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7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA
9

10 TORI OWENS, an individual,
11 Plaintiff,
12 vs.

13 GLOBAL PRESS INTERNATIONAL, INC., a
14 California corporation and DOES 1 to 10,
15 Inclusive.
16 Defendants.

CASE NO.: SACV15-2468-JVS

PLAINTIFF'S MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
GLOBAL PRESS INTERNATIONAL'S
MOTION FOR SUMMARY JUDGMENT

Date: Aug. 3, 2020

Time: 1:30 P.M.

Justice: Hon. James V. Selna

Crtrm: 10c

17 **I. INTRODUCTION**

18 Plaintiff Tori Owens [hereinafter Owens] hereby submits this opposition to the motion
19 for summary judgement. Owens is a well-educated woman and loving mother who graduated
20 from UC Berkeley and is fluent in three languages. Ms. Owens was a dedicated employee of
21 Defendant Global International Inc., [hereinafter Global] where she was recognized for her
22 outstanding work. Global is a printing company that specializes in domestic and international
23 travel guides for families with young children.

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27 PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

1 Owens was forced to take leave when her son [hereinafter J.O.] required psychiatric care
2 after witnessing the tragic death of his friend. Owens gave immediate and continual notice to her
3 supervisor that J.O. needed care and treatment to recover. Upon return, Owens was offered a
4 position with different skills and hours that was not adequately similar to her previous one. Ms.
5 Owens seeks protection under The Family Medical Leave Act, 29 U.S.C. §§2601-2654 (West
6 2020) [hereinafter FMLA] which allows parents to take time off work and care for themselves or
7 family members suffering from serious health conditions without facing repercussions.

8 Plaintiff disputes Defendant's contention and asserts that she gave adequate notice after
9 J.O. had a serious medical condition qualifying for federal protection under the FMLA and was
10 not give an equivalent position upon return. Global's motion for summary judgement should be
11 denied because of the reasons set forth herein.

12 II. STATEMENT OF FACTS

13 Owens is accomplished with a degree from Berkeley and is fluent in three languages. She
14 is a devoted single mother to her six year old son J.O. and is his main caregiver as she cannot
15 rely on her ex-husband who rarely watches their son or provides any financial support. Owens
16 began working for Global on or about June 2017 as an International Liaison. (Pl.'s Dep. 5:20-27,
17 June 17, 2020.) Owens had consistent hours, permitted travel rights, and was able to use her
18 foreign language skills. During her tenure, Owens's work performance exceeded Global's
19 expectations. Reviews of her performance were consistently excellent and she was awarded a
20 raise each year. (Nunez Dep. 3:13-16, June 16, 2020; Owens Perform. Eval., June 6, 2019.)

21 On February 28, 2020 Owens, while at work, received a call from the local
22 hospital stating that J.O. was in an accident. Owens distraught, immediately left work and
23 rushed to the hospital to see her child. (Pl.'s Dep. 7: 5-7.)

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1 J.O. had witnessed his friend get hit and killed by a car while chasing a ball and was emotionally
2 distraught but thankfully physically unharmed other than some bruises and cuts from falling.
3 (Pl.'s Dep. 8:5-10; Mercy Hosp. E.R. Rpt., Feb 28, 2020.) Owens while still at the hospital that
4 same day notified her supervisor, Mark Nunez, [hereinafter Nunez] by voicemail that she would
5 need to take leave to care for J.O. Nunez did not respond to the voicemail. (Pl.'s Dep. 13:4-5.) In
6 the resulting weeks, Owens noticed J.O. was fine physically but was struggling emotionally. He
7 was lethargic and having recurring nightmares about the violent death of his friend. (Pl.'s Dep.
8 8:19-20.) The school called Owens to pick up J.O. because he could not last an entire day
9 without breaking down into tears. (Pl.'s Dep. 9:17-18.) Owens grew concerned and took J.O. to
10 see his physician who cleared him of physical injuries. Owens then sought psychiatric care for
11 her son to deal with his emotional trauma. (Pl.'s Dep. 10:2-4.) Because J.O. needed continued
12 care, on March 6, 2020 Owens spoke to Nunez and informed him that she needed more time off.
13 (Nunez Dep. 5:2-13.) At no time did Nunez, nor Global, or its employees notify Owens of her
14 rights to take leave under the FMLA.

