted in* 1993 U.S.C.C.A.N. 3, 26.

CLM does not dispute that during her time away from work, Ms. Kapur attended to her mother's needs. Nor does it dispute that her mother would have been unable to take care of those needs without Ms. Kapur's assistance. Rather, CLM argues that the care Ms. Kapur provided is not the type of care contemplated by the FMLA simply because it was not administered in connection with prescribed medical treatments. But contrary to CLM's assertions, the FMLA does not require that leave taken to care for a parent must involve medical treatment of the parent's serious health condition.[1] Instead, it only requires that the employee be needed to assist the parent in carrying out daily activities that he or she could not otherwise perform because of the condition.

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[1] In the event that the Court disagrees, Ms. Kapur requests that the Court extend the discovery deadline to permit Ms. Kapur to produce an expert report from Dr. Jonathan Sethi detailing the medical benefits of the treatments her mother received while at ACHT.

Because the parties' only dispute with regard to Ms. Kapur's FMLA interference claim concerns the legal scope of the word "care" as it is used in its statutory context, summary judgment is appropriate. *See* Fed. R. Civ. P. 56(a) (stating that the court shall grant summary judgment if it determines that "there is no genuine dispute as to any material fact and [a party] is entitled to judgment as a matter of law"); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Even absent a motion filed by one of the parties, the Court has the power to enter summary judgment in its own discretion. Fed. R. Civ. P. 56(f)(3). Accordingly, Ms. Kapur respectfully requests the Court to hold that the assistance she provided during her mother's stay at ACHT constitutes "care" under the FMLA.

A. The plain language of the Act clearly indicates that care for a family member need not be related to ongoing medical treatment.

Perhaps the most fundamental principle of statutory interpretation is that "the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); *see also Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there."). Section 2612(a)(1)(C) provides that an eligible employee is entitled to leave as long as two requirements are satisfied: (1) the leave must be taken "to care for" a

family member, and (2) the family member must have a "serious health condition." CLM asks the Court to read a third limitation into the statute—that the leave must involve some medical treatment of the family member's health condition. (Letter from CLM's Counsel, at 1.) A plain reading of the statute mandates that CLM's interpretation must fail.

As the Seventh Circuit recently recognized in *Ballard v. Chicago Park District* when confronted with a similar argument, § 2612(a)(1)(C) uses the term "care," not "treatment." 741 F.3d 838, 840 (7th Cir. 2014) (holding that an employee cares for a family member as long as the employee attends to the family member's needs, even if such care is not part of ongoing medical treatment). Although other subsections of § 2612 discuss medical treatment, even those sections consider treatment as but one situation in which leave to care for a family member would be appropriate. *See* 29 U.S.C. § 2612(b)(2), (e)(2). Had Congress intended to restrict leave under § 2612(a)(1)(C) to periods where family members were actively receiving medical treatment, it would have explicitly done so.

Furthermore, in the absence of an indication to the contrary, courts should presume that words in a statute bear their "ordinary, contemporary, common meaning." *Walters v. Metropolitan Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997). As it is commonly understood, the term "care" means to "provide for or attend to needs or perform necessary personal services." WEBSTER'S THIRD NEW

INTERNATIONAL DICTIONARY 338 (1993). That understanding in no way mandates a connection to medical treatment. Consistent with this interpretation, the Department of Labor regulations list numerous examples of situations in which an employee could provide care by attending to the needs of a family member—only one of which (transportation to the doctor) necessarily relates to medical treatment. *See* 29 C.F.R. § 825.124(a).

Finally, reading the additional limitation urged by CLM into the statute leads to illogical results. For example, according to the regulations interpreting the meaning of "serious health condition," an employee would be eligible for FMLA leave to care for a family member recovering from chemotherapy or radiation cancer treatments. 29 C.F.R. § 825.115(e). Under CLM's interpretation, the assistance provided by the employee during that time would have to involve further medical treatment in order to qualify as "care" for purposes of the FMLA. The regulation, however, specifically covers periods of *recovery*, and does not require periods of further treatment. Similarly, the regulation explicitly states that for permanent or long-term conditions, a family member "need not be receiving active treatment" by a health care provider in order to satisfy the serious health condition requirement. *Id.* § 825.115(d). CLM's limited view of "care" by an employee would require precisely the opposite outcome. The Court should not presume that Congress intended such a convoluted result. *S.E.C. v. Rosenthal*, 650

F.3d 156, 162 (2d Cir. 2011) ("[A] statute should be interpreted in a way that avoids absurd results.").

B. The case CLM relies upon to show that Ms. Kapur did not care for her mother is unpersuasive due to its factual differences and unsupported reasoning.

