

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PAMELA HALL,)
)
 Plaintiff,)
)
 vs.) Case No. 2:16-cv-02729-JTM-KGG
)
LIFE CARE CENTERS OF AMERICA,)
INC. (D/B/A LIFE CARE CENTER OF)
KANSAS CITY), et al.,)
)
 Defendants.)

PRETRIAL ORDER

A pretrial conference was conducted in this case on March 15, 2018, by U.S. Magistrate Judge Kenneth G. Gale. The plaintiff, Pamela Hall, appeared through counsel, Patrick G. Reavey and Kevin C. Koc. The defendants, Life Care Centers of America, Inc. and Michelle Yosick, appeared through counsel, Anthony J. Romano and Uzo N. Nwonwu.

This pretrial order supersedes all pleadings and controls the subsequent course of this case. It will not be modified except by consent of the parties and the court's approval, or by order of the court to prevent manifest injustice. Fed. R. Civ. P. 16(d) & (e); D. Kan. Rule 16.2(c).

1. PRELIMINARY MATTERS.

a. Subject Matter Jurisdiction. Subject matter jurisdiction is invoked under 28 U.S.C. § 1331, but Defendants¹ dispute it because they contend Plaintiff lacks standing given pendency of a bankruptcy case in which Hall failed to disclose the above-captioned lawsuit, even as of the date of her deposition in March 2018. Defendants further contend the first time the trustee learned of this lawsuit's existence was when Defendants' counsel informed him of this fact on March 6, 2018. It also is Defendants' position that Plaintiff used the end of her employment at Life Care to obtain favorable rulings from the bankruptcy court (notably, an abatement of scheduled payments), and yet failed to disclose her claims against Defendants as an asset, which, according to Defendants, is in direct violation of the bankruptcy court's order in its confirmation. Defendants intend to file a dispositive motion on the already set dispositive motion deadline. Plaintiff disputes Defendants' claim that she lacks standing because the Trustee in the still pending bankruptcy has been notified of this case. Moreover, Plaintiff contends that Defendants have long known about Plaintiff's Chapter 13 Bankruptcy (the confirmation of her Chapter 13 plan occurred long before she was fired by Defendants), and, according to Plaintiff, despite this knowledge, they first raised this issue last week, and did not assert the defense in their Answer (as an affirmative defense or otherwise). According to Plaintiff, the defense, therefore, has been waived.

b. Personal Jurisdiction. The court's personal jurisdiction over the parties is not disputed.

c. Venue. Venue in this court is not disputed.

¹ As stated elsewhere herein, Plaintiff objects to Defendant Yosick raising defenses as to allegations she's already admitted by not filing an Answer, or were not previously raised by her as an affirmative defense.

d. Governing Law. Subject to the court’s determination of the law that applies to the case, the parties believe and agree that the substantive issues in this case are governed by the following law: The Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (“FMLA”); the Americans with Disabilities Act, § 42 U.S.C. 12101 *et seq.* (“ADA”); and the Age Discrimination in Employment Act (“ADEA”). The subject matter jurisdiction issue referenced in Part 1.a above is governed by the following law: 11 U.S.C. § 521.

2. STIPULATIONS.

a. The following facts are stipulated:

1. Defendant Michelle Yosick (“Yosick”), during Hall’s employment was employed by Life Care with the title Regional Vice President and was Hall’s supervisor.

2. Defendant Life Care is a corporation registered to conduct business in Kansas and is the management company for a facility called Life Care Center of Kansas City, located at 3231 West 61st Street in Kansas City, Kansas.

3. Hall was on approved FMLA leave for approximately two weeks in August and September of 2015.

4. On January 25, 2016, Hall left work after sending Yosick an email indicating she was going to “check this heart thing out.”

5. On February 10, 2016, Yosick presented Hall with a separation agreement (dated February 11, 2016), which Hall signed.

b. The parties have stipulated to the admissibility of the following exhibits for purposes of summary judgment and trial:

1. The EEOC file.

3. FACTUAL CONTENTIONS.

a. Contentions of Plaintiffs.

