

No. 26-

In the Supreme Court of the United States

RADIAL U.S.A., INC.,

Petitioner,

v.

GARY T. RAMADEI.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE SECOND CIRCUIT

Petition for Writ of Certiorari

MICHELLE S. KALLEN
Steptoe LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

STEPHEN E. HUGHES
Kiernan Trebach LLP
40 Court St.
Boston, MA 02108

ANDREW BUTZ
Kiernan Trebach LLP
1776 Eye St. NW, Ste 600
Washington, D.C. 20006

Counsel for Petitioner

CONOR TUCKER
Counsel of Record
Steptoe LLP
633 W. 5th St., Ste 1900
Los Angeles, CA 90071
(213) 439-9400
ctucker@steptoe.com

QUESTIONS PRESENTED

The Family and Medical Leave Act has been interpreted to permit claims alleging retaliation. The statute applies nationwide, but the causation standard for retaliation claims now depends on geography. The First, Second, Third, Eighth, and Ninth Circuits have held that the FMLA only requires that protected activity was a “negative” or “motivating” factor of an adverse employment action, with the Second and Third Circuits expressly deferring to Department of Labor regulations under *Chevron U.S.A. Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The Eleventh and Fourth Circuits instead interpret the statute, without deference, to require but-for causation. The Sixth and Seventh Circuits have panel decisions going both ways. The district court, at summary judgment and at trial, applied the then-controlling causation standard in the Second Circuit, which defers to regulations under *Chevron*. After trial below, this Court overruled *Chevron* in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). On appeal, petitioner argued that *Loper Bright* required revisiting the Second Circuit’s prior controlling causation standard, and the issue was fulsomely briefed and argued by both sides, but the Second Circuit refused to address the question.

1. The first question presented is: whether the text of the FMLA, including 29 U.S.C. §2615 and §2617, requires plaintiffs to prove that exercise of rights under the FMLA was the but-for cause of an adverse employment action, or whether courts should defer to the Department of Labor’s lesser standard of causation in 29 C.F.R. §825.220(c).

2. The second question presented is: whether a court of appeals may refuse to decide, on waiver or forfeiture grounds, a purely legal challenge to circuit precedent when an intervening decision of this Court fundamentally alters the governing legal framework after trial but before appellate review, when raising the argument in the trial court was futile because it was foreclosed by binding circuit precedent, and when the issue was raised and fully briefed at the first non-futile opportunity on appeal.

**PARTIES TO THE PROCEEDINGS AND
CORPORATE DISCLOSURE STATEMENT**

1. Petitioner Radiall USA, Inc., was defendant in the district court and defendant-appellant in the Second Circuit.

2. Respondent Gary Ramadei, an individual, was plaintiff in the district court and plaintiff-appellee in the Second Circuit.

3. Petitioner Radiall USA, Inc., is a privately held company incorporated in Arizona. It is owned by privately held Radiall America, Inc., incorporated in Delaware, which is a subsidiary of Radiall SA, a privately held company incorporated in the French Republic. No publicly held company owns 10% or more of Radiall USA, Inc. stock.

RELATED PROCEEDINGS

United States District Court (D. Conn.)

Ramadei v. Radiall USA, Inc., No. 3:21-cv-01435 (Sept. 16, 2024)

United States Court of Appeals (2d Cir.)

Radiall USA, Inc. v. Ramadei, No. 25-587-cv (April 30, 2026)

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT	iii
RELATED PROCEEDINGS	iii
TABLE OF APPENDICES	vi
TABLE OF AUTHORITIES.....	viii
INTRODUCTION.....	1
OPINIONS BELOW	3
JURISDICTION	4
STATUTORY PROVISIONS INVOLVED	4
STATEMENT	5
A. Statutory and regulatory background	5
B. Ramadei’s dispute with Radiall	6
C. Procedural history	6
1. Summary judgment	7
2. Trial and post-trial motions.....	8
3. Radiall’s appeal	9
REASONS FOR GRANTING THE PETITION	11
I. The Court should grant review to resolve an intractable conflict among the courts of appeals on the FMLA’s causation standard.	12
A. Courts disagree on the appropriate causation standard for FMLA retaliation. .	13

B. The Second Circuit is wrong: the FMLA requires showing but-for causation.	20
C. The question is important, recurring, and will not resolve itself	23
D. This case presents a clean vehicle.	25
II. Review is warranted to ensure that intervening Supreme Court authority receives full effect in the lower courts.....	27
A. The Second Circuit improperly refused to reach a purely legal challenge to circuit precedent when the district court was powerless to act and the issue was fully briefed on appeal.	28
B. Review is uniquely warranted in light of the danger of undermining <i>Loper Bright</i> . ..	32
C. The Court often grants certiorari to stop misapplied preservation rules from distorting appellate review.	33
CONCLUSION	35

TABLE OF APPENDICES

	Page
APPENDIX A: Opinion of the United States Court of Appeals for the Sec- ond Circuit (March 19, 2026).....	1a
APPENDIX B: Ruling on Motion of the United States District Court for the District of Connecticut (February 10, 2025)	9a
APPENDIX C: Ruling on Motion of the United States District Court for the District of Connecticut (September 16, 2024)	35a
APPENDIX D: Judgment of the United States District Court for the District of Connecticut (September 16, 2024)	75a
APPENDIX E: Verdict Form of the United States District Court for the District of Connecticut (December 8, 2023)	77a
APPENDIX F: Jury Charge — Motivating Factors of the United States District Court for the District of Connecticut (December 8, 2023)	80a
APPENDIX G: Ruling on Defendant’s Motion of the United States District Court for the District of Con- necticut (September 8, 2023).....	84a

APPENDIX H: Order of the United States Court of Appeals for the Sec- ond Circuit (April 30, 2026).....	112a
APPENDIX I: Relevant Provisions Involved	113a
29 U.S.C . §2614.....	113a
29 U.S.C . §2615	119a
29 U.S.C . §2617	120a
29 C.F.R . §825.220.....	126a

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Ahmed v. Hamtramck Public Schools</i> , 178 F.4th 975 (6th Cir. 2026)	19
<i>Anderson v. Nations Lending Corp.</i> , 27 F.4th 1300 (7th Cir. 2022)	18
<i>Arban v. West Publishing Corp.</i> , 345 F.3d 390 (6th Cir. 2003)	19
<i>Bachelder v.</i> <i>America West Airlines, Inc.</i> , 259 F.3d 1112 (9th Cir. 2001)	16
<i>Carr v. Saul</i> , 593 U.S. 83 (2021)	28, 29, 30, 35
<i>Chase v. United States Postal Service</i> , 843 F.3d 553 (1st Cir. 2016)	15
<i>Chevron U.S.A. Inc. v. Natural</i> <i>Resources Defense Council, Inc.</i> , 467 U.S. 837 (1984)	1, 2, 9, 10, 12–17, 22, 23, 32, 33
<i>Chitwood v.</i> <i>Ascension Health Alliance</i> , 168 F.4th 493 (7th Cir. 2026)	19, 23, 24
<i>Coleman v. Children’s Hospital</i> <i>of Philadelphia</i> , No. 23-3064, 2024 WL 4490602 (3d Cir. Oct. 15, 2024)	23, 24

<i>Comcast Corp. v. National Association of African American-Owned Media</i> , 589 U.S. 327 (2020).....	2, 10, 12, 22
<i>Curtis Pub. Co. v. Butts</i> , 388 U.S. 130 (1967).....	31, 32
<i>Davis v. United States</i> , 589 U.S. 345 (2020).....	28, 33, 34
<i>Decou-Snowton v. Jefferson Parish</i> , No. 24-30079, 2024 WL 4879466 (5th Cir. Nov. 25, 2024).....	23, 24
<i>Dupree v. Younger</i> , 598 U.S. 729 (2023).....	27, 29–31, 33–35
<i>Egan v. Delaware River Port Authority</i> , 851 F.3d 263 (3d Cir. 2017)	5, 14, 15, 21
<i>Evans v. Cooperative Response Center, Inc.</i> , 996 F.3d 539 (8th Cir. 2021).....	16
<i>Fry v. Rand Construction Corp.</i> , 964 F.3d 239 (4th Cir. 2020).....	17, 18
<i>Gross v. FBL Financial Services, Inc.</i> , 557 U.S. 167 (2009).....	1, 2, 12, 14, 15, 19, 20, 22, 23
<i>Hannah P. v. Haines</i> , 80 F.4th 236 (4th Cir. 2023)	18
<i>Highmark Inc. v. Allcare Health Mgmt. Sys.</i> , 572 U.S. 559 (2014).....	25

<i>Hodgens v. General Dynamics Corp.</i> , 144 F.3d 151 (1st Cir. 1998)	15
<i>Kirkland-Hudson v.</i> <i>Mount Vernon City School District</i> , No. 21-CV-695, 2024 WL 4277940 (S.D.N.Y. Sept. 23, 2024)	27
<i>Lapham v. Walgreen Co.</i> , 88 F.4th 879 (11th Cir. 2023), cert. denied 145 S.Ct. 162 (2024)	5, 16, 17, 19
<i>Lewis v. Sch. Dist. #70</i> , 523 F.3d 730 (7th Cir. 2008).....	18
<i>Lohmeier v.</i> <i>Gottlieb Memorial Hospital</i> , 147 F.4th 817 (7th Cir. 2025)	19
<i>Loper Bright Enterprises v. Raimondo</i> , 603 U.S. 369 (2024).....	2, 9, 11, 12, 22–24, 26, 27, 31–34
<i>Marez v.</i> <i>Saint-Gobain Containers, Inc.</i> , 688 F.3d 958 (8th Cir. 2012).....	16
<i>Marshall v.</i> <i>The Rawlings Company LLC</i> , 854 F.3d 368 (6th Cir. 2017).....	19
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973).....	7
<i>Mehta v. DLA Piper LLP</i> , No. 23CIV4757, 2025 WL 2771659 (S.D.N.Y. Sept. 29, 2025)	23–24, 25

<i>Phillips v. New Millennium Building Sys., LLC</i> , No. 20-2095, 2022 WL 2188405 (4th Cir. June 17, 2022)	18
<i>Pulczynski v. Trinity Structural Towers, Inc.</i> , 691 F.3d 996 (8th Cir. 2012)	16
<i>Rosales-Mireles v. United States</i> , 585 U.S. 129 (2018)	34
<i>Rouse v. Wynn Las Vegas, LLC</i> , 829 Fed. Appx. 746 (9th Cir. 2020)	16, 25
<i>Sharp v. Profitt</i> , 674 Fed. Appx. 440 (6th Cir. 2016)	19
<i>Singleton v. Wulff</i> , 428 U.S. 106 (1976)	27
<i>Thompson v. Gold Medal Bakery, Inc.</i> , 989 F.3d 135 (1st Cir. 2021)	15, 25
<i>Trahanas v. Northwestern University</i> , 64 F.4th 842 (7th Cir. 2023)	18
<i>United States v. Games-Perez</i> , 695 F.3d 1104 (10th Cir. 2012)	31
<i>United States v. Olano</i> , 507 U.S. 725 (1993)	27, 31, 32
<i>United States v. Sineneng-Smith</i> , 590 U.S. 371 (2020)	27
<i>United States v. Wells</i> , 519 U.S. 482 (1997)	26

<i>University of Texas Southwestern Medical Center v. Nassar,</i> 570 U.S. 338 (2013).....	1, 10, 12–23, 25
<i>Woods v. START Treatment & Recovery Ctrs.,</i> 864 F.3d 158 (2d Cir. 2017)	8, 10, 11, 13, 14, 17, 21–23, 26, 27, 32

Statutes and Regulations:

28 U.S.C.	
§1254.....	4
§1331.....	4
§1367.....	4
§1291.....	4
29 U.S.C.	
§2612.....	5
§2614.....	4, 5
§2615.....	5, 6, 14, 15, 17, 20
§2617.....	4, 5, 20
42 U.S.C. §2000e-2(m).....	21
29 C.F.R.	
§825.220.....	1, 4, 5, 8, 12, 13, 15, 16, 18, 19

Other Authorities:

Susan Wiltsie and Theanna Bezney, “Federal Courts Raise the Bar on Employee FMLA Retaliation Claims,” BLOOMBERG LAW (Apr. 2, 2025).....	24
--	----

INTRODUCTION

This petition presents an acknowledged and entrenched conflict among the courts of appeals over a question that governs a frequently litigated statute covering millions of American workers: what a plaintiff must prove to establish causation on a damages claim of retaliation under the Family and Medical Leave Act. On one side, the First, Second, Third, Eighth, and Ninth Circuits hold that an employee need show only that FMLA-protected leave was a “negative” or “motivating” factor in an adverse employment action. On the other side, the Fourth and Eleventh Circuits require the employee to prove that the exercise of FMLA rights was the but-for cause of the challenged action. Different panels within the Sixth and Seventh Circuits go different ways. The upshot is a regime in which identical FMLA claims, on identical facts, stand or fall based on the courthouse in which they are filed.

This division rests on a now-defunct foundation. The circuits that accept less than but-for causation reached that result by relying on a Department of Labor (DOL) regulation providing that an employer may not “use the taking of FMLA leave as a negative factor in employment actions” (29 C.F.R. §825.220(c)), usually by deferring to that interpretation under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The circuits that demand but-for causation, by contrast, apply this Court’s repeated instruction that statutes sounding in tort are presumed to incorporate but-for causation absent an affirmative indication otherwise. See *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013); *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167

(2009), *Comcast Corp. v. National Association of African American-Owned Media*, 589 U.S. 327 (2020). The conflict is a direct byproduct of *Chevron* deference to an agency’s statutory interpretation.

That makes this case a compelling vehicle with ideal timing. The district court applied the Second Circuit’s established “negative factor” causation standard to deny summary judgment and, at trial, instructed the jury on that standard. Then, after summary judgment and trial, but before Radiall’s appeal, this Court decided *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). That decision overruled *Chevron* and restored to the courts the duty to interpret statutes. And, although *Loper Bright*’s logic took away the basis for the majority rule on FMLA causation, when Radiall asked the Second Circuit to address the issue, the court refused. Instead, notwithstanding full briefing by both parties regarding this Court’s intervening *Loper Bright* decision, the Second Circuit held that Radiall had failed to preserve the issue.

That refusal supplies the second question presented and independently warrants review. The Second Circuit reasoned that Radiall had invited the error by not challenging the controlling causation standard at summary judgment or trial—before this Court decided *Loper Bright*. And it blamed Radiall for not predicting, in its post-trial motions, *Loper Bright*’s application to the FMLA mere months after *Loper Bright* was handed down. Because a party cannot voluntarily relinquish an argument that intervening law had not yet made available, it neither waives nor forfeits a purely legal challenge by raising it on appeal at the first opportunity for a court to grant relief. This

Court has repeatedly reversed courts of appeals that erect preservation traps to avoid deciding purely legal questions. The ruling below is worse: it demands a futile gesture before a powerless tribunal and then treats the omission as a reason to shield outdated precedent from review.

The stakes here are neither abstract nor isolated. The FMLA governs many millions of American workers (including governmental employees) and the employers who hire them. Retaliation claims arise in every circuit and the causation standard determines whether claims survive summary judgment, how juries are instructed, and the extent of damages.

This case proves the point. Applying the “motivating factor” standard, the district court sent Ramadei’s FMLA claim to a jury while his ADEA claims, governed by but-for causation, were dismissed at summary judgment. That resulted in a judgment exceeding \$770,000 even though the jury found that Radiall had acted in good faith. Had the correct standard applied, this case would have ended before trial.

Two important questions converge in this petition: whether the FMLA requires proof of but-for causation, and whether a court of appeals may invoke preservation doctrine to avoid a purely legal challenge to precedent that intervening authority from this Court has undermined. Only this Court can resolve them, and it should grant this petition.

OPINIONS BELOW

The district court’s September 8, 2023, order denying-in-part petitioner’s motion for summary judgment (App.84a–111a) is unpublished, but is available at 2023 WL 5831883.

The district court's September 16, 2024, order granting respondent's post-trial motions for damages and attorney's fees (App.35a–74a) is unpublished, but is available at 2024 WL 4198326.

The district court's February 10, 2025, order denying petitioner's post-trial motions (App.9a–34a) is unpublished, but is available at 2025 WL 444398.

The Second Circuit's March 19, 2026, summary order (App.1a–8a) is unpublished, but is available at 2026 WL 772851.

The April 30, 2026, order denying petitioner's petition for rehearing or rehearing en banc is reproduced in the Appendix. App.112a.

JURISDICTION

The courts below had jurisdiction under 28 U.S.C. §1331, §1367, and §1291. This Court has jurisdiction under 28 U.S.C. §1254.

The Court of Appeals for the Second Circuit issued its opinion on March 19, 2026, and denied rehearing or rehearing en banc on April 30, 2026. On July 10, 2026, Justice Sotomayor granted petitioner's application to extend time to petition for a writ of certiorari until September 28, 2026.

STATUTORY PROVISIONS INVOLVED

The following statutory provisions and regulations are reproduced in the Appendix: 29 U.S.C. §2614 (App.113a–118a); 29 U.S.C. §2615 (App.119a); 29 U.S.C. §2617 (App.120a–125a); and 29 C.F.R. §825.220 (App.126a–128a).

STATEMENT

A. Statutory and regulatory background

The FMLA entitles eligible employees to take unpaid, job-protected leave for family and medical reasons. 29 U.S.C. §2612. While on leave, the employer must maintain the employee’s health coverage and, after leave, must restore the employee to the same or equivalent job and benefits. §2614(a)(1), (c). Eligible employees’ entitlements are subject to statutory “[l]imitations,” including that restored employees are not entitled to “any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.” §2614(a)(3).

The lower courts interpret Section 2615(a) to provide a cause of action to employees retaliated against for exercising rights under the FMLA. *E.g.*, *Egan v. Delaware River Port Authority*, 851 F.3d 263, 271–273 & n.3 (3d Cir. 2017) (subd.(a)(1) prohibits retaliatory discharge); *Lapham v. Walgreen Co.*, 88 F.4th 879, 890–891 & n.15 (11th Cir. 2023), cert. denied 145 S.Ct. 162 (2024) (subd.(a)(2) prohibits retaliatory discharge claims). An employee may, in addition to “equitable relief,” seek “damages equal to the amount of any * * * compensation denied or lost to such employee by reason of the violation” or, if no such losses occurred, “any actual monetary losses sustained by the employee as a direct result of the violation.” §2617(a)(1)(A)(i)(I), (II).

DOL regulations interpret the FMLA to prohibit employers from “us[ing] the taking of FMLA leave as a negative factor in employment actions * * *.” 29 C.F.R. §825.220(c).

B. Ramadei's dispute with Radiall

Radiall USA, LLC employed Gary Ramadei as Facility Manager. App. 86a. By 2018, because of reduced needs related to changes in Radiall's manufacturing operations, Radiall began a reduction in force that included changing facilities, reducing staff, and adjusting job responsibilities. App.86a–88a. Part of that plan included transitioning the Facility Manager's duties to existing managers and a new entry-level Maintenance Associate position. App.89a–91a. Financial adversity caused by the COVID-19 pandemic led Radiall to expand plans to reduce staffing and other costs, including phasing out the Facility Manager position before October 2020. App.89a–90a. By mid-October, Radiall had hired a qualified Maintenance Associate. App.91a.

On September 8, 2020, Ramadei left work feeling ill. App.90a. His symptoms worsened and he was admitted to the hospital for pulmonary embolisms. App.90a. He was released on September 15 and used pre-planned leave to recuperate at home until September 28, when he returned to the same position and salary. App.90a. After the maintenance associate started work in mid-October, Radiall informed Ramadei that his position had been eliminated in the reduction in force. App.91a. He remained for four weeks to assist with the transition. *Ibid.*

C. Procedural history

Ramadei sued Radiall, alleging four age-discrimination claims (two under the Age Discrimination in Employment Act (ADEA), and two under Connecticut law) and one retaliation count under the FMLA. App.92a.

1. Summary judgment

Radiall moved for summary judgment on all five claims. The district court evaluated Radiall’s motion with respect to each claim under the burden-shifting framework articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). App.93a–94a, 103a. First, the employee must prove a *prima facie* case of retaliation. Cf. *McDonnell Douglas*, 411 U.S. at 802. If they do, the employer can proffer a legitimate, nonretaliatory reason for the adverse action. *Id.* 802–803. If the employer does, then the employee must demonstrate that the proffered reason is pretext for retaliation. *Id.* 804–805.

The district court dismissed all age discrimination claims, but denied summary judgment on Ramadei’s FMLA claims. App.110a.

Ramadei’s State Age Discrimination Claims. Under Connecticut law, Ramadei need only “prove that age discrimination was a motivating factor behind the adverse action, not that the adverse action could not have occurred without it.” App.94a–95a. The district court found that Ramadei had sufficient evidence for his *prima facie* case to survive. App.95a–97a. It also found that Radiall “easily clear[ed] th[e] hurdle” of showing a legitimate, nondiscriminatory reason for Ramadei’s termination: Radiall’s “broader cost-cutting strategy in the wake of the COVID-19 pandemic, which impacted Radiall’s finances.” App.97a–98a. However, Ramadei could not “meaningfully call into question Radiall’s core rationale for his termination—that it no longer required a highly skilled, management-level employee to do the facilities work.” App.99a. The district court granted summary judgment to Radiall. App.102a–103a.

Ramadei’s ADEA Claims. The ADEA has “a higher ‘but-for’ causation standard” than Ramadei’s Connecticut age discrimination claims. App.103a (quotation omitted). The district court granted summary judgment “[b]ecause Ramadei has not provided evidence sufficient to demonstrate pretext under [Connecticut’s] lower causation standard, [so] his claims under the ADEA must also fail.” App.103a.

Ramadei’s FMLA Claim. The district court applied then-controlling circuit authority that “a plaintiff need only show that his FMLA-protected leave was a motivating factor in his termination, rather than a but-for cause,” as under the ADEA. App.104a (citing *Woods v. START Treatment & Recovery Ctrs.*, 864 F.3d 158, 168–169 (2d Cir. 2017)). The district court held that Ramadei “met each element of his *prima facie* case” and that “changing business needs and the financial impact of COVID-19” both “constitute legitimate, nonretaliatory reasons” for Ramadei’s termination. App.107a. Still, the district court held that, because of the timing of Ramadei’s firing and alleged “inconsistent” explanations as to when the decision to terminate Ramadei became final, “Ramadei’s sudden use of FMLA-protected leave” could have “played a motivating role in Radiall’s decision.” App.110a.

2. Trial and post-trial motions

Trial occurred in early December 2023. Again, the causation standard in the Second Circuit, which deferred to DOL’s interpretation of the FMLA at 29 C.F.R. §825.220(c), only required Ramadei to prove that his FMLA-protected leave was a motivating factor in his termination under *Woods*. App.77a–78a, 80a–83a. So, consistent with its summary judgment

order (App.110a), the district court instructed the jury that Ramadei only needs to show that “termination of his employment was motivated, at least in part, by his medical leave” (App.78a, 83a).

The jury found that Radiall “acted in good faith” and had reasonable grounds to believe it was not violating the FMLA when terminating Ramadei. App.79a (Question 5). Regardless, it found Ramadei’s termination was motivated at least in part by his medical leave and awarded Ramadei approximately \$187,000 in economic damages. App.78a (Question 2).

The district court denied Radiall’s motion for a new trial and granted Ramadei additional damages, including attorneys’ fees, bringing the total judgment to over \$770,000. App.34a, 75a–76a.

3. Radiall’s appeal

More than six months after trial here, this Court decided *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Although *Loper Bright* overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Court did “not call into question prior cases that relied on the *Chevron* framework.” *Loper Bright*, 603 U.S. at 412. Those cases remained “statutory *stare decisis*” and “[m]ere reliance on *Chevron* cannot constitute a ‘special justification’ for overruling such a holding.” *Loper Bright*, 603 U.S. at 412. In other words, departing from existing circuit precedent requires judicial action. *Id.* 412–413.

On appeal, Radiall argued that, after *Loper Bright*, the Second Circuit should overrule its prior deference under *Chevron* to DOL’s interpretation of the FMLA and hold that Ramadei must show that his FMLA

leave was the “but-for” cause of his termination. App.3a. *Woods*, Radiall argued, should be overruled not merely because of its reliance on *Chevron*, but also because *Woods* was inconsistent with this Court’s precedents, including *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013).

In *Nassar*, this Court interpreted the causation standard for the antiretaliation provisions of Title VII. It found that “Title VII retaliation claims must be proved according to traditional principles of but-for causation,” not some “lessened causation test.” *Nassar*, 570 U.S. at 360. That conclusion flowed both from the “background against which Congress legislated in enacting Title VII” and from the provision’s text. *Id.* 347, 351–352. As to background, the “textbook tort law” concept of but-for causation was the “default rule[]” that Congress “is presumed to have incorporated, absent an indication to the contrary in the statute itself.” *Id.* 347. And as to text, while the anti-discrimination provision indicated an intent to depart from the default rule (*id.* 348–349), the text of the anti-retaliation provision did not (*id.* 351–352). But-for causation was thus required to prove retaliation under Title VII. Years later, the Court again confirmed that the “ancient and simple ‘but for’ common law causation test * * * supplies the ‘default’ or ‘background’ rule against which Congress is normally presumed to have legislated”. *Comcast Corp. v. National Association of African American-Owned Media*, 589 U.S. 327, 332 (2020).

Radiall thus argued that absent any *Chevron* deference, under the “default rule[]” identified by *Nassar*, the FMLA required proof of but-for causation, which Ramadei could not provide. The parties fulsomely

briefed the issue of overruling *Woods* on this basis. Radiall C.A. Br. at 20–45; Ramadei C.A. Br. at 37–38, 44–61; Radiall C.A. Reply Br. at 1–27; No. 25-587 Dkts. 55, 57, 62, and 69 (2d Cir.).

The Second Circuit declined to revisit *Woods* for two reasons. First, although *Woods* was controlling precedent at trial and *Loper Bright* had not yet been decided, the Second Circuit asserted that Radiall had waived the issue by “invit[ing] the error it complains of.” App.3a. Second, it held that Radiall forfeited the issue by failing to raise *Loper Bright* in Radiall’s post-trial motions, filed three months after *Loper Bright* was decided. App.4a. The panel held that the district court’s instruction under *Woods* was not plain error because the cases Radiall relied upon (including *Nassar*) “interpreted other statutes” and “neither the Supreme Court nor we have addressed the implications of [those] three cases for FMLA retaliation claims.” App.4a–5a.

Radiall sought rehearing and rehearing en banc, which was denied on April 30, 2026. App.112a.

On July 10, 2026, Justice Sotomayor granted Radiall’s application to extend the time to file a petition for a writ of certiorari to September 28, 2026.

This petition follows.

REASONS FOR GRANTING THE PETITION

This petition presents two issues that warrant certiorari. *First*, the courts of appeals are deeply divided over whether FMLA retaliation claims require but-for causation. *Second*, the Second Circuit improperly invoked preservation principles to shield its prior statutory interpretation after this Court’s intervening decision altered the legal framework.

I. The Court should grant review to resolve an intractable conflict among the courts of appeals on the FMLA’s causation standard.

There is a conflict among the circuit courts of appeal on the first question presented in this case. On one side, the First, Second, Third, Eighth, and Ninth Circuits have held that something less than but-for causation suffices. These circuits have generally deferred under *Chevron* to DOL’s interpretation of the FMLA, as reflected in 29 C.F.R. §825.220(c). On the other side, the Fourth and Eleventh Circuits apply the traditional but-for causation standard required by this Court’s decisions in *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013), *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), and *Comcast Corp. v. National Association of African American-Owned Media*, 589 U.S. 327 (2020). These circuits generally reject *Chevron* deference. Other circuits, such as the Sixth and Seventh Circuits, have internally inconsistent decisions of panels going both ways.

Only this Court can remedy that confusion. It should reverse the Second Circuit below. While prior precedent applying *Chevron* deference must be respected as “statutory *stare decisis*” and reliance on *Chevron*, alone, does not require reversal (see *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412–413 (2024)), multiple courts have since explained how the Second Circuit’s interpretation of the FMLA’s text was untenable. The Second Circuit should not be permitted to shield such precedent from scrutiny.

