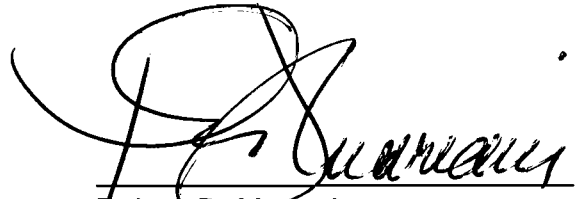




his disability and/or his use of FMLA leave. Defendant cites to authority that mere awareness of a disability by an employer and mere temporal proximity of a termination to FMLA leave are both insufficient to raise an inference of discrimination. The cases Defendant cites, however, all concerned motions for summary judgment, not motions to dismiss for failure to state a claim. At the pleading stage, Plaintiff allegations are sufficient to state a claim and proceed to discovery. As to the second objection, even if the R&R did not address one of Defendant's arguments—Plaintiff admission of his own wrongful conduct in the complaint negates any inference of discrimination—the error, if any, is harmless because the argument is without merit. As discussed above, Plaintiff has raised a reasonable inference in his complaint that he was terminated because of his disability and/or his use of FMLA leave. Defendant cites no authority for the proposition that, *on a motion to dismiss*, a Plaintiff's admission of his or her own wrongful conduct negates an otherwise reasonable inference of discrimination, or necessarily precludes Plaintiff from pleading a *prima facie* case of discrimination. Plaintiff is not required to satisfy the same standard here as he will be required to satisfy at the summary judgment stage.

3. Defendant's Motion to Dismiss, (Doc. 8), Plaintiff's Amended Complaint is **DENIED.**

A handwritten signature in black ink, appearing to read "R. Mariani", written over a horizontal line.

Robert D. Mariani  
United States District Judge