UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JILLIAN LANKFORD,

Plaintiff,

v

Case No. CD
Hon.

THE SALVATION ARMY,

Defendant.

MILLER COHEN, P.L.C.
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Judith A. Champa (P57489)
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COMPLAINT AND DEMAND FOR TRIAL BY JURY

There is no other civil action pending
in this Honorable Court or any other Court
arising out of the same transaction and occurrence.

/s/Keith D. Flynn
Keith D. Flynn

NOW COMES Plaintiff, **JILLIAN LANKFORD**, by and through her attorneys, **MILLER COHEN, P.L.C.**, for her Complaint against The Salvation Army, and states as follows:

INTRODUCTION

Plaintiff Lankford was a loyal and hard-working employee of The Salvation Army, Defendant, from about August 2007 to on or about October 1, 2018. There, Plaintiff, after several promotions, ultimately served in the position of Executive Assistant. She received praise

throughout her employment, including in December 2017 when she received praise and a discretionary bonus.

In about mid-January 2018, Plaintiff disclosed to Defendant that she was expecting, and that she would need leave under FMLA beginning in July 2018. Plaintiff felt pressure to keep up with her work as Defendant hinted that there was no one else who could perform all of her job tasks and workload. Therefore, Plaintiff stated that maybe she could work during her leave. Plaintiff said this because she was afraid that, otherwise, her leave would not be approved.

Plaintiff continued to receive praise from January 2018 through early May 2018. However, on or about May 15, 2018, Plaintiff sent an email to Defendant stating that after careful consideration, she would be unable to work during her leave. After Plaintiff advised management of her inability to work during leave, Defendant's attitude toward Plaintiff began to change. Management began to act angry and annoyed with Ms. Lankford and her leave. Plaintiff left for her pregnancy and childbirth leave on July 11, 2018. She returned from leave on October 1, 2018 and was terminated that same day.

Under the Pregnancy Discrimination Act, sex discrimination under Title VII is unlawful, which includes discrimination against someone on the basis of pregnancy, childbirth, or related medical conditions. Michigan's Elliott-Larsen Civil Rights Act further prohibits pregnancy and child birth discrimination. Under the FMLA, it is illegal to retaliate against an employee for exercising their right to FMLA leave. Defendant did all of these things when it terminated Plaintiff immediately upon her return from FMLA leave related to pregnancy and childbirth.

Since her termination, Plaintiff has not been able to find comparable employment making what she had made at Defendant. Due to Defendant's actions, Plaintiff lost her job, lost wages and benefits, and has been subjected to emotional harm. Consequently, Plaintiff requests that

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she be made whole for the injuries incurred due to this violation.

PARTIES

1. Plaintiff, Jillian Lankford, is a private citizen and, at all material times, has been a resident of the City of Dearborn, County of Wayne, and State of Michigan.

2. Defendant, The Salvation Army, operates a foreign non-profit corporation with a Registered Office Address in East Lansing, Michigan, Ingham County, and which operates out of numerous locations within Michigan, including its Southeast Michigan Adult Rehabilitation Center (ARC) in Detroit, Michigan, Wayne County.

JURISDICTION AND VENUE

3. This Court has original jurisdiction over Plaintiff's claims arising under the Family Medical Leave Act, 29 U.S.C. § 2611 et seq., pursuant to 28 U.S.C. § 1331, and 42 U.S.C. § 1981.

4. This Court has original jurisdiction over Plaintiff's claims arising under The Pregnancy Discrimination Act of 1978, 42 U.S.C. §§ 2000e et seq., pursuant to 28 U.S.C. § 1331, and 42 U.S.C. § 1981.

5. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff's state law claims.

6. This Court is the proper venue pursuant to 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

7. Plaintiff, Jillian Lankford, was employed by Defendant from around August 2007 until October 1, 2018, most recently working at its Southeast Michigan ARC, Detroit, Michigan.

8. Plaintiff was promoted by Defendant several times and, at the time of her termination, held the position of Executive Assistant.

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9. Plaintiff received praise throughout her employment, including in December 2017 when she received a discretionary bonus.

10. In about mid-January 2018, Plaintiff disclosed to Defendant that she was expecting.

11. In about mid-January 2018, Plaintiff specifically informed Envoy Jacqueline Idzior and Envoy Bob Idzior (both Assistant Administrators) of her pregnancy and that she would need leave under FMLA beginning in July 2018.

12. Plaintiff felt pressure to keep up with her work as Defendant hinted that there was no one else who could perform all of her job tasks and workload.

13. Plaintiff originally told Defendant that maybe she could work during her leave.

14. Plaintiff made the statement described in paragraph 13 above because she was afraid that, otherwise, her leave would not be approved.

15. Plaintiff continued to receive praise from January 2018 through early May 2018.

16. On or about May 15, 2018, Ms. Lankford sent an email to management stating that after careful consideration, she would be unable to work during her leave.

17. After Plaintiff advised Defendant of her inability to work during leave, Defendant began discussing how her job duties would be covered.

18. On June 10, 2018, Major Larry Manzella emailed Ms. Lankford and others that position reviews would be performed during the summer months.

19. Defendant was irritated and angry that it had no one lined up to cover Ms. Lankford's work.

20. On July 9, 2018, Plaintiff emailed Major Manzella and the Envoys and expressed concerns with her job description and asked for consideration.

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21. On July 10, 2018, Plaintiff verbally spoke with Major Manzella expressing her need for clarity on her job performance and responsibilities.

22. On July 11, 2018, Major Manzella emailed Plaintiff telling her that her concerns would be addressed when she returned from leave.

23. Plaintiff began her FMLA leave due to pregnancy and childbirth on July 11, 2018.

24. Plaintiff returned from leave on October 1, 2018.

25. On October 1, 2018, the same day Plaintiff returned from leave, Defendant terminated her.

26. Just before Plaintiff's absence, Defendant indicated to Plaintiff that it temporarily hired a male employee to help perform the job functions of the Plaintiff during her leave.

27. When Plaintiff returned on October 1, all of Plaintiff's personal belongings were packed away in boxes and pushed off to the side of her office, and the male employee who had taken over her job duties had taken over her office.

28 Only after Plaintiff returned on October 1, did it become clear to her that the real reason the Employer hired the male co-worker was to replace her.

29. Defendant discharged Plaintiff in retaliation for her FMLA leave and based on her sex due to her pregnancy and childbirth.

COUNT I

VIOLATION OF THE FAMILY MEDICAL LEAVE ACT (FMLA)

30. Plaintiff incorporates by reference all preceding paragraphs.

31. Plaintiff was an "eligible employee" as defined by the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 1211(2)(a):

a. Plaintiff worked for Defendants for more than one year; and

b. Plaintiff worked in excess 1,250 hours for the proceeding 12-month period at all relevant times.

32. Defendant The Salvation Army is an "employer" as defined by the FMLA, 29 U.S.C. § 1211(4)(a), as a public agency who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

33. Plaintiff was entitled to FMLA leave as an eligible employee due to her pregnancy and childbirth.

34. While Defendants granted Plaintiff leave under the FMLA, Defendants retaliated against Plaintiff for taking the leave and for refusing to work during her protected medical leave when they terminated her employment as soon as she returned from leave.

35. Terminating Plaintiff for taking protected medical leave was retaliatory and a violation of the FMLA. 29 U.S.C. § 2615(a)(2).

WHEREFORE Plaintiff respectfully requests this Honorable court to enter a judgment, holding Defendant liable for compensatory damages including; back pay, liquidated damages in the amount of back pay plus interest, reinstatement, front pay, back and front benefits, interest, attorneys' fees, costs, and all other such relief this Court deems just and equitable.

COUNT II

VIOLATION OF THE PREGNANCY DISCRIMINATION ACT OF 1978 (PDA)

36. Plaintiff incorporates by reference all preceding paragraphs.

37. The Pregnancy Discrimination Act of 1978 (PDA) amended Title VII to clearly establish that discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination.

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38. Plaintiff is a female who took protected medical leave due to pregnancy and childbirth, and thus she falls under the protection of the PDA.

39. Defendant discharged Plaintiff in retaliation against her based on her sex, because she needed to take leave due to her pregnancy and childbirth.

40. As a direct and proximate result of Defendants' retaliatory conduct, Plaintiff has lost benefits; her future earning capacity has been substantially impaired; she has suffered severe emotional distress, humiliation, embarrassment, pain and suffering and loss of enjoyment of life; and she has suffered other non-pecuniary losses, all of which will be proven at the trial of this action.

WHEREFORE Plaintiff respectfully requests this Honorable court to enter a judgment, holding Defendant liable for compensatory damages including; back pay, liquidated damages in the amount of back pay plus interest, reinstatement, front pay, back and front benefits, interest, attorneys' fees, costs, and all other such relief this Court deems just and equitable.

COUNT III

VIOLATION OF THE ELLIOTT-LARSEN CIVIL RIGHTS ACT (ELCRA)

41. Plaintiff incorporates by reference all preceding paragraphs.

42. Michigan's Elliott Larsen Civil Rights Act (ELCRA) prohibits sex discrimination in the workplace, including discrimination based on pregnancy, childbirth, or related conditions. M.C.L. §372.2101, *et seq*.

43. Plaintiff is a female who took protected medical leave due to pregnancy and childbirth, and thus she falls under the protection of the ELCRA.

44. Defendant discharged Plaintiff in retaliation against her based on her sex, because she needed to take leave due to her pregnancy and childbirth.

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45. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff has lost benefits; her future earning capacity has been substantially impaired; she has suffered severe emotional distress, humiliation, embarrassment, pain and suffering and loss of enjoyment of life; and she has suffered other non-pecuniary losses, all of which will be proven at the trial of this action.

WHEREFORE Plaintiff respectfully requests this Honorable court to enter a judgment, holding Defendant liable for compensatory damages including; back pay, liquidated damages in the amount of back pay plus interest, reinstatement, front pay, back and front benefits, interest, attorneys' fees, costs, and all other such relief this Court deems just and equitable.

Respectfully submitted,
MILLER COHEN, P.L.C.

By: /s/Keith D. Flynn

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Dated: September 29, 2020

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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Defendant.

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DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff, Jillian Lankford, by her attorneys, MILLER COHEN, P.L.C., and hereby demands a trial by jury, for all issues so triable.

Respectfully submitted,

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Dated: September 29, 2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JILLIAN LANKFORD,

Plaintiff,

v

THE SALVATION ARMY

Defendant.

Case No. 2:20-cv-12656
Hon. Nancy G. Edmunds
Magistrate Kimberly G. Altman

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DEFENDANT, THE SALVATION ARMY'S MOTION FOR SUMMARY JUDGMENT

Defendant, The Salvation Army ("Defendant" or "TSA") moves this Court under Fed. R. Civ. P. 56 for entry of summary judgment in its favor as to all claims asserted by Plaintiff Jillian Lankford ("Plaintiff" or "Lankford"). For the reasons stated in the accompanying Brief in Support, Defendant respectfully requests that its motion be granted and judgment entered in its favor.

Pursuant to L.R. 7.1, on October 14, 2021, Defendant's Attorney John T. Below conferred with Plaintiff's Attorney Judith A. Champa regarding the nature and legal bases of this motion and requested but did not obtain concurrence in the relief sought.

Respectfully Submitted,

BODMAN PLC

By: /s/ John T. Below

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Date: October 18, 2021

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JILLIAN LANKFORD,

Plaintiff,

v

THE SALVATION ARMY

Defendant.

Case No. 2:20-cv-12656
Hon. Nancy G. Edmunds
Magistrate Kimberly G. Altman

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DEFENDANT, THE SALVATION ARMY'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES PRESENTED

1. Can Plaintiff Jillian Lankford maintain a claim that The Salvation Army violated the Family and Medical Leave Act?

Defendant, The Salvation Army answers: "No."

2. Can Plaintiff Jillian Lankford maintain a claim that The Salvation Army violated the Pregnancy Discrimination Act of 1978?

Defendant, The Salvation Army answers: "No."

CONTROLLING AUTHORITY

Fed. R. Civ. P. 56

Donald v. Sybra, Inc., 667 F.3d 757 (6th Cir. 2012).

Henderson v. Chrysler Grp., LLC, 610 Fed. Appx. 488 (6th Cir. 2015).

Kubik v. Central Michigan Bd. of Trustees, 717 Fed. Appx. 577 (6th Cir. 2017).

Kuhn v. Washtenaw Cnty., 709 F.3d 612 (6th Cir. 2013).

Megivern v. Glacier Hills, Inc., 519 Fed. Appx. 385 (6th Cir. 2013).

Nguyen v. City of Cleveland, 229 F.3d 559 (6th Cir. 2000).

Seeger v. Cincinnati Bel Tel. Co., 681 F.3d 274 (6th Cir. 2012).

Skrjanc v. Great Lakes Power Serv. Co., 272 F.3d 309 (6th Cir. 2001).

INTRODUCTION

Defendant, The Salvation Army ("Defendant" or "TSA") provided Plaintiff Jillian Lankford ("Plaintiff" or "Lankford") with significant promotional opportunities throughout her 11 years of employment, extending to her increasing levels of responsibility and discretion. Citing such "accomplishments," Lankford presented TSA with a proposal for a $20,000 raise, effective May 2016, in accordance with which she agreed to un-enroll in health insurance benefits for 3 years, which she anticipated would save TSA "upwards of $10,000 annually." TSA agreed and granted Lankford's pitch for the unprecedentedly large raise.

