

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

STEVE PAPPAS,
30822 South Creek Way
Fulshear, Texas 77441,

TAWANA LINDSAY,
2346 Rolling Meadows Street
Waldorf, Maryland 20601,

NICHOLE MATHIES,
1000 Hanbury Court
Capitol Heights, Maryland 20743, and

MALACHI MALIK,
3645 Marketplace Blvd, Suite 130-758
East Point, Georgia 30344,

Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

METROPOLITAN POLICE
DEPARTMENT OF THE DISTRICT
OF COLUMBIA,
300 Indiana Avenue, N.W.
Washington, District of Columbia 20001,

DISTRICT OF COLUMBIA,
Karl A. Racine, Attorney General
Office of the Attorney General
441 4th Street, N.W., Suite 630 South
Washington, D.C. 20001, and

PETER NEWSHAM, in his official
Capacity as Chief of Police of the
Metropolitan Police Department of the
District of Columbia,
300 Indiana Avenue, N.W.
Washington, District of Columbia 20001,

Defendants.

Civil Action No.:
JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiffs Steve Pappas, Tawana Lindsay, Nichole Mathies, and Malachi Malik, on behalf of themselves and all others similarly situated, file this Amended Complaint against Defendants Metropolitan Police Department (“MPD”), the District of Columbia (“DC”), and Peter Newsham (“Newsham”), in his official capacity as Chief of Police of the MPD (collectively “Defendants”), and complain and allege upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief.

NATURE OF THE ACTION

1. Plaintiffs bring this class action under Title I of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101, *et seq.*, and Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. §§ 794, *et seq.*

2. Plaintiffs allege that Defendants terminated their employment on account of their disabilities rather than accommodating them by restructuring job duties, providing extended leave, or reassigning them to available positions that they could have performed.

3. Plaintiff Steve Pappas alleges that Defendants made improper medical inquiries and imposed improper medical examinations on him.

4. Plaintiffs allege that Defendants violated the ADA and Section 504 by implementing a policy or practice of forcing employees with disabilities who spend 172 cumulative work days in less than full-duty status into disability retirement, with no possibility of reasonable accommodation by reassignment, job restructuring, or extended leave.

5. Plaintiff Steve Pappas alleges that Defendants violated, and continue to violate, the ADA and Section 504 by implementing a policy or practice of making improper medical inquiries and medical examinations on employees who experience off-duty illnesses or injuries.

6. This Class Action Complaint is filed on behalf of all similarly situated MPD police officers and former MPD police officers.

JURISDICTION AND VENUE

7. This Court has original jurisdiction pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§1331 and 1343.

8. This Court has authority to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and authority to grant equitable relief and monetary damages pursuant to 42 U.S.C. § 12117(a) and 29 U.S.C. § 794a.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because the employment practices alleged to be unlawful were committed within the District of Columbia.

PARTIES

10. Plaintiff Steve Pappas is a resident of Texas and worked as a Police Officer for MPD from September 24, 2001 to March 6, 2015.

11. Plaintiff Tawana Lindsay is a resident of Maryland and worked as a Police Officer for MPD from March 28, 1988 to December 7, 2015.

12. Plaintiff Nichole Mathies is a resident of Maryland and worked as a Police Officer for MPD from November 19, 1990 to October 23, 2015.

13. Plaintiff Malachi Malik is a resident of Georgia and worked as a Police Officer for MPD from December 20, 1999 to June 25, 2018.

14. Defendant MPD is the primary law enforcement agency for the District of Columbia and one of the ten largest local police agencies in the United States. MPD has over 4,000 sworn and civilian employees.

15. Defendant DC is the jurisdiction that oversees MPD, a city government agency.

16. Defendant Newsham is the Chief of the Metropolitan Police Department of the District of Columbia. In his role, Newsham oversees the administration of MPD.

17. At all relevant times, Defendants were doing business in the District of Columbia and had at least fifteen employees.

18. At all relevant times, Defendants MPD and DC were employers and covered entities under the ADA, 42 U.S.C. §§ 12111(2),(5).

19. At all relevant times, Defendants MPD and DC were recipients of federal financial assistance.

20. At all relevant times, Defendants MPD and DC were covered entities under the ADA, 42 U.S.C. § 12111(2), and Section 504, 29 U.S.C. § 794.

FACTUAL ALLEGATIONS

Plaintiff Pappas

21. In 2013, while employed as a law enforcement officer by Defendant MPD, Mr. Pappas was diagnosed with congestive heart failure by his physician.

