

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|-----------------------------------|---|-------------------------------------|
| EQUAL EMPLOYMENT OPPORTUNITY |) | |
| COMMISSION, |) | |
| |) | CA 08-1358 |
| Plaintiff, |) | |
| |) | |
| and |) | |
| |) | |
| DIANA ALTIERI-HAND, |) | |
| |) | |
| Intervenor Plaintiff, |) | |
| |) | |
| v. |) | Honorable Judge Terrence F. McVerry |
| |) | |
| LIFECARE MANAGEMENT SERVICES, LLC |) | |
| and |) | JURY TRIAL DEMANDED |
| LIFECARE HOSPITALS OF PITTSBURGH, |) | |
| INC. |) | |
| |) | (Electronically filed) |
| Defendants. |) | |
| |) | |

AMENDED INTERVENOR’S COMPLAINT

AND NOW, comes the above INTERVENOR/Plaintiff, (hereinafter “Plaintiff) by and through her counsel, Helen R. Kotler, Esquire, and David F. Weiner, Esquire and files the following Amended Intervenor’s Complaint:

PRELIMINARY STATEMENT

1. This is an action brought pursuant to the Americans with Disabilities Act, as amended, hereinafter the “ADA” and the Age Discrimination in Employment Act of 1967, as amended, hereinafter the “ADEA.” This action seeks declaratory, injunctive and equitable relief; compensatory, and punitive damages; and costs, expenses, expert witness fees and attorneys’s fees for the unlawful practices of discrimination based on her disability, perceived disability or history of a disability, colon cancer, and retaliation under the ADA and ADEA for complaining of harassment and filing a charge of discrimination. Plaintiff asserts that she was subjected to a hostile

environment and retaliation after complaining of said environment. This case is also brought pursuant to §§ 502 and 510 of the Employment Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1132 and 1140 of ERISA and pursuant to the Family and Medical Leave Act of 1993 (29 U.S.C. § 2615.) Further, Plaintiff also brings this case pursuant to the Pennsylvania Human Relations Act, 43 P.S. §951 et seq.

I. Parties

2. Plaintiff Diana Altieri Hand (“Altieri-Hand”) resides in Murrysville, Westmoreland County, Pennsylvania, located in the Western District of Pennsylvania.

3. At all relevant times, Defendants have continuously been an employer engaged in an industry affecting commerce within the meaning of §101(5) of the ADA, 42 U.S.C. . §12111(5) and Section 101(7) of the ADA, 42 U.S.C. §1211(7) which incorporated by reference sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

4. Defendants are engaged in an industry affecting commerce, as defined in Section 11(h) of the ADEA, 29 U.S.C. §630(h). Defendants employed twenty or more employees at all times relevant to this action. Defendant is “an employer” within the meaning of Section 11(b) of the ADEA, 29 U.S.C. §630(b).

II. Jurisdiction and Venue

5. Jurisdiction of this Court is invoked pursuant to the ADA and under 28 U.S.C. §§28 451, § 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990,42 U.S.C. 12117(a), which is incorporated by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964(“Title VII”) 42 U.S.C. §§20003-(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42

U.S.C. §1981a. It is invoked pursuant to the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.* which incorporates by reference Section 16(b), 29 U.S.C. §216(b), of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* Further, Plaintiff invokes §§ 502 and 510 of the Employment Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1132 and 1140 of ERISA and 29 U.S.C. § 2617 of the Family and Medical Leave Act. Plaintiff invokes the doctrine of pendent jurisdiction as to her claims asserted pursuant to the Pennsylvania Human Relations Act.

6. The Plaintiff worked for Defendants at a site located in Wilkinsburg, Pennsylvania in Allegheny County and all unlawful employment practices alleged below were committed within the jurisdiction of the United States District Court for the Western District of Pennsylvania.

Exhaustion of Administrative Remedies

7. Prior to filing this Complaint to intervene, Plaintiff timely filed a written charge alleging claims of discrimination based on disability, age, harassment and retaliation with the EEOC which was cross-filed timely at the PHRC.

