



IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

Case No. CACE-18-023542 (25)

CAROLINA MATAMOROS,

Plaintiff,

vs.

BROWARD SHERIFF'S
OFFICE,

Defendant.

NOTICE OF REMOVAL OF
THIS CIVIL ACTION TO THE
UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA AND
NOTICE OF FILING THEREOF

TO: THE CLERK OF THE CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA; and

PLAINTIFF through her attorneys.

PLEASE TAKE NOTICE that on November 19, 2018, Defendant, Broward Sheriff's Office, filed in the United States District Court for the Southern District of Florida, its Notice of Removal of this Civil Action and that a copy of said Notice of Removal with all attachments thereto is exhibited hereto and filed herewith in this Court.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. §1446(d), the filing of the Notice of Removal in the United States District Court for the Southern District of Florida, together with the filing of a copy of the Notice of Removal with this Court, effects the removal of this action, and the above-captioned Court shall proceed no further unless and until the case is remanded.

Dated: November 19, 2018

Respectfully submitted,

Gale Payne & Associates
Attorneys for Defendant,
Broward Sheriff's Office
1220 East Broward Blvd.
Ft. Lauderdale, FL 33301
(954) 821-4500 Telephone
gcpattorney@aol.com

By: /s/Gale Ciceric Payne
Gale Ciceric Payne, Esq.
Florida Bar No. 306967

Certification and Certificate of Service

The undersigned hereby certifies that the foregoing Notice of Removal and Notice of Filing Thereof together with Exhibit A as attached were filed with the Clerk of the Circuit Court for

the Seventeenth Judicial Circuit in and for Broward County, Florida on November 19, 2018. The undersigned hereby further certifies that the foregoing Notice of Removal and Notice of Filing Thereof together with Exhibits as attached were served by email on Peter M. Hoogerwoerd and Nathaly Lewis, Esquires, Remer & Georges-Pierre, PLLC, attorneys for the Plaintiff, at pmh@rgpattorneys.com and nl@rgpattorneys.com, which attorneys constitute all adverse parties to this action, this 19th day of November, 2018.

/s/ Gale Ciceric Payne
Gale Ciceric Payne

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 0:18-cv-62813

CAROLINA MATAMOROS,

Plaintiff,

vs.

BROWARD SHERIFF'S OFFICE,

Defendant.

_____ /

NOTICE OF REMOVAL

Defendant, Broward Sheriff's Office, pursuant to 28 U.S.C. §§1331, 1367, and 1441, files a Notice of Removal to remove this action pending in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, Case No. CACE-18-023542, to this Court based on:

1. On October 24, 2018, the plaintiff served a copy of the Summons and Complaint in the above-referenced action in State Court on the Defendant. A copy of all process, pleadings, motions, and orders served in that action are attached hereto pursuant to 28 U.S.C. §1446(a).
2. The Notice of Removal is filed within thirty days after Defendant's receipt, through service, of a copy of the initial pleading referenced above pursuant to 28 U.S.C. §1446(b).
3. Removing defendant, Broward Sheriff's Office, is the sole defendant in this action.
4. The Complaint includes three Counts. Count I alleges a claim against Defendant under the federal, statutory Family Medical Leave Act ("FMLA"), and is titled "Interference with Rights under the FMLA." Paragraph 1 of the Complaint states, "This is an action by the Plaintiff for damages for Defendant's violations of the Family and Medical Leave Act, 29 U.S.C. §2601 *et seq.*" Under Section 2617(a) of the FMLA, a civil action may be brought in, *inter*

alia, any Federal court of competent jurisdiction. Pursuant to 28 U.S.C. §1331, this Court has original jurisdiction of this civil action arising under the FMLA laws of the United States.

5. This Court has supplemental jurisdiction over Counts II and III of the complaint hereby removed pursuant to 28 U.S.C. §1367. Count II claims disability discrimination under the Florida Civil Rights Act (“FCRA”) for defendant’s purported denial of FMLA leave and of reasonable accommodation (falling under the purview of the Americans with Disabilities Act (“ADA”)) and alleges that, “Such discrimination was based upon the Plaintiff’s close association with an individual who had a disability in that Plaintiff would not have been the object of discrimination but for the fact that Plaintiff has close association with an individual who suffered a disability,” (¶49 of Complaint). Count III claims retaliation under the FRCA for exercising rights to FMLA leave and ADA accommodation (Count III). All three Counts of the Complaint, at ¶s 30, 39 & 57, readopt the factual allegations in the first 29 paragraphs of the Complaint. The claims alleged in Counts II and III are so related to the Count I claim over which this Court has original jurisdiction that they form part of the same case or controversy under 28 U.S.C. §1367.