22. Per MPD policy, Mr. Pappas reported to the Police and Fire Clinic for “medical evaluation.” MPD required Mr. Pappas to provide detailed medical records of his diagnosis and treatment.

23. MPD then assigned Mr. Pappas to a limited-duty position.

24. Periodically throughout his limited duty assignment, MPD required Mr. Pappas to provide the medical records of his treatment, including results of his echocardiograms and detailed letters from his treating physicians, and, on information and belief, communicated directly with his treating physicians.

25. While on limited duty, Mr. Pappas applied for a civilian position within MPD and DC. Although he was qualified for the position, he did not receive an interview.

26. Per MPD policy, after 172 work days in limited-duty status, Mr. Pappas was required to appear before the Police and Firefighters Retirement Relief Board for disability retirement.

27. Despite Mr. Pappas's doctor's report from October 17, 2014, which stated that he was hopeful Mr. Pappas would normalize within six months (by April 17, 2015), on March 6, 2015, Defendant MPD involuntarily retired Mr. Pappas expressly on the basis of disability. MPD refused to accommodate him by restructuring his position, authorizing additional leave, or permitting him to continue in a limited duty position.

28. MPD did not engage in the interactive process or make efforts to determine if there were positions available for which Mr. Pappas was qualified as a reasonable accommodation, nor was Mr. Pappas given priority for placement into any vacant position or considered for restructuring of his position.

29. On information and belief, Defendants had vacant positions available for which Mr. Pappas was qualified during the relevant period.

Plaintiff Lindsay

30. On or about September 3, 2014, while employed by MPD, Ms. Lindsay began experiencing severe foot and ankle pain.

31. On September 4, 2014, Ms. Lindsay provided MPD with a note from her podiatrist, advising that Ms. Lindsay was to wear an ambulatory walking boot as part of her treatment. Upon receipt of the podiatrist's note, MPD placed Ms. Lindsay on limited duty.

32. On February 24, 2015, Ms. Lindsay underwent foot and ankle surgery to repair her fallen arch and was subsequently placed on sick leave. On April 28, 2015, Ms. Lindsay returned to her limited duty assignment.

33. Despite a note from Ms. Lindsay's physician that she was expected to fully recover within six to twelve months after the surgery, MPD denied Ms. Lindsay's request for postponing the disability retirement consideration hearing scheduled for August 6, 2015 to February 25, 2016, which would have been twelve months from the date of her surgery.

34. MPD involuntarily retired Ms. Lindsay at the end of the 172-day limit for sick leave and limited duty assignment on December 7, 2015, just two months before she was expected to be able to return to full duty.

35. MPD did not engage in the interactive process or make a reasonable effort to reassign Ms. Lindsay to any vacant position or provide other reasonable accommodations.

36. On information and belief, Defendants had vacant positions available for which Ms. Lindsay was qualified during the relevant period.

Plaintiff Mathies

37. On or about August 4, 2014, while employed by MPD and on duty, Ms. Mathies injured her ankle.

38. After an initial hospital visit, Ms. Mathies was treated by MPD doctors, who diagnosed her with a high ankle sprain and recommended physical therapy. MPD placed Ms. Mathies on sick leave.

39. After a month of physical therapy, Ms. Mathies had an MRI, which revealed she would need surgery.

40. Ms. Mathies underwent surgery on October 18, 2014 and again on June 25, 2015. MPD did not offer Ms. Mathies light duty or an accommodation after either surgery.

41. Despite Ms. Mathies's doctors anticipating that she would be able to perform the full scope of her duties six to twelve months after a third surgery, MPD involuntarily retired Ms.

Mathies on October 23, 2015, the end of the 172-day limit for sick leave and limited duty assignment.

42. MPD refused to accommodate Ms. Mathies by restructuring her position, authorizing additional leave, or permitting her to continue in a limited duty position.

43. MPD did not engage in the interactive process or make a reasonable effort to reassign Ms. Mathies to any vacant position or provide other reasonable accommodations.

44. On information and belief, Defendants had vacant positions available for which Ms. Mathies was qualified during the relevant period.

Plaintiff Malik

45. In June of 2016, Mr. Malik injured his back while on duty at a community outreach event.

46. Mr. Malik underwent surgery and was subsequently on sick leave for several months. He returned to work in a limited-duty capacity in February or March of 2017.

