

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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ALMETHIA MIDDLETON,

Plaintiff,

-against-

GERIATRIC SERVICES, INC.,
D/B/A BRIGHT SIDE MANOR and
ELIZABETH DAVIS, individually

Defendants.

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Case No. 23-1785

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff ALMETHIA MIDDLETON (“Plaintiff” or “Ms. Middleton”) by her attorneys, FILIPPATOS PLLC, hereby complains of Defendants, upon personal knowledge, as well as information and belief, by alleging and averring as follows:

NATURE OF CASE

1. This is a case in which Defendants unlawfully discriminated and retaliated against Plaintiff, a highly accomplished female professional, simply because she sought clearance from her doctor in order to take the COVID-19 vaccine following a major surgery – namely, a Total Hysterectomy (surgical removal of the uterus) with Bilateral Salpingectomy (surgical removal of the Fallopian tubes). Plaintiff’s case is a textbook case of discrimination and retaliation on the basis of her disability and request for protected leave, for which reasonable accommodation was not offered.

2. Plaintiff brings this action alleging that Defendants have violated the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101, et seq., as amended by the ADA Amendments Act of 2008, Pub. L. No. 110-325 (“ADAA”); the Family and Medical Leave Act of

1993, 29 U.S.C. §§ 2601 et seq. (“FMLA”), as amended by the Families First Coronavirus Response Act of 2020, Pub. L. No. §§ 116- 127 (“FFCRA”); and the New Jersey Law Against Discrimination of 1945 (“NJLAD”), as amended and codified, §§ 10:5-1, et seq.

3. By Plaintiff (a) timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) on August 11, 2022; (b) receiving a Notice of Right to Sue from the EEOC on December 29, 2022; and (c) filing this Complaint within 90 days of the issuance thereof, Plaintiff has satisfied all of the procedural prerequisites for the commencement of the instant action. A copy of the Notice of Right to Sue is annexed hereto as **Exhibit A**.

PARTIES

4. At all times relevant hereto, Plaintiff is a resident of the State of New Jersey and the County of Bergen.

5. At all times relevant hereto, Defendant Geriatric Services, Inc. d/b/a Bright Side Manor (“Defendant” or “BSM”), was and is a 501(c)(3) not-for-profit corporation duly existing pursuant to, and by virtue of, the laws of the State of New Jersey. Defendant BSM maintains a principal place of business located at 300 Teaneck Road, Teaneck, New Jersey 07666.

6. Defendant BSM is a senior housing and supportive care center. Upon information and belief, BSM employs over 50 individuals on a full-time or full-time equivalent basis, and thus is subject to all statutes upon which Plaintiff is proceeding herein.

7. Upon information and belief, at all times relevant hereto, Defendant Elizabeth Davis is a resident of the State of New Jersey and the County of Bergen.

8. At all times relevant hereto, Defendant Davis was Plaintiff’s supervisor.

9. Defendant BSM and Defendant Davis are sometimes collectively referred to herein as “Defendants.”

10. At all times relevant hereto, Plaintiff was an employee of Defendants, holding the position of Social Worker.

JURISDICTION AND VENUE

11. Jurisdiction of this Court is proper under 29 U.S.C. § 2617 and 28 U.S.C. §§ 1331 as this is a civil action arising under the FMLA and ADA.

12. The Court has supplemental jurisdiction over the claims that Plaintiff has brought under state law pursuant to 28 U.S.C. § 1367.

13. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b), as Defendants reside in the District of New Jersey, or a substantial part of the acts complained of herein occurred therein.

FACTUAL ALLEGATIONS

I. Plaintiff is Hired by Defendant BSM

14. Plaintiff began working for Defendant BSM as a Social Worker in November 2020, bringing with her over thirteen years of experience in the Social Work field, and over six years of experience as a Social Worker, including in her most recent position of two years as Social Worker, Director of Social Services at Sprain Brook Manor nursing facility in Yonkers, New York.

15. Plaintiff was hired in the midst of the global COVID-19 pandemic by Defendant Davis in November 2020 as a Social Services Social Worker. In this role, Plaintiff was responsible for reviewing facility policies and procedures as part of the facility’s interdisciplinary team to assure compliance with state and federal regulations; reviewing and setting policies concerning resident care and quality of life; developing facility social work policies; developing and

maintaining a catalog of current community resources for residents and their families; participating in conferences with the Ombudsman; understanding and meeting all government requirements for social service documentation; documenting progress in meeting the psychosocial needs of residents; working with the interdisciplinary team and administration to promote and protect resident rights and the psychological well-being of each resident; preventing and addressing resident abuse as mandated by law and professional licensure; scheduling visits with family and friends; and finally, identifying community changes and opportunities such as legislation, regulation, and programs that affect nursing home residents.