6. This Court has original and supplemental jurisdiction over all claims in this action under 28 U.S.C. §§1331 and 1367. Removal of this action is proper pursuant to 28 U.S.C. §1441(a).

7. Broward Sheriff’s Office, will give all written notices as required by 28 U.S.C. §1446(d), and hereby does give and will give written notice of this Notice of Removal to all adverse parties, namely the Plaintiff, and will file a copy of said notices with the Clerk of the Circuit Court of the 17th Judicial in and for Broward County, Florida.

WHEREFORE, Defendant, Broward Sheriff’s Office, requests that this action proceed in this Court as an action properly removed to it.

Dated: November 19, 2018
Fort Lauderdale, Florida

Respectfully submitted,

/s/ Gale Ciceric Payne
Gale Ciceric Payne, Esq.
Florida Bar No. 306967
Email: gcpattorney@aol.com
Gale Payne & Associates
1220 East Broward Boulevard
Fort Lauderdale, FL 33301
Telephone Number: (954) 821-4500
Attorneys for Defendant, Broward
Sheriff's Office

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2018, I filed the foregoing Notice of Removal and Attachments with the Clerk of this Court. I also certify that the foregoing document and Attachments are being served on the 19th day of November on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing and by email to all counsel of record for Plaintiff at the email addresses identified on the attached Service List.

/s/ Gale Ciceric Payne
Gale Ciceric Payne

SERVICE LIST

Plaintiff, Carolina Matamoros versus Defendant, Broward Sheriff's Office

Case No. CIV-

United States District Court, Southern District of Florida

Peter M. Hoogerwoerd, Esquire
pmh@rgpattorneys.com
Remer & Georges-Pierre, PLLC
44 West Flagler Street, Suite 2200
Miami, FL 33130
Telephone: (305) 416-5000
Facsimile: (305) 416-5005
Attorneys for Plaintiff, Carolina
Matamoros

Nathaly Lewis, Esquire
nl@rgpattorneys.com
Remer & Georges-Pierre, PLLC
44 West Flagler Street, Suite 2200
Miami, FL 33130
Telephone: (305) 416-5000
Facsimile: (305) 416-5005
Attorneys for Plaintiff, Carolina
Matamoros

Gale Ciceric Payne, Esquire
gcpattorney@aol.com
Gale Payne & Associates
1220 East Broward Boulevard
Fort Lauderdale, FL 33301
Telephone: (954) 821-4500
Attorney for Defendant, Broward
Sheriff's Office

List of Attachments to Notice of Removal

- Civil Cover Sheet JS44 FLSD, United States District Court for the Southern District of Florida
- Summons, Civil Cover Sheet, and Complaint in Carolina Matamoros v. Broward Sheriff's Office, in Case No. CACE-18-023542 in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida
- Defendant's Motion to Dismiss and/or Strike the Complaint, in Case No. CACE-18-023542 in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida

I. (a) PLAINTIFFS Matamoros, Carolina. R

DEFENDANTS Broward Sherriff's Office

County of Residence of First Listed Defendant **Broward**
(IN U.S. PLAINTIFF CASES ONLY)

Attorneys (If Known)

Gale Ciceric Payne: Gale Payne & Assoc., 1220 E Broward Blvd.
Ft. Lauderdale, FL 33301, (954) 821-4500

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☒ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

[Click here for: Nature of Sim Code Descriptions](#)

PERSONAL INJURY

- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal
 28 USC 157

OTHER STATUTES

- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729 (a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced or Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of S Statutes