8. The Plaintiff has filed this action subsequent to the expiration of sixty (60) days from the filing of a charge of age discrimination with the EEOC.

9. On July 18, 2008, the EEOC issued a Determination, finding a violation of the ADA with respect to harassment, terms and condition, failure to accommodate, discipline, and discharge.

10. On or around September 30, 2008, the EEOC, per its prerogative and right, filed a suit against Respondents for violations of the Americans with Disabilities Act which is pending in the Western District of Pennsylvania at CA-08-1358.

FACTS

11. Plaintiff, a female, was age 46 at the time of her termination.
12. Plaintiff was hired by Forbes Health Systems (Forbes) on or around June 17, 1978 and worked there for approximately 21 years when around August of 1999, Forbes Metropolitan Hospital was purchased by Defendant LifeCare Management Services.
13. While employed with Defendant until September 28, 2007, Plaintiff was the business office manager of one of its subsidiaries, LifeCare Hospitals of Pittsburgh.
14. For most of the almost twenty nine years of Plaintiff's employment with Defendant or its predecessor, she was located at the same desk occupying the same position and performing the same or similar duties both before and during her employment with Defendant.
15. On or around November 10, 2006, while employed by Defendant, Plaintiff was diagnosed with a form of colon cancer which has a strong hereditary component, termed Nonpolyposis colorectal Cancer or Lynch Syndrome, all of which she disclosed to her employer.
16. Pursuant to the provisions of the Family and Medical Leave Act ("FMLA"), Plaintiff took a leave of absence from work and underwent surgery on December 7, 2006, resulting in the removal of her large intestines and a total hysterectomy.
17. Thereafter, on or around January 30, 2007, Plaintiff began a course of treatment, including chemotherapy.
18. While on FMLA, Plaintiff's supervisor and others, including an employee who reported to her, handled her duties with Plaintiff's help as she called in with assistance.
19. On or around February 28, 2007, Defendant's Human Resources department notified Plaintiff that her FMLA benefits had ended On February 5, 2007 and she was terminated effective the same day of the letter although she had been in discussions with her former

supervisor about returning to work on a part time basis.

20. At the beginning of March 2007, Plaintiff's physician approved her to return to work on a part time basis and thereafter, her former supervisor was able to convince some managers to accommodate Plaintiff by permitting her to work at home and to come onto the office periodically as her health permitted, in that she was receiving chemotherapy and suffered from side effects and had a compromised immune system.

21. During the period that Plaintiff was off work, she received short term and long term disability benefits under Defendant's ERISA plan.

22. In or around March 2008, Plaintiff told Rick Pletz, the newly named CEO of Lifecare in Pittsburgh about her condition, that she was on chemotherapy and that she had a predisposition for recurrent cancer due to the nature of the cancer which would require careful screening for the rest of her life.

23. Defendant replaced Plaintiff's former supervisor with Michael Murray, an employee newly hired into their corporate offices in Plano, Texas on or around June 17, 2007 who worked in the Pittsburgh area a few days per week.

24. Plaintiff informed Murray, the Regional Director of Finance, that she was working twenty-four hours per week, some at home on her laptop, and informed him that she was in chemotherapy, and that her hands and feet were swollen.

25. On or around June 29, 2007, Murray removed one of Plaintiff's direct reports in the Business Office to another position after which Plaintiff explained to Murray that this elimination would impact her ability to complete all of the work in the office.

26. In or around mid-July 2007, Murray told Plaintiff that he was eliminating the "part time

Business Office Manager position” effective September 1, 2007 and if she wished to continue to work, she would have to work full time as of September 1, 2007 and then informed Plaintiff by e-mail of August 2, 2007, that not only was he requiring her to return to work full time but she would have to submit a “full-duty” release by August 17, 2007.

27. At that time, Plaintiff was still undergoing chemotherapy which caused her to suffer from severe fatigue, nausea, vomiting, severe diarrhea, body pains, anemia, and sleep deprivation particularly for the first forty-eight hours after the chemotherapy and then her symptoms diminished somewhat until the next treatment.