CLM cites *Tayag v. Lahey Clinic Hospital, Inc.* out of the First Circuit in support of its assertion that an employee's care for a family member under the FMLA must involve medical treatment of the family member's serious health condition. (Letter from CLM's Counsel, at 1.) Admittedly, the *Tayag* court did state that the FMLA does not protect leave to care for a family member during an away-from-home trip if that trip is unrelated to medical treatment of the family member's illness. 632 F.3d 788, 791 (1st Cir. 2011). CLM does not acknowledge, however, that the First Circuit made that statement in dicta, and more importantly, that it did so without engaging in any independent analysis of the statute. Instead, the court cited a pair of cases from the Ninth Circuit and—without discussing the merits of those cases—held that the plaintiff was not entitled to leave on unrelated grounds.

Furthermore, the factual circumstances of *Tayag* are markedly different than those presented in this case. Although the plaintiff there claimed that she was entitled to FMLA leave to provide psychological comfort and reassurance to her sick husband during their seven-week "spiritual pilgrimage" in the Philippines, the

certification issued by her husband's cardiologist stated that Mr. Tayag was "not incapacitated" and that the plaintiff's leave was unnecessary. *Id.* at 793. Ms. Kapur, on the other hand, submitted a valid certification from her mother's physician when she requested leave and was directly involved in her mother's recovery throughout their stay at ACHT. In addition to the psychological comfort and support she provided her mother, Ms. Kapur attended to her mother's basic nutritional and hygienic needs—precisely the type of care contemplated by the statute. *See* 29 C.F.R. § 825.124(a) (stating that care "encompasses both physical and psychological care. It includes situations where, for example, . . . the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs").

Additionally, this Court need not credit the Ninth Circuit's incomplete reasoning in the two cases cited by the *Tayag* court. The first of these, *Tellis v. Alaska Airlines, Inc.*, turned on whether the plaintiff's "cross-country trip to retrieve the family vehicle during his wife's late-stage pregnancy difficulties" constituted care. *See* 414 F.3d 1045, 1046 (9th Cir. 2005). The plaintiff claimed that, although he was away from his wife for four days, his trip qualified as care because it provided his wife with psychological reassurance that she would soon have reliable transportation. The court rejected his argument, holding that, at a minimum, care under the FMLA requires "some actual care." *See id.* at 1047.

Because the plaintiff had not remained "in close and continuing proximity" to his wife, and because he had not participated in his wife's ongoing treatment, the court determined that he had not cared for her within the meaning of the statute. *See id.* at 1047–48.

In reaching its decision, the *Tellis* court relied upon *Marchisheck v. San Mateo County*, the second case cited by the First Circuit in *Tayag*. In *Marchisheck*, the plaintiff argued she was entitled to FMLA leave to move her son to a relative's home in the Philippines in order to keep him safe from gang violence. *See* 199 F.3d 1068, 1076 (9th Cir. 1999). After first concluding that the son did not have a qualifying serious health condition, the court stated that 29 C.F.R. § 825.116[2] "*suggests* that 'caring for' a child with a 'serious health condition' involves some level of participation in ongoing treatment of that condition." *Id.* (emphasis added). Because the plaintiff had not moved her son to allow him to receive medical or psychological treatment, the court held that she had not provided him with care. *Id.*

Notably, neither *Tellis* nor *Marchisheck* identifies any portion of the statute or its related regulations that requires—or even suggests—that care must be related to ongoing medical treatment. As the Seventh Circuit stated in *Ballard*, the rule cited in *Marchisheck* stands only for the proposition that "so long as the employee

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[2] Under the current version of the regulations, the rule cited by the court is located at 29 C.F.R. § 825.124 and contains only minor changes that do not apply here.

attends to a family member's basic medical, hygienic, or nutritional needs, that employee is caring for the family member, even if that care is not part of ongoing treatment of [a] condition." *Ballard*, 741 F.3d at 842. Furthermore, attending to a family member's basic nutritional or hygienic needs is an activity that in no way necessitates the involvement of a medical professional or health care provider. Interpreting "care" to require an employee's participation in ongoing treatment would drastically reduce the intended scope of the FMLA. *Cf.* Maegan Lindsey, Comment, *The Family and Medical Leave Act: Who Really Cares?*, 50 S. TEX. L. REV. 559, 561 (2009) (explaining that Congress intended the Act to extend to nursing a loved one back to health).

Tellis and *Marchisheck* can also be distinguished on a factual basis. Neither of the plaintiffs in those cases offered any evidence that they provided any actual care to a family member who needed it. Ms. Kapur, however, has shown that she remained at all times in close and continuing proximity to her mother while providing both physical and psychological care—care that, according to a physician's certification, was necessary for her mother's recovery.

