

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

STEVE PAPPAS,)
3331 Diamond Falls Circle)
Land O Lakes, Florida 34638)

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.)

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)

ROBERT J. CONTEE III, 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.: 19-2800 (RC)
JURY TRIAL DEMANDED**

THIRD AMENDED COMPLAINT

Plaintiffs Steve Pappas, Tawana Lindsay, Nichole Mathies, and Malachi Malik, on behalf of themselves and all others similarly situated, file this Third Amended Complaint against Defendants the District of Columbia (“DC”) and Robert J. Contee III (“Contee”), in his official

capacity as Chief of Police of the Metropolitan Police Department of DC (“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.* Plaintiff Pappas additionally brings this class action under Section 504 of the Rehabilitation Act of 1973 (“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. Plaintiffs allege that Defendants violated the ADA, and Plaintiff Pappas alleges Defendants violated Section 504, by implementing a policy or practice of forcing employees with disabilities who spend 172 cumulative workdays over a two-year period in less than full-duty status into disability retirement, with no possibility of reasonable accommodation by reassignment, job restructuring, or extended leave (the “Forced Retirement Policy”).

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

JURISDICTION AND VENUE

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

6. 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.

7. 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

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

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

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

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

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

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

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

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

16. At all relevant times, Defendants were recipients of federal financial assistance. At all relevant times, Defendants were covered entities under Section 504, 29 U.S.C. § 794.

FACTUAL ALLEGATIONS

Allegations Common to All Plaintiffs

17. At all relevant times, Defendants maintained a blanket policy or practice that mandates retirement for MPD officers who cannot resume full-duty status after 172 cumulative workdays over any 24-month period as a result of any disability, with no possibility of reassignment, job restructuring, or extended leave (“Forced Retirement Policy”). MPD General Order 100.11.L.

18. According to MPD’s written policy, disability retirement is mandatory for those injured off-duty “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.”

19. Where the officer’s disability occurs during the performance of duty, MPD may authorize additional time beyond the 172-day period 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.

20. Upon information and belief, it was common knowledge amongst MPD officers that, upon expiration of the 172-day period, an officer with a disability who had not been cleared for full duty would be forced into retirement pursuant to the Forced Retirement Policy.

21. The Police and Fire Clinic (the “MPD Clinic”) implements the Forced Retirement Policy by referring MPD officers who reach the 172-day period to the Police and Firefighters’ Retirement and Relief Board (“Retirement Board”) for forced retirement.

22. The MPD Clinic is staffed by doctors who evaluate MPD officers on behalf of MPD. At all relevant times, Defendants’ policy, MPD General Order 100.11.V.B, required and continues to require MPD officers to report to the Clinic for “medical evaluation” whenever they

experience any “off-duty injury/illness.” That policy also requires MPD officers who are injured on-duty to seek treatment at the MPD Clinic in non-emergency situations.

23. On behalf of MPD, the MPD Clinic determines whether officers are qualified for sick leave, able to serve in a limited-duty capacity, or able to work in a full-duty capacity.

24. If the 172-day period expires for a particular MPD officer, the MPD Clinic, on behalf of MPD, submits a memorandum to the Retirement Board explaining why, in its view, the MPD officer should be forced to retire due to disability.

25. The Retirement Board then holds a hearing in order to make a final determination of the terms of the retirement, including what retirement benefits the officer may receive.

26. The Retirement Board is composed of several individuals, including an MPD representative and a representative from the DC Department of Human Resources.

27. At the Retirement Board hearing, an MPD Clinic physician testifies on behalf of MPD and explains why, in MPD’s view, the officer is not able to return to work in a full-duty capacity and, for that reason, must be retired pursuant to the Forced Retirement Policy.

28. MPD did not develop procedures pursuant to which MPD officers could request reasonable accommodations for disabilities pursuant to the ADA and Section 504 until June 2017.

Plaintiff Pappas

29. In or around May 2013, while employed as a law enforcement officer by MPD, Mr. Pappas was diagnosed with congestive heart failure by his physician.

30. 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.

31. MPD Clinic doctors placed Mr. Pappas on sick leave for approximately six months. During that period, Mr. Pappas had periodic check-up appointments with the MPD Clinic so as to inform MPD Clinic doctors as to his recovery.

32. After approximately six months on sick leave, the MPD Clinic cleared Mr. Pappas to return to work in a limited-duty capacity, and MPD then assigned Mr. Pappas to a limited-duty position.

33. Mr. Pappas told his superior officer and other MPD colleagues that he was working in a limited-duty position because he had a heart issue from which he was still recovering.

34. While on limited duty, and on his own initiative, Mr. Pappas applied for a civilian position within MPD. Mr. Pappas informed a superior officer that he had applied for this position.

35. On his own initiative, Mr. Pappas also arranged to meet with the MPD supervisor responsible for filling the position to which Mr. Pappas had applied.