28. Informed of Murray’s ultimatum and his refusal to continue accommodating her, and of Plaintiff’s potential loss of health insurance benefits, Plaintiff’s physician reluctantly allowed Plaintiff to return to work on a full time basis which she did although she was still at risk for infection, had neuropathy, severe diarrhea, a lack of stamina, and was not sleeping well.

29. The doctor would not have released Plaintiff to return to work in September if he were aware that she would be required to work more than forty hours per week.

30. Plaintiff continued in chemotherapy until August 27, 2008, the last day of her treatment.

31. When Plaintiff returned to work, she still suffered pain, swelling of the wrists, hands, and feet, neuropathy which is an on-going condition, and her stamina was low.

32. Additionally, Plaintiff suffers from diarrhea and the need to use the rest room frequently due to the surgical intervention on her bowels.

33. From in or around July 2007, in addition to requiring her to return to work without restrictions by September 1, 2007 or be fired, Respondents began a harassing and onerous course of conduct against Plaintiff which included telling her in August 2007 that she could speak to no

other employees for more than 10 seconds although her duties were service oriented.

34. Within a few days of her return, on September 7, 2007, Defendant issued a First Written Warning to Plaintiff, who had never received a written warning in her 29 years of employment, and threatened her with termination.

35. On or around September 10, 2008, Plaintiff approached Robin Arslanpay, the on-site Director of Human Resources since in or about February 2008 about Murray's conduct toward her, the First Written Warning she received, and discussed some of the limitations that she had, including bathroom limitations, issues with swelling and numbness in hands, and total exhaustion.

36. Murray's and Defendants' discriminatory and harassing conduct was for the purpose of causing her to quit her position or to create a means to terminate her.

37. Murray's and Defendants' discriminatory conduct includes but is not limited to the following:

- a. By assigning Plaintiff additional duties on her return to work.
- b. For instance, when Plaintiff returned to work on a full time basis she learned that one of her direct reports was removed from her and moved to a different position and was permitted to support Plaintiff only 2-3 hours per week even though previously, in or around May 2007, another of Plaintiff's direct reports who worked for her before she became sick was moved and thereafter Plaintiff was assigned about 30% of her duties when she returned to work.
- c. When she returned to full time work on or around September 1, 2007, Plaintiff was forced to work nine hour days without lunch in order to try and complete her

assignments.

- d. Murray, although aware of Plaintiff's condition, began to put more pressure on her and held her to a different standard from which other managers were held.
- e. Murray ignored Plaintiff's complaints that he was putting too many demands on her, and that she needed help, seemed not to want to speak with her and told her to just do what he said to do.
- f. Rather than assign a competent worker to Plaintiff or returning one of her former direct reports, around mid-September 2007, a temporary worker was assigned who was unable to do the work causing much of Plaintiff's time to be spent monitoring and correcting errors.
- g. Murray would shout and scream at Plaintiff in a threatening manner frequently, even coming around the front of the desk and throwing up his arms as if to strike her.
- h. Murray would demean Plaintiff's work as not good enough, treat her in a demeaning way, change due dates, left her out of meetings she normally would have attended, and generally through his actions made it appear that he wanted Plaintiff to leave her position.
- i. Defendants subjected Plaintiff to unfair discipline and disparate terms and conditions of employment.
- j. Although aware that Plaintiff was still suffering from the effects of chemotherapy, Murray directed Plaintiff to work weekends without additional pay which would have exceeded forty (40) hours a week

k. Initially unbeknown to her, Murray would closely scrutinize Plaintiff to see when she arrived in the parking lot and if she stopped to use the rest room when she arrived which she would often have to do, would criticize her although Plaintiff was listed as an exempt employee and routinely worked more than eight hours per day, often through her lunch hour.

l. Defendants' ignored not only Plaintiff's complaints about Murray's harassment of her but also ignored complaints of another employee who observed how Murray treated Plaintiff.

38. On or around August 29, 2007, Plaintiff complained to the Vice President of Operations regarding Murray's demeaning treatment of her.