CIVIL RIGHTS

☐ 440 Other Civil Rights

☐ 441 Voting

☒ 442 Employment

☐ 443 Housing/
Accommodations

☒ 445 Amer. w/Disabilities -
Employment

☐ 446 Amer. w/Disabilities -
Other

☐ 448 Education

PRISONER PETITIONS
Habens Corpus:
☐ 463 Alien Detainee
☐ 510 Motions to Vacate Sentence
Other:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition
☐ 560 Civil Detainee – Conditions of Confinement

LABOR

- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl Ret. Inc. Security Act

SOCIAL SECURITY

☐ 861 HIA (1395ff)

☐ 862 Black Lung (923)

☐ 863 DIWC/DIWW (405(g))

☐ 864 SSID Title XVI

☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26
 USC 7609

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Re-filed (See V1 below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation - Direct File ☐ 9 Remanded from Appellate Court

b) Related Cases ☐ YES ☒ NO
DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause. (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 2601 et seq. (FMLA) and Fla. Statute. 760.01-760.11 Violation of FMLA and Disability Discrimination

LENGTH OF TRIAL via 3 days estimated (for both sides to try entire case)

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE November 19, 2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CAROLINA ROSE MATAMOROS,

Plaintiff,

vs.

Case No. CACE-18-023542

BROWARD SHERIFF'S OFFICE,
a Florida Profit Corporation

Defendant(s).

10/24/18
[Signature]

1:58
278

SUMMONS IN A CIVIL CASE

TO:

Ronald Marc Gunzburger
BROWARD SHERIFF'S OFFICE
2601 W. BROWARD BOULEVARD
FT. LAUDERDALE, FL 33312

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

PETER M. HOOGERWOERD, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET, STE. 2200
MIAMI, FL 33130

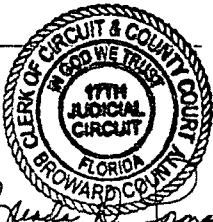
an answer to the amended complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

OCT 17 2018

CLERK

DATE

(BY) DEPUTY CLERK


[Signature]
BRENDA D. FORMAN

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

Case No. _____
Judge: _____

Carolina Matamoros
Plaintiff

vs

Broward Sheriff's Office
Defendant

II. TYPE OF CASE

- ☐ Condominium
- ☐ Contracts and indebtedness
- ☐ Eminent domain
- ☐ Auto negligence
- ☐ Negligence – other
 - ☐ Business governance
 - ☐ Business torts
 - ☐ Environmental/Toxic tort
 - ☐ Third party indemnification
 - ☐ Construction defect
 - ☐ Mass tort
 - ☐ Negligent security
 - ☐ Nursing home negligence
 - ☐ Premises liability – commercial
 - ☐ Premises liability – residential
- ☐ Products liability
- ☐ Real Property/Mortgage foreclosure
 - ☐ Commercial foreclosure \$0 - \$50,000
 - ☐ Commercial foreclosure \$50,001 - \$249,999
 - ☐ Commercial foreclosure \$250,000 or more
 - ☐ Homestead residential foreclosure \$0 – 50,000
 - ☐ Homestead residential foreclosure \$50,001 - \$249,999
 - ☐ Homestead residential foreclosure \$250,000 or more
 - ☐ Non-homestead residential foreclosure \$0 - \$50,000
 - ☐ Non-homestead residential foreclosure \$50,001 - \$249,999

- ☐ Non-homestead residential foreclosure \$250,000 or more
- ☐ Other real property actions \$0 - \$50,000
- ☐ Other real property actions \$50,001 - \$249,999
- ☐ Other real property actions \$250,000 or more
- ☐ Professional malpractice
 - ☐ Malpractice – business
 - ☐ Malpractice – medical
 - ☐ Malpractice – other professional
- ☒ Other
 - ☐ Antitrust/Trade Regulation
 - ☐ Business Transaction
 - ☐ Circuit Civil - Not Applicable
 - ☐ Constitutional challenge-statute or ordinance
 - ☐ Constitutional challenge-proposed amendment
 - ☐ Corporate Trusts
 - ☒ Discrimination-employment or other
 - ☐ Insurance claims
 - ☐ Intellectual property
 - ☐ Libel/Slander
 - ☐ Shareholder derivative action
 - ☐ Securities litigation
 - ☐ Trade secrets
 - ☐ Trust litigation

