

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

BARBARA NELSON,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 8:19-cv-329
)	
JULIE KUNKLE, an individual, and AMERICAN BLUE RIBBON HOLDINGS, LLC, a Delaware limited liability company,)	
)	
Defendants.)	
)	

SUGGESTION OF BANKRUPTCY

PLEASE TAKE NOTICE that, on January 27, 2020, American Blue Ribbon Holdings, LLC (“Blue Ribbon”) and certain of its affiliates (collectively, the “Debtors”) filed voluntary petitions (the “Chapter 11 Petitions”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). Consistent with precedent and in accordance with that certain *Order Authorizing and Directing the Joint Administration of Related Chapter 11 Cases for Procedural Purposes Only* [Docket No. 35], all of the Debtors cases will be jointly administered under Case No. 20-10161 (LSS) (Bankr. D. Del.).

PLEASE TAKE FURTHER NOTICE that, pursuant to Bankruptcy Code sections 1107(a) and 1108, the Debtors continue to manage their property as debtors-in-possession.

PLEASE TAKE FURTHER NOTICE that, pursuant to section 541 of the Bankruptcy Code, the commencement of Debtors’ chapter 11 cases created an estate comprised, subject to certain limited exceptions, of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1).

PLEASE TAKE FURTHER NOTICE that, pursuant to section 362 of the Bankruptcy Code, upon the filing of the Chapter 11 Petitions, an injunction (the “Automatic Stay”) was placed into effect which automatically stays, among other things, (i) the commencement or continuation of any judicial, administrative, or other action or proceeding against Blue Ribbon (or any of the other Debtors) that was, or could have been, commenced before the filing of the Chapter 11 Petitions or (ii) any act to obtain possession of or exercise control over property of the Debtors’ estates.

PLEASE TAKE FURTHER NOTICE that any action taken by the Plaintiff or any other party against the Debtors without obtaining relief from the Bankruptcy Court from the Automatic Stay may be *void ab initio* and may be subject to findings of contempt and the assessment of penalties and fines by the Bankruptcy Court against Plaintiff or such other party. The Debtors reserve and retain all rights to seek relief from the Bankruptcy Court from any action, judgment, order, or ruling entered in violation of the Automatic Stay.

Date: January 28, 2020.

Respectfully submitted,

s/Danielle L. Kitson

Danielle L. Kitson, (NE Bar No. 23581)

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***Attorneys for American Blue Ribbon Holdings, LLC
and Julie Kunkle***

CERTIFICATION OF COMPLIANT WITH NECivR 7.1(d)

I, Danielle L. Kitson, certify that Defendant's Reply Brief in Support of Defendant's Motion to Compel Arbitration and to Dismiss complies with Local Rule 7.1(d), and contains 568 words. I further certify that in preparation of the above document, I used Microsoft Word for Office 365, and that this word processing program has been applied specifically to include all text, including the caption, headings, footnotes, and quotations.

Dated: January 28, 2020

Respectfully submitted,

s/Danielle L. Kitson

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***Attorneys for American Blue Ribbon Holdings,
LLC and Julie Kunkle***

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2020, a true and correct copy of the foregoing was filed through the Court's electronic filing system (CM/ECF), and deposited in the U.S. mail, postage prepaid and addressed as follows:

Patrick M. Flood
PANSING HOGAN ERNST & BACHMAN LLP
10250 Regency Circle, Suite 300
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Attorney for Plaintiff

s/ Danielle L. Kitson
Danielle L.Kitson

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TRIAL-OMAHA

**U.S. District Court
District of Nebraska (8 Omaha)
CIVIL DOCKET FOR CASE #: 8:19-cv-00329-BCB-SMB**

Nelson v. Kunkle et al
Assigned to: Judge Brian C. Buescher
Referred to: Magistrate Judge Susan M. Bazis
Cause: 28:1331 Fed. Question: Employment Discrimination

Date Filed: 07/29/2019
Jury Demand: Plaintiff
Nature of Suit: 751 Labor: Family and Medical Leave Act
Jurisdiction: Federal Question

Plaintiff**Barbara Nelson**

represented by **Patrick M. Flood**
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Omaha, NE 68114-3728
(402) 397-5500
Fax: (402) 397-4853
Email: pflood@pheblaw.com
ATTORNEY TO BE NOTICED

V.