Were the Court to adopt CLM's argument that care away from home must relate to ongoing medical treatment, ailing family members like Ms. Kapur's mother would become prisoners within their own homes unless they were traveling to a doctor's office. Employees would be precluded from removing a family

member from the home for something even as simple as visiting a restaurant, regardless of the fact that such an activity could be considered attending to the family member's dietary needs. Congress could not have intended such an insensitive and illogical result. Accordingly, Ms. Kapur respectfully urges the Court to enter partial summary judgment in her favor and hold that for purposes of § 2612(a)(1)(C), care need not involve ongoing medical treatment.

II. Even if Ms. Kapur was not entitled to FMLA leave to care for her mother, this Court should hold that her retaliation claim survives as a matter of law.

In addition to the substantive rights guaranteed by the FMLA, the Act also prohibits employers from retaliating against employees who have engaged in an activity protected by the statute. *Strickland v. Water Works & Sewer Bd.*, 239 F.3d 1199, 1206 (11th Cir. 2001). The Act specifically provides that "[a]n employer is prohibited from discriminating against employees . . . who have used FMLA leave." *King v. Preferred Technical Grp.*, 166 F.3d 887, 891 (7th Cir. 1999). In order to succeed on a retaliation claim, an employee must demonstrate that an employer intentionally subjected the employee to discrimination for exercising an FMLA right. *Strickland*, 239 F.3d at 1207.

Absent direct evidence of the employer's retaliatory intent, courts analyze retaliation claims under the *McDonnell Douglas* burden-shifting framework. *See e.g.*, *Phillips v. Mathews*, 547 F.3d 905, 912 (8th Cir. 2008). Under *McDonnell*

Douglas, if the plaintiff can establish a prima facie case of discrimination, the burden shifts to the defendant to articulate a legitimate purpose for the adverse action. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). If the defendant is able to do so, the plaintiff is afforded the opportunity to show that the defendant's proffered justification is pretextual. *Id.* at 804.

To establish a prima facie case, a plaintiff must show that: (1) she engaged in protected conduct; (2) she suffered a materially adverse employment action; and (3) the materially adverse action was causally linked to the protected conduct. *Martin v. Brevard Cnty. Pub. Sch.*, 543 F.3d 1261, 1268 (11th Cir. 2008). If the plaintiff produces facts such that a reasonable jury could find in her favor, the defendant may not prevail as a matter of law. *See Sisk v. Picture People, Inc.*, 669 F.3d 896, 900 (8th Cir. 2012). CLM contends that it is entitled to summary judgment on Ms. Kapur's retaliation claim because the leave she requested was not protected by the FMLA. CLM ignores, however, that the Act extends to an employee's good faith attempt to take leave she believes falls under the FMLA. Accordingly, even if the Court determines that Ms. Kapur did not care for her mother, it should hold that Ms. Kapur may bring a free-standing retaliation claim.

A. The plain language of the statute extends to attempts to exercise leave.

Although the Act does not explicitly prohibit retaliation against an employee for exercising FMLA rights, courts have uniformly held that 29 U.S.C. § 2615(a)

provides a logical statutory basis for a retaliation claim. *See Johnson v. Dollar Gen.*, 880 F. Supp. 2d 967, 987 (N.D. Iowa 2012), *aff'd*, 508 F. App'x 587 (8th Cir. 2013). Specifically, § 2615(a)(1) provides that "[i]t shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or *the attempt to exercise*, any right provided under this subchapter." 29 U.S.C. § 2615(a)(1) (2014) (emphasis added).

Congress's inclusion of the phrase "attempt to exercise" indicates that it intended the Act to protect successful as well as unsuccessful efforts to take leave under the statute. *Johnson*, 880 F. Supp. 2d at 992–93. The common meaning of "attempt" is also consistent with that interpretation. *See* BLACK'S LAW DICTIONARY 152 (10th ed. 2014) (defining "attempt" as "the act or an instance of making an effort to accomplish something, esp[ecially] without success"). Accordingly, the statute should be read to protect employees from retaliation when they take leave and learn later that the leave taken was not protected under the statute.

Additionally, it is a well-settled canon of statutory interpretation that courts ought to construe statutes without viewing any clause, sentence, or word as superfluous. *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Therefore, it is a court's duty to "give effect . . . to every clause and word of a statute." *Inhabitants of Montclair Twp. v. Ramsdell*, 107 U.S. 147, 152 (1883). Consequently, the clause "attempt to exercise" is important in determining when a retaliation claim survives

under § 2615(a)(1). In *Walker v. Elmore County Board of Education*, the Eleventh Circuit ignored this principle and held that while the statute protects an "attempt to exercise" a right, the attempt must be successful. 379 F.3d 1249, 1253 (11th Cir. 2004). That conclusion, however, reads "attempt to exercise" out of the statute altogether—a result that completely alters the scope of the FMLA's protections. Similarly, CLM asks the Court to overlook the fact that Congress purposefully included that phrase within the statute's prohibition. Because the statute indicates that unsuccessful attempts are within the protections of the FMLA, the Court should reject CLM's proffered interpretation.