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes ☐ No ☒

III. **REMEDIES SOUGHT** (check all that apply):

- ☒ Monetary;
- ☒ Non-monetary declaratory or injunctive relief;
- ☒ Punitive

IV. **NUMBER OF CAUSES OF ACTION:** (.)
(Specify)

3

V. **IS THIS CASE A CLASS ACTION LAWSUIT?**

- ☐ Yes
- ☒ No

VI. **HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- ☒ No
- ☐ Yes – If "yes" list all related cases by name, case number and court:

VII. **IS JURY TRIAL DEMANDED IN COMPLAINT?**

- ☒ Yes
- ☐ No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Nathaly Lewis FL Bar No : 118315
Attorney or party

(Bar number, if attorney)

Nathaly Lewis 10/04/2018
(Type or print name)

Date

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CAROLINA MATAMOROS,

Plaintiff,

vs.

Case No.:

BROWARD SHERIFF'S OFFICE

Defendant.

COMPLAINT

COMES NOW, Plaintiff, CAROLINA MATAMOROS ("Plaintiff"), by and through the undersigned counsel, hereby sues Defendant, BROWARD SHERIFF'S OFFICE ("Defendant"), and in support avers as follows:

GENERAL ALLEGATIONS

1. This is an action by the Plaintiff for damages for Defendant's violations of the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, and the Florida Civil Rights Act of 1992, Florida Statutes, Chapter 760, *et seq.* ("FCRA"), to redress injuries resulting from Defendant's unlawful conduct against Plaintiff.
2. This Court has jurisdiction over Plaintiff's claims pursuant to Fla. Stat. §§ 760.01-760.11.
3. Plaintiff was at all times relevant to this action, and continues to be, a resident of Miami Dade County Florida, and is otherwise sui juris. Plaintiff is a covered employee for purposes of the FCRA, and FMLA.
4. Plaintiff is an individual with a relationship or association with a person with a known disability. She is therefore a member of a class protected under the FCRA because the terms, conditions, and privileges of her employment were altered because of her relationship or

association with a person with a known disability.

5. Defendant, BROWARD SHERIFF'S OFFICE, is a government entity in Broward County.
6. Defendant has, at all times material, employed 15 or more employees for each working day in each of twenty or more calendar weeks in the current or preceding year in accordance with the FCRA (Fla. Stat. §760.02(7)).
7. On July 18, 2017, Plaintiff previously filed a timely charge of employment discrimination with the Equal Employment Opportunity Commission and dual filed with the Florida Commission on Human relations, the agencies which are responsible for investigating claims of employment discrimination.
8. Venue is proper in Broward County because all of the actions complained of herein occurred within Broward County.
9. The Florida Commission on Human Relations did not issue a finding on Plaintiff's charge within 180 days of the filing of said charge.
10. Declaratory, injunctive, legal and equitable relief sought pursuant to the laws set forth above together with attorneys' fees, costs and damages.
11. All conditions precedent for the filing of this action before this Court have been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

12. Plaintiff began employment with Defendant on or about January 2010 as a Communications Operator 3.
13. Due to Plaintiff's son disability, on or about August 17, 2016, Plaintiff began requesting an accommodation because of her disabled son.

14. Throughout Plaintiff's employment with Defendant, Plaintiff was able to perform the essential functions of her job duties and responsibilities, and at all relevant times she did perform her job at satisfactory or above-satisfactory levels.
15. Plaintiff requested to work on a part-time shift as Plaintiff's son disability exacerbated within each month. In fact, Plaintiff's son was hospitalized on eight (8) different occasions.
16. On or about August 2016, Plaintiff found out that a part time position became available. Plaintiff informed her Superiors, Latasha Elmaadawya ("Ms. Elmaadawya") and Lisa Zarazinski ("Ms. Zarazinski"), that she was interested in the position as a form of accommodation due to her son's disability.
17. Plaintiff followed the correct procedure in order to be chosen for the shift. Nevertheless, Defendant denied Plaintiff's request.
18. On or about September 2016, Plaintiff made a request under the Family Medical Leave Act.
19. Defendant advised Plaintiff that her request for leave was denied. Plaintiff was advised that she will be eligible to in March 2017.
20. Thereafter, Plaintiff was subjected to several disciplinary actions although her lack of attendance was due to her son's disability, which she communicated to her superiors.
21. On or about January 2017, Plaintiff received the part time position accompanied by an Internal Affairs Investigation regarding her attendance placing Plaintiff under investigation.
22. On or about May 2017, Plaintiff was suspended without pay for two (2) months.
23. On or about July 2017, Plaintiff returned to work.
24. On or about July 18, 2017, due to the disparate treatment she continued to be subjected to, Plaintiff filed her charge of discrimination.
25. On or about August 2017, Plaintiff requested FMLA leave again.