Pamela Hall began working for Life Care in February of 2013 as the Executive Director of Life Care's facility in Andover, Kansas. Under her leadership, the Andover location improved immensely and became profitable.

Interested in returning to the Kansas City area to be close to family, Hall sought and received (in March of 2015) the Executive Director position for Life Care's facility in Kansas City, Kansas. The location (which is in a high crime area) was known for high employee turnover (including the Executive Director position), difficult working conditions, and a history of State license deficiencies.

In the summer of 2015, Hall began having symptoms that she believed were related to a heart condition. After seeking medical attention, her doctor suggested she take two weeks off work, and undergo a battery of cardiac tests and a sleep study. Ultimately, Hall was diagnosed with severe anxiety and sleep apnea. Life Care approved Hall's request for FMLA leave from August 31, 2015 through September 15, 2015.

On January 25, 2016, Hall received a letter from the State of Kansas indicating she may have to appear before the licensing board related to facility deficiencies at the Kansas City, Kansas location. Hall immediately provided the letter to her boss Yosick, and Yosick's boss. Yosick and Yosick's boss were both supportive of Hall regarding the license issue, and neither one of them ever suggested that the issue reflected poorly on Hall's performance, or put her job

in jeopardy. The license issue, nonetheless, was distressing to Hall, and she began having symptoms that again led her to believe she was having heart problems. Hall immediately went to her doctor to seek medical attention, and she told Yosick (on January 25, 2016) where she was going. Hall's doctor faxed FMLA paperwork to Life Care on January 25, 2016. The next day, January 26, 2016, Hall sent a message to Corridini indicating she was under the care of her doctor, she would need to be off work for two weeks, and requested that Corridini let Yosick know of the information (and Corridini did this) and asked that she be sent FMLA paperwork that Life Care required.

Notes by Annette Sharp (an HR employee who works at Life Care's corporate headquarters) indicate she sent Hall FMLA paperwork on February 1, 2016. On February 4, 2016, Yosick and Corridini were provided FMLA paperwork from Hall's doctor, indicating she needed to be away from work for a serious health condition from January 25, 2016 through February 8, 2016. But a day or two before receipt of Hall's FMLA paperwork, Life Care's in-house counsel Theodore Lu instructed Corridini to send Hall a letter demanding that Hall call Yosick within two days (before 5:00 p.m. on February 5, 2016), and she was forbidden from communicating with Yosick through any means other than a live telephone call. Sharp's records do not indicate that Yosick or Corridini ever sent the FMLA paperwork they received on February 4, 2016 to Sharp, even though Corridini was asked by Sharp on February 8, 2016 if she had heard from Hall, but Corridini denied hearing from her.

While on the FMLA leave that started on January 25, 2016, Hall developed a painful boil that she ultimately went to the emergency room to get treated for. Because of the pain and not being able to sit, Hall's doctor filled out FMLA paperwork covering the dates of February 3, 2016 through February 17, 2016. Hall's doctor sent the paperwork to Yosick and Sharp, and

Sharp's notes confirm she received it.

Despite being out on FMLA (for two different medical conditions), Yosick contacted Hall at home, requesting that she come into work on February 10, 2016. Wanting to preserve her job, Hall agreed to Yosick's request and went into work on February 10, 2016. Once there, Yosick was in her (Hall's) office waiting for Hall. Yosick informed Hall she was being fired because Yosick needed someone who was "dependable", and made it clear she was referring to Hall's medical conditions. Hall responded by indicating she was on the mend, expected to be back to work soon, and asked if Yosick could give her "a second chance". Yosick declined the request, and instead presented Hall with a separation agreement, and indicated it needed to be signed right away for Hall to receive the extra pay. Hall signed the agreement without reviewing it, and Yosick did not provide her a copy until she specifically asked for one a few days later. Hall later revoked her signature as provided for in the agreement. Despite receiving the revocation and having the option under the agreement not to pay all of the monies provided by the agreement, Life Care proceeded to pay Hall the monies, and then later denied that Hall had revoked her signature. Hall was 61 years old at the time she was fired.