Defendant**Julie Kunkle**

represented by **Danielle L. Kitson**
LITTLER, MENDELSON LAW FIRM
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ATTORNEY TO BE NOTICED

Defendant

**American Blue Ribbon Holdings,
LLC**
a Delaware limited liability company

represented by **Danielle L. Kitson**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text

07/29/2019	1	COMPLAINT with jury demand against American Blue Ribbon Holdings, LLC, Julie Kunkle (Filing fee \$ 400, receipt number ANEDC-3986830), by Attorney Patrick M. Flood on behalf of Barbara Nelson(Flood, Patrick) (Entered: 07/29/2019)
07/29/2019	2	Summons Requested as to Julie Kunkle and American Blue Ribbon Holdings, LLC regarding Complaint 1 . (Flood, Patrick) (Entered: 07/29/2019)
07/29/2019	3	TEXT NOTICE OF JUDGES ASSIGNED: Judge Robert F. Rossiter, Jr. and Magistrate Judge Susan M. Bazis assigned. In accordance with 28 U.S.C. 636(c) (2), the parties are notified that, if all parties consent, a magistrate judge may conduct a civil action or proceeding, including a jury or nonjury trial, subject to the courts rules and policies governing the assignment of judges in civil cases. See Fed. R. Civ. P. 73; NEGenR 1.4. (LKO) (Entered: 07/29/2019)
07/29/2019	4	Summons Issued as to defendants American Blue Ribbon Holdings, LLC and Julie Kunkle. YOU MUST PRINT YOUR ISSUED SUMMONS, WHICH ARE ATTACHED TO THIS DOCUMENT. PAPER COPIES WILL NOT BE MAILED. (LKO) (Entered: 07/29/2019)
08/05/2019	5	RETURN of service of Summons Returned Executed on 07/31/19 upon American Blue Ribbon Holdings, LLC by Attorney Patrick M. Flood on behalf of Plaintiff Barbara Nelson.(Flood, Patrick) (Entered: 08/05/2019)
08/05/2019	6	RETURN of service of Summons Returned Executed on 07/31/19 upon Julie Kunkle by Attorney Patrick M. Flood on behalf of Plaintiff Barbara Nelson. (Flood, Patrick) (Entered: 08/05/2019)
08/21/2019	7	UNOPPOSED MOTION for Extension of Time to File a Responsive Pleading to Plaintiff's Complaint by Attorney Danielle L. Kitson on behalf of Defendant American Blue Ribbon Holdings, LLC.(Kitson, Danielle) (Entered: 08/21/2019)
08/22/2019	8	TEXT ORDER granting 7 Unopposed Motion for Extension of Time. American Blue Ribbon Holdings, LLC shall answer or otherwise respond to the Complaint by September 10, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 08/22/2019)
09/05/2019	9	TEXT REASSIGNMENT ORDER - that in the interest of judicial economy, this case is reassigned to Judge Brian C. Buescher for disposition. The magistrate judge remains assigned to the case for judicial supervision and processing of all pretrial matters. Ordered by Chief Judge John M. Gerrard. (DKM) (Entered: 09/05/2019)
09/10/2019	10	JOINT MOTION to Stay <i>Proceedings Pending Mediation</i> by Attorney Danielle L. Kitson on behalf of Defendant American Blue Ribbon Holdings, LLC. (Kitson, Danielle) (Entered: 09/10/2019)
09/11/2019	11	TEXT ORDER granting 10 Joint Motion to Stay Proceedings Pending Mediation. This matter is stayed until November 11, 2019. The parties shall file a report advising the Court as to the status of this case by November 11, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 09/11/2019)
11/11/2019	12	

