



STETSON LAW

**2014  
SEVENTH ANNUAL  
NATIONAL PRETRIAL COMPETITION**

The Competition will be held on October 16–19, 2014  
at Stetson University College of Law,  
Gulfport, Florida,  
in cooperation  
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 *The Center for Excellence in*  
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STETSON UNIVERSITY COLLEGE OF LAW

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

-----X  
NADIRA KAPUR,

*Plaintiff,*

v.

CENTRO LADE MANUFACTURING, INC.,

*Defendant.*  
-----X

Civil Action No. 13-X441-CIV-R

**COMPLAINT**

JURY TRIAL REQUESTED

**JURISDICTION**

1. The jurisdiction of the Court is invoked under 28 U.S.C. § 1331 for violations of the Family and Medical Leave Act of 1993 (“FMLA”), as amended, 29 U.S.C. § 2601, et seq.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1), because a substantial part of the events and omissions giving rise to this action occurred in this district.

3. The Court has personal jurisdiction over Defendant because Defendant is incorporated and maintains a principal place of business in the State of Florida.

**PARTIES**

4. Plaintiff Nadia Kapur is a resident of the town of Huntsville in the State of Florida. From April 12, 2003, until her wrongful termination on October 15, 2013, Ms. Kapur was an employee of Defendant Centro Lade Manufacturing, Inc. (“CLM”).

5. Defendant CLM is manufacturing company that produces microchips for digital cameras. CLM is incorporated in the State of Stetson and its main manufacturing facility is located in the town of Huntsville, Stetson. CLM has over 250 employees. At all relevant times, CLM was an employer within the meaning of and subject to the FMLA.

### **FACTS**

6. In 2003, Ms. Kapur began her career as with CLM as a packager in the distribution department. In her ten-year career, she was promoted three times, first to the position of Supervisor of the package line, then to Assistant Supervisor of distribution, and finally in 2010, after a special training course at CLM, she was promoted to Clean Line Assembler. Clean Line Assemblers work on the microchips themselves in a special manufacturing area and are considered highly skilled workers. Throughout her employment, Ms. Kapur worked more than 1,250 hours per year.

7. Throughout her employment with CLM, Ms. Kapur received positive performance evaluations. At CLM, employees are ranked on a scale of 1 to 5, with a 1 meaning “unsatisfactory performance” and a 5 meaning “excellent performance.” In four of her years at the company, she received a rating of 3 which is “satisfactory,” in three of her years as an employee she received a rating of 4, which is “exceeding standards,” and in her last three years at the company, she received the highest rating of 5.

8. In December 2012, Ms. Kapur’s mother, Anila Verma, was diagnosed with breast cancer. From December 2012 through October 2013, Ms. Verma received ongoing treatment for this condition, including surgery and chemotherapy. Ms. Kapur

cared for her mother during this time, transporting her mother to appointments, as well as feeding, bathing, and performing household chores for Ms. Verma when Ms. Verma was unable to do so.

9. On August 2, 2013, Ms. Kapur provided CLM notice that starting on September 9, 2013, she would need two weeks FMLA leave in order to care for her mother. Ms. Kapur provided certification from Ms. Verma's doctor that Ms. Verma had been diagnosed with breast cancer and would need care while recovering from her most recent chemotherapy treatment. CLM initially granted Ms. Kapur's request for FMLA leave.

10. From September 9 through September 22, Ms. Kapur cared for her mother in the following ways: (a) Ms. Kapur transported Ms. Verma from her home in Huntsville to the Ayurveda Center for Holistic Treatment ("ACHT") in Strawbridge, Stetson, a three-hour drive; (b) Ms. Kapur accompanied Ms. Verma to her treatments at ACHT and took notes for Ms. Verma's later use; (c) Ms. Kapur assisted Ms. Verma with her hygienic needs when she became nauseous and/or too weak to do so herself; and (d) Ms. Kapur stayed with and provided Ms. Verma psychological comfort and support during Ms. Verma's stay at ACHT.

11. During her time at the ACHT, Ms. Verma received the traditional Ayurvedic treatments of therapeutic massage, meditation, and prescribed meals and counseling on Ayurvedic diet.

12. Ms. Kapur returned to work on September 23, 2013. Upon her return, Human Resources personnel questioned her about her trip and informed her that CLM

did not consider the ACHT a valid medical provider that would justify FMLA leave. The next day, CLM terminated Plaintiff's employment for unauthorized absences.