Lankford sought leave under the Family and Medical Leave Act ("FMLA") for the births of her children in 2017 and 2018, both of which TSA swiftly approved without issue. Shortly before her 2018 FMLA leave, Lankford requested a copy of her personnel file. TSA reviewed Lankford's file in preparation for its production and discovered that she had fraudulently re-enrolled in TSA's health insurance benefits, violating Lankford's own proposal and contradicting the trust she knew TSA afforded her. Lankford's coworkers simultaneously highlighted Lankford's deteriorating interpersonal skills, including her impatience and unprofessionalism. TSA, therefore, made the decision to terminate Lankford's employment. TSA permitted Lankford to complete the entirety of her FMLA leave, allowing Lankford to maintain her deceptively-acquired health insurance benefits during the birth and

early care of her newborn son, and waited to communicate the termination decision upon her return to work on October 1, 2018.

Lankford's termination is entirely unrelated to her FMLA leaves and/or pregnancies. It was Lankford's request for her personnel file that prompted the discovery of her insurance re-enrollment, and it was Lankford's absence that emboldened her coworkers to finally and openly express their concerns. TSA's termination decision was legitimate, non-discriminatory, and non-retaliatory, and Lankford cannot demonstrate otherwise, entitling TSA to summary judgment.

STATEMENT OF FACTS

I. TSA's Structure

TSA's Southeastern Michigan Adult Rehabilitation Center ("ARC") is managed by "administrators." Ex. 1: J. Idzior Dep., pp. 18:25-19:25. As of 2018, the administrators were Major Larry Manzella ("Manzella"), Envoy Robert Idzior ("R. Idzior"), and Envoy Jacqulynn Idzior ("J. Idzior") (collectively, the "Administration").[1] Ex. 1: J. Idzior Dep., pp. 34:14-16, 97:8-11. Manzella was the

[1] Manzella, an Officer and Pastor, oversaw the Southeastern Michigan ARC. R. Idzior and J. Idzior reported to Manzella, and then the additional staff, including human resources, store management, and the finance team, reported to them. In terms of titles, Manzella explains, "The Salvation Army is set up like the military and . . . promotions are based on years of service, so the first five years I was a Lieutenant and then the second five years I was promoted to Captain, and then from that point on, you serve as a Major unless you get a specific rank for a specific responsibility such as a Colonel or Lieutenant Colonel . . . Envoys are folks who

highest ranking official at TSA's Southeastern Michigan ARC at that time. Ex. 2: Manzella Dep., p. 9:23-25. The ARC is part of The Salvation Army's Central Territory ARC Command, Headquartered in Hoffman Estates, Illinois. Ex. 1 J. Idzior Dep., p. 19:15-19; Ex. 2: Manzella Dep., p. 10:1-4.

II. Lankford's Employment History and Request for an Exorbitant Raise.

TSA hired Lankford as a cashier at the St. Clair Shores thrift store in August 2007. Ex. 3: Lankford Dep., p. 21:6-13. Lankford worked in various positions for TSA, and, between 2007 and 2015, she was given increasing levels of responsibilities. Ex. 3: Lankford Dep., pp. 23:15-22, 24:17-25:11, 27:7-28:3, 28:10-20; 29:11-16, 30:21-31:8, 41:11-14. As of May 2015, Lankford was employed as the Assistant Director of Operations and received an annual salary of $55,000. Ex. 4: May 2015 Payroll Change Notice. Lankford described her Assistant Director of Operations duties as including assisting store supervisors, creating training manuals, overseeing "logistics and donations and communications," and handling "the director of operation's paperwork." Ex. 3: Lankford Dep., pp. 41:17-42:6. In this position, Lankford was supervised by and reported to J. Idzior. Ex. 4: May 2015 Payroll Change Notice (identifying J. Idzior as the "Manager").

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have not gone through The Salvation Army seminary or training experience, but are recommended to serve in some capacity." Ex. 2: Manzella Dep., pp. 9:15-11:21.

It is undisputed that, in May 2016, after approximately one year in the Assistant Director of Operations position, Lankford requested an exorbitant compensation raise of more than 36 percent and, in exchange, offered certain concessions, including un-enrollment from TSA's health insurance plan for 3 years. Ex. 5: Lankford Salary Proposal. Specifically, Lankford proposed:

> My current salary is $55,000 annually with the use of a company car, gas card, $10,662.00 per year in insurance and a $1,000.00 guaranteed bonus through May 2016; and **I am proposing an increase of $20,000** bringing my annual salary to $75,000 along with the continued use of a [TSA] vehicle and gas card.
>
> **In exchange for the salary increase**, I am prepared to make the following commitments and take the following cost saving initiatives:
>
> 1. Continued employment within the Southeast Michigan ARC for a minimum of 3 years (June 2019) at the proposed salary;
> 2. No expectation of any future merit increases until my June 2019 annual review;
> 3. Forfeiture of all discretionary bonuses, and elimination of any additional pay, saving up to $12,000 annually; and
> 4. **Unenrollment in [TSA] insurance beginning May 2017 which will result in an expected savings to the company of upwards of $10,000 annually.**

Ex. 5 (emphasis added). Because an increase of this size is "unheard of in [TSA]," it required approval by ARC's Administration and Command. Ex. 6: R. Idzior Dep., pp. 18:12-19:22; Ex. 1, J. Idzior Dep., pp. 45:22-46:12.

Ultimately, TSA agreed to Lankford's proposed terms – a $20,000 increase in her annual salary in exchange for the "cost saving initiatives" that she proposed, *including the promise to un-enroll from TSA-provided health insurance benefits*. Ex.

5: Lankford Salary Proposal; Ex. 7: 2016 Payroll Change Notice (incorporating Lankford's proposal). There is no dispute that TSA and Lankford agreed that she would not re-enroll in such benefits until at least 3 years had passed. Ex. 3: Lankford Dep., p. 49:15-18; Ex. 1: J. Idzior Dep., pp. 41:10-42:15; Ex. 2: Manzella Dep., pp. 33:18-35:1.

Lankford secured her $20,000 raise and un-enrolled in benefits, effective July 1, 2017 (two months later than promised). Ex. 8: 2017 Enrollment/Change Form. However, *only four months later*, Lankford re-enrolled in benefits covering both herself and her family under TSA's health, dental, vision, and hearing insurance plan, effective January 1, 2018. Ex. 9: 2018 Election Summary; Ex 3: Lankford Dep., p. 48:20-24. At her deposition, Lankford claimed that she re-enrolled in benefits because she had been placed in the new "Executive Assistant" position, and she saw that "nothing had changed" on her payroll change notice, so she decided that she would switch from her husband's insurance to TSA's insurance, allowing him to earn "one dollar more per hour." Ex. 3: Lankford Dep., pp. 68:5-14, 18-22. Lankford conceded that the move to Executive Assistant was a "neutral" job action – it was not a promotion. Ex. 3: Lankford Dep., p. 51:1-14. Lankford did not inform J. Idzior "or anybody else in management" about her re-enrollment, meaning she knew that she was not authorized to re-enroll in benefits *and* keep the $20,000 increase. Ex. 3: Lankford Dep., p. 49:7-10. In fact, Administration had no idea that

Lankford had reenrolled in health insurance.[2] Ex. 2: Manzella Dep., p. 64:18-23; Ex. 3: Lankford Dep., p. 56:12-18. Lankford does not dispute that Administration had no knowledge of her secret re-enrollment in the TSA health insurance plan. Ex. 3: Lankford Dep., p. 49:11-14.

III. Lankford Commences her New Executive Assistant Position.

Lankford first reported to J. Idzior and R. Idzior upon the commencement of her Executive Assistant position; Major Manzella was added as a supervisor in March 2018. Ex. 2: Manzella Dep., p. 38:5-23; Ex. 3: Lankford Dep., p. 67:12-19; Ex. 10: 3/1/18 Email. Lankford understood that the Executive Assistant position was "[a]bsolutely" an "important job," with "a lot of responsibility." Ex. 3: Lankford Dep., p. 112:4-7.[3] Nonetheless, Manzella endorsed a "[f]lexible hours" and "family first" mentality, and he "was in favor of work-life balance." Ex. 11: Plaintiff's Notes from 3/6/18 Meeting; Ex. 2: Manzella Dep., p. 43:6-15; Ex. 3: Lankford Dep., p. 114:1-15.

[2] Lankford was certain that, if she re-enrolled, Administration would not receive notification thereof because she knew that Administration would not have access to her personnel file without help from human resources given that employees' personnel files are "locked under key by the human resources director." Ex. 3: Lankford Dep., p. 93:10-19.

[3] Lankford delineates the many job duties she claims to have performed. Ex. 3: Lankford Dep., pp. 65:18-67:19.

IV. Lankford Takes FMLA Leave for the Birth of her Second Child.

Lankford informed TSA that she was pregnant with her second child in January 2018. Ex. 3: Lankford Dep., pp. 115:17-116:5. Lankford estimated that her leave would begin in July 2018, and that she would "be absent as much as [she] was approved for." *Id.* [4] Of her own volition, Lankford initially planned to conduct some work during her FMLA leave, but, "[a]fter careful consideration," she "decided to be completely unavailable during FMLA once it is approved." Ex. 12: 5/15/18 Email, p. 1. Included with the email communication is a summary of Lankford's job duties and anticipated projects that would require coverage during her leave. *Id.* Manzella responded, "You know I totally get this. The most important thing in your life isn't your job[;] it's your family. I think [you're] making the right call." *Id.*, p. 5. R. Idzior and J. Idzior echoed Manzella's sentiments. R. Idzior was "[a]bsolutely not" "angry about having to reassign any of [Lankford's] job duties," and TSA "got them all covered." Ex. 6: R. Idzior Dep., pp. 30:19-25, 33:13-15. J. Idzior had "no" problems finding "cover" for Lankford's duties and was "[n]ot at all" "upset" that Lankford was taking FMLA leave; J. Idzior herself had just returned from FMLA

[4] In January 2017, TSA approved Lankford's request for FMLA leave due to the birth of her first child between April 2017 and July 2017. Ex. 3: Lankford Dep., p. 63:7-10. There is no dispute that Lankford returned without incident to a similar position at the conclusion of the leave. *Id.*, pp. 51:1-10, 65:17-23. Lankford admits that no TSA Administrator or anyone else said or did anything to make her "feel that [her] job was in jeopardy" during her first FMLA leave. *Id.*, p. 65:4-7.

leave and had experienced no hostility or pushback because of her absences. Ex. 1: J. Idzior Dep., pp. 89:22-24, 148:10-149:2. TSA approved Lankford's FMLA leave, beginning approximately July 15, 2018 and concluding September 29, 2018. Ex. 3: Lankford Dep., pp. 134:23-135:1; Ex. 1: J. Idzior Dep., p. 124:20-23.

Shortly before her FMLA leave was to commence, on July 9, 2018, Lankford submitted her "position review" to the Administrators, in which she made troubling revelations and bluntly expressed frustration with her superiors. Ex. 13: 7/9/18 Position Review. For example, Lankford claims: she received "little to no direction" and "contradictory information [that] impeded [her] ability to see many tasks through completion"; her "position encompasses the duties of four people," which "someone off the street could [not] handle," as evidenced by "the number of people needed to assign" Lankford's duties during her anticipated leave; "[t]here is an overwhelming amount of misdirection"; "unclear direction often interposes the flow and growth of some relationship dynamics"; and, the sense that employees should do what they are told "leaves much to be desired." *Id*., pp. 1-4.

Lankford met with Manzella on the morning of July 10, 2018, secretly recorded their meeting, and referred vaguely to allegations that she was labelled defiant. Ex. 3: Lankford Dep., pp. 89:20-90:2, 140:2-14. Manzella planned to discuss Lankford's "attitude" and "work through that particular issue" when she came back from FMLA leave. Ex. 2: Manzella Dep., p. 59:11-22.

On July 11, 2018, with Manzella's approval, Lankford started her leave earlier than expected. Ex. 3: Lankford Dep., pp. 134:23-135:21. Lankford was asked to return her TSA computer while on FMLA leave but refused to do so. Ex. 3: Lankford Dep., p. 151:4-13 (claiming, "I don't take direction from my assistant"); Ex. 1: J. Idzior Dep., pp. 95:19-96:5.

After giving birth on July 25, 2018, Lankford completed a "special enrollment," and added her newborn son to her health insurance plan, which covered health, dental, vision, and hearing for herself and her family. Ex. 14: Special Enrollment Form. Soon thereafter, on August 27, 2018, Lankford received a text message from the former Director of Human Resources, Dea Weathers ("Weathers"), about a "formality in question" as to the enrollment. Ex. 15: Text Messages, p. 15. Lankford hypothesized, "Ugh . . . [W]hat's wrong with my insurance[?] . . . My negotiated contract from [Assistant Director of Operations] that got me that raise?" *Id.* Lankford admits that her re-enrollment "first came to the attention of the [A]dministrators" while she was on FMLA leave. Ex. 3: Lankford Dep., p. 56:12-18. Lankford took the entirety of her FMLA leave with full benefits and returned to work on October 1, 2018, as planned. Ex. 1: J. Idzior Dep., p. 124:20-23.