		STATUS REPORT <i>Jointly Filed</i> by Attorney Danielle L. Kitson on behalf of Defendants American Blue Ribbon Holdings, LLC, Julie Kunkle.(Kitson, Danielle) (Entered: 11/11/2019)
11/12/2019	13	TEXT ORDER - The parties have advised that mediation was unsuccessful 12 . Accordingly, Defendants shall answer or otherwise respond to the Complaint by November 25, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 11/12/2019)
11/25/2019	14	UNOPPOSED MOTION for Extension of Time to File a Responsive Pleading by Attorney Danielle L. Kitson on behalf of Defendants American Blue Ribbon Holdings, LLC, Julie Kunkle.(Kitson, Danielle) (Entered: 11/25/2019)
11/26/2019	15	TEXT ORDER granting 14 Motion for Extension of Time to File a Responsive Pleading. Defendants shall answer or otherwise respond to the complaint by December 5, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 11/26/2019)
12/05/2019	16	MOTION to Compel Arbitration and to Dismiss by Attorney Danielle L. Kitson on behalf of Defendants American Blue Ribbon Holdings, LLC, Julie Kunkle. (Attachments: # 1 Supplement Brief, # 2 Exhibit Index)(Kitson, Danielle) (Entered: 12/05/2019)
12/17/2019	17	UNOPPOSED MOTION for Extension of Time to File a Responsive Pleading to Defendants' Motion to Compel Arbitration and to Dismiss Under Fed.R.Civ.P. 12(b)6), MOTION to Extend by Attorney Patrick M. Flood on behalf of Plaintiff Barbara Nelson.(Flood, Patrick) (Entered: 12/17/2019)
12/18/2019	18	TEXT ORDER granting 17 Unopposed Motion for Extension of Time. Plaintiff shall respond to Defendants' Motion to Compel Arbitration and Dismiss 16 by December 30, 2019. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 12/18/2019)
12/30/2019	19	BRIEF in opposition to Defendants' Motion to Compel Arbitration and to Dismiss by Attorney Patrick M. Flood on behalf of Plaintiff Barbara Nelson. (Flood, Patrick) (Entered: 12/30/2019)
12/30/2019	20	INDEX in opposition to Defendants' Motion to Compel Arbitration and to Dismiss by Attorney Patrick M. Flood on behalf of Plaintiff Barbara Nelson. (Attachments: # 1 Exhibit)(Flood, Patrick) (Entered: 12/30/2019)
01/06/2020	21	UNOPPOSED MOTION to Extend Time Within Which to File a Reply in Support of MOTION to Compel Arbitration and to Dismiss 16 by Attorney Danielle L. Kitson on behalf of Defendants American Blue Ribbon Holdings, LLC, Julie Kunkle.(Kitson, Danielle) (Entered: 01/06/2020)
01/07/2020	22	TEXT ORDER granting 21 Unopposed Motion to Extend. Defendants shall file a reply brief in support of their Motion to Compel Arbitration 16 by January 16, 2020. Ordered by Magistrate Judge Susan M. Bazis. (LRH) (Entered: 01/07/2020)
01/16/2020	23	

		REPLY BRIEF in support of MOTION to Compel <i>Arbitration and to Dismiss 16</i> by Attorney Danielle L. Kitson on behalf of Defendants American Blue Ribbon Holdings, LLC, Julie Kunkle. (Attachments: # 1 Exhibit Index)(Kitson, Danielle) (Entered: 01/16/2020)
01/28/2020	24	SUGGESTION OF BANKRUPTCY by Attorney Danielle L. Kitson on behalf of Defendant American Blue Ribbon Holdings, LLC.(Kitson, Danielle) (Entered: 01/28/2020)
01/29/2020	25	ORDER - This matter is stayed as to defendant American Blue Ribbon Holdings, LLC, only. The clerk's office is ordered to terminate Filing 24 , Suggestion in Bankruptcy. Ordered by Judge Brian C. Buescher. (LKO) (Entered: 01/29/2020)

PACER Service Center			
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

BARBARA NELSON,)	Case No. _____
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	
JULIE KUNKLE and AMERICAN)	
BLUE RIBBON HOLDINGS, LLC,)	
a Delaware limited liability company,)	
)	
Defendants.)	

