DOCKET NO. HHD-CV21-6148568-S	:	SUPERIOR COURT
DANA LOUBRIEL	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
GLOBAL HELP DESK SERVICES, INC.	:	MAY 29, 2024

MEMORANDUM OF DECISION
RE: MOTION TO STRIKE (#110)

This is an employment discrimination case. The plaintiff claims that the defendant's stated reason for terminating her—that she lied about seeing a company demo for an HR/payroll web-based system—was a pretext to mask unlawful discrimination or retaliation on the basis of her race (Hispanic) and national origin (Puerto Rican), in violation of the Connecticut Fair Employment Practices Act ("CFEPA").[1] She also alleges that the defendant discriminated against her for exercising her rights under the Family and Medical Leave Act ("FMLA").

The defendant moves to strike each of the six counts of the complaint. Mainly, the defendant argues that the complaint does not allege sufficient facts to support a reasonable inference of discriminatory intent or motive. The defendant also argues that one of the plaintiff's claims, for discrimination on the basis of "associational disability," does not exist under Connecticut law.

For the following reasons, the court concludes that the first through fourth counts of the complaint fail to state a claim upon which relief can be granted. However, the court will deny the motion to strike the fifth and sixth counts.

[1] General Statutes § 46a-51 et seq.

120.00

I

THE COMPLAINT

The court summarizes the allegations of the complaint. The defendant, Global Help Desk Services, Inc. ("GHDSI"), hired the plaintiff ("Loubriel") on June 30, 2015, as a Human Resource Assistant. Loubriel is Hispanic, Puerto Rican and has a disabled son, all facts of which GHDSI was aware.

During the Covid-19 pandemic, Loubriel lost many of her son's daytime nurses. Because of the nursing shortage, she took FMLA family leave in April and early May 2020 to care for her son. She returned to work on May 11, 2020. GHDSI subsequently told Loubriel to stay home between May 26 through June 1, 2020, due to her seasonal allergies and her son's allergies. Loubriel returned to work on June 1, 2020.

On July 1, 2020, Loubriel notified her supervisor that she was being mistreated since returning from FMLA leave and that it was unfair to send her home because of allergies when another employee, a white male who was coughing in the workplace, was allowed to continue to work in the office.

On an unspecified date in July 2020, Loubriel notified GHDSI that she needed time to care for her son.

On July 29, 2020, GHDSI terminated Loubriel's employment. GHDSI told Loubriel it was terminating her for lying about seeing a company demo for an HR/payroll web-based system. Loubriel does not dispute that she lied about seeing the demo. However, she alleges that the stated reason for her termination was a pretext to mask unlawful discrimination and/or retaliation.

Loubriel filed a complaint with the Commission on Human Rights and Opportunities on October 8, 2020. She received a release of jurisdiction on July 16, 2021.

Loubriel's complaint includes additional allegations concerning GHDSI's treatment of other employees who are white, including an employee who lied to GHDSI about his previous employment but was not fired. Loubriel includes these allegations to show that allegedly "similarly situated" employees who were white were treated differently. She argues that these allegations support her position that GHDSI's stated reason for terminating her was a pretext for discrimination. The court considers the import of these additional allegations in Part II.D below.

II

DISCUSSION

"A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . [I]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Citations omitted; internal quotation marks omitted.) *Vacco* v. *Microsoft Corp.*, 260 Conn. 59, 64-65, 793 A.2d 1048 (2002). "Thus, we assume the truth of both the specific factual allegations and any facts fairly provable thereunder. In doing so, moreover, we read the allegations broadly, rather than narrowly." *Macomber* v. *Travelers Property & Casualty Corp.*, 261 Conn. 620, 629, 804 A.2d 180 (2002).

This long-settled legal standard is easy to articulate but difficult to apply in employment discrimination cases. Although the parties acknowledge that Connecticut is a fact pleading state,

they disagree on precisely what Connecticut law, particularly Practice Book §§ 10-1[2] and 10-39 (a),[3] requires a plaintiff to plead to state a legally sufficient employment discrimination claim.