A. Courts disagree on the appropriate causation standard for FMLA retaliation.

The federal courts of appeals have decided the first question presented in directly conflicting ways, warranting review. Rule 10.

1. Deferring to agency interpretations under *Chevron*, five circuits permit causation to be proven by something less than but-for causation, so long as FMLA-protected leave was a so-called “negative” or “motivating” factor.

Second Circuit. In *Woods v. START Treatment & Recovery Centers, Inc.*, 864 F.3d 158 (2d Cir. 2017), the Second Circuit deferred under *Chevron* to Department of Labor DOL regulations and held that FMLA retaliation claims do not require but-for causation. Cassandra Woods was fired for poor job performance while on probation. *Id.* 163. Woods suffered from severe anemia, which had required her hospitalization twice during probation. *Ibid.* Twelve days after returning to work after her second hospitalization, her manager recommended terminating her and she was terminated a week later. *Id.* 164.

The district court reasoned that *Nassar* required Woods to prove that her FMLA-protected activity was the but-for cause of her termination. *Woods v. START Treatment & Recovery Centers, Inc.*, No. 13-cv-4719, 2016 WL590458, *6–*8 (E.D.N.Y. Feb. 11, 2016). It rejected deference to regulations that “employers cannot use the taking of FMLA leave as a negative factor,” because “those regulations do not override the language of the statute.” *Ibid.* (first quoting 29 C.F.R. §825.220(c)). As the district court noted, this “Court in *Nassar* explicitly declined to defer to ‘longstanding

agency views’ of the” EEOC. *Id.* 6 (quoting *Nassar*, 570 U.S. at 360).

The Second Circuit reversed. In its view, DOL’s interpretation controlled. In the “first step of the *Chevron* analysis,” it found the statute ambiguous or silent: “Section 2615(a)(1) * * * makes no mention of a motivating factor test, and unlike the statutes in *Nassar* and *Gross*, it lacks any indicia of Congress’s intent to create ‘but-for’ causation—words like ‘because’ or ‘by reason of.’” 864 F.3d at 168. Acknowledging that *Nassar* “sa[ys] that Congress must indicate when it intends to depart from the default tort rule of ‘but for’ causation,” the *Woods* court nevertheless reasoned that “Congress has chosen to remain silent on the causation issue * * * and has instead delegated a statutory gap-filling function to the Secretary of Labor.” *Ibid.* So, under “step two,” because the “Department’s interpretation is reasonable,” it controlled. *Id.* 169. Thus, “a ‘negative factor’ causation standard” applied to “FMLA retaliation claims.” *Ibid.*

Third Circuit. Contemporaneously, the Third Circuit reached the same result. *Egan v. Delaware River Port Authority*, 851 F.3d 263 (3d Cir. 2017). The plaintiff took intermittent FMLA leave for migraines and was terminated when his position was eliminated. *Id.* 267–268. The trial court refused a mixed-motive jury instruction and the jury found for the employer. *Id.* 268–269.

The Third Circuit vacated. That court first addressed whether the FMLA authorized a retaliation cause of action and, if so, its requirements. *Id.* 270–273. It held that section 2615(a)(1)—the “interference provision”—was ambiguous and permissibly interpreted by DOL regulations to provide a cause of action

for retaliation. *Id.* 272–273. Turning to causation, the Third Circuit first distinguished *Gross* and *Nassar* as dealing with “because of” statutory language that was absent from section 2615. *Ibid.* It then held that the “FMLA interference provision * * * does not provide a causation standard and thus does not unambiguously require the use of ‘but-for’ causation.” *Id.* 273. “Section 825.220(c) fills in that gap.” *Ibid.* And because “[w]e cannot say that choosing something other than ‘but-for’ causation is unreasonable,” the court deferred to the regulations. *Id.* 273–274. Judge Jordan wrote separately, confirming the result’s foundation in *Chevron*. “Were we free to actually interpret the law rather than merely defer to an executive agency,” he noted, “we might well conclude that the FMLA does not allow for a mixed-motive instruction for Egan’s retaliation claim.” 851 F.3d at 282 (Jordan, J. concurring) (*Nassar* and *Gross* otherwise made but-for causation the “standard requirement”).

First, Eighth, and Ninth Circuits. Before *Nassar*, the First, Eighth, and the Ninth Circuits had determined that FMLA retaliation claims only required showing negative or motivating factor causation. These circuits have not revisited those decisions in light of *Nassar*.

The First Circuit held that DOL’s “regulations interpreting the FMLA” only require[d] “negative factor” causation and “are entitled to deference under *Chevron*.” *E.g., Chase v. United States Postal Service*, 843 F.3d 553, 559 & n.2 (1st Cir. 2016) (discussing *Hodgens v. General Dynamics Corp.*, 144 F.3d 151, 160 & n.4 (1st Cir. 1998)). It has not revisited this holding in the wake of *Nassar*. *E.g., Thompson v. Gold Medal Bakery, Inc.*, 989 F.3d 135, 144 (1st Cir. 2021).

The Eighth Circuit “do[es] not require plaintiffs in employment discrimination cases to prove that their protected activity was the ‘but for’ cause of termination.” *Marez v. Saint-Gobain Containers, Inc.*, 688 F.3d 958, 963 & n.3 (8th Cir. 2012). Although it has not applied *Chevron* deference expressly, it points to 29 C.F.R. §825.220(c) as the source of its “‘negative factor’ standard.” *Pulczynski v. Trinity Structural Towers, Inc.*, 691 F.3d 996, 1007 (8th Cir. 2012). This standard remains in force well after *Nassar*. *E.g., Evans v. Cooperative Response Center, Inc.*, 996 F.3d 539, 551 (8th Cir. 2021) (citing *Pulczynski* as standard for “causal connection between the protected activity and the adverse action”).

The Ninth Circuit long ago deferred to 29 C.F.R. §825.220(c) to hold that a plaintiff “need only prove by a preponderance of the evidence that her taking of FMLA-protected leave constituted a negative factor in the decision to terminate her.” *Bachelder v. America West Airlines, Inc.*, 259 F.3d 1112, 1125 (9th Cir. 2001). The Ninth Circuit continues to apply that standard even after *Nassar*. *Rouse v. Wynn Las Vegas, LLC*, 829 Fed. Appx. 746, 748 (9th Cir. 2020) (mem.) (reversing summary judgment under *Bachelder* “negative factor” standard).

2. Two circuits apply but-for causation to FMLA retaliation claims.

Eleventh Circuit. The lead case, *Lapham v. Walgreen Co.*, 88 F.4th 879 (11th Cir. 2023), requires plaintiffs to prove that FMLA-protected activity was the but-for cause of an adverse employment action. The district court initially agreed that the plaintiff need only satisfy a “motivating-factor” standard but, on reconsideration, “determined that her retaliation

claims must satisfy a but-for causation standard” and granted summary judgment in favor of the defendant. *Id.* 890.

The Eleventh Circuit affirmed. Because it had not previously decided “the causation standard for FMLA [and state-law equivalent] retaliation claims,” it began “with the text of the relevant statutes.” *Lapham*, 88 F.4th at 890 & n.14. The court noted that the language of 29 U.S.C. §2615(a) “does not, upon first glance, explicitly endorse one causation standard or the other,” but noted that this Court’s decision in *Nassar* “indicates that this kind of language carries with it a but-for standard.” *Id.* 891. That is because, under *Nassar*, “absent an indication to the contrary in the statute itself” a statute sounding in tort “is ‘presumed to have incorporated’ the default standard.” *Ibid.* (quoting and citing *Nassar*). Echoing the *Woods* district court, the Eleventh Circuit reasoned that “notably” this “Court declined to defer to the interpretation of Title VII’s retaliation provisions articulated” by the EEOC in *Nassar* itself. *Id.* 892.

The court then rejected *Chevron* deference: “Applying the reasoning of *Nassar*, by writing the FMLA’s retaliation provision to include the equivalent of ‘because [of]’ language (and no other causation language), Congress clearly chose to embrace the default but-for causation standard” and “so, we cannot defer to the DOL’s contrary interpretation.” *Lapham*, 88 F.4th at 893.

Fourth Circuit. In 2020, the Fourth Circuit rejected an attempt to lower the standard of causation for FMLA retaliation claims. *Fry v. Rand Construction Corp.*, 964 F.3d 239, 245–246 (4th Cir. 2020). The plaintiff argued the Fourth Circuit should abandon

precedent to assess her claim under “negative-factor causation.” *Ibid.* The plaintiff argued that DOL’s “negative factor” regulation (29 C.F.R. §825.220(c)), permitted the court to revisit its prior precedent. *Ibid.* But the Fourth Circuit refused because, regardless, the *McDonnell Douglas* framework “requires but-for causation.” *Id.* 246.

Later unpublished cases confirmed that FMLA “[r]etaliation claims ... require the employee to show that the retaliation was a but-for causation of a challenged adverse employment action.” *Phillips v. New Millennium Building Sys., LLC*, No. 20-2095, 2022 WL 2188405, *2 (4th Cir. June 17, 2022) (quotation omitted). And, over dissent, the Fourth Circuit has further held that damages for FMLA retaliation claims must also be proved by but-for causation. *Hannah P. v. Haines*, 80 F.4th 236, 244–245 (4th Cir. 2023); see also *id.* 256–257 & nn. 6–7 (Gregory, J., dissenting).

3. Two circuits are internally inconsistent.

Seventh Circuit. The Seventh Circuit has contradicted itself in published panel opinions. Relying on pre-*Nassar* caselaw, a panel held that a plaintiff “does not need to prove that ‘retaliation was the *only* reason for her termination; she may establish an FMLA retaliation claim by showing that the protected conduct was a substantial or motivating factor in the employer’s decision.” *Anderson v. Nations Lending Corp.*, 27 F.4th 1300, 1307 (7th Cir. 2022) (quoting *Lewis v. Sch. Dist. #70*, 523 F.3d 730, 741–742 (7th Cir. 2008)); see *Trahanas v. Northwestern University*, 64 F.4th 842, 856 (7th Cir. 2023) (quoting *Anderson*). Shortly thereafter, that court came, without qualification or explanation, to the exact opposite conclusion: “To

make out an FMLA retaliation claim, [the plaintiff] must show that her FMLA request was the ‘but-for’ cause of her termination.” *Lohmeier v. Gottlieb Memorial Hospital*, 147 F.4th 817, 830 (7th Cir. 2025).

The Seventh Circuit openly acknowledges that its “cases have not been fully consistent about the causation standard for an FMLA retaliation claim.” *Chitwood v. Ascension Health Alliance*, 168 F.4th 493, 498 & n.2 (7th Cir. 2026). But it has not yet resolved the issue, which “may be a substantial one, implicating statutory and regulatory construction as well as Supreme Court precedent.” *Ibid.*

Sixth Circuit. Before *Nassar*, the Sixth Circuit adopted DOL’s interpretation that employers cannot “use the taking of FMLA leave as a negative factor in employment actions.” *Arban v. West Publishing Corp.*, 345 F.3d 390, 403 (6th Cir. 2003) (quoting 29 C.F.R. §825.220(c)). It has since reiterated that refrain. See *Marshall v. The Rawlings Company LLC*, 854 F.3d 368, 376 (6th Cir. 2017) (citing *Arban*); *Ahmed v. Hamtramck Public Schools*, 178 F.4th 975, 981 (6th Cir. 2026) (citing *Marshall*).

The only panel to address FMLA-retaliation causation and *Nassar* explicitly, however, came out the other way, indicating “it is likely that causation in this analysis [FMLA retaliation] means actual or ‘but-for’ causation.” *Sharp v. Profitt*, 674 Fed. Appx. 440, 451 (6th Cir. 2016) (mem.). Presaging the Eleventh Circuit’s analysis in *Lapham*, that panel reasoned that this Court’s decisions in *Nassar* and *Gross*, although interpreting Title VII, were likely to apply to FMLA retaliation as “because” (the language in Title VII) and “for” (the language in the FMLA) “are synonyms.” *Ibid.* citing ROGET’S THESAURUS (4th ed. 1977) and

WEBSTER'S 3D NEW NAT'L DICTIONARY. "Thus, given our interpretive practices and the meaning 'for' has in the statute's context, it seems that FMLA retaliation requires a showing of but-for causation." *Ibid.*

*
**

The circuits are confused and in conflict, with diametrically opposed reasoning and results that cannot be reconciled. Certiorari is warranted.

B. The Second Circuit is wrong: the FMLA requires showing but-for causation.

This Court has not directly addressed the issue, but the FMLA requires plaintiffs seeking damages to show but-for causation. The Second Circuit, and the majority view with it, is wrong.

Start with the text. The provisions expressly referring to retaliation all include language invoking but-for causation. See 29 U.S.C. §2615(a)(2) ("It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual *for* opposing any practice made unlawful by this subchapter.") (emphasis added); *id.* §2615(b) ("It shall be unlawful for any person to discharge or in any other manner discriminate against any individual *because* such individual * * *") (emphasis added); *id.* §2617(a)(1)(A)(i)(I) (damages include "any wages, salary, employment benefits, or other compensation denied or lost such employee *by reason of* the violation") (emphasis added).

The terms "because [of]" and "by reason of" classically invoke but-for causation. See, *e.g.*, *Nassar*, 570 U.S. at 350 (Title VII); *Gross*, 557 U.S. at 176 (ADEA). And the term "for" may be "[u]sed in the

sense of ‘because of,’ ‘on account of,’ or ‘in consequence of.’” FOR, BLACK’S LAW DICTIONARY (6th ed. 1990). The text of the FMLA retaliation provisions thus requires but-for causation.

Moreover, the background principles of law this Court identified in *Nassar* require but-for causation. For enactments sounding in tort (as the FMLA does), the “default rules [Congress] is presumed to have incorporated, absent an indication to the contrary in the statute itself[,]” are the “traditional principles of but-for causation.” *Nassar*, 570 U.S. at 347, 360. There is no language in the retaliation provisions that discusses a lower standard, such as the “motivating factor” language in the discrimination provisions of Title VII justifying a lower standard of causation there. *E.g.*, 42 U.S.C. §2000e-2(m) (“* * * an unlawful employment practice is established when the complaining party demonstrates that [*e.g.*] race * * * was a motivating factor for any employment practice, even though other factors also motivated the practice.”). Absent any indication to the contrary in the statute, Congress is presumed to have incorporated the default rule of but-for causation. *Nassar*, 570 U.S. at 346–347.

Both text and tradition point to the same conclusion: FMLA retaliation plaintiffs must show but-for causation to succeed.

The majority circuits get this exactly backwards. Both *Woods* and *Egan* suggest that because the FMLA does not clearly specify a causation standard, courts may look to the DOL’s regulation adopting a lesser standard. *Egan* reasons that because the FMLA “does not provide a causation standard” and “does not unambiguously require the use of ‘but-for’ causation,” an

executive agency’s determination should “fill[] the gap.” 851 F.3d at 273. *Woods* similarly reasons that Section 2615(a)(1) “lacks any indicia of Congress’s intent to create ‘but for’ causation.” 864 F.3d at 168.

Congress is not required to invoke but-for causation for that standard to apply. Just the opposite: but-for causation is presumed unless Congress affirmatively indicates otherwise. But-for causation is the “background” principle and if Congress means to step away from that “default” there must be an “indication to the contrary in the statute itself.” *Nassar*, 570 U.S. at 347. “This ancient and simple ‘but for’ common law causation test * * * supplies the ‘default’ or ‘background’ rule against which Congress is normally presumed to have legislated * * * includ[ing] when it comes to federal antidiscrimination laws * * *.” *Comcast*, 589 U.S. at 332.

The motivating-factor courts flip that logic, requiring an “indication to the contrary in the statute itself” before the “default” would apply. But, even if the FMLA’s text were silent or ambiguous (and it is not), then the default rule requires but-for causation—not some “lessened causation test.” *Nassar*, 570 U.S. at 360.

Loper Bright makes the errors starker. A motivating factor causation standard is only available through *Chevron* deference. Under that (now overruled) framework, genuine ambiguity would have permitted the courts to defer to reasonable agency interpretations. That is no longer the law. And under *Nassar*, *Comcast*, and *Gross*, this Court’s instructions are clear: but-for causation is the “default” to which courts must turn when a statute is silent.

This Court left revisiting *Chevron*-based interpretations to the lower courts in the first instance. *Loper Bright*, 603 U.S. at 412–413. The Second Circuit has declined to revisit *Woods*, leaving to this Court the task of addressing the confusion among the circuit courts and resolving whether the motivating-factor cases can remain statutory *stare decisis* under *Nassar*, *Comcast*, and *Gross*.

C. The question is important, recurring, and will not resolve itself

The FMLA applies to millions of American workers, including governmental employees, and the employers who hire, supervise, and retain them. This Court has recognized that the “proper interpretation and implementation” of retaliation provisions, and their “causal standards” have “particular significance because claims of retaliation are being made with ever-increasing frequency.” Cf. *Nassar*, 570 U.S. at 358.

The issue of FMLA-retaliation causation arises with enough frequency that it has received pointed judicial commentary in recent years. Cf. *e.g.*, *Decou-Snowton v. Jefferson Parish*, No. 24-30079, 2024 WL 4879466, *4 & n.2 (5th Cir. Nov. 25, 2024) (“the causation standard in FMLA retaliation cases is an unsettled question”); *Chitwood*, 168 F.4th at 498 & n.2 (“Our cases have not been fully consistent about the causation standard for an FMLA retaliation claim.”); *Coleman v. Children’s Hospital of Philadelphia*, No. 23-3064, 2024 WL 4490602, *3 & n.4 (3d Cir. Oct. 15, 2024) (whether “‘motivating factor’ causation standard for FMLA retaliation claims * * * withstands the Supreme Court’s decision in *Loper Bright* * * * is open to question.”); *Mehta v. DLA Piper LLP*, No. 23CIV4757, 2025 WL 2771659, *9 & n.2 (S.D.N.Y.

Sept. 29, 2025) (“it remains an open question whether the Second Circuit would now interpret the FMLA to encompass the stricter causation standard that applies under Title VII” after *Loper Bright*).

The causation standard touches every phase of FMLA retaliation cases. The difference between the standards determines whether claims survive summary judgment, what instructions the jury receives, and the standard of proof at trial. It can be outcome determinative, as identical claims may stand or fall depending on whether a plaintiff sues in New York or Miami or Richmond or Philadelphia. And, in Chicago or Cincinnati, the standard might change courtroom-to-courtroom depending on which panel decision the parties—or the district court judge—latches onto first. And practitioners have caught on, recommending that “[m]ulti-district employers should consider whether there is an opportunity to transfer FMLA retaliation cases to courts applying the ‘but-for’ standard.”¹

Further, the split will not heal itself, for at least two reasons.

Circuits are deadlocked. The split is open and acknowledged and has been for a long time. Some circuits have found ways to avoid ruling on the issue after *Loper Bright*. *E.g.*, App.4a; *Decou-Snowton*, 2024 WL4879466, *4 & n.2; *Chitwood*, 168 F.4th at 498 & n.2; *Coleman*, 2024 WL 4490602, *3 & n.4. And others

¹ *E.g.*, Susan Wiltsie and Theanna Bezney, “Federal Courts Raise the Bar on Employee FMLA Retaliation Claims,” BLOOMBERG LAW (Apr. 2, 2025), <https://news.bloomberglaw.com/us-law-week/federal-courts-raise-the-bar-on-employee-fmla-retaliation-claims>

have yet to revisit their pre-*Nassar* decisions even though the Court decided that case more than a decade ago. *E.g.*, *Thompson*, 989 F.3d at 144; *Rouse*, 829 Fed. Appx. at 748. This has even left district courts paralyzed, acknowledging the split but bound by circuit precedent. *Mehta*, 2025 WL 2771659, *9 & n.2.

Entrenched disagreement. As discussed, the circuits divide for conflicting reasons, and their approaches remain difficult to reconcile. The split will not resolve on its own. Resolving the issue likely requires not only taking it en banc in each circuit—a rare event—but also for each circuit to break in the same direction. That is hard to imagine when both the rules and the internal logic of the circuits are confused.

D. This case presents a clean vehicle.

The district court below applied the wrong causation standard at summary judgment, and that error was outcome determinative. The court dismissed the ADEA claims under but-for causation but allowed the FMLA claim to proceed under the negative-factor standard. App. 99a–100a, 103a. Had the correct standard applied, the case would have ended at summary judgment. The question is purely legal, the record is complete, and it was presented and fully briefed in the Second Circuit.

Because the error was purely legal and occurred on summary judgment, this Court reviews it de novo. *E.g.*, *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 572 U.S. 559, 563 (2014).

The Second Circuit’s waiver and forfeiture suggestions do not corrupt the vehicle.

As discussed in Section II.A, Radiall never intentionally abandoned a known right, because *Loper Bright* and its application to FMLA causation standards post-dated summary judgment and trial. Radiall could not have “invited the error it complains of” with its jury instructions. App.3a. The error far predated the jury instructions, first because binding precedent required that lesser causation standard, and second because the error originated in the district court’s summary judgment ruling.

But even if there were “invited error,” it would not preclude this Court’s review. “[H]owever valuable these doctrines [including invited error] may be in controlling the party who wishes to change its position on the way from the district court to the court of appeals, they cannot dispositively oust this Court’s traditional rule that we may address a question properly presented in a petition for certiorari if it was ‘pressed [in] or passed on’ by the Court of Appeals.” *United States v. Wells*, 519 U.S. 482, 488 (1997). Radiall vigorously pressed the issue below through scores of pages of briefing. Particularly where an intervening change in the law laid prior errors bare, it is “sensible to reach the question presented” regardless of any “inconsistency between a party’s request for a jury instruction and its position before this Court.” *Wells*, 519 U.S. at 488.

Nor was there any forfeiture. App.3a–4a. Radiall raised and fulsomely briefed overruling *Woods* at the first opportunity it could (its opening brief on appeal) and to the first court that had the power to do so (the Second Circuit). That is not forfeiture.

Radiall could not have raised it at summary judgment or trial because the district court was bound by

Woods and this Court had not decided *Loper Bright*. Indeed, as the causation standard had been applied at summary judgment, preservation of a purely legal issue should not turn on whether Radiall raised it in post-trial motions at all. Cf. *Dupree v. Younger*, 598 U.S. 729, 735–736 (2023). Moreover, it would be unfair to require Radiall to have predicted *Loper Bright*’s application to FMLA causation in the weeks after *Loper Bright* was handed down. *Loper Bright* did not involve the FMLA. And the only court in the Second Circuit to address the issue prior to Radiall’s post-trial motion on October 9, 2024, decided that *Woods* survived *Loper Bright* and that “but-for causation is not required under the FMLA.” *Kirkland-Hudson v. Mount Vernon City School District*, No. 21-CV-695, 2024 WL 4277940, *18 & n.24 (S.D.N.Y. Sept. 23, 2024).

The causation question was fully briefed by all parties in the court of appeals. The issue is preserved, it is squarely presented, and the answer will be case-dispositive. The Court should grant the petition.

II. Review is warranted to ensure that intervening Supreme Court authority receives full effect in the lower courts.

This Court generally leaves the “matter of what questions may be taken up and resolved for the first time on appeal * * * primarily to the discretion of the courts of appeal.” *Singleton v. Wulff*, 428 U.S. 106, 121 (1976). But that discretion is not unbounded. *United States v. Olano*, 507 U.S. 725, 732 (1993). This Court has policed that discretion by reversing courts of appeal both for reaching issues they should not (*United States v. Sineneng-Smith*, 590 U.S. 371, 375–376 (2020)) and for misapplying preservation principles to

avoid issues they should (*Davis v. United States*, 589 U.S. 345, 346–347 (2020) (per curiam)).

If the courts of appeals may invoke preservation doctrine to avoid confronting intervening precedent altering the governing legal framework, this Court’s decisions will be denied effect in the very cases where they matter most. This is a case in point, as the Second Circuit misapplied preservation principles to avoid revisiting precedent whose justification—*Chevron* deference—has now evaporated. This Court left to the lower courts the task of sorting out whether *Chevron* deference should remain “statutory *stare decisis*” or not. Lower courts should not be permitted to shirk that responsibility.

A. The Second Circuit improperly refused to reach a purely legal challenge to circuit precedent when the district court was powerless to act and the issue was fully briefed on appeal.

1. Parties need not engage in futile acts to preserve purely legal arguments.

A. Recent cases from this Court make that clear. “It makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested.” *Carr v. Saul*, 593 U.S. 83, 93 (2021). *Carr* is instructive. There, the purely legal issue involved the constitutional status of administrative law judges in the Social Security Administration. *Id.* 85. This Court held in a separate case (*Lucia*) that ALJs within the Securities and Exchange Commission had been unconstitutionally appointed. *Ibid.* The *Carr* plaintiffs argued that the SSA’s ALJs were similarly unconstitutionally appointed but, because *Lucia* was

handed down after rulings in their administrative cases, they made those arguments on review of those administrative decisions rather than directly to the administrative agency. *Id.* 87. Multiple district courts and courts of appeals held that the plaintiffs’ failure to exhaust the argument had forfeited that challenge because they had not pressed it in administrative proceedings. *Ibid.*

This Court reversed, both because agency adjudicators lacked institutional competence to entertain constitutional challenges and because “this Court has consistently recognized a futility exception to exhaustion requirements.” *Carr*, 593 U.S. at 92–93. *Carr*’s teachings, although in a different context, apply directly here: district courts are not competent to overrule directly contrary, controlling circuit authority and thus are powerless to grant the requested relief. A party should not be required to engage in “[s]uch a vain exercise” of raising foreclosed arguments that will do little to “promot[e] judicial efficiency.” *Id.* 93 (second quotation omitted, second alteration original).

The principles outlined in *Carr* are underscored by *Dupree v. Younger*, 598 U.S. 729 (2023). There, the Fourth Circuit refused to review a purely legal argument that had been rejected at summary judgment but not renewed in a post-trial motion. *Id.* 738. That was “wrong,” including because it came with the “steep cost” of “the loss of appellate review for unwary litigants who think it futile to relitigate an already-rejected legal argument.” *Ibid.* A ruling on a “summary judgment motion is sufficient to preserve legal” issues precisely because a “district court’s resolution

of a pure question of law * * * is unaffected by future developments in the case.” *Id.* 735–736.

That principle applies to contrary, controlling circuit authority with greater force here than in *Dupree*. There, the issue of law decided at summary judgment was case-specific, i.e., whether a particular internal investigation satisfied an administrative exhaustion requirement. 598 U.S. at 732–733. That legal conclusion sufficed to preserve the issue. Here, by contrast, the legal issue was not a free decision of law by the district court, but rather a dictated application of binding precedent. The district court applied the causation standard as required by controlling circuit precedent that was directly on point. If in *Dupree* there were no “future developments in the case” that could change the legal issue decided at summary judgment, then here there certainly could not be any developments in the district court that would change the causation standard the Second Circuit required it to apply.

B. It does not take much to extend the rules of *Carr* and *Dupree* here: parties need not take futile steps with powerless adjudicators to preserve purely legal issues for appellate review. And review is warranted to make that clear.

As Justice Gorsuch, then a judge on the Tenth Circuit, once explained, forcing a party to object to action by the district court that is required by circuit precedent, merely to preserve a challenge to that circuit precedent, leads to absurd results: “wary defense counsel in future cases should undertake the—otherwise entirely futile—gesture of asking district courts and panels of this court to overrule [circuit precedent]. All this, of course, ensures the same statutory

question sooner or later will find its way back to the very same spot it is in today. And because no district court or panel is authorized to take up the question of overruling [circuit precedent], the question won't be any better briefed, adversarially tested, or more ready for decision than it is in this case." *United States v. Games-Perez*, 695 F.3d 1104, 1123 (10th Cir. 2012) (Gorsuch, J., dissenting from denial of rehearing en banc). Echoing that logic, this Court, in *Dupree*, rejected precisely such an "empty exercise" that the Second Circuit expected here. 598 U.S. at 737.

2. The Second Circuit erred by refusing to address the purely legal issue presented to it. The district court applied a particular causation standard at summary judgment and Radiall challenged that standard on appeal. That standard was erroneous (see *supra* Section I.B) and correcting that purely legal issue on summary judgment requires reversal.