Hall received a formal performance review by Yosick on January 7, 2015. Yosick gave her an overall rating of "4", which is defined as: "Good role model. Goes beyond expectations on occasion, little or no supervision necessary." Hall received no discipline or writeups during the entire time she worked at Life Care. The "immediate jeopardy" deficiencies that Life Care appears to now be claiming led to Hall's termination, were never the subject of any discipline or counseling provided to Hall by anyone at Life Care, and the Kansas City, Kansas location for years and years had numerous deficiencies noted by the State. And this was part of the reason Yosick placed Hall at that location – to turn it around just like she had done

with Andover. There have been many other Life Care Executive Directors who have had the same or more severe license and/or facility deficiencies, but they were not subject to discipline or termination. Plaintiff was 61 when fired. Life Care replaced her with a substantially younger person, who had no history of FMLA leave, or having a disability.

b. Contentions of Defendants.

Life Care is a management company that manages more than 200 skilled nursing, rehabilitation, Alzheimer's, and senior living campuses in 28 states. The facilities Life Care manages offer a large range of services to meet the needs of their residents and patients. Each Life Care managed facility – such as Life Care Center of Kansas City – is overseen by an Executive Director whose responsibility it is to provide leadership and direction for the facility in order to ensure quality resident care. The Executive Director is also responsible for providing oversight of key areas including financial operations, people development, customer service, marketing, and clinical operations. Ultimately, the Executive Director is responsible for managing the facility's budget to meet the facility's needs and the division's goal. The Executive Director is directly supervised by a Regional Vice President who has oversight for more than one facility.

Hall began her employment with Life Care on or about February 11, 2013, as the Interim Executive Director at Life Care Center of Andover in Andover, Kansas. Yosick, the Regional Vice President over Hall's region, hired Hall for the position and supervised her.

In early 2015, Hall asked Yosick if she could transfer from Andover to Life Care Center of Kansas City, in Kansas City, Kansas. Yosick had numerous discussions with Hall regarding the Kansas City location and how much work it would take to lead that facility. The Kansas City facility required a more hands-on Executive Director. Hall still requested she be transferred into

the position and, on or around March 27, 2015, Yosick agreed to transfer Hall to the Executive Director position at Life Care Center of Kansas City. Yosick remained Hall's supervisor. After Hall took over the Kansas City location, new issues with regulatory compliance arose where a resident walked out of the facility. As a result of this, in July 2015, the Kansas City location received an immediate jeopardy tag from the state of Kansas – a very serious deficiency. When a facility receives an immediate jeopardy tag, it has to go through a “plan of correction” process to abate the immediate jeopardy and prepare the facility for a subsequent survey visit from the state. The facility also receives civil monetary penalties when there is an immediate jeopardy tag from the state of Kansas.

During this time, Hall applied for and took approved FMLA leave from August 31, 2015, to September 14, 2015. After she exhausted her approved leave, Hall returned to work on September 16, 2015, and continued to perform her job duties as the Executive Director of the Kansas City facility. In December 2015, the Kansas City facility received another immediate jeopardy tag while under Hall's leadership as the administrator. Receiving two immediate jeopardy tags in less than six months is a very rare occurrence. In fact, Hall is unaware of any other facility that has ever received two immediate jeopardy tags within such a short time span. That issue led to the Board of Nursing Home Administrators apparently sending a letter to Hall, which she received in January 2016, asking that she appear before the board. Hall claimed that the letter sent her over the edge and, on January 25, 2016, Hall informed Yosick that she needed to seek medical attention as she thought she was having a “heart thing.” Hall left and did not return to work or contact Yosick at any time to provide an update on her status. Given the facility was still working through the immediate jeopardy process and preparing for the state to return for the subsequent survey, Yosick traveled to the Kansas City, Kansas location and

devoted her attention to clearing the state survey.