Most plaintiffs have no difficulty alleging facts supporting several of the essential elements of most employment discrimination claims, i.e., the plaintiff worked for the defendant, was a member of protected class or engaged in protected activity and suffered an adverse employment action. The difficulty is pleading facts showing that the employer disciplined or discharged the plaintiff *because* of her protected status or activity, not for a legitimate, lawful reason. Set the pleading bar too high and plaintiffs with meritorious discrimination claims may never see the inside of a courtroom. Set the bar too low and employers may be forced to expend significant resources, both time and money, defending groundless lawsuits.

As explained below, the court holds that a plaintiff must allege facts that give plausible support to a minimal inference of discriminatory motivation.

A

Notice Pleading Versus Fact Pleading

Connecticut is a fact pleading state. *Bridgeport Harbour Place I, LLC* v. *Ganim*, 303 Conn. 205, 213 n.7, 32 A.3d 296 (2011) [hereinafter "*Bridgeport Harbour*"]; Practice Book § 10-1. By contrast, federal courts use a notice pleading standard. Rule 8 (a) (1) of the Federal

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[2] Practice Book § 10-1 provides in relevant part: "Each pleading shall contain a plain and concise statement of the material facts on which the pleader relies, but not of the evidence by which they are to be proved, such statement to be divided into paragraphs numbered consecutively, each containing as nearly as may be a separate allegation."

[3] Practice Book § 10-39 (a) provides in relevant part: "A motion to strike shall be used whenever any party wishes to contest: (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted."

Rules of Civil Procedure requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Historically, the federal notice pleading standard has been viewed as more liberal, flexible and relaxed than a fact pleading standard. *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544, 575, 127 S.Ct. 1955, 167 L. Ed. 2d 929 (2007) (Stevens, J., dissenting) [hereinafter "*Twombly*"] (describing history of adoption of Rule 8 and reasons for substituting notice pleading for fact pleading).

When a Connecticut court addresses the sufficiency of the factual allegations of a complaint, the court is bound by Practice Book § 10-1 and state law governing motions to strike. But the Connecticut Supreme Court has stated that recent U.S. Supreme Court decisions articulating new federal pleading standards are relevant to understanding and applying Connecticut's fact pleading standard. *Bridgeport Harbour*, supra, 303 Conn. 213-14 (discussing *Twombly*). Accordingly, a review and comparison of federal and Connecticut pleading standards is warranted.

B

Notice Pleading

For the better part of the past sixty years, the leading U.S. Supreme Court case concerning the federal pleading standard was *Conley* v. *Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L. Ed. 2d 80 (1957). Justice Black explained that "[i]n appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove *no set of facts* in support of his claim which would entitle him to relief." (Emphasis added.) Id., 45-46.

In 2007, the Supreme Court adopted a new pleading standard, initially in the context of federal antitrust cases. In *Twombly*, the Court rejected the "no set of facts" pleading standard in

favor of a requirement that a plaintiff include "enough facts [in a complaint] to state a claim to relief that is plausible on its face." *Twombly*, supra, 550 U.S. 570. "Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." Id., 556.

Justice Stevens, joined by Justice Ginsburg, dissented from this new pleading standard, which they viewed as a reversion towards "Byzantine special pleadings rules" from ancient English common law. Id., 573-74. "Under the relaxed pleading standards of the Federal Rules, the idea was not to keep litigants out of court but rather to keep them in. The merits of a claim would be sorted out during a flexible pretrial process and, as appropriate, through the crucible of trial." Id., 575.

Any doubt that *Twombly*'s holding applied solely to antitrust cases was eliminated two years later when the Supreme Court decided *Ashcroft* v. *Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L. Ed. 2d 868 (2009) [hereinafter "*Iqbal*"]. Respondent Javaid Iqbal was a Pakistani Muslim who was arrested on criminal charges after the September 11, 2001, terrorist attacks on the World Trade Center. He brought a *Bivens* action[4] against federal officials alleging that they had designated him a person of "high interest" on account of his race, religion, or national origin, in violation of the first and fifth amendments to the United States constitution.

Citing *Twombly*, the Supreme Court held that Iqbal's complaint failed to plead sufficient facts to state a claim for purposeful and unlawful discrimination. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to

[4] *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388, 91 S.Ct. 1999, 29 L. Ed. 2d 619 (1971).

relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.' . . .

"Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . . (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we 'are not bound to accept as true a legal conclusion couched as a factual allegation' . . .). Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . . Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.' Fed. Rule Civ. Proc. 8 (a) (2).

"In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint,

they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." (Citations omitted.) *Iqbal*, supra, 556 U.S. 678–79.

To summarize, although the text of Rule 8 of the Federal Rules of Civil Procedure remained unchanged, the meaning of the notice pleading standard Rule 8 embodies evolved significantly in *Twombly* and *Iqbal*. To survive a motion to dismiss, a complaint in federal court must state a claim to relief that is plausible on its face. That standard requires a plaintiff to plead sufficient factual content to show that the asserted claim is plausible on its face.

Precisely how this new pleading standard applies to Title VII cases remains a point of disagreement. However, the Second Circuit has held that, "absent direct evidence of discrimination, what must be plausibly supported by facts alleged in the complaint is that the plaintiff is a member of a protected class, was qualified, suffered an adverse employment action, *and has at least minimal support for the proposition that the employer was motivated by discriminatory intent*. The facts alleged must give plausible support to the reduced requirements that arise under [the *McDonnell Douglas* burden-shifting framework] in the initial phase of a Title VII litigation. The facts required by *Iqbal* to be alleged in the complaint need not give plausible support to the ultimate question of whether the adverse employment action was attributable to discrimination. They need only give plausible support to a minimal inference of discriminatory motivation." (Emphasis added; footnote omitted.) *Littlejohn* v. *New York*, 795 F.3d 297, 311 (2d Cir. 2015); accord *Menaker* v. *Hofstra University*, 935 F.3d 20, 30 (2d Cir. 2019) ("[a] plaintiff need only allege facts that give 'plausible support to a minimal inference of discriminatory motivation'").

C

Relevance of *Twombly* and *Iqbal* to Fact Pleading in Connecticut

What do *Twombly* and *Iqbal* have to do with the pleading requirements and motion to strike standards in Connecticut? Our state Supreme Court's decision in *Bridgeport Harbour* supplies the answer to this question.

The plaintiff in *Bridgeport Harbour* was a developer who alleged that the defendants had engaged in an illegal conspiracy in restraint of trade, in violation of the Connecticut Antitrust Act. The trial court granted motions to strike the original and amended complaint because they "failed to allege facts that would establish an actual adverse effect on competition as a whole in the relevant market and failed to allege facts that would constitute price discrimination in violation of [the state antitrust act]." *Bridgeport Harbour*, supra, 303 Conn. 209. The Appellate Court affirmed.

On further appeal, the Supreme Court discussed how Connecticut's pleading requirements applied to a complaint alleging a violation of state antitrust law. The court began by reciting the legal standard governing motions to strike, i.e., all factual allegations must be taken as true and the complaint must be construed in the light most favorable to sustaining its legal sufficiency. Id., 213. The court then noted that the state antitrust law states that "courts of this state shall be guided by interpretations given by the federal courts to federal antitrust statutes." (Internal quotation marks omitted.) Id. "With respect to the allegations necessary to state a cognizable antitrust claim, the United States Supreme Court has explained that, in pleading such a claim, a formulaic recitations of the elements of the cause of action will not do. . . . *Factual allegations must be enough to raise a right to relief above the speculative level.*" (Emphasis added.) Id.

For the latter proposition, the Supreme Court cited *Twombly*. Id. The court also included a critical footnote: "We note, moreover, that because Connecticut is a fact pleading state . . . this point has particular pertinence to cases, like the present one, involving claims under this state's antitrust laws." (Citations omitted.) Id., 213 n.7.

Bridgeport Harbour serves three functions relevant to this case. First, it reminds the bench, bar and litigants that fact pleading requires a plaintiff to plead facts, not simply the elements of a cause of action. Second, it instructs that the facts pleaded must be sufficient to take the legal viability of the plaintiff's claim out of the realm of speculation. Third, by citing *Twombly* with approval, *Bridgeport Harbour* strongly implies that the "plausible on its face" standard the U.S. Supreme Court adopted in *Twombly* is consistent with the fact-pleading requirements of our state.