13. On October 15, 2013, CLM posted a hiring notice on its website. According to this notice, CLM was hiring 25 Clean Line Assemblers in order to fill large holiday orders. Former CLM employees with clean line training were encouraged to apply. Ms. Kapur applied for one of the positions, but on October 21, 2013, received notice that CLM declined her application.

### **STATUTORY VIOLATIONS**

14. CLM, Plaintiff's employer, is a private sector employer who employs 50 or more employees for at least 20 work weeks in the current or preceding calendar year and is engaged in an activity affecting commerce.

15. Plaintiff worked for a covered employer.

16. At the time of her request for FLMA leave, Plaintiff had worked for the employer for at least 12 months and had worked at least 1,250 hours over the prior 12 months.

17. Plaintiff worked at a location where at least 50 employees are employed by the employer within 75 miles.

18. Plaintiff was entitled to take reasonable leave, not to exceed a total of 12 workweeks of leave during any 12 month period, for the care of plaintiff's mother, who had a serious health condition.

19. Plaintiff gave Defendant written medical verification of her mother's serious medical condition and need for care.

20. Plaintiff provided Defendant with advance notice of the need for leave to care for her mother and returned to work on the date set in that notice.

21. Plaintiff was nonetheless terminated from her job on September 24, 2013.

22. Defendant interfered with Plaintiff's exercise of her right to take reasonable leave to care for her mother who had a serious health condition, as provided under the Family and Medical Leave Act.

23. Plaintiff was qualified for the position of Clean Line Assembler. As of October 15, 2013, CLM had open positions for Clean Line Assembler. On October 21, 2013, Defendant refused to rehire Plaintiff for this position in retaliation against Plaintiff for exercising and/or attempting to exercise her rights under the Family Medical Leave Act.

WHEREFORE, Plaintiff respectfully requests this Court to grant the following relief:

1. Award Plaintiff damages against Defendants in an amount equal to any wages, salary, employment benefits, and other compensation denied or lost to Plaintiff by reason of the violation of the statute;

2. Award Plaintiff interest on the amount of any wages, salary, employment benefits, and other compensation denied or lost to Plaintiff by reason of the violation of the statute;

3. Award Plaintiff an additional amount as liquidated damages equal to the sum of the amount of any wages, salary, employment benefits, and other compensation denied or lost to plaintiff and the interest on that amount;

4. Award Plaintiff such equitable relief as may be appropriate, including employment, reinstatement, and promotion;

5. Award Plaintiff reasonable attorney's fees, reasonable expert witness fees, and other costs of the action;

6. Grant Plaintiff such other and further relief as the Court deems appropriate under the circumstances.

Plaintiff requests a jury trial in this matter.

Dated: February 15, 2014

*F. Smithfield*

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF STETSON

-----X

NADIRA KAPUR,

*Plaintiff,*

Civil Action No. 13-X441-CIV-R

v.

**ANSWER**

CENTRO LADE MANUFACTURING, INC.,

*Defendant.*

-----X

1. Paragraph 1 is denied to the extent it alleges that Defendant Centro Lade Manufacturing, Inc. (“CLM”) took any action toward Plaintiff in violation of the Family and Medical Leave Act (FMLA). Defendant admits the remaining allegations of the paragraph.

2. Admitted.

3. Admitted.

4. Defendant lacks knowledge or information sufficient to admit or deny Plaintiff’s current residence. Defendant denies Paragraph 4 to the extent Plaintiff alleges that Defendant took any action in violation of the FMLA or otherwise wrongfully terminated Plaintiff’s employment. Defendant admits the remaining allegations of the paragraph.

5. Admitted.

6. Admitted.

7. Admitted.

8. Defendant lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 8.

9. Defendant admits that on August 2, 2013, it received documents from Ms. Kapur requesting FMLA leave and alleges that the documents speak for themselves. Defendant admits that on August 4, 2013, it granted Ms. Kapur's request and that Ms. Kapur was absent from work from September 9 through September 22.

10. Defendant lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 10, except that Defendant denies that during this time period Plaintiff cared for her mother as that term is defined under the FMLA.

11. Defendant lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 11.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Denied.

19. Defendant denies the allegations of Paragraph 19 and alleges that any documents concerning the medical condition of Plaintiff's mother speak for themselves.

20. Defendant denies the allegations of Paragraph 20, except admits that on August 2, 2013, Plaintiff provided Defendant with a documents seeking leave, which documents speaks for themselves. Defendant admits Plaintiff was absent from work starting on September 9, until she returned to work on September 23, 2013.

