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6 *Attorneys for Defendant*  
*Anderson Business Advisors, LLC*

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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA, SOUTHERN DIVISION**

10 ELIZABETH CANNON, an individual,  
11 Plaintiff,

12 vs.

13 ANDERSON BUSINESS ADVISORS, LLC, a  
Nevada limited liability company,  
14 Defendant.

Case No. 2:18-cv-01599-APG-VCF

**JOINT PRETRIAL ORDER**

15 After pretrial proceedings in this case, IT IS ORDERED:

16 The parties, Elizabeth Cannon (“Plaintiff”) and Anderson Business Advisors, LLC  
17 (“Defendant”) submit this Pretrial Order as follows:

18 **I. Nature of the Case**

19 **a. Plaintiff’s Statement**

20 Plaintiff, Elizabeth Cannon brings her Complaint, filed 08/24/18 [ECF #1] alleging causes of  
21 action for Family Medical Leave Interference and Family Medical Leave Act Retaliation pursuant to  
22 29 U.S.C. § 2615, et. seq. Plaintiff’s Complaint also alleges causes of action for Breach of Contract,  
23 Breach of the Covenant of Good Faith and Fair Dealing. By order of the Court on 03/09/21 [ECF  
24 #124], the Court dismissed Plaintiff’s claims for Breach of Contract, and Breach of the Covenant of  
25

1 Good Faith and Fair Dealing. At this time, only Plaintiff's claims for FMLA Interference and FMLA  
2 Retaliation are at issue.

3 **b. Defendant's Statement**

4 Defendant, Anderson Business Advisors denies all claims. More specifically, Anderson  
5 contends that on or about January 30, 2018, Anderson issued Plaintiff a level 2 written warning.  
6 Anderson issued Plaintiff the warning because she was away from the office "Far Too Many Days."  
7 Per the terms of the written warning, Plaintiff was required to come into the office for work, rather  
8 than working remotely. On January 30, 2018, Plaintiff requested information regarding potential  
9 FMLA leave claiming that she needed to take care of a "parent due to his/her serious health condition".  
10 Cannon had previously inquired about taking FMLA leave for the same reason in April 2017.  
11 Anderson provided Plaintiff with the required FMLA documents for her to have completed by her  
12 mother's physician. Plaintiff requested a day off on February 16, 2018 for cosmetic breast surgery.  
13 Plaintiff did not come into the office for work from February 19-21, 2018. Plaintiff's absences on  
14 February 19-21, 2018 were "no call no show" absences. On February 20, 2018, Anderson  
15 representative Dan Ollman contacted Plaintiff via text message to determine what was happening with  
16 Plaintiff. Plaintiff indicated that she would be in to work, stating that she would "Uber tomorrow" and  
17 that "Holly [would] clean [her] drains." Plaintiff did not report to work as promised in her text  
18 messages. Anderson terminated Plaintiff's employment on February 21, 2018.

19 **Relief Sought**

20 (1) Plaintiff seeks past and future lost wages from the date of her termination through  
21 payment of any judgment obtained;

22 (2) Plaintiff seeks liquidated and/or punitive damages to the fullest extent allowed under the  
23 law, including, but not limited to, 29 U.S.C. § 2617(a)(1)(A)(iii);

1 (3) Plaintiff seeks pre-judgment interest to the fullest extent allowed under the law,  
2 including, but not limited to, 29 U.S.C. § 2617(a)(1)(A)(ii);

3 (4) Plaintiff seeks fees and costs incurred in bringing the instant lawsuit to the fullest extent  
4 allowed under the law, including, but not limited to, 29 U.S.C. § 2617(a)(3)

5 **Contentions of Parties:**

6 Plaintiff contends that she was wrongfully denied the protections of the FMLA when she had  
7 surgery. Plaintiff further contends that she was terminated for exercising her rights under the  
8 FMLA when she utilized the leave protections therein.

9 Defendant contends that Plaintiff was terminated for attendance issues. Furthermore, Plaintiff  
10 never sought to take FMLA leave. Finally, Plaintiff never presented any evidence that even if  
11 she had requested FMLA, that she was eligible for FMLA.

12 **II.**

13 **Statement of Jurisdiction:**

14 The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 2617,  
15 which provides that an action for FMLA leave interference or retaliation may be maintained against  
16 an employer “in any Federal or State court of competent jurisdiction.” 29 U.S.C. § 2617(a)(2). 2. The  
17 Court also has supplemental jurisdiction, when necessary, pursuant to 28 U.S.C. § 1367

18 This is an issue of Federal law, and this court has jurisdiction over this matter pursuant to 28  
19 U.S.C. § 1331 and 29 U.S.C. § 2617, which provides that an action for FMLA leave interference or  
20 retaliation may be maintained against an employer “in any Federal or State court of competent  
21 jurisdiction.” 29 U.S.C. § 2617(a)(2). 2. The Court also has supplemental jurisdiction, when necessary,  
22 pursuant to 28 U.S.C. § 1367.

**III.**

The following facts are admitted by the parties and require no proof:

- (a) Anderson hired Elizabeth Cannon on April 18, 2016.
- (b) Plaintiff's last day of employment with Anderson was on February 21, 2018.
- (c) At the time of her termination, Plaintiff's job title was Senior Advisor.

**IV.**

The following facts, though not admitted, will not be contested at trial by evidence to the contrary:

None at this time.

**V.**

The following are the issues of fact to be tried and determined at trial. [Each issue of fact must be stated separately and in specific terms.]

- (1) Whether Elizabeth Cannon qualified for FMLA protection either because of her surgery or her post-surgical care and/or complications.
- (2) Whether Elizabeth Cannon timely requested FMLA leave for her breast-surgery.
- (3) Whether Elizabeth Cannon's breast surgery would have qualified for leave under the FMLA.
- (4) Whether Elizabeth Cannon's termination was due to attendance issues.