While away from the facility, Hall reached out to Jaimie Corradini, Divisional Director of Human Resources, the human resources employee who supported Hall's region, and asked for FMLA paperwork. Hall also noted she had messed up and could not face Yosick given how badly she messed things up at the facility. Hall communicated all this in writing, via Facebook Messenger. During the same timeframe, Hall also told her friends – again via Facebook Messenger– that she planned to milk FMLA for as long as she could and would then quit. She told friends she would never return to Life Care. Attempts to communicate with her by both Yosick and the Human Resources Specialist to determine her leave status and any other needs related to her absence proved unavailing, yet Hall notes she gratefully took two weeks of approved leave. On February 4, 2016, Hall provided partially completed FMLA paperwork to the Kansas City facility related to her absence from work. She subsequently provided different and incomplete FMLA paperwork related to an abscess she developed while already out on leave. Hall saw a physician related to the abscess on or about February 8, 2016, but the document backdates her leave to February 2, 2016.

During Hall's absence, given her expressions about being unable to face Yosick, how over the edge she felt about going before the Board of Nursing Home Administrators to explain receiving two immediate jeopardy tags, and her fear of losing her administrator's license, Life Care reached out to Hall to see if she would come in and meet with Yosick. Defendants would have proceeded as such regardless of Hall's FMLA paperwork request or if she received it. Hall agreed and came in to meet with Yosick on February 10, 2016. During the February 10, 2016, meeting, Hall voluntarily resigned her employment. As part of that resignation, Hall received a separation agreement offering her four weeks' pay and other terms. During the meeting, Hall

raised the issue of her anniversary date being the next day on February 11, 2016, and asked that her employment terminate on that date, which would afford her 10 additional vacation days. Life Care agreed with Hall and dated the agreement for February 11, 2016, which provided Hall an additional 10 days of paid vacation as she terminated her employment at Life Care.

After consulting with counsel, Hall apparently revoked the agreement within the seven-day period allowed under the Older Workers Benefit Protection Act. Despite that, Hall continued accepting the monetary payments Life Care sent in consideration for the release of claims in the separation agreement. To date, Hall has not returned the money even though she claims to have revoked the very agreement that provides for the payments.

Following her resignation, Hall told friends on Facebook, among other things, that she quit her employment and/or that she resigned from Life Care. She remained off work until around May 2016, at which time she obtained alternate employment. Her new employer subsequently terminated her employment in July 2016. After not having work for only 11 days, Hall found another, better payment job. Thereafter, Hall retired in September 2017.

4. LEGAL CLAIMS AND DEFENSES.

a. Legal Claims of Plaintiffs.

Plaintiff asserts that she is entitled to recover upon the following [theory] [alternative theories]:

1) FMLA Violations.

Defendants interfered with Plaintiff's FMLA rights by -- at a time when they knew she was on FMLA leave -- demanding that she communicate with Yosick through no other means than a live telephone call before 5:00 p.m. on February 5, 2016, and then purposely not providing Plaintiff's FMLA paperwork (received by Yosick, Corridini, and others on February 4,

2016) to Life Care's FMLA representative (Sharp), all the time knowing the absence of the paperwork was creating a discrepancy for Sharp, and denying that they had heard from Plaintiff when in fact they had (all of which was adversely affecting Plaintiff's FMLA leave). Defendants' interference also came in the form of firing Plaintiff before she had used the FMLA time she, by law, was entitled to.

Defendants retaliated against Plaintiff for her exercise of FMLA rights in late summer of 2015, and in January and February of 2016, by fabricating reasons to terminate her (first "job abandonment", then hoping she would miss the February 5 deadline, and now "immediate jeopardy" issues), pretending they didn't know where Plaintiff was or what she was doing, and then firing her for supposedly not being "dependable" because of her FMLA medical conditions and her exercise of FMLA rights (including leave).

2) ADA Violations.