39. At a meeting on September 7, 2007, when Murray gave her a Final Written Warning and also accused her of being late, Plaintiff explained she needed to use the rest room and might stop on the way in and was still suffering from side effects from chemotherapy. When she asked Arslanpay if she was covered by the ADA, Arslanpay said she was.

40. On September 10, 2007, Plaintiff met with Arslanpay and asked for help in dealing with Murray, explaining she had "bathroom" issues. Arslanpay suggested she look for a job elsewhere since corporate sent Murray and he was not "going anywhere."

41. At a September 26, 2007 meeting with Murray, he became loud, angry and physically aggressive toward Plaintiff, leaping up from her desk, coming toward her, raising his arms to the extent that Plaintiff thought he was going to strike her.

42. Plaintiff reported Murray's harassing conduct to Robin Arslanpay, the Human Resources Director, and she informed Plaintiff that Murray was "the man", was well liked by corporate and

her choice was to either deal with Murray's conduct or leave, never offering to accommodate her.

43. After Arslanpay told Plaintiff that she had not documented her complaints, Plaintiff wrote Arslanpay on September 27, 2007 reiterating how Murray behaved toward her, and she described his aggressive assaultive behavior and that she believed he was setting her up for failure and asked to meet with her and Rick Pletz.

44. On or around September 28, 2007, Arslanpay and Pletz called Plaintiff into a meeting where Plaintiff described Murray's conduct toward her, including his physically threatening posture toward her and which was inconsistent with Defendants' Code of Conduct.

45. Arslanpay and Pletz claimed that Murray was not aware of the meeting, that Murray was "not going anywhere", and if Plaintiff remained, Murray would fire her in a matter of months.

46. Arslanpay and Pletz, asserted that because of her long years of service, they were offering Plaintiff a separation of twelve weeks and health insurance during that period. Alternatively, Arslanpay said Plaintiff risked being terminated in the next few months for cause and therefore she would receive no severance and health insurance benefits.

47. In order to receive the severance package, Arslanpay and Pletz told Plaintiff that she would be obligated to sign a Release of all potential legal actions.

48. Arslanpay and Pletz told Plaintiff that if she signed the Severance agreement and Release that they would not oppose her receiving unemployment compensation.

49. Pletz told Plaintiff that she would not need to report to work while she considered whether to agree to the severance package and release which was not presented to her in writing at the meeting.

50. At no time did Defendants enter into an interactive process with Plaintiff to provide her

with a reasonable accommodation.

51. Thereafter, in a September 30, 2008 email, Plaintiff asked that she be provided a copy of the Agreement as “she was hesitant to make a decision by Monday without having the documents to review.” and she requested clarification on whether she was to “report to work as scheduled (8:30-5:00) until I have reviewed the documents and accept the package as offered. Should I come in and get the documents from you but not work?”

52. On Sunday, September 30, 2007 around 9:00 p.m., at Plaintiff’s request, Pletz mailed her a form entitled Separation Agreement, Release and Waiver which among other things, stated that Plaintiff had twenty one days to consider its terms, a copy of which is attached hereto as Exhibit 1.

53. As to returning to work, Pletz told Plaintiff in his September 30, 2007 email that “if you feel this is the direction you plan to take it is not necessary to come to work tomorrow. If this is not your intention and you wish to continue to work, you should report to work as normally scheduled. You are welcome to respond to this email with questions you may have.”

54. Thereafter on Tuesday, October 2, 2007, Pletz called Plaintiff at her home, and asked if she had questions. Plaintiff told him she was to consult with a lawyer on Wednesday, October 3, 2007 to review the agreement as suggested in the agreement and she would let him know what was decided. Pletz said nothing to Plaintiff about her being terminated and said she did not have to report to work as long as she was reviewing the agreement.

55. On Thursday, October 4, 2007, Plaintiff again requested clarification about her job and what she should do about reporting to work while considering the agreement and how she was being paid. At that time, Plaintiff had Paid Time Off available to her to use if she needed to

be off.

56. On October 4, 2007, Pletz sent an email to Plaintiff stating that he assumed that Plaintiff was accepting the Agreement because she did not report to work and the “separation is where we stand are being paid as such.”