15 On March 9, 2020 Owens took J.O. to see psychiatrist Robert Saltsman, M.D.
16 [hereinafter Dr. Saltsman]. After evaluating J.O., Dr. Saltsman diagnosed him with post-
17 traumatic stress disorder and prescribed him Ambien. (J.O.'s Patient Care Record, Mar 9, 2020-
18 April 3, 2020.) Dr. Saltsman testified J.O. had “demonstrated anxiety resulting from the intrusive
19 distressing recollections” (Saltsman Dep. 4:25-27, June 15, 2020.) and recommended J.O. avoid
20 stressful situations which Owens interpreted to include school and daycare. (Pl.'s Dep. 11:1-3.)
21 Over the next several weeks Owens left voice messages for Nunez keeping him updated on her
22 son's condition and requesting additional time off, during which J.O. continued to see Dr.
23 Saltsman over multiple visits. On March 19, 2020 Nunez called Owens and left a message
24 threatening she “should come in or look for another job.” (Nunez Dep. 6:25-28.)

1 Due to J.O. responding well to his therapy, on or about April 3, 2020 Dr. Saltsman
2 recommended J.O. return to his daily activities including school and daycare. (J.O.'s Patient Care
3 Record, Mar 9, 2020-April 3, 2020.) Owens, following Dr. Saltman's recommendation, sent J.O.
4 back to school and daycare the following Monday. She stayed home most of the first week in
5 case her son had trouble readjusting again and needed to come home. (Pl.'s Dep. 14:25-29.) Once
6 Owens was confident in J.O.'s ability to readjust, she decided to return to work. On April 9,
7 2020, her first day back at work, Owens was informed her position had been filled. (Pl.'s Dep.
8 15: 18-19.) Global offered her the position of Manuscript Editor which had the same salary and
9 basic benefits but not the same job duties or hours. Seeing no other options, Owens initially
10 accepted the job but found it hectic and dissatisfying from the start and only performed the job
11 for about three weeks. (Pl.'s Dep. 15: 24-25.) The new job was not equivalent to the one Owens
12 held before she took leave due to the hours being different, her no longer having travel perks,
13 and her language skills no longer being required. (Pl's Dep. 16:7-9, 16:17.19.) Owens became
14 increasingly dissatisfied with the job and as a single parent the late hours were not manageable
15 for her. (Pl.'s Dep. 16: 7-9.) Due to the changes and difficulties in the new job, Owens decided
16 she had "no choice but to quit" and resigned from Global. (Pl.'s Dep. 16:28.)

17 Global's summary judgment should be denied because there is a genuine issues of
18 material fact regarding whether Owens gave adequate notice, whether J.O. had a serious
19 condition and whether she was given a similar job.

20 **III. ARGUMENT**

21 Global's motion for summary judgment should be denied. Summary judgement is only
22 appropriate when there is no genuine issue of material fact and the moving party is entitled
23 judgement as a matter of law. Fed. R. Civ. P. 56(a) (West 2020).

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1 The Court must view the facts and inferences in the light most favorable to the non-moving
2 party, Fed. R. Civ. P. 56(c) (West 2020). The task on a summary judgment motion is not to
3 weigh the evidence but rather only to determine whether there is a genuine issue for trial. If the
4 court determines that there is sufficient disagreement of a genuine issue of material fact it must
5 deny Global’s motion and allow the issues to be resolved by a jury.

6 The FMLA was created to allow employees the ability to take time off work if they or a
7 family member have a serious medical condition. It protects employees from receiving
8 repercussions from their employers such as termination or being moved to a non-equivalent
9 position upon return. The FMLA provides employees like Owens the ability to balance their
10 home lives with their work lives. The Act was designed for workers like Owens, a single parent
11 who must take care of her child while holding a job.

12 The Court should deny Global’s motion for summary judgement because there are
13 material facts in dispute that a reasonable jury could return a verdict for Owens.

14 A. THE NOTICE PLAINTIFF GAVE TO DEFENDANT IS ADEQUATE PURSUANT TO
15 THE FMLA BECAUSE SHE CALLED HER SUPERVISOR THE DAY OF HER CHILD’S
16 ACCIDENT AND CONTINUED TO CONTACT HIM FOR THE DURATION OF HER
LEAVE.

17 Owens gave Global adequate notice by calling her supervisor on the day of the accident
18 and calling him multiple times throughout her leave. Under the FMLA, an employee must notify
19 his or her employer of the need for qualifying leave. 29 USC 2612(92)(B). The notice may be
20 verbal or written. 29 CRF §§ 825.302(c), 825.303(b). “Notice may be sufficient when employees
21 call employers to tell them that they or their children are sick and will be absent from work.”
22 Brannon v. OshKosh B’Gosh, Inc., 897 F. Supp. 1028, 1037 (M.D. Tenn 1995). In Brannon there
23 was triable issue of fact as to whether the plaintiff provided sufficient notice by calling in to state
24 her child was sick.