The Second Circuit improperly dodged the issue. It identified no jurisdictional obstacle to deciding the issue and no sound basis for declining to reach it. Instead, it suggested that Radiall had waived or forfeited the issue.

That misapplies both doctrines. Radiall did not waive the issue because it never made "intentional relinquishment of a known right." *Olano*, 507 U.S. at 733 (quotation omitted). A party cannot "waive[] a 'known right' before it was aware of" intervening Supreme Court law. *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 145 (1967). Here, controlling authority at summary judgment and trial required a lesser causation standard. *Loper Bright* was not handed down until six months after trial, and even then its application to FMLA causation was not clear until later. Radiall

could not have waived, at summary judgment or trial, an argument it did not have until long after summary judgment and trial.

Nor did Radiall forfeit the issue. Forfeiture “is the failure to make the timely assertion of a right.” *Olano*, 507 U.S. at 733. Petitioner asserted the argument at its first opportunity in front of an adjudicator with the power to grant it relief: its opening appellate brief. The parties then, over scores of pages, thoroughly litigated whether *Woods* could survive *Loper Bright*. So long as the “points were raised early enough so that this Court has had the benefit of some ventilation of them by the courts below,” that is enough. *Curtis Pub.*, 388 U.S. at 145. No forfeiture occurred here: the issue was fully litigated in the court of appeal, is purely legal, involves intervening Supreme Court law, and implicates a ripe circuit split. Only the Second Circuit, and not the district court, could have addressed that argument and Radiall raised it as early as it could to that court.

B. Review is uniquely warranted in light of the danger of undermining *Loper Bright*.

In *Loper Bright*, this Court restored the courts’ obligation to “interpret constitutional and statutory provisions” that *Chevron* had displaced and left to the lower courts the task of sorting out which “statutory *stare decisis*” to maintain and which to jettison. 603 U.S. at 391–392, 412.

The Second Circuit shirked its responsibility. *Woods*’ “negative factor” standard rests on *Chevron* deference. *Woods*, 864 F.3d at 168–169. After *Loper Bright*, that precedent can no longer stand on its original footing. Radiall asked the Second Circuit to

address it (Radiall C.A. Br. 20–45; Radiall C.A. Reply Br. 10–27) and Ramadei joined issue (Ramadei C.A. Br. 37–38, 44–61). The FMLA’s causation standard was not hidden, late-breaking, or undeveloped. It was the central legal dispute on appeal and fully aired.

Of course, answering the question would require the Second Circuit to perform a statutory *stare decisis* analysis. That is precisely what *Loper Bright* requires lower courts to do. In overruling *Chevron*, this Court did “not call into question prior cases that relied on the Chevron framework.” 603 U.S. at 412. Rather, it left to the lower courts whether sufficient “‘special justification’ for overruling” prior *Chevron*-based interpretations existed. *Ibid.*

The Second Circuit’s refusal permits *Chevron* deference to continue by inertia. Whatever the eventual result on the merits, that much is error. If a prior circuit decision remains good law, the court of appeals should explain why. If intervening Supreme Court authority has undermined the prior decision, it should say so. What it cannot do is treat a district court’s compelled obedience to circuit precedent, and the futility of raising the issue in the district court, as a reason to avoid deciding the question altogether.

C. The Court often grants certiorari to stop misapplied preservation rules from distorting appellate review.

The Court has repeatedly granted review when a court of appeals skirts ruling on an issue by misapplying appellate preservation rules. See *Dupree*, 598 U.S. at 738 (reversing where Fourth Circuit avoided purely legal summary judgment issue); *Davis v. United States*, 589 U.S. 345, 347 (2020) (per curiam)

(summary reversal where misapplication of preservation rule would “immunize factual errors from plain-error review”); *Rosales-Mireles v. United States*, 585 U.S. 129, 137, 145 (2018) (reversing “unduly restrictive” forfeiture rule).

This issue warrants the Court’s review to prevent preservation traps from stunting the growth of the law. The Second Circuit’s rule requires a party to ask a district court to do what it cannot: disregard binding circuit precedent. It then treats the party’s failure to perform that futile act as waiver or forfeiture. That serves no preservation value, because it gives the district court no meaningful chance to correct an error it had no power to correct. It gives the opposing party no additional notice. It gives the court of appeals no better record. It only insulates circuit precedent from review in light of intervening Supreme Court law such as *Loper Bright*.

That is more problematic than other preservation traps this court has rejected. And, here, the Second Circuit’s attempt to “shield” its precedent from review with preservation doctrines (*Davis*, 589 U.S. at 347) created another error: misapplication of the plain-error standard. On appeal, Radiall challenged the district court’s application of an erroneous legal standard at summary judgment. That is a “pure legal question of law” that cannot be forfeited because it “is unaffected by future developments in the case.” *Dupree*, 598 U.S. at 736. It is subject to de novo, not plain error, review. The standard of review does not change merely because the district court repeated that error—again, dictated by circuit precedent—in its jury instructions.

Granting certiorari will provide substantial clarity on an important question of issue preservation that this Court has gestured towards, in *Dupree* and *Carr*, but has not decided.

CONCLUSION

The Court should grant review on both questions presented, and reverse.

Respectfully submitted,

MICHELLE S. KALLEN
Steptoe LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

STEPHEN E. HUGHES
Kiernan Trebach LLP
40 Court St.
Boston, MA 02108

ANDREW BUTZ
Kiernan Trebach LLP
1776 Eye St. NW, Ste 600
Washington, D.C. 20006

Counsel for Petitioner

CONOR TUCKER
Counsel of Record
Steptoe LLP
633 W. 5th St., Ste 1900
Los Angeles, CA 90071
(213) 439-9400
ctucker@steptoe.com

SEPTEMBER 2026

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A: Opinion of the United States Court of Appeals for the Second Circuit (March 19, 2026)	1a
APPENDIX B: Ruling on Motion of the United States District Court for the District of Connecticut (February 10, 2025)	9a
APPENDIX C: Ruling On Motion of the United States District Court for the District of Connecticut (September 16, 2024)	35a
APPENDIX D: Judgment of the United States District Court for the District of Connecticut (September 16, 2024)	75a
APPENDIX E: Verdict Form of the United States District Court for the District of Connecticut (December 8, 2023)	77a
APPENDIX F: Jury Charge — Motivating Factors of the United States District Court for the District of Connecticut (December 8, 2023)	80a
APPENDIX G: Ruling on Defendant’s Motion of the United States District Court for the District of Connecticut (September 8, 2023)	84a

APPENDIX H: Order of the United States Court of Appeals for the Sec- ond Circuit (April 30, 2026).....	112a
--	------

APPENDIX I: Relevant Provisions Involved	113a
29 U.S.C. §2614.....	113a
29 U.S.C. §2615	119a
29 U.S.C. §2617	120a
29 C.F.R. §825.220.....	126a

1a

**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT, FILED MARCH 19, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

25-587-cv

GARY T. RAMADEI,

Plaintiff-Appellee,

v.

RADIAL USA, INC.,

Defendant-Appellant.

March 19, 2026

SUMMARY ORDER

PRESENT: MICHAEL H. PARK,
WILLIAM J. NARDINI,
MARIA ARAÚJO KAHN,
Circuit Judges.

Appeal from a judgment of the United States District
Court for the District of Connecticut (Hall, *J.*).

**UPON DUE CONSIDERATION, IT IS HEREBY
ORDERED, ADJUDGED, AND DECREED** that the
judgment of the district court is **AFFIRMED**.

Appendix A

Plaintiff-Appellee Gary Ramadei sued his former employer, Defendant-Appellant Radiall USA, Inc., alleging, among other things, that Radiall terminated his employment in retaliation for taking medical leave under the Family and Medical Leave Act (“FMLA”). The district court denied Radiall’s motion for summary judgment as to Ramadei’s FMLA retaliation claim, and the case proceeded to trial in December 2023. The jury returned a verdict for Ramadei, and the court entered final judgment for Ramadei in the amount of \$770,006.06 plus post-judgment interest. Radiall filed post-trial motions for a new trial and for judgment as a matter of law in October 2024, which the court denied.¹ On appeal, Radiall argues principally that (1) the district court erred by using the “motivating factor” causation standard rather than the “but for” causation standard for the FMLA retaliation claim, (2) the jury returned an irreconcilably inconsistent verdict, and (3) the court erroneously admitted testimony from two witnesses. We assume the parties’ familiarity with the underlying facts, the procedural history, and the issues on appeal.

I. Motivating-Factor Causation Standard

Radiall contends the district court committed legal error by using the motivating-factor rather than the but-for causation standard for Ramadei’s FMLA retaliation claim when it denied Radiall’s summary-judgment motion, created the verdict form, and instructed the jury. Our

1. The district court construed Radiall’s post-trial motion for judgment notwithstanding the verdict as a renewed motion for judgment as a matter of law.

Appendix A

decision in *Woods v. START Treatment & Recovery Centers, Inc.* held that “a ‘motivating factor’ causation standard applies” to FMLA retaliation claims. 864 F.3d 158, 166 (2d Cir. 2017). But Radiall asks us to overturn *Woods* because (1) *Woods* was based on *Chevron* deference, which the Supreme Court overruled in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); and (2) *Woods* is inconsistent with the Supreme Court’s rulings in *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009); *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013); and *Comcast Corp. v. National Ass’n of African American-Owned Media*, 589 U.S. 327 (2020). Radiall maintains that under *Gross*, *Nassar*, and *Comcast*, causes of action created in federal employment-discrimination statutes incorporate but-for causation unless Congress expressly says otherwise. Radiall claims that this default rule of but-for causation applies here because the FMLA does not expressly provide for a different causation standard for retaliation claims.

Radiall waived this argument because it requested that the jury be instructed on the motivating-factor standard, as reflected in its pretrial proposed jury instructions. We will not grant relief where, as here, a party has invited the error it complains of. *See United States v. Bastian*, 770 F.3d 212, 218 (2d Cir. 2014).

Even if Radiall had not affirmatively waived the causation issue, it would also be forfeited. At no point did Radiall challenge the *Woods* motivating-factor causation standard before the district court, even though the *Gross*,

Appendix A

Nassar, and *Comcast* decisions it relies on were all issued before this action commenced in October 2021. And Radiall did not challenge the standard based on *Loper Bright* in its October 2024 post-trial motions, even though the Supreme Court had decided *Loper Bright* more than three months earlier.

Where a party has merely forfeited an issue, we may review their challenge for plain error. *See Lavin-McEleney v. Marist Coll.*, 239 F.3d 476, 482 (2d Cir. 2001) (“Because plaintiff did not challenge the special verdict form below, we review for plain error.”); *Yukos Cap. S.A.R.L. v. Feldman*, 977 F.3d 216, 236-37 (2d Cir. 2020) (“This court applies a ‘plain error’ standard when reviewing unpreserved objections to jury instructions in civil cases.”). Under plain-error review, we “will only grant relief if there was (1) error, (2) that is plain, (3) that affects substantial rights, and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Keeling v. Hars*, 809 F.3d 43, 51 (2d Cir. 2015) (quotation marks omitted). “A reviewing court should overturn a lower court’s decision on plain error review only with extreme caution in the civil context.” *Yukos*, 977 F.3d at 237 (cleaned up). “On plain error review, we typically will not find such error where the operative legal question is unsettled, including where there is no binding precedent from the Supreme Court or this court.” *Fabri v. United Techs. Int’l, Inc.*, 387 F.3d 109, 122 (2d Cir. 2004) (cleaned up).

Radiall has failed to demonstrate plain error here. Its argument raises the “unsettled” legal question whether

Appendix A

Gross, *Nassar*, and *Comcast* require application of the but-for causation standard to FMLA retaliation claims. *Id.* (quotation marks omitted). Those cases interpreted other statutes. *See Gross*, 557 U.S. at 180 (Age Discrimination in Employment Act); *Nassar*, 570 U.S. at 362 (Title VII); *Comcast*, 589 U.S. at 341 (42 U.S.C. § 1981). And neither the Supreme Court nor we have addressed the implications of all three cases for FMLA retaliation claims. Given our decision in *Woods* adopting the motivating-factor standard, and the absence of “binding precedent from the Supreme Court or this court” to the contrary, the district court did not commit plain error in using the motivating-factor causation standard. *Fabri*, 387 F.3d at 122 (cleaned up).

II. Jury Verdict

Radiall next contends that the case should be retried because the jury returned an irreconcilably inconsistent verdict. In response to Question 1 on the verdict form, the jury found that Ramadei had “proven by a preponderance of the evidence that he exercised his rights under the FMLA, and that Radiall USA’s termination of his employment was motivated, at least in part, by his medical leave pursuant to the Family and Medical Leave Act.” Special App’x at 25. The jury also found, in response to Question 5, that Radiall had “proven by a preponderance of the evidence that it acted in good faith and had reasonable grounds to believe terminating Mr. Ramadei was not a violation of the Family and Medical Leave Act.” *Id.* at 26. Radiall claims that these two answers are logically incompatible and that the jury’s good-faith finding is binding on the district court rather than advisory.

Appendix A

As with its causation argument, however, Radiall has waived its consistency challenge and, even if the claim had not been waived, it failed to demonstrate error warranting a new trial. “It is well established that a party waives its objection to any inconsistency in a jury verdict if it fails to object to the verdict prior to the excusing of the jury.” *Kosmyinka v. Polaris Indus., Inc.*, 462 F.3d 74, 83 (2d Cir. 2006). Radiall failed to object to the verdict on consistency grounds before the court excused the jury and thus waived this argument.² “Nor is the [purportedly] inconsistent verdict fundamental error,” *Perks v. Town of Huntington*, 234 F. App’x 8, 10 (2d Cir. 2007), “a standard that is more stringent than the plain error standard,” *Fabri*, 387 F.3d at 119. Radiall’s consistency challenge raises multiple unsettled legal questions, including whether (1) a good-faith finding is irreconcilable with a retaliation finding in an FMLA case and (2) a jury’s good-faith finding in an FMLA retaliation case is or can be advisory. Without binding precedent on these issues, “any error in the jury verdict, if there was one, is not fundamental.” *Anderson Grp., LLC v. City of Saratoga Springs*, 805 F.3d 34, 50 (2d Cir. 2015).

2. “The verdict sheet, for its part, implied that” the jury could find retaliation as well as good faith. *Anderson Grp., LLC v. City of Saratoga Springs*, 805 F.3d 34, 48 (2d Cir. 2015). “At bottom, therefore,” Radiall’s “argument that the jury was required to reach consistent outcomes” (i.e., retaliation and lack of good faith, or good faith and no retaliation) “is, in reality, a challenge to the content of the district court’s instructions or to the composition of the verdict sheet.” *Id.* at 48-49. “As such challenges must be raised before the jury retires to deliberate,” Radiall “waived them at well.” *Id.* at 49.

*Appendix A***III. Evidentiary Rulings**

Finally, Radiall contends that the district court erred in admitting testimony from two witnesses. The court's evidentiary rulings do not merit a new trial.

“We review the district court's evidentiary rulings for abuse of discretion.” *Warren v. Pataki*, 823 F.3d 125, 137 (2d Cir. 2016). We “give district court judges wide latitude in determining whether evidence is admissible at trial.” *Meloff v. N.Y. Life Ins. Co.*, 240 F.3d 138, 148 (2d Cir. 2001) (quotation marks omitted). An “erroneous evidentiary ruling warrants a new trial only when a substantial right of a party is affected, as when a jury's judgment would be swayed in a material fashion by the error.” *Lore v. City of Syracuse*, 670 F.3d 127, 155 (2d Cir. 2012) (quotation marks omitted). “We will not grant a new trial if we find that the improperly admitted evidence was harmless.” *Warren*, 823 F.3d at 138 (quotation marks omitted). “An error is harmless if we can conclude with fair assurance that the evidence did not substantially influence the jury.” *Cameron v. City of New York*, 598 F.3d 50, 61 (2d Cir. 2010) (quotation marks omitted). “In civil cases, the burden falls on the appellant to show that the error was not harmless and that it is likely that in some material respect the factfinder's judgment was swayed by the error.” *Warren*, 823 F.3d at 138 (quotation marks omitted).

Radiall challenges the admission of testimony from (1) Joanna Petrowski, a former Radiall employee who testified about her experience taking medical leave, and (2) Ramadei himself, who testified that William Moleski

Appendix A

had taken medical leave from his job at Radiall and that Ramadei heard that Moleski had been told his health insurance was revoked while he was on leave. Assuming without deciding that the district court erred in admitting this testimony, we conclude that Radiall has failed to meet its burden to show these errors were not harmless. To try to show the challenged testimony substantially influenced the jury, Radiall offers only “conjecture.” *Tesser v. Bd. of Educ. of City Sch. Dist. of City of N.Y.*, 370 F.3d 314, 320 (2d Cir. 2004). It states that “the testimony of Petrowski likely took on extraordinary significance for the jury,” Ramadei’s testimony about Moleski was “introduced just before closing arguments,” and the “combination” of testimony from Petrowski and Ramadei “in this short trial likely resulted in the jury improperly applying ‘rough justice’ against Radiall.” Appellant’s Br. at 55, 58. Without more, “we have no basis on which to conclude that it is likely that in some material respect the factfinder’s judgment was swayed by the alleged error[s].” *Tesser*, 370 F.3d at 320 (cleaned up).

* * *

We have considered Radiall’s remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:

/s/ Catherine O’Hagan Wolfe
Catherine O’Hagan Wolfe, Clerk of Court

**APPENDIX B — RULING ON MOTION OF
THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT, FILED
FEBRUARY 10, 2025**

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL CASE NO. 3:21-CV-01435 (JCH)

GARY T. RAMADEI,

Plaintiff,

v.

RADIAL USA, INC.,

Defendant.

Filed February 10, 2025

**RULING ON MOTION FOR A NEW TRIAL AND
MOTION FOR JUDGMENT AS A MATTER OF LAW**

I. INTRODUCTION

The plaintiff, Gary T. Ramadei (“Mr. Ramadei”) sued the defendant, Radial USA, Inc. (“Radial”) under state and federal law, including section 2615 of title 29 of the U.S. Code, known as the Family Medical Leave Act (“FMLA”). Complaint (“Compl.”) (Doc. No. 1). The jury only considered Mr. Ramadei’s FMLA claim and

Appendix B

returned a verdict in his favor. Jury Verdict (Doc. No. 86). Following trial, Mr. Ramadei moved for liquidated damages, pre- and post-judgment interest, front pay or reinstatement, and attorneys' fees. *See* Ruling on Motion for Award of Liquidated Damages, Motion for Award of Pre- and Post-Judgment Interest, Motion for Front Pay or Reinstatement, Motion for Attorney Fees and Costs ("Post-Trial Ruling") (Doc. No. 122). After considering Mr. Ramadei's post-trial motions, the court entered judgment in his favor in the amount of \$770,006.06 plus post-judgment interest. Judgment (Doc. No. 123). Radiall filed a Motion for a New Trial and Memorandum in Support ("Def.'s Mem. New Trial") (Doc. No. 124) and renewed Motion for Judgment as a Matter of Law and Memorandum in Support ("Def.'s Mem. JAML") (Doc. No. 125). Mr. Ramadei opposes the Motions. *See* Pl.'s Opposition to Motion for a New Trial ("Pl.'s Opp'n New Trial") (Doc. No. 127); Pl.'s Opposition to renewed Motion for Judgment as a Matter of Law ("Pl.'s Opp'n JMAL") (Doc. No. 126). For the reasons that follow, the Motions are denied.

II. BACKGROUND

The court assumes the parties are familiar with the facts and procedural history of this case, which the court has previously summarized in its Ruling on Motion for Summary Judgment (Doc. No. 44) and Post-Trial Ruling (Doc. No. 122). The court provides only a brief summary of the relevant background here and summarizes additional background information in the Discussion section of this Ruling. *Infra*, part IV.

Appendix B

During trial, the jury heard testimony from several Radiall employees: Lori Musante (“Ms. Musante”), Director of Human Resources; Rich Broga (“Mr. Broga”), Controller; Patrice Rigoland (“Mr. Rigoland”), General Manager; and Maite Tristan (“Ms. Tristan”), President. *See* Transcript (“Tr.”) Day One (Doc. No. 98); Tr. Day Two (Doc. No. 99); Tr. Day Three (Doc. No. 100). Mr. Ramadei and Joanna Petrowski (“Ms. Petrowski”), a former Radiall employee who had taken medical leave, also testified. Tr. Day One; Tr. Day Two. The jury returned a verdict in Mr. Ramadei’s favor and awarded him \$187,714.00 for losses he sustained as a result of Radiall’s violation of the FMLA. Jury Verdict. Mr. Ramadei moved for liquidated damages, pre- and post-judgment interest, front pay or reinstatement, and attorney fees. Pl.’s Mot Liquidated Damages (Doc. No. 102); Pl.’s Mot. Pre- and Post-Judgment Interest (Doc. No. 103); Mot. Front-Pay or Reinstatement (Doc. No. 104); Mot. Attorney Fees (Doc. No. 105). The court partially granted the Motions. Post-Trial Ruling.

III. LEGAL STANDARDS**A. Motion for a New Trial**

Under Rule 59, the court may grant a new trial “for any reason for which a new trial has heretofore been granted in an action at law in federal court[.]” Fed. R. Civ. P. 59(a)(1)(A). “A motion for a new trial should be granted when, in the opinion of the district court, ‘the jury has reached a seriously erroneous result or the verdict is a miscarriage of justice.’” *Song v. Ives Lab’ys, Inc.*, 957

Appendix B

F.2d 1041, 1047 (2d Cir. 1992) (cleaned up and internal quotation marks omitted). In considering a Rule 59 motion, the court may freely weight the evidence “and need not view it in the light most favorable to the verdict winner.” *Id.* (internal quotation marks omitted). Nonetheless, “[a] court considering a Rule 59 motion . . . must bear in mind . . . that the court should only grant such a motion when the jury’s verdict is egregious.” *DLC Mgmt. Corp. v. Town of Hyde Park*, 163 F.3d 124, 134 (2d Cir. 1998) (internal quotation marks omitted).

B. Motion for Judgment as a Matter of Law

Rule 50(b) allows for the entry of judgment as a matter of law if a jury returns a verdict for which there is no legally sufficient evidentiary basis. *See* Fed. R. Civ. P. 50(b). The standard under Rule 50 is the same as that for summary judgment: a court may not grant a Rule 50 motion unless “the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable [persons] could have reached.” *This Is Me, Inc. v. Taylor*, 157 F.3d 139, 142 (2d Cir. 1998) (alterations in original) (internal quotation marks and citation omitted).

A movant’s burden under Rule 50 is “particularly heavy where, as here, the jury has deliberated in the case and has actually returned its verdict in favor of the non-movant.” *Cash v. Cnty. of Erie*, 654 F.3d 324, 333 (2d Cir. 2011) (internal quotation marks omitted) (citing *Cross v. N.Y.C. Transit Auth.*, 417 F.3d 241, 248 (2d Cir. 2005)).

Appendix B

Indeed, judgment as a matter of law may only be granted where “(1) there is such a complete absence of evidence supporting the verdict that the jury’s findings could only have been the result of sheer surmise and conjecture, or (2) there is such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded persons could not arrive at a verdict against it.” *Meloff v. N.Y. Life Ins. Co.*, 240 F.3d 138, 145 (2d Cir. 2001) (quoting *Galdieri-Ambrosini v. Nat’l Realty & Dev. Corp.*, 136 F.3d 276, 289 (2d Cir. 1998)).

Importantly, “[w]eakness of the evidence does not justify judgment as a matter of law; as in the case of a grant of summary judgment, the evidence must be such that a reasonable juror would have been compelled to accept the view of the moving party.” *Playtex Prods., Inc. v. Procter & Gamble Co.*, 126 F. App’x 32, 34 (2d Cir. 2005) (quoting *This is Me, Inc.*, 157 F.3d at 142). Rather, the verdict must be upheld “[a]s long as there is some evidence based upon which the jury could have held the defendant[] . . . liable[.]” *Newton v. City of New York*, 779 F.3d 140, 158 (2d Cir. 2015) (internal quotation marks omitted).

IV. DISCUSSION

In Radiall’s view, either a new trial or judgment as a matter of law in Radiall’s favor is warranted because the court erred in making several evidentiary rulings and preparing Verdict Form Questions One and Two. *See* Def.’s Mem. New Trial; Def.’s Mem. JMAL. Radiall also argues the Motions should be granted because the jury returned a verdict for Mr. Ramadei that was against the manifest

Appendix B

weight of the evidence. *See* Def.'s Mem. New Trial; Def.'s Mem. JMAL. Mr. Ramadei opposes the Motions, arguing the court did not err as Radiall asserts and the jury's verdict was sound. *See* Pl.'s Opp'n New Trial; Pl.'s Opp'n JMAL. The court considers Radiall's arguments, beginning with those raised in its Motion for a New Trial.

A. Motion for a New Trial**1. Joanna Petrowski Testimony**

Radiall argues the court erred by allowing Ms. Petrowski to testify about her experience taking medical leave because she was not similarly situated to Mr. Ramadei, the decisions to terminate Ms. Petrowski and Mr. Ramadei were made by different Radiall employees, and the terminations occurred three years apart. Def.'s Mem. New Trial at 4–13. According to Radiall, Ms. Petrowski's testimony lacked probative value, and, as a result, the court's decision to admit the testimony caused Radiall undue prejudice. *Id.* at 13–15. Mr. Ramadei opposes these arguments. Pl.'s Opp'n New Trial at 3–10.

A plaintiff may attempt to establish that an employer engaged in a pattern of discrimination by introducing “me too” evidence, that is, evidence that other employees were also subject to discrimination. “The question whether evidence of discrimination by other supervisors is relevant in an individual . . . case is fact based and depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case.” *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379,

Appendix B

388 (2008). Among the factors courts consider in this District are: (1) “how *similar* the ‘me too’ acts of alleged discrimination are to the alleged acts of discrimination against the plaintiff”; (2) “whether any of the *same individuals* were involved with perpetrating the alleged ‘me too’ acts of discrimination as those individuals who the plaintiff alleges discriminated against h[im]”; and (3) “what kind of *temporal nexus* exists between the alleged ‘me too’ acts of discrimination and the alleged acts of discrimination against the plaintiff.” *DeAngelis v. City of Bridgeport*, No. 3:14-CV-01618 (JAM), 2018 WL 429156, at *2 (D. Conn. Jan. 15, 2018); *accord Miro v. City of Bridgeport*, No. 3:20-CV-346 (VAB), 2023 WL 4992877, at *7 (D. Conn. Aug. 3, 2023).

Starting with the first factor, the testimony of Mr. Ramadei and Ms. Petrowski describe similar acts of discrimination. Mr. Ramadei testified that he had worked for Radiall, and its predecessor, Applied Engineering Products (“AEP”), for 31 years. *See* Tr. Day One, at 201:24–202:2. Mr. Ramadei never received a negative performance evaluation. *Id.* at 179:11–12. Indeed, before Mr. Ramadei’s medical absence, he had no indication that his position was at risk of being eliminated. *Id.* at 161:18–162:9; 176:23–177:20. At the time of his termination, Mr. Ramadei estimated that there was plenty of work for him to perform in accordance with his typical responsibilities. *Id.* at 179:5–7; *see* 201:24–202:2. Despite this, soon after Mr. Ramadei returned to work from his medical absence, Mr. Ramadei’s manager, Mr. Broga, told Mr. Ramadei his position had been eliminated. *Id.* at 199:16–200:1. Mr. Ramadei testified that he could think of no reason for his

Appendix B

termination other than that he had taken medical leave. *Id.* at 202:1–2. He testified that, upon learning of his termination, Mr. Broga, and later, Ms. Musante, asked Mr. Ramadei to sign a form that Mr. Ramadei thought would prevent him from suing Radiall. *Id.* at 202:17–203:4.