57. By e-mail dated October 5, 2007, Plaintiff responded to Pletz’s e-mail indicating that she misunderstood his response as she understood that as long as she was considering the offer within the twenty one day period indicated in the Separation Agreement and Release which she sent him, that she did not need to return to work and was confused how he reached that assumption. She asked if she should report to work until she reached a decision.

58. Thereafter, by email dated October 5, 2007, Pletz with copies to Robin Arslanpay and Stacey Ehle, an HR official in the Texas headquarters, told Plaintiff that when she did not report to work as instructed, they terminated her employment, effective Friday, September 28, 2007.

59. In November 2007, Plaintiff would again be eligible for FMLA should her medical condition require it.

60. After Plaintiff’s termination, upon information and belief, Defendants replaced her with a healthy female with no known disabilities who was younger than Plaintiff.

61. Thereafter the younger replacement female was assigned two full time reports and a casual worker and was assigned to report to a person other than Mike Murray.

62. Plaintiff applied for unemployment compensation which was granted and she received unemployment compensation benefits.

63. Thereafter, on or around December 20, 2007, Plaintiff filed a charge of discrimination

with the EEOC based on the Americans with Disabilities Act, Title VII, and the ADEA alleging discrimination, harassment and retaliation.

64. Plaintiff dually filed the charge with the PHRC when she filed with the EEOC.

65. On or around April 14, 2008, the Pennsylvania Department of UC Benefits and Allowances notified Plaintiff that they had determined that she was not entitled to the unemployment compensation benefits that she had received because she had voluntarily quit when she failed to report to work on Monday, October 1, 2007 and failed to exhaust alternatives before quitting.

66. Further, on April 29, 2008, the Pennsylvania Department of UC Benefits and Allowances notified Plaintiff that she was at fault in receiving benefits to which she was not entitled and she would have to repay \$13,000 because she had allegedly made a false statement to the Department.

67. Plaintiff appealed this determination and a hearing was scheduled to determine her right to retain the benefits she had been paid.

68. Prior to the scheduled hearing before the Referee on May 8, 2008, in or around late April 2008, after a review of the file of the Referee, Plaintiff learned that on or around April 18, 2008, the Defendants' representative, Ajah Anderson of Corporate Cost Control, Inc. with the complicity of Robin Arslanpay, Respondent's local Human Resources Director and Stacey Ehle, Director of Human Resources, submitted an incomplete and thereby misleading document and misleading information to the unemployment compensation authorities.

69. In a deliberate effort to adversely impact Plaintiff as to the unemployment compensation benefits that she had already received, Defendants knowingly and intentionally

failed to submit the complete string of emails which included emails that showed that rather than quitting her job, Defendants had terminated her on October 5, 2007 and instead, Defendants told the authorities that Plaintiff abandoned her job, voluntarily quit, failed to appear or call off for scheduled shifts, and did not discuss the situation or make any other attempts to resolve the situation all of which was untrue.

70. At all times relevant hereto, Plaintiff was qualified for her position and was asked to assist other LifeCare facilities locally and around the country with patient accounting issues and received awards.

71. At all times relevant hereto, Plaintiff properly performed her duties.

72. Plaintiff, age 46 at her termination, was one of a number of other older long term exempt employees at the Pittsburgh facility who also had medical problems and who Defendants terminated.

73. Upon information and belief, said long term older employees would suddenly be accused of poor performance and then terminated.

74. Plaintiff has timely met the administrative requirements to bring this action.

Count I

Disability discrimination Pursuant to the Americans with Disabilities Act

75. Plaintiff incorporates Paragraphs 1 through 74 as though fully set forth herein.

76. Plaintiff is a member of a class protected by the Americans with Disabilities Act as having a disability, perceived to have a disability, or has a history of a disability.

77. At all times relevant hereto, Defendants unlawfully and intentionally discriminated against Plaintiff because of her disability by allowing her to be harassed and subjected to a

hostile environment based on her having a disability, perceived to have a disability and/or having a history of a disability.