**VI.**

The following are the issues of law to be to be tried and determined at trial. [Each issue of law must be stated separately and in specific terms.]

- (a) Whether Elizabeth Cannon's surgical procedure, and/or post-surgical complications, qualified for protection under the FMLA.
- (b) Whether Elizabeth Cannon timely requested FMLA leave for her breast surgery.

1 (c) Whether Elizabeth Cannon's breast surgery would have qualified for leave under the  
2 FMLA.

3 (d) Whether Anderson's termination of Elizabeth Cannon was retaliatory for her taking  
4 FMLA leave.

5 (e) Whether Anderson's termination of Elizabeth Cannon was in violation of the FMLA.

6 (f) Whether Elizabeth Cannon's termination was due to attendance issues.

7 **VII.**

8 The following exhibits are stipulated into evidence in this case and may be so marked by the  
9 clerk.

10 None at this time.

11 **VIII.**

12 (b) As to the following exhibits, the party against whom the same will be offered objects to  
13 their admission on the grounds stated:

14 (1) Plaintiff's exhibits: None

15 (2) Defendant's exhibits: None

16 (c) Electronic evidence: [State whether the parties intent to present electronic evidence for  
17 purposes of jury deliberations.]

18 No Electronic Evidence is anticipated to be presented for the purpose of jury  
19 deliberations.

20 (d) Depositions:

21 (1) Plaintiff will offer the following depositions:

22 Deposition of Plaintiff, Elizabeth Cannon. Plaintiff intends to use the entire deposition  
23 against Defendant.

24 Deposition of Rodney Truman, the FRCP 30(b)(6) designee for Defendant. Plaintiff  
25 intends to use the entire deposition against Defendant.

(5) Defendant will offer the following depositions:

1 Deposition of Plaintiff, Elizabeth Cannon. Defendant intends to use the entire  
2 deposition against Plaintiff.

3 Deposition of Rodney Truman, the FRCP 30(b)(6) designee for Defendant. Defendant  
4 intends to use the entire deposition against Plaintiff.

5 (e) Objections to depositions:

6 1) Defendant objects to plaintiff's depositions as follows: None.

7 (2) Plaintiff objects to defendant's depositions as follows: None.

8 **IX.**

9 The following witnesses may be called by the parties at trial:

10 (a) Provide names and addresses of plaintiff's witnesses.<sup>1</sup>

11 (i) Elizabeth Cannon  
12 C/O HKM Employment Attorneys  
13 101 Convention Center Drive, Suite 600  
14 Las Vegas, Nevada, 89109

15 (ii) Rodney Truman  
16 C/O Messner Reeves  
17 8945 W. Russell Road, Suite 300  
18 Las Vegas, NV 89148

19 (iii) Dan Ollman  
20 C/O Messner Reeves  
21 8945 W. Russell Road, Suite 300  
22 Las Vegas, NV 89148

23 (iv) Toby Mathis  
24 C/O Messner Reeves  
25 8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148

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<sup>1</sup> Defendant objects to Plaintiff's witnesses as Plaintiff failed to complete any disclosures pursuant to FRCP 26 during the discovery period. Defendant also objects to Plaintiff's use of any documentary evidence under the same grounds.

1 (v) Clint Coons  
C/O Messner Reeves  
2 8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148

3 (vi) Michael Bowman C/O Messner Reeves  
4 8945 W. Russell Road, Suite 300  
Las Vegas, NV 89148

5 (vii) Randall Ritchie  
6 C/O Messner Reeves  
8945 W. Russell Road, Suite 300  
7 Las Vegas, NV 89148

8 (viii) Elizabeth's Assistant

9  
10 (b) (b) Provide names and addresses of defendant's witnesses.

11 (c) Anderson Business Advisors' FRCP 30(b)(6) Witness as to Human Resources, Rod  
Truman  
12 c/o Messner Reeves  
8945 W. Russell Road, Suite 300  
13 Las Vegas, Nevada 89148

14 (d) Anderson Business Advisors' FRCP 30(b)(6) Witness as to Operations and Plaintiff's  
employment, David Gass  
15 c/o Messner Reeves  
8945 W. Russell Road, Suite 300  
16 Las Vegas, Nevada 89148

17 (e) Plaintiff, Elizabeth Cannon  
C/O HKM Employment Attorneys  
18 101 Convention Center Drive, Suite 600  
Las Vegas, Nevada, 89109

19  
20 **X.**

21 The attorneys or parties have met and jointly offer these three trial dates: February 1-15, 2023,  
22 February 20-28, 2023, March 1-30, 2023. It is expressly understood by the undersigned that the court  
23 will set the trial of this matter on one of the agreed-upon dates if possible; if not, the trial will be set  
24 at the convenience of the court's calendar.

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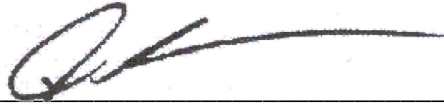
1 It is estimated that the trial will take a total of 5-6 days not including jury selection.

2 **XI.**

3 **ACTION BY THE COURT**

4 This case is set for jury trial on the stacked calendar on February 6, 2023, at 9:00 a.m. Calendar call will  
5 be held on January 31, 2023, at 9:00 a.m. in Las Vegas Courtroom 6C.

6 DATED: May 23, 2022



7  
8 ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE

9 APPROVED AS TO FORM AND CONTENT:

10 DATED this 16<sup>th</sup> day of May, 2022.

11 **HKM EMPLOYMENT ATTORNEYS LLP**

**MESSNER REEVES**

12 */s/ Jenny L. Foley*

*/s/ Renee M. Finch*

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