Similar to Mr. Ramadei, Ms. Petrowski testified that she worked for Radiall, formerly AEP, for 34 years and had never received a negative performance review. *See* Tr. Day Two at 321:19–23. Prior to taking medical leave, Ms. Petrowski, like Mr. Ramadei, had no reason to think her position might be eliminated. *Id.* at 321:24–322:2; Tr. Day One at 176:23–177:20. While Ms. Petrowski was out on her second medical leave, her manager, Marie Pirrez Pez, and Ms. Musante informed Ms. Petrowski that her position had been eliminated. Tr. Day Two at 317:25–318:24. This explanation did not make sense to Ms. Petrowski because she believed, as did Mr. Ramadei when he was terminated, that the company was sufficiently busy. *Id.* at 319:8–12, 320:17–18; Tr. Day One at 179:5–7. In the court’s estimation, the factual similarities between Mr. Ramadei’s termination and Ms. Petrowski’s termination outweigh any relevant dissimilarities between the witness’ experiences. Accordingly, the first factor favors admitting Ms. Petrowski’s testimony as “me too” evidence.

The second factor also weighs in favor of permitting Ms. Petrowski to testify as a “me too” witness. Importantly, the second factor suggests the court should consider whether “any” people involved in the termination decisions of the plaintiff and the “me too” witness were the same. *DeAngelis*, 2018 WL 429156, at *2. It may be

Appendix B

true, as Radiall argues, that the decision to eliminate Mr. Ramadei's position was made by a somewhat different group of people than those who decided to eliminate Ms. Petrowski's position. Def.'s Mem. New Trial at 10–11. However, witness testimony suggests Ms. Musante was involved in implementing Radiall's decision to terminate both Mr. Ramadei and Ms. Musante, and Mr. Rigoland either "validate[d]" or approved the decision to terminate both employees. Tr. Day One at 202:17–203:4; Tr. Day Two at 317:25–318:4, 24, 437:23–438:7, 439:15–21, 440:14–16. Indeed, Radiall concedes Ms. Musante and Mr. Rigoland's involvement in both terminations in its memorandum. *See* Def.'s Mem. New Trial at 10–11. The court has identified not just "any" person who was involved in the termination decision of Ms. Petrowski and Mr. Ramadei, it has identified two senior Radiall employees who either approved or implemented the company's termination decisions.

The court disagrees with Radiall's characterization that Mr. Rigoland played only a "supporting role" in the termination of Ms. Petrowski but was "fundamental" in terminating Mr. Ramadei. Def.'s Mem. New Trial at 12. The court view's Mr. Rigoland as also playing a "fundamental" role in Ms. Petrowski's termination because Mr. Rigoland's testimony suggests his approval was necessary before Ms. Petrowski could be terminated. Tr. Day Two at 432:2–17; 439:15–21. The second factor, therefore, weighs in favor of admitting Ms. Petrowski's testimony because the decision to terminate her position and the decision to terminate Mr. Ramadei's position involved at least two of the same Radiall employees, at

Appendix B

least one of whom played a “fundamental” role in the decision to eliminate both positions.

The third, and final, factor does not strongly favor inclusion or exclusion of the “me too” testimony. Radiall cites district court cases where proffered “me too” witnesses were not permitted to testify because their termination was up-to ten years separated from the termination of the plaintiff. Def.’s Mem. New Trial at 12–13 (citing cases). The temporal proximity between the termination of a “me too” witness and a plaintiff may be significant because it serves as one indication about whether the circumstances at issue have probative value. *See Miro v. City of Bridgeport*, No. 3:20-CV-346 (VAB), 2023 WL 4992877, at *10 (D. Conn. Aug. 3, 2023) (explaining that testimony from a proposed witness who was terminated ten years before the plaintiff would be of limited probative value). However, “temporal proximity is just one factor to consider.” *Belabbas v. Inova Software Inc.*, No. 1:16-CV-07379 (LGS), 2019 WL 13258045, at *3 (S.D.N.Y. Oct. 1, 2019) (“The fact that Plaintiff’s alleged discrimination happened at least two years after [the “me too” witness] termination also does not bar [her] testimony.”).

The court, weighing all three “me too” factors, concludes that Ms. Petrowski’s testimony was relevant because it described a termination experience similar to that of Mr. Ramadei and involved two of the same Radiall employees, both of whom played important roles in the terminations.

Appendix B

Pursuant to Federal Rule of Evidence 403, relevant evidence such as here Ms. Petrowski's testimony should only be excluded when "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. The court considered Rule 403 at trial when it admitted this evidence. The court did not and cannot now conclude that Ms. Petrowski's testimony substantially outweighed its probative value. As a result, the court concludes the testimony was properly admitted and denies Radiall's Motion for a New Trial on this basis.

2. Gary Ramadei Testimony

According to Radiall, the court erred by allowing Mr. Ramadei to testify about William Moleski's ("Mr. Moleski") experience taking medical leave while employed by Radiall. Def.'s Mem. New Trial at 15–17. According to Radiall, the court erred for two reasons. First, it admitted Mr. Ramadei's testimony about Mr. Moleski pursuant to the state of mind exception of Federal Rule of Evidence 803(3). *Id.* 15–16. In Radiall's view, the state of Mr. Ramadei's mind was irrelevant to the ultimate question of whether Radiall was liable for FMLA violations. *Id.* Second, the court's decision to admit this supposedly irrelevant testimony was contrary to Federal Rule of Evidence 403 because the testimony's *de minimis* probative value was outweighed by the risk of either unfair prejudice to Radiall or jury confusion. *Id.* at 16.

Appendix B

Before addressing each of Radiall's arguments, a brief description of the testimony at issue is worthwhile. Mr. Ramadei testified during the first day of trial and was asked by his attorney why he sought a doctor's note while on medical leave. Tr. Day One. At 192:17–20. Mr. Ramadei explained, in part, that he did so because he “had seen how people were treated.” Tr. Day One at 192:24. Immediately thereafter, Mr. Ramadei's counsel requested a sidebar and explained to the court that she was concerned Mr. Ramadei was about to discuss Mr. Moleski's experience taking medical leave, which, at the time, was excluded by the court's Motion in Limine Ruling. *Id.* at 193:7–11. In response, the court directed Mr. Ramadei's attorney to avoid eliciting testimony about Mr. Moleski's experience taking FMLA leave. *Id.* at 193:13–25. On the third day of trial, Ms. Musante testified about six employees who had taken medical leave without issue in 2019 and 2020. Tr. Day Three at 536:23–537:12, 564:16–565:21, 566:10–567:11. Following this testimony, having found that Radiall had “opened the door”, the court allowed Mr. Ramadei's attorney to recall him as a witness so that Mr. Ramadei could testify about his knowledge of Mr. Moleski's medical leave. *See id.* at 657:18–20. Radiall objected to Mr. Ramadei's testimony, asserting that it was inadmissible hearsay. *Id.* at 658:20. The court allowed the testimony but, per Federal Rule of Evidence 803(3), instructed the jury to consider Mr. Ramadei's testimony only to the extent it explained his state of mind as he was on medical leave. *Id.* at 658:22–659:2. Following the court's instruction to the jury, Mr. Ramadei explained that Mr. Moleski had taken medical leave from Radiall. *Id.* at 659:9–661:14. Mr. Ramadei testified that he heard Mr.

Appendix B

Moleski had been told his health insurance, presumably supplied by Radiall, had been revoked while he was on medical leave. *Id.* at 660:11–16.

Turning to Radiall’s first argument, evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.” Fed. R. Evid. 401. In making his FMLA claim, Mr. Ramadei was required to prove that he provided Radiall with sufficient information about a serious medical condition warranting medical leave. Jury Charge (Doc. No. 85) at ¶¶ 12–13. Mr. Ramadei’s testimony goes to this element of his FMLA claim because it suggests that, at the time Mr. Ramadei was in the hospital, he was aware of a former Radiall colleague, Mr. Moleski, who had had difficulty taking medical leave. Tr. Day Three 660:11–16. Mr. Ramadei’s awareness of Mr. Moleski’s experience makes it more likely that Mr. Ramadei would have obtained medical documentation of his health condition and shared it with Radiall to avoid the same interruption to his medical insurance that he thought Mr. Moleski experienced. *See id.* 660:11–16; Tr. Day One at 194:18–20. Thus, the court concludes Mr. Ramadei’s testimony about Mr. Moleski’s experience taking medical leave while employed at Radiall is relevant and has some probative value.

As for Radiall’s second argument, even relevant evidence may be excluded if “its probative value is *substantially* outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative

Appendix B

evidence.” Fed. R. Evid. 403 (emphasis added). In Radiall’s view, that the jury found Radiall had retaliated against Mr. Ramadei can only be explained by the jury’s improper consideration of Mr. Ramadei’s testimony about Mr. Moleski because there was no competent evidence that Radiall retaliated against Mr. Ramadei. Def.’s Mem. New Trial at 17.

Contrary to Radiall’s contention, the jury was presented with ample competent evidence upon which it could reasonably have found Radiall retaliated against Mr. Ramadei for taking medical leave. For example, Mr. Ramadei testified that, having worked at Radiall, including its predecessor, for 31 years, he had never received a negative performance review or disciplinary warning, was never denied a bonus for which he was eligible, and had never been told by any Radiall employee that his performance was in any way unsatisfactory. Tr. Day One at 178:22–179:13. Despite Mr. Ramadei’s record, Radiall decided to inform him that his position had been eliminated about two weeks after Mr. Ramadei returned from medical leave. Tr. Day One at 66:1–7. Mr. Rigoland testified that Mr. Ramadei’s position was scheduled for elimination as early as 2018. Tr. Day Two at 442:18–21. However, Mr. Rigoland also testified that the decision to terminate Mr. Ramadei was postponed in 2018, 2019, and 2020. *Id.* at 442:18–445:2. Finally, Mr. Rigoland testified that the decision to terminate Mr. Ramadei was made sometime between September 24, 2020, and October 14, 2020, soon after Mr. Ramadei was on medical leave. *Id.* at 440:11–441:19. Considering the testimony just described, the jury was presented with ample evidence to conclude

Appendix B

Radiall retaliated against Mr. Ramadei. Accordingly, the court is unconvinced by Radiall's argument that the state of mind evidence at issue here caused it undue prejudice. Instead, the court concludes the state of mind evidence was probative and was not substantially outweighed by the risk of undue prejudice or confusion. To the extent Radiall seeks a new trial on the basis of the Mr. Ramadei's state of mind testimony, its Motion is denied.

3. Maite Tristan Testimony

Radiall next argues that the court erred when it refused to allow Radiall to introduce evidence about the date a spreadsheet was created and directed the jury to disregard testimony about the same. Def's Mem. New Trial at 17–23. Mr. Ramadei opposes Radiall's assertions. Pl.'s Opp'n New Trial at 13–16.

During the third day of trial, Radiall called its president, Ms. Tristan, to testify. Counsel for Radiall showed Ms. Tristan Exhibit 10. Tr. Day Three at 610:8–9. Exhibit 10 is a spreadsheet that includes the description "Staff Replacement - Facility Mgr with Maintenance Agent". Ex. 10. Ms. Tristan explained that she, and others, prepared the spreadsheet as part of an effort to reduce costs. *See* Tr. Day Three at 610:11–21. Radiall's attorney asked Ms. Tristan to explain why the Google Sheet lacked a date. *Id.* at 410:22–24. Ms. Tristan said that, while the spreadsheet did not display a date, the maker of the cloud-based software, Google, automatically records and dates each time the spreadsheet is edited. *See id.* at 610:22–611:17. Ms. Tristan testified that Exhibit 10

Appendix B

was edited on April 28, 2020. *See id.* at 611:17–18. When Radiall’s counsel asked Ms. Tristan how she knew the spreadsheet was edited on April 28, she said she recalled editing it that week with Mr. Rigoland. *Id.* at 611:23–612:1.

Ms. Tristan later testified that Radiall undertakes an annual budgeting process beginning each September. *Id.* at 615:18–21. Radiall’s counsel directed Ms. Tristan to Exhibit 54, a spreadsheet that again included the phrase “Staff Replacement – Facility Mgr with Maintenance Agent”. Ex. 54. Ms. Tristan testified that the spreadsheet was “the September 15 version” of the spreadsheet previously discussed, Exhibit 10. Tr. Day Three at 620:17–18. Counsel for Mr. Ramadei moved to strike Ms. Tristan’s testimony about the date of Exhibit 54, an objection the court sustained. *Id.* at 620:21–621:6. After this objection, the following exchange occurred between Radiall’s counsel and Ms. Tristan:

Q: So what was the date that you actually entered into this document [Exhibit 54]?

A: September 15.

Q: How do you know that?

A: I know that because there’s a time stamp on the live document in Google If anybody wanted to check . . . me, it’s information that we have available.

Id. at 623:25–624:14. On cross examination, counsel for Mr. Ramadei asked Ms. Tristan if she had any documents

Appendix B

that could support her testimony about certain dates, including the dates the spreadsheet was edited. *Id.* at 644:7–10. Ms. Tristan replied that she did and testified “[counsel for Radiall] has the electronic document where he can show the time stamps.” *Id.* at 644:15–17. Following a sidebar, the court instructed the jury to disregard Ms. Tristan’s response on cross examination that counsel for Radiall possessed a document in the courtroom that would substantiate Ms. Tristan’s assertions about the date the spreadsheet was edited. *Id.* at 648:3–19.

Under Federal Rule of Civil Procedure 26 (“Rule 26”), each party has an obligation to supplement answers to interrogatories “in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties”. Fed. R. Civ. P. 26(e)(1)(A). Pursuant to Federal Rule of Civil Procedure 37 (“Rule 37”), “[i]f a party fails to provide information . . . as required by Rule 26(a) or (e), the party is not allowed to use that information . . . at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1). Taken together, a party that fails to disclose a document as required under Rule 26 is, ordinarily, prohibited from introducing that document, or information contained therein, at trial.

Application of the Rules just discussed requires the court to consider: (1) whether the electronic version of the spreadsheet that Ms. Tristan described as being present in the courtroom was a separate document from the spreadsheets produced by Radiall, thereby requiring

Appendix B

a separate production; and, if so, (2) whether Radiall's failure to produce this document was substantially justified or harmless. Starting with the first issue, the court continues to understand the electronic version of the spreadsheet, as described by Ms. Tristan, to be a separate document from the versions produced by Radiall and introduced as exhibits. This electronic version contained material information not in the spreadsheets that were produced and thus the electronic version should have been disclosed by Radiall to Mr. Ramadei pursuant to Rule 26(e). *See* Wright & Miller, 8A Fed. Prac. & Proc. Civ. § 2049.1 (3d ed.) (describing Rule 26(e)'s supplementation requirement as a "broad . . . directive").¹

Turning to the second issue, even if Radiall failed to disclose the electronic version of the spreadsheet, it might still have been admissible under Rule 37(c). Fed. R. Civ. P. 37(c)(1). However, Radiall had the burden to show that either the document was withheld for substantially justified reasons, or Mr. Ramadei would be unharmed by its introduction. *See Doe v. Hicks*, No. 3:15-CV-01123 (AVC), 2016 WL 5172814, at *8 (D. Conn. Sept. 21, 2016). During a sidebar, counsel for Radiall argued that its failure to disclose the electronic version of the spreadsheet was substantially justified. *See* Tr. Day Three at 645:8–16, 646:6–13. Radiall's counsel noted that, during her deposition, Ms. Tristan mentioned dates the spreadsheet

1. Radiall was also required to disclose this electronic document under Rule 26(a)(3)(A)(iii), which directs each party to provide to the opposing party the "identification of each document or exhibit . . . separately identifying those items the party expects to offer or those it may offer if the need arises."

Appendix B

at issue was edited could be seen on the electronic version of the document. *Id.* at 645:8–16. Upon learning this, it was Mr. Ramadei’s burden, according to Radiall, to request the electronic versions of the spreadsheet. *Id.* The court disagrees, as it explained at trial. Having learned of the existence of another version of the document at issue, it was Radiall’s burden to supplement its production. *Id.* at 645:24–646:5.

Radiall also argued that the information at issue was metadata, not a separate version of the spreadsheet, and Mr. Ramadei did not request document metadata. *See id.* at 646:10–13. The information about the date a document was created or edited may, ordinarily, be considered metadata. *See United States v. Brown*, 843 F.3d 74, 76 n. 1 (2d Cir. 2016) (“Metadata is data typically stored electronically that describes characteristics of [electronically stored information (‘ESI’) such as how, when, and by whom ESI was collected, created, accessed, modified, and how it is formatted.” (cleaned up and internal quotation marks omitted)). Metadata is typically not visible to the naked eye, instead, it is usually information hidden within a document that must be extracted to be viewable. *See Aguilar v. Immigr. & Customs Enf’t Div. of U.S. Dep’t of Homeland Sec.*, 255 F.R.D. 350, 354 (S.D.N.Y. 2008) (describing metadata as including “hidden text”). Here, by contrast, Ms. Tristan described the electronic version of the spreadsheet as “the document . . . [with a] time stamp by Google.” Tr. Day Three at 642:1–2. Earlier, she testified that Google Sheets allows the user to “open the software and say . . . show me what [the spreadsheet] looked like on this date and the software will show me what it looked like.” *Id.* at 611:9–12. Based

Appendix B

on the foregoing, the court understands Google Sheets to offer users a version control function that allows them to view iterations of a document on command. When a user selects the version of the document they wish to view, the date is prominently displayed on the electronic version of the spreadsheet. Radiall, therefore, was not substantially justified in withholding the electronic version of the spreadsheet, because Mr. Ramadei requested electronically stored information, such as the electronic version of the spreadsheet at issue here. Pl.'s Ex. 7 at 1.²

Finally, even if the court erred in excluding the electronic version of the spreadsheet, the court issued a narrow instruction to the jury about disregarding Ms. Tristan's testimony. Tr. Day Three at 648:5–9.³ The

2. Radiall made no argument at trial about whether introduction of the electronic version of the spreadsheet would be harmless. *See* Tr. Day Three at 644–648. However, the court's view is that Mr. Ramadei would have been harmed, *i.e.*, prejudiced, by introduction of the spreadsheet at issue near the close of trial.

3. The court's instructed the jury as follows:

Ladies and gentlemen . . . during cross-examination, Attorney DeMatteis has been questioning [Ms. Tristan] and in the course of the questioning, there has been testimony given that would put out the idea that there's something in the courtroom that would evidence testimony she gave on direct. You are to disregard that testimony. You have no knowledge as you sit here as jurors and as you deliberate that there is anything today that could show a basis for some testimony she gave.

Tr. Day Three at 648:5–9.

Appendix B

jury was free to consider Ms. Tristan's other testimony suggesting that Exhibit 54 was edited on September 15, 2020, including that Radiall undertakes a budgeting process every September and that Ms. Tristan's examination of the spreadsheet revealed it was edited on the date in question. *See id.* at 615:20–21, 623:25–624:18. As a result, the court does not conclude that Radiall was prejudiced such that a new trial is warranted. *See Pace v. Nat'l R.R. Passenger Corp.*, 291 F. Supp. 2d 93, 97 (D. Conn. 2003) ("A motion for new trial on the basis of improper evidentiary rulings will be granted only where the improper ruling affects a substantial right of the moving party."). The court, therefore, denies Radiall's Motion to the extent it seeks a new trial on this basis.

4. Verdict Form Question One

Radiall argues Verdict Form Question One was impermissibly vague because it failed to ask the jury to provide a basis for its finding that Mr. Ramadei's termination was motivated, at least in part, by his medical leave. Def.'s Mem. New Trial at 27. That Question One was vague is suggested by the jury's supposedly conflicting answer to Question Five, where it found Radiall acted in good faith and reasonably believed it was not violating the FMLA when it terminated Mr. Ramadei. *Id.* at 27–28. In opposition, Mr. Ramadei argues Radiall failed to object to Question One. Pl.'s Opp'n New Trial at 18.

Radiall does not cite to any portion of the record showing it objected to Verdict Form Question One. *See* Def.'s Mem. New Trial at 27–28. "[U]nless there is plain

Appendix B

error, failure to object to an issue during trial precludes review of that issue on a motion for a new trial.” *Hardy v. Saliva Diagnostic Sys., Inc.*, 52 F. Supp. 2d 333, 340 (D. Conn. 1999) (internal quotation marks omitted) (citing *Schaafsma v. Morin Vermont Corp.*, 802 F.2d 629, 636 (2d Cir. 1986)); accord *Pace v. Nat’l R.R. Passenger Corp.*, 291 F. Supp. 2d 93, 97 (D. Conn. 2003). The court is unable to locate any such objection upon its own review of the record. Radiall, having failed to object to Verdict Form Question One, the court will consider whether its formulation of Question One constitutes plain error. *See Lavin-McEleney v. Marist Coll.*, 239 F.3d 476, 482 (2d Cir. 2001). “To constitute plain error, a court’s action must contravene an established rule of law, and go to the very essence of the case.” *Rasanen v. Doe*, 723 F.3d 325, 333 (2d Cir. 2013) (internal quotation marks and citations omitted).

The court does not agree with Radiall that the jury’s answers to Verdict Form Questions One and Five suggest the jury was confused by Question One. Indeed, the court does not view the jury’s answers to Questions One and Five as being contradictory. As the court explained in its prior Ruling, an employer may violate the FMLA without intending to do so and while acting in good faith. Post-Trial Ruling at 8–15. The Jury Charge similarly explained “[a]n employer who violates the FMLA must also pay an additional amount known as liquidated damages[,] [unless] you find . . . Radiall[’s] . . . violation was in good faith and” Radiall reasonably believed it was not violating the FMLA. Jury Charge at ¶ 19. Accordingly, the court does not view the jury’s answers to Verdict Form Questions One and Five as suggesting the jury was confused. As this was the basis of Radiall’s challenge to Verdict Form Question

Appendix B

One, the court concludes Radiall has failed to demonstrate Question One amounts to plain error and denies Radiall's Motion for a New Trial on this basis.

5. Verdict Form Question Two

Verdict Form Question Two was impermissibly vague, according to Radiall, because it did not require the jury to allocate backpay between the Facilities Manager and Maintenance Associate positions. *See* Def.'s Mem. New Trial at 25–26. In Radiall's view, this error was prejudicial because it introduced unnecessary ambiguity when the court calculated front-pay. *Id.* at 26–27. Absent this supposed error, there would be no need for the court to speculate about which position, Facility Manager or Maintenance Associate, should serve as the basis of the court's front-pay calculation. *See id.* Mr. Ramadei opposes this argument, noting that Radiall failed to formally object to the Verdict Form and has not satisfactorily argued that the vagueness of the form warrants a new trial. Pl.'s Opp'n New Trial at 18. While Radiall may not have formally objected to Question Two, Radiall did suggest modifications to Question Two. *See* Tr. Day Three at 674:1–5. Accordingly, the court will review Radiall's challenge to Question Two on the merits.

Radiall requested that the court adopt a verdict form that directed the jury to calculate backpay on an annual basis, considering the Facilities Manager and Management Associate positions separately. *See* Def.'s Mem. New Trial at 24–26. Had the court adopted Radiall's proposed verdict form, the jury would have had to enter some monetary value in as many as fourteen separate

Appendix B

places. *See id.* The verdict form adopted by the court, by contrast, required the jury to enter a monetary value only once, thereby simplifying the work of the jury and reducing the risk that they might become confused.

That the court's version of Verdict Form Question Two is adequately clear is made all the more apparent when considering the court's jury instructions, which the jury is presumed to have followed. *United States v. Williams*, 690 F.3d 70, 77 (2d Cir. 2012). In this case, the court properly instructed the jury as to the manner in which it should calculate back pay. Jury Charge at ¶ 17. The court sees no reason to conclude that the jury failed to follow this instruction when completing Verdict Form Question Two. Thus, Radiall has not established that Verdict Form Question Two suggests that the jury has reached an erroneous result, or the verdict is a miscarriage of justice. Accordingly, the court denies Radiall's Motion for a New Trial on this basis.

6. Jury Verdict

Radiall's final argument as part of its Motion for a New Trial is that the jury's answer to Verdict Form Question One was contrary to the weight of the evidence because there was no evidence that Radiall's decision to eliminate Mr. Ramadei's position was motivated by his medical leave. Def.'s Mem. New Trial at 23–24.

“[A] decision is against the weight of the evidence if and only if the verdict is (1) seriously erroneous or (2) a miscarriage of justice.” *ING Glob. v. United Parcel Serv. Oasis Supply Corp.*, 757 F.3d 92, 99 (2d Cir. 2014). As

Appendix B

the court has already explained, the jury was presented with ample evidence upon which it could find Radiall's decision to terminate Mr. Ramadei was motivated, at least in part, by his use of medical leave. *See, supra*, part IV.A.2. The court concludes that the jury's verdict was neither seriously erroneous nor a miscarriage of justice and denies Radiall's Motion for a New Trial on this basis. Having considered and rejected all of Radiall's arguments, the court denies its Motion for a New Trial.

B. Motion for Judgment as a Matter of Law

Pursuant to Rule 50(b), Radiall submits a renewed Motion for Judgment as a Matter of Law. It argues the jury's verdict was contrary to the manifest weight of the evidence and could have been reached only as a result of conjecture or surmise, failure to follow the court's jury instructions, and errors of law made by the court. *See* Def.'s Mem. JMAL. Mr. Ramadei opposes this Motion, citing evidence admitted at trial that supports the jury's verdict. Pl.'s Opp'n Judgment as a Matter of Law ("JMAL") (Doc. No. 126).

The standard governing the court's consideration of motions made under Rule 59 is "less stringent" than the standard applied to motions made under Rule 50. This is because "(1) a new trial under Rule 59(a) 'may be granted even if there is substantial evidence supporting the jury's verdict,' and (2) 'a trial judge is free to weigh the evidence h[er]self, and need not view it in the light most favorable to the verdict winner.'" *Manley v. AmBase Corp.*, 337 F.3d 237, 244–45 (2d Cir. 2003) (quoting *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 169 (2d Cir. 2001)).

Appendix B

Radiall argues its renewed Motion for Judgment as a Matter of Law should be granted because Ms. Musante, Mr. Rigoland and Ms. Tristan all testified that the decision to eliminate Mr. Ramadei's position had been made "years prior" to Mr. Ramadei taking medical leave. Def.'s Mem. JMAL at 3. The company's decision, according to Radiall's summary of the evidence introduced at trial, stemmed from its downsizing of the Connecticut facility and financial strain resulting from the COVID-19 pandemic. *Id.* at 3.

That the jury did not credit Radiall's explanation for the elimination of Mr. Ramadei's position does not mean that its Motion for Judgment as a Matter of Law is warranted. As already discussed, the court concludes the jury was presented with evidence from which it could have reasonably found Radiall's decision to eliminate Mr. Ramadei's position was made because he took medical leave. *See, supra*, part IV.A.2. Accordingly, the court denies Radiall's renewed Motion for Judgment as a Matter of Law.

V. CONCLUSION

For the reasons stated above, the court denies the defendant's Motion for a New Trial (Doc. No. 124) and Motion for Judgment as a Matter of Law (Doc. No. 125).

SO ORDERED.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge

**APPENDIX C — RULING ON MOTION OF
THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT, FILED
SEPTEMBER 16, 2024**

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL CASE NO. 3:21-CV-01435 (JCH)

GARY T. RAMADEI,

Plaintiff,

v.

RADIAL USA, INC.,

Defendant.

Filed September 16, 2024

**RULING ON MOTION FOR AWARD OF
LIQUIDATED DAMAGES, MOTION FOR AWARD
OF PRE- AND POST-JUDGMENT INTEREST,
MOTION FOR FRONT PAY OR REINSTATEMENT,
AND MOTION FOR ATTORNEY FEES AND COSTS**

I. INTRODUCTION

Plaintiff Gary Ramadei (“Mr. Ramadei”) moves this court for awards of liquidated damages, front pay or reinstatement, pre- and post-judgment interest, and attorneys’ fees and costs. *See* Motion for Award of Liquidated Damages (“Liq. Damages Mot.”) (Doc.

Appendix C

No. 102); Motion for Award of Pre- and Post-Judgment Interest (“Interest Mot.”) (Doc. No. 103); Motion for Front Pay or Reinstatement (“Front Pay Mot.”) (Doc. No. 104); Motion for Attorney Fees and Costs (“Fees & Costs Mot.”) (Doc. No. 105); *see also* Reply Memorandum in Support of Motion for Award of Liquidated Damages (“Liq. Damages Reply”) (Doc. No. 110); Reply Memorandum in Support of Motion for Attorney Fees and Costs (“Fees & Costs Reply”) (Doc. No. 111); Reply Memorandum in Support of Motion for Front Pay or Reinstatement (“Front Pay Reply”) (Doc. No. 112). The defendant, Radiall USA, Inc. (“Radiall”), opposes all Motions but the Motion for Award of Pre- and Post-Judgment Interest; *See* Memorandum in Opposition to Motion for Award of Liquidated Damages (“Liq. Damages Opp’n”) (Doc. No. 107); Memorandum in Opposition to Motion for Attorney Fees and Costs (“Fees & Costs Opp’n”) (Doc. No. 108); Memorandum in Opposition to Motion for Front Pay or Reinstatement (“Front Pay Opp’n”) (Doc. No. 109).