21. Admitted.

22. Denied.

23. Defendant admits that as of October 15, 2013, CLM had open positions for Clean Line assembler and did not rehire Plaintiff for this position. Defendant denies the remaining allegations of paragraph 23.

24. The Complaint fails to state claims on which relief may be granted.

25. Defendant denies the Plaintiff is entitled to any relief as against Defendant.

26. Plaintiff's employment was terminated and Plaintiff was not rehired for legitimate business reasons.

WHEREFORE, Defendant requests that the Complaint be dismissed and that it be awarded its costs of defense, including reasonable attorney's fees.

Dated: March 1, 2014

*Harriet Delancy*

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June 30, 2014

Hon. Patricia Feldman  
United States District Court  
Eastern District of Stetson  
1400 NW Pine St.  
Huntsville, ST 23457

Re: Kapur v. Centro Lade Manufacturing, Inc., No. 13-X441-CIV-R

Dear Judge Feldman:

We represent Plaintiff Nadira Kapur in the above-referenced matter. Pursuant to the Court's individual practices, we write this letter motion to compel Defendant to produce certain discovery and, if necessary, for an order extending the discovery deadline to allow Plaintiff's expert discovery. The parties have substantially completed discovery on all non-disputed issues and have attempted to resolve these remaining issues in good faith. The deadline for completion of discovery is currently set for August 15, 2014.

Specifically, Plaintiff respectfully requests the Court either issue a determination that Plaintiff's leave was to "care for" her mother as that term is used under the Family and Medical Leave Act of 1993 ("FMLA") or, in the alternative, extend the discovery deadline to permit Plaintiff to produce an expert report from Dr. Jonathan Sethi of the Ayurveda Center for Holistic Treatment ("ACHT"). Plaintiff further requests an order compelling Defendant to produce personnel files concerning all former employees who applied for a position at Centro Lade Manufacturing, Inc. ("CLM") in response to its October 15, 2013 call for applicants.

As set forth in the Complaint, Plaintiff alleges claims of interference and retaliation under the FMLA, as amended, 29 U.S.C. § 2601, et seq. In support of her interference claim, Plaintiff alleges that she was entitled to FMLA leave from September 9 through September 22, 2013, in order to care for her mother, Anila Verma. Plaintiff required this time off in order to transport her mother to the ACHT, a center providing traditional Ayurveda treatments, to care for Ms. Verma's basic nutritional and hygienic needs during the trip and stay, and to provide Ms. Verma support and psychological comfort during those treatments. Ms. Verma has been diagnosed with breast cancer and since January 2013, has received surgery and chemotherapy to treat this condition. While at ACHT, Ms. Verma received massages, and special diets and nutritional counseling, and engaged in meditation according to the precepts of Ayurveda in order to rebuild her health and immune system after the ravages of chemotherapy. Defendant is apparently

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claiming that Plaintiff's trip to and stay at ACHT was a vacation and not for the care of Plaintiff's mother because Ms. Verma did not receive medical, or at least traditional western medical, treatment for her condition. Contrary to Defendant's assertions, an employee is entitled to FMLA leave to care for a sick family member, even if during that time the family member is not actively receiving medical treatment. *See Ballard v. Chicago Park Dist.*, 741 F.3d 838 (7th Cir. 2014).

In the alternative, should the Court conclude that the family member must be receiving medical treatment in order to qualify for "care for" FMLA leave, Plaintiff requests an extension of the discovery deadline in order to produce an expert report from Dr. Jonathan Sethi of the ACHT concerning the medical benefits of the treatments Ms. Verma received. The parties originally set the discovery deadline without the expectation of a need for expert discovery, but should the Court credit Defendant's arguments, Plaintiff now requires sufficient time for this discovery in order to establish that Ms. Verma was receiving ongoing medical treatment, not a "spa vacation."

The second issue of dispute concerns Plaintiff's cause of action for retaliation under the FMLA. Plaintiff's retaliation claims are based on Defendant's failure to rehire Plaintiff in October 2013. At that time, CLM was hiring 25 Clean Line Assemblers in response to large holiday orders. This is a skilled position for which Plaintiff had received special training during her time at CLM, prior to her wrongful termination. Discovery to date has revealed that approximately 200 people applied for the positions and all 25 positions were filled by individuals who previously worked for CLM as Clean Line Assemblers. Plaintiff has therefore requested the applications and any CLM personnel files of all those who applied for the Clean Line Assembler position in October 2013, including those hired for the position.