16. Plaintiff was hired by Defendants at an annual salary of \$65,000.

II. Plaintiff is Shut Out and Demeaned by Defendant Davis After Disclosing Details Of Her Medical Condition

17. Plaintiff's assimilation into and functioning within BSM initially progressed smoothly. However, things began to change drastically for the worse beginning in June 2021, after Plaintiff revealed to her supervisors that she would have to go out on a medically required leave to have surgery.

18. Prior to her hire in November 2020, Plaintiff advised Defendants of the fact that she had previously suffered from endometriosis for at least the last four years. Plaintiff first made Defendants aware of her condition when she specifically advised Administrator Jorge Angulo, Controller/Accountant Emily Davis ("Controller/Accountant Davis"), Defendant Elizabeth Davis, and Director of Nursing Lisa Cooper in a conversation which took place during her initial interview. Plaintiff also referenced her previous medical condition to Mr. Angulo, Ms. Cooper, Controller/Accountant Davis, and Defendant Davis numerous times throughout her employment, so each of them was well aware of her medical condition.

19. In June 2021, after consulting with her doctors, Plaintiff advised her direct supervisor Mr. Angulo, Controller/Accountant Emily Davis, and Ms. Cooper, that her condition had unfortunately taken a turn for the worse and her doctor had advised she would require surgery. Plaintiff specifically advised Mr. Angulo, Controller/Accountant Davis, and Ms. Cooper that she had fibroids and heavy bleeding and would need to be out of work for between six (6) to eight (8) weeks for a total hysterectomy and recovery. Mr. Angulo, Controller/Accountant Davis, and Ms. Cooper initially seemed very understanding and supportive of Plaintiff's medical condition and need for a medical leave of absence.

20. A few months later, in September 2021, Defendant Davis advised all employees during a video-conference staff meeting of the BSM policy that all staff must be vaccinated against the COVID-19 virus or otherwise comply with weekly testing mandates. This news raised some concerns for Plaintiff given her recent serious health condition, and the potentially unknown factors of its interplay with the novel COVID vaccine.

21. Due to these concerns, following the meeting, Plaintiff advised Controller/Accountant Davis, Mr. Angulo, and Ms. Cooper that she would need to consult with her doctors prior to receiving the COVID vaccine. Nonetheless, Plaintiff stated that she was more than willing to comply with the weekly testing mandate until she was able to appropriately consult with her physician regarding receiving the COVID vaccine.

22. Following this discussion, Defendant Davis seemed to become very upset with Plaintiff and began to engage in targeted demeaning, isolating, and belittling tactics toward her, such as routinely either cutting Plaintiff off while she was speaking and/or dismissing her concerns entirely during staff meetings.

23. By September of 2021, Defendant Davis's demeaning, isolating, and belittling behavior had caused Plaintiff so much concern that she decided to address it in person with Mr. Angulo, who replied dismissively by telling her: "You know [Defendant Davis] is very controlling. It's her way or no way."

24. In September and October of 2021, Plaintiff advised Defendant Davis, Controller/Accountant Davis, Ms. Cooper, and Mr. Angulo both in person and via email that her surgery had been scheduled for December 13, 2021. Controller/Accountant Davis forwarded Plaintiff the necessary paperwork to request FMLA leave, which Plaintiff appropriately filled out with her doctor and sent to ADP. Thereafter, ADP communicated to Plaintiff in a document sent via email on December 29, 2021, that her FMLA leave was approved for dates between December 13, 2021, to March 11, 2022.

25. Thankfully, Plaintiff successfully completed her scheduled surgery with Dr. Adi Katz, MD at Northwell Health Hospital on December 13, 2021. However, on Jan 25, 2022, Plaintiff was advised by Dr. Katz during her six-week post-operative check-up that she was suffering from post-operative complications and would therefore need to stay home on bed rest for a period to recover and ultimately become medically cleared to return to work.

26. Dr. Katz provided Plaintiff with documentation to this effect, which stated that Plaintiff should be on leave until February 22, 2022, clearing her to return to work on February 23, 2022, barring any further complications. Plaintiff emailed a copy of this documentation to Controller/Accountant Davis on January 25, 2022.