V. TSA Determines that Termination of Lankford's Employment is Warranted and Necessary.

On or around July 5, 2018, shortly before her second FMLA leave, Lankford requested a copy of her personnel file. Ex. 16: Personnel File Request. According to its "normal procedure," TSA reviewed Lankford's personnel file with local counsel and ARC Command in preparation for its production to Lankford, at which point TSA discovered that Lankford had re-enrolled herself and her family in its health insurance plan. Ex. 1: J. Idzior Dep., pp. 97:2-98:17; Ex. 2: Manzella Dep., p. 56:6-21; Ex. 6: R. Idzior Dep., pp. 43:23-44:23. Manzella, J. Idzior, and R. Idzior all agreed that, due to Lankford's secret and fraudulent re-enrollment in benefits in violation of her agreement with TSA, termination was warranted. Ex. 1: J. Idzior Dep., p. 109:4-20; Ex. 2: Manzella Dep., pp. 66:7-67:1; Ex. 6: R. Idzior Dep., p. 41:2-8. TSA waited until her October 1, 2018 return-to-work date to communicate and effectuate the termination because TSA "did not want to disturb her leave." Ex. 1: J. Idzior Dep., p. 100:5-12.

Upon the determination that Lankford had engaged in deceitful conduct that warranted employment termination, J. Idzior also solicited written statements from ARC employees, because she had received complaints about Lankford's "behavior," and, according to J. Idzior, Lankford "deserved a thorough investigation on every claim that was brought against her." Ex. 1: J. Idzior, pp. 111:3-14, 122:1-16; *see* Ex. 17: Written Statements, in which Lankford's coworkers described her infamously rude and discourteous conduct. Regardless of her many interpersonal conflicts, TSA

terminated Lankford for fraudulently re-enrolling in health insurance benefits. Ex. 1: J. Idzior Dep., p. 123:1-12; Ex. 6: R. Idzior Dep., pp. 38:5-12, 41:2-8; Ex. 2: Manzella Dep., pp. 61:16-62:23 (explaining, "There was no intention of firing [Lankford] until we discovered she committed the fraud").

The investigation and termination decision were summarized in the Termination Report and accompanying memorandum. Ex 18: Termination Documentation. J. Idzior met with Lankford and Weathers on October 1, 2018, and J. Idzior "read directly off of the termination report" in communicating the separation to Lankford. Ex. 1: J. Idzior Dep., p. 100:13-18. Lankford admits that she was told that she was being terminated "[f]or signing up on [TSA's] insurance without permission." Ex. 3: Lankford Dep., pp. 147:17-148:7. Manzella, J. Idzior, and R. Idzior all testified that, regardless of any other issue, Lankford would have been terminated for her misconduct regarding health insurance reenrollment. Ex. 1: J. Idzior Dep., p. 109:4-20; Ex. 2: Manzella Dep., pp. 66:19-67:1; Ex. 6: R. Idzior, p. 41:2-8.

LAW AND ARGUMENT

Summary judgment is appropriate where the record evidence, including depositions, demonstrate "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56.

I. Plaintiff's FMLA Claim Must be Dismissed

In Count I of the Complaint, Plaintiff alleges that TSA violated the FMLA by terminating her employment in retaliation "for taking the leave" and "for refusing to work during her protected medical leave." Ex. 19: Complaint, ¶¶ 34-35; *see also* Ex. 3: Lankford Dep., p. 58:20-22 (reiterating her claim that termination was "discrimination" for having taken FMLA leave). In this case, Plaintiff attempts to establish her allegation of retaliatory discharge through circumstantial evidence. Therefore, the familiar *McDonnell-Douglas* burden-shifting analysis will apply. *Edgar v. JAC Products, Inc.*, 443 F.3d 501, 508 (6th Cir. 2006), citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Under this analysis, the plaintiff must establish a *prima facie* case of retaliation, and, if successful, the defendant can rebut the *prima facie* case by articulating a legitimate, non-discriminatory, non-retaliatory reason for its actions. *Donald v. Sybra, Inc.*, 667 F.3d 757, 761-762 (6th Cir. 2012). To survive summary judgment, the plaintiff must then demonstrate that the legitimate reason asserted is "pretext" for unlawful retaliation. *Donald*, 667 F.3d at 761-762.

a. Plaintiff cannot establish a *prima facie* case.

"To establish a prima facie claim of FMLA retaliation, [Lankford] must show that: (1) she was engaged in an activity protected by the FMLA; (2) [TSA] knew that she was exercising her rights under the FMLA; (3) after learning of [her] exercise of

FMLA rights, [TSA] took an employment action adverse to her; and (4) there was a causal connection between the protected FMLA activity and the adverse employment action." *Donald* at 761. Here, Plaintiff cannot establish a "causal connection" between her leave and termination. "'To establish a causal connection, a plaintiff must proffer evidence sufficient to raise the inference that her protected activity was the likely reason for the adverse action.'" *Henderson v. Chrysler Grp., LLC*, 610 Fed. Appx. 488, 494 (6th Cir. 2015) (affirming the district court's grant of summary judgment in defendant's favor where the plaintiff could not establish a causal connection), citing *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 596 (6th Cir. 2007).

In this matter, Plaintiff has no evidence of a connection between her 2018 FMLA leave and her termination.[5] She also makes no allegation that anyone in Administration was upset about her taking FMLA leave. With regard to Major Manzella, the presiding officer in Administration, Plaintiff admits that he was supportive of her leave. Ex. 3: Lankford Dep., p. 121:19-23; Ex. 12: 5/15/18 Email, p. 5. With regard to R. Idzior, Plaintiff admits that he never told her not to go on leave. Ex. 3: Lankford Dep., pp. 92:15-17, 123:9-12. She merely "speculated" that he was upset. Ex. 3: Lankford Dep., p. 92:18-23. Finally, with regard to J. Idzior,

[5] Plaintiff previously took an FMLA leave due to the birth of her first child in 2017 and returned to work without incident.

who had recently returned from an FMLA leave herself, Plaintiff simply claimed that J. Idizor was "cold" towards her. Ex. 3: Lankford Dep., p. 89:17-19. These allegations are insufficient to establish a causal connection between Plaintiff's FMLA leave and her discharge.[6] *See Allen v. Mich. Dep't of Corr.*, 165 F.3d 405, 413 (affirming the dismissal of plaintiff's retaliation claim because his "vague," "generalized," and "conclusory allegations are insufficient to establish causation"); *see also Galeski v. City of Dearborn*, 690 F. Supp. 2d 603, 620-621 (E.D. Mich. 2010) (citing *Allen* in finding that the plaintiff failed to show a causal connection because he submitted no "corroborating evidence to demonstrate causation").

Plaintiff will likely argue that the timing of her discharge is enough to establish a causal connection for the purpose of establishing a *prima facie* case.[7]

---

[6] Plaintiff relies (deficiently) on her "overall feeling" of being discriminated or retaliated against for taking FMLA leave because "[i]t was regularly discussed [by her co-workers] that when you went on FMLA, . . . your job could be in jeopardy." Ex. 3: Lankford Dep., p. 59:5-12. This subjective belief is not evidence of a causal connection. Moreover, Plaintiff only identifies one person who had taken an FMLA leave and was fired, but she admits that he was actually terminated because R. Idzior "didn't enjoy supervising him in the warehouse and didn't think that he was capable of running the kitchen." *Id.*, pp. 95:14-96:25.

[7] As discussed here and below, timing alone is never enough to survive summary judgment because timing alone will not satisfy a plaintiff's burden to establish a causal connection or show pretext. *Nguyen v. City of Cleveland*, 229 F.3d 559, 566-567 (6th Cir. 2000) (emphasizing that "temporal proximity in the absence of other evidence of causation is not sufficient to raise an inference of a causal link"); *see also Skrjanc v. Great Lakes Power Serv. Co.*, 272 F.3d 309, 317 (6th Cir. 2001) (affirming the district court's grant of summary judgment in defendant's favor where the plaintiff's only evidence of pretext was that he was terminated one month after informing the defendant that he intended to take FMLA leave).

However, the termination in this case did not occur close in time to when TSA learned of Plaintiff's intent to take leave.

> The temporal proximity between the protected activity and the adverse employment action may be sufficient to establish a causal connection for establishing a prima facie case in certain circumstances . . . "Where an adverse employment action occurs *very close in time after an employer learns of a protected activity*, such temporal proximity between the events is significant enough to constitute evidence of a causal connection for the purposes of satisfying a prima facie case of retaliation. But where some time elapses between when the employer learns of a protected activity and the subsequent adverse employment action, *the employee must couple temporal proximity with other evidence of retaliatory conduct to establish causality*."

Henderson, 610 Fed. Appx. at 494-495 (emphasis in original) (finding that "the passage of six to seven months" between protected activity and the adverse employment action is not "very close" in time, and, "without more, cannot sustain an inference of a causal connection") (internal citations omitted). *See also Blosser v. AK Steel Corp.*, 520 Fed. Appx. 359, 363-365 (6th Cir. 2013) (holding that the plaintiff needed to "couple temporal proximity with other evidence of retaliatory conduct to establish causality," which he could not do, because four months separated his FMLA leave commencement and termination); *Hafford v. Seidner*, 183 F.3d 506, 515 (6th Cir. 1999) (refusing to find a causal connection and dismissing plaintiff's retaliation claim because the adverse action "occurred two to five months" after the engagement in protected activity, and the plaintiff presented no "additional evidence" to support the "insufficient" and "loose" temporal proximity).

In this case, Plaintiff informed J. Idzior that she was pregnant and intended to take FMLA leave in January 2018, meaning her October 2018 termination transpired almost ten months after TSA "learned" of her protected activity (i.e., request for FMLA leave). Ex. 3: Lankford Dep., pp. 115:17-116:5. No causal connection can be established due to this significant gap in time. Also, the timing of the discharge should be discounted in this case because the discovery of Plaintiff's fraudulent re-enrollment in health insurance constitutes a significant intervening event between the date of her request for FMLA leave and her termination.[8] *Kuhn v. Washtenaw Cnty.*, 709 F.3d 612, 628 (6th Cir. 2013) (finding that the plaintiff failed to show a causal connection because "an intervening legitimate reason" for the termination decision "dispel[led] an inference of retaliation based on temporal proximity") (internal citations omitted).

b. TSA relied on legitimate, non-discriminatory, and non-retaliatory reasons for terminating Plaintiff.

Plaintiff cannot establish a *prima facie* case, but, even if she could, TSA clearly has met its burden of presenting a legitimate, non-discriminatory, non-retaliatory reason for the termination. Here, the facts undeniably show that Plaintiff proposed an exorbitant $20,000 raise to which TSA agreed *on the condition* that Plaintiff would waive health insurance for *three years*. There is no dispute that

[8] TSA actually gave Plaintiff a break by allowing her to continue her FMLA leave and stay on the fraudulently obtained health insurance for the duration thereof.

Plaintiff violated the terms of her own proposition by re-enrolling in TSA's health insurance plan, and that Plaintiff did so in secret, specifically refusing to inform Administration. This resulted in Plaintiff's selfish and deceitful receipt of both health insurance benefits *and* the inflated salary. It is also undisputed that Administration did not learn of Plaintiff's deception until she requested her personnel file as she was going on FMLA leave. In a nutshell, Plaintiff pulled a fast one on TSA – first, she made a deal to waive health insurance to obtain an unprecedented salary increase of more than 36 percent, then, after having secured the increase, she re-enrolled in health insurance, only months later, so that her husband could get a $1.00 per hour wage increase. Plaintiff relied upon the assurance that there was little chance of her actions being detected because she knew Administration would not have general access to her personnel file without help from human resources. Ex. 3: Lankford Dep., p. 93:15-19. And, when an issue arose with regard to her insurance, Plaintiff knew exactly why and immediately and nervously referenced her breached agreement: "Ugh . . . [W]hat's wrong with my insurance[?] . . . My negotiated contract from [Assistant Director of Operations] that got me that raise?" Ex. 3: Lankford Dep., p. 56:12-18; Ex. 15: Text Messages, p. 15.

It is well-established that, "Fraud and dishonesty constitute lawful, non-retaliatory bases for termination." *Seeger v. Cincinnati Bel Tel. Co.*, 681 F.3d 274, 284 (6th Cir. 2012) (internal citations omitted); *see also Joostberns v. United Parcel*

Servs., Inc., 166 Fed. Appx. 783, 794 (6th Cir. 2006) (affirming the dismissal of the plaintiff's FMLA retaliation claim where the defendant's legitimate, non-retaliatory business reason was plaintiff's dishonesty, in accordance with which the plaintiff utilized the defendant's mailing services for personal gain without payment or permission). Plaintiff's stealth re-enrollment in health insurance was dishonest, fraudulent, and clearly in violation of her agreement with TSA. The record testimony of the Administrators (Manzella, R. Idzior, and J. Idzior) is consistent – regardless of the other issues cited in the termination report, including Plaintiff's unprofessional and condescending attitude and her unauthorized use of a gas card, Plaintiff's fraudulent re-enrollment in health insurance solely warranted, necessitated, and prompted her employment termination. Ex. 2: Manzella Dep., pp. 66:19-67:1; Ex. 6: R. Idzior Dep., p. 41:2-8; Ex. 1: J. Idzior Dep., p. 109:4-20.

c. Plaintiff has no evidence of pretext.