The requested information is reasonably calculated to lead to the discovery of admissible evidence. *See Fed. R. Civ. P. 26*. Plaintiff alleges that Defendant failed to rehire her because during her employment with CLM, Plaintiff sought FMLA leave to care for her mother. To prove this claim Plaintiff must demonstrate CLM had a retaliatory motive. One method of proof is to demonstrate that similarly situated applications with no prior history of FMLA leave requests were hired when Plaintiff was not. Another method of proof is for Plaintiff to show that CLM's claimed reason for not hiring her—record of policy violations during prior employment at CLM—is pretext. This proof requires evidence concerning the qualifications and any prior CLM employment history of the applicants and hires for the October 2013 hiring round. An order compelling this production is therefore warranted.

Plaintiff therefore requests a preliminary ruling on the issue of whether her leave was to care for her mother under the FMLA, or in the alternative an extension of the discovery deadline

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to allow for expert discovery. Plaintiff further requests an order compelling Defendant to produce the requested personnel documents as relevant to her retaliation claim.

We thank the Court for its consideration.

Respectfully submitted,

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July 15, 2014

Hon. Patricia Feldman  
United States District Court  
Eastern District of Stetson  
1400 NW Pine St.  
Huntsville, ST 23457

Re: Kapur v. Centro Lade Manufacturing, Inc., No. 13-X441-CIV-R

Dear Judge Feldman:

We represent Defendant Centro Lade Manufacturing, Inc. ("CLM") in the above mentioned matter. We submit this opposition to Plaintiff's June 30, 2014 letter motion to compel and to extend the discovery deadline. In accordance with this Court's individual rules, Defendant respectfully requests a hearing on the parties' discovery dispute and to consider summary judgment on the legal issues raised by the motion to compel. Defendant agrees with Plaintiff's assertion that the parties have conferred in good faith on the issues raised in the motion and confirms that other than the disputed issues, the parties have completed discovery on a timely basis.

Plaintiff's motion to compel and to extend the discovery deadline beyond August 15, 2014 should be denied because Plaintiff seeks information to support claims that fail as a matter of law. First, Plaintiff alleges that CLM interfered with her right to FMLA leave by terminating her for unauthorized absences after she took time off to take her mother to a spa where both would enjoy massages and meditation. Although Ms. Kapur's mother is ill, the FMLA does not allow employees to take leave for personal vacation. The FMLA provides for leave in order to care for a close family member with a serious medical condition, and this requires the leave involve some medical treatment of that condition. *Tayag v. Lahey Clinic Hosp., Inc.*, 632 F.3d 788 (1st Cir. 2011). Moreover, Plaintiff's attempt to get around this requirement by claiming expert status for Jonathan Sethi is unavailing. "Dr." Sethi does not have a medical degree that is recognized in the United States, his "treatments" at the Ayurveda Center for Holistic Treatment ("AHT") predominantly consist of specialize diets and cleanses, massage, and meditation. Plaintiff would offer his testimony as a purported expert on the issue of whether these treatments had medical benefits. Dr. Sethi's testimony and evidence, however, is not likely to be admissible and thus, it is not worth spending the time, effort, and expense on expert discovery on his views.

Second, for her retaliation claims, Plaintiff seeks extensive, costly discovery of non-party personnel files, including highly personal information about non-parties taking of leave for their own or family member's serious medical condition. Plaintiff claims such information is necessary to explore whether CLM's decision to not rehire Plaintiff was in retaliation for

Plaintiff's request for FMLA leave during her employment at CLM. Plaintiff is engaged in a fishing expedition on the unsubstantiated theory that CLM somehow has a pattern of failing to re-hire former employees who exercised FMLA rights. There is no reason to subject Defendant to this burdensome discovery and non-parties to this invasion of their privacy because Plaintiff's retaliation claims fail as a matter of law. Plaintiff was not entitled to FMLA leave in the first place, and consequently, cannot assert a claim of retaliation. See, e.g., *Walker v. Elmore Cnty. Bd. of Educ.*, 379 F.3d 1249, 1253 (11th Cir. 2004). Further, even if Plaintiff could assert a retaliation claim when she was not entitled to FMLA leave, the burden or expense of the proposed discovery outweighs its potential benefits. CLM received nearly 200 applications for the call for applications, all from former employees. Each of these applicants has an extensive personnel file that must be pulled from storage, then reviewed and redacted to protect the private information of the non-party applicants. Plaintiff has not even proposed a method of protecting these individuals' privacy in the course of her broad search of hundreds of files nor offered to pay the inevitable expense of doing so. Plaintiff requests this invasive and expensive production in the hope of finding some highly circumstantial and potentially inadmissible evidence of retaliation.

