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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 U.S. EQUAL EMPLOYMENT OPPORTUNITY  
16 COMMISSION,

17 Plaintiff,

18 vs.

19 CHILDREN’S HOSPITAL AND RESEARCH  
20 CENTER,

21 Defendant.

Case No.: CV 13-5715

**COMPLAINT**

**Civil Rights - Employment Discrimination**

**DEMAND FOR JURY TRIAL**

22 **NATURE OF THE ACTION**

23 This is an action under Title I of the Americans with Disabilities Act of 1990, as amended, to  
24 correct unlawful employment practices on the basis of disability (breast cancer) and to provide  
25 appropriate relief to Charging Party, Imelda Tamayo, who was adversely affected by such practices.  
26 Defendant Children’s Hospital and Research Center (“Defendant”) discriminated against Ms.  
27 Tamayo, a qualified individual with a disability, by failing to provide her with a reasonable  
28 accommodation and discharging her because of her disability and the extended treatment it required.

**JURISDICTION AND VENUE**

1. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343  
and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with

1 Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12117(a), as amended by the ADA Amendments Act  
2 of 2008, which incorporates by reference section 706(f)(1) and (3) of Title VII of the Civil Rights  
3 Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e-5(f)(1) and (3), and pursuant to Section 102 of the  
4 Civil Rights Act of 1991, 42 U.S.C. § 1981a.

5 2. The employment practices alleged to be unlawful were and are now being committed  
6 within the State of California, County of Alameda and City of Oakland, thus venue is proper “in any  
7 judicial district in the State in which the unlawful employment practice is alleged to have been  
8 committed.” (Section 706(f)(3) of Title VII, 42 U.S.C. §2000e-5(f)(3)). Venue is therefore proper  
9 in the United States District Court for the Northern District of California.

#### 10 **INTRA-DISTRICT ASSIGNMENT**

11 3. This action is appropriate for assignment to the Oakland Division of the Northern  
12 District of California because the adverse actions alleged herein took place in Oakland, California  
13 and because Defendant, its records and witnesses are located in Oakland, California.

#### 14 **PARTIES**

15 4. Plaintiff, the U.S. Equal Employment Opportunity Commission (the “Commission”),  
16 is the agency of the United States of America charged with the administration, interpretation and  
17 enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a)  
18 of the ADA, 42 U.S.C. § 12117(a), as amended, which incorporates by reference sections 706(f)(1)  
19 and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3), as amended.

20 5. At all relevant times, Defendant has continuously done business as Children’s  
21 Hospital and Research Center, a California non-profit regional medical center, doing business in the  
22 State of California, in the County of Alameda, and has continuously had at least fifteen (15)  
23 employees.

24 6. At all relevant times, Defendant has continuously been an employer engaged in an  
25 industry affecting commerce under section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section  
26 101(7) of the ADA, 42 U.S.C. § 12111(7), as amended, which incorporates by reference Section  
27 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

28 7. At all relevant times, the Defendant has been a covered entity under Section 101(2) of

1 the ADA, 42 U.S.C. § 12111(2), as amended.

2 **STATEMENT OF CLAIMS**

3 8. More than thirty days prior to the institution of this lawsuit, Charging Party Tamayo  
4 filed a charge with the Commission, alleging violations by Defendant of Title I of the ADA, as  
5 amended. The Commission has issued a Letter of Determination finding reasonable cause to believe  
6 that Defendant discriminated against Ms. Tamayo because of her disability and therefore violated the  
7 ADA. Prior to instituting this lawsuit, the Commission attempted to eliminate the unlawful  
8 employment practices alleged herein and to effect voluntary compliance with the ADA through  
9 informal methods of conciliation, conference and persuasion within the meaning of Section 706(b)  
10 of Title VII, 42 U.S.C. §§2000e- (b) and 2000e-6. All conditions precedent to the institution of this  
11 lawsuit have been fulfilled.

12 9. Since at least July of 2011, Defendant has engaged in unlawful employment practices  
13 at its facility in Oakland, California in violation of Section 102(a) of Title I of the ADA, 42 U.S.C.  
14 §12112(a), as amended, by, *inter alia*, failing to provide a reasonable accommodation to Ms.  
15 Tamayo and subsequently discharging her because of her disability. Ms. Tamayo had breast cancer  
16 which substantially limited her in the major life activity of cell reproduction. During her treatment  
17 and recovery period, she could not perform the daily tasks of caring for herself because she was  
18 weakened from her impairment and its treatment. She is currently in remission.