Plaintiff, for her Complaint against Defendants, states and alleges as follows:

1. Plaintiff is, and at all times relevant to these proceedings was, a resident of Omaha, Douglas County, Nebraska.
2. Defendant Julie Kunkle is, and at all times relevant to these proceedings was, a resident of Omaha, Douglas County, Nebraska.
3. Defendant American Blue Ribbon Holdings, LLC (“ABRH”) is a Delaware limited liability company licensed to do business in Nebraska and which operates a number of Village Inn restaurants, including the location located at 54th & L Streets in Omaha, Douglas County, Nebraska.
4. Until February 7, 2019, Plaintiff was employed as an Assistant Manager for ABRH, including serving two years as Assistant Manager at the 54th & L Street Village Inn location.
5. While Plaintiff was employed as an Assistant Manager at the 54th & L Street location, her immediate boss, the General Manager, was Defendant Julie Kunkle (“Kunkle”).
6. In August, 2018, Kunkle began making defamatory statements about Plaintiff. Specifically, Kunkle called Plaintiff a “tattooed biker chick” and indicated to Plaintiff and others that Plaintiff “took it up the ass”. In addition, Kunkle spread false statements about Plaintiff having

spent the weekend in jail and spread that false information to other people in the chain of command, including to LeRoy Baker, the District Manager.

7. On November 17, 2018, Plaintiff's appendix ruptured, and she had to undergo emergency surgery and miss work. Defendant ABRH put Plaintiff on leave under the Family Medical Leave Act ("FMLA"), and indicated to Plaintiff that her FMLA leave started on November 16, 2018.

8. On December 10, 2018, Plaintiff received a doctor's note that she could return to work with a 20-pound lifting restriction. However, when she brought that restriction to the attention of her bosses, Kunkle and Baker, she was told that no restrictions of any kind would be permitted and that she had to remain on FMLA leave.

9. Later in December, 2018, Plaintiff developed a bowel obstruction. Due to this occurrence, Plaintiff started missing additional time away from work. Plaintiff's doctor indicated that Plaintiff needed to be off work until February 10, 2019, but according to the way that ABRH maintained records, Plaintiff's FMLA ran out on February 5, 2019.

10. After Plaintiff's FMLA time had run out, according to ABRH's records, Plaintiff was fired on February 7, 2019.

11. ABRH had a policy in effect that, if a person's employment ended due to the exhaustion of the employee's FMLA leave, the employee could apply for reinstatement. Plaintiff promptly applied for reinstatement, but her request was denied.

12. Beginning when Plaintiff took FMLA leave in November, 2018, and continuing, Kunkle has told customers and other staff at the 54th & L Street Village Inn location that Plaintiff had bowel problems, her appendix ruptured, she was bleeding from the rectum, and even gave customers Plaintiff's phone number.

13. At the time of her termination, Plaintiff had 66 hours of accrued vacation. This amount has never been paid by ABRH.

14. Following Plaintiff's termination from employment, Defendant ABRH has failed to notify Plaintiff of her right to continue health coverage.

15. This Court has subject matter jurisdiction of this matter pursuant to 28 U.S.C §1331 for alleged violations of 28 U.S.C §28 2601 *et. seq.* and 29 U.S.C §1166(a)(4). This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C §1367(a).

16. Venue in this Court is pursuant to 28 U.S.C §1391, as all material facts occurred in the District of Nebraska.

COUNT ONE
(Defamation)

17. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 above.

18. Defendant Kunkle's statements referenced in paragraph 6 above are defamatory per se. Defendant Kunkle made these statements knowing that they were untrue, or with reckless disregard as to whether they were true, and with malice.

19. As a direct and proximate result of Kunkle's defamatory statements, Plaintiff has suffered general damages for pain and suffering and emotional distress.

WHEREFORE, Plaintiff requests judgment against Defendant Kunkle for general damages in an amount to be proven at trial, for the costs of this action, and for such other and further relief as this Court may allow.

COUNT TWO
(Interference Under the FMLA)

20. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 above.

21. By disclosing Plaintiff's personal medical information to Village Inn customers and other staff, Defendants interfered with Plaintiff's substantive rights under the FMLA.