47. After Mr. Malik had back surgery, Mr. Malik's preexisting heart condition, of which MPD was aware, was aggravated. MPD's cardiologist examined him and informed him that he needed a defibrillator. Mr. Malik was also informed that after the defibrillator was installed, he would no longer be eligible to work for MPD.

48. Mr. Malik underwent heart surgery to install a defibrillator in September 2017. He never returned to work.

49. Even though Mr. Malik had fully recovered from his back injury and would fully recover from his heart surgery, MPD involuntarily retired Mr. Malik expressly on the basis of disability on June 25, 2018.

50. MPD refused to accommodate Mr. Malik by restructuring his position, authorizing additional leave, or permitting him to continue in a limited duty position.

51. Furthermore, MPD made no individualized inquiry into whether Mr. Malik could perform the essential functions of his job after his surgery and had no basis to believe that Mr. Malik could not fully perform the scope of his position as a Police Officer. On information and belief, MPD did not involuntarily retire a different police officer who also had a defibrillator.

52. MPD did not engage in the interactive process or make a reasonable effort to reassign Mr. Malik to any vacant position or provide other reasonable accommodations.

53. On information and belief, Defendants had vacant positions available for which Mr. Malik was qualified during the relevant period.

Defendants' Policies and Practices which Violated the ADA and Section 504

54. At all relevant times, Defendants maintained a blanket policy or practice that mandates involuntary retirement for MPD officers who cannot resume full-duty status after 172 cumulative work days over any 24-month period as a result of any disability that occurs outside the performance of duty, with no possibility of reassignment, job restructuring, or extended leave. Disability retirement is mandatory “regardless of whether the medical prognosis is that a member will be able to perform in a full duty status after reaching maximum medical improvement.” Where the officer’s disability occurs during the performance of duty, MPD may authorize additional time if the individual’s prognosis is that he or she will eventually be able to perform the full duties of their position, but there is still no possibility of reassignment or job restructuring. MPD General Order 100.11.L.

55. At all relevant times, Defendants’ policy, MPD General Order 100.11.V.B, required and continues to require law enforcement personnel to report to the Police and Fire Clinic for “medical evaluation” whenever they experience any “off-duty injury/illness.”

56. At all relevant times, Defendants’ policy, MPD General Order 100.11.V.N.1, required and continues to require law enforcement personnel to “provide copies of their medical

records from their private physicians upon request” to the Police and Fire Clinic during its monitoring of an illness, injury, or medical condition, including but not limited to “lab reports, surgical reports, a diagnosis and prognosis of medical condition and any other information as deemed necessary.... The Medical Certification Report does not satisfy this requirement.” Failure to comply may result in disciplinary action.

57. All conditions precedent to the institution of this lawsuit have been fulfilled. Mr. Pappas timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) alleging violations of Title I of the ADA. Mr. Pappas’s charge tolled the charge-filing deadline for a class of all similarly situated MPD officers on October 5, 2015. On August 10, 2016, the EEOC issued a Determination finding cause to believe that by its actions and through its policies, Defendants had violated the ADA rights of Mr. Pappas and a class of similarly situated individuals. On June 21, 2019 the Department of Justice issued a Notice of Right to Sue regarding Mr. Pappas’s claim. Mr. Pappas filed this class action on September 19, 2019.

58. Mr. Pappas, Ms. Lindsay, Ms. Mathies, and Mr. Malik were at all relevant times individuals with a disability within the meaning of 42 U.S.C. § 12102 and 29 C.F.R. § 1630.2. Mr. Pappas had a physical disability that substantially limited the major bodily function of his cardiovascular system and, without the ameliorating effects of medication and treatment, substantially limited other major life activities, including but not limited to running, walking long distances, and breathing. Ms. Lindsay had a physical disability that substantially limited her ability to walk and stand. Ms. Mathies had a physical disability that substantially limited her ability to walk, stand, and drive. Mr. Malik had a physical disability that affected the major bodily functions of the circulatory and cardiovascular systems.

CLASS ACTION ALLEGATIONS

59. Plaintiffs bring Counts I and II, as set forth below, on behalf of themselves and as a class action, pursuant to the provisions of Rule 23 of the Federal Rule of Civil Procedure on behalf of a class defined as:

All current and former employees of Defendants who were employed as MPD sworn law enforcement officers between December 9, 2014 and the date that class certification is granted and who had a physical or mental disability and were, or were perceived by Defendants to be, unable to perform all the functions of their regular positions, and who were not considered for reassignment, job restructuring, or extended leave as part of the reasonable accommodation process (the “Accommodations Class”).