For the reasons set forth below, the court grants in part the Motion for Award of Pre- and Post-Judgment, Motion for Liquidated Damages, Motion for Front Pay or Reimbursement, and Motion for Attorney Fees and Costs.

II. BACKGROUND

The court assumes familiarity with the facts and the procedural history pertaining to this action, most of which is provided in further detail in the court’s Ruling on Motion for Summary Judgment (“MSJ Ruling”) (Doc. No. 44). The court provides a summary of the background relevant to the instant Motions.

Appendix C

Mr. Ramadei brought this action against his former employer, Radiall, alleging age discrimination in violation of the Age Discrimination in Employment Act of 1967 (“ADEA”), 29 U.S.C. § 623 *et seq.*, and the Connecticut Fair Employment Practices Act (“CFEPA”), Conn. Gen. Stat. § 46a-60(b)(1), as well as retaliation in violation of the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2615. *See* Complaint (“Compl.”) (Doc. No. 1).

On September 8, 2023, the court granted summary judgment in Radiall’s favor as to the age discrimination claims and denied summary judgment with respect to the FMLA claim. *See* MSJ Ruling. On December 8, 2023, at the conclusion of a four-day trial, the jury found that Radiall had violated the FMLA. *See* Jury Verdict (Doc. No. 86) at 1. As to damages, the jury granted a total award of \$187,714.00, as compensation for, *inter alia*, lost wages, salary, and employment benefits. *See id.* at 1. The jury did not find that Mr. Ramadei had failed to mitigate his damages. *See id.* at 2. On an advisory basis, the jury found that Radiall had acted in good faith and had reasonable grounds to believe terminating Mr. Ramadei was not a violation of the FMLA. *See id.*

III. DISCUSSION

A. Motion for Award of Pre- and Post-Judgment Interest

1. Pre-judgment Interest

The FMLA provides that an employer shall be liable for interest on the back pay award at “the prevailing rate”.

Appendix C

See 29 U.S.C. § 2617(a)(1)(A)(ii). Pre-judgment interest awards are mandatory and “automatically becom[e] part of the damages award under the plain terms of the statute.” *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 302 (4th Cir. 2009) (citing 29 U.S.C. § 2617(a)(1)(A)(i)–(iii)). In light of the mandatory grant of pre-judgment interest and the lack of opposition from the defendant, plaintiff’s Motion is granted insofar as it seeks pre-judgment interest.

The court next turns to the issue of the amount to be awarded. Mr. Ramadei seeks pre-judgment interest in the amount of \$26,186.13. *See* Interest Mot. at 2–3. Mr. Ramadei arrives at this sum by, first, multiplying the jury award of \$187,714, by 4.65%—the weekly average 1-year constant maturity Treasury yield for the week of January 12, 2024—and then, tripling that amount for the approximately three years wages were withheld from November 13, 2020, the effective date of his employment termination, to December 8, 2023, the date of the jury verdict. *See id.* Mr. Ramadei uses the 4.65% rate because courts in this Circuit have looked to the federal post-judgment interest statute to calculate pre-judgment interest. *See id.* This statute provides that “interest shall be calculated . . . at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding[] the date of the judgment.” *See* 28 U.S.C. § 1961(a).

Although Radiall did not file a memorandum in opposition to the plaintiff’s Motion for Award of Pre- and Post-Judgment Interest, it seemingly has a different

Appendix C

understanding of the appropriate calculation according to the numbers it presented in its Memorandum in Opposition to the plaintiff's Motion for Award of Attorneys' Fees and Costs. *See* Fees & Costs Opp'n at 8. The defendant projected the pre-judgment interest on the back pay award to be \$8,729. *See id.* at 8. This amount is equal to a straightforward application of the 4.65% rate to the \$187,714 back pay award.

Neither the \$26,196.13 amount provided by the plaintiff, nor the \$8,729 amount assumed by the defendant is appropriate. The purpose of pre-judgment interest is to "discourage an employer from attempting to enjoy an interest-free loan for as long as [it can] delay paying out back wages." *Chandler v. Bombardier Cap., Inc.*, 44 F.3d 80, 83 (2d Cir. 1994) (quoting *Clarke v. Frank*, 960 F.2d 1146, 1153–54 (2d Cir. 1992)). "Where prejudgment interest is given, it should be assessed upon damages only as they become due." *Id.* at 84. Here, the 4.65% interest rate is not the rate for the time period at issue, and both sides failed to calculate interest based on accrued earnings. *See, e.g., Ferguson v. Lander Co., Inc.*, No. 3:06-CV-0328 (DEP), 2008 WL 921032, at *23 n. 39 (N.D.N.Y. Apr. 2, 2008). Because the methodology, and thus the amount to be awarded, is within the court's discretion, the court will determine the appropriate interest rate and calculation. *See id.*, at *23 (citing *Torres v. Costich*, 935 F. Supp. 232, 236 (W.D.N.Y. Aug. 22, 1996)); *Robinson v. Instructional Sys., Inc.*, 80 F. Supp. 2d 203, 208 (S.D.N.Y. 2000) (citing *Endico Potatoes, Inc. v. CIT Group/Factoring, Inc.*, 67 F.3d 1063, 1071 (2d Cir. 1995)).

*Appendix C***a. Interest Rate**

Although “[t]he Second Circuit has not definitively spoken concerning the particular methodology to be employed” in calculating pre-judgment interest under the FMLA, “it has[,] at various times, [] found that using either 28 U.S.C. § 1961 or 26 U.S.C. § 6621 does not present an abuse of discretion.” *Ferguson*, 2008 WL 921032, at *23 (citations omitted) (collecting cases); *see also Brenlla v. LaSorsa Buick Pontiac Chevrolet, Inc.*, No. 00-CV-5207 (JCF), 2002 WL 1059117, at *12 (S.D.N.Y. May 28, 2002) (noting that courts have often applied the rate in section 1961 to pre-judgment interest awards in employment discrimination cases). As such, and considering the lack of opposition from the defendant, the court sees no reason why it should not apply the weekly average 1-year constant maturity Treasury yield identified in section 1961 in determining pre-judgment interest. However, while applying the weekly average Treasury yield corresponding to *the week preceding judgment*, *see* 28 U.S.C. § 1961, makes sense for post-judgment interest, it is ill suited for approximating the interest the employer collected by virtue of retaining back wages. In that instance, the applicable average 1-year constant maturity will vary across the time between the date of termination and the date judgment is entered.

Had the plaintiff continued employment past November 13, 2020, he would have received a paycheck for the last two weeks of November in the second week of December 2020, assuming a biweekly pay schedule. Thus, the first “missed” paycheck would have been due December

Appendix C

11, 2020. The Federal Reserve determines the weekly Treasury rate each Friday by calculating the average of the daily Treasury rate, published each business day of the week. *See Market Yield on U.S. Treasury Securities at 1-Year Constant Maturity, Quoted on an Investment Basis*, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/WGS1YR> (explaining that weekly rate averages are calculated each Friday). Therefore, the court will begin computing pre-judgment interest from the 1-year constant maturity Treasury yield for the week of December 18, 2020. The average rate is 0.09% for the first year (52 weeks); 2.56% for the second year; 5.07% for the third year; and 4.91% for the period between December 2023 to September 2024. *See id.*

b. Calculation

The plaintiff's proposed award in the amount of \$26,186.13 is also flawed because, aside from drawing the interest rate from 2024, it is calculated by tripling the interest on the back pay award. *See Interest Mot.* at 4. That method of calculating assumes that the entire back pay award was due from the date of termination until the jury's verdict. Backpay is meant to reflect the employee's compensation, *e.g.*, salary plus benefits. Thus, the best approximation for interest as it becomes due requires applying the relevant rate to a *pro rata* portion of the back pay award. *Brenlla*, 2002 WL 1059117, at *12 n.9 (citing *Robinson*, 80 F. Supp. 2d at 208).

Appendix C

As applied here, this means that the back pay award of \$187,714 is prorated to \$62,571.33 per year for the period between December 2020 to December 2023, when the jury reached its verdict. The first \$62,571.33 will accrue interest at an annualized rate of 0.09% in the first year, 2.56% in the second year, 5.07% in the third year, and 4.91% in the final nine months preceding this judgment. *See, supra*, Section III.A.1.a. The second \$62,571.33 is not due until the second year, so it will accrue zero interest in the first year, thereafter, it will accrue interest at an annualized rate of 2.56% in the second year, 5.07% in the third year, and 4.91% in the final nine months. *See id.* The third \$62,571.33 will accrue interest at an annualized rate of 5.07% and 4.91%, respectively. *See id.*

Considering that salary is usually paid biweekly, electing to compound pre-judgment interest annually does not realistically capture the potential interest the defendant earned by withholding wages throughout the entire year. On the other hand, compounding interest daily fails to consider that employers only pay wages 2–3 times a month, assuming a biweekly schedule. As such, the court’s calculation compounds the interest monthly because it serves as a reasonable model. *See, e.g., Ferguson*, 2008 WL 921032, at *23 n.39 (computing compounded interest by assuming the plaintiff’s annual salary was fully earned halfway through the year).

Based on this methodology, Radiall earned \$31.42 in 2020–2021, by withholding \$5,214.28 each month at an annualized interest rate of 0.09%. The *pro rata* award for 2020–2021, \$62,571.33, plus the 2020–2021 interest,

Appendix C

\$31.42, together, will accrue interest at an annualized rate of 2.56%, 5.07%, and 4.91%, respectively. In total, the first year *pro rata* award will accrue \$7,511.76 over the period at issue.¹ The same methodology applied to the *pro rata* awards for the last two years yields interest amounts of \$6,663.49, and \$4,152.47, respectively. In total, the accrued pre-judgment interest on damages amounts to \$18,327.72. *See, supra*, 1.

1.

2020-2021			2021-2022		
Balance (\$)	Rate (%)	Interest (\$)	Balance (\$)	Rate (%)	Interest (\$)
62,571.33*	0.09	31.42	62,602.75	2.56	1,618.98
			62,571.33*	2.56	873.09
		31.42			2,492.07

2022-2023			2023-Sept. 2024		
Balance (\$)	Rate (%)	Interest (\$)	Balance (\$)	Rate (%)	Interest (\$)
64,221.74	5.07	3,333.17	67,554.91	4.91	2,528.18
63,444.42	5.07	3,292.83	66,737.25	4.91	2,497.58
62,571.33*	5.07	1,745.47	64,316.80	4.91	2,407.00
		8,371.47			7,432.76

Total Interest (\$)	Total (\$)
7,511.76	70,083.09
6,663.49	69,234.82
4,152.47	66,732.80
18,327.72	206,041.71

* Interest calculated based on a monthly accrual of \$5,214.28.

Appendix C

Accordingly, the plaintiff's Motion for Pre-Judgment Interest is granted in part. The pre-judgment interest to be awarded is \$18,327.72.

2. Post-Judgment Interest

The plaintiff seeks a post-judgment interest award to be determined at a rate of 4.65%. *See* Interest Mot. at 1. As discussed, *see, supra*, at Section III.A.1, this rate is drawn from the 1-year constant maturity Treasury yield for the week of January 12, 2024. Section 1961 of title 28 of the U.S. Code, governing post-judgment interest awards, provides that the applicable interest rate is the average 1-year constant maturity Treasury yield . . . *for the calendar week preceding[] the date of judgment.*" *See* 28 U.S.C. § 1961 (emphasis added). Accordingly, the court grants the Motion insofar as it seeks post-judgment interest but denies the Motion as to the 4.65% rate drawn from the week of January 12, 2024. Using the rate from the preceding week, available as of September 10, 2024, the court calculates the post-judgment interest as of today, September 16, 2024, the day the Clerk will enter judgment, to be 4.22%.

B. Motion for Award of Liquidated Damages

An employer who violates the FMLA shall be liable to the employee for liquidated damages equal to the sum of the amount of the back pay award and pre-judgment interest. *See* 29 U.S.C. § 2617(a)(1)(A)(iii). However, if a violative employer "proves to the satisfaction of the court that the act or omission which violated section 2615 . . .

Appendix C

was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 2615 . . . the court may, in [its] discretion[,]” decline to award liquidated damages. *Id.* The court’s “discretion must be exercised consistently with the strong presumption under the statute in favor of doubling.” *Arban v. West Pub. Corp.*, 345 F.3d 390, 408 (6th Cir. 2003) (quoting *Elwell v. Univ. Hosps. Home Care Servs.*, 276 F.3d 832, 840 (6th Cir. 2002)). Thus, even if the employer acted in good faith and reasonably believed it was not violating the FMLA, the court may still award liquidated damages. *See Hite v. Vermeer Mfg. Co.*, 446 F.3d 858, 868 (8th Cir. 2006). In the instant case, the jury answered “yes” when it was asked, on an advisory basis, whether Radiall had acted in good faith and reasonably believed it was not violating the FMLA when it terminated Mr. Ramadei’s employment. *See Jury Verdict at 2.*

The plaintiff argues that an award of liquidated damages, *i.e.*, double damages, is merited in this case, despite the jury’s advisory conclusion that Radiall acted in good faith. *See Liq. Damages Mot. at 3–7.* Mr. Ramadei emphasizes the statutory language that explicitly places the determinations of good faith and reasonableness within the court’s discretion and permits the court to decline an invitation to reduce liquidated damages—even if it finds that the employer acted in good faith and had reasonable grounds to believe it was not violating the FMLA. *See id.* at 3–5. Radiall counterargues that the court should follow the jury’s determination, noting that the court did not provide any indication to the jury that its answer was advisory and not binding. *See Liq. Damages Opp’n at 4–5.*

Appendix C

Radiall points to various portions of the evidentiary record adduced at trial that, in its view, support the jury's verdict that the elimination of the Facility Manager position was made in good faith and that it reasonably believed it was not violating Mr. Ramadei's FMLA rights. *See id.* at 5–11.

Before turning to the weight the court accords to the jury's advisory determinations, a review of the standards of reasonableness and good faith as they pertain to liquidated damages under the FMLA is warranted. "[T] here are few cases discussing FMLA's liquidated damages provision in detail. However, because the provision mirrors the liquidated damages provision under the Fair Labor Standards Act ("FLSA"), 'courts considering liquidated damages under [the] FMLA have looked at cases under the FLSA.'"² *Persky v. Cendant Corp.*, 547 F. Supp. 2d 152, 156 (D. Conn. 2008) (quoting *Palma v. Pharmedica Commc'ns, Inc.*, 3:00-CV-1128 (HBF), 2003 WL 22750600, at *1 n. 2 (D. Conn. Sept. 30, 2003)); *see also Dotson v. Pfizer, Inc.*, 558 F.3d 284, 302 (4th Cir. 2009) (citing *Mayhew v. Wells*, 125 F.3d 216, 220 (4th Cir. 1997)); *Jordan v. U.S.P.S.*, 379

2. The liquidated damages provision of the FLSA provides:

if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the [FLSA] of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 of this title.

Appendix C

F.3d 1196, 1201–02 (10th Cir. 2004); *Arban*, 345 F.3d at 407–08. Under the FLSA:

To establish good faith, a defendant must produce plain and substantial evidence of at least an honest intention to ascertain what the Act requires and to comply with it. Good faith in this context requires more than ignorance of the prevailing law or uncertainty about its development. It requires that an employer first take active steps to ascertain the dictates of [the law] and then move to comply with them. In addition, the reasonableness requirement imposes an objective standard by which to judge the employer’s conduct.

Persky, 547 F. Supp. 2d at 157 (internal quotation marks and citations omitted) (alteration in original). Applying that standard to the FMLA, the employer must show that it took honest and reasonable steps to: (1) determine what the FMLA required of it, and (2) act in compliance with the requirements.

Due to disputes over the scope of instructions regarding liquidated damages and the reality that the issue would ultimately be decided by the court, even with the jury’s advisory determination, the Jury Charge in the instant case did not explain what “good faith” and “reasonable belief” mean in the context of FMLA liquidated damages. *See* Jury Charge at 26. Accordingly, the court concludes that it will not accord significant weight to the jury’s determination pertaining to liquidated damages.

Appendix C

Turning to the merits, the defendant argues that its good faith is evident from documentary and testimonial evidence showing: (1) its consistent efforts to comply with the FMLA, and (2) that it eliminated the Facilities Manager position for purely financial reasons. *See* Liq. Damages Opp’n at 5–8. Taking these arguments in turn, Radiall’s efforts to comply with the FMLA, generally, do not establish that it made similar effort in Mr. Ramadei’s case, specifically. Radiall’s latter argument impermissibly seeks to relitigate an issue—whether the decision to terminate Mr. Ramadei’s employment was motivated, at least in part, by his protected leave—that was within the jury’s province and decided in Mr. Ramadei’s favor. *See* Jury Verdict at 1; *Arban*, 345 F.3d at 408 (holding that the district court abused its discretion in crediting the defendant’s argument that it acted in good faith in deciding to terminate the plaintiff’s employment before the plaintiff requested medical leave, because, in returning a verdict for the plaintiff, the jury necessarily found that the defendant made its decision based on plaintiff’s medical leave). “When legal and equitable issues to be decided in the same case depend on common determinations of fact, such questions of fact are submitted to the jury, and the court in resolving the equitable issues is then bound by the jury’s findings on them.” *Smith v. Diffie Ford-Lincoln-Mercury, Inc.*, 298 F.3d 955, 965 (10th Cir. 2002) (citing *Ag Servs. of America, Inc. v. Nielsen*, 231 F.3d 726, 730 (10th Cir. 2000)). The Seventh Amendment prohibits the court from reaching a conclusion contrary to the jury’s determination on fact issues that are supported by the evidence. *See id.*; *see also Wade v. Orange Cnty. Sheriff’s Off.*, 844 F.2d 951, 954 (2d Cir. 1988) (“when the jury has

Appendix C

decided a factual issue, its determination has the effect of precluding the court from deciding the same fact issue in a different way.”).

Radiall further argues that it had reasonable grounds to believe it was not violating the FMLA when it terminated Mr. Ramadei’s employment because the documentary and testimonial evidence shows that: (1) Lori Musante (“Ms. Musante”), then-Director of Human Resources, and Patrice Rigoland (“Mr. Rigoland”), General Manager, reasonably believed they had facilitated Mr. Ramadei’s protected leave in an appropriate manner and to his satisfaction; and (2) Maite Tristan (“Ms. Tristan”), the President of Radiall, believed her decision was purely financial in nature. *See* Liq. Damages Opp’n at 8–11. Even assuming, *arguendo*, both sets of beliefs identified by Radiall are objectively reasonable, they do not address the crucial question of whether the defendant took reasonable steps to comply with the FMLA. Radiall essentially ignored a glaring sign that it should have investigated. As the documentary and testimonial evidence presented at trial demonstrates, although the position had been identified for potential elimination for some time, the plan to eliminate it was not set in motion until Mr. Ramadei was on leave. There is no evidence, therefore, that Radiall investigated or attempted to verify that the Facilities Manager position was terminated in a manner that would comply with the FMLA. *See Persky*, 547 F. Supp. 2d at 161–62 (holding the defendant failed to act in good faith and could not reasonably believe it was complying with the FMLA because it failed to adequately investigate the circumstances leading to the plaintiff’s employment termination).

Appendix C

Further, the defendants made no effort to determine whether Mr. Ramadei could or would be willing to take the Maintenance Associate position. *See Persky*, 547 F. Supp. 2d at 162 (finding that the defendant did not investigate whether the plaintiff could perform the functions of the “transition” position and noting that defendant dismissed plaintiff’s assertions that the position essentially required performing the same duties the plaintiff had been performing on the ground that the position “would have been terminated regardless of whether she was qualified to perform similar services . . . because [the] plaintiff’s qualifications [were] irrelevant to the decision the company made” (internal quotation marks and citations omitted)).

The evidence shows that the FMLA was not even considered. At trial, Ms. Musante testified that, although Mr. Ramadei provided Human Resources with sufficient information to place her on notice that his leave qualified as FMLA leave, at no point did she or any other Radiall employee make that determination or provide Mr. Ramadei with notice of his rights, as required by the FMLA. *See* 12/05/2023 Trial Transcript (“Day 1 Tr.”) (Doc. No. 98) at 61:2–62:12; *Dollar v. Smithway Motor Xpress, Inc.*, 787 F. Supp. 2d 896, 926 (N.D. Iowa 2011), *aff’d in part, vacated on other grounds*, 710 F.3d 798 (8th Cir. 2013) (holding the defendant lacked good faith and reasonable grounds to believe its actions did not violate the FMLA because the Vice President of Human Resources and Safety “failed to consider the FMLA when he fired [plaintiff]” and “was willfully indifferent to it”). Relatedly, Ms. Tristan’s belief that her decision was solely based on financial matters, presumably based on her ignorance of Mr. Ramadei’s

Appendix C

protected leave, is of no import here. *See Dotson*, 558 F.3d at 303 (rejecting the employer-defendant’s argument that, because it did not know the statutory implications of the plaintiff’s leave, the award of liquidated damages is punitive). Radiall had an affirmative “statutory burden of seeking out further information and complying with the FMLA when an employee indicates that he or she is seeking leave for a protected reason.” *Id.*

In conclusion, given the specific meaning of good faith and reasonable belief in the FMLA context, which were not explained to the jury, the court will not rely on the advisory verdict. Radiall has not shown by substantial evidence that it made an effort to ensure that the actions it took with respect to Mr. Ramadei’s employment complied with the FMLA. Therefore, Radiall has not proven to the court’s satisfaction that it acted in good faith and reasonably believed it was not violating Mr. Ramadei’s FMLA rights when it terminated his employment. Based on the foregoing and in light of the strong presumption of double damages, section 2617 mandates an award of liquidated damages. *See Persky*, 547 F. Supp. 2d at 165 (“As the Tenth Circuit has noted, ‘the non-discretionary calculation of damages under the FMLA should not be considered a windfall, but rather a congressional judgment, enforced by the courts, designed to compensate employees for the obscure damages that occur when one wrongfully loses wages, even if only temporarily.’” (quoting *Jordan*, 379 F.3d at 1201)).

Accordingly, the court grants the plaintiff’s Motion for Liquidated Damages. Although the plaintiff seeks

Appendix C

an award of liquidated damages equal to the back pay award, \$187,714, the statute mandates inclusion of the pre-judgment interest, \$18,327.72, in the liquidated damages calculation. *See* 29 U.S.C. § 2617(a)(1)(A)(iii). As such, the court awards the plaintiff liquidated damages in the amount of \$206,041.71.

C. Motion for Award of Front Pay or Reinstatement

Plaintiff moves for an award of front pay, or in the alternative, reinstatement. *See* Front Pay Mot. Front pay or reinstatement constitutes equitable relief under the FMLA. *See* 29 U.S.C. § 2617(a)(1)(B); *Traxler v. Multnomah Cnty.*, 596 F.3d 1007, 1011 (9th Cir. 2010) (“The FMLA does not explicitly grant plaintiffs the right to front pay; any front pay awards must fall within the section on equitable relief.”). The decision to order reinstatement or grant a front pay award is discretionary. If the court finds that the award of back pay is sufficient to make the plaintiff whole, it may deny a request for equitable relief. *Palma*, 2003 WL 22750600, at *3.

“In deciding whether an award of front pay is appropriate, a court should consider (1) whether ‘reinstatement [is] either impossible or impracticable’ (2) whether the plaintiff has a reasonable prospect of obtaining comparable employment; and (3) whether the calculation of front pay would involve ‘undue speculation.’” *Shannon v. Fireman’s Fund Ins. Co.*, 136 F. Supp. 2d 225, 233 (S.D.N.Y. 2001) (quoting *Whittlesey v. Union Carbide Corp.*, 742 F.2d 724, 729 (2d Cir. 1984)); *see also Padilla v. Metro–North Commuter R.R.*, 92 F.3d 117, 125–26 (2d Cir. 1996).

Appendix C

“As a practical matter, front pay is awarded at the court’s discretion only if the court determines that reinstatement is inappropriate, such as where no position is available or the employer-employee relationship has been so damaged by animosity that reinstatement is impracticable.” *Traxler*, 596 F.3d at 1012 (citing *Whittlesey*, 742 F.2d at 728).

1. Reinstatement

Neither Mr. Ramadei nor Radiall meaningfully address reinstatement in their papers. Mr. Ramadei only notes that an award of front pay is more appropriate than reinstatement due to hostility between himself and Radiall. *See* Front Pay Mot. at 2. In response, Radiall asserts that, because neither party seeks reinstatement, it would not address that form of relief in its Memorandum in Opposition. *See* Front Pay Opp’n at 1.

Upon further questioning at oral argument, the parties confirmed that there is some hostility between them as a result of the litigation, making reinstatement impossible.

2. Reasonable Prospect of Obtaining Comparable Employment

Mr. Ramadei argues the court should award front pay because, despite his efforts, he has been unable to secure comparable employment. *See* Front Pay Mot. at 2–3. In its Memorandum in Opposition, the defendant first argues that it “should not be made to subsidize” the

Appendix C

plaintiff in the form of a front pay award because (1) the plaintiff failed to adequately mitigate his damages; and (2) preferred to work for himself and at his own pace as evidenced by his business, Ramadei Corvette, LLC, an initiative, which Radiall argues constitutes a “change in career goals.”³ *See* Front Pay Opp’n at 3–4.

In advancing an argument concerning the adequacy of Mr. Ramadei’s mitigation efforts, Radiall seeks to relitigate an issue within the jury’s province and decided in Mr. Ramadei’s favor.⁴ In response to the question on the Verdict Form asking whether Radiall had proven by a preponderance of evidence that suitable alternative work existed, and that Mr. Ramadei did not make reasonable efforts to obtain such work, the jury answered, “no.” *See* Jury Verdict at 2. It was Radiall’s burden to prove that Mr. Ramadei failed to satisfy his duty to mitigate, *see Dailey v. Societe Generale*, 108 F.3d 451, 456 (2d Cir. 1997) (citing *Clarke v. Frank*, 960 F.2d 1146, 1152 (2d Cir. 1992)), and Radiall failed to meet its burden at trial. The court will not reexamine the issue now.

3. The court will not address the defendant’s argument that the court need not award front pay because there was no evidence of intentional conduct on the part of the defendant. *See* Front Pay Opp. at 6-7. While the nature of the defendant’s conduct may affect the possibility of reinstatement, it has little to no bearing on the issues regarding front pay, *i.e.*, whether there exists a reasonable prospect that the plaintiff can secure comparable employment and whether the calculation of front pay would be unduly speculative. *See Shannon v. Fireman’s Fund Ins. Co.*, 136 F. Supp. 2d 225, 233 (S.D.N.Y. 2001) (citing *Whittlesey*, 72 F.2d at 729).

4. The affirmative defense of failure to mitigate damages is an issue within the jury’s province.

*Appendix C***3. Speculative**

Radiall argues that an award of front pay based on the salary of either the Facilities Manager or Maintenance Associate positions would be speculative because there was evidence at trial that Radiall planned to eliminate the Facilities Manager position, and it is unclear whether Mr. Ramadei would have accepted the Facilities Associate position. *See* Front Pay Opp'n at 4–5.

The jury, however, must have implicitly concluded that Mr. Ramadei would have chosen to remain at Radiall had he not been terminated. The jury was instructed that, “[a]n employer who has violated the FMLA must pay damages equal to the amount of any wages, salary, employment benefits, or other compensation denied or lost to the employee. However, you should not consider any lost earnings based on future pay.” Jury Charge at 24. In light of this instruction, the jury could only have awarded damages if it concluded Mr. Ramadei would have been employed by Radiall had he not been terminated. Consequently, if the court were to adopt Radiall’s position, it risks contradicting the jury’s implicit finding and interfering with Mr. Ramadei’s Seventh Amendment right. *See Walker v. Schult*, 45 F.4th 598, 618 (2d Cir. 2022) (“‘The court is not permitted to find as a fact a proposition that is contrary to a finding made by the jury,’ or ‘findings that were implicit in the jury’s verdict.’”) (quoting *Zellner v. Summerlin*, 494 F.3d 344, 371 (2d Cir. 2007)); *see also Wade*, 844 F.2d at 954.