B. An employee may bring a retaliation claim if she had a reasonable, good faith belief that she was entitled to leave under the Act.

Courts have also recognized that the FMLA implicitly includes an element of good faith in a retaliation claim. *See Johnson*, 880 F. Supp. 2d at 993. In *Johnson v. Dollar General*, the court explained that a plaintiff may establish a prima facie case, even if the leave requested was not protected under the FMLA. *See id.* at 994. All that is required is that the plaintiff must have given the employer adequate notice that she needed leave "that the plaintiff believed, in good faith, might be covered by the FMLA." *Id.*

The Eighth and Tenth Circuits follow comparable approaches. In *Wierman v. Casey's General Stores*, the Eighth Circuit held that "[i]n order to benefit from the protections of the statute, an employee must provide [her] employer with

enough information to show that [she] *may need* FMLA leave." 638 F.3d 984, 1000 (8th Cir. 2011) (emphasis added). This suggests that an employee may benefit from the protections of the statute before she is certain that she is entitled to the leave requested as long as she has a reasonable, good faith belief that the leave is covered under the FMLA. In *Wilkins v. Packerware Corp.*, the Tenth Circuit similarly indicated that a court could reasonably conclude that "an employee engages in 'protected activity' for purposes of an FMLA retaliation claim whenever he or she *asserts* an FMLA right, even if it later emerges that the employee is *not actually eligible* for leave." 260 Fed. App'x. 98, 103 (10th Cir. 2008) (emphasis in original).

Moreover, refusing to recognize an employee's good faith would defeat the purpose of the statute and is bad public policy. The purpose of the retaliation claim is to deter an employer's discriminatory animus toward an attempt to exercise FMLA rights. *See Johnson*, 880 F. Supp. 2d at 993. Allowing an employer to terminate an employee after she has provided notice that she may need leave under FMLA would allow employers to circumvent this deterrent. The *Wilkins* court agreed and explained that an employer should not be permitted to terminate an employee who took leave to care for an ailing spouse, only to later find out that the doctor misdiagnosed the spouse's serious health condition. 260 Fed. App'x at 103.

Similarly, Ms. Kapur's good faith belief that leave to care for her mother was protected by the statute should protect her from CLM's retaliatory action.

Furthermore, courts routinely consider good faith in retaliation cases brought under the Americans with Disabilities Act (ADA)—a statute which is very similar to the FMLA in both operation and structure. *See Wilkins*, 260 Fed. App'x. at 103. In *Wilkins,* the court noted that, due to their analogous nature, it would be curious for a court to consider good faith in the context of the ADA but not in an FMLA cause of action. *See id.* at 103; *cf. Selenke v. Medical Imaging of Colorado*, 248 F.3d 1249, 1264 (10th Cir. 2001) (overturning the district court's conclusion that because the plaintiff was not disabled under the ADA, she could not pursue a retaliation claim); *Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1328 (11th Cir. 1998) (holding that a good faith belief suffices to satisfy the first element of an ADA retaliation claim); *Krouse v. American Sterilizer Co.*, 126 F.3d 494, 502 (3d Cir. 1997) (stating that a plaintiff in an ADA retaliation case need not establish that he is a "qualified individual with a disability").

Indeed, the language of the ADA statute tracks that of the FMLA very closely. It provides that "[i]t shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of . . . any right granted or protected by this chapter." *Selenke*, 248 F.3d at 1264 (quoting 42 U.S.C. § 12203(b) (2014)). Additionally, courts analyze an ADA retaliation claim the

same as they would a claim brought under the FMLA. *See Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1178 (10th Cir. 1999). For example, courts apply the same *McDonnell Douglas* burden-shifting framework in both causes of action and the elements of a retaliation claim under both statutes are exactly the same. *Id.*

The similarity of the language, analysis, and elements of the two statutes suggest that a court should treat a retaliation claim the same under both statutes. Accordingly, this Court should recognize that FMLA protections are available to an employee who attempts to exercise leave under the statute with a reasonable, good faith belief that the leave is covered under the Act.

CONCLUSION

In passing the FMLA, Congress intended to lessen the tension between the workplace and home life. It did not strive to relegate sick individuals to their homes except to make trips to the doctor. Accordingly, this Court should enter summary judgment in favor of Ms. Kapur and hold that leave to care for a family member need not be related to ongoing medical treatment. But even if the Court concludes that Ms. Kapur was not entitled to take leave to care for her mother, the Court should hold that her retaliation claim survives as a matter of law because Ms. Kapur reasonably believed that the FMLA covered the leave she requested.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via certified mail on this, the 12th day of September, 2014.

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