27. On January 27, Plaintiff wrote a follow-up email to Defendant Davis, Controller/Accountant Davis, Mr. Angulo, and Ms. Cooper, which read:

Just so we are all on the same page. I am currently out on Full Disability from Dec 13, 2021 through February 22, 2022 returning

on the 23. I contact the Department of Health and they advise me that since I am not actively employed this document [regarding vaccine requirements] does not apply to me until I return to work. I am fully aware that I am required to have at least 1 vaccine by the 28 of February in order to be in compliance. I have contact my PCP once again in an effort to have the form filled out in its entirety. I am awaiting for her response. My PCP office is in the state of NY. I provided what she gave me. I will attempt to reach out to her again. Please bear in mind that I had major surgery meaning physically and mentally I am trying to recover. If I need to be fully vaccinated prior to my return please advise as I have a schedule appointment with my Immunologist on Feb 22, 2022. I am at the mercy of my PCP as I have to wait for her to return my phone call. Thank you in advance for your patience and understanding. I am trying to get better in an effort to return.

Almethia Middleton

III. Almost Immediately Following Her Formal Requests for Protected Medical Leave, Which She Required as a Reasonable Accommodation for her Disability, Plaintiff Suffered Unlawful Retaliation by Defendant BSM. Resulting in Her Termination

28. Unfortunately, despite Plaintiff providing Defendants with ample documentation which reflected her need to rest on medical leave, prior to the week of February 13, 2022, Defendant Davis contacted Plaintiff at least four times via telephone, as well as via numerous emails, warning Plaintiff that she must be vaccinated against COVID-19 in order to return to work. These repeated contacts by Defendant Davis were not only invasive and harassing during Plaintiff's medically protected leave, but moreover, superfluous, and totally unnecessary given Plaintiff's clear confirmation that she was aware of BSM's policy regarding COVID vaccination and was actively working with her doctor to determine whether she could safely take the vaccine.

29. In fact, Controller/Accountant Davis contacted Plaintiff so much during the month of January 2022 while Plaintiff was on leave that Plaintiff complained to Defendant Davis that these continuous contacts while Plaintiff was on medical leave were inappropriate. In turn, Defendant Davis immediately retaliated and began to threaten Plaintiff over the phone, stating that

she “has a business to run” and advising that since she was receiving benefits from the government, she “would not allow one person to cause her to miss out” on her “entitlements” from the government.

30. Understandably, these repeated harassing contacts greatly concerned Plaintiff and left her with no choice but to conclude she was being harassed and retaliated against by Defendants due to her disability and request for protected leave and reasonable accommodation.

31. On February 21, 2022, Plaintiff wrote Defendant Davis an email advising that an appointment with her immunologist (to discuss her eligibility for the COVID vaccine) had been postponed until February 23, meaning Plaintiff would be unable to return to work on February 22, as planned. On February 22, Defendant Davis replied to Plaintiff’s email stating, in part: “[a]s you know, Governor Murphy’s recent directive requires that all health care workers in facilities such as [BSM] have proof of at least one vaccination by February 16 in order to continue working. Alternatively, a medical exemption, citing a condition which is acceptable to the CDC can be provided. Please let us know what you will be submitting and when.” Plaintiff replied to Defendant Davis’s email within minutes advising: “I will be submitting documentation from my healthcare provider as well as a negative covid testing result upon or prior to my arrival [at work]. My [immunologist] appointment has been rescheduled for tomorrow.”

32. Plaintiff ultimately visited her physician to consult about her eligibility for the COVID vaccine on February 24, 2022; while at the office, Plaintiff requested that her physician forward appropriate paperwork regarding her physician’s recommendation for her exemption for the COVID vaccine to Defendants.

33. Upon receiving the paperwork later that day, Defendant Davis sent Plaintiff an email advising, in part: “I did receive the paperwork. I have requested that someone at the State

level review it because, as far as I understand, this does not satisfy the CDC requirements for a medical exemption which are quite strict and rigid. If the State responds with an opinion that it is acceptable, then you can return to work. If not, however, we will have to discuss whether or not you will agree to be vaccinated ...”