78. At all times relevant hereto, Defendants unlawfully and intentionally discriminated against Plaintiff because of her disability by ceasing to accommodate her.

79. At all times relevant hereto, Defendants unlawfully and intentionally discriminated against Plaintiff because of her disability, their perception she had a disability, and/or her history of a disability by terminating her employment.

80. Defendants' actions in intentionally, deliberately, willfully and maliciously harassing Plaintiff as set forth above, in ceasing to accommodate Plaintiff and in terminating Plaintiff were all in violation of the Americans With Disabilities Act.

81. The unlawful employment practices complained of herein were done with malice or with reckless indifference to the federally protected rights of Plaintiff.

82. As a result of the illegal actions of Defendants set forth above, Plaintiff has suffered substantial damages including lost pay, lost benefits, and front pay, and causing her to incur attorneys' fees and costs.

83. As a result of the illegal actions of Defendants, Plaintiff suffered substantial damages including humiliation, embarrassment, feelings of helplessness, anxiety and depression some of which manifested themselves in physical symptoms.

WHEREFORE, Plaintiff seeks damages as follows:

- a. Back pay;
- b. Reinstatement to employment;
- c. Front pay;

- d. Compensatory damages;
- e. Attorney fees and costs of litigation;
- f. Any other relief permitted by law, including but not limited to injunctive relief, declaratory relief and punitive damages.

Count II

Discrimination and Retaliation Pursuant to the ADA

84. Plaintiff incorporates Paragraphs 1 through 83 as though fully set forth herein
85. Plaintiff raised issues of discriminatory treatment with Human Resources based on her disability in her employment with Defendants prior to her termination beginning in or around late August 2007 and into late September 2007.
86. As a result of raising said issues, Plaintiff began to experience further harassment and discrimination and no action was taken to remedy the matters complained of by Plaintiff nor was any investigation conducted.
87. As a result of raising said issues, Plaintiff was unfairly scrutinized, disciplined and ultimately terminated.
88. Plaintiff is an individual covered by the ADEA and protections established by the Older Worker's Benefits Protection Act, ("OWBPA") 29 U.S.C. §626(f)(1), amending the ADEA and in effect since October 16, 1990.
89. OWBPA established safeguards to ensure that any waiver or release of ADEA rights is knowing and voluntary.
90. Defendants sought to have Plaintiff waive her rights as described orally to her on September 28, 2007 and as set forth in the Separation Agreement, Release and Waiver presented

to her on September 30, 2007, Exhibit 1.

91. Defendants first asked Plaintiff to agree to the proposed separation without it being in writing with the protections of OWBPA and then when they did present the agreement to Plaintiff at her request, it did not have the safeguards required by OWBPA in that it did not contain a seven-day revocation period.

92. When Plaintiff tried to avail herself of the OWBPA protections contained within the agreement, namely she was advised in writing to consult with an attorney prior to executing the Separation Agreement and she was given at least 21 days within which to consider the agreement, which she mentioned to Defendants, Defendants terminated her.

93. Defendants retaliated against Plaintiff for not immediately waiving her rights to the protections of the ADA, the ADEA, OWBPA, ERISA, and the FMLA.

94. As a result of refusing to sign a separation agreement within four days of being presented with said agreement which required Plaintiff to waive her rights to bring a discrimination action and which provided for 21 days to consider it, Defendants terminated Plaintiff and attempted to prevent her from receiving the unemployment compensation benefits they said she would be eligible for once she signed the separation agreement.

95. In retaliation for Plaintiff's raising issues of discrimination and failing to waive her rights, Defendants opposed Plaintiff's receipt of unemployment compensation benefits which had been promised if she waived her rights by presenting false information to the authorities.

96. Within shortly more than three months after Plaintiff filed a complaint of discrimination with the EEOC and the PHRC, Defendants continued to deliberately try to interfere with Plaintiff's unemployment compensation benefits by intentionally and knowingly filing false and

incomplete information with the authorities.

97. The retaliatory actions of Defendants in providing false and incomplete information to the authorities caused Plaintiff to suffer damages even though she was successful in retaining the benefits that she received.