1 Brannon was forced to call out of work when her daughter became ill with a high fever
2 and required hospitalization. Id. at 1033. Brannon verbally told her employer and her husband
3 gave a note signed by the emergency room physician stating her daughter needed to stay home.
4 Id. at 1033. Brannon's daughter stayed home for more than three days. The court held that in the
5 case of a medical emergency requiring leave due to an employee's own serious health condition
6 or to care for a family member with one, written advance notice pursuant to an employer's
7 internal rules and procedures may not be required for FMLA leave. Id. at 1028. Furthermore, the
8 court held in Brannon that after plaintiff gave initial notice, it became the employer's duty to
9 make further inquiry to determine if the leave qualified for FMLA protection. Id. at 1028.

10 Similar to the facts in Brannon, Owens called her supervisor Nunez the day the accident
11 happened and continued to call him to keep him updated throughout her leave. She gave Nunez
12 oral notice that she needed to take care of her child on the day of the accident, fulfilling her
13 obligation for emergency leave. On multiple occasions Nunez failed to call Owens back when
14 she left voicemails. If Global wanted to get in to contact with Owens they could have.

15 Because there are disputed material facts that indicate Owens gave adequate notice to
16 Global and its employees, Global's motion for summary judgment should be denied.

17 **B. PLAINTIFF HAD TO CARE FOR HER SON BECAUSE HER SON WITNESSED A
18 TRAUMATIC EVENT THAT LED TO EMOTIONAL DISTRESS WHICH QUALIFIES AS
A SERIOUS MEDICAL CONDITION.**

19 Owens's leave was justified because her son witnessed a traumatic experience that left
20 him with emotional distress requiring care and treatment that qualifies as a serious medical
21 condition under the FMLA. As defined by the FMLA a serious health condition means an illness,
22 injury, impairment or physical or mental condition that involves (A) inpatient care in a hospital,
23 hospice or residential medical care facility; or (b) continuing treatment by a health care provider.:
24 29 U.S.C §611 (11) (West 2020).

1 In Brannon, plaintiff's daughter became ill and she called out of work. Brannon's
2 daughter was ill for more than three days. Id. at 1033. The court determined that plaintiff's
3 daughter had a serious illness and had been ill for three consecutive days which excused
4 plaintiff's January absences under the FMLA. Id. at 1037. The court also determined that proper
5 notice was given by plaintiff to her employer for the January 1994 absence. Similar to Brannon,
6 J.O. did suffer a serious health condition that would trigger FMLA leave. J.O. was diagnosed
7 with Post Traumatic Stress Disorder and was told to avoid stressful situations. J.O. could not
8 make it through a day of school without crying and having to go home.

9 Global points to the standard held in Martyszenko v. Safeway, Inc., 120 F.3d 120, 124
10 (8th Cir. 1997), when the Eighth Circuit awarded summary judgment in favor of the defendants
11 stating that plaintiff's son did not have a serious condition. Plaintiff took her son to a psychiatrist
12 over multiple visits. Id. at 122. In Martyszenko her son was not diagnosed with any condition
13 and no evidence was found of distractibility, psychosis, or hallucinations. He also found no
14 indication of sexual abuse in the minor to trigger emotional distress and found his condition did
15 not hinder him from participating in any activities. Id. at 123. Unlike in Martyszenko, J.O. did
16 suffer a traumatic event watching his friend die and was diagnosed with Post Traumatic Stress
17 Disorder at his initial consultation triggering the need for more psychiatric visits. J.O. could not
18 make it through a day of school without crying and had constant night terrors, disrupting his
19 daily routine. Due to his diagnosis, J.O. required additional visits to work through his traumas
20 whereas in Martyszenko nothing was found wrong with her child. Martyszenko presents different
21 circumstances and it should not be held as the standard in this motion. Owens's son J.O. had a
22 serious health condition that required additional care and triggers FMLA protections.

23 Because there are disputed material facts that indicate Owens's son suffered from a
24 serious condition, Global's motion for summary judgment should be denied.

1 C. DEFENDANT FAILED IN ITS OBLIGATIONS TO RESTORE PLAINTIFF TO THE
2 SAME OR SIMILAR POSITION BECAUSE THE NEW POSITION HAD DIFFERENT
3 HOURS, JOB SKILLS AND WAS NOT EQUIVALENT TO THE POSITION SHE HELD
4 BEFORE HER LEAVE.

