

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION**

**JENNIFER MODLIN,**

**Plaintiff,**

**Case No.:**

**v.**

**LINCARE HOLDINGS INC.,**

**Defendant.**

/

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, JENNIFER MODLIN (hereinafter “Plaintiff”), by and through undersigned counsel, brings this action against Defendant, LINCARE HOLDINGS INC. (hereinafter “Defendant”), and in support of her claims states as follows:

**JURISDICTION AND VENUE**

1. This is an action for damages in excess of \$30,000, exclusive of interest, fees, and costs, for violations of the Florida Civil Rights Act of 1992, as amended, (“FCRA”), Fla. Stat. Section 760.01 et seq. and the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601 et seq. (“FMLA”).

2. Venue is proper in Pinellas County, because all of the events giving rise to these claims occurred in this County.

**PARTIES**

3. Plaintiff is a resident of Largo in Pinellas County, Florida, and she worked for Defendant in Pinellas County.

4. Defendant is a Delaware corporation in business as a provider of oxygen and other respiratory therapy services to patients in the home. Defendant has an office and place of business located in Clearwater in Pinellas County, Florida.

### **GENERAL ALLEGATIONS**

5. This is an action to recover damages suffered by Plaintiff while employed by Defendant, when Defendant interfered with Plaintiff's rights under the FMLA and retaliated against Plaintiff for exercising these same rights.

6. This is also an action to recover damages suffered by Plaintiff while employed by Defendant, when Defendant discriminated against and retaliated against Plaintiff based on her national origin and/or religious beliefs and/or practices, in violation of the FCRA.

7. At all times material hereto, Plaintiff was an employee of Defendant.

8. At all times material hereto, Defendant employed fifteen (15) or more employees. Thus, Defendant is an "employer" within the meaning of the FCRA, Fla. Stat. Section 760.02(7).

9. Plaintiff was an employee of Defendant, and she worked at least 1250 hours in the 12 months preceding her request for leave under the FMLA.

10. Thus, Plaintiff was an "eligible employee" within the meaning of the FMLA, 29 U.S.C. § 2611(2).

11. Defendant is an "employer" within the meaning of the FMLA, 29 U.S.C. § 2611(4).

12. Plaintiff has satisfied all conditions precedent, or they have been waived.

13. Plaintiff has retained the undersigned attorneys and agreed to pay them a fee.

14. Plaintiff requests a jury trial for all issues so triable.

### **FACTS**

15. Plaintiff began working for Defendant on or around February 9, 2015.

16. Plaintiff performed the job for which she was hired in a satisfactory manner.

17. Plaintiff is part Native American and believes in and engages in Native American religious practices and/or beliefs.

18. Thus, Plaintiff is a member of a protected class based on her national origin and/or religious beliefs and/or practices, and as such benefits from the protections of the FCRA.

19. Plaintiff was subjected to disparate treatment on the basis of her national origin and/or religious beliefs and/or practices.

20. Specifically, in or around July 2018, Defendant informed Plaintiff she was not allowed to burn sage in the office after receiving complaints from Plaintiff's coworkers, whereas Plaintiff's coworkers were permitted to burn incense at the office.

21. On or around a date in mid-November 2018, certain of Defendant's employees stated that Plaintiff was a witch due to her previously burning sage in the office. Around the same time, another of Defendant's employees named "Cherise" locked Plaintiff out of the office on one occasion.

22. On or around a date in mid to late November 2018, Plaintiff complained to Defendant about the discriminatory treatment she experienced. Defendant's Human Resources representative, Amy Swearingen set up a meeting with Plaintiff to discuss and investigate the matter.

23. Shortly after receiving Plaintiff's complaints of discrimination, Ms. Swearingen held a meeting with Plaintiff and accused Plaintiff of talking about witchcraft at work. Plaintiff informed Ms. Swearingen that was not the case but Plaintiff told her she is part Native American and as such she participates in Native American religious practices and/or beliefs. Ms. Swearingen accused Plaintiff of persecuting her coworkers who were not Native American and who held Christian beliefs. Ms. Swearingen abruptly ended the meeting.