This last point is key. The court acknowledges that the Connecticut Supreme Court has not formally adopted the *Twombly/Iqbal* pleading standard. However, if the "plausible on its face" standard is required under relaxed federal notice pleading rules, logic dictates that at least that standard applies in more stringent fact pleading jurisdictions like Connecticut.

Pending a definitive opinion from the Connecticut Appellate or Supreme Court, the court holds that for a complaint to state a claim that can withstand a motion to strike, it must plead sufficient facts to establish that the asserted cause of action is plausible on its face. In the employment discrimination context, the facts plead must "give plausible support to a minimal inference of discriminatory motivation." *Littlejohn* v. *New York*, supra, 795 F.3d 311.

D

Has the Plaintiff Pleaded a Plausible Claim of Employment Discrimination on the Basis of Race and National Origin?

The first and second counts of Loubriel's complaint allege that GHDSI terminated her because of her race (first count) and her national origin (second count). GHDSI contends that the allegations of the complaint are insufficient to support even a minimal inference that the stated reason for terminating Loubriel was a pretext for discrimination.

GHDSI fairly and accurately summarizes Loubriel's "similarly situated" employee allegations: "1) Plaintiff was Hispanic and from Puerto Rico (paras. 14-15); GHDSI kn[e]w Plaintiff was Hispanic and from Puerto Rico (paras. 18, 19); 3) a Caucasian employee was paid salary while out on short term disability at some unspecified date, while Plaintiff was not paid her salary when she received short term disability benefits 'in 2017,' nor did an African American employee 'in 2017 or 2018' (paras. 26-33), 4) a Caucasian employee 'lied' on a job application and in an interview about whether she needed to give notice to a prior employer before starting work at GHDSI at some unspecified time (paras. 37-38); 5) a Caucasian employee was discovered sleeping on the job at some unspecified time but was not terminated (paras. 39-40); 6) during the COVID-19 pandemic, a Caucasian employee was given allergy medicine for his cough so that he could remain at work, while Plaintiff was told to stay home with allergy symptoms. (paras. 50-54)." Def.'s Mem. of Law in Supp. of Mot. to Strike, docket entry no. 111, pp. 7-8 ("Def. Mem.").

GHDSI argues that the allegations above do not contain sufficient factual detail to determine whether the other employees were similarly situated to Loubriel. GHDSI contends that Loubriel is legally obligated to show that "in all material respects" she was similarly situated to other employees. Def. Mem., p. 6. "An employee is similarly situated to co-employees if they

were (1) subject to the same performance evaluation and discipline standards and (2) engaged in comparable conduct . . . [T]he standard for comparing conduct requires a reasonably close resemblance of the facts and circumstances of plaintiff's and comparator's cases, rather than a showing that both cases are identical . . . In other words, the comparator must be similarly situated to the plaintiff in all material respects." Def. Mem., p. 7 (quoting *Ruiz* v. *Rockland*, 609 F.3d 486, 493-94 [2d Cir. 2010]).

Loubriel responds that "[w]hether employees are similar situated is a question of fact" which cannot be resolved on a motion to strike. Pl.'s Obj. to Mot. to Strike, docket entry no. 115, p. 12 (citing *Brown* v. *Daikin America, Inc.*, 756 F.3d 219, 230 [2d Cir. 2014]).

The court agrees with Loubriel that whether a comparator employee is similarly situated within the meaning of the law ordinarily is a question of fact. However, that does not relieve a plaintiff of his or her obligation to plead sufficient facts to permit a court to determine whether the complaint provides plausible support for a minimal inference of discriminatory motivation.

The court concludes that Loubriel has not met this threshold burden. First, beyond alleging that one comparator employee was a "service desk manager" and another was a "sales executive," Loubriel has provided no material information about the comparator employees other than their race and, by implication, their national origin. Second, the allegations about GHDSI's payment of short-term disability benefits to certain employees in 2017 and 2018 bear no legal, logical or temporal relationship to this case. Third, the allegations concerning an employee who lied about her previous employment and the employee who was found sleeping on the job do not include any dates or timeframes for when the conduct at issue occurred.