Plaintiff suffered from severe anxiety and sleep apnea that substantially limited her ability to sleep and work, she had a record of these disabilities, and Life Care regarded her as being disabled. Plaintiff requested time away from work because of her disabilities in the form of her FMLA leave requests. Instead of accommodating these reasonable requests, Life Care interfered with them, acted confused about them, and ultimately fired Plaintiff instead of accommodating her.

Plaintiff had a record of having disabilities, and Life Care regarded her as disabled. Life Care fired Plaintiff because of her disabilities, her record of disabilities, and because it regarded her as disabled.

3) ADEA Violation.

Plaintiff was 61 years old when she was fired. Life Care viewed her as being

susceptible to more and more medical problems because of her advancing age, and fired her because of her age. Plaintiff was replaced by someone substantially younger than her.

b. Defenses of Defendants.²

Defendants assert the following defenses, in addition to asserting that Plaintiff cannot establish the prima facie elements of her claims or meet the burden shifting requirements:

1. Hall's claims fail because she did not suffer an adverse employment action.³
2. Hall's disability discrimination claims fail because she is not/was not a qualified individual with a disability, as defined by applicable law and regulation, and Defendants did not regard her as disabled.
3. Hall's disability discrimination claims fails for her failure to request an accommodation and/or engage in the interactive process.
4. Hall's claims fail because Defendants based any employment decisions affecting her on legitimate, non-discriminatory, non-retaliatory, and non-pretextual reasons unrelated to any protected status or the exercise of protected rights.
5. Hall has suffered no damages.
6. Hall has failed to reasonably and properly mitigate her damages with respect to her diligence in seeking other employment and her subsequent termination for cause from her subsequent employment.
7. Hall's alleged disability, age, and any other protected characteristics or activities were not factors in any action taken by Defendants. Defendants based their decisions in meeting

² Plaintiff objects to any defenses being asserted by Defendant Yosick as she did not timely file an Answer in this case, and thus has admitted all of Plaintiff's allegations in the Complaint.

³ Plaintiff objects to this defense as Life Care did not raise it as part of its Answer, and in fact admitted the opposite. *See* ¶ 30 of Answer.

with Plaintiff and the discussion during the meeting on legitimate factors/reasons other than disability and/or protected activity, and consistent with reasonable business judgment and necessity.⁴

8. Defendants would have taken the same actions regardless of any alleged protected characteristic or activity alleged by Plaintiff.

9. Yosick is not subject to individual liability under the FMLA.

10. Defendants made no decision nor took any action motivated by malice or evil motive or intent, nor were Defendants callously indifferent to Plaintiff's protected rights.

11. Life Care is an equal opportunity employer that does not discriminate or retaliate against employees on the basis of protected status, including disability, or activity.

12. Defendants are not liable for discrimination or retaliation because, among other things, Life Care had measures in place to prevent and/or correct discrimination or retaliation (e.g., policies and a multi-avenue complaint procedure). Hall failed to avail herself of such measures, thus depriving Defendants of the opportunity to take remedial measures to correct the conduct of which Hall complains.

13. Hall's absence from the facility was not attributable to her serious health conditions.

14. Hall's claims in this action are barred by estoppel and/or judicial estoppel for lack of standing to pursue her claims and based on her failure to disclose her claims against Defendants to the bankruptcy court. *See Anderson v. Seven Falls Co.*, 696 F. App'x 341 (10th Cir. 2017) (unpublished) (affirming summary judgment on judicial estoppel grounds due to plaintiff's failure to disclose lawsuit to bankruptcy estate); *Allen v. C & H Distribs., L.L.C.*, 813

⁴ Plaintiff objects to this defense being asserted without Life Care indicating what it based its

