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11
12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE DISTRICT OF ALASKA

14 U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)

15)
16 Plaintiff,)

17 v.)

18 CLUB DEMONSTRATION)
SERVICES, INC.,)

19 Defendant.)

Case No.

20
21 **COMPLAINT
AND JURY DEMAND**

22 (Title I of the Americans with Disabilities Act, as amended, 42 U.S.C. §§ 12111–12117)

23 NATURE OF THE ACTION

24 This is an action under Title I of the Americans with Disabilities Act, as amended,

1 42 U.S.C. § 12101 *et seq.* (“ADA”), and Title I of the Civil Rights Act of 1991, Pub. L.
2 102-166, to correct unlawful employment practices on the basis of disability and to
3 provide appropriate relief to Terry Baker, who is adversely affected by such practices.
4 Plaintiff, the United States Equal Employment Opportunity Commission (“EEOC”)
5 alleges that Defendant, Club Demonstration Services, Inc. (“Defendant”), violated the
6 ADA when CDS: (1) did not make reasonable accommodations to the known physical
7 limitations of Baker, an otherwise qualified individual with a disability, and
8 (2) constructively discharged Baker from her employment on the basis of her disability.

9 JURISDICTION AND VENUE

10 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
11 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a)
12 of the ADA, as amended, 42 U.S.C. § 12117(a), which incorporates by reference Sections
13 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended,
14 42 U.S.C. § 2000e-5(f)(1), (3); and Section 102 of the Civil Rights Act of 1991, 42
15 U.S.C. § 1981a.

16 2. The employment practices alleged to be unlawful were committed within
17 the jurisdiction of the United States District Court for the District of Alaska.

18 PARTIES

19 3. Plaintiff, the United States Equal Employment Opportunity Commission, is
20 the agency of the United States of America charged with the administration,
21 interpretation and enforcement of Title I of the ADA, and is expressly authorized to bring
22 this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by
23 reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1), (3).

24 4. At all relevant times, Defendant, Club Demonstration Services, Inc., has

1 been a Connecticut corporation employing more than 500 employees in each of twenty
2 (20) or more weeks in 2017, registered with the State of Alaska, and doing business in the
3 City and Borough of Juneau, Alaska.

4 5. At all relevant times, Defendant has continuously been an employer
5 engaged in an industry affecting commerce under Sections 101(2) of the ADA, 42 U.S.C.
6 § 12111(2), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by
7 reference Sections 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g)–(h).

8 6. At all relevant times, Defendant has been a covered entity under Section
9 101(2) of the ADA, 42 U.S.C. § 12111(2).

10 ADMINISTRATIVE PROCEDURES

11 7. More than thirty (30) days prior to the institution of this lawsuit, Baker filed
12 a charge of discrimination with the EEOC alleging that Defendant denied her reasonable
13 accommodation of her disability and constructively discharged her on the basis of
14 disability, in violation of the ADA.

15 8. By letter dated December 20, 2018, the EEOC issued to Defendant a
16 Determination finding, *inter alia*, that Defendant denied Baker reasonable
17 accommodation of her disability and constructively discharged her on the basis of
18 disability, in violation of the ADA, and invited Defendant to join with the EEOC in
19 informal methods of conciliation to endeavor to eliminate the discriminatory practices
20 and provide appropriate relief.

21 9. The EEOC engaged in communications with Defendant to provide
22 Defendant the opportunity to remedy the discriminatory practices described in the
23 Determination.

24 10. The EEOC was unable to secure from Defendant a conciliation agreement

1 acceptable to the EEOC.

2 11. By letter dated March 18, 2019, the EEOC issued to Defendant a Notice of
3 Failure of Conciliation, notifying Defendant of the EEOC's determination that efforts to
4 conciliate Baker's charge had been unsuccessful and that further conciliation efforts
5 would be futile or non-productive.

6 12. All conditions precedent to the institution of this lawsuit have been
7 fulfilled.

8 STATEMENT OF CLAIMS

9 13. Since at least June 14, 2017, Defendant has engaged in unlawful
10 employment practices in violation of Section 102(a) of Title I of the ADA, 42 U.S.C.
11 § 12112(a). Defendant discriminated against Baker when it did not make reasonable
12 accommodation to her known physical limitations and when it constructively discharged
13 her from her employment on the basis of disability, in violation of Section 102(a) of the
14 ADA.