Considered in the aggregate, as the court must, Loubriel's allegations resemble a "shotgun pleading" in which a plaintiff has "throw[n] everything against the wall and hop[es]

something sticks." *Banks* v. *Bosch Rexroth Corp.*, United States District Court, Docket No. 5:12-345 (DCR) (E.D. Ky. Mar. 5, 2014) (citing *Krusinski* v. *U.S. Dept. of Agriculture,* 4 F.3d 994 [6th Cir. 1993]).

The court acknowledges that a plaintiff pleading an employment discrimination claim has not had the benefit of discovery, which may reveal additional facts relevant to proving that other employees who were treated differently from the plaintiff were, in fact, "similarly situated." Yet, before a plaintiff can obtain the benefits of discovery, she needs to plead sufficient facts to persuade a court that her discrimination claim is plausible, not speculative. Applying the "plausible on its face" standard to a given set of allegations in a complaint is not a logical syllogism that leads inexorably to one, and only one, outcome.[5] As the U.S. Supreme Court explained in *Iqbal*, "[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, supra, 556 U.S. 679. Or, as Justice Oliver Wendell Holmes remarked, "[g]eneral propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise." *Lochner* v. *New York*, 198 U.S. 45, 76, 25 S.Ct. 539, 49 L. Ed. 937 (1905) (Holmes, J., dissenting).

In the court's judgment, Loubriel has not met her burden of pleading plausible race and national origin discrimination claims. Accordingly, the court will strike the first and second counts of the complaint.

[5] A paradigmatic example of such a syllogism is, "All men are mortal, Socrates is a man, ergo, Socrates is mortal."

E

Disability Association Discrimination Claim

General Statutes § 46a-60 (b) (1) makes it unlawful for an employer to discriminate against an employee on the basis of a disability. In the third count of the complaint, Loubriel contends that this statute also permits discrimination claims based on an employee's *association* with a person with a disability. More specifically, she alleges that GHDSI terminated her because her son has a disability.

GHDSI argues that the plain language of § 46a-60 (b) (1) only supports discrimination claims by individuals who are themselves disabled, not because of an association with a person with a disability. The court concurs. See *DeMarco* v. *Charter Oak Temple Restoration Assoc.*, Superior Court, judicial district of Hartford, Docket No. CV-21-6137759-S (February 10, 2022, *Rosen, J.*), appeal pending, AC 46099 (2022) (rejecting associational disability claim). Accordingly, the court will grant the motion to strike the third count of the complaint.

F

CFEPA Retaliation Claim

In the fourth count, Loubriel alleges that GHDSI retaliated against her "for opposing discriminatory and illegal employment practices." Compl., docket entry no. 100.31 ("Cmpl."), ¶ 82 (a). Elsewhere in her complaint, in paragraphs incorporated by reference into the fourth count, Loubriel alleges that she "communicated her opposition to terminate [an employee] because of his alcoholic liver disease as it constituted disability discrimination," Cmpl., ¶ 56, and "voiced her opposition to the defendant for not hiring [a] female African American employee." Cmpl., ¶ 58.

Section 46a-60 (a) (4) forbids an employer to "discharge, expel or otherwise discriminate against any person because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84[.]" Protected activity under the statute is not limited to the filing of formal discrimination charges; it includes informal protests of discriminatory employment practices, including complaints to management, writing critical letters to customers, protecting against discrimination by industry and expressing support of co-workers who have filed formal charges. E.g., *Matima* v. *Celli*, 228 F.3d 68, 78-79 (2d Cir. 2000); *Setkoski* v. *Bauer*, Superior Court, judicial district of Hartford, Docket No. CV-11-6023082-S (May 10, 2012, *Domnarski, J.*).

Loubriel's allegations do not state a plausible claim for relief under § 46a-60 (a) (4). She offers two allegations of "voicing" or "communicating" opposition to employment decisions concerning other employees. These threadbare allegations are devoid of dates or any other contextual information and, as such, are insufficient to support an inference that Loubriel engaged in protected activity under § 46a-60 (a) (4) or that such activity was causally related to her termination. Accordingly, the court will strike the fourth count of the complaint.

G

FMLA Discrimination/Retaliation Claim

In the fifth count, Loubriel alleges that GHDSI discriminated and/or retaliated against her for exercising rights under the Family Medical Leave Act. Specifically, she alleges that GHDSI terminated her after she returned from her alleged FMLA leave on May 11, 2020.