24. In response to Plaintiff's complaints of discrimination on the basis of her national origin and/or religious beliefs and/or practices, Defendant took no remedial action.

25. On or about a date in early December 2018, Plaintiff learned that her minor child (2 years of age) required surgery on January 11, 2019. Due to the surgery, Plaintiff required FMLA protected leave to care for her minor child.

26. In early December 2018, Plaintiff requested leave from Defendant in order to care for her minor child due to his surgery.

27. On or about January 9, 2019, Plaintiff mentioned her eligibility and/or need for FMLA protected leave to Defendant for her minor child's surgery.

28. In January 2019, Plaintiff was off from work on leave to care for her minor child during and after his surgery.

29. On or about January 14, 2019, Defendant terminated Plaintiff's employment for a pretextual reason.

30. Defendant terminated Plaintiff's employment based on her national origin and/or religious beliefs and/or practices, and/or in retaliation for her complaints of discrimination on the basis of her national origin and/or religious beliefs and/or practices, in violation of the FCRA.

31. Plaintiff exercised her rights under the FMLA by attempting to file for and utilizing FMLA leave.

32. Defendant's termination of Plaintiff's employment violated Plaintiff's rights under the FMLA.

33. Defendant interfered with Plaintiff's FMLA rights and terminated Plaintiff's employment in retaliation for her FMLA protected absences.

**COUNT I – FCRA VIOLATION**  
**(DISCRIMINATION)**

34. Plaintiff realleges and readopts the allegations of paragraphs 1 through 30 of this Complaint, as though fully set forth herein.

35. Plaintiff is a member of a protected class under the FCRA.

36. Plaintiff was subjected to disparate treatment on account of her national origin and/or religious beliefs and/or practices.

37. Defendant's actions were willful and done with malice.

38. Plaintiff was injured due to Defendant's violations of the FCRA, for which she is entitled to relief.

***WHEREFORE***, Plaintiff demands:

- a) A jury trial on all issues so triable;
- b) That process issue and this Court take jurisdiction over the case;
- c) Compensation for lost wages, benefits, and other remuneration;
- d) Reinstatement of Plaintiff to a position comparable to her prior position, or in the alternative, front pay;
- e) Any other compensatory damages, including emotional distress, allowable at law;

- f) Punitive damages;
- g) Prejudgment interest on all monetary recovery obtained.
- h) All costs and attorney's fees incurred in prosecuting these claims; and
- i) For such further relief as this Court deems just and equitable.

**COUNT II – FCRA VIOLATION  
(HARASSMENT)**

39. Plaintiff realleges and readopts the allegations of paragraphs 1 through 30 of this Complaint, as though fully set forth herein.

40. Defendant retaliated against Plaintiff for engaging in protected activity under the FCRA by terminating her employment.

41. Defendant's actions were willful and done with malice.

42. By terminating her employment, Defendant took material adverse action against Plaintiff.

43. Plaintiff was injured due to Defendant's violations of the FCRA, for which Plaintiff is entitled to legal and injunctive relief.

***WHEREFORE***, Plaintiff demands:

- a) A jury trial on all issues so triable;
- b) That process issue and that this Court take jurisdiction over the case;
- c) That this Court enter a declaratory judgment, stating that Defendant interfered with Plaintiff's rights under the FCRA;
- d) Compensation for lost wages, benefits, and other remuneration;
- e) Reinstatement of Plaintiff to a position comparable to her prior position, with back pay plus interest, pension rights, and all benefits;
- f) Front pay;

- g) Any other compensatory damages, including emotional distress, allowable at law;
- h) Punitive damages;
- i) Prejudgment interest on all monetary recovery obtained.
- j) All costs and attorney's fees incurred in prosecuting these claims; and
- k) For such further relief as this Court deems just and equitable.