Under the *McDonnell Douglas* framework, once TSA establishes a legitimate reason for termination, the burden shifts back to Plaintiff to demonstrate that said reason is pretext for unlawful conduct. *Donald* at 762.

> "'[A] reason cannot . . . be a pretext for discrimination unless **it is shown both that the reason was false, and that discrimination was the real reason**' . . . A plaintiff may establish pretext by showing that the employer's proffered reasons (1) have no basis in fact; (2) did not actually motivate the action; or (3) were insufficient to warrant the action . . . 'Whichever method the plaintiff employs, [she] always bears the burden of producing sufficient evidence from which the jury could

> reasonably reject [the defendant's] explanation and infer that the defendant[] intentionally discriminated against [her]."

Seeger at 285 (internal citations omitted) (emphasis added) (holding that the plaintiff's "good employment record" was irrelevant because the defendant terminated the plaintiff's employment based upon its honest belief that he committed fraud, affirming dismissal of plaintiff's FMLA retaliation claim).

In this case, Plaintiff has come forward with no evidence that TSA's reason for discharging her was false. While Plaintiff tried to explain that she believed she was justified in re-enrolling in benefits because her position had changed, she also admitted that she knew that her position change was "neutral," not a promotion, and could not, therefore, rationalize a $20,000 raise. Ex. 3: Lankford Dep., p. 65:15-23. Moreover, the agreement regarding salary increase and un-enrollment in group health benefits does not state that it is tied to any one position. *See* Ex. 5. In fact, Plaintiff agreed to "[c]ontinued employment within the Southeast Michigan ARC for a minimum of 3 years," meaning she specifically chose not to link her salary increase to any position. Plaintiff also never asked that her salary be decreased upon the neutral change. Furthermore, Plaintiff purposefully kept her re-enrollment a secret from Administration, and she became concerned when an issue with her insurance arose while she was on FMLA leave and specifically referenced the 2016 agreement, collectively demonstrating the insincerity of Plaintiff's single ad hoc explanation. Ex. 3: Lankford Dep., pp. 49:7-10, 56:12-18. Regardless, Plaintiff's

explanation for re-enrollment does not show that TSA's reason for terminating her was "false," let alone pretext for discrimination.

In assessing pretext, the Sixth Circuit follows the "honest belief rule":

> Where the employer can demonstrate an honest belief in its proffered reason, however, the inference of pre-text is not warranted . . . [A]n employer's proffered reason is considered honestly held where the employer can establish it reasonably reli[ed] on particularized facts that were before it at the time the decision was made. Thereafter, the burden is on the plaintiff to demonstrate that the employer's belief was not honestly held. An employee's bare assertion that the employer's proffered reason has no basis in fact is insufficient . . . and fails to create a genuine issue of material fact." . . .
>
> The ground rules for application of the honest belief rule are clear. A plaintiff is required to show 'more than a dispute over the facts upon which the discharge was based.' We have not required that the employer's decision-making process under scrutiny 'be optimal or that it left no stone unturned. Rather, the key inquiry is whether the employer made a reasonably informed and considered decision before taking an adverse employment action' . . . Furthermore, 'the falsity of [a] [d]efendant's reason for terminating [a] plaintiff cannot establish pretext as a matter of law' . . . As long as the employer held an honest belief in its proffered reason, 'the employee cannot establish pretext even if the employer's reason is ultimately found to be mistaken, foolish, trivial, or baseless.'"

Seeger at 285-286 (internal citations omitted).

Here, Plaintiff has not come forward with evidence that TSA Administrators did not honestly believe that she breached her 2016 agreement and fraudulently re-enrolled in health insurance. Despite any subjective protestation by Plaintiff that her termination was "unfair," a court cannot substitute their judgment for the judgment of the employer. *See Hardesty v. Kroger*, 758 Fed. Appx 490, 496 (6th Cir. 2019)

("[T]hough [the plaintiff] protests that his firing was unfounded and unfair, a court does not sit as a 'super-personnel department,' second-guessing management decisions"); *see also Smith v. Leggett Wire Co.*, 220 F.3d 752, 763 (6th Cir. 2000) ("It is inappropriate for the judiciary to substitute its judgment for that of management").

To the extent that Plaintiff attempts to rely on temporal proximity to establish pretext, "the law in this circuit is clear that temporal proximity cannot be the sole basis for finding pretext." *Donald* at 763 (holding that temporal proximity "alone is not enough," even where the plaintiff was terminated immediately upon her return from FMLA leave); *see also Skrjanc*, 272 F.3d at 317 (noting, "[T]emporal proximity is insufficient in and of itself to establish that the employer's nondiscriminatory reason for discharging an employee was in fact pretextual."). As stated above, no inference can be drawn from the timing of Plaintiff's discharge, which occurred 10 months after TSA learned of her intent to take FMLA leave.

II. Plaintiff's PDA Claim Must be Dismissed

In her Complaint, Plaintiff alleges that TSA terminated her employment due to her pregnancy in violation of The Pregnancy Discrimination Act ("PDA"), an amendment to Title VII of the Civil Rights Act of 1964, which extended the prohibition on discharging employees "on the basis of sex" to firing women because of pregnancy. 42 U.S.C. 2000e(k). Plaintiff's pregnancy discrimination claim also

relies on circumstantial evidence, and, as such, the *McDonnell-Douglas* burden-shifting framework applies. *See Kubik v. Central Michigan Bd. of Trustees,* 717 Fed. Appx. 577, 581 (6th Cir. 2017).

a. Plaintiff cannot establish a *prima facie* case of pregnancy discrimination.

In the "specific context of pregnancy discrimination claims," the test for establishing a *prima facie* case requires the plaintiff to show that: "1) she was pregnant, 2) she was qualified for her job, 3) she was subjected to an adverse employment decision, and 4) there is a nexus between her pregnancy and the adverse employment decision." *Id.* Here, Plaintiff has not and cannot assert facts sufficient to establish the requisite causal nexus. Plaintiff makes vague allegations that her pregnancy was a factor in her termination, but she has no evidence to support a finding that Manzella, J. Idzior, or R. Idzior discriminated against her on the basis of her pregnancy.

Presumably, Plaintiff will argue that the timing of her discharge establishes the nexus. While a court may consider timing at the *prima facie* stage of a pregnancy discrimination case (*Asmo v. Keane, Inc.*, 471 F.3d 588, 592 (6th Cir. 2007)), ultimately, a Plaintiff will need to establish something more than timing to survive summary judgment. *Skrjanc* at 317. When considering timing at the *prima facie* stage, courts look to when the defendant learned of the pregnancy. *Asmo*, 471 F.3d

at 593 (considering the time elapsed between the date that the employer learned of the pregnancy and the discharge).

The timing of Plaintiff's discharge does not support a causal connection or nexus. First, Plaintiff had a prior pregnancy and returned without incident. Second, she announced her pregnancy in January of 2018 (Ex. 3: Lankford Dep., pp. 115:17-116:5), ten months before her discharge, which is not close enough in time to support a finding of a causal connection even at the *prima facie* stage. *See Nguyen*, 229 F.3d at 566-567 (adopting the six-month threshold, meaning temporal proximity alone is insufficient to establish a *prima facie* case where more than six months separates the protected activity and the adverse employment action). Third, the effect of the timing of the discharge, again, must be discounted because there was a significant intervening event (i.e., TSA's discovery that Plaintiff had secretly and fraudulently re-enrolled in TSA's health insurance plan).

b. Plaintiff cannot show that TSA's legitimate non-*discriminatory* reason was pretextual.

As outlined in Section I, b., above, TSA has satisfied its burden of articulating its legitimate, non-discriminatory, non-retaliatory reasons for Plaintiff's termination. TSA terminated Plaintiff for fraudulently, and in breach of contract, re-enrolling in TSA's health insurance plan despite her promise to waive such benefits in exchange for a $20,000 salary increase.

Again, "Pretext may be demonstrated if 'the proffered reason (1) has no basis in fact, (2) did not actually motivate the defendant's challenged conduct, or (3) was insufficient to warrant the challenged conduct' . . . At all times, '[t]he plaintiff retains the burden of persuasion.'" *Megivern v. Glacier Hills, Inc.*, 519 Fed. Appx. 385, 398 (6th Cir. 2013) (internal citations omitted) (affirming the dismissal of the plaintiff's pregnancy discrimination claim where the termination report reflected the termination rationale and the temporal proximity of one day was not supported by "other, independent evidence of pretext").

Plaintiff has not met, and will not meet, her burden of establishing pretext. It is undisputed that she requested, and TSA agreed to grant, a $20,000 raise in exchange for waiving benefits, and that she re-enrolled in benefits four months later without notifying Administration. Ex. 5: Salary Increase Proposal; Ex. 7: May 2016 Payroll Change Notice; Ex. 8: 2017 Enrollment/Change Form; Ex. 9: 2018 Election Summary. It is also undisputed that TSA only discovered Plaintiff's re-enrollment while reviewing her personnel file in preparation for its production to Plaintiff *at her request*. Plaintiff also has no evidence that her fraudulent re-enrollment did not motivate the termination. Ex. 18: Termination Documentation; Ex. 3: Lankford Dep., pp. 57:4-6, 147:25-148:7; Ex. 2: Manzella Dep., pp. 66:19-67:1; Ex. 6: R. Idzior Dep., p. 41:2-8; Ex. 1: J. Idzior Dep., p. 109:4-20. Finally, and objectively, Plaintiff's fraudulent re-enrollment is sufficient to warrant termination. TSA

provided Plaintiff with significant responsibilities, and her deception jeopardized and outright violated its trust, making her continued employment impossible.

CONCLUSION

Defendant should be granted summary judgment, and Plaintiff's Complaint should be dismissed with prejudice. Considering the undisputed genuine and material facts, and for the reasons stated above, Plaintiff Jillian Lankford cannot establish her claims under the Family and Medical Leave Act and the Pregnancy Discrimination Act.

Respectfully Submitted,

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Date: October 18, 2021

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JILLIAN LANKFORD,

Plaintiff,

v

THE SALVATION ARMY

Defendant.

Case No. 2:20-cv-12656
Hon. Nancy G. Edmunds
Magistrate Kimberly G. Altman

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PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases **Page**

INDEX OF AUTHORITIES CONTINUED

Cases **Page**

INDEX OF AUTHORITIES CONTINUED

Cases **Page**

Statutes

Other Authorities

STATEMENT OF ISSUES PRESENTED

1. Whether there is a genuine issue of material fact that Defendant discharged Plaintiff for requesting pregnancy leave where Defendant demonstrated hostility toward Plaintiff due to her pregnancy and leave request, offered shifting rationales for her termination, and proffered reasons for her termination that were ordinarily insufficient to warrant termination.

Plaintiff says "Yes."

Defendant says "No."

I. INTRODUCTION

Plaintiff Jillian Lankford was terminated by Defendant Salvation Army in retaliation for taking FMLA leave immediately after giving birth to her second child. At the time of Ms. Lankford's termination, she had been an employee for eleven years with a stellar performance record. Defendant's managerial witnesses described Ms. Lankford as an "amazing," "phenomenal," "exceptional," and "fantastic" employee. (***Exhibit 11,*** 33-34; 47-50**;** ***Exhibit 15,*** 27**)** Despite this positive acclaim, Plaintiff was terminated upon returning to work from maternity leave on October 1, 2018.

In an attempt to explain Plaintiff's termination, Defendant threw mud against the proverbial wall to see what would stick. Namely, Plaintiff was told that she was being terminated for sending negative emails that created a hostile work environment and for re-enrolling on the Defendant's health insurance back in late 2017. (***Exhibit 5,*** 148) As for the first gob of mud, the Robert Idzior ("R. Idzior) and Larry Manzella, two of Defendant's managers responsible for the decision to terminate Plaintiff testified under oath that he did not review the negative statements in question. (***Exhibit 15****,* 40-41; ***Exhibit 16,*** *60*) Another manager, Jacqulynn Idzior ("J. Idzior") could not testify to a single person being terminated for being rude in the past. (***Exhibit 2,*** *para. 24; E****xhibit 5,*** 162; ***Exhibit 11,*** 134;). Neither R. Idzior or J. Idzior could testify as to following up with the witnesses or providing Ms. Lankford with an opportunity to respond. ***(Exhibit 11****,* 111-115; 120; ***Exhibit 15,*** 45) Instead, the lead decision maker, Manzella, testified

that he did not even know that was a reason offered for her termination. **(*Exhibit 16,*** 62)

Yet, in its Position Statement to the EEOC, Defendant relied almost exclusively on the alleged tone of Plaintiff's emails to explain why Plaintiff was discharged. (***Exhibit 14,*** n5) Only in a rather perfunctory footnote did the Defendant allege that Ms. Lankford had attempted to commit fraud by signing up for the employer's healthcare insurance. It is easy to understand why the Defendant initially relegated this baseless allegation to a footnote—Plaintiff's re-enrollment on health insurance provided by the Defendant was done with full knowledge of Defendant. Namely, Plaintiff's re-enrollment was completed using Defendant's health insurance forms prepared with the assistance of Defendant and authorized by personnel in Human Resources. (***Exhibits* 7**; ***Exhibit 8*)** While Defendant feigns ignorance, all three management officials responsible for terminating Plaintiff arguably possessed knowledge having audited Plaintiff's personnel file as recently as January 2018. (***Exhibit 5,*** 104, 110; ***Exhibit 11,*** 97) This Court should not reward such untoward conduct by granting Defendant's meritless Motion. That Motion should be denied and Plaintiff should be awarded costs and attorneys' fees for being forced to respond.