34. Upon not hearing anything further from Defendant BSM by the following day, Plaintiff emailed Defendant Davis, Controller/Accountant Davis, Mr. Angulo, and Ms. Cooper on the following afternoon of February 25, stating:

Just a quick question, not sure if you heard anything back from the “State of NJ”, however, I just placed a called into the state of NJ and I spoke to a rep regarding the above. I also submitted the same requesting documentation to their attention for review and they advised me that it is clearly up to my employer to have me reinstated. I then received a letter from ADP Total Source “Return to Work Medical Certification – FMLA Leave” that states if I am not back at work by March 4, 2022 my benefits will be terminated, let’s keep in mind, I submitted all necessary documents from both my HCP advising me that I can return to work with no limitations and also I am unable to take the vaccine at this present time but I have a schedule date after March 31, 2022 (temporary). I am also compliant with PCR testing biweekly/weekly. I am also compliant with keeping on my mask as well as following universal precaution. Please advised me how I would be compensated for my time lost while we adhere and await a response from the “State of NJ”.

Thank you,
Almethia Middleton

35. Unfortunately, Plaintiff never received any reply to this message from Defendant Davis, Controller/Accountant Davis, Mr. Angulo, or Ms. Cooper.

36. Instead, that same day, February 25, 2022, Plaintiff received a telephone call from an ADP Total Source representative in which she was shockingly advised that that her employment with BSM had been terminated.

37. Utterly shocked, dismayed, and hurt at this abrupt and confusing turn of events, Plaintiff inquired of the ADP Total Source representative as to the reason for her termination, who replied something to the effect of: “failure to comply with a requested mandate” and/or refusal to get vaccinated. Plaintiff advised the representative that she was in fact at home on Medical Leave. The representative told Plaintiff that she would investigate the matter and call her back, but Plaintiff has never since received a return phone call from anyone at ADP or BSM.

38. Days later, Defendants provided a shifting reason for why they had terminated Plaintiff, writing to her through ADP on March 8, 2022, stating that she had been terminated due to “Job Abandonment.”

39. To make matters even worse, Plaintiff has since received telephone calls from staff members at BSM that make clear that Defendants have continued to discriminate against, retaliate against, and disparage her by announcing such falsities as Plaintiff refused to return to work, and/or that she resigned due to her refusal to take the COVID vaccine — statements which are totally untrue.

40. Defendants’ opportunistic manipulation of the circumstances surrounding Plaintiff’s medical leave and the State of New Jersey’s COVID vaccination requirements, as well as Defendants’ shifting positions, belie the factually incorrect and pretextual reasons stated for Plaintiff’s termination – i.e., that she allegedly refused to take the COVID vaccine and thereafter abandoned her job.

41. This brazen conduct clearly indicates Defendants’ discriminatory and retaliatory animus against Plaintiff simply for having a disability and the temerity to ask for protected medical leave as a reasonable accommodation regarding same.

FIRST CAUSE OF ACTION
Discrimination in Violation of the ADA
Against Defendant BSM

42. Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

43. By the actions detailed above, among others, Defendant BSM has discriminated against Plaintiff in violation of the ADA by, *inter alia*, denying her the equal terms and conditions of employment because of her disability (Total Hysterectomy with Bilateral Salpingectomy caused by a host of gynecological conditions).

44. As a direct and proximate result of Defendant BSM's unlawful discriminatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, for which she is entitled to an award of monetary damages and other relief, in addition to reasonable attorneys' fees and expenses.

45. As a direct and proximate result of Defendant BSM's unlawful discriminatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, mental anguish and severe emotional distress, for which she is entitled to an award of monetary damages and other relief.

46. Defendant BSM's unlawful and discriminatory actions constitute malicious, willful, and wanton violations of the ADA, for which Plaintiff is entitled to an award of punitive damages.

SECOND CAUSE OF ACTION
Failure to Provide a Reasonable Accommodation in Violation of the ADA
Against Defendant BSM

47. Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

48. Plaintiff was diagnosed with endometriosis and a host of severe gynecological conditions which required surgery, and for which Plaintiff was prescribed medication, making her a qualified individual with a disability within the meaning of the ADA.

49. During the days leading up to her termination, Plaintiff explained to Defendant BSM that she could not obtain a doctor's appointment before February 24, 2022, at which point she might be cleared to take the COVID vaccine and/or return to work. However, BSM ignored Plaintiff's requests for a reasonable accommodation regarding seeking her doctor's advice regarding her eligibility for the COVID vaccine.

50. Defendants failed to engage in the interactive process.

51. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer damages including but not limited to economic and pecuniary losses, severe emotional, psychological, and physical stress, distress, anxiety, pain, and suffering, the inability to enjoy life's pleasures, and other non-pecuniary losses and special damages.