26. Defendant. denied Plaintiff's request for leave.
27. On or about January 2018. Plaintiff was again suspended.
28. To this date. Plaintiff continues to be under Internal Affairs Investigation regarding her attendance and received a negative evaluation by Ms. Elmaadawya.
29. Plaintiff's disciplinary actions and/or negative evaluations were predicated and/or motivated by her request to be reasonably accommodated to take care of her disabled son and/or her request for Leave.

COUNT I

Interference with Rights under the FMLA

30. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-29 above as if set out in full herein.
31. Plaintiff is an individual entitled to protection under the FMLA.
32. Plaintiff was eligible for FMLA leave due to her son's serious health condition.
33. At all times relevant hereto. AKAL SECURITY was a covered employer under the FMLA. 29 U.S.C. § 2611(4)(A)(iii) in that it employed over 50 employees in 20 or more workweeks in the current or preceding calendar year.
34. On or about September 2016, Plaintiff applied for leave under the FMLA. Plaintiff was advised she had to wait until March of 2017 to reapply.
35. Thereafter. Plaintiff was suspended for two months.
36. When Defendant suspended Plaintiff. Defendant interfered with Plaintiff's right to apply for FMLA leave and thus violated the FMLA.
37. As a result of Defendant's unlawful conduct. Plaintiff has suffered and continues to suffer damages.
38. Defendant. by and through its officers. and/or supervisors. authorized. condoned. and/or

ratified the unlawful conduct of its employees.

WHEREFORE. Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FMLA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, front pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;
- C. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- D. Require Defendant to reinstate Plaintiff to his position at the rate of pay and with the full benefits he would have, had he not been discriminated against by Defendant, or in lieu of reinstatement, award him front pay;
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT II

Disability Discrimination in Violation of the FCRA

- 39. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-29 of this complaint as if set out in full herein.
- 40. Plaintiff is a member of a protected class under the FCRA.
- 41. On or about August 2016, Plaintiff's son's asthma exacerbated. As a result, Plaintiff's son's health deteriorated over the following months. Plaintiff's son was in and out of the hospital.
- 42. On or about August 17, 2016, Plaintiff requested to be transferred to a part time position to be

- able to care for her son.
43. Defendant's denied Plaintiff's request.
44. On or about September 2016, Plaintiff requested FMLA leave to take care of her son. Plaintiff's request was again denied.
45. On or about January 2017, Plaintiff was given the part time position but was also advised she was under investigation for her absenteeism.
46. On or about May 2017, Plaintiff is suspended for two months without pay.
47. Upon information and belief, other similarly situated employees were not suspended for similar absences.
48. By the conduct describe above, Defendant has engaged in discrimination against Plaintiff because of Plaintiff's close association with an individual who had a disability and subjected the Plaintiff to disability-based animosity.
49. Such discrimination was based upon the Plaintiff's close association with an individual who had a disability in that Plaintiff would not have been the object of discrimination but for the fact that Plaintiff has close association with an individual who suffered a disability.
50. Defendant's conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendant and its supervisory personnel were aware that discrimination on the basis of Plaintiff's close association with an individual, who had a disability due to suffering from a stroke, was unlawful but acted in reckless disregard of the law.
51. At all times material hereto, the employees exhibiting discriminatory conduct towards Plaintiff possessed the authority to affect the terms, conditions, and privileges of Plaintiff's employment with the Defendant.
52. Defendant retained all employees who exhibited discriminatory conduct toward the

Plaintiff and did so despite the knowledge of said employees engaging in discriminatory actions.

53. As a result of Defendant's actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.

54. The conduct of Defendant, by and through the conduct of its agents, employees, and/or representatives, and the Defendant's failure to make prompt remedial action to prevent continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under federal law.