II. STATEMENT OF FACTS

A. Background.

On August 19, 2007, Plaintiff was hired by Defendant as a cashier. (***Exhibit 17***) During her eleven years with the employer, Ms. Lankford received glowing praise and

compliments from management as well as numerous promotions. (***Exhibit 18***) By May 27, 2015, Plaintiff was promoted to the Assistant Director of Operations. (***Exhibit 1*****).** In December 2016, Ms. Lankford was told by the Director of Operations, Jacqulynn Idzior, that Ms. Idzior was going to be the new Administrator of Southeast Michigan after the prior Administrator retired. (***Exhibit 2***, ¶ 3-7) Ms. Lankford was told by Ms. Idzior that she would be promoted to Director once Ms. Idzior became the Administrator. (Id. at ¶7) At that time, Plaintiff notified Ms. Idzior that she was pregnant and intended to take maternity leave. (Id.)

After informing Ms. Idzior of her intent to maternity leave, Plaintiff was written up for allegedly creating a hostile work environment for the first time in the nine years that she had worked for Defendant. (Id. at ¶8) Then, Defendant began removing Plaintiff's job duties, including her role as a supervisor. (Id.) Prior to commencing her maternity leave, she was informed that she was not going to be returned to her old position of Assistant Director of Operations. (Id.) As noted by Ms. Lankford, she essentially "had to hand over [her] entire job before [she] left for maternity leave." (Id.) In April 2017, Plaintiff took her first maternity leave. (***Exhibit 5,*** 63) After recovering from giving birth to her son (Id.), she returned to work on July 3, 2017. Upon her return, Plaintiff was informed that she was going to be the Idziors' Executive Assistant. (Id. at 51, 67) Ms. Lankford's new position was dramatically different than her prior position significantly broadening her responsibilities, but without any commensurate change in

her compensation. (Id. at 65, 130; ***Exhibit 2***, ¶9)[1]

B. Plaintiff's Second Maternity Leave and Subsequent Termination

Ms. Lankford found out that she was pregnant with her second child and informed the employer in January 2018. (***Exhibit 2***, ¶14) At that time, Ms. Lankford had indicated that she intended to work throughout her leave. (Id.) However, she began to believe that it would be too much for her to do so and she emailed management on May 15th that she was not going to be able to work during her leave. (Id.) Whereas she had received a discretionary bonus based on her work performance in December 2017 and constant praise from January to May 2018, that all ended on May 15th. (Id. at ¶15)

At that point, there was a noticeable change in management's attitude toward Plaintiff with managers no longer making eye contact, excluding her from emails that she ordinarily had been copied on, and nit-picking her over minor issues. (Id.) Both Manzella and R. Idzior expressed frustrations over finding people to take over Plaintiff's numerous job responsibilities while she was on leave. (***Exhibit 2***, ¶16; ***Exhibit 5***, 122-24) J. Idzior testified to emailing other managers admitting to be distraught over Ms. Lankford's May 15th email requesting maternity leave. (***Exhibit 9***, 85) After that, Plaintiff heard from Dea Weathers in Human Resources that R. Idzior had been going

[1] Despite Defendant's mischaracterization that it had granted Plaintiff an "exorbitant raise," Plaintiff's exhibit 4 to the Manzella dep shows that Plaintiff's salary was right about at the average of where it should be for the Executive Assistant position– not at the high end or the low end.

through Plaintiff's personnel file, which was not regularly done. (**Exhibit 5,** 91**; Exhibit 2,** ¶17) Even Manzella admitted that the normal process for reviewing an employee's personnel file is through the Legal Department. (***Exhibit 16***, 56)

Plaintiff's leave began unexpectedly four days early on July 11, 2018 due to Plaintiff suffering a back injury at home. (***Exhibit 5,*** 121-22; 134-35) On October 1, 2018, Plaintiff returned to work. That same day, Plaintiff's "temporary" replacement while she was on leave had already been set up in Ms. Lankford's office with Plaintiff's personal items already boxed up and off to the side. (***Exhibit 16***, 67) Plaintiff was terminated that day for allegedly being rude and using a disrespectful tone months prior and for re-enrolling on the employer's health insurance. (***Exhibit 2***, ¶18; ***Exhibit 11***, 100; ***Exhibit 12***) Ms. Lankford was not provided the statements that were allegedly "rude" or "disrespectful." (Id. at ¶19) Plaintiff was not even given examples. (Id.) Nor was she asked any questions by the Defendant or allowed to respond in any way. (Id.) After her termination, Ms. Lankford was told that the Defendant had been calling in Plaintiff's co-workers asking questions about her while she was out on leave. (Id. at ¶20). Only after Plaintiff filed an EEOC charge did Plaintiff receive the statements that the Defendant had collected against her. (Id. at ¶22) Nothing in the statements appeared to claim that Plaintiff was rude or disrespectful. (***Exhibit 11***, 93-95) Notably, the statements involved individuals who Plaintiff had a good relationship with or spent time with socially. (Id. at ¶21) Other statements that were produced came from employees

with whom Plaintiff did not even closely work with. (Id.) The Defendant's other rationale for Plaintiff's termination was relegated to a footnote in its Position Statement that Ms. Lankford's termination was due to her re-enrolling in the Defendant's health insurance. (***Exhibit 14, n5)*** Now, Defendant has changed its story primarily relying on that second rationale for Plaintiff's discharge. This convenient shift is likely due to the deposition testimony of its managers. Namely, Manzella (the lead decision maker) testified that he was unaware of the investigation into Jillian's alleged "rude" behavior until after it happened nor did he ever look at the statements. (***Exhibit 16***, 59-60) Manzella noted that he did not recall any other employee who had been fired for rudeness or having an attitude. (Id. at 64) Instead, Manzella believed that Plaintiff was only terminated for the health insurance issue. (Id. at 60)[2]

C. Defendant's Rationale for Terminating Plaintiff has No Basis in Fact

Defendant asserts that Plaintiff committed fraud by re-enrolling for health insurance benefits allegedly in violation of the terms of an offer for a raise that Plaintiff received in 2016. Specifically, Plaintiff had asked Ms. Idzior for a $20,000 raise.

[2] Similarly, J. Idzior testified that she did not think that many of the emails that Defendant allegedly relied on before the EEOC were rude. (***Exhibit 11,*** 128-32) Furthermore, J. Idzior testified that she did not rely on any of these emails to terminate Jillian for rudeness, even though they are presented that way in the EEOC position statement. (Id.) More so, she testified that there had been other complaints about tone or curtness, including her husband R. Idzior. (Id. at 134-35) Yet, not single person had been fired for that. (Id.)

(***Exhibit 2***, ¶3) While a $20,000 raise would have exceeded the pay range for the Assistant Director of Operations position, Plaintiff asserted that the $20,000 raise would compensate her for the extra responsibilities that she had taken on as she was in training to become the new Director of Operations at the time. (Id.) Ms. Idzior suggested that Plaintiff prepare a proposal as the Administrator of Southeast Michigan was "handing out money." (Id.) Ms. Lankford submitted her proposal in May 2016. (***Exhibit 3***) Plaintiff requested raise would bring her annual compensation to $75,000 per year. Plaintiff's salary would remain the same for three years, i.e, until 2019. Plaintiff offered to unenroll from the Defendant's insurance program and accept the following additional responsibilities as the Assistant Director of Operations including: 1) management of all operations; 2) executing lease renewals 3) regular visits to challenging stores; 4) development of regular and routine training programs; 4) supervision of additional stores and/or warehouses; among other responsibilities. (Id.)

That proposal was expressly limited to the position of Assistant Director of Operations. (Id.)

On June 20, 2016, Defendant provided Plaintiff with a $20,000 raise. The terms of this raise are documented in a handwritten note on Defndant's Payroll Change Notice:

> Jillian has guaranteed 3 years to the company at this proposed wage. Next annual [review] due May 15, 2019 (please see her attached proposal).

(***Exhibit 4***) No mention was made in Defendant's handwritten acceptance of Plaintiff's $20,000 raise proposal about any disenrollment from Defendant's health insurance

coverage. (Id.) This form was produced by Defendant to Plaintiff from Plaintiff's "Personnel File, Bates numbers 0077-00278," which is maintained by Defendant's Human Resources ("HR") department. The pay raise had been processed by Human Resources Director, Dea Weathers ("Weathers").

More than a year later, on July 12, 2017, Plaintiff waived her health insurance coverage because she and her child were covered under her husband's health insurance program. (***Exhibit 7***) Plaintiff submitted this form to Defendant's Human Resources Department. (***Exhibit 5***, 52-53). After returning from her first maternity leave, however, she was no longer an Assistant Director of Operations and, instead, returned from leave to a new position of Executive Assistant as indicated above. As Plaintiff was no longer in the Assistant Director of Operations position, Plaintiff spoke to Defendant's HR Director, Dea Weathers, in October 2017 to see if she could re-enroll in Defendant's health insurance coverage. (Id.) This conversation resulted in Ms. Weathers providing Plaintiff with the necessary paperwork for re-enrollment. (Id.) At no time did Ms. Weathers mention to Plaintiff any putative healthcare waiver of 2016. (Id.) On October 25, 2017, Defendant processed its Health Benefits reinstatement confirmation for Plaintiff acknowledging that she and her family had been re-enrolled for healthcare coverage effective January 1, 2018 to December 31, 2018. (***Exhibit 6***; ***Exhibit 8***)

After she had been re-enrolled in the employer's health insurance, Ms. Lankford's personnel file was reviewed as part of a regular annual audit. On January 23-26, 2018,

Defendant received the results of the audit. (***Exhibit 9***; ***Exhibit 16)*** Larry Manzella, Defendant's Administrator at the time, forwarded a copy of this Internal Audit to J. Idzior and R. Idzior. (Id.) After he reviewed the audit, Manzella told Plaintiff that her file had been flagged because her $20,000 pay raise in 2016 had not been approved by the Board at Command. (***Exhibit 5***, 110) Manzella said he had to justify this raise for the Executive Assistant position. (Id.) Manzella asked Plaintiff to prepare an Executive Assistant job description. (***Id.*** at 110-11). On January 29, 2018, Plaintiff submitted the Executive Assistant job description to J. Idzoir and R. Idzior. (***Exhibit 10***) At no time did Manzella indicate that there was an issue with Ms. Lankford's health insurance. The document was produced by Defendant to Plaintiff from Plaintiff's "Personnel File Produced in 2018, Bates numbers 00279-00414," which is maintained by Defendant's HR department.

On August 9, 2018, Plaintiff completed Defendant's Health Care Special Enrollment/Change Form in order to add her newborn son to Defendant's healthcare coverage. (***Exhibit 20***) This form was approved by Defendant, again, without issue. ***Id.*** This form was produced by Defendant to Plaintiff from Plaintiff's "Insurance Documents" file, Bates numbers 0077-00278, which is maintained by Defendant's HR department. Simply put, there is no evidence in the record that Ms. Lankford made one misrepresentation, hid anything at all from the Defendant, or was otherwise not permitted to enroll on the employer's health insurance plan.

III. STANDARD OF REVIEW

Under FED. R. CIV. P. 56(a), the Defendant must show that there is no genuine dispute as to material fact and movant is entitled to judgment as a matter of law. However, moving party must support its assertions of fact in a "form admissible in evidence."[3] "[T]he movant has the burden of showing conclusively that there exists no genuine issue as to a material fact and the evidence together with all inferences to be drawn therefrom must be read in the light most favorable to the party opposing the motion."[4] The Sixth Circuit instructs that "caution should be exercised in granting summary judgment once a plaintiff has established a *prima facie* inference of retaliation through direct or circumstantial evidence."[5]

IV. ARGUMENT

Under the Family Medical Leave Act, Plaintiff is entitled to twelve weeks of leave per twelve-month period of time because she is an eligible employee working for a covered employer and suffering from a serious health condition. Upon returning from leave, Defendant was required to restore Plaintiff to her position prior

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[3] FED. R. CIV. P. 56(c)(2).

[4] ***Smith v. Hudson***, 600 F.2d 60, 63-64 (6th Cir. 1979). Furthermore, employment actions are inherently fact-based. Summary judgment should "seldom be granted . . . unless all the evidence points one way and is susceptible to no reasonable inferences sustaining the position of the nonmoving party." ***Hindman v. Transkrit Corp.***, 145 F.3d 986, 990 (8th Cir. 1998).