98. As a result of the retaliatory actions of Defendants in terminating Plaintiff and then providing false and incomplete information to the unemployment compensation authorities who accused Plaintiff of an overpayment, Plaintiff suffered mental anguish, undue stress and fear and embarrassment and incurred attorneys' fees and costs.

99. The actions of Defendants were done in a willful and wanton manner with malice and disregard of the rights of Plaintiff and in violation of the Americans With Disabilities Act.

WHEREFORE, Plaintiff seeks damages as follows:

- a. Back pay;
- b. Reinstatement to employment;
- c. Front pay;
- d. Compensatory damages;
- e. Attorney fees and costs of litigation;
- f. Any other relief permitted by law, including but not limited to injunctive relief, declaratory relief and punitive damages.

Count III

Discrimination and Retaliation Pursuant to 29 U.S. C. § 1140 of ERISA

100. Plaintiff incorporates Paragraphs 1 through 99 as though fully set forth herein

101. At all times relevant to this action, Plaintiff was a "participant" in the Defendant's

employee benefits plans as defined by 29 U.S.C. §1002(7).

102. Defendants' health insurance plan of which Plaintiff was a participant was self funded by Defendant and the costs incurred for medical care were allocated back to each facility so that Plaintiff's cancer treatments could impact the bottom line of the Pittsburgh LifeCare facility where Plaintiff worked.

103. Because of the serious nature of her condition and the need to keep the cancer in check, Plaintiff had ongoing expensive medical costs and very high monthly prescription costs.

104. Additionally, Defendant's long term disability plan of which Plaintiff was a participant was to become self funded as of January 2008.

105. Because of the serious nature of Plaintiff's condition and the genetic component, the need for on-going surveillance, and the high prescription costs, Plaintiff and Defendants could anticipate very high medical bills in addition to the extraordinary medical expenses incurred by Plaintiff in 2007 all of which was self funded by Defendants.

106. Defendants, in an effort to reduce costs, purposely and intentionally/harassed Plaintiff in an effort to force her to quit and then terminated her and interfered with the Plaintiff's right to continued health benefits under Defendants' employee benefits plans, thereby causing Plaintiff to lose substantial health insurance benefits, life insurance benefits, deposits into her 401K, wages and other fringe benefits of employment including disability benefits should she again become ill.

WHEREFORE, Plaintiff seeks damages as follows:

- a. Full equitable relief under ERISA (29 U.S.C. § 1001 et seq.) including back pay, reinstatement to Plaintiff's position as an employee of Defendant, restitution of

Plaintiff's lost employee benefits and pre-judgment interest.

- b. Attorney's fees and costs; and
- c. Such other relief as law and equity allows.

Count IV

Discrimination and Retaliation Pursuant to the FMLA

107. Plaintiff incorporates Paragraphs 1 through 106 as though fully set forth herein
108. Plaintiff availed herself of the FMLA benefits from in or around early December 2006 through on or around February 28, 2007
109. Based on Defendants' FMLA plan, Plaintiff would again be eligible for FMLA leave in or around November 2007.
110. Based on the serious nature of Plaintiff's medical condition, her genetic pre-disposition of further risks of colon cancer, and her need to seek medical treatment, Defendants knew that it was likely that Plaintiff would need to avail herself of FMLA leave beginning at some point in November 2007, 30 days after she was terminated.
111. Defendant terminated Plaintiff in order to not have to accommodate her further, to not be liable for high payments of medical bills and to avoid her again utilizing the FMLA and because she utilized her full FMLA leave.
112. Said termination was in violation of 29 U.S.C. § 2615(a)(2)

WHEREFORE, Plaintiff prays for the following relief:

- a. Back pay;
- b. Reinstatement to employment;
- c. Front pay;

- d. Compensatory damages;
- e. Attorney fees and costs of litigation;
- f. Any other relief permitted by law, including but not limited to injunctive relief, and declaratory relief.

Count V

Retaliation discrimination pursuant to the ADEA

113. Plaintiff incorporates paragraphs 1 through 112 by reference as though fully set forth herein.

114. Defendant's conduct in regard to the harassment that Plaintiff suffered in a hostile environment, and her termination based on age and disability discrimination and retaliation constitutes unlawful discrimination on account of her age in violation of the ADEA.