36. During that meeting, Mr. Pappas told the supervisor that he had applied for the position because he worried that MPD would force him to retire pursuant to the Forced Retirement Policy.

37. Mr. Pappas also conveyed to this MPD supervisor that he wanted to continue to work at MPD and did not want to be forced into retirement.

38. Although he was qualified for the position and would have been able fully to perform its essential duties without accommodations, Mr. Pappas did not receive an interview.

39. While on limited duty, Mr. Pappas told superior officers that he wished to continue working for MPD and did not wish to retire.

40. But Mr. Pappas knew, and other officers knew, that once the 172-day allotment expired, MPD forced officers to retire. Mr. Pappas had no expectation that he would be allowed to keep working in a limited-duty capacity if he needed more than 172 days to recover.

41. The prospect of being forced into retirement despite his desire to keep working for MPD caused Mr. Pappas to suffer from depression, anxiety, and stress.

42. Pursuant to the Forced Retirement Policy, after 172 workdays in less than full-duty status, Mr. Pappas was required to appear before the Retirement Board for a hearing and final determination as to whether he would be retired due to disability and the terms of that retirement.

43. In advance of the hearing, Mr. Pappas submitted to MPD a doctor's report from October 17, 2014, which stated that he was hopeful Mr. Pappas would normalize within six months (by April 17, 2015).

44. Nonetheless, in or around March 6, 2015, MPD involuntarily retired Mr. Pappas expressly on the basis of disability.

45. MPD never offered to accommodate Mr. Pappas by restructuring his position, authorizing additional leave, or permitting him to continue in a limited duty position.

46. MPD did not engage in the interactive process or make efforts to determine if there were positions available within MPD or within DC government for which Mr. Pappas was qualified as a reasonable accommodation.

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

Plaintiff Lindsay

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

49. 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.

50. Ms. Lindsay also filled out relevant MPD paperwork on September 4, 2014, explaining that her doctor had advised her to wear a walking boot as part of her treatment.

51. While on limited duty, Ms. Lindsay had appointments with the MPD Clinic in order to provide the MPD Clinic with updates on her progress and documentation from her doctor.

52. On February 24, 2015, Ms. Lindsay underwent foot and ankle surgery to repair her fallen arch and was subsequently placed on sick leave by the MPD Clinic. On or around April 28, 2015, the MPD Clinic cleared Ms. Lindsay to return to her limited-duty assignment.

53. In May 2015, the MPD Clinic recommended that the Retirement Board consider Ms. Lindsay for retirement pursuant to the Forced Retirement Policy.

54. 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 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.

55. 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.

56. 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.

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

Plaintiff Mathies

58. On or about August 4, 2014, while employed by MPD and on duty, Ms. Mathies injured her ankle. She informed her superior officers of her injury the same day it occurred.

59. On or about August 5, 2014, Ms. Mathies was treated by MPD Clinic doctors, who diagnosed her with a high ankle sprain and recommended physical therapy. The MPD Clinic then placed Ms. Mathies on sick leave.

60. After approximately one month of physical therapy, Ms. Mathies had an MRI, which revealed she would need surgery.

61. 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. As a result, Ms. Mathies was on sick leave while she recovered from these surgeries.

62. Ms. Mathies told a doctor working at the MPD Clinic that she did not want to be retired. In response, the doctor noted that MPD maintained a 172-day Forced Retirement Policy and did not mention any other options that would enable Ms. Mathies to continue working at MPD.

63. In or around May 1, 2015, the MPD Clinic recommended Ms. Mathies for disability retirement pursuant to the Forced Retirement Policy.

64. Ms. Mathies received a notice from MPD indicating that she would have a hearing before the Retirement Board prior to her retirement, but that notice did not mention any other policies or procedures for requesting or receiving accommodations.

65. Despite Ms. Mathies' 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, pursuant to the Forced Retirement Policy.

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

67. 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.

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

Plaintiff Malik

69. In June of 2016, Mr. Malik injured his back while on duty at a community outreach event. Soon after the injury occurred, Mr. Malik informed his superior officer that he had injured his back and filled out an MPD form in order to document the injury.

70. Mr. Malik then promptly visited the MPD Clinic for evaluation.

71. In light of his back injury, the MPD Clinic placed Mr. Malik on sick leave, and he remained on sick leave until he had surgery in November 2016. Mr. Malik then spent additional time on sick leave while he recovered from back surgery.

72. Mr. Malik returned to work in a limited-duty capacity in or around February or March of 2017.

73. After Mr. Malik had back surgery, Malik's preexisting heart condition, of which MPD was aware, was aggravated. When he returned to work in a limited-duty capacity, Mr. Malik informed MPD colleagues about his aggravated heart condition. In addition, the effects of the heart aggravation were apparent to MPD, because, while on limited duty, Mr. Malik wore an external "Life Vest" on his body for three months that monitored his heart.

74. A cardiologist examined him and informed him that he needed a defibrillator. MPD Clinic physicians informed Mr. Malik that after the defibrillator was installed, he would no longer be eligible to work for MPD.