[5] ***Singfield v. Akron Metropolitan Housing Auth.***, 389 F.3d 555, 564 (6th Cir. 2004).

to the leave.[6] Plaintiff alleges that her termination both interfered with her rights under the FMLA and constituted retaliation. Similarly, Plaintiff alleges that she was discriminated against on the basis of her pregnancy and childbirth in violation of the Pregnancy Discrimination Act of 1978 (PDA) and Michigan's Elliott Larsen Civil Rights Act (ELCRA). MCL §372.2101, *et seq.*[7]

A. Plaintiff has Produced Sufficient Evidence that There Exists a Genuine Issue of Material Fact Over Whether Her Discharge was Caused by Her Pregnancy and Request for Leave

Under FMLA, Defendant may not "interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter."[8] Employees have a right to be restored to their position or a similar position upon returning from leave.[9] Under ***Jennings v. Mid-American Energy Co.***, Even though Plaintiff was allowed to take leave, Plaintiff also had a right to be restored to her position once she returned.[10] To demonstrate a *prima facie* case for interference with substantive rights, Plaintiff must show:

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[6] 29 USC § 2614(a)(1)(A).
[7] In the interest of judicial economy, Plaintiff will address her claim of pregnancy discrimination in conjunction with her claim of retaliation under the FMLA as the analysis is substantially similar considering the basis of Defendant's Motion.
[8] 29 USC § 2615(a)(1).
[9] ***Wysong v. Dow Chem. Co.***, 503 F.3d 441, 447 (6th Cir. 2007)("If an employer takes an employment action based, in whole or in part on the fact that the employee took FMLA-protected leave, the employer has denied the employee a benefit to which he is entitled.")
[10] 282 F. Supp. 2d 954, 960 (S.D. Iowa 2003).

> (1) She was an eligible employee; (2) the defendant was an employer as defined under the FMLA; (3) the employee was entitled to leave under the FMLA; (4) the employee gave the employer notice of her intention to take leave; and (5) the employer denied the employee FMLA benefits to which she was entitled.[11]

Defendant has already admitted that Plaintiff was an eligible employee, that it was a covered employer, and that Ms. Lankford's leave was approved. (***Exhibit 5,*** *116)* Under the FMLA, "serious health condition" is defined as "an illness, injury, impairment, or physical or mental condition that involves: (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) ***continuing treatment by a health care provider***."[12] 29 C.F.R. 825.120(a)(4)***, Leave for pregnancy or birth***. ("The expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child."); *see also* ***George v. Russel Stove Candies, Inc.,*** 106 Fed. Appx. 946, 949 (6th Cir. 2004)(The FMLA considers pregnancy a "serious health condition involving treatment by a health care provider."). Here, Plaintiff satisfies all of these requirements and was entitled to FMLA leave due to her pregnancy, for prenatal care, and for her own serious health condition following the birth of her child.

As for restoration to her former position, Defendant interfered with Plaintiff's

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[11] ***Killian v. Yorozu Auto. Tenn., Inc.***, 454 F.3d 549, 556 (6th Cir. 2006) (citing ***Walton v.Ford Motor Co.***, 424 F.3d 481, 485 (6th Cir. 2005)). 29 USC §§ 2612(a)(1)(D), 2614(a)(1)(A); ***Jennings***, 282 F. Supp. 2d at 961.

[12] 29 USC § 2611(11)(emphasis added).

restoration by discharging her the morning she returned to work. Since Plaintiff was entitled to the right that was denied by Defendant, Defendant's motive is irrelevant.[13] The facts, show that Plaintiff was entitled under the FMLA to take leave and be restored to her previous position, but the Defendant refused to do so. Consequently, Defendant's motion should be denied.

B. There Exists a Genuine Issue of Material Fact over Whether Defendant Reasonably Believed Its Reason or Acted with Retaliatory Animus.

An employer may not discharge, or otherwise discriminate against an employee for exercising rights under the FMLA.[14] In order to meet Plaintiff's *prima facie* case alleging retaliation for exercising rights under the FMLA, Plaintiff must demonstrate the following:

> (1) Plaintiff availed himself of a protected right under FMLA; (2) Defendant knew that Plaintiff exercised a protected right; (3) Plaintiff was adversely affected by an employment decision; and (4) there was a causal connection between the exercise of the protected right and the adverse employment action.

See e.g. ***Hoge v. Honda of America Mfg., Inc.***, 384 F.3d 238, 244 (6th Cir.2004); ***Canitia v. Yellow Freight Sys., Inc.***, 903 F.2d 1064, 1066 (6th Cir.1990).[15]

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[13] ***Jennings***, 282 F. Supp. 2d at 961.

[14] 29 U.S.C. §2615(a)(2).

[15] To establish a prima facie case of pregnancy discrimination, an employee must show: "1) she was pregnant, 2) she was qualified for her job, 3) she was subjected to an adverse employment decision, and 4) there is a nexus between her pregnancy and the adverse employment decision." ***Deboer v. Musashi Auto Parts, Inc.***, 124 F. App'x 387, 391 (6th Cir. 2005)(quoting ***Cline v. Catholic Diocese of Toledo***, 206 F.3d 651, 658 (6th Cir. 2000)).This is not meant to be an onerous burden. *Id.* The

1. Plaintiff has Produced Sufficient Evidence to Create a Genuine Issue of Material Fact as to Retaliation

Of the four elements listed above, Defendant only argues that there is no genuine issue of material fact as to a causal link. In this case, there is significant evidence of causation. First, the two events—Plaintiff's return from FMLA leave and her termination—occurred the very same day. The Sixth Circuit held in ***Mickey v. Zeidler Tool and Die Co.***, very close temporal proximity is enough to show causation. In ***Mickey***, on the same day that the plaintiff filed an EEOC charge, his supervisor discharged the plaintiff. *Id.* at 525, The Court found that casual connection could be inferred between defendant learning of the protected activity and firing the plaintiff. 516 F.3d 516 (6th Cir. 2008); *see also* ***Deboer v. Musashi Auto Parts, Inc.***, 124 F. App'x 387, 391 (6th Cir. 2005)(Sixth Circuit held that a demotion that took place the day after the plaintiff's request for maternity leave was sufficient to meet her *prima facie* case). This is a similar situation to the current case at bar where Defendant's attitude toward Ms. Lankford changed dramatically after she requested to utilize maternity leave.

However, Plaintiff relies on more than just temporal proximity. After Plaintiff told Defendant that she was pregnant and would be taking leave, management's

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elements are similar to those necessary to show a claim for discrimination under ELCRA. *Id.* Again, in the interest of brevity, Plaintiff addresses her pregnancy discrimination claims by discussing the elements of FMLA as both claims require a showing of causation.

attitude toward her completely flipped. (***Exhibit 5***, 59-61, 92, 173) Management expressed frustration over having to reassign Plaintiff's job duties and began a witch hunt while she was on leave to discharge her. (***Exhibit 2***, ¶16-17; ***Exhibit 5***, 91, 122-24; ***Exhibit 9***, 85). Courts do not just look to when leave was requested in determining temporal proximity; instead, the Sixth Circuit has reiterated that, "We have found sufficient evidence of a causal connection where the time between the employee's leave expired . . . and the employee's termination was two to three months." ***Judge v. Landscape Forms, Inc.***, 592 F. App'x 403 , 409 (6th Cir. 2014) (citing ***Bryson v. Regis Corp.***, 498 F.3d 561 , 571 (6th Cir. 2007)); ***Cooley v. East Tenn. Human Res. Agency, Inc.***, 720 F. App'x 734, 743 (6th Cir. 2017)(holding temporal proximity for purposes of showing causation can be measured from the date employee's FMLA leave expired and plaintiff returned to work).

Defendant had no issues with Plaintiff prior to her decision to take maternity leave, which was conveyed to Defendant on May 15, 2018. She was given glowing performance reviews and received numerous promotions. (***Exhibit 11,*** 33-34; 47-50***;*** ***Exhibit 15,*** 27**)** Despite this, Plaintiff was terminated the **VERY SAME** day that she returned to work from leave. Consequently, Plaintiff has produced sufficient evidence to meet her *prima facie* showing.

2. Defendant's Proffered Reason for Plaintiff's Termination is Mere Pretext

In wrongful termination lawsuits, courts typically apply the burden-shifting test under ***McDonnell Douglas v. Green***:

1) Plaintiff establishes a *prima facie* case by a preponderance of the evidence;
2) Burden of production shifts to Defendant to rebut the prima facie case by providing a legitimate non-discriminatory reason for Plaintiff's termination; and
3) Plaintiff must show that Defendant's reason is pretext for behavior actually motivated by discrimination.[16]

Pretext can be established by showing that: (1) employer's reason had no basis in fact; (2) the reason did not actually motivate the discharge; or (3) the reason was insufficient to motivate the discharge.[17] Defendant argues that it had a legitimate non-discriminatory reason for Plaintiff's termination—namely, that Plaintiff requested to re-enroll in the employer's health insurance and, in doing so, somehow committed fraud.[18]

First, that allegation has no basis in fact. Plaintiff's proposal for the $20,000 raise was in exchange for Plaintiff performing additional job functions as

[16] 411 U.S. 792, 802 (1973).
[17] ***Deboer v. Musashi Auto Parts, Inc.***, 124 F. App'x 387, 392 (6th Cir. 2005).
[18] While Defendant initially asserted that Plaintiff was terminated for her "rude" tone in emails, this rationale seems to have been dropped entirely by the Defendant. In the interest of judicial economy, The reason for this about-face is likely due to the deposition of J. Idzior that management had no reason to believe that Plaintiff was rude or that the statements that Defendant pointed to were not rude. (***Exhibit 11***, 93-95) Also, other employees were far ruder, yet, that was never a sufficient reason for discharge in the past. (***Exhibit 2,*** ¶ 24) Nonetheless, Plaintiff will not deal with that rationale as thoroughly given the recent priority given to the other baseless rationale.

the "Assistant Director of Operations." (***Exhibit 3)*** After requesting leave, she was forced to give that position up and resumed her employment as an "Executive Assistant" performing a completely different set of job responsibilities. (***Exhibit 5***, 63) At that point, that proposal was null and void.

Furthermore, the paperwork approving the raise makes no mention of waiving healthcare insurance provided to all other employees at the Salvation Army. All the foregoing events and concomitant documentation existed long before the putative events that Defendant claims led to its perfunctory firing of Plaintiff the very same day she returned from maternity leave. (***Exhibit 12)*** Literally, this issue was not raised by the Defendant until October 1, 2018 despite Defendant possessing knowledge that Plaintiff re-enrolled in July 2017. As the Michigan Supreme Court held in ***Quality Products and Concepts Co. v. Nagel Precision, Inc***. 469 Mich. 362, 374 (2003):

> [A] waiver is a voluntary and intentional abandonment of a known right. *Roberts v Mecosta Co Hosp*, 466 Mich. 57, 64 n. 4; 642 N.W. 2d 663 (2002); *People v Carines*, 460 Mich. 750 , 762 n 7; 597 N.W. 2d 130 (1999). This waiver principle is analytically relevant to a case in which ***a course of conduct*** is asserted as a basis for amendment of an existing contract because it supports the mutuality requirement. Stated otherwise, when a ***course of conduct*** establishes by clear and convincing evidence that a contracting party, relying on the terms of the prior contract, knowingly waived enforcement of those terms, the requirement of mutual agreement has been satisfied.

Id. A jury considering the foregoing documented facts easily could find that Defendant, through its agents' course of conduct, never accepted Plaintiff's offer to relinquish her healthcare coverage or, if accepted, Defendant waived that requirement. Moreover,

there is additional documentation authored in handwriting by Defendant's employee and approved by Plaintiff's supervisor, J. Idzior showing that Defendant's decision to increase Plaintiff's compensation had nothing to do with her relinquishing her healthcare coverage and, therefore, was not part of the agreement. Defendant's June 20, 2016 Payroll Change Notice:

> [G]uaranteed 3 years to the company at this proposed wage. Next annual due May 15, 2019 (please see her attached proposal).

(Exhibit 4) These corporate business records are presumed to be accurate and reliable. ***Parker v. Reda,*** 327 F.3d 211, 214 (2d Cir. 2003) ("Business records are made reliable by … a duty to make an accurate record as part of a continuing job or occupation.") (quoting ***Fed.R.Civ.P. 803(6)*** Advisory Comm. Note). The Court noted in ***Cobbins*** an employer has an "independent motivation for creating and maintaining reliable business records." ***Cobbins v. Tenn. Dept. of Transp.,*** 566 F.3d 582, 588. (6th Cir. 2009).[19]

A jury could easily find that Defendant's decision to accept Plaintiff's proposed compensation increase was based only on her agreement to forego any further compensation reviews and adjustments for three years. (***Exhibit 4***) The foregoing Defendant-authored and Defendant-approved document confirms this. Another Defendant-authored document provides additional confirmation. Plaintiff's

[19] It is undisputed that Defendant's business records were made in the regular course of its business, they were kept in Defendant's HR Department as part of its regular course of business, it was the regular practice of Defendant to store all personnel documents with its HR Department, and all of these documents were made by persons with knowledge of the transactions and meet the four-part test for reliability enumerated in ***Cobbins*** and are admissible Under FRE 803(6).

participation in Defendant's healthcare insurance continued for more than a year after she received her June 2016 compensation increase. On July 12, 2017, Plaintiff waived her health insurance coverage because she and her child were covered under her husband's health insurance program. (***Exhibit*** **5**, 52-53; ***Exhibit 7***) The shift in healthcare insurance from Defendant's program to the insurance program provided by her husband's employer did not occur until July 31, 2017; a fact that, once again, is confirmed by Defendant's own documentation. *Id*. Plaintiff re-enrolled in Defendant's healthcare insurance program effective on January 1, 2018 as confirmed in Defendant's own documents. **(*Exhibit 8*)**. A jury could easily conclude that the Defendant by its course of conduct either waived or agreed that it was never part of the 2016 agreement with respect to Plaintiff's proposal to forego healthcare coverage.