52. Accordingly, as a result of Defendant BSM's unlawful conduct, Plaintiff has been damaged as set forth herein and is entitled to the maximum compensation available under this law, including punitive damages and attorneys' fees and litigation costs.

THIRD CAUSE OF ACTION
Retaliation in Violation of the ADA
Against Defendant BSM

53. Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

54. Plaintiff suffered from a disability, was perceived as suffering from a disability and/or had a record of a disability as defined by the ADA.

55. Defendant BSM retaliated against Plaintiff for her engagement in protected activities, including, but not limited to, requesting a reasonable accommodation and protected medical leave, and opposing Defendants' discrimination against her.

56. As a direct and proximate result of BSM's unlawful retaliatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, including, but not limited to, loss of past and future income, compensation and benefits for which Plaintiff is entitled to an award of damages.

57. As a direct and proximate result of Defendant BSM's unlawful retaliatory conduct in violation of the ADA. Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which Plaintiff is entitled to an award of damages.

FOURTH CAUSE OF ACTION
Interference in Violation of FMLA
Against All Defendants

58. Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

59. Section 2612(D) of the Family Medical Leave Act, states in pertinent part: "an eligible employee shall be entitled to a total of 12 work weeks of leave during any 12-month period ... Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee."

60. Section 2615(a)(1) of the Family Medical Leave Act, states in pertinent part: "Interference with rights. 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.”

61. To state a prima facie claim for interference under the FMLA, a plaintiff must establish: (1) he or she was an eligible employee under the FMLA; (2) the defendant was an employer subject to the FMLA's requirements; (3) the plaintiff was entitled to FMLA leave; (4) the plaintiff gave notice to the defendant of his or her intention to take FMLA leave; and (5) the plaintiff was denied benefits to which he or she was entitled under the FMLA.

62. Supervisors can be held individually liable under the FMLA.

63. Plaintiff and Defendants are subject to the FMLA as an eligible employee and covered employer(s), respectively.

64. Plaintiff was entitled to take leave under the FMLA.

65. Plaintiff gave notice of her intention to take FMLA leave in or about June 2021, in connection with a surgery scheduled for December 13, 2021.

66. Defendants interfered with Plaintiff's FMLA rights by terminating her employment on February 25, 2022, while Plaintiff was still on FMLA leave, depriving her of her FMLA rights.

67. As a direct and proximate result of Defendants' unlawful and wrongful actions or omissions against Plaintiff as described herein, Plaintiff has sustained injuries and damages, including, but not limited to: (a) loss of earnings; (b) loss of career opportunities; (c) mental and emotional distress; (d) loss of reputation and esteem in the community; and (e) loss of ordinary pleasures of everyday life, including the opportunity to pursue the gainful occupation of her choice, for which she is entitled to the maximum damages recoverable under the law.

FIFTH CAUSE OF ACTION
Retaliation in Violation of FMLA
Against All Defendants

68. Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

69. Section 2615(a)(2) of the Family Medical Leave Act, states in pertinent part: “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.”

70. To establish a prima facie case of FMLA retaliation, a plaintiff must establish that: (1) she availed herself of a protected right under the FMLA; (2) she suffered an adverse employment action; and (3) there was a causal connection between the employee's protected activity and the employer's adverse employment action.

71. Plaintiff exercised rights protected under the FMLA by requesting leave in or about June 2021, and by taking FMLA leave from December 13, 2021, to March 11, 2022.

72. In response to Plaintiff’s activities, which were protected conduct under the FMLA, Defendants wrongfully retaliated against Plaintiff by, *inter alia*, terminating her employment on February 25, 2022, while Plaintiff was still on protected leave.

73. As a direct and proximate result of Defendants’ unlawful and wrongful actions or omissions against Plaintiff, as described herein, Plaintiff has sustained injuries and damages, including, but not limited to: (a) loss of earnings; (b) loss of career opportunities; (c) mental and emotional distress; (d) loss of reputation and esteem in the community; and (e) loss of ordinary pleasures of everyday life, including the opportunity to pursue the gainful occupation of her choice, for which she is entitled to the maximum damages recoverable under the law.

SIXTH CAUSE OF ACTION
Discrimination in Violation of the NJLAD
Against All Defendants

74. Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

75. Defendants have discriminated against Plaintiff in violation of the New Jersey Law Against Discrimination by subjecting her to disparate treatment because of her disability (Total Hysterectomy with Bilateral Salpingectomy caused by a host of gynecological conditions), by, *inter alia*, terminating Plaintiff's employment.

76. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the New Jersey Law Against Discrimination, Plaintiff has suffered and continues to suffer financial and economic damages as well as severe mental anguish and emotional distress, including but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.

77. Defendants' unlawful discriminatory conduct constitutes a willful and wanton violation of the New Jersey Law Against Discrimination, was outrageous and malicious, was intended to injure Plaintiff, and was done with reckless indifference to Plaintiff's civil rights, entitling Plaintiff to an award of punitive damages.

SEVENTH CAUSE OF ACTION
Retaliation in Violation of the NJLAD
Against All Defendants

78. Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

79. Defendants retaliated against Plaintiff for her engagement in protected activities, including, but not limited to, requesting a reasonable accommodation and protected medical leave, and opposing Defendants' discrimination against her.

80. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the New Jersey Law Against Discrimination, Plaintiff has suffered and continues to suffer financial and economic damages as well as severe mental anguish and emotional distress, including but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.

81. Defendants' unlawful retaliatory conduct constitutes a willful and wanton violation of the New Jersey Law Against Discrimination, was outrageous and malicious, was intended to injure Plaintiff, and was done with reckless indifference to Plaintiff's civil rights, entitling Plaintiff to an award of punitive damages.

EIGHTH CAUSE OF ACTION
Aiding and Abetting Discrimination and Retaliation in Violation of the NJLAD
Against the Individual Defendant

82. Plaintiff hereby repeats, reiterates, and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

83. The NJLAD provides that "[i]t shall be ... unlawful discrimination ... [f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden [under the NJLAD]...." N.J.S.A. 10:5-12(e).

84. By the actions described above, among others, Defendant Davis knowingly or recklessly aided and abetted and directly participated in the unlawful discrimination and retaliation to which Plaintiff was subjected in violation of the NJLAD.

85. As a direct and proximate result of Defendant Davis' unlawful conduct in violation of the NJLAD, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, for which she is entitled to an award of damages, in addition to reasonable attorneys' fees and expenses.

86. As a direct and proximate result of Defendant Davis' unlawful conduct in violation of the NJLAD, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress, for which she is entitled to an award of damages.

87. Defendant Davis' unlawful and retaliatory actions constitute malicious, willful, and wanton violations of the NJLAD, for which Plaintiff is entitled to an award of punitive damages.

WHEREFORE, Plaintiff respectfully requests a judgment against the Defendants:

A. Declaring that the Defendants engaged in, and enjoining Defendants from continuing to engage in, unlawful employment practices prohibited by the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, et seq., as amended by the ADA Amendments Act of 2008, Pub. L. No. 110-325 ("ADAA"); the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq. ("FMLA"), as amended by the Families First Coronavirus Response Act of 2020, Pub. L. No. §§ 116- 127 ("FFCRA"); and the New Jersey Law Against Discrimination of 1945 ("NJLAD"), as amended and codified, §§ 10:5-1, et seq., in that Defendants discriminated against Plaintiff based on her disability (Total Hysterectomy with Bilateral Salpingectomy caused by a host of gynecological conditions); her request(s) for accommodation; her request for protected leave; and retaliated against Plaintiff;

B. Awarding Plaintiff compensatory damages for mental, emotional, and physical injury, distress, pain and suffering and injury to her reputation in an amount to be proven at trial;

C. Awarding Plaintiff punitive damages;

D. Awarding Plaintiff attorneys' fees, costs, disbursements, and expenses incurred in this prosecution of this action; and

E. Awarding Plaintiff such other and further relief as the Court may deem just, proper, and equitable to remedy the Defendants' unlawful employment practices against her.

JURY DEMAND

Plaintiff hereby demands a trial of all her claims by an unbiased jury of her peers.

Dated: White Plains, New York
March 29, 2023

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By: /s/ Tanvir H. Rahman

EXHIBIT A



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Newark Area Office
283-299 Market St, Suite 1703
Newark, NJ 07102
(862) 338-9410
Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 12/29/2022

To: Almethia Middleton
42 Haven Avenue
Bergenfield, NJ 07621
Charge No: 524-2022-02090

EEOC Representative and email: Nicole Zamudio
Investigator
nicole.zamudio@eeoc.gov

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 524-2022-02090.

On behalf of the Commission,

JOHN WALDINGER
Area Office Director

Cc:

David Walsh
Jackson Lewis
200 Connell Dr.,ste. 2000
Berkeley Heights, NJ 07922

Theodore Filippatos
Filippatos PLLC
199 Main St., Ste. 800
White Plains, NY 10601

Please retain this notice for your records.