75. Mr. Malik underwent heart surgery to install a defibrillator in September 2017. The MPD Clinic placed him on sick leave post-surgery and Mr. Malik reported to the MPD Clinic periodically to provide updates.

76. The MPD Clinic recommended that Mr. Malik be retired pursuant to the Forced Retirement Policy, and a Retirement Board hearing was held on or around January 11, 2018.

77. At the hearing, Mr. Malik expressed his desire to continue to work for MPD.

78. 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 disabilities on June 25, 2018, pursuant to the Forced Retirement Policy.

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

80. 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.

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

Conditions Precedent to the Lawsuit

82. 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.

83. 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

84. Plaintiffs bring Count I, 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 at any time between December 9, 2014, and the date that class certification is granted who developed a physical or mental disability and were referred to the Police and Firefighters Retirement Relief Board (“Retirement Board”) for disability retirement even though Defendants never determined their suitability for extended leave, job restructuring, and reassignment and who were disability retired or whose Retirement Board decision remains pending (the “Class”).

85. Plaintiffs Steve Pappas, Tawana Lindsay, and Nichole Mathies seek to represent a subclass of all Class Members who were disability retired as MPD sworn law enforcement officers between December 9, 2014 and June 30, 2017 (“Subclass 1”).

86. Plaintiff Malachi Malik seeks to represent a subclass of all Class Members who were referred for disability retirement between July 1, 2017 and the date that class certification is granted and who were disability retired or whose Retirement Board decision remains pending (“Subclass 2”).

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

88. Plaintiff Steve Pappas also brings Count II on behalf of himself.

89. 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.

90. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The Class and the Subclasses contain 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. 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.

91. **Commonality – Federal Rule of Civil Procedure 23(a)(2).** Common questions of law and fact exist as to all Class (and Subclasses) 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 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 (and Subclasses) are entitled to damages, declaratory relief, injunctive relief, or other equitable relief.

92. Defendants engaged in a common course of conduct based on their adoption and application of the MPD Forced 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 themselves and the other Class and Subclass 1 & 2 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.

93. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other Class (and Subclass 1 & 2) members because, among other things, all Class (and Subclass 1 & 2) members were comparably injured through Defendants' uniform and discriminatory application of their Forced Retirement policy and failures to provide reasonable accommodations of reassignment, job restructuring, and extended leave. Further, there are no defenses available to Defendants that are unique to Plaintiffs.

94. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate Class representatives (and Steve Pappas, Tawana Lindsay, and Nichole Mathies are adequate Subclass 1 representative and Malachi Malik is an adequate Subclass 2 representative) because their interests do not conflict with the interests of the other Class (and Subclass 1 & 2) 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.

95. **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 Class (and Subclass 1 & 2) members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Class (and Subclass 1 & 2) as a whole.

96. **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 Class (and Subclass 1 & 2) 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 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.

97. 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 (and Subclass 1 & 2) 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 (and Subclass 1 & 2) 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 Class)

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

99. 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.

100. 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

Class on the basis of disability in regard to accommodation, termination, and retirement of employees and other terms, conditions, and privileges of employment.

101. 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 Class on the basis of disability.

102. 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 Class.

103. 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.

104. 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 Class.

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

106. Plaintiffs and the members of the 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.

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

108. Defendants failed or refused to engage in good faith interactive processes with Plaintiffs and the Class to determine appropriate accommodations.

109. 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 Class of equal employment opportunities and otherwise adversely affect their status as employees because of their disabilities.

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

111. 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 Class.

SECOND CLAIM FOR RELIEF

Violation of Section 504 of the Rehabilitation Act - Reasonable Accommodations (On Behalf of Mr. Pappas)

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

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

114. 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 on the basis of disability.

115. 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.

116. 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.

117. 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 Mr. Pappas.

118. Defendants are recipients of federal financial assistance subject to Section 504.

119. Mr. Pappas is an individual with disabilities as defined in Section 504.

120. Mr. Pappas was able, with or without reasonable accommodation, to perform the essential functions of his position with job restructuring or extended leave, or could have performed the essential functions of a position obtained through reassignment.

121. Defendants failed or refused to provide reasonable accommodations, including but not limited to job restructuring, extended leave, and reassignment, to Mr. Pappas.

122. Defendants failed or refused to engage in good faith interactive processes with Mr. Pappas to determine appropriate accommodations.

123. The effect of the Defendants' discriminatory practices has been to deprive Mr. Pappas of equal employment opportunities and otherwise adversely affect his status as an employee because of his disability.

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

125. 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.

DEMAND FOR JURY TRIAL

Plaintiffs demand 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 Class, respectfully request that the Court enter judgment in their favor and against Defendants, as follows:

I. Claims I and II (on behalf of All Plaintiffs and the 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 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 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.

Dated: January 9, 2023

Respectfully submitted,

/s Eve Hill

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