Second, Defendant was clearly motivated by Plaintiff's request for pregnancy leave. Defendant gave her, in effect, the cold shoulder and silent treatment until she went on leave in July 2018. (***Exhibit 5***, 59-61, 92, 173) Defendant earlier retaliated for Plaintiff's first request for leave. When she came back from her first leave, Plaintiff was forced to give that position up and resumed her employment as an "Executive Assistant" performing a completely different set of job responsibilities. (***Exhibit 5***, 63; ***Exhibit 2,*** ¶ 23) Then, upon returning after her second maternity leave, she came back to her personal possessions being boxed with her replacement already situated in her office. Other employees had received

the same negative treatment upon their announcement that they would be taking FLMA leave. **(*Exhibit 2*,** para. 23*; **Exhibit 5***, 59-60*).*

Third, the reason offered is insufficient to warrant termination. Discovery has shown the Defendant reasonably could not have had an honest belief that Plaintiff committed fraud. Defendant continued Plaintiff's enrollment in its health insurance program for more than a year after increasing Plaintiff's compensation. (**Exhibits 4, 7**) Plaintiff's re-enrollment in Defendant's health insurance program was well known to Defendant long before Defendant concocted a false claim of healthcare fraud as an excuse for terminating Plaintiff's employment the day she returned to work from her second maternity leave. (**Exhibit 8**) At the time Plaintiff re-enrolled in Defendant's health insurance program Defendant had possession of Plaintiff's written compensation increase proposal. (**Exhibit 4,** pg. 3-4) Defendant also had documents confirming and granting Plaintiff's requested compensation increase based exclusively on Plaintiff's agreement to waive any compensation review for three years. (**Exhibit 4**) The Defendant corporation had full knowledge of Plaintiff's re-enrollment in Defendant's healthcare program. Defendant offered no evidence to even suggest that Plaintiff attempted to conceal her applying to Defendant for resumption of her healthcare coverage. That contention by Defendant is preposterous on its face. Plaintiff had to make her request directly to Defendant. It was Defendant's employees who prepared the forms – Defendant's forms – needed for Plaintiff to sign to obtain that insurance.

Those forms were counter-signed by Defendant's employees. (***Exhibits* 7, 8)** Even after a thorough audit of Plaintiff's personnel file by Mr. Manzella in January 2018, the issue was never once raised prior to Plaintiff's termination.

It is a well-settled "under Michigan law, the knowledge of a corporate agent can be imputed to the entire corporation." ***Gold v. Deloitte & Touche, LLP (In re NM Holdings Co.)***, 622 F.3d 613, 620 (6th Cir. 2010).

> A corporation can only act through its employees and, consequently, the acts of its employees, within the scope of their employment, constitute the acts of the corporation. Likewise, knowledge acquired by employees within the scope of their employment is imputed to the corporation. In consequence, a corporation cannot plead innocence by asserting that the information obtained by several employees was not acquired by anyone individual employee who then would have comprehended its full import. Rather, the corporation is considered to have acquired the collective knowledge of its employees and is held responsible for their failure to act accordingly.

Id.; *see,* ***U.S. v. One Parcel of Land Located at 7326 Highway 45, N.***, 965 F.2d 311 (7th Cir. 1992) ("A corporation acts through its agents. Similarly, a corporation 'knows' through its agents." (quoting W. Fletcher, 3 Corporations § 787 (1986). Those same forms were placed in Plaintiff's personnel file – the very same file that contained Plaintiff's compensation increase proposal and the Defendant's documentation granting that compensation increase. Hence, there exists a genuine issue of material fact that Defendant's proffered non-discriminatory reason was mere pretext.

3. <u>There is a Genuine Issue of Material Fact Over Whether Defendant Possessed an Honest Belief that Plaintiff Improperly Re-Enrolled in Health Insurance Benefits</u>

Defendant's argument that it "honestly believed" that Plaintiff had engaged in fraud is without merit considering the record. In the Sixth Circuit, Defendant must have more than just an "honest belief" that Plaintiff was committing fraud—it must also establish "reasonable reliance on the ***particularized facts*** rather than on ***ignorance and mythology***."[20] The burden is on Defendant to show particularized facts and reasonable belief.[21] In this case, there are no particularized facts in this report that show any fraud. Here, Defendant's reasoning for Plaintiff's discharge has changed since Plaintiff was discharged creating the appearance of pretext. Defendant originally told Plaintiff that she was being terminated for her rude tone and disrespectful behavior. (***Exhibit 5,*** 157 158) Post-litigation, Defendant's explanation has changed to Plaintiff re-enrolling in healthcare benefits. This change in the Defendant's rationale for termination indicates pretext and is merely a legal theory being proffered to prevent liability over Defendant's unlawful conduct. As noted by the Sixth Circuit Court of Appeals:

> An employer's changing rationale for making an adverse employment decision can be evidence of pretext." Shifting justifications over time calls the credibility of those justifications into question. By showing that the [employer's] justification for firing him changed over time, [the plaintiff] shows a genuine issue of fact that the [employer's] proffered reason was not only false, but that the falsity was a pretext for discrimination.

[20] ***Smith v. Chrysler Corp.***, 155 F.3d 799, 806 (6th Cir. 1998)(emphasis added).
[21] ***Id.***

Cicero v. Borg-Warner Auto., Inc., 280 F.3d 579, 592 (6th Cir.2002)(quoting ***Thurman v. Yellow Freight Sys.,*** 90 F.3d 1160, 1167 (6th Cir. 1997) am. on other grounds, 97 F.3d 833 (6th Cir 1997). Consequently, Plaintiff has produced sufficient evidence to, at minimum, demonstrate that there is a genuine issue of material fact on pretext that needs to be resolved by a jury

Furthermore, in order to constitute an honest belief, Defendant must show that Plaintiff's discharge was a "reasonably informed and considered decision."[22] In ***Smith v. Chrysler***, the employee was falling asleep while driving home from work and was consequently diagnosed with a sleeping disorder. The employee requested an accommodation under ADA. His employer discharged him for allegedly falsifying a medical survey provided during the employment application process because he stated that he did not suffer from tiredness or fatigue. The Sixth Circuit held that employers must engage in a broader investigation of Plaintiff's condition in validating its own opinion, but only to the point of a general understanding.[23]

In ***Gurne v. Michigan Bell Telephone Co.***, the court found that there was a genuine issue of material fact as to whether the employee had lied about her FMLA leave, as to the employee's retaliation claim.[24] Even though the employee was

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[22] *See* ***Braithwaite v. The Timken Co.***, 258 F.3d 488, 494 (6th Cir.2001).
[23] ***Id.*** at 808 (The court did not look to whether the employer understood the medical definition of narcolepsy, only whether it had a reasonable basis to believe employee lied).
[24] 2011 WL 5553817, at *13-15 (E.D. Mich. 2011)***(Exhibit 21)***.

observed at a party when she was on leave for migraines, the court found that a jury could reasonably find that the employer did not make a reasonable and considered decision before termination.[25] The court based this finding on the facts that: (1) the decision-maker did not even know what the employee's "serious health condition" was; (2) had already made the determination to discharge the employee before she had an opportunity to respond; and (3) where other managerial employees believed a more thorough investigation should be done prior to discharge. ***Id.*** The Court once again found in ***Rhea v. Wal-Mart Stores, Inc.*** that the employee had been discriminated against by his employer, and that reasonable jury could conclude that the employer failed to make a reasonably informed and considered decision before terminating the employee.[26] In ***Wal-Mart***, the employee was accused of sexual harassment. The incident had been videotaped, but the employer could not provide the tape. However, a co-worker reported him. The court relied upon the following evidence produced by the employee demonstrating that: (1) he was a long-term employee who had "met expectations;" (2) had not received the basis of his charge; (3) had not been offered an opportunity to rebut the accusations; and (4) had not discussed any discipline short of termination. ***Id.*** at *6-7.

Plaintiff was a long-time employee of defendant with a strong performance

[25] ***Id.*** at 13.

[26] No. 06-13617, 2007 WL 3408546 (E.D. Mich. 2007)(attached as ***Exhibit 23***.

record. Yet, she was terminated without receiving the basis for the employer's decision and without having an opportunity to rebut the accusations levied against her. It should be stated that if Defendant was truly concerned that Plaintiff re-enrolling was contrary to the terms of the alleged agreement under which Defendant granted the requested compensation increase, Defendant should have confronted Plaintiff at that time in 2017. At a minimum, Defendant should have raised this issue in January 2018 when her personnel file was flagged. Instead, Defendant unlawfully sought to "stick its head in the sand" until after Plaintiff requested FMLA on May 15, 2018. Consequently, Defendant's Motion should be denied as there exists a genuine issue of material fact.

Conclusion

For the foregoing reasons, Defendant's Motion should be denied, and this case should proceed to trial as soon as time is available on this Court's schedule.

Respectfully submitted,
MILLER COHEN, P.L.C.

DATED: NOVEMBER 8, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on *November 8, 2021*, the foregoing document was electronically filed by the undersigned's authorized representative, using the ECF system, which will send notification of such filing to all counsel of record.

By: */Keith D. Flynn*
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termination?

A. No.

Q. No? After your first pregnancy did you experience postpartum depression?

A. I did not.

Q. How about after your second pregnancy?

A. I was told my depression was not a symptom of postpartum. I believed it was, and it was not.

Q. Would you be surprised if Dr. Wuckert had written in her notes that signs and symptoms of postpartum depression and anxiety were discussed?

A. No, I would not be surprised.

Q. Okay. Did she tell you whether she felt that you were experiencing postpartum depression?

A. She told me that usually after nine months, it's not postpartum depression.

Q. After nine months?

A. Correct, of having the baby.

Q. When did you start experiencing depression after having your second baby?

A. Following my job loss.

Q. What date did you lose your job?

A. October 1st, 2018.

Q. Would you be surprised that you discussed postpartum depression on September 5th with Dr. Wuckert?

A. Would I be surprised?
Q. Yes.
A. No.
Q. Okay. Because you were saying that you didn't experience it -- you didn't discuss this until after your termination.
A. I believe my answer was that I did not experience it, not that I didn't discuss it.
Q. Okay. What's the difference? Why would you be discussing it if you weren't experiencing it?
A. It is a regular thing that we are asked after we have children. We have to fill out a questionnaire and other paperwork regarding postpartum depression.
Q. Okay. So Dr. Wuckert was just engaging in a questionnaire, that wasn't you raising it with her?
A. Correct.
Q. Are you on any antidepressive medications right now?
A. Yes.
Q. What is it?
A. Prozac.
Q. And how long have you been taking that?
A. Since hospitalization in May of 2019.
Q. Why were you hospitalized?
A. For depression.
Q. And who did you see when you were hospitalized?

A. In Royal Oak Beaumont, Dr. Lu was who I was assigned to.
Q. In Dr. Lu's notes, he states that you said that you had increased depression since you gave birth to your second child 10 months ago. Would that be accurate?
A. That would be accurate.
Q. He also said in your history you had two inpatient psychiatric treatments and one inpatient substance abuse treatment, but that was from age 16 to 19. Would that be accurate?
A. Yes.
Q. And would you be surprised if -- well, I guess this is not -- they didn't -- he states that as of 5-8-2019, that you were diagnosed with postpartum depression?
A. Would I be surprised by that?
Q. Yes.
A. No.
Q. Who diagnosed you with postpartum depression in May of 2019?
A. May of 2019, my psychiatrist -- postpartum depression? I have not received a postpartum depression diagnosis that I am aware of. On my outpatient paperwork, it says depression.
Q. So if he has that in your history, you're not sure why?

A. I can understand why.
Q. And you reviewed the paperwork from Dr. Lu?
A. Specifically every piece? More than likely I glanced at it.
Q. Do you recall that he diagnosed you with major depressive disorder, severe recurrent?
A. Yes.
Q. Okay. Were you experiencing any other stressors in your life that you feel were contributing to your depression after you had your second baby?
A. Not knowing if I was going to be terminated for having a baby.
Q. Were you having issues dealing with having to take care of two children?
A. Issues happen when taking care of children more than any other --
Q. Were you depressed about having to take care of two children?
A. I was depressed on not being able to work.
Q. Were you depressed about having to take care of two children?
A. No.
Q. Were you overwhelmed with having to take care of two children?
A. Sure, yes.

Q. Who did you see at the Grosse Pointe Psychiatric Services?
A. Dr. Guyer and Melissa Altamore.
Q. And are you still seeing those doctors?
A. Dr. Guyer is deceased as of May or June, and Melissa Altamore, I still see.
Q. Do you recall in July of 2020 saying that your main concern was your relationship with your husband?
A. I'd have to have some contextual -- my main concern out of life? My main concern out of that day?
Q. I understand you didn't write these, but I'll read to you the note from Grosse Pointe Services. Main concern is relationship and husband and his anxiety that prevents him from really participating as a husband and father.
A. Sounds like that was the main concern of our discussion that day.

MS. CHAMPA: I have an objection. It appears as though you're reading from documents that you got from doctors' offices, maybe through our releases, perhaps. I mean, we had a standing request, interrogatory request, to produce anything that you were going to use at deposition, and we've never received anything.