15 14. Baker is a qualified individual with a disability who, under Sections 3 and
16 101(8) of the ADA, 42 U.S.C. §§ 12102, 12111(8), can perform the essential functions of
17 Defendant's position of part time sales advisor with reasonable accommodation:

18 a. Since 2015, when a nerve was severed during surgery for spinal
19 stenosis, Baker has had neurogenic bladder and history of cauda equina
20 syndrome, which cause urinary incontinence. These conditions
21 substantially limited the operation of Baker's major bodily function of
22 bladder function, and substantially limited the major life activities of
23 standing, walking, and riding transportation.

24 b. Due the resulting urinary incontinence, Baker had to make frequent

1 use of the restroom to empty her bladder and/or change into a clean pair of
2 diapers.

3 c. Baker was qualified for the part time sales advisor position, as
4 demonstrated by CDS's continued employment of her from May 2016 until
5 September 2017.

6 d. The essential job functions of a part time sales advisor employed by
7 CDS are to demonstrate and explain products to members of Costco
8 Warehouse Corporation ("Costco"), answer Costco member questions
9 about the products, and to prepare, transport, and clean the carts used for
10 the demonstrations.

11 e. Baker was and is able to perform these essential job functions with
12 the reasonable accommodation of bathroom breaks as needed.

13 15. Baker began working for Defendant on or about May 6, 2016 at Costco
14 Warehouse 107 in Juneau, Alaska.

15 16. From May 2016 until approximately June 2017, Baker took bathroom
16 breaks as needed to use the toilet and/or change into a clean pair of diapers due to the
17 urinary incontinence caused by her condition of neurogenic bladder and cauda equina
18 syndrome.

19 17. In or around June 2017, Baker's manager informed Baker and her co-
20 workers that they were no longer permitted to use the bathroom other than during their
21 lunch break or their scheduled 15-minute break.

22 18. On or shortly after June 6, 2017, Baker submitted a doctor's note to
23 Defendant requesting that Baker be allowed to use the restroom as much as needed due to
24 a medical condition.

1 19. On or about June 14, 2017, the doctor’s note was routed to Defendant’s
2 Human Resources Generalist (“HRG”) for the North West – Alaska region.

3 20. Later that same day, the HRG wrote a letter to Baker, stating that that
4 Defendant was “unable to provide [her] with an accommodation at this time because it
5 would pose an undue hardship to the company and/or necessitate the elimination of
6 essential job functions of [her] position.”

7 21. Defendant did not engage in an interactive process with Baker or propose
8 an alternative accommodation before issuing this letter denying her request for
9 accommodation.

10 22. Taking bathroom breaks as she needed to due to her disability would not
11 have prevented Baker from fulfilling the essential functions of her job. A bathroom
12 break takes only a few minutes including the time to secure her demonstration, so even a
13 number of such breaks per shift would not have prevented Baker from promoting and
14 explaining products to Costco members, answering their questions, and preparing,
15 transporting, or cleaning her demonstration cart. This is demonstrated by, among other
16 things, Baker satisfactorily fulfilling her duties from May 2016 until her manager
17 implemented the bathroom policy in or around June 2017.

18 23. Because Defendant did not make reasonable accommodation to Baker’s
19 disability, Baker was forced to wear multiple diapers at a time to avoid leaking urine on
20 the floor when she wet herself, and even then, on occasion, her diapers became so
21 saturated that urine leaked, but she could not change them until a scheduled break. In
22 addition, Baker would not drink anything during her shift to avoid exacerbating the
23 problem, against her doctor’s advice to drink water regularly.

24 24. It was physically uncomfortable and deeply humiliating to Baker to be

1 forced to work in wet diapers.

2 25. On or about July 8, 2017, Baker complained to Defendant that her request
3 for accommodation had been denied.

4 26. Baker's complaint was routed to the same Human Resources Generalist that
5 had denied her request for accommodation.