In light of Mr. Ramadei’s 64 years of age, and the lack of reasonable prospects of securing comparable

Appendix C

employment, the court concludes that the back pay award does not make the plaintiff whole and exercises its discretion to grant his request for an award of front pay.

4. Amount

The court now turns to the issue of the amount of front pay to award. Mr. Ramadei seeks \$212,687, based on projected salary, benefits, and annual raises of two percent each year for 2024 and 2025, less earnings from his business, Ramadei Corvette. *See Front Pay Mot.* at 3–4. He argues that this amount is reasonable because it will bring him to age 66, just shy of his goal of retiring at age 67. *See id.* at 3. First, Radiall contends that, if any front pay is to be awarded, it should be based on the Maintenance Associate salary. *See Front Pay Opp’n* at 8–10. Second, Radiall argues that front pay should be limited to one year because it is speculative to award front pay past the age of 65. *See id.* at 10.

As to its first point, Radiall avers that the “only credible explanation” for the jury’s award of \$187,714—exactly one-half of the \$375,427 requested by Mr. Ramadei—is that the jury clearly recognized that Radiall was going to replace the Facilities Manager position with the Maintenance Associate position and relied on Ms. Tristan’s testimony that the Maintenance Associate position would cost Radiall half of the cost of the Facilities Manager position. *See Front Pay Opp’n* at 7–8. Mr. Ramadei argues that Radiall’s proffered explanation for the jury’s award is speculative. *See Front Pay Reply* at 2–3. Explaining that while he proved “he was terminated

Appendix C

only after Radiall intentionally retaliated against him for taking FMLA leave[,] Radiall did *not* prove that the Facilities Manager position would have been eliminated regardless of whether [he] took medical leave.” *See* Front Pay Reply at 3.

The court agrees with the plaintiff and declines to speculate on the basis of the jury’s award. As Mr. Ramadei emphasizes, Ms. Tristan’s testimony, that the cost of the facilities position would be cut in half, does not provide much information. *See* Front Pay Reply at 2–3 & 3 n.1. On cross examination, Ms. Tristan estimated that the replacement saved Radiall “in the neighborhood of \$50,000.” *See* 12/07/2023 Trial Transcript (“Day 3 Tr.”) (Doc. No. 100) at 639:15–19. However, her testimony is of low probative value because of her inability to recall information related to the 2021 budget, *see id.* at 639–641, and Radiall’s failure to provide documents that corroborate the testimony on which the defendant now relies. As a result, it would require the court to speculate if it were to calculate front pay based on the Maintenance Associate position because there is no evidence demonstrating whether the position was salaried or paid hourly; how many hours the Associate worked; whether bonuses were paid; or whether Radiall offered any benefits.

Further, Richard Broga (“Mr. Broga”), Mr. Ramadei’s former supervisor, testified at trial that Radiall hired contractors to resolve matters that the Maintenance Associate could not perform. *See, e.g.*, Day 3 Tr. at 486:18–487:23, 492:9–498:23. Although the landlord of the Wallingford facility appeared to cover the costs for

Appendix C

outside work, *see id.* at 484:15–485:2, Radiall hired and paid contractors for at least some facilities-related matters that Mr. Ramadei handled prior to his termination but that Munson could not complete. *See id.* at 487:9–23, 501:4–503:24.⁵ Ms. Tristan’s testimony that Radiall’s savings were in the range of \$50,000 does not make clear whether that number accounts for the costs related to hiring contractors. As such, the court concludes that neither a 50% nor \$50,000 reduction is supported.

Radiall also contends that front pay should be limited to one year because it is speculative to award front pay past the age of 65. *See id.* at 10. The cases cited by Radiall as support are readily distinguishable. In *Shannon*, the court noted that although the plaintiff—63 years old at the time of trial—testified that he intended to work at his former place of employment until the age of 70, there was evidence that contradicted the plaintiff’s testimony. *See Shannon v. Fireman’s Fund Ins. Co.*, 136 F. Supp. 2d 225, 234 (S.D.N.Y. 2001) (“Immediately upon his termination, however, Shannon told Edward Helfers, Shannon’s manager, . . . that he wanted to work until he was at least sixty-five years old. At the time of the termination, Shannon also indicated to his sister that all he wanted was to work three more years so he could retire comfortably.” (internal citations omitted)). The court in *Shannon* further noted that the plaintiff became eligible for his pension at age 65. *See id.* In *Buckley*, the plaintiff

5. At oral argument, defense counsel contested the court’s recounting of this testimony. However, it appears from the transcript in question, that defense counsel’s recollection of this testimony is inaccurate. *See* Day 3 Tr. at 502:5–503:24.

Appendix C

asserted he had planned to remain at his former place of employment until he reached the retirement age of sixty-five. *Buckley v. Reynolds Metal Co.*, 690 F. Supp. 211, 216 (S.D.N.Y. 1988). None of those factual considerations are present in the instant case.

Front pay awards until or past the age of 65 can certainly be speculative when the plaintiff is relatively young, and the award encompasses ten or more years given the reality that many events can occur in that timespan that could terminate or change the employment relationship. *See, e.g., Whittlesey*, 742 F.2d at 729; *Buckley*, 690 F. Supp. at 216; *Chisholm v. Mem'l Sloan-Kettering Cancer Ctr.*, 824 F. Supp. 2d 573, 577 (S.D.N.Y. 2011); *accord Dotson*, 558 F.3d at 300. The circumstances in the present case do not render a front pay award past the age of 65 unduly speculative. *See Whittlesey*, 742 F.2d at 729 (affirming a district court's decision to award front pay because "[t]he time period was relatively short, approximately four years, and thus did not involve some of the uncertainties which might surround a front pay award to a younger worker."). Even though Mr. Ramadei was terminated on November 13, 2020, at age 61 or 62, he applied to facilities-related jobs *at least* through February 18, 2022.⁶ Mr. Ramadei testified that he would have liked to have worked until at least age 67, because he is not "the type of person to sit around." *See Day 1 Tr.* at 162:15—19. The fact that he began Ramadei Corvette LLC buttresses his testimony that he prefers to remain active. The front

6. Mr. Ramadei credibly testified that he was still applying to jobs at the time of trial. *See Day 1 Tr.* at 140:6–11.

Appendix C

pay amount sought by the plaintiff is reasonably limited to a period of two years.⁷

In light of the foregoing, the front pay calculation will be based on Mr. Ramadei's salary for 2019, his last full year of employment, in the amount of \$112,177.17.⁸ See Pl.'s Ex. 13, 2019 W-2. The court declines the plaintiff's request to engage in a hypothetical calculation of salaries for 2024 and 2025 based on an annual two percent raise. See Front Pay Mot. at 3–4. Evidence at trial pertaining to Mr. Ramadei's raises shows a general trend of a decreasing annual raise rate.⁹ See Def.'s Trial Ex. 60, 2017–2019

7. The plaintiff's request for two years of front pay, at which time he will be 66 years of age, constitutes a compromise between the defendant's position and the plaintiff's stated intention to work until at least 67.

8. In its Memorandum in Opposition and at oral argument, Radiall cited to *Reed v. A.W. Lawrence & Co., Inc.*, 95 F.3d 1170, 1182 (2d Cir. 1996), to argue that using the salary associated with the Facilities Maintenance Position would create an undue windfall because it would be placing him in a better position than he otherwise would have been had he not been terminated. However, the facts in *Reed* are very different from those in the instant case. The court in *Reed* limited the plaintiff's front pay to seven weeks because the employer's office was scheduled to shut down seven weeks after the jury rendered its verdict. See *id.*

9. In his Motion, Mr. Ramadei relied on his own testimony that he was awarded an annual raise of approximately two percent each year. See Front Pay Mot. at 3 (citing Pl.'s Ex. 1, Day 1 Tr., at 263). Even assuming, *arguendo*, Mr. Ramadei received an average annual raise of two percent, the evidence shows a decreasing trend in the last few years for which there is data pertaining to his base pay and bonus.

Appendix C

Bonus History. Mr. Ramadei's salary, including bonus pay, increased by four percent from 2017 to 2018, but increased less than one-tenth of a percent from 2019 to 2020. *See id.* Mr. Ramadei did not receive a raise in the spring of 2020—the season during which a raise, if any, would have gone into effect. *See* 12/06/2023 Trial Transcript (Doc. No. 99) at 280:9–281:6. Therefore, the court will exclude annual raises from its calculation of front pay.

The court begins its front pay calculation with an award in the amount of \$224,354.34, which is the sum of the projected annual salary of \$112,177.17, for each of 2024 and 2025. Mr. Ramadei estimates he will earn \$47,687 from his Corvette business in 2024 and 2025, collectively. Front Pay Mot. at 4. This estimate, which Radiall does not challenge, *see* Front Pay Opp'n at 10–12 (challenging the plaintiff's calculations on other grounds), is reasonable given Mr. Ramadei's testimony that he earned the same amount from his Corvette business in 2022 and 2023, combined. *See* Day 2 Tr. at 266:10–14. The award is, therefore, reduced by \$47,687, which equals \$176,667.34. The award is then increased by \$5,096—the amount Mr. Ramadei expended on healthcare costs in 2023—for each year, or \$10,192 for two years, for health benefits.¹⁰ The total amount of front pay the court awards is \$186,859.34.

10. The defendant did not raise any particular objections to this amount in its Memorandum in Opposition. Further, it bears noting that Ramadei sought front pay related to benefits in the amount of \$5,096, which represents the lowest yearly sum he has had to pay so far. *See* Day 2 Tr. at 265:16–22. From his termination until the date of trial, he had expended \$21,649 total in healthcare costs, *see id.*, *i.e.*, an average of \$7,216.33 per year.

Appendix C

The plaintiff's Motion for Front Pay or Reinstatement is granted in part. Front pay in the amount of \$186,859.34 is awarded, and reinstatement is denied.

D. Motion for Award of Attorney Fees and Costs

The plaintiff moves for an award of reasonable attorney fees and costs. *See* Fees & Costs Mot. The FMLA provides that, "in addition to any judgment awarded to the plaintiff," the court shall "allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant." 29 U.S.C. § 2617(a)(3). "Both [the] [Second Circuit] and the Supreme Court have held that the lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case—creates a 'presumptively reasonable fee.'" *Millea v. Metro-North R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (quoting *Arbor Hill Concerned Citizens Neighborhood Assoc. v. Cnty. of Albany*, 522 F.3d 182, 183 (2d Cir. 2008)); *see also* *Perdue v. Kenny A. ex Rel. Winn*, 559 U.S. 542, 552 (2010). Neither party contests the use of the lodestar method in the court's calculation of a presumptively reasonable attorney's fees calculation. The lodestar requires multiplying "a reasonable hourly rate" by "the reasonable number of hours required by the case." *Millea*, 658 F.3d at 166.

1. Reasonable Hourly Rate

When determining a reasonable hourly rate, the court should consider "case-specific variables that [the Second Circuit] and other courts have identified as relevant to the

Appendix C

reasonableness of attorney's fees in setting a reasonable hourly rate." *See Arbor Hill*, 522 F.3d at 189. Such factors include, *inter alia*:

the time and labor spent by counsel, the novelty and complexity of the legal issues, the skill required to perform the legal service properly, the preclusion of other employment due to acceptance of the case, the fees customarily charged in the same locality for similar services, whether the fee is fixed or contingent, the lawyer's experience and ability, relevant time limitations imposed by the client or circumstances of the case, the magnitude of the case and the results obtained, and the nature and length of the lawyer-client relationship.

Johnson v. Ga. Highway Exp., Inc., 488 F.2d 714, 717–720 (5th Cir. 1974) (listing factors for determining the reasonableness of attorney's fees).

Several attorneys worked on Mr. Ramadei's case, to varying degrees.¹¹ *See Fees & Costs Mot.* at 5. Attorneys

11. In addition to the attorneys identified in the body of this Ruling, counsel notes that Attorney Jordan Wheeler spent 12 minutes working on this case and that she billed at an hourly rate of \$350. *See Fees & Costs Mot.* at 5, 8 n.3; Pl.'s Ex. 4, Time Entry Summary at 4. Because little information was provided regarding Attorney Wheeler's experience, *see Fees & Costs Mot.* at 8 n.3, the court cannot determine whether her hourly rate is reasonable. On this ground, and considering the miniscule amount of time billed, the court declines to award Attorney Wheeler fees.

Appendix C

Amanda M. DeMatteis (“Attorney DeMatteis”) and Betsy A. Ingraham (“Attorney Ingraham”) billed at \$500 per hour. *See id.* Attorney Joshua R. Goodbaum (“Attorney Goodbaum”) billed at \$550 per hour. *See id.* Attorney Meaghan Kirby (“Attorney Kirby”) billed at \$250 per hour. *See id.* Counsel for Mr. Ramadei argue that their experience and recognition in the legal community, the risk of representation (contingency fee), and the market support their requested rates. *See id.* at 5–11.

a. Experience & Recognition

Since graduating from law school in 2012, lead counsel, Attorney DeMatteis, has practiced in the area of employment law. *See id.* at 5. Attorney DeMatteis has practiced at Garrison, Levin-Epstein, Fitzgerald & Pirrotti, P.C. (“Garrison”) since 2016, and in 2020, she became partner. *See id.* 5–6. She has tried six cases to verdict. *See id.* at 6. Attorney Goodbaum graduated law school in 2009 and has practiced employment law at Garrison since 2011. *See id.* at 6–7. Similarly to Attorney DeMatteis, Attorney Goodbaum has tried six cases to judgment. *See id.* at 7.

Attorney Ingraham has primarily practiced general litigation in Connecticut since 2004, and has tried more than twenty cases to verdict. *See id.* at 8. She joined Garrison, practicing exclusively employment law, in early 2022. *See id.* Attorney Kirby clerked for a year on the Connecticut Appellate Court and practiced general civil litigation for nearly two years prior to joining Garrison in October 2023 as an associate practicing employment law. *See id.* at 8–9.

Appendix C

Counsel argues that the requested rates correspond to the market rate for attorneys with their experience. In support of their argument regarding market rates, counsel cites to *Champagne v. Columbia Dental, P.C.*, in which Judge Bryant noted that it is “reasonable to infer that hourly rates have increased” since the \$325–\$450 customary hourly rate for highly experienced litigators in 2008. *See* No. 3:18-CV-01390 (VLB), 2022 WL 951687, at *5 (D. Conn. Mar. 30, 2022). While Judge Bryant did also note that “an hourly rate of \$450 in 2008 is the equivalent buying power to \$604.85 in February 2022”, *see id.*, she seemingly only did so to make clear that counsel’s requested hourly rate of \$450 was more than reasonable given his status as a managing partner with approximately 18 years of experience. *See id.*, at *5–6.

From its own review of cases in the past three years, the court finds the prevailing rate to be approximately \$350–\$450 for litigators with extensive experience and approximately \$300 for mid-level associates. *See, e.g., Cornelio v. Connecticut*, No. 3:19-CV-0129 (JAM) (TOF), 2023 WL 10802701, at *7 (D. Conn. Nov. 28, 2023) (finding \$350–\$450 hourly rates for litigators, including partners, with extensive experience to be customary); *Rzasa v. BJ’s Rests., Inc.*, No. 3:23-CV-0140 (JCH), 2023 WL 3860457, at *4 (D. Conn. June 7, 2023) (finding hourly rates of \$500 for a partner, \$400 for a senior associate, and \$300 for a mid-level associate to be reasonable); *Rhymes v. Mecca Auto, LLC*, No. 3:21-CV-01360 (KAD), 2022 WL 3082986, at *6 (D. Conn. Aug. 3, 2022) (concluding that hourly rates of \$475 for a managing attorney and \$350 for a senior associate are reasonable). The rare cases in which the

Appendix C

court has approved an hourly rate of \$500 were due, in large part, to the litigator's decades of experience. *See Cornelio*, 2023 WL 10802701, at *9.

As such, the court finds that, based on its own knowledge of attorney hourly rates in Connecticut, the record before it, and a review of the relevant case law, the requested hourly rate of \$250 for Attorney Kirby and an hourly rate of \$450 for Attorney DeMatteis, \$475 for Attorney Goodbaum, and \$475 for Attorney Ingraham are reasonable.

b. Contingency Fee

Next, the court notes that counsel took on representation on a contingency basis. “[C]ontingent fee arrangements ordinarily entitle the victorious attorney ‘to some premium for the risk incurred.’” *Cornelio*, 2023 WL 10802701, at *8 (quoting *Sakiko Fujiwara v. Sushi Yasuda Ltd.*, 58 F. Supp. 3d 424, 438–39 (S.D.N.Y. 2014)).

Quite notably, Attorney DeMatteis has represented Mr. Ramadei since October 2020, when he received notification of his termination. The court easily finds that she has borne the risks of assuming representation. *See Fees & Costs Mot.* at 9; Pl.’s Ex. 4, Time Entry Summary (Doc. No. 105-4) at 1; *cf. Cornelio*, 2023 WL 10802701, at *8 (noting that counsel did not bear as much risk as he would have had he been involved since the beginning because, after remand, there were no experts or depositions and only a modest amount of written discovery occurred). As such, the court concludes Attorney DeMatteis is entitled to a premium of \$25, resulting in an hourly rate of \$475.

Appendix C

In sum, based on the aforementioned factors, the supporting documentation, and this court's familiarity with hourly rates in Connecticut, the court will award hourly rates of \$475, \$475, \$475, and \$250 for Attorneys DeMatteis, Goodbaum, Ingraham, and Kirby, respectively.

2. Reasonable Number of Hours Required

Having determined the reasonable hourly rate for each attorney involved, the court turns to the issue of whether the hours worked constitute “a reasonable number of hours required by the case.” *Millea*, 658 F.3d at 166.

Counsel for Mr. Ramadei seeks a fee that accounts for the total number of hours worked on the case from the time Attorney DeMatteis undertook representation in October 2020, until the filing of the post-trial Motions at issue in the instant Ruling. *See Fees & Costs Mem.* at 11–12. Radiall contests the inclusion of hours worked in connection with the age discrimination claims, which were dismissed at the summary judgment stage. *See Fees & Costs Opp'n* at 4–6.

Generally, “work on an unsuccessful claim cannot be deemed to have been expended in pursuit of the ultimate result achieved.” *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (internal quotation marks and citation omitted). Therefore, a court should exclude hours that are “excessive or duplicative” and that “reflect work done only in connection with unrelated claims on which plaintiffs did not succeed”. *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998). However, where a plaintiff's claims

Appendix C

involve “a common core of facts” or are “based on related legal theories,” “[m]uch of counsel’s time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis.” *See Hensley*, 461 U.S. at 435. Because “[s]uch a lawsuit cannot be viewed as a series of discrete claims,” the court should not reduce the fee award because the plaintiff did not succeed on every claim. *See id.* Thus, a plaintiff may be entitled to attorney’s fees incurred from hours worked on claims that are ultimately unsuccessful, provided that the unsuccessful claims “were ‘inextricably intertwined’ with the successful claim and involved the same facts and related legal theories.” *See Johnson v. Rapice*, No. 3:00-CV-1556 (DFM), 2007 WL 1020747, at *2 (D. Conn. Mar. 30, 2007) (quoting *Quarantino v. Tiffany & Co.*, 166 F.3d 422, 425 (2d Cir. 1999)).

Radiall argues that the court should reduce the portion of the award attributable to work and expenses incurred through the summary judgment stage on the ground that the age discrimination and FMLA violation claims did not share a common core of facts, differed in legal theory, and required different proofs. *See Fees & Costs Opp’n* at 4–6. In response, Mr. Ramadei counters that the case would have been litigated the same notwithstanding the age discrimination claims. *See Fees & Costs Reply* at 1–2. In particular, Mr. Ramadei contends that all “person[s] deposed during litigation testified at trial[;] [n]early all documents used in depositions with those witnesses became trial exhibits[;] [t]here was no motion practice relating to discovery issues[;] [and] [t]here were no experts related to the age claims.” *See id.*

Appendix C

Both the age discrimination and FMLA violation claims were subject to the *McDonnell-Douglas* burden-shifting framework. *See* MSJ Ruling at 9–10, 17–18. Although the elements of the age discrimination claims and FMLA violation claim differ in the abstract, there was overlap because they involved the same termination decision. For instance, Mr. Ramadei presumably relied on and could have marshalled the same evidence to show that he was qualified for his position and that he experienced an adverse employment action for both causes of action, if those elements had been disputed by Radiall.¹² *See id.* at 10–11, 18. That the causes of action shared roughly the same core facts is readily discernible from the fact that Radiall offered the same explanation for its decision to terminate Mr. Ramadei’s employment to meet its burden at the summary judgment stage to articulate a legitimate, nondiscriminatory reason for its adverse action. *See id.* at 21. Consequently, the court declines to reduce the pre-summary judgment fees and costs in half as suggested by the defendant.

However, although there was significant overlap and very little discovery that was not shared across all claims, there was at least some time that was spent performing

12. With respect to his state-law age discrimination claim, Radiall did not dispute in its Motion for Summary Judgment the first three elements of Ramadei’s *prima facie* showing that (1) he was within the protected age group; (2) he was qualified for his position; and (3) he suffered an adverse employment action. *See* MSJ Ruling at 10. The only issue in dispute was the fourth element—whether the adverse action occurred under circumstances giving rise to an inference of discrimination. *See id.*

Appendix C

work that pertained only to the age discrimination claims. Mr. Ramadei's counsel admitted as much at oral argument. She conceded that, in opposing the Motion for Summary Judgment, some time was spent making the argument that the evidentiary record supported an inference of age discrimination, which shared little to no overlap with the arguments pertaining to the FMLA claims. *See, e.g.*, MSJ Ruling at 15–17. As such, the court will exercise its discretion and reduce pre-summary judgment fees by ten percent to account for work done solely in connection with the age discrimination claims. *See Marion S. Mishkin Law Office v. Lopalo*, 767 F.3d 144, 150 (2d Cir. 2014).

The attorneys who worked on Mr. Ramadei's case spent 109.8 out of 420.7 total hours representing Mr. Ramadei through the summary judgment stage.¹³ *See* Pl.'s Ex. 3, Time Entries (Doc. No. 105-3) at 1–9; Pl.'s Ex. 4, Time Entry Summary (Doc. No. 105-4). The fees associated with these 109.8 hours amount to \$52,155. A ten percent reduction results in a fee award of \$46,939.50, for work performed through summary judgment. Because the defendant does not oppose the remaining portion of the requested award, and the court's review revealed no duplicate or unnecessary billing, the court concludes that the post-summary judgment time of 310.9 hours is reasonable, resulting in a post-summary judgment award of \$116,290.00. The total amount in attorneys' fees awarded to the plaintiff is \$163,229.50.

13. These numbers exclude Attorney Wheeler's 0.2 hours.

*Appendix C***3. Reasonableness of Costs**

The plaintiff also moves for an award of costs in the amount of \$8,151.72, in connection with filing fees, service of process, deposition fees, and parking fees. *See* Fees & Costs Mot. at 13; Pl.’s Ex. 5, All Expenses (Doc. No. 105-5). Radiall does not appear to oppose any costs on any other ground beyond those associated with pre-summary judgment age discrimination claims. *See, supra*, Section III.D.2. Mr. Ramadei’s pre-judgment costs equal \$3,179.32. *See* Fees & Costs Mot. at 13; Pl.’s Ex. 5, All Expenses (Doc. No. 105-5). For the reasons set forth above, *see, supra*, Section III.D.2, the court will reduce this amount by ten percent, resulting in an award of \$2,861.39 for pre-judgment costs. Because the remaining costs sought by Mr. Ramadei are reasonable, the court awards the claimed post-summary judgment costs in full, in the amount of \$4,972.40. Therefore, the total amount in costs awarded to the plaintiff is \$7,833.79.

4. Reduction Based on “Limited Success”

Radiall contends that the jury’s damages award of \$187,714, amounting to half of what the plaintiff sought, counsels in favor of reducing fees and costs by twenty to eighty percent. *See* Fees & Costs Opp’n at 6–9. Radiall arrives at a reduction in the 20–80% range on the ground that: (1) so far, Mr. Ramadei has already been unsuccessful in achieving 50% of the back pay he sought, *i.e.*, 20% of the total amount of approximately \$1 million in remedies sought; and (2) if liquidated damages and front pay are denied, Mr. Ramadei will have only recovered 20% of the total amount he sought. *See id.* at 8–9.

Appendix C

“A presumptively correct ‘lodestar’ figure” generally “should not be reduced simply because a plaintiff recovered a low damage award.” *Cowan v. Prudential Ins. Co. of Am.*, 935 F.2d 522, 526 (2d Cir. 1991). The court remains mindful of the principle that it should generally avoid imposing significant reductions in fees in civil rights cases based on relatively low damages awards. *Id.* Particularly relevant here is that:

By enacting a fee-shifting provision for FMLA claims, Congress has already made the policy determination that FMLA claims serve an important public purpose disproportionate to their cash value. We cannot second-guess this legislative policy decision.

See Millea, 658 F.3d at 167. Further, fee awards in FMLA cases cannot be reduced *solely* based on the size of the damages award. *See id.* at 168.

FMLA claims are often small-ticket items, and small damages awards should be expected without raising the inference that the victory was technical or de minimis. If an expense of time is required to obtain an award that is not available by voluntary compliance or offer of settlement, the expense advances the purposes of the statute. Absent a purely technical victory in an otherwise frivolous suit, litigation outcomes are only relevant to fee award calculations when they are a direct result of the quality of the attorney’s performance.

Id.

Appendix C

Although he sought a higher amount, Mr. Ramadei obtained a damages award that is far from nominal or miniscule. It bears emphasis that, with the court's dispositions in the instant Ruling, plaintiff will be awarded a total of approximately \$580,000, excluding attorneys' fees and costs. There is no indication that the jury's decision to award less than the amount Mr. Ramadei sought was a reflection on the performance by his counsel.

Accordingly, the court thus declines to reduce the attorneys' fees award based on the amount of back pay damages awarded.

5. Summary

Based on the foregoing, the court grants in part the Motion for Attorneys' Fees and Costs and awards the plaintiff \$163,229.50 in attorneys' fees and \$7,833.79 in expenses and costs.

IV. CONCLUSION

For the reasons stated above, the Motion for an Award of Pre- and Post-Judgment Interest (Doc. No. 103); Motion for Liquidated Damages (Doc. No. 102); Motion for Front Pay or Reinstatement (Doc. No. 104); and Motion for Attorney Fees and Costs (Doc. No. 105) are granted in part.

The plaintiff is awarded pre-judgment interest in the amount of \$18,327.72, and post-judgment interest, at a rate to be calculated under section 1961 of title 28 of the

74a

Appendix C

U.S. Code and accruing on the day judgment is entered in this case. The court awards plaintiff liquidated damages in the amount of \$206,041.71, and front pay in the amount of \$186,859.34. The court also awards attorneys' fees in the amount of \$163,229.50, and costs in the amount of \$7,833.79.

SO ORDERED.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge

**APPENDIX D — JUDGMENT OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF CONNECTICUT, DATED SEPTEMBER 16, 2024**

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

3:21-cv-01435 (JCH)

GARY T. RAMADEI,

Plaintiff,

v.

RADIAL USA, INC.,

Defendant.

JUDGMENT

This matter came on for trial before a jury and the Honorable Janet C. Hall, United States District Judge. On December 8, 2023, after deliberation, the jury returned a verdict in favor of the plaintiff, Gary T. Ramadei, against defendant, Radial USA, Inc. in the amount of \$187,714.00.

In addition, on September 16, 2024, the court issued a Ruling (Doc. No. 122) granting in part plaintiff's Motion for Award of Liquidated Damages (Doc. No. 102), Motion for an Award of Pre- and Post Judgment Interest (Doc. No. 103), Motion for Front Pay or Reinstatement (Doc. No. 104), and Motion for Attorney Fees and Costs (Doc. No.