F.3d 566, 572 (5th Cir. 2015) (*quoting Flugence v. Axis Surplus Ins. Co (In re Fluegence)*), 738 F.3d 126, 129 (5th Cir. 2013)); *see also Davis v. FCA US LLC*, No. 15-13773, 2017 WL 3601946, at *5 (E.D. Mich. Aug. 22, 2017) (“Chapter 13 debtors have a continuing obligation to disclose all potential claims, including potential claims that arise post-petition while the bankruptcy is pending.”); *Eagle Well Serv., Inc. v. Cent. Power Sys. & Servs., Inc.*, No. 08-2184-CM, 2009 WL 2776878, at *1 (D. Kan. Aug. 8, 2009) (“the court finds that defendant should be allowed to assert defenses it alleged at least five months before trial and raised in the pretrial order and its motion for summary judgment.”); *Neonatal Prod. Grp., Inc. v. Shields*, 276 F. Supp. 3d 1120, 1146 (D. Kan. 2017).⁵

15. Hall lacks standing to maintain her claims as the claim belongs to the bankruptcy estate.

16. Hall’s claims are barred by the doctrine of after-acquired evidence based on deposition testimony provided regarding Hall’s work history and disclosures related to such history.⁶

decisions on.

⁵ Plaintiff objects to Life Care’s defenses listed in Paragraphs 15 and 16 as waived for not being raised as part of its Answer, and frivolous based on applicable case law. *See United States v. Harrell*, 642 F.3d 907, 918 (10th Cir. 2011) (“In addition, the doctrine of judicial estoppel is an affirmative defense.”); *Middleton-Thomas v. Piat, Inc.*, No. 17-2023-JWL, 2018 WL 836291, at *3–5 (D. Kan. Feb. 13, 2018); *Autos, Inc. v. Gowin*, 244 F. App’x 885, 889 (10th Cir. 2007) (“Since a Chapter 13 debtor is a debtor in possession, see 11 U.S.C. § 1306, Rule 6009 confirms our view that Gowin has standing to pursue the legal claims asserted here.”); *See In re Ortiz*, 430 B.R. 523 (Bankr.E.D.Wis.2010) (no judicial estoppel where debtor orally disclosed post-petition cause of action to trustee); *Jaeger v. Clear Wing Prod.*, 465 F.Supp.2d 879 (S.D. Ill 2006) (oral disclosure to trustee precluded application of judicial estoppel doctrine).

⁶ Plaintiff objects to this defense as stated inasmuch as it does not indicate what after-acquired evidence is being referred to.

17. Hall's claims are subject to release, waiver, unclean hands, and/or ratification to the extent she released her claims and/or ratified the release by accepting the benefits of the agreement. *Neonatal Prod. Grp., Inc. v. Shields*, 276 F. Supp. 3d 1120, 1146 (D. Kan. 2017).⁷

18. Hall is not entitled to any lost wages during any period she was unable or unavailable to work.

19. Defendants are not the proximate cause for any damages Hall has suffered.

20. Without conceding the burden of proof, liability, or that Plaintiff was damaged by any action of Defendants, any alleged emotional harm Hall suffered is subject to apportionment based on other stressors in her life.

21. Without conceding the burden of proof, liability, or that Hall was damaged by any actions of Defendants, Hall is not entitled to a jury trial regarding any equitable claims or equitable relief related to her claims.

22. Without conceding the burden of proof, liability, or that Hall was damaged by any actions of Defendants, Hall's claim for punitive damages is barred because the request seeks damages in violation of equal protection, and cruel and unusual punishment provisions of the United States Constitution or the Constitution of the State of Kansas.

23. Without conceding the burden of proof, liability, or that Hall was damaged by any actions of Defendants, Defendants acted in good faith and/or with reasonable grounds for believing that any conduct Hall alleges did not violate the FMLA.

24. Without conceding the burden of proof, liability, or that Hall was damaged by any actions of Defendants, Defendants have acted in good faith to comply with all applicable laws and therefore Hall is not entitled to an award of punitive, liquidated, or special damages.

5. DAMAGES AND NON-MONETARY RELIEF REQUESTED.

a. Plaintiff's Damages.

1. Plaintiff's Back Damages Calculated Through Trial

a. Benefits:

In addition to lost wages, Plaintiff utilized Defendant LCCA's benefits and thus claims as damages the lost value of these benefits. Plaintiff calculates her lost benefits at the rate of 20 percent of lost wages during her period of unemployment.