60. Plaintiffs and the members of the Accommodations Class are similarly situated in that they were and are all subject to the same discriminatory policy or practices.

61. Plaintiff Steve Pappas bring Counts III and IV, as set forth below, on behalf of himself and as a class action, pursuant to the provisions of Rule 23 of the Federal Rule of Civil Procedure on behalf of a class defined as:

All current and former employees of Defendants who were employed as MPD sworn law enforcement officers between December 9, 2014 and the date that class certification is granted and who were subjected to Defendants’ policy of requiring notification to, medical evaluation by, or submission of medical records to MPD regarding any off-duty illness or injury for which the inquiry or information was not limited to that which was necessary to aid in approval of requested sick leave or reasonable accommodation, or to determine the employees’ ability to perform the essential functions of their positions (the “Inquiries Class”).

62. Certification of Plaintiffs’ claims for class-wide treatment under Federal Rule of Civil Procedure 23 is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using common proof as would be used to prove those elements in individual actions alleging the same claims.

63. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The Accommodations Class contains a large number of former MPD officers who were forced into disability retirement by Defendants and current MPD officers with disabilities who are being or will be denied reasonable accommodations and subjected to forced disability retirement. The precise number of Class members and their addresses are presently unknown to Plaintiffs but may be ascertained from Defendants' books and records. On information and belief, the number of class members exceeds 40. Class members may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

64. The Inquiries Class contains a large number of current and former MPD officers with and without disabilities who were subjected to improper medical inquiries and examinations likely to elicit information about a disability. The precise number of Class members and their addresses are presently unknown to Plaintiffs but may be ascertained from Defendants' books and records. On information and belief, the number of class members exceeds 1,000. Class members may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

65. **Commonality – Federal Rule of Civil Procedure 23(a)(2).** Common questions of law and fact exist as to all Accommodations and Inquiries Class members and predominate over questions affecting only individual Class members, such as whether Defendants have a policy or practice that forces disability retirement and denies accommodations; whether Defendants have a policy or practice that requires medical inquiries and examinations that are likely to elicit disability information; whether those policies or practices violate federal law; whether Defendants' policies are job-related and consistent with business necessity; and whether Plaintiffs and the other members of the Class are entitled to damages, declaratory relief, injunctive relief, or other equitable relief.

66. Defendants engaged in a common course of conduct based on their adoption and application of the MPD disability retirement policy or practice and the reasonable accommodation policy or practice that gives rise to the legal rights sought to be enforced by Plaintiffs, on behalf of himself and the other Class members. Similar or identical violations of federal law are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

67. Defendants engaged in a common course of conduct based on their adoption and application of the MPD policy requiring notice and medical evaluation of all off-duty illnesses and injuries and requiring submission of medical records. Similar or identical violations of federal law are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

68. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other Accommodations and Inquiries Class members because, among other things, all Class members were comparably injured through Defendants' uniform and discriminatory application of their disability retirement policy and policies requiring notice, evaluation and medical records for off-duty illnesses and injuries. Further, there are no defenses available to Defendants that are unique to Plaintiffs.

69. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other Class members they seek to represent, they have retained counsel competent and experienced in complex class action litigation, and they will prosecute this action vigorously. The Class's interests will be fairly and adequately protected by Plaintiffs and their counsel.

70. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendants have acted or refused to act on grounds that apply generally to Plaintiffs and the other

Accommodations and Inquiries Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Accommodations and Inquiries Classes as a whole.

71. **Predominance and Superiority – Federal Rule of Civil Procedure 23(b)(3).** In addition, common issues of law and fact predominate over questions affecting only individual Accommodations and Inquiries Class members because proof of Defendants’ common systemic policy of civil rights violations will provide the common proof to establish liability against Defendants. By contrast, individual issues, such as compensation available to individual Accommodations Class members, will be determined based primarily on the salary and benefits to which each individual would have been entitled if he or she had not been forcibly retired – a mathematical calculation based on established pay schedules set and made publicly available by Defendants.

72. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for Class members to individually seek redress for Defendants’ wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation would create a potential for inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF

**Violation of Title I of the ADA - Reasonable Accommodations
(On Behalf of Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class)**

73. The allegations contained in the previous paragraphs are incorporated by reference.

74. Title I of the ADA, 42 U.S.C. §§ 12111-117, and its implementing regulation, 29 C.F.R. Part 1630, require covered employers, such as Defendants, to refrain from discriminating against employees with disabilities, including by failing to provide reasonable accommodations to such employees.