5 Owens was not reinstated to or given an equivalent position by defendant due to the
6 differences in the job duties, hours, and because she could not use her language skills. The
7 FMLA states except as provided in subsection (b), any eligible employee who takes leave under
8 section 2612 of this title for the intended purpose of the leave shall be entitled, on return from
9 such leave--(A) to be restored by the employer to the position of employment held by the
10 employee when the leave commenced; or (B) to be restored to an equivalent position with
11 equivalent employment benefits, pay, and other terms and conditions of employment. FMLA 29
12 U.S.C. § 2614. Under the FMLA when an employee returns from leave she is entitled to return to
13 the position she held before or if that position is unavailable, to an equivalent position. Parker v.
Hanhemann Univ. Hosp., 234 F. Supp. 2d 478, 489 (D.N.J. 2002).

14 In Parker, A nurse upon returning to work from FMLA leave found that her position had
15 been terminated and was offered a different position that had different tasks and hours. Plaintiff
16 Parker was employed as a nurse at the defendant's hospital. She had been promoted to a new
17 pilot position as a bed chief in May. Id. at 481. Her duties were to maintain the status of beds,
18 ensure timely transfers of patients and keep in communication with admissions. Id. at 481.
19 Plaintiff had a serious health condition and requested medical leave pursuant to the FMLA.
20 Defendants granted plaintiff's request for leave. When plaintiff went on leave her job was full-
21 time, Monday through Friday daytime shifts, and a more senior position. Id. at 481. When
22 plaintiff returned from leave, she was told her bed chief position had been eliminated. Id. at 482.
23 She spoke with HR who gave her options of other jobs at the hospital. Plaintiff thought the
24 available jobs were not equivalent to the job she had previously. Id. at 482.

1 She was not qualified for one position offered and the others were subordinate to her previous
2 position. Additionally, the positions offered were not Monday to Friday and not during the
3 daytime like her previous position was. Id. at 482.

4 In Parker, the court found that under FMLA she was entitled to an equivalent position
5 that is virtually identical to the employee's former position in terms of pay benefits, working
6 conditions, privileges, and prerequisites. Id. at 491. It must involve the same or substantially
7 similar duties and responsibilities which must entail substantially equivalent skill, effort,
8 responsibility, and authority. Id. at 491. The court determined that because status, duties, and
9 working conditions all were part of the equivalence inquiry, a reasonable factfinder could
10 determine that the positions were not equivalent. Id. at 491.

11 Like Parker, Owens was not returned to a similar or equivalent position. When she
12 returned from leave, she was informed that her position had been filled. She was not reinstated as
13 an International Liaison, but was moved to a Manuscript Editor upon her return. Though the pay
14 and benefits were similar, the job duties, skills, and hours were vastly different. The new job
15 required her to come in to work in the late morning and leave late at night which as a single
16 parent would put a financial burden on Owens who would have been required to find someone to
17 watch J.O. five nights a week. Furthermore, Owens could not use her language skills and no
18 longer had travel rights in her new position. Global argues that because Owens had worked late
19 hours in her previous position there was no substantial difference to the new job. There is a
20 difference between meeting the occasional late-night deadline and working late hours five days a
21 week. The manuscript editor job therefore comprised different status, duties and working
22 conditions that could be viewed as not equivalent to her previous position. Global by ultimately
23 failing to return Owens to the same or similar position upon expiration of her leave unlawfully
24 interfered with Owens's substantive rights under the FMLA, to which she was eligible.

1 In Parker, the court determined that because the new job had different requirements and
2 necessary skills, it should be up to a jury to decide the facts. Id. at 490. The same standard should
3 be held in this case. Therefore, because there are genuine differences in Owen's jobs and there
4 are genuine issues of material fact that should be determined by a jury, Global should be denied a
5 summary judgment as a matter of law.

6 **IV. CONCLUSION**

7 The FMLA protects employees if they have a serious medical condition or need to take
8 care of a family member. It gives employees the opportunity to take leave from work without the
9 fear of losing their position. The disputed facts show that Global failed in its duties as an
10 employer under the FMLA to provide Plaintiff with an equivalent position. Owens gave adequate
11 notice, her son had a serious documented illness as defined by the FMLA, and she was not
12 restored to an equivalent position upon return. Her new position did not use her previous skills
13 and the hours were impractical for a single mother. There are disputed facts in this case that
14 should be left to a jury of Owens's peers to decide. For the foregoing reasons, Plaintiff Tori
15 Owens respectfully requests that Defendant Global International Inc.'s Motion for Summary
16 Judgement be DENIED in its entirety.

17 DATED: July 9, 2021

18 Juss Ghrin & Barrett LLP

19 

20 _____
21 Olivia Benson, Esq.
22 Attorneys for Plaintiff
23 TORI OWNS