Appendix D

105). Consistent with the court's Ruling, the plaintiff is awarded liquidated damages in the amount of \$206,041.71, pre-judgment interest in the amount of \$18,327.72, and front pay in the amount of \$186,859.34. The court also awards attorneys' fees in the amount of \$163,229.50, and costs in the amount of \$7,833.79.

Therefore, it is ORDERED, ADJUDGED and DECREED that judgment is entered for the plaintiff, and against the defendant, in the total amount of \$770,006.06, plus post-judgment interest, at a rate to be calculated under section 1961 of title 28 of the U.S. Code, and the case is closed.

Dated at New Haven, Connecticut, this 16th day of September 2024.

Dinah Milton Kinney, Clerk of Court,

/s/ Liana Barry
Deputy Clerk

ENTERED ON DOCKET 9/16/2024

77a

**APPENDIX E — VERDICT FORM OF THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT,
DATED DECEMBER 8, 2023**

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. 3:21-CV-1435 (JCH)

GARY RAMADEI,

Plaintiff,

v.

RADIAL USA, INC.,

Defendant.

December 8, 2023

VERDICT FORM

We, the jury, unanimously find the following:

**I. FAMILY AND MEDICAL LEAVE ACT
RETALIATION CLAIM**

A. Liability

1. Has Mr. Gary Ramadei proven by a preponderance of the evidence that he exercised his rights under

Appendix E

the FMLA, and that Radiall USA's termination of his employment was motivated, at least in part, by his medical leave pursuant to the Family and Medical Leave Act?

☒ YES ☐ NO

If you answered YES to Question 1, please answer Question 2.

If you answered NO to Question 1, your deliberations are complete, and you may proceed to Part II.

B. Economic Damages

2. If you answered "YES" to Question 1, what amount do you award Mr. Ramadei to compensate him for his lost wages, salary, employment benefits, or other compensation?

\$ 187,714.00

If you answered Question 2, please answer Question 3.

3. Has Radiall USA proven by a preponderance of the evidence that suitable alternative work existed, and that Mr. Ramadei did not make reasonable efforts to obtain such work?

☐ YES ☒ NO

If you answered NO to Question 3, please answer Question 5.

79a

Appendix E

If you answered YES to Question 3, please answer Question 4.

4. By what amount of money should the answer to Question 2 be reduced because Mr. Ramadei failed to mitigate his damages?

\$_____

Please proceed to Question 5.

C. Liquidated Damages

5. Has Radiall USA proven by a preponderance of the evidence that it acted in good faith and had reasonable grounds to believe terminating Mr. Ramadei was not a violation the Family and Medical Leave Act?

☒ YES ☐ NO

If you have answered Question 5, you have completed your deliberations, and you may proceed to Part II.

II. CONCLUSION

You have now completed the Verdict Form. Please have your foreperson sign and date below.

_____	<u>12/8/2023</u>
Jury Foreperson	Date

80a

**APPENDIX F — JURY CHARGE — MOTIVATING
FACTORS OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT,
DATED DECEMBER 8, 2023**

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL CASE NO.
3:21-CV-01435 (JCH)

GARY RAMADEI,

Plaintiff,

v.

RADIALL USA, INC.

Defendant.

December 8, 2023

JURY CHARGE

* * *

14. MOTIVATING FACTOR

The next element you must decide is the second and final element—whether a motivating factor in Radiall USA’s decision to terminate Mr. Ramadei’s employment was that he had taken leave under the FMLA.

Appendix F

Mr. Ramadei does not need to prove that his medical leave was the only reason, the sole reason, or even the principal reason for his termination. Mr. Ramadei need only prove that his medical leave played a motivating role, i.e., it played a part, in Radiall USA's decision.

In making a determination with respect to this element, you may consider the temporal proximity between Mr. Ramadei's leave and his termination, which can be part of the basis to infer that his leave was a motivating factor in Radiall USA's decision to terminate Mr. Ramadei, but not by itself. In considering this second element and inferences to be drawn from temporal proximity between the leave taken and Mr. Ramadei's termination, it is not necessary to show the termination occurred while Mr. Ramadei was on FMLA leave.

A business like Radiall USA has the legal right to make business decisions for a good reason, a bad reason, or no reason at all, as long as it was not motivated at all by an employee's FMLA leave. The law does not require that employment decisions be what you might consider to be fair, only that Radiall USA not be motivated, even in part, to retaliate against a person for requesting or taking leave protected by the FMLA.

You can consider any nonretaliatory reason offered by Radiall USA for terminating Mr. Ramadei. Under the law, Radiall USA need not prove that the reasons for its decisions to eliminate or replace the Facilities Manager position or terminate Mr. Ramadei were good reasons or justifiable reasons, or that they are reasons with which

Appendix F

you would agree. Rather, Radiall USA, as it did here, may present evidence of one or more nonretaliatory business reasons for its decision to eliminate Mr. Ramadei's position and then terminate him.

Mr. Ramadei is not required to prove that the business justification offered by Radiall USA was pretextual or false. Further, even if the jury finds that the business reason given for eliminating his position and terminating Mr. Ramadei is credible, remember that, as to the second element, the burden Mr. Ramadei has is to prove that a motivating factor for his termination was retaliation for having taken FMLA leave.

However, if you find that the justification is false—that is, it was not the real reason for the decision to terminate Mr. Ramadei—you may, but are not required to, infer that the pretext or false explanation was designed to conceal retaliation as a motivating factor in the determination to terminate Mr. Ramadei. This inference, together with other evidence supporting a finding of retaliation, can support a jury finding Mr. Ramadei has proven the second element. However, even if you find that Radiall USA has not proven its proffered reason for terminating Mr. Ramadei, or even if you find that it is false, that by itself, does not satisfy Mr. Ramadei's burden of proving that retaliation was a motivating factor in Radiall USA's decision.

Remember, it is for you, the jury, to decide based on all the evidence what inferences to draw, if any, in deciding whether Mr. Ramadei has carried his burden on

Appendix F

the second element, that is, has proven that retaliation for taking leave was one reason that motivated Radiall USA to terminate him when it did.

If, after considering all the evidence, you find that that the adverse action was not motivated or caused, even in part, because Mr. Ramadei took FMLA leave, then you must return a verdict for Radiall USA.

On the other hand, if after considering all the evidence, you find that Mr. Ramadei's termination in October 2020, was motivated or caused, at least in part, by the taking of FMLA leave, then you must return a verdict for Mr. Ramadei and proceed to determine what, if any, damages Mr. Ramadei suffered.

**APPENDIX G — RULING ON DEFENDANT’S
MOTION OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT,
FILED SEPTEMBER 8, 2023**

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL CASE NO. 3:21-CV-01435 (JCH)

GARY T. RAMADEI,

Plaintiff,

v.

RADIAL USA, INC.,

Defendant.

Filed September 8, 2023

**RULING ON DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Gary Ramadei (“Ramadei”) brings this action against his former employer, Radial USA, Inc. (“Radial”), alleging age discrimination in violation of the Age Discrimination in Employment Act of 1967 (“ADEA”), 29 U.S.C. § 623 et seq., and the Connecticut Fair Employment Practices Act (“CFEPA”), Conn. Gen. Stat. § 46a–60(b)(1), as well as retaliation in violation of the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2615.

Appendix G

Before the court is Radiall's Motion for Summary Judgment, *see* Defendant's Motion for Summary Judgment ("Def.'s Mot.") (Doc. No. 27), which Ramadei opposes, *see* Plaintiff's Corrected Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment ("Pl.'s Mem.") (Doc. No. 37). For the reasons discussed below, the Motion is granted in part and denied in part.

II. BACKGROUND

A. Factual Background¹

Radiall is a private corporation that designs and manufactures interconnect devices and transceivers. Plaintiff's Local Rule 56(a)2 Statement of Facts ("Pl.'s LR 56(a)2 Stmt.") ¶ 1 (Doc. No. 34-18)²; Defendant's Local

1. The court draws primarily from the parties' Local Rule 56(a) Statements and supporting Exhibits in summarizing the material facts. As it must, the court construes all disputed facts in the light most favorable to Ramadei, the nonmoving party. Unless otherwise noted, the facts are undisputed.

2. Under Local Rule 56(a)2, "[a] party opposing a motion for summary judgment shall file . . . a document entitled 'Local Rule 56(a)2 Statement of Facts in Opposition to Summary Judgment,' which shall include a reproduction of each numbered paragraph in the moving party's Local Rule 56 (a)1 Statement followed by a response to each paragraph admitting or denying the fact and/or objecting to the fact" D. Conn. L. Civ. R. 56(a)2(i). The plaintiff has provided this document (Doc. No. 34-18) under the title "Plaintiff's Response to Defendant's Local Rule 56(a)1 Statement". The court construes this document to be Plaintiff's Rule 56(a)2 Statement and will cite it accordingly.

Appendix G

Rule 56(a)1 Statement of Facts (“Def.’s LR 56(a)1 Stmt.”) ¶ 1 (Doc. No. 27-2). Radiall has offices and manufacturing plants throughout the United States and overseas, including in France, Mexico, and Connecticut. Pl.’s LR 56(a)2 Stmt. ¶¶ 5-7; Def.’s LR 56(a)1 Stmt. ¶¶ 5-7.

In 2005, Radiall purchased Applied Engineering Products, where Ramadei was employed; Ramadei continued working for Radiall as a Facilities Manager from 2005 until his termination in 2020. Pl.’s LR 56(a)2 Stmt. ¶ 2; Def.’s LR 56(a)1 Stmt. ¶ 2; Plaintiff’s Statement of Additional Material Facts (“Pl.’s AMF”) ¶ 2 (Doc. No. 34-1). Over the course of his time at Radiall, Ramadei’s job responsibilities as Facilities Manager evolved. From 2005 to December 2019, Ramadei worked in Radiall’s New Haven facility, an approximately 65,000-square foot manufacturing plant. Pl.’s LR 56(a)2 Stmt. ¶ 3; Def.’s LR 56(a)1 Stmt. ¶ 3. In 2007, when the New Haven facility was at its peak, Ramadei was responsible for managing a team of five maintenance employees. Pl.’s LR 56(a)2 Stmt. ¶ 12; Def.’s LR 56(a)1 Stmt. ¶ 12. Over the next decade, however, Radiall began to shift its business structure, “moving away from manual electrical/mechanical manufacturing and toward more high-tech digital type

Local Rule 56(a)2 further provides that a party may also include, in the Local Rule 56(a)2 Statement, “a separate section entitled ‘Additional Material Facts’ setting forth in separately numbered paragraphs . . . any additional facts . . .” *Id.* at 56(a)2(i). Plaintiff has submitted this document (Doc. No. 34-1) under the title “Plaintiff’s Local Rule 56(a)2 Statement”. The court construes this document to be part of plaintiff’s Local Rule 56(a)2 Statement and will cite to it as plaintiff’s “Additional Material Facts”.

Appendix G

production.” Pl.’s LR 56(a)2 Stmt. ¶ 6; Def.’s LR 56(a)1 Stmt. ¶ 6. In addition, around 2017-2018, Radiall “relocated its antenna chamber to France and eliminated its New Haven machine shop.” Pl.’s LR 56(a)2 Stmt. ¶ 7; Def.’s LR 56(a)1 Stmt. ¶ 7. As a result, the number of employees on Ramadei’s maintenance team dwindled. Pl.’s LR 56(a)2 Stmt. ¶¶ 5-7, 12-13, 15; Def.’s LR 56(a)1 Stmt. ¶¶ 5-7, 12-13, 15. According to Ramadei, during this period, one of the mechanics on his team—William Moleski (“Moleski”), who was approximately 63 years old—lost his job after taking medical leave. *See* Plaintiff’s Transcript of the Deposition of Gary Ramadei (“Pl.’s Ramadei Dep. Tr.”), at 36:12-36:21 (Doc. No. 34-5).³ Ramadei alleges that, when he advocated for Moleski’s return, his then-supervisor, William Neale (“Neale”), responded that “Moleski was old enough to retire and he should.” *Id.* at 37:5-37:13; Pl.’s AMF ¶ 9. Neale denies ever making this statement. *See* Affidavit of William Neale (“Neale Aff.”) ¶ 9, Def.’s Ex. F (Doc. No. 27-4). Ramadei also alleges that, around the same time, two other Radiall employees—Joanna Petrowski, who was over 60 years old, and Dominick Naclerio, who had multiple sclerosis and was one year from retirement—were terminated by Radiall after taking medical leave. *See* Pl.’s Ramadei Dep. Tr. at 136:15-137:17.

3. In its Opposition materials, plaintiff’s counsel attaches portions of deposition transcripts as “unnumbered . . . exhibits”. Declaration of Amanda M. DeMatteis, at 1 (Doc. No. 34-2).

The court also notes that plaintiff and defendant cite to different portions of the same depositions; in turn, the court will specify, in each citation, whether it is citing to a deposition transcript proffered by the plaintiff or the defendant.

Appendix G

By October 2018, Ramadei was the only employee left on the maintenance team. Pl.’s LR 56(a)2 Stmt. ¶ 15; Def.’s LR 56(a)1 Stmt. ¶ 15. Both parties agree that, after 2018, there was “less work that was required of the facility management team.” *See* Pl.’s LR 56(a)2 Stmt. ¶ 16; Def.’s LR 56(a)1 Stmt. ¶ 16; Defendant’s Transcript of the Deposition of Gary Ramadei (“Def.’s Ramadei Dep. Tr.”), Def.’s Ex. E, at 47:9-47:12 (Doc. No. 27-4). However, Ramadei maintains that, as the sole remaining facilities employee, he was responsible for a wide range of duties—some of a more complex, skill-based nature, and others of a more menial nature. *See* Pl.’s Ramadei Dep. Tr. at 51:2-51:24. Because of its shift in business, Radiall no longer needed a facility as large as the New Haven facility. Pl.’s LR 56(a)2 Stmt. ¶ 17; Def.’s LR 56(a)1 Stmt. ¶ 17. In December 2019, Radiall moved from the New Haven facility to a much smaller, 30,000-square foot facility in Wallingford, Connecticut. Pl.’s LR 56(a)2 Stmt. ¶ 17; Def.’s LR 56(a)1 Stmt. ¶ 17. The parties dispute whether Ramadei’s duties changed after the shift to Wallingford—Radiall claims that they “diminished even further . . . due to the reduced space”, *see* Def.’s LR 56(a)1 Stmt. ¶ 19, which Ramadei denies, *see* Pl.’s LR 56(a)2 Stmt. ¶ 19.⁴

4. In support, Ramadei offers two pieces of evidence: (1) a list of the maintenance team’s responsibilities, put together by Neale, as of November 2018, *see* Maintenance Team Responsibilities List, Pl.’s Ex. 3 (Doc. No. 34-10); and (2) testimony from Richard Broga—who was Ramadei’s second supervisor from May 2020 until his termination—stating that Ramadei continued to be responsible for virtually all the duties in the 2018 list up until his termination, *see* Plaintiff’s Transcript of the Deposition of Richard Broga (“Pl.’s Broga Dep. Tr.”), at 35:8-36:14 (Doc. No. 34-3).

Appendix G

According to testimony from Maite Tristan Magarino (“Tristan”)—the President of Radiall—the COVID-19 pandemic had a significant impact on Radiall’s finances, causing a “negative growth of 34.8 percent” in 2020 as compared with 2019, and an additional projected loss of “almost 11 percent” for 2021. Defendant’s Transcript of the Deposition of Maite Tristan Magarino, Def.’s Ex. A, at 25:20-25:23 (Doc. No. 27-4). The parties disagree, in part, as to what then transpired over the course of 2020. Radiall asserts that, as the pandemic unfolded in the spring and summer of 2020, Radiall officials—including Tristan; Patrice Rigoland (“Rigoland”), the General Manager; and Lori Musante (“Musante”), the then-Director of Human Resources—began to form “more definitive” plans to “reduc[e] staffing costs”, which included “the elimination of the Facilities Manager position.” Def.’s LR 56(a)1 Stmt. ¶¶ 21-22. Radiall has offered four Exhibits, each of them charts, purporting to show its internal plans to cut costs, in part, by eliminating Ramadei’s Facilities Manager position during either Quarter 2 or Quarter 3 of 2020. *See* First Defensive Plan, Def.’s Ex. G (Doc. No. 26-1); Staff Assessment, Def.’s Ex. H (Doc. No. 26-1); June 22 Salary Cuts, Def.’s Ex. I (Doc. No. 26-1); Second Defensive Plan, Def.’s Ex. J (Doc. No. 26-1).⁵ Ramadei does not appear to contest the authenticity of the documents, but he disputes Radiall’s assertion that the documents show that Radiall

5. Of the four documents, only one—Exhibit I—contains a visible date. Otherwise, it appears that the purported dates of each document are provided by Radiall through its Rule 56(a)1 Statement. *See* Def.’s LR 56(a)1 Stmt. ¶¶ 22-25. Radiall has not provided any internal emails or other communications regarding the termination of Ramadei’s position.

Appendix G

intended to eliminate his position prior to October 2020. See Pl.'s LR 56(a)2 Stmt. ¶¶ 22-25.

On September 8, 2020, Ramadei felt ill and left work early. Pl.'s LR 56(a)2 Stmt. ¶ 27; Def.'s LR 56(a)1 Stmt. ¶ 27. Later that day, Ramadei notified Human Resources that he was feeling unwell and, consequently, he would not be coming into work the following day. Pl.'s LR 56(a)2 Stmt. ¶ 28; Def.'s LR 56(a)1 Stmt. ¶ 28. Unfortunately, Ramadei's symptoms worsened, and he was admitted to the hospital for pulmonary embolisms. Pl.'s LR 56(a)2 Stmt. ¶ 30; Def.'s LR 56(a)1 Stmt. ¶ 30; Pl.'s AMF ¶ 52. On September 15, Ramadei was released from the hospital with a note from his physician stating that he could return to work on September 21. Pl.'s LR 56(a)2 Stmt. ¶ 31; Def.'s LR 56(a)1 Stmt. ¶ 31. The following day, Ramadei notified Richard Broga—his then-supervisor—Rigoland, and Musante that he would be taking time off from work for the remainder of the week and the following week to recuperate from his health condition. Pl.'s LR 56(a)2 Stmt. ¶ 32; Def.'s LR 56(a)1 Stmt. ¶ 32; Sept. 16, 2020 Email from Gary Ramadei to Lori Musante, Richard Broga, Patrice Rigoland, and Victoria Jenks ("Ramadei Email"), Pl.'s Ex. 6 (Doc. No. 34-13). At the time, Ramadei was scheduled for paid time off the week of September 21, and he used that leave to recuperate. Pl.'s LR 56(a)2 Stmt. ¶ 32; Def.'s LR 56(a)1 Stmt. ¶ 32. Although Ramadei was never placed on FMLA leave, Musante has since acknowledged that Ramadei's request for leave likely qualified for FMLA protection. Defendant's Transcript of the Deposition of Lori Musante ("Def.'s Musante Dep. Tr."), Def.'s Ex. D, at 114:2-117:8. Ramadei returned to work on September 28. Pl.'s LR 56(a)2 Stmt. ¶ 35; Def.'s LR 56(a)1 Stmt. ¶ 35.

Appendix G

On October 16, 2020, Ramadei was notified by Broga that his position had been eliminated and he was losing his job. Pl.’s Ramadei Dep. Tr. at 133:23-134:13; Pl.’s LR 56(a)2 Stmt. ¶ 41; Def.’s LR 56(a)1 Stmt. ¶ 41. The decision to terminate Ramadei was made by Musante, Rigoland, and, at a “high level”, Tristan. *See* Pl.’s LR 56(a)2 Stmt. ¶ 22; Def.’s LR 56(a)1 Stmt. ¶ 22; Plaintiff’s Transcript of the Deposition of Maite Tristan Magarino, at 6:17-6:20 (Doc. No. 34-7). Around the same time, Radiall hired Jason Munson (“Munson”)—a man in his 30s—as a “maintenance associate”. Def.’s LR 56(a)1 Stmt. ¶ 41a; Pl.’s LR 56(a)2 Stmt. ¶ 41a; Pl.’s AMF ¶ 64; Defendant’s Responses to Plaintiff’s Statement of Additional Material Facts ¶ 64 (Doc. No. 41); Offer Letter, Def.’s Ex. S, at 1 (Doc. No. 27-4). Upon his termination, Ramadei received a letter from Rigoland memorializing his termination and asking him to remain at Radiall for a few more weeks so that he could “transfer . . . the important knowledge [he] gained over the years” to Munson, as well as Broga. Termination Letter, Pl.’s Ex. 1 (Doc. No. 34-8); *see also* Plaintiff’s Transcript of the Deposition of Richard Broga (“Pl.’s Broga Dep. Tr.”), at 51:15-51:17 (Doc. No. 34-3). Ramadei spent the remaining four weeks of his tenure at Radiall working with Munson and Broga, *see* Pl.’s Ramadei Dep. Tr. at 156:2-157:18, and once Ramadei left, most of his responsibilities were assumed by Munson and Broga, *see* Pl.’s Broga Dep. Tr. at 43:12-49:24.

Ramadei was 61 years old at the time of his termination from Radiall. Pl.’s LR 56(a)2 Stmt. ¶ 2; Def.’s LR 56(a)1 Stmt. ¶ 2.

*Appendix G***B. Procedural Background**

On October 29, 2021, Ramadei filed his initial Complaint in this action, *see* Complaint (Doc. No. 1), in which he brings five Counts against Radiall. *Id.* Counts One and Two allege age discrimination in violation of the ADEA,⁶ *see id.* at ¶¶ 31-37, while Counts Three and Four allege age discrimination in violation of the CFEPa,⁷ *see id.* at ¶¶ 38-44. Count Five alleges retaliation in violation of the FMLA. *Id.* at ¶¶ 45-48. Radiall filed its Answer to plaintiff's Complaint on January 7, 2022. *See* Answer (Doc. No. 12).

On January 17, 2023, Radiall moved for summary judgment on all five Counts. *See* Def.'s Mot. Ramadei opposes the Motion. *See* Pl.'s Mem.

III. LEGAL STANDARD

A motion for summary judgment may be granted only when the moving party can establish that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Wright v. N.Y. State Dep't of Corr.*, 831 F.3d 64, 71-72 (2d Cir. 2016). If the moving party satisfies this burden, the nonmoving party must set forth specific facts

6. Count Two also seeks liquidated damages under the ADEA. *See* Compl. at ¶ 37.

7. Count Four also seeks punitive damages under the CFEPa. *See id.* at ¶ 44.

Appendix G

demonstrating that there is indeed “a genuine issue for trial.” *Wright v. Goord*, 554 F.3d 255, 266 (2d Cir. 2009). A genuine issue exists where “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Cross Commerce Media, Inc. v. Collective, Inc.*, 841 F.3d 155, 162 (2d Cir. 2016). Unsupported allegations do not create a material issue of fact and cannot overcome a properly supported motion for summary judgment. *See Weinstock v. Columbia Univ.*, 224 F.3d 33, 41 (2d Cir. 2000). In assessing the record to determine whether there are disputed issues of material fact, the trial court must “resolve all ambiguities and draw all inferences in favor of the party against whom summary judgment is sought.” *LaFond v. Gen. Physics Servs. Corp.*, 50 F.3d 165, 175 (2d Cir. 1995).

IV. DISCUSSION**A. Age Discrimination Claims**

In support of its Motion for Summary Judgment, Radiall argues that all four of Ramadei’s age discrimination claims under the ADEA and CFEPA⁸ fail because he has not established a *prima facie* case. *See* Memorandum of Law in Support of Defendant’s Motion for Summary Judgment (“Def.’s Mem.”), at 9 (Doc. No. 27-1). Radiall further argues that, even assuming Ramadei has established a *prima facie* case, his discrimination claims still fail because

8. In its Memorandum, Radiall analyzes all four age discrimination claims together. *See* Memorandum of Law in Support of Defendant’s Motion for Summary Judgment (“Def.’s Mem.”), at 8 (Doc. No. 27-1).

Appendix G

Radiall had legitimate, nondiscriminatory reasons for terminating his employment. *Id.* at 12. In response, Ramadei counters that (1) he has indeed established a *prima facie* case of age discrimination, *see* Pl.’s Mem. at 11-12, and (2) Radiall’s proffered explanations for his termination are pretextual, *see id.* at 12-13.

Courts in the Second Circuit analyze both ADEA and CFEPA claims under the same burden-shifting evidentiary framework set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Weichman v. Chubb & Son*, 552 F. Supp. 2d 271, 282 (D. Conn. 2008). Under the *McDonnell-Douglas* framework, “the plaintiff bears the initial burden of establishing a *prima facie* case of discrimination.” *See Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 106 (2d Cir. 2010). If the plaintiff meets this burden, the defendant must articulate a legitimate, nondiscriminatory reason for its action. *Id.* Once such a reason is given, “the plaintiff can no longer rely on the *prima facie* case, but may still prevail if she can show that the employer’s determination was in fact the result of discrimination.” *Id.*

However, at this final step, the two statutes diverge. Under the ADEA, the plaintiff must show that age was the “but-for” cause of the adverse employment action. *See Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009). But-for causation is “established whenever a particular outcome would not have happened ‘but for’ the purported cause.” *Bostock v. Clayton County*, 140 S. Ct. 1731, 1739 (2022). The CFEPA, on the other hand, only requires the plaintiff to prove that age discrimination was a motivating

Appendix G

factor behind the adverse action, not that the adverse action could not have occurred without it.⁹ *See Wallace v. Caring Sols., LLC*, 213 Conn. App. 605, 611-12 (2022). Because the plaintiff bears a lower burden of proof under the CFEPA, the court will begin by analyzing Ramadei's CFEPA claims.

1. CFEPA Claims (Counts Three and Four)**a) *Prima Facie* Case**

To establish a *prima facie* case of age discrimination under the CFEPA, a plaintiff must show (1) that he was within the protected age group, (2) that he was qualified for the position, (3) that he experienced an adverse employment action, and (4) that this adverse action occurred under circumstances giving rise to an inference of discrimination. *See Mendillo v. Prudential Ins. Co. of Am.*, 156 F. Supp. 3d 317, 338, 344-45 (D. Conn. 2016); *Steinmetz v. W. Conn. Home Care*, No. 3:19-CV-1819, 2022 WL 4367595, at *5 (D. Conn. Sept. 21, 2022). While Radiall does not contest that Ramadei has met the first three elements, it argues that Ramadei has “fail[ed] to present sufficient evidence to establish” an inference of discrimination. Def.'s Mem. at 9. Ramadei contends that such an inference is “supplied by the substantial age disparity” between Ramadei, 61-years-old at the time of his termination, and Munson, the “30-something year old man whom Defendant selected in his stead.” Pl.'s Mem. at 12.

9. Radiall incorrectly asserts that the standard is the same under the ADEA and CFEPA. *See* Def.'s Mem. at 1.

Appendix G

Generally, a plaintiff's replacement by a significantly younger person is sufficient, by itself, to establish an inference of age discrimination. *See Carlton v. Mystic Transp., Inc.*, 202 F.3d 129, 135 (2d Cir. 2000). In assessing whether a plaintiff was "replaced", courts "focus on the transfer of the plaintiff's job responsibilities, not assumption of his or her title." *Fontecchio v. ABC Corp.*, No. 12-CV-6998, 2015 WL 327838, at *7 (S.D.N.Y. Jan. 23, 2015). Moreover, courts in this Circuit have held that, where there is evidence that a majority of a plaintiff's job responsibilities were transferred to a younger employee, such evidence is sufficient to support an inference of age discrimination. *See id.* at *7; *see also Montana v. First Fed. Sav. & Loan Ass'n of Rochester*, 869 F.2d 100, 105 (2d Cir. 1989) (finding an inference of age discrimination where "the majority of [a plaintiff's] responsibilities . . . were transferred to a twenty-six year old [younger] coworker").

Here, Ramadei has produced evidence that, following his departure, Munson assumed responsibility over many—if not most—of his former duties, albeit at a substantially lower salary. *See* Pl.'s Broga Dep. Tr. at 43:12-49:24; Offer Letter at 1. Thus, although Radiall correctly notes that Ramadei's former duties were "redistributed" across multiple employees, *see* Defendant's Reply Brief in Support of Defendant's Motion for Summary Judgment ("Def.'s Reply"), at 3 (Doc. No. 40), a reasonable trier of fact could nonetheless conclude that, by assuming most of Ramadei's former duties, Munson effectively replaced Ramadei.