WHEREFORE, Plaintiff requests judgment against Defendants, jointly and severally, for damages in an amount to be proven at trial, attorneys' fees, and for such other and further relief as this Court may allow.

COUNT THREE
(Retaliation under the FMLA)

22. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 above.

23. By disclosing Plaintiff's medical information to Village Inn customers and other staff, Defendants retaliated against Plaintiff for having exercised her rights under the FMLA.

WHEREFORE, Plaintiff requests judgment against Defendants, jointly and severally, for damages in an amount to be proven at trial, attorneys' fees, and for such other and further relief as this Court may allow.

COUNT FOUR
(Interference under the FMLA)

24. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 above.

25. By not allowing Plaintiff back to work with the 20-pound lifting restriction on December 10, 2018, Defendants interfered with Plaintiff's rights under the FMLA.

26. As a direct and proximate cause of Defendants' interference under the FMLA, Plaintiff missed additional days away from work which ultimately resulted in her termination of employment for having exhausted FMLA leave.

WHEREFORE, Plaintiff requests judgment against Defendants, jointly and severally, for lost wages, attorneys' fees, costs, and such other and further relief as this Court may allow.

COUNT FIVE
(Retaliation under the FMLA)

27. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 above.

28. By not allowing Plaintiff back to work with a 20-pound lifting restriction on December 10, 2018, Defendants retaliated against Plaintiff for having exercised her FMLA rights.

29. As a direct and proximate cause of Defendants' retaliation under the FMLA, Plaintiff missed additional days away from work which ultimately resulted in her termination of employment for having exhausted her FMLA leave.

WHEREFORE, Plaintiff requests judgment against Defendants, jointly and severally, for lost wages, attorneys' fees, costs, and such other and further relief as this Court may allow.

COUNT SIX
(Retaliation under the FMLA)

30. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 above.

31. Despite having a company policy in favor of reinstating employees whose jobs had ended due to exhaustion of FMLA leave, Defendant ABRH refused to reinstate Plaintiff after her FMLA leave had expired, because of her prior exercise of her rights under the FMLA.

WHEREFORE, Plaintiff requests judgment against Defendant ABRH for lost wages, costs, attorneys' fees, and for such other and further relief as this Court may allow.

COUNT SEVEN
(Violation of COBRA)

32. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 above.

33. Defendant ABRH was required to provide Plaintiff with information pertaining to her right to continue health coverage within 14 days of her termination pursuant to 29 U.S.C. § 1166(a)(4). ABRH failed to notify Plaintiff of her right to continue health coverage, and is responsible to pay Plaintiff \$110.00 per day from the date of the failure to notify, February 15, 2019, to the date of correction.

WHEREFORE Plaintiff request judgment against ABRH in the amount of \$110.00 per day from February 15, 2019 to the date the correction is made, for the costs of this action, for her attorneys' fees, and for such other and relief as this Court may allow.

COUNT EIGHT
(Violation of the Nebraska Wage Payment and Collection Act)

34. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 above.

35. At the time of Plaintiff's termination from employment, she had 66 hours of accrued vacation. Such accrued but unpaid vacation hours constitutes wages under the Nebraska Wage Payment and Collection Act set forth at Neb. Rev. Stat. § 48-1228 et. seq.

36. Plaintiff requested Defendant ABRH to make the payment of the 66 hours of vacation, but Defendant ABRH refused. More than thirty (30) days have elapsed since when the 66 hours of vacation were due.

37. ABRH's refusal to pay Plaintiff for the unused vacation was willful.

38. As a direct and proximate result of Defendant ABRH's refusal to pay Plaintiff's accrued vacation hours, Plaintiff is owed for 66 hours of unpaid vacation, prejudgment interest, her costs, and attorneys' fees.

WHEREFORE, Plaintiff requests judgment against ABRH for 66 hours of unpaid vacation, an amount equal to two times the unpaid vacation hours to be paid to the State of Nebraska, costs, attorneys' fees, prejudgment interest, and for such other and further relief as this Court may allow.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial on all issues in Omaha, Nebraska.

BARBARA NELSON, Plaintiff

By: s/Patrick M. Flood

Patrick M. Flood, #19042

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