**COUNT III - FMLA INTERFERENCE**

44. Plaintiff realleges and readopts the allegations of paragraphs 1 through 33 of this Complaint, as fully set forth herein.

45. Plaintiff required time off from work to care for her minor child requiring leave protected under the FMLA.

46. By terminating Plaintiff's employment for Plaintiff's FMLA protected absences from work, Defendant interfered with Plaintiff's FMLA rights, in violation of 29 U.S.C. §§ 2614(a)(1)(A) and 2615(a)(2).

47. Defendant's actions were willful and done with malice.

48. Plaintiff was injured by Defendant's violations of the FMLA, for which Plaintiff is entitled to legal and injunctive relief.

***WHEREFORE***, Plaintiff demands:

- (a) That this Court enter a judgment, stating that Defendant interfered with Plaintiff's rights in violation of the FMLA;
- (b) An injunction restraining continued violation of the FMLA by Defendant;
- (c) Compensation for lost wages, benefits, and other remuneration;

- (d) Reinstatement of Plaintiff to a position comparable to Plaintiff's prior position with back pay plus interest, pension rights and all benefits or, in the alternative, the entry of a judgment under 29 U.S.C. § 2617(a)(1)(A)(i)(II), against Defendant and in favor of Plaintiff, for the monetary losses that Plaintiff suffered as a direct result of Defendant's violations of the FMLA;
- (e) Front pay;
- (f) Liquidated Damages;
- (g) Prejudgment interest on all monetary recovery obtained;
- (h) All costs and attorney's fees incurred in prosecuting these claims; and
- (i) For such further relief as this Court deems just and equitable.

**COUNT IV – FMLA RETALIATION**

49. Plaintiff realleges and readopts the allegations set forth in Paragraphs 1 through 33 of this Complaint, as fully set forth herein.

50. Plaintiff required time off from work to care for her minor child, requiring leave protected under the FMLA.

51. Plaintiff engaged in protected activity under the FMLA by exercising and/or attempting to exercise her FMLA rights.

52. Defendant retaliated against Plaintiff for engaging in protected activity under the FMLA by terminating her employment.

53. Defendant's actions were willful and done with malice.

54. Plaintiff was injured by Defendant's violations of the FMLA, for which Plaintiff is entitled to legal and injunctive relief.

**WHEREFORE**, Plaintiff demands:

- (a) That this Court enter a judgment, stating that Defendant retaliated against Plaintiff in violation of the FMLA;
- (b) An injunction restraining continued violation of the FMLA by Defendant;
- (c) Compensation for lost wages, benefits, and other remuneration;
- (d) Reinstatement of Plaintiff to a position comparable to Plaintiff's prior position with back pay plus interest, pension rights and all benefits or, in the alternative, the entry of a judgment under 29 U.S.C. § 2617(a)(1)(A)(i)(II), against Defendant and in favor of Plaintiff, for the monetary losses that Plaintiff suffered as a direct result of Defendant's violations of the FMLA;
- (e) Front pay;
- (f) Liquidated Damages;
- (g) Prejudgment interest on all monetary recovery obtained;
- (h) All costs and attorney's fees incurred in prosecuting these claims; and
- (i) For such further relief as this Court deems just and equitable.

**JURY TRIAL DEMAND**

Plaintiff demands trial by jury as to all issues so triable.

Dated this 5th day of April, 2020.

Respectfully submitted,



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**CHRISTOPHER J. SABA**  
Florida Bar Number: 0092016  
**WENZEL FENTON CABASSA, P.A.**  
1110 North Florida Avenue, Suite 300  
Tampa, Florida 33602  
Main Number: 813-224-0431  
Direct Dial: 813-321-4086  
Facsimile: 813-229-8712  
Email: csaba@wfclaw.com  
Email: tsoriano@wfclaw.com  
**Attorneys for Plaintiff**