75. Defendants have violated Section 102(a) of Title I of the ADA, 42 U.S.C. § 12112(a), by discriminating against Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class on the basis of disability in regard to accommodation, termination, and retirement of employees and other terms, conditions, and privileges of employment.

76. Defendants have violated Section 102(b)(3)(A) of Title I of the ADA, 42 U.S.C. § 12112(b)(3)(A), by utilizing standards, criteria, or methods of administration that have the effect of discriminating against Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class on the basis of disability.

77. Defendants have violated Section 102(b)(5)(A) of Title I of the ADA, 42 U.S.C. § 12112(b)(5)(A), by not making reasonable accommodations for the known physical or mental disabilities of Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class.

78. Reasonable accommodations include, but are not limited to, reassignment to a vacant position when an employee with a disability can no longer perform the essential functions of the employee's position due to a disability, and a vacant position for which the employee is qualified is available. Reasonable accommodations also include restructuring of the duties of a position and extended leave time.

79. Defendants have violated 102(b)(6) of Title I of the ADA, 42 U.S.C. § 12112(b)(6), by using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out Plaintiffs and the Accommodations Class.

80. Plaintiffs and the other aggrieved individuals for whom Plaintiffs seek relief are individuals with disabilities as defined in the ADA.

81. Plaintiffs and the members of the Accommodations Class are or were able, with or without reasonable accommodation, to perform the essential functions of their positions with job restructuring or extended leave, or could have performed the essential functions of a position obtained through reassignment.

82. Defendants failed or refused to provide reasonable accommodations, including but not limited to job restructuring, extended leave, and reassignment, to Plaintiffs and the Accommodations Class.

83. Defendants failed or refused to engage in good faith interactions with Plaintiffs and the Accommodations Class to determine appropriate accommodations.

84. The effect of the implementation of the Defendants' discriminatory policy and practices has been to deprive Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class of equal employment opportunities and otherwise adversely affect their status as employees because of their disabilities.

85. The unlawful employment practices of the Defendants were intentional.

86. Upon information and belief, the unlawful employment practices of the Defendants were done with malice or with reckless indifference to the federally protected rights of Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class.

SECOND CLAIM FOR RELIEF

**Violation of Section 504 of the Rehabilitation Act - Reasonable Accommodations
(On Behalf of Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations
Class)**

87. The allegations contained in the previous paragraphs are incorporated by reference.

88. Defendants have violated Section 504 and its regulations, 28 C.F.R. §§ 41.52-.53, by discriminating against Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class on the basis of disability in regard to accommodation, termination, and retirement of employees and other terms, conditions, and privileges of employment.

89. Defendants have violated Section 504 and its regulations, 28 C.F.R. § 41.52, by utilizing standards, criteria, or methods of administration that have the effect of discriminating against Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class on the basis of disability.

90. Defendants have violated Section 504 and its regulations, 28 C.F.R. § 41.53, by not making reasonable accommodations to the known physical or mental disabilities of Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class.

91. Reasonable accommodations include, but are not limited to, reassignment to a vacant position when an employee with a disability can no longer perform the essential functions of the employee's position due to a disability, and a vacant position for which the employee is qualified is available. Reasonable accommodations also include restructuring of the duties of a position and extended leave time.

92. Defendants have violated Section 504 and its regulations, 28 C.F.R. § 41.54, by using qualification standards, employment tests, or other selection criteria that discriminate against Plaintiffs and the Accommodations Class.

93. Defendants MPD and DC are recipients of federal financial assistance subject to Section 504.

94. Plaintiffs and the members of the Accommodations Class are individuals with disabilities as defined in Section 504.

95. Plaintiffs and the Accommodations Class are or were able, with or without reasonable accommodation, to perform the essential functions of their positions with job restructuring or extended leave, or could have performed the essential functions of a position obtained through reassignment.

96. Defendants failed or refused to provide reasonable accommodations, including but not limited to job restructuring, extended leave, and reassignment, to Plaintiffs and the Accommodations Class.

97. Defendants failed or refused to engage in good faith interactions with Plaintiffs and the Accommodations Class to determine appropriate accommodations.

98. The effect of the Defendants' discriminatory practices has been to deprive Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class of equal employment opportunities and otherwise adversely affect their status as employees because of their disabilities.

99. The unlawful employment policy and implementing practices of Defendants were intentional.

100. Upon information and belief, the unlawful employment practices of the Defendant were done with malice or with reckless indifference to the federally protected rights of Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class.