115. As a result of the intentional violations of the ADEA, Plaintiff has suffered damages including lost present and future wages and lost benefits and other monetary losses.

WHEREFORE, Plaintiff prays this honorable court for the following relief:

- a. A declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 that Defendants have wilfully violated the rights of Plaintiff as secured by the ADEA;
- b. A mandatory injunction enjoining defendants from continuing to violate the ADEA;
- c. A court order that the Defendants reinstate the Plaintiff with full seniority, back pay plus interest, and other benefits, or, in the alternative front pay;
- d. Compensatory and consequential damages of the loss of appropriate fringe benefits caused by Defendants' violations of the ADEA;

- e. Liquidated damages against the Defendants for willful violations of the ADEA;
- f. An award of reasonable attorneys' fees and the costs and expenses related to the litigation of the ADEA claim;
- g. Such other relief as is deemed appropriate.

Count VI

Disability and Retaliation Discrimination

pursuant to the Pennsylvania Human Relations Act

116. Plaintiff incorporates paragraphs 1 through 115 by reference as though fully set forth herein.

117. Defendants have discriminated against the Plaintiff in the terms and conditions of her employment, have permitted Plaintiff to be harassed and subjected to a hostile environment because of her disability, and have terminated her based on her disability all in violation of the Pennsylvania Human Relations Act, as amended.

118. Plaintiff has been damaged as a direct and proximate result of the Defendants' acts and omissions in the form of lost pay and benefits, incurred attorneys' fees and costs, and other expenses.

119. Plaintiff has suffered undue stress, mental anguish, and embarrassment as a result of the discriminatory actions of Defendants.

WHEREFORE, Plaintiff prays for the following relief:

- a. That the Court declare Defendants' conduct complained of herein to be in violation of Plaintiff's rights as secured by the Pennsylvania Human Relations Act.

- b. That the Court permanently enjoin Defendants, its officers, management personnel, employees, agents, attorneys, successors, assigns and those acting in concert therewith from any conduct violating Plaintiff's rights and the rights of others similarly situated as secured by the Pennsylvania Human Relations Act.
- c. That the Court award Plaintiff compensatory damages.
- d. That the Court order Plaintiff reinstated to her position
- e. That the Court order Defendants to make Plaintiff whole by providing her appropriate lost earnings and benefits with prejudgment interest, and other affirmative relief.
- f. That the Court award attorney's fees and costs incurred in prosecuting this action.
- g. That the Court award Plaintiff such additional and further relief as it deems just and proper.

COUNT VII

Retaliation Pursuant to the Americans with Disabilities Act

120. Plaintiff incorporates paragraphs 1-119 by reference as though fully set forth herein.

121. On October 27, 2008, the EEOC issued a Notice of Dismissal and Notice of Rights pursuant to a second retaliation charge filed by Plaintiff, alleging additional retaliation, EEOC Charge No. 533-2008-01029, informing Plaintiff that a lawsuit must be filed within 90 days of receipt of the Notice or her right to sue would be lost.

122. The underlying facts of Charge No. 533-2008-01029 are set forth in paragraphs 65-69 of this Complaint.

123. As a result of the retaliatory actions of Defendants knowingly providing false and incomplete information to the unemployment compensation authorities who accused Plaintiff of making a false statement to the Department, and sought to recoup monies paid, Plaintiff suffered mental anguish, undue stress and fear and embarrassment and incurred attorneys' fees and costs.

124. The actions of Defendants were done in a willful and wanton manner with malice and disregard of the rights of Plaintiff and in violation of the Americans with Disabilities Act.

WHEREFORE, Plaintiff seeks damages as follows:

- a. Compensatory damages;
- b. Attorney fees and costs of litigation;
- c. Any other relief permitted by law, including but not limited to injunctive relief, declaratory relief and punitive damages.

A jury trial is demanded in all counts where such a jury trial is permitted.

Respectfully submitted,

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