55. The actions of the Defendant and/or its agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to federal law, to punish the Defendant for its actions and to deter it, and others, from such action in the future.

56. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendant's discriminatory practices unless and until this Honorable Court grants relief.

WHEREFORE. Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FCRA, and has done so willfully, intentionally, and with reckless disregard for Plaintiff's rights;
- B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;

- C. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life:
- D. Require Defendant to reinstate Plaintiff to the position at the rate of pay and with the full benefits Plaintiff would have had Plaintiff not been discriminated against by Defendant, or in lieu of reinstatement, award front pay:
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees: and
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT III

Retaliation in Violation of the FCRA

- 57. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-29 of this complaint as if set out in full herein.
- 58. Plaintiff is a member of a protected class under the FCRA.
- 59. By the conduct describe above, Defendant retaliated against Plaintiff for exercising rights protected under the FCRA.
- 60. Defendant's conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendant and its supervisory personnel were aware that discrimination on the basis of Plaintiff's sex, national origin and/or disability was unlawful but acted in reckless disregard of the law.
- 61. As a result of Defendant's actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.
- 62. The conduct of Defendant, by and through the conduct of its agents, employees, and/or representatives, and the Defendant's failure to make prompt remedial action to prevent

continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under state law.

63. The actions of the Defendant and/or its agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to federal law, to punish the Defendant for its actions and to deter it, and others, from such action in the future. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendant's discriminatory practices unless and until this Honorable Court grants relief.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FCRA, and has done so willfully, intentionally, and with reckless disregard for Plaintiff's rights;
- B. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- C. Require Defendant to place Plaintiff to the position of full time Patrol Officer at the rate of pay and with the full benefits Plaintiff would have had Plaintiff not been discriminated against by Defendant, or in lieu of reinstatement;
- D. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated: October 4, 2018

Respectfully submitted,

/s/Nathaly Lewis

Peter M. Hoogerwoerd, Esq.

Florida Bar No.: 188239

pmh@rgpattorneys.com

Nathaly Lewis, Esq.

Florida Bar No.: 118315

nl@rgpattorneys.com

REMER & GEORGES-PIERRE, PLLC

44 West Flagler Street, Suite 2200

Miami, FL 33130

Telephone: (305) 416-5000

Facsimile: (305) 416-5005

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

Case No. CACE-18-023542

CAROLINA ROSE MATAMOROS,

Plaintiff,

vs.

BROWARD SHERIFF'S
OFFICE,

Defendant.

Defendant's Motion To
Dismiss and/or Strike
The Complaint

Defendant, pursuant to Rule 1.140(b) and (f) of the Florida Rules of Civil Procedure, moves this Court for an order dismissing the complaint for failure to state a cause of action and striking immaterial portions.

1. Count II of the complaint alleges disability discrimination under the Florida Civil Rights Act ("FCRA") "because of "Plaintiff's close association with an individual who had a disability" [¶ 48] and "based upon the Plaintiff's close association with an individual who had a disability" [at ¶49], in that the Broward Sheriff's Office ("BSO") denied her request to "work on a part-time shift . . . part-time position [that] became available . . . as a form of accommodation due to her son's disability" [¶15, 16, 42, 42] and "suspended" her "without pay." [¶46]

2. Disability discrimination cases under the FCRA are analyzed under the same framework and in conformity with the Americans with Disabilities Act ("ADA") statute. A controlling Eleventh Circuit opinion held that, as a matter of law, the association provision of the ADA does not protect an employee who is absent from work due to the disability of a family member from even termination, let alone suspension as alleged herein. Hilburn v. Murata Electronics North America, Inc., 181 F.3d 1220, 1231 (11th Cir. 1999) (citing and approving

Tyndall v. National Educ. Ctrs, Inc., 31 F.3d 209 (4th Cir. 1994) and Hartog v. Wasatch Academy, 129 F.3d 1076 (10th Cir. 1997).

3. Hartog held that “the ADA does not require an employer to make any ‘reasonable accommodation’ to the disabilities of relatives or associates of an employee who is not himself disabled.” Id., at 1084. Hartog cited the Interpretive Guidance directive of the EEOC issued pursuant to its authority under the ADA as follows:

“[A]n employer need not provide the applicant or employee without a disability with a reasonable accommodation because that duty only applies to qualified applicants or employees with disabilities. Thus, for example, an employee would not be entitled to a modified work schedule as an accommodation to enable the employee to care for a spouse with a disability.”