MR. FEALK: This probably came in after our

discovery response. Why don't we get a copy of this for you?

MS. CHAMPA: Anything else that you got from doctors' offices?

MR. FEALK: Do you want it now or do you want it after? I'm just going to go through a few of these. We'll get you a copy, that's no problem.

BY MR. FEALK:

Q. So my question to you is: Your relationship with your husband, wasn't this a cause of your depression, or at least contributing to it?

A. During what time?

Q. This is July of 2013 -- sorry. July of 2020.

A. July of 2020, yes.

Q. Okay. And isn't it true that you told your therapist that you had cheated on your husband?

A. Yes.

Q. And did you tell your husband that subsequently?

A. Prior to telling my therapist.

Q. Okay. And was that causing you stress?

A. No.

Q. It wasn't causing you any stress?

A. No.

Q. Okay. Would you agree with me that the emotional distress that you say that you've suffered and whether I don't know what information she has. Not that I'm aware of.

I'm telling my attorney the things, some other things. It would have been listed in there, but it's not --

Q. I don't want to know any attorney-client privileged information, but if you have other facts about what these individuals know pertaining to your case that would not have been reflected in your answers to interrogatories, I want to know that.

A. Pertaining to my case, as me individually being discriminated against for being pregnant, no.

Q. Okay. Have you looked for a job after you were terminated?

A. Yes.

Q. What have you done to look for a job?

A. I have created a Linkedin profile. I have submitted my resume to numerous jobs. I've created two resumes for management positions and a resume for an assistant position. I've submitted my resume in and out of the city. I've submitted it in other states, regularly receive alerts for job postings and listings that Indeed has linked my resume to and apply for them.

Q. At the time that you responded to our discovery requests, did you provide us with information on the jobs that you applied to?

A. Can you tell me when that was?

Q. This would have been March 4th. Did you provide us

all the information you had on what you had applied to at the time?

A. At the time, yes.

Q. Have you continued to apply to jobs after March 4th?

A. I've continued to search for jobs.

Q. Have you applied to any?

A. I don't recall applying to any since, no.

Q. Okay. Have you had a dispute with your husband about whether you should go back to work?

A. A dispute? No.

Q. Okay. He's against you going back to work?

A. He is not for keeping the house in order and me going to work.

Q. Okay. But you still want to go back to work?

A. I will be going back to work once I find a career.

Q. Why haven't you applied for any jobs since March?

A. Since March of this year?

Q. Yes.

A. Because I've been working for Tinkergarden.

Q. And what have you been doing for Tinkergarden?

A. Leading virtual classes to children ages 18 months to eight.

Q. And is that a full-time job?

A. It is not.

Q. And what do you get paid at Tinkergarden?

A. Depends on the season. Anywhere between 150 and 350 a season, and maybe discretionary bonus if I exceed a certain number of enrollees per class.
Q. What is a season?
A. A season is spring, summer, fall, winter.
Q. Okay. If you're only working part-time doing this, how come you're not looking for a full-time job?
A. I'm looking for a job.
Q. You just haven't found any to apply to, is that correct?
A. Correct.
Q. What kind of a job are you looking for?
A. Anything that's going to pay for daycare, car insurance and a car to get there and then leave me with some to add to the household expenses.
Q. You're not talking about as a benefit, you're talking about how much you can make?
A. I'm talking about a base salary.
Q. Base salary. What base salary are you looking for?
A. No less than 50,000.
Q. No less than 50,000. And not all ads list how much the salary is, correct?
A. More recently, since the pandemic, ads have listed salary.
Q. Fair enough, but not all ads list the salary, correct?

A. Not all ads that I have seen list the salary, correct.
Q. Okay. So what kind of work are you looking for, what positions?
A. Management positions and assistant positions.
Q. Okay. And you haven't seen any that came up since March that are worth applying for?
A. I have seen multiple management positions in fast food, and those are not worth applying for.
Q. Okay. And other than the fast food ones that you decided not to apply to, are you saying that you haven't seen any other jobs that are worth applying to?
A. There are no jobs that I have seen and read through that are worth applying to since then.
Q. Have you had any other work other than Tinkergarden since you've been terminated?
A. I regularly sell clothing, shoes and accessories online.
Q. And how much time does that take out of your day?
A. It depends on what part of it I'm doing.
Q. Okay. Ballpark, how much -- how many hours a week do you spend selling the clothing and shoes?
A. And packing it?
Q. And packing it.
A. Roughly eight hours a week.

Q. And how much time do you spend with Tinkergarden?
A. Depends on how many classes I have a week.
Q. Ballpark?
A. Eight.
Q. Okay. How much do you make from the shoe selling and clothing selling?
A. Almost $5,000.
Q. And that's $5,000 over what period of time?
A. Since 2020 until now.
Q. Why don't you apply for a fast food position?
A. They don't pay anything more than 15 or $16 an hour.
Q. Have you had any other training classes since you were terminated?
A. No, I have not.
Q. Did you receive unemployment benefits?
A. I did not.
Q. Did you apply for them?
A. Not allowed to as an ex-employee of The Salvation Army, from my understanding, because it is a charitable organization.
Q. Other than health insurance, what benefits were you enrolled in at the time of your discharge?
A. I believe life insurance and the 403(b) retirement plan.
Q. Did Salvation Army contribute to the 403(b) or was

that totally out of your pocket?
A. Salvation Army contributed.
Q. How much?
A. I cannot tell you off the top of my head.
Q. Are you receiving any other kinds of benefits through any government program?
A. If the stimulus is considered one of those, we've received stimulus money.
Q. Okay. And you said that you didn't apply for Social Security benefits, correct?
A. Not that I recall.
Q. We made a request, I'm just -- we haven't received them, but it looks like they have some records. I'm not sure what these records are, so I guess we'll see. Did you apply for Medicare benefits?
A. No.
Q. Where is your health insurance through now?
A. My husband's employer.
Q. And who's that?
A. Dearborn Police Department.
Q. Is he a police officer?
A. Yes.
Q. Have you had any other source of income since your termination other than what you've already told me?
A. Odd babysitting jobs and garage sales.

Q. And how much do you think you'ye made from babysitting and garage sales?
A. Less than I'd like to say.
Q. Approximately?
A. Less than $500.
Q. Okay. Other than being treated by -- what's the name of the social worker again at Grosse Pointe?
A. The therapist?
Q. The therapist.
A. The therapist or the psychiatrist?
Q. Let me back up. Psychiatrist, is that the one that passed away?
A. Yes.
Q. And what's the therapist's name?
A. Melissa Altamore.
Q. And she -- and Melissa Altamore, are you -- you're still seeing her, correct?
A. Yes.
Q. Are you seeing any other mental health professional at this time?
A. No.
Q. Other than the Prozac that you told me about, have you taken any other medication for depression or anxiety in the last five years?
A. No.

EXHIBIT 18

The Salvation Army
Southeast Michigan ARC
TERMINATION REPORT

revised 2/1/18

Name: Jillian Lankford

Last 4 digits of SSN: _____

Dept/Store: Administration Job Title: Executive Assistant

Effective Date: October 1, 2018

Type of Separation:
_____ Resignation (Please attach letter of resignation and all documentation)
X Dismissal (Please attach all documentation)

OCT - 9 2018

Reason for Resignation or Dismissal:
See memo attached

Employee Evaluation:

	Unsatisfactory	Fair	Satisfactory	Good	Excellent
Attendance			✓		
Cooperation	✓				
Initiative		✓			
Job Knowledge			✓		
Quality of Work		✓			

Request Deactivation for (check box):

Lotus Notes/Citrix	X
POS	
Service Point	
Countergram	
DSS	X
Shelby	
ADP	

ARC Command
Finance Board
HR Section
OCT 10 2018
Approved
NOT Approved
By _____

DW

Rehire:
_____ Yes - If conditional, please explain: _____
X No

Additional Comments: must return: laptop, cellphone, master keys gas card, vehicle keys, anything else belonging to TSA.
laptop charger and cellphone charger was not returned.

Print Manager's Name: Jacqulynn Idzior

Manager's Signature: _____ Date: 10/1/2018

Supervisor's Signature: _____ Date: _____

Administrator's Signature: _____ Date: 10/10/18

ALL TERMINATIONS MUST BE SENT TO HUMAN RESOURCES WITHIN 24 HOURS OF THE DATE OF TERMINATION

Please note that once a termination report has been received by Human Resources, any and all pay checks will be mailed to the address on file

For HR Only: Chesterfield Health Chesterfield Voluntary Life + Basic Life

The Salvation Army
Southeast Michigan ARC
TERMINATION REPORT

DW 10/17 revised 2/1/18

Name: Jillian Lankford

Last 4 digits of SSN: _____

Dept/Store: Administration Job Title: Executive Assistant

Effective Date: October 1, 2018

Type of Separation:

_____ Resignation (Please attach letter of resignation and all documentation)

X Dismissal (Please attach all documentation)

OCT - 9 2018

Reason for Resignation or Dismissal:

See memo attached

Employee Evaluation:

	Unsatisfactory	Fair	Satisfactory	Good	Excellent
Attendance			✓		
Cooperation	✓				
Initiative		✓			
Job Knowledge			✓		
Quality of Work		✓			

Request Deactivation for (check box):

Lotus Notes/Citrix	X
POS	
ServicePoint	
Counterpoint	
DSS	X
Shelby	
ADP	

DW

Rehire:

_____ Yes - If conditional, please explain: _____

X No

Additional Comments: must return: laptop, cellphone, master keys gas card, vehicle keys, anything else belonging to TSA. laptop charger and cellphone charger was not returned.

Print Manager's Name: Jacqulynn Idzior

Manager's Signature: _____ Date: 10/1/2018

Supervisor's Signature : _____ Date: _____

Administrator's Signature: _____ Date: 10/10/18

ALL TERMINATIONS MUST BE SENT TO HUMAN RESOURCES WITHIN 24 HOURS OF THE DATE OF TERMINATION

Please note that once a termination report has been received by Human Resources, any and all pay checks will be mailed to the address on file

For HR Only: Chesterfield Health Chesterfield Voluntary Life + Basic Life

Re: Jillian Lankford Termination

Date: September 14, 2018

From: Jacqulynn Idzior, Assistant Administrator

On May 15, 2018, Jillian Lankford sent an email to Major Manzella in which she conveyed that she was overwhelmed with her workload and the responsibilities of her job. In response, and in preparation for her FMLA leave, we began to review her job duties and re-assigned them to internal personnel who would be assuming these duties in her absence commencing in July. During the early stages of this re-alignment, we saw many benefits in moving (and returning because Jillian has unilaterally taken them on without advising administration) certain tasks to other departments.

Thereafter, on July 9, 2018, Jillian again sent an email to Major Manzella, with an attachment, outlining her job duties and her opinion of some of her responsibilities. Throughout the email and attachment it became evident to administration that Jillian felt she was not receiving clear communication or directives and was frustrated by reporting to three administrators. She also opined that the issues all stemmed from administration and took no responsibility for any issues. This was the first time that this was brought to our attention. Although we attempted to speak with Jillian regarding her concerns, she abruptly left work on July 10 (prior to her scheduled FMLA leave of July 16) and would not return any of our multiple inquiries to discuss. Thus, we began to look into her concerns without additional input from her.

However, during our investigation, we learned information which we concluded was troublesome and gave us concern. Some of the information we learned was as follows:

1. Jillian engaged in deceitful conduct. Jillian asked for a significant raise in 2016. She was getting married and told us that she was going to go onto her husband's insurance as such, she would not need insurance through The Salvation Army. She argued that due to the fact that she would be saving us $10,000 annually in insurance costs, she would like a raise. Based upon her representations, we granted the increase. However, upon review of her personnel file in August 2018, it was discovered that she signed up for insurance at open enrollment in October 2017 to take effect in January 2018 and we have been paying her benefits for over 8 months. Jillian also utilized her company issued gas card while on maternity leave. Although we allowed use of the vehicle, she was unauthorized to use company funds to fill the tank for personnel use.

2. After speaking with numerous employees who worked with Jillian and to whom her tasks were reassigned, we learned that she has repeatedly engaged in discourteous and disrespectful conduct to not only peers, but also superiors. This conduct has been both in person and in emails. Her conduct can be described as "arrogant", "condescending", and "haughty" and she has made others feel minimal and inept within the organization. Her overall conduct, in creating hostility amongst peers and superiors, is inconsistent with the interest of The Salvation Army. Jillian had been previously warned about similar type of conduct; however, she does not appear to have corrected this.

3. Jillian has often been insubordinate and disrespectful to her immediate supervisor, Major Manzella and has been witnessed on several occasions rolling her eyes during meetings conducted by her superiors. She once demanded Major Manzella to "sit down and not leave until I get my answers." She has also spoken to many others criticizing her immediate supervisors' performance and management skills.

Based upon our interviews of employees and the statements in Jillian's own letters, that she is not happy with the organization and does not want to continue working here, we have made a decision to not continue her employment. We have also concluded, as administrators, that our working relationship is beyond repair. She is in a position which requires a level of trust and confidence and we no longer feel that we can trust her and our working relationship is beyond repair. Jillian's conduct has been intimidating to others and hostile. WE will be communicating this decision to Jillian when she returns from her leave (which is expected October 1, 2018).