Benefits lost by Plaintiff may have included, but are not necessarily limited to, the following:

Vacation, Holiday Pay, Special Holiday, Sick Pay, Group Life Insurance, Health Insurance, Dental Insurance, Vision Insurance, Disability, Tuition Reimbursement, Annual Wellness Testing, Bonus. These damages will be calculated within the lost wages calculations below.

b. 401K

Plaintiff participated in a 401K plan during her employment with Defendant. To meet living expenses during her period of unemployment, it was necessary for Plaintiff to cash in the 401K plan. Plaintiff is seeking the lost earnings on the amount she cashed out until age 65.

This calculation is to be supplemented.

c. Back Pay during first period of unemployment:

2015 Annual Compensation:	\$103,527.23 (includes car and cell phone allowance).
Weekly equivalent:	\$1,990.91
Termination	2/11/16
Reemployment date	8/05/16
Unemployment period	32 weeks

- (1) Back pay owed for first unemployment period: \$63,709.12
- (2) Lost Benefits 20% = \$12,741.82

Back Pay (wages and benefits) first period of unemployment = \$76,450.94

d. Lost wages on account of Cost of Living considerations

⁷ Plaintiff objects to these defenses as they were not raised as part of Life Care's Answer.

Although Plaintiff became reemployed on 8/05/16 at a salary of \$106,000.00, she claims damages based on the cost of living difference using the Locality Pay Rates of Kansas City (15.59) and Seattle/Tacoma (24.24).

<u>Region</u>	<u>Rate</u>	<u>Compensation</u>	<u>“Base”</u>
Kansas City	15.59	\$103,527.23	\$89,563.98
Seattle/ Tacoma	24.24	\$106,000.00	\$85,318.74
Difference per year		\$4,245.24	
Difference per week		\$81.64	
Reemployment date		8/05/16	
End of Seattle/Tacoma Reemployment		8/24/17	

55 weeks at \$81.64 per week

Lost Wages (Cost of Living) \$4,490.20

e. Back Pay during second period of unemployment:

End of Reemployment	8/24/17
Trial date	9/04/18
Number of weeks	54
Weekly LCCA compensation (as indicated above)	\$1,990.91

(1) Back pay owed for second period of unemployment: \$107,509.14

(2) Lost benefits for second period of unemployment: \$21,501.83

Back Pay (wages and benefits) 2nd period of unemployment = \$129,010.97

TOTAL BACK PAY DAMAGES (c, d, e): \$209,952.11

2. Plaintiff’s Claim for Front Pay Damages:

Plaintiff is claiming front pay damages for a one-year period after the trial, at which time Plaintiff will be 65 years old:

\$1,990.91 X 52 weeks, 20% of \$103,527.32 for lost benefits is \$20,705.46

TOTAL FRONT PAY DAMAGES: \$124,232.78

3. Plaintiff's Miscellaneous Damages

Plaintiff was required to apply for licensure in numerous states in which her new employer conducts business. In addition, Plaintiff is maintaining licensure with the State of Kansas. Plaintiff estimates this damage to be: **\$1,050.00.**

Plaintiff also claims as damages the expenses incurred in her employment search and relocation. These expenses include a storage unit, rent and house payment, airfare, and hotel for relocation. Plaintiff currently estimates these expenses at **\$6,000.00.**

TOTAL MISC. DAMAGES: \$7,050

1. Economic Damages:

BACK PAY (INCL. BENEFITS)	<u>\$209,952.11</u>
FRONT PAY (INCL. BENEFITS)	<u>\$124,232.78</u>
MISC.	<u>\$7,050.00</u>
401K DAMAGES	TBD

TOTAL 341,234.89

2. Emotional Distress Damages: To be determined by jury.
3. Punitive Damages. To be determined by jury.
4. Liquidated Damages for FMLA: \$341,234.89
5. Liquidated Damages for ADEA: \$341,234.89
6. Reinstatement to former or equivalent position.
7. Attorney's Fees: Expected to exceed \$150,000.
8. Costs of this action.
9. Prejudgment and Post-judgment Interest.

b. Defendants' Damages.