Id. The huge body of ADA case law follows this precedent addressed in paragraphs 2 & 3 above. See Overly v. Covenant Transport, Inc., (6th Cir. 2006); Corbin v. Medical Center, Navicent Health, 2016 WL 5724992, 9 (M.D.Ga. 2016) (no prima facie case established for associational disability discrimination in that, where ADA requires no reasonable accommodation to employee that associates with a disabled relative, termination of employee frequently absent from work due to disability of family member does not violate ADA); Pittman v. Moseley, Warren, Pritchard & Parrish, 2002 WL 2007880 (M.D.Fla. July 29, 2002); Castro-Medina v. Procter & Gamble Commercial Co., 565 F.Supp. 2d 343 (D. Puerto Rico 2008); Erdman v. Nationwide Ins. Co., 621 F.Supp.2d 230 (M.D.Penn. 2007); Darby v. Hinds County Dept. of Human Services, 83 F.Supp. 754 (S.D.Miss. 1999).

4. As such, Count II does not state a disability discrimination action for failure to reasonably accommodate plaintiff’s schedule to work part time to take care of her allegedly disabled son or for her investigation and suspension for any attendance issues stemming from the care of her allegedly disabled son. Stated differently, Count II must be dismissed for its derivative

ADA claims that fail to state a cause of action as a matter of law. Only Count II's derivative FMLA violations under the FCRA can withstand a motion to dismiss. Likewise, Count III retaliation claim premised on its derivative ADA claims fails to state a cause of action, leaving only Count II's retaliation based on the alleged, derivative FMLA claims.

5. Plaintiff's claims for emotional damages and punitive damages for violation of the FMLA (Count I) and its derivative FMLA claims under the FCRA (Counts II & III) must be dismissed where the exclusive remedies under the FMLA do not include damages for emotional distress or punitive damages and preempt any state law allowing such damages. Graham v. State Farm Mut. Ins. Co., 193 F.3d 1274, 1284 (11th Cir. 1999); Alvarez v. Hi-Temp Inc., 2004 WL 603489 (Congress' exclusive remedies under FMLA preempt state law remedies premised on violation of a right created by the FMLA).

6. All claims for punitive damages under the FCRA (Counts II & III) even those that are not premised on the FMLA, must be dismissed and stricken as the FCRA specifically precludes punitive damages against defendant. The FCRA, Fla.Stat. §760.11(5) states that, "[T]he state and its agencies and subdivisions shall not be liable for punitive damages." BSO is an agency and subdivision of the state. Pirez v. Brescher, 584 So.2d 993 (Fla. 1991)(BSO is a political subdivision under 768.28 of the FCRA); Beard v. Hambrick, 396 So.2d 708 (Fla. 1981). Likewise punitive damages under the discrimination provisions of the ADA, 42 U.S.C. §1981(b)(1) do not permit punitive damages against a government agency or political subdivision, nor are punitive damages for an ADA retaliation claim, even against non-government agencies or political subdivisions, recoverable. Alvarado v. Cajun Operating Company, 588 F.3d 1261 (9th Cir. 2009).

WHEREFORE, Defendant moves to dismiss and/or strike the complaint.

Respectfully submitted,

Gale Payne & Associates
Attorneys for Defendant
1220 East Broward Blvd.
Ft. Lauderdale, FL 33301
(954) 821-4500 Telephone
gcpattorney@aol.com

By: /s/Gale Ciceric Payne
Gale Ciceric Payne, Esq.
Florida Bar No. 306967
gcpattorney@aol.com

Certificate of Service

The undersigned hereby certifies that the foregoing Motion to Dismiss and/or Strike was served by email on Peter M. Hoogerwoerd and Nathaly Lewis, Esquires, Remer & Georges-Pierre, PLLC, attorneys for the Plaintiff, 44 West Flagler Street, Suite 2200, Miami, FL 333130, this 13th day of November, 2018.

/s/ Gale Ciceric Payne
Of Counsel