Appendix G

Indeed, additional evidence in the record further suggests that Radiall saw Munson as Ramadei's *de facto* replacement. Radiall officially hired Munson on October 19, 2020, *see* Offer Letter, three days after Ramadei was informed of his termination, *see* Pl.'s Ramadei Dep. Tr. at 133:23-134:13. Radiall's termination letter to Ramadei requested that he use his final days at Radiall to "transfer . . . the important knowledge [he] gained over the years to [Broga] and an entry-level maintenance person"—*i.e.*, Munson. *See* Termination Letter. And, according to Rigoland's testimony, Radiall delayed Ramadei's termination in part because it wanted to have a maintenance agent "on board" first. *See* Plaintiff's Transcript of the Deposition of Patrice Rigoland ("Pl.'s Rigoland Dep. Tr."), at 43:14-43:24 (Doc. No. 34-6). Viewed in the light most favorable to the plaintiff, these facts suggest that Ramadei was effectively replaced by Munson. Ramadei has thus met his *de minimis* burden of establishing a *prima facie* case.

**b) Legitimate, Nondiscriminatory
Reasons for Termination**

With the plaintiff establishing a *prima facie* case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for Ramadei's termination. *Gorzynski*, 596 F.3d at 107. Here, Radiall easily clears that hurdle. First, Radiall states that its shifting business and the "consequent reduction in the amount of space and equipment to be maintained", including the move to the smaller Wallingford facility, meant that Radiall's facilities team "no longer . . . need[ed] . . . someone of Plaintiff's

Appendix G

management level and broad skill set.” Def.’s Mem. at 12; *accord* Def.’s LR 56(a)1 Stmt. ¶¶ 9-10, 18. Second, Radiall states that Ramadei’s position was eliminated as part of a broader cost-cutting strategy in the wake of the COVID-19 pandemic, which impacted Radiall’s finances. Def.’s Mem. at 12; *accord* Def.’s LR 56(a)1 Stmt. ¶¶ 20, 22. In support, Radiall has proffered four documents purporting to show its internal plans to cut costs, in part, by eliminating Ramadei’s Facilities Manager position. *See* First Defensive Plan; Staff Assessment; June 22 Salary Cuts; Second Defensive Plan. As courts in this Circuit have held, “[f]inancial difficulties and cost-cutting can be legitimate reasons to terminate an employee.” *Dieck v. Suffolk Cnty. Vanderbilt Museum*, No. 09-CV-2263, 2011 WL 4434066, at *4 (E.D.N.Y. Sept. 22, 2011); *accord McCloskey v. Union Carbide Corp.*, 815 F. Supp. 78, 81 (2d Cir. 1993) (“A restructuring and reorganizing of operations is a legitimate non-discriminatory reason for termination.”). Radiall has met its burden of articulating legitimate, nondiscriminatory reasons for Ramadei’s termination.

c) Pretext for Age Discrimination

Because Radiall has provided legitimate, nondiscriminatory reasons for its adverse action, the burden shifts back to Ramadei to demonstrate that Radiall’s proffered reasons are pretexts for discrimination. A plaintiff can demonstrate pretext through circumstantial evidence, including evidence comprising the *prima facie* case, or by showing that the employer’s proffered explanation is unworthy of

Appendix G

credence. *See Heyman v. Queens Vill. Comm.*, 198 F.3d 68, 72 (2d Cir. 1999). Moreover, a plaintiff can challenge an employer’s proffered explanation by showing that the explanation suffers from “weaknesses, implausibilities, inconsistencies, or contradictions”. *Zann Kwan v. Andalex Grp. LLC*, 737 F.3d 834, 846 (2d Cir. 2013). To defeat summary judgment, the plaintiff must provide evidence that the defendant was motivated, at least in part, by discriminatory animus. *See Wallace*, 213 Conn. App. at 623 (applying the motivating factor test as the applicable standard of causation for CFEPa claims).

Ramadei contends that “[Radiall’s] stated reasons for terminating Mr. Ramadei—namely, that his position was eliminated, and the diminished scope of the duties following the move to Wallingford—are false”. Pl.’s Mem. at 13. As evidence, Ramadei points to testimony from Broga that, at the time of his termination in October 2020, his list of responsibilities as Facilities Manager remained “wide ranging in [its] scope” and largely unchanged since the end of 2018. Pl.’s Broga Dep. Tr. at 35:8-37:12; *accord* Maintenance Team Responsibilities List, Pl.’s Ex. 3 (Doc. No. 34-10) (listing Ramadei’s responsibilities as of November 6, 2018). However, this evidence, even construed in a light most favorable to Ramadei, does not meaningfully call into question Radiall’s core rationale for his termination—that it no longer required a highly skilled, management-level employee to do the facilities work. Indeed, Ramadei admits that, by the end of 2018, there was “less work that was required of the facility management team.” Def.’s Ramadei Dep. Tr. at 47:9-47:12. Moreover, Ramadei’s evidence that his list of

Appendix G

responsibilities remained the same between New Haven and Wallingford does not materially challenge Radiall's reasoning that the much-smaller Wallingford facility required less time, labor, and expertise. *See* Def.'s Mem. at 12; Def.'s Reply at 2. Nor does this evidence rebut Radiall's explanation that the Facilities Manager position was eliminated. As discussed above, Munson assumed many—but not all—of Ramadei's former duties, *see* Pl.'s Broga Dep. Tr. at 43:12-49:24, at approximately half of Ramadei's former salary, *see* Offer Letter; Pl.'s LR 56(a)2 Stmt. ¶ 41a; Def.'s LR 56(a)1 Stmt. ¶ 41a. This evidence was sufficient to demonstrate that Ramadei was effectively replaced by Munson for purposes of establishing his *prima facie* case; it is not, however, sufficient for a jury to find that the Facilities Manager position was not, in fact, eliminated. In sum, Ramadei's evidence does not raise any genuine dispute of material fact as to whether Radiall's explanations are unworthy of credence.

Ramadei also attempts to offer additional circumstantial evidence that Radiall's explanations were pretexts for age discrimination. First, Ramadei notes an alleged remark made in 2015 or 2016 by Neale—his prior supervisor—that Moleski, one of Ramadei's then-coworkers, was “old enough to retire and he should.” Pl.'s Ramadei Dep. Tr. at 37:5-37:13. Even assuming that Neale made this statement—which he denies, *see* Neale Aff. ¶ 9—the Second Circuit has stated that “[c]omments about another employee's age, removed from any context suggesting that they influenced decisions regarding [the plaintiff's] own employment, do not suffice to create a genuine issue of fact”. *Delaney v. Bank of Am. Corp.*,

Appendix G

766 F.3d 163, 170 (2d Cir. 2014). Here, Neale’s alleged statement is of particularly low probative value because (1) it was made four to five years before Ramadei’s termination, *see* Pl.’s Ramadei Dep. Tr. at 36:25-37:13, (2) by an individual who departed the company months before Ramadei was terminated, *see* Neale Aff. ¶ 1. As such, the alleged remark does not suffice as evidence of pretext.

As additional evidence, Ramadei offers his own testimony alleging that Moleski, as well as Petrowski and Naclerio—all older employees—were terminated by Radiall after taking medical leave. *See* Pl.’s Ramadei Dep. Tr. at 136:15-137:17. The court agrees with Radiall that this testimony constitutes inadmissible hearsay and speculation. In his testimony, Ramadei appears to recount statements by out-of-court declarants to prove the truth of the matters asserted therein—that Radiall has discriminated against older employees and retaliated against them for taking medical leave. For example, he describes how Petrowski, an “older” employee, “was called at home to tell her her job was eliminated” shortly after taking medical leave, and that she later “explained to [Ramadei] what happened”. Pl.’s Ramadei Dep. Tr. at 136:14-137:17. These alleged statements constitute hearsay and are thus inadmissible. *See* Fed. R. Evid. 801; *LaMarch v. Tishman Speyer Props.*, No. 03-CV-5246, 2006 WL 2265086, at *6 (E.D.N.Y. Aug. 8, 2006) (finding that plaintiff’s “testimony regarding other employees’ statements about age discrimination” is inadmissible hearsay and therefore cannot be considered). At other points, Ramadei testifies about his own perception that there was a pattern of terminating older employees at Radiall. *See* Pl.’s Ramadei Dep. Tr. at 136:14-137:4

Appendix G

(testifying that Radiall’s alleged termination of Moleski, Petrowski, and Naclerio “seemed to follow a pattern”); *id.* at 168:11-169:13 (testifying as to his belief that Moleski, Petrowski, and Naclerio were terminated due to age discrimination). These statements are speculation—as Ramadei himself appears to concede, *see id.* at 169:6-169:13—and are therefore inadmissible. *See Saenger v. Montefiore Med. Ctr.*, 706 F. Supp. 2d 494, 517 (S.D.N.Y. 2010) (refusing to consider, as evidence, plaintiff’s perception that his employer engaged in a pattern of discrimination against older employees because it was speculation). A court cannot, at the summary judgment stage, consider evidence that would be inadmissible at trial. *See DiStiso v. Cook*, 691 F.3d 226, 230 (2d Cir. 2012). Ramadei has not provided affidavits from any of these former coworkers. Nor has he provided any other evidence to corroborate his testimony. As such, the court must exclude this testimony from its consideration.

Taken together, Ramadei has not offered evidence upon which a jury could reasonably find that Radiall’s proffered explanations were pretexts for discrimination.¹⁰

10. Radiall has also provided data purporting to show that, during the relevant time period, it terminated age-protected employees—that is, employees 40 years old and over—at a rate that is virtually identical to the rate at which it terminated employees outside the protected age group. *See* List of Active and Terminated Employees, Def.’s Ex. O (Doc. No. 27-4); Age Report Sheet, Def.’s Ex. P (Doc. No. 27-4); Employees Hired and Terminated from 1/1/2020 to 7/1/2021, Def.’s Ex. Q (Doc. No. 27-4). Because the court finds that Ramadei has not provided evidence sufficient to demonstrate pretext, the court need not consider the demographic data proffered by Radiall.

Appendix G

Because no reasonable trier of fact could conclude, from the admissible evidence provided, that Ramadei's termination was motivated, at least in part, by discriminatory intent, the Motion for Summary Judgment as to Counts Three and Four is granted.

2. ADEA Claims (Counts One and Two)

As discussed above, the ADEA adheres to the same *McDonnell-Douglas* burden-shifting framework as the CFEPA, *see Weichman*, 552 F. Supp. 2d at 282, but with a higher “but-for” causation standard, *see Gross*, 557 U.S. at 176. Because Ramadei has not provided evidence sufficient to demonstrate pretext under the CFEPA's lower causation standard, his claims under the ADEA also must fail. Radiall's Motion for Summary Judgment as to Counts One and Two is granted.

B. FMLA Retaliation Claim (Count Five)

Radiall also moves for summary judgment as to Ramadei's FMLA retaliation claim. *See* Def.'s Mot. Under the FMLA, an employer may not “interfere with, restrain, or deny the exercise of or the attempt to exercise” FMLA-protected rights. 29 U.S.C. § 2615. The Second Circuit generally applies the *McDonnell-Douglas* burden-shifting framework to FMLA retaliation claims. *See Roberts v. Health Ass'n*, 308 Fed. App'x 568, 570 (2d Cir. 2009). To survive summary judgment, a plaintiff must first establish a *prima facie* case of retaliation; if the defendant then provides a legitimate, nonretaliatory reason for their adverse action, the plaintiff must demonstrate that the

Appendix G

defendant's proffered reason is a pretext for retaliation. *Id.* Moreover, to prevail on an FMLA retaliation claim, a plaintiff need only show that his FMLA-protected leave was a motivating factor in his termination, rather than a but-for cause. *See Woods v. START Treatment Recovery Ctrs.*, 864 F.3d 158, 168-69 (2d Cir. 2017).

1. *Prima Facie* Case

A plaintiff must first establish a *prima facie* case of retaliation by showing that “(1) [he] exercised [his] rights protected under the FMLA, (2) [he] was qualified for [his] position, (3) [he] suffered an adverse employment action, and (4) the adverse employment action occurred under circumstances giving rise to an inference of retaliatory intent.” *Roberts*, 308 Fed. App’x at 570.

Radiall argues that Ramadei has failed to establish the first, third, and fourth elements of the *prima facie* case.¹¹ Def.’s Mem. at 16-19. First, Radiall asserts that Ramadei did not exercise FMLA-protected rights when he notified Musante, Broga, and Rigoland that he was taking time off from work for a medical condition because (1) he never discussed FMLA leave, and (2) there is “insufficient evidence to prove that Radiall had knowledge at the time of the request that the leave likely qualified for FMLA protection”. *Id.* at 16-17. However, as Radiall notes, courts in this Circuit have recognized that “FMLA retaliation may be based on proof of a plaintiff’s inquiry

11. Radiall does not contest that Ramadei was well qualified for the Facilities Manager position.

Appendix G

notice to his employer . . . requesting potentially FMLA-qualifying leave, even though he may have been unaware of the FMLA's [applicability], so long as the employer had knowledge that the requested purpose likely qualified for FMLA protection." *See McNamara v. Trinity Coll.*, No. 3:12-CV-363, 2013 WL 164221, at *4 (D. Conn. Jan. 15, 2013); *see also Darboe v. Staples, Inc.*, 243 F. Supp. 2d 5, 17 (S.D.N.Y. 2003) (finding that an employee's request for time off to receive medical treatment, without explicitly requesting FMLA leave, qualified as FMLA-protected leave). Here, Ramadei notified Radiall via email of his intent to take time off for the remainder of the week to rest and recuperate from his pulmonary embolism condition, as advised by his doctor, and to use prescheduled vacation time for the following week to further recuperate. *See* Ramadei Email. At her deposition, Musante admitted that Ramadei's leave likely qualified for FMLA protection. *See* Def.'s Musante Dep. Tr. at 114:2-117:8. Moreover, Radiall does not contest that Ramadei's email adequately complied with Radiall's FMLA policy, which requires employees to "either request[] FMLA leave specifically, or explain[] the reasons for leave so as to allow the Company to determine that the leave is FMLA-qualifying." *See* Radiall USA Employee Handbook, Pl.'s Ex. 7, at 54 (Doc No. 34-14). Viewing the evidence in the light most favorable to the plaintiff, the court finds that Ramadei's email was sufficient to put Radiall on "inquiry notice" that he was exercising an FMLA-protected right. *See Jennings v. Parade Publ'n*, No. 01-CV-8590, 2003 WL 22241511, at *3 (S.D.N.Y. Sept. 30, 2003) ("[O]n the basis of a request and some preliminary information an employer may be put on inquiry notice and thereby obligated to request from the

Appendix G

employee additional information regarding the asserted qualifying condition.”). Ramadei provided Radiall with sufficient information to determine whether his leave was FMLA-qualifying; Radiall’s failure to do so does not bar Ramadei’s claim. Ramadei has thus established the first prong of the *prima facie* case.

Radiall further argues that Ramadei has failed to establish that he suffered an adverse employment action. Def.’s Mem. at 15. That is incorrect. Ramadei’s employment was terminated. Termination of employment clearly qualifies as an adverse action under the FMLA. *See Dighello v. Thurston Foods, Inc.*, 307 F. Supp. 3d 5, 21 (D. Conn. 2018) (noting, in an FMLA retaliation claim, that termination constitutes an adverse employment action).

As to the fourth prong, plaintiff and defendant disagree over whether the temporal proximity between Ramadei’s exercise of FMLA-protected rights and his termination—approximately one month—is sufficient to establish an inference of retaliatory intent. *See* Def.’s Mem. at 17-18; Pl.’s Mem. at 16. In the Second Circuit, a time period of a few weeks between an FMLA-protected act and termination is generally enough to give rise to an inference of retaliatory intent. *See Rodrigues v. Conn. Container Corp.*, No. 3:20-CV-00294, 2022 WL 844610, at *7 (D. Conn. Mar. 22, 2022); *see also Fernandez v. Woodhull Med. & Mental Health Ctr.*, No. 14-CV-4191, 2017 WL 3432037, at *8 (E.D.N.Y. Aug. 8, 2017) (collecting cases supporting the proposition that “courts frequently find a period of a few weeks sufficient” to raise an inference of retaliatory intent). The court agrees with Ramadei that

Appendix G

the approximately one-month gap between his protected activity and his termination is sufficient to raise an inference of retaliatory intent.¹² Ramadei has thus met each element of his *prima facie* case.

2. Legitimate, Nonretaliatory Reasons for Termination

Once again, Radiall must articulate a legitimate, nonretaliatory reason for Ramadei's termination. As discussed above, Radiall states that it eliminated Ramadei's position due to changing business needs and the financial impact of COVID-19, both of which constitute legitimate, nonretaliatory reasons. *See* Section IV.A.1.b, *supra*.

3. Pretext for Retaliation

At the third step of the *McDonnell-Douglas* framework, the burden shifts back to Ramadei to

12. Radiall counters that, under Second Circuit precedent, “[w]here timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise.” Def.’s Mem. at 18 (quoting *Slattery v. Swiss Reins. Am. Corp.*, 248 F.3d 87, 95 (2d Cir. 2001)).

Here, however, it does not appear that there were any “adverse job actions” that began before Ramadei’s termination. Although Radiall points to its “cost-cutting plans commenced in April 2020”, *id.*, the mere existence of such plans does not constitute a materially adverse job action. As such, these internal plans do not negate the inference of retaliatory intent.

Appendix G

demonstrate that Radiall’s proffered reasons were a “pretext for retaliation.” *See Arizmendi v. Rich Prods. Corp.*, No. 22-CV-1971, 2023 WL 4246106, at *2 (2d Cir. June 29, 2023). As discussed above, a plaintiff can demonstrate pretext through evidence comprising the *prima facie* case and evidence that the employer’s proffered explanation is unworthy of credence, *see Sista v. CDC Ixis N. Am., Inc.*, 445 F.3d 161, 173 (2d Cir. 2006)—including, for example, by showing that the explanation contains “weaknesses, implausibilities, inconsistencies, or contradictions”. *Zann Kwan*, 737 F.3d at 846.

As Radiall correctly notes, the temporal proximity between Ramadei’s protected activity and termination—the crux of his *prima facie* case—is insufficient, by itself, to demonstrate pretext. *See El Sayed v. Hilton Hotels Corp.*, 627 F.3d 931, 933 (2d Cir. 2010) (per curiam). However, Ramadei’s pretext argument does not end there. Rather, Ramadei has put forth evidence revealing potential, material inconsistencies in the testimony of two Radiall officials involved in his termination—namely, Rigoland and Musante—about the timing of the decision to terminate him, as well as the underlying reasons for said timing. Rigoland testified that the decision to terminate Ramadei was made “right after the [COVID-19] crisis[,] [o]r already when we moved to the new facility”. Pl.’s Rigoland Dep. Tr. at 43:1-43:9. When asked why Ramadei was not formally terminated until October 2020, Rigoland explained that “he was still completing . . . work”, and that Radiall still “had to hire a maintenance agent.” *Id.* at 47:1-47:8. Musante, however, testified that the decision to terminate Ramadei was “iterative” and “fluid”, and

Appendix G

she further testified that the final decision was not made until October 2020 because “we wanted to be thoughtful, and . . . as helpful as possible[] about finances.” Plaintiff’s Transcript of the Deposition of Lori Musante, at 103:4-103:12 (Doc. No. 34-4). Most notably, Musante also testified that, up until October 2020, she remained hopeful that “things would . . . change[]” and Ramadei’s position would not be eliminated. *Id.* at 104:16-104:20.

Construed in the light most favorable to the plaintiff, Musante’s testimony suggests that, contrary to Rigoland’s testimony and the internal documents proffered by Radiall, the elimination of Ramadei’s position was not a foregone conclusion by the time he took medical leave. This evidence of potentially “inconsistent” and unclear employer explanations about the timing of the final decision, combined with the very close temporal proximity between Ramadei’s medical leave and termination, is sufficient to defeat summary judgment. *See Zann Kwan*, 737 F.3d at 847 (stating that “a plaintiff may rely on evidence comprising her prima facie case, including temporal proximity, together with other evidence such as inconsistent employer explanations, to defeat summary judgment”); *see also Rodrigues*, 2022 WL 844610, at *8 (denying summary judgment on an FMLA retaliation claim in part because “genuine issues of material fact exist as to the timing of [the defendant’s] decision” to terminate the plaintiff).

In its Reply Memorandum, Radiall argues that the testimony from Rigoland and Musante merely shows “differing perspectives about different events

Appendix G

and documents”, and that these differing perspectives do not raise any “material” issues of fact. Def.’s Reply at 6. The court respectfully disagrees. Although Rigoland and Musante’s depositions do not, necessarily, outright contradict one another, their differing accounts nonetheless raise a genuine question of fact as to whether Radiall officials decided to terminate Ramadei before he took FMLA-qualifying leave. This dispute over timing is particularly relevant because Ramadei bases his retaliation claim on temporality proximity. A reasonable trier of fact could conclude, based on the defendant’s inconsistent explanations as to timing—coupled with the close temporal proximity between the FMLA-eligible leave and termination—that Ramadei’s sudden use of FMLA-protected leave played a motivating role in Radiall’s decision to pull the proverbial trigger and terminate his employment. The timing and potentially inconsistent testimony are thus material, disputed facts that lie in the province of the jury.

The court therefore reserves this question for the jury and denies Radiall’s Motion for Summary Judgment as to Count Five.

V. CONCLUSION

For the reasons discussed above, the Motion for Summary Judgment (Doc. No. 27) is granted in part and denied in part. The Motion is granted with respect to Counts One, Two, Three, and Four, and denied with respect to Count Five. Defendant’s Motion to Seal Exhibits G, H, I, and J (Doc. No. 26) is also granted in part.

111a

Appendix G

Defendant may refile the Exhibits with all confidential and proprietary information redacted, provided that the portions of the Exhibits that pertain directly to plaintiff and the elimination of the Facilities Manager position—as cited by defendant in its summary judgment materials—are unredacted.

SO ORDERED.

Dated at New Haven, Connecticut this 8th day of September 2023.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge

112a

**APPENDIX H — ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT, FILED APRIL 30, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No: 25-587

GARY T. RAMADEI,

Plaintiff-Appellee,

v.

RADIAL USA, INC.,

Defendant-Appellant.

Filed April 30, 2026

ORDER

Appellant, Radial USA, Inc., filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe, Clerk

**APPENDIX I — RELEVANT
PROVISIONS INVOLVED**

29 U.S. Code § 2614—Employment and benefits protection

(a) RESTORATION TO POSITION

(1) IN GENERAL

Except as provided in subsection (b), any eligible employee who takes leave under section 2612 of this title for the intended purpose of the leave shall be entitled, on return from such leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) LOSS OF BENEFITS

The taking of leave under section 2612 of this title shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) LIMITATIONS

Nothing in this section shall be construed to entitle any restored employee to—

Appendix I

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) CERTIFICATION

As a condition of restoration under paragraph (1) for an employee who has taken leave under section 2612(a)(1)(D) of this title, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.

(5) CONSTRUCTION

Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 2612 of this title to report periodically to the employer on the status and intention of the employee to return to work.

Appendix I

(b) EXEMPTION CONCERNING CERTAIN HIGHLY COMPENSATED EMPLOYEES

(1) DENIAL OF RESTORATION

An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if—

(A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(B) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury would occur; and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) AFFECTED EMPLOYEES

An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

*Appendix I***(c) MAINTENANCE OF HEALTH BENEFITS****(1) COVERAGE**

Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 2612 of this title, the employer shall maintain coverage under any “group health plan” (as defined in section 5000(b)(1) of Title 26) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(2) FAILURE TO RETURN FROM LEAVE

The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 2612 of this title if—

(A) the employee fails to return from leave under section 2612 of this title after the period of leave to which the employee is entitled has expired; and

(B) the employee fails to return to work for a reason other than—

(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 2612(a)(1) of this title or under section 2612(a)(3) of this title; or

Appendix I

(ii) other circumstances beyond the control of the employee.

(3) CERTIFICATION

(A) Issuance

An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by—

(i) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in section 2612(a)(1)(C) of this title;

(ii) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 2612(a)(1)(D) of this title; or

(iii) a certification issued by the health care provider of the servicemember being cared for by the employee, in the case of an employee unable to return to work because of a condition specified in section 2612(a)(3) of this title.

Appendix I

(B) Copy

The employee shall provide, in a timely manner, a copy of such certification to the employer.

(C) Sufficiency of certification

(i) Leave due to serious health condition of employee

The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.

(ii) Leave due to serious health condition of family member

The certification described in subparagraph (A)(i) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

Appendix I

29 U.S. Code § 2615—Prohibited acts

(a) INTERFERENCE WITH RIGHTS

(1) EXERCISE OF RIGHTS

It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

(2) DISCRIMINATION

It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES

It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this subchapter;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this subchapter; or

(3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this subchapter.

Appendix I

29 U.S. Code § 2617—Enforcement

(a) Civil action by employees

(1) Liability

Any employer who violates section 2615 of this title shall be liable to any eligible employee affected—

(A) for damages equal to—

(i) the amount of—

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks (or 26 weeks, in a case involving leave under section 2612(a) (3) of this title) of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

Appendix I

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 2615 of this title proves to the satisfaction of the court that the act or omission which violated section 2615 of this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 2615 of this title, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) RIGHT OF ACTION

An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of—

(A) the employees; or

(B) the employees and other employees similarly situated.

Appendix I

(3) FEES AND COSTS

The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) LIMITATIONS

The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate—

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1),

unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

Appendix I

(b) ACTION BY SECRETARY

(1) ADMINISTRATIVE ACTION

The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 2615 of this title in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 206 and 207 of this title.

(2) CIVIL ACTION

The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (a)(1)(A).

(3) SUMS RECOVERED

Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) LIMITATION

(1) IN GENERAL

Except as provided in paragraph (2), an action may be brought under this section not later than 2 years

Appendix I

after the date of the last event constituting the alleged violation for which the action is brought.

(2) WILLFUL VIOLATION

In the case of such action brought for a willful violation of section 2615 of this title, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) COMMENCEMENT

In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) ACTION FOR INJUNCTION BY SECRETARY

The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary—

(1) to restrain violations of section 2615 of this title, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or

(2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

125a

Appendix I

(e) SOLICITOR OF LABOR

The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

(f) GOVERNMENT ACCOUNTABILITY OFFICE AND LIBRARY OF CONGRESS

In the case of the Government Accountability Office and the Library of Congress, the authority of the Secretary of Labor under this subchapter shall be exercised respectively by the Comptroller General of the United States and the Librarian of Congress.

Appendix I

29 C.F.R. § 825.220—Protection for employees who request leave or otherwise assert FMLA rights.

(a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act.

(2) An employer is prohibited from discharging or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the Act.

(3) All persons (whether or not employers) are prohibited from discharging or in any other way discriminating against any person (whether or not an employee) because that person has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to this Act;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under this Act;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under this Act.

Appendix I

(b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. See § 825.400(c). Interfering with the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid responsibilities under FMLA, for example:

- (1) Transferring employees from one worksite to another for the purpose of reducing worksites, or to keep worksites, below the 50–employee threshold for employee eligibility under the Act;
- (2) Changing the essential functions of the job in order to preclude the taking of leave;
- (3) Reducing hours available to work in order to avoid employee eligibility.

(c) The Act's prohibition against interference prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the

Appendix I

same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under no fault attendance policies. See § 825.215.

(d) Employees cannot waive, nor may employers induce employees to waive, their prospective rights under FMLA. For example, employees (or their collective bargaining representatives) cannot trade off the right to take FMLA leave against some other benefit offered by the employer. This does not prevent the settlement or release of FMLA claims by employees based on past employer conduct without the approval of the Department of Labor or a court. Nor does it prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a light duty assignment while recovering from a serious health condition. See § 825.702(d). An employee's acceptance of such light duty assignment does not constitute a waiver of the employee's prospective rights, including the right to be restored to the same position the employee held at the time the employee's FMLA leave commenced or to an equivalent position. The employee's right to restoration, however, ceases at the end of the applicable 12-month FMLA leave year.

(e) Individuals, and not merely employees, are protected from retaliation for opposing (e.g., filing a complaint about) any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or regulations.