THIRD CLAIM FOR RELIEF

**Violation of Title I of the ADA - Improper Medical Inquiries
(On Behalf of Mr. Pappas and the Inquiries Class)**

101. The allegations contained in the previous paragraphs are incorporated by reference.

102. Title I of the ADA, 42 U.S.C. §§ 12111-117, and its implementing regulation, 29 C.F.R. Part 1630, prohibit employer requests for employees' medical data, including queries likely to reveal disability-related information, because of Congress' conclusion that such revelations lead to employment discrimination. See 42 U.S.C. § 12112(d)(4). Improper employer questions, examinations, and medical records requests themselves constitute illegal discrimination unless they are job-related and consistent with business necessity. *Id.*

103. Defendants have violated Section 102(d) of Title I of the ADA, 42 U.S.C. § 12112(d), by subjecting Mr. Pappas and the Inquiries Class to improper medical inquiries, examinations, and medical records demands.

104. The unlawful employment practices of Defendants were intentional. Upon information and belief, the unlawful employment practices of Defendants were done with malice or with reckless indifference to the federally protected rights of Mr. Pappas and the Inquiries Class.

FOURTH CLAIM FOR RELIEF

**Violation of Section 504 of the Rehabilitation Act - Improper Medical Inquiries
(On Behalf of Mr. Pappas and the Inquiries Class)**

105. The allegations contained in the previous paragraphs are incorporated by reference.

106. Section 504, 29 U.S.C. § 794, and its implementing regulation, 28 C.F.R. Part 41, prohibit employer requests for employees' medical data, including queries likely to reveal disability-related information.

107. Defendants have violated Section 504 by subjecting Mr. Pappas and the Inquiries Class to improper medical inquiries, examinations, and medical records demands.

108. The unlawful employment practices of the Defendants were intentional.

109. Upon information and belief, the unlawful employment practices of the Defendants were done with malice or with reckless indifference to the federally protected rights of Mr. Pappas and the Inquiries Class.

DEMAND FOR JURY TRIAL

Plaintiffs demands a trial by jury of all claims in this complaint so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Accommodations and Inquiries Classes, respectfully request that the Court enter judgment in their favor and against Defendants, as follows:

I. Claims I and II (on behalf of Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the Accommodations Class)

- A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in employment practices that discriminate on the basis of disability, including but not limited to the implementation of policies to restructure positions when needed to accommodate employees with disabilities, to provide extended leave when needed to accommodate employees with disabilities, and to identify vacant positions and reassign employees with disabilities to vacant positions for which they are qualified without competition for the position, when no accommodation is available in the current job;
- B. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of the unlawful employment practices;

- C. Order Defendants to make whole Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the other members of the Accommodations Class by providing appropriate back pay, front pay, and benefits with prejudgment interest, compensatory damages for past and future pecuniary losses resulting from unlawful employment practices, and other affirmative and equitable relief necessary to eradicate the effects of their unlawful employment practices;
- D. Order Defendants to make whole Mr. Pappas, Ms. Lindsay, Ms. Mathies, Mr. Malik, and the other members of the Accommodations Class by providing compensation for past and future non-pecuniary losses resulting from their unlawful employment practices, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial;
- E. Grant such further relief as the Court deems necessary and proper in the public interest; and
- F. Award Plaintiffs' attorneys' fees and costs.

II. Claims III and IV (on behalf of Mr. Pappas and the Inquiries Class)

- A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them from engaging in employment practices which discriminate on the basis of disability, including but not limited to the implementation of policies to refrain from requiring notices, medical evaluations, and medical records that are likely to elicit disability-related information unless they are job-related and consistent with business necessity;
- B. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for qualified individuals with disabilities,

and that eradicate the effects of the unlawful medical inquiry and examination practices;

- C. Order Defendants to make whole Mr. Pappas and the other members of the Inquiries Class by providing appropriate back pay, front pay, and benefits with prejudgment interest, compensatory damages for past and future pecuniary losses resulting from unlawful medical inquiry and examination practices, and other affirmative and equitable relief necessary to eradicate the effects of their unlawful medical inquiry and examination practices;
- D. Order Defendants to make whole Mr. Pappas and the other members of the Inquiries Class by providing compensation for past and future non-pecuniary losses resulting from their unlawful medical inquiry and examination practices, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial;
- E. Grant such further relief as the Court deems necessary and proper in the public interest; and
- F. Award Plaintiffs' attorneys' fees and costs.

Dated: December 12, 2019

Respectfully submitted,

/s Eve Hill

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