Defendants deny that Hall has suffered damages of any kind by any act or omission of Defendants and further deny Hall is entitled to recovery of any damages or other relief.

Defendants' seek the return of the monetary remuneration Plaintiff received from the separation agreement she signed and avers that she revoked under contract principles. Defendants also seek to recover their costs if successful in the defense of this matter, as determined by the Court.

c. Non-Monetary Relief Requested, if any.

Estoppel for lack of standing under Fed. R. Civ. P. 12(b)(1).⁸

6. AMENDMENTS TO PLEADINGS.

Defendants seek to answer on behalf of Yosick (Doc. 78).

7. DISCOVERY.

Under the scheduling order and any amendments, all discovery should have concluded by March 2, 2018. Discovery is incomplete, in that the parties have agreed only that Plaintiff may depose Annette Sharp and Life Care, subject to agreement on the previously noticed Rule 30(b)(6) topics, out of time. Plaintiff has also requested the deposition of Life Care in-house counsel Theodore Lu, based on documents just produced, which indicate he was directly involved in connection with Plaintiff's FMLA leave. Defendants object to Plaintiff taking the deposition on the basis of attorney-client privilege and timely objections on the basis of such privilege made during deposition questioning intended to invade the privilege.

Unopposed discovery may continue after the deadline for completion of discovery so long as it does not delay the briefing of or ruling on dispositive motions or other pretrial preparations. Although discovery may be conducted beyond the deadline for completion of

⁸ Plaintiff objects as this defense is not allowed per 10th Circuit Law: *Autos, Inc. v. Gowin*, 244 F. App'x 885, 889 (10th Cir. 2007) ("Since a Chapter 13 debtor is a debtor in possession, see 11 U.S.C. § 1306, Rule 6009 confirms our view that Gowin has standing to pursue the legal claims asserted here.").

discovery if all parties are in agreement to do so, under these circumstances the court will not be available to resolve any disputes that arise during the course of such extended discovery.

8. MOTIONS.

a. Pending Motions.

Plaintiff's Motion to Enforce Discovery and Suggestions in Support filed January 12, 2018 (Doc. 58).

Plaintiff's Motion for Fees, Expenses, and Sanctions (Doc. 75)

Defendants' Motion for Leave to File Answer Out of Time (Doc. 78)

b. Additional Pretrial Motions.

After the pretrial conference, the parties intend to file the following motions:

Dispositive motions.

The dispositive-motion deadline, as established in the scheduling order and any amendments, is **March 30, 2018**.

The parties should follow the summary-judgment guidelines available on the court's website:

<http://ksd.uscourts.gov/wp-content/uploads/2015/10/Summary-Judgment-Guidelines.pdf>

Consistent with the scheduling order filed earlier in this case, the arguments and authorities section of briefs or memoranda must not exceed 30 pages, absent an order of the court.

c. Motions Regarding Expert Testimony. Not applicable, i.e., the parties have stipulated that no expert testimony will be used in this case.

9. TRIAL.

The trial docket setting, as established in the scheduling order and any amendments, is

September 4, 2018, at 9:00 a.m., in Kansas City, Kansas. This case will be tried by jury. The court will attempt to decide any timely filed dispositive motions approximately 60 days before trial. If no dispositive motions are timely filed, or if the case remains at issue after timely dispositive motions have been decided, then the trial judge will convene another pretrial conference to discuss, among other things, the setting of deadlines for filing final witness and exhibit disclosures, exchanging and marking trial exhibits, designating deposition testimony for presentation at trial, motions in limine, proposed instructions in jury trials, and proposed findings of fact and conclusions of law in bench trials.

IT IS SO ORDERED.

Dated _____, 2018, at _____, Kansas.

KENNETH G. GALE
U. S. Magistrate Judge

Approved by:

/s/ Patrick Reavey

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