19 10. Defendant hired Ms. Tamayo as an Office Associate in its Endocrinology Department  
20 in or around March 2009. At the time Ms. Tamayo was diagnosed with breast cancer in December  
21 2011, she had been performing her duties satisfactorily. Ms. Tamayo's disability required her to  
22 seek a two month medical leave of absence in or around January 2012. Ms. Tamayo sought to  
23 extend her medical leave three times to undergo treatment for her disability, including a double  
24 mastectomy, reconstruction surgery for each breast and the removal of her fallopian tubes, ovaries  
25 and uterus. On or about July 10, 2012, when Ms. Tamayo was in her sixth month of medical leave,  
26 Defendant rejected Ms. Tamayo's doctor's medical certification, which stated that Ms. Tamayo was  
27 still recuperating from surgery but could return to work without restrictions on September 1, 2012.  
28 Defendant denied Ms. Tamayo any further medical leave and fired her based on its belief that she

1 would not be able to return to work on September 1, 2012 and that Ms. Tamayo's continued absence  
2 would cause it undue business hardship. Defendant did not explore any alternative accommodations  
3 with Ms. Tamayo, such as reassigning her to several vacant Office Associate positions elsewhere in  
4 the hospital, for which it advertised in August and filled sometime in the fall of 2012.

5 11. The effect of the actions complained of in Paragraphs 9 and 10 above has been to  
6 deprive Ms. Tamayo of equal employment opportunities and otherwise adversely affect her status as  
7 an employee because of her disability.

8 12. The unlawful employment practices complained of in Paragraphs 9 and 10 above  
9 were intentional.

10 13. The unlawful employment practices complained of in Paragraphs 9 and 10 above  
11 were done with malice or reckless indifference to Ms. Tamayo's federally protected rights.

12 **PRAYER FOR RELIEF**

13 Wherefore, the Commission respectfully requests that this Court:

14 A. Grant a permanent injunction enjoining Defendant, its officers, agents, employees,  
15 attorneys, successors, assigns, and all persons acting in concert or participation with Defendant, from  
16 terminating the employment of an employee because of a disability, failing to reinstate or provide a  
17 reasonable accommodation to an employee because of a disability, and engaging in any other  
18 employment practice which discriminates against an employee on the basis of disability.

19 B. Order Defendant to institute and carry out policies, practices, and programs which  
20 prohibit discrimination and eradicate the effects of their unlawful past and present employment  
21 practices.

22 C. Order Defendant to make whole Charging Party Imelda Tamayo by providing  
23 appropriate back pay and benefits with prejudgment interest in amounts to be determined at trial, and  
24 other affirmative relief necessary to eradicate the effects of its unlawful employment practices,  
25 including but not limited to reinstatement and/or front pay.

26 D. Order Defendant to make whole Ms. Tamayo by providing compensation for past and  
27 future pecuniary losses resulting from the unlawful employment practices complained of above,  
28 including but not limited to out-of-pocket expenses necessitated by Defendant's unlawful conduct, in

1 amounts to be determined at trial.

2 E. Order Defendant to make whole Ms. Tamayo by providing compensation for past and  
3 future non-pecuniary losses resulting from the unlawful practices complained of above including,  
4 but not limited to emotional pain and suffering, inconvenience, loss of enjoyment of life and  
5 humiliation, in amounts to be determined at trial.

6 F. Order Defendant to pay Ms. Tamayo punitive damages for its malicious or reckless  
7 conduct described above, in an amount to be determined at trial.

8 G. Grant such further relief as the Court may deem just and proper in the public interest.

9 H. Award the Commission its costs in this action.

10 **DEMAND FOR JURY TRIAL**

11 The Commission requests a jury trial on all questions of fact raised by its Complaint.

12 P. DAVID LOPEZ  
13 General Counsel

14 JAMES LEE  
15 Deputy General Counsel

16 GWENDOLYN YOUNG REAMS  
17 Associate General Counsel

18 Date: December 11, 2013

19 By: /s/ William R. Tamayo  
WILLIAM R. TAMAYO  
Regional Attorney

20 Date: December 11, 2013

21 By: /s/ Marcia Mitchell  
MARCIA MITCHELL  
Supervisory Trial Attorney

22 Date: December 11, 2013

23 By: /s/ Debra A. Smith  
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