6 27. On or about July 10, 2017, in anticipation of a procedure that she hoped
7 would enable her to self-catheterize, Baker inquired with the HRG about the possibility
8 of bathroom breaks every two (2) hours, which might lessen the physical discomfort and
9 humiliation she had to endure until she was able to self-catheterize.

10 28. On or about July 11, 2017, Defendant's HRG verbally reiterated to Baker
11 that she would not be accommodated.

12 29. On or about July 14, 2017, Baker nonetheless submitted a doctor's note
13 requesting bathroom breaks every two (2) hours, which specifically noted that she had an
14 upcoming appointment that might result in a decrease in the frequency with which she
15 would need to use the bathroom, a reference to the possibility that Baker might soon be
16 able to self-catheterize.

17 30. On or about July 27, 2017, Defendant's HRG informed Baker in writing
18 that Defendant would not accommodate her.

19 31. Nonetheless, in or around August 2017, in anticipation of being able self-
20 catheterize, Baker worked with her manager such that her manager would give Baker the
21 first break available, which gave her a break approximately every two hours and lessen
22 the physical discomfort and humiliation she had to endure until she was able to self-
23 catheterize.

24 32. Baker's manager knew that this arrangement was ineffective in preventing

1 Baker from wetting herself, and nonetheless did not to give her permission to take
2 additional bathroom breaks.

3 33. Over time, Baker's manager increasingly failed to provide even this
4 informal arrangement, failing to give Baker the first break available which forced Baker
5 to work longer than two hours between bathroom breaks.

6 34. Baker was not able to able self-catheterize as soon as she had expected, and
7 she had no choice but to keep wearing diapers and continue to wet herself at work
8 through September 2017.

9 35. Due to the multiple written denials she received from Defendant's HRG,
10 Baker knew that it would be futile to again request a reasonable accommodation of
11 bathroom breaks as needed.

12 36. Baker had competently, diligently, and reasonably sought reasonable
13 accommodation of her disability for over three (3) months, all while continuing to fulfill
14 her job duties despite the extraordinary and egregious circumstances of being forced to
15 work through the physical discomfort and deep humiliation of wearing urine-soaked
16 diapers.

17 37. By September 19, 2017, Baker could no longer endure these extraordinary
18 and egregious working conditions.

19 38. On or about September 20, 2017, Baker submitted a doctor's note to
20 Defendant stating that Baker could not continue working for Defendant without more
21 frequent restroom breaks.

22 39. At the time she submitted this note, Defendant did not inform Baker that
23 she could request medical leave in lieu of discharge.

24 40. Defendant terminated Baker's employment effective September 24, 2017.

1 employees, attorneys, all persons in active concert or participation with it, and successors,
2 from engaging in any employment practice that discriminates based on disability.

3 B. Order Defendant to institute and carry out policies, practices, and programs
4 which provide equal employment opportunities for qualified individuals with disabilities,
5 and which eradicate the effects of its past and present unlawful employment practices.

6 C. Order Defendant to make Baker whole by providing appropriate back pay
7 with prejudgment interest, in amounts to be determined at trial, and other affirmative
8 relief necessary to eradicate the effects of its unlawful employment practices described in
9 in paragraphs 13 through 47 above, including reinstatement of Baker with the reasonable
10 accommodation of bathroom breaks as needed.

11 D. Order Defendant to make Baker whole by providing compensation for past
12 and future pecuniary losses resulting from the unlawful employment practices described
13 in paragraphs 13 through 47 above, in amounts to be determined at trial.

14 E. Order Defendant to make Baker whole by providing compensation for past
15 and future non-pecuniary losses resulting from the unlawful employment practices
16 described in paragraphs 13 through 47 above, including emotional pain, suffering,
17 inconvenience, mental anguish, and other nonpecuniary losses, in amounts to be
18 determined at trial.

19 F. Order Defendant to pay punitive damages for its malicious and reckless
20 conduct, as described in paragraphs 13 through 47 above, in amounts to be determined at
21 trial.

22 G. Grant such further relief as the Court deems necessary and proper to the
23 public interest.

24 H. Award the EEOC its costs of this action.

1 JURY TRIAL DEMAND

2 The EEOC requests a jury trial on all questions of fact raised by this Complaint.

3
4 DATED May 8, 2019.

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