Loubriel's allegations state a plausible claim for relief for FMLA discrimination or retaliation. As noted, GHDSI terminated Loubriel on July 29, 2020—less than three months after she returned from her alleged FMLA leave. At the pleading stage of a case, a plaintiff may rely

on the temporal proximity of the adverse employment action to the protected activity support an inference of discrimination, provided the temporal proximity is "very close." *Clark County School District* v. *Breeden*, 532 U.S. 268, 273, 121 S.Ct. 1508, 149 L. Ed. 2d 509 (2001). Courts have held that significantly longer gaps than three months are still sufficient to support an inference of discrimination. E.g., *Gorzynski* v. *JetBlue Airways Corp.*, 596 F.3d 96, 110-11 (2d Cir. 2010) (five-month gap is not too long to find causal relationship).

Accordingly, the court will deny the motion to strike the fifth count.

H

FMLA Interference Claim

In the sixth count, Loubriel alleges that GHDSI interfered with her exercise of rights under the FMLA.

"To make a prima facie showing of FMLA interference, [a plaintiff] must show that: (1) she is an FMLA-eligible employee; (2) the defendant is an employer, as defined in the FMLA; (3) she was entitled to take FMLA leave; (4) she gave notice to her employer of her intention to take leave; and (5) she was denied FMLA benefits to which she was entitled." *Hewitt* v. *Triple Point Technology, Inc.*, 171 F. Supp. 3d 10, 16 (D. Conn. 2016) (citing *Achille* v. *Chestnut Ridge Transportation, Inc.*, 584 Fed. Appx. 20 [2d Cir. 2014]).

Loubriel alleges that she took FMLA leave from late April to May 11, 2020. Thus, she cannot plausibly claim that her termination on July 29, 2020, interfered with her ability to take FMLA leave several months earlier. To the extent that Loubriel alleges FMLA "interference by termination," such a claim is not legally cognizable and constitutes a "retaliation theory in disguise." *Blake* v. *Recovery Network of Programs, Inc.*, 655 F. Supp. 3d 39, 48 (D. Conn. 2023).

However, Loubriel further alleges that "[i]n July 2020, [she] notified defendant that she needed time to care for her disabled son." Cmpl., ¶ 59. This allegation, coupled with the temporal proximity of Loubriel's termination to this request, is sufficient to state a plausible claim for FMLA interference. "An employee giving notice of the need for FMLA leave *does not need to expressly assert rights under the Act or even mention the FMLA* to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements set forth in § 825.302 or § 825.303 depending on whether the need for leave is foreseeable or unforeseeable. An employee giving notice of the need for FMLA leave must explain the reasons for the needed leave so as to allow the employer to determine whether the leave qualifies under the Act." (Emphasis added.) 29 C.F.R. § 825.301 (b).

The court will deny the motion to strike the sixth count of the complaint.

III

CONCLUSION

For the foregoing reasons, the Motion to Strike is Granted as to the first through fourth counts of the complaint and DENIED as to the fifth and sixth counts.

Daniel J. Klau, Judge

Checklist for Clerk

Docket Number: HHD-CV21-6148568-S

Case Name: Dana Loubriel v. Global Help Desk Services, Inc.

Memorandum of Decision dated: 5/29/24

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

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HHD-CV21-6148568-S LOUBRIEL, DANA v. GLOBAL HELP DESK SERVICES, INC.

Prefix: HD3 **Case Type:** M90 **File Date:** 10/22/2021 **Return Date:** 11/16/2021

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help | Exhibits

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Information Updated as of: 05/29/2024

Case Information

Case Type: M90 - Misc - All other
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 02/26/2024 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party	No Fee Party	Category
P-01 DANA LOUBRIEL **Attorney:** SABATINI & ASSOCIATES LLC (052654) File Date: 10/22/2021 1 MARKET SQUARE NEWINGTON , CT 06111		Plaintiff
D-01 GLOBAL HELP DESK SERVICES, INC. **Attorney:** LETIZIA AMBROSE & FALLS PC (409142) File Date: 11/16/2021 667-669 STATE STREET NEW HAVEN , CT 06511		Defendant

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