For these reasons, Defendant respectfully requests that Plaintiff's letter motion to compel and to extend the deadline for discovery be denied and that this Court permit Defendant to immediately move for summary judgment on Plaintiff's claims that fail as a matter of law.

We thank the Court for its consideration.

Respectfully submitted,



Harriet Delancy  
#5890348



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

-----X  
NADIRA KAPUR,

*Plaintiff,*

Civil Action No. 13-X441-CIV-R

v.

CENTRO LADE MANUFACTURING, INC.,

*Defendant.*

-----X

**Minute Order**  
**August 1, 2014**

1. Plaintiff brings claims of interference and retaliation in violation of the Family and Medical Leave Act of 1993 (“FMLA”), as amended, 29 U.S.C. § 2601, et seq.
2. On June 30, 2014, pursuant to this Court’s individual rules,<sup>1</sup> Plaintiff Nadir Kapur submitted a letter motion seeking a Court ruling that her trip and stay with her mother at the Ayurveda Center for Holistic Treatment (“ACHT”) qualified as caring for her mother, Ms. Anila Verma, under the FMLA regardless of the nature of the treatment Ms. Verma received. Alternatively, Plaintiff’s letter motion requests an extension of the discovery deadline in order to permit Plaintiff to produce and the parties to conduct expert discovery on whether the treatments provided to Ms. Verma had a medical benefit for Ms.

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<sup>1</sup> Although the District of Stetson generally follows the Local Rules of the United States District Court for the Middle District of Florida, the District of Stetson allows individual judges to elect to use letter motions for discovery disputes.

Verma's serious medical condition. In Defendant CLM's July 14, 2014 letter opposition, Defendant opposes this relief asserting that leave for purposes other than medical treatment of a family member's condition is not qualified FMLA leave to care for the family member.<sup>2</sup> Defendant alternatively opposes the motion on the grounds that Plaintiff's planned expert discovery is not reasonably calculated to lead to the discovery of admissible evidence.

3. Plaintiff's June 30, 2014 letter motion further seeks to compel the Defendant Centro Lade Manufacturing, Inc. ("CLM") to produce certain personnel files. Plaintiff asserts these documents could lead to the discovery of admissible evidence relevant to her claim of retaliatory failure to hire. Defendant CLM claims this discovery is not warranted because Plaintiff's claims for retaliation fail as a matter of law and, alternatively, because the burden or expense of the requested production outweighs its likely benefit.

4. The Court is convinced that there are legal arguments that could potentially resolve this matter on summary judgment. The parties are therefore directed to submit supplemental briefing on these issues as set forth below. Should Plaintiff's claims survive as a matter of law, the Court requires additional factual information in order to rule on Plaintiff's motion to compel and for an extension of the discovery deadline.

It is therefore ORDERED, ADJUDGED, and DECREED that:

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<sup>2</sup> Defendant has waived any argument regarding the sufficiency of the certification Plaintiff submitted when requesting FMLA leave. Rather, Defendant argues that upon receiving additional information concerning the nature and purpose of Plaintiff's leave, Defendant determined the leave was not FMLA qualified, and it was free to terminate Plaintiff, an at-will employee, for her improper absences.

(1) The parties will submit to the Court, no later than 12:00 noon on September 12, 2014, supplemental briefs (a brief on behalf of the Plaintiff and a brief on behalf of the Defendant) on the issues of: (a) whether Plaintiff accompanying her mother to the ACHT qualified as leave “to care” for a family member that is protected by the FMLA, and (b) whether Plaintiff’s retaliation claims fail as a matter of law if Plaintiff was not entitled to take the FMLA leave she requested.

(2) The parties will appear for oral argument on these issues starting on October 17, 2014. At this appearance, the parties must also be prepared to present factual testimony in support of their discovery arguments in the event the Court finds Plaintiff’s claim survive as a matter of law. The parties are directed in particular to bring witnesses on the issue of whether expert discovery of and by Dr. Sethi is reasonably calculated to lead to the discovery of admissible evidence and whether the burden and expense of Plaintiff’s requested production of personnel files outweighs the likely benefit of this discovery.

Done at Huntsville, Stetson, this 1st day of August, 2014.

*FELDMAN, U.S.D.J.*

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UNITED STATES DISTRICT JUDGE