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7 **UNITED STATES DISTRICT COURT**
 8 **NORTHERN DISTRICT OF CALIFORNIA**

9 U.S. EQUAL EMPLOYMENT OPPORTUNITY
 10 COMMISSION,

Case No.:

11 Plaintiff,

COMPLAINT

12 vs.

JURY TRIAL DEMAND

13 DIGNITY HEALTH, d/b/a MERCY MEDICAL
 14 CENTER, REDDING

15 Defendant.

16 **NATURE OF THE ACTION**

17 This is an action under Title I of the Americans with Disabilities Act of 1990, as amended
 18 (ADA), and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the
 19 basis of disability and to provide appropriate relief to Alina Sorling. As alleged with greater
 20 particularity in the Statement of Claims below, Defendant, Dignity Health d/b/a Mercy Medical
 21 Center, Redding, violated the ADA by subjecting Sorling, a blind employee, to disability
 22 discrimination when it failed to provide readily available reasonable accommodations that would
 23 have enabled her to return to a Food Service Technician position that she held successfully for ten
 24 years prior to becoming disabled. Defendant also violated the ADA by relying on discriminatory
 25 qualification standards that unlawfully screened Sorling out of employment opportunities. As a
 26 result, Defendant discriminatorily terminated Sorling's employment.

27 **JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This

1 action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act
2 of 1990 (ADA), 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of
3 Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e-5(f)(1) and (3) and pursuant
4 to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

5 2. Defendant's corporate headquarters is in San Francisco, CA, which is within the jurisdiction
6 of the United States District Court for the Northern District of California.

7 **PARTIES**

8 3. Plaintiff, the Equal Employment Opportunity Commission (EEOC or Commission), is the
9 federal agency charged with the administration, interpretation, and enforcement of Title I of the
10 ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §
11 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §
12 2000e-5(f)(1) and (3).

13 4. At all relevant times, Defendant Dignity Health has been operating Mercy Medical Center,
14 an acute care hospital, in Redding, CA. At all relevant times, Defendant has continuously been an
15 employer engaged in an industry affecting commerce under Sections 101(5) and 101(7) of the ADA,
16 42 U.S.C. § 12111(5), (7).

17 5. At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA,
18 42 U.S.C. § 12111(2).

19 **ADMINISTRATIVE PROCEDURES**

20 6. More than thirty days prior to the institution of this lawsuit, Alina Sorling filed a charge with
21 the Commission alleging that Defendant discriminated against her in violation of the ADA.

22 7. By letter dated October 17, 2017, the Commission issued to Defendant a Determination
23 finding reasonable cause to believe that Defendant violated the ADA.

24 8. On November 8, 2017, the EEOC invited Defendant to join with the EEOC in informal
25 methods of conciliation to endeavor to eliminate the discriminatory practices and provide
26 appropriate relief.

27 9. The EEOC communicated with Defendant to provide Defendant the opportunity to remedy

1 the discriminatory practices described in the EEOC's Determination letter.

2 10. The EEOC was unable to secure from Defendant a conciliation agreement acceptable to the
3 Commission.

4 11. By letter dated April 19, 2018, the EEOC issued to Defendant notice that efforts to conciliate
5 were unsuccessful and that further conciliation efforts would be futile or non-productive.

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

7 **STATEMENT OF CLAIMS**

8 13. Alina Sorling began working for Defendant as a Food Service Technician in the Nutrition
9 Service Department on February 23, 2004.

10 14. Upon hire, Defendant administered physical tests to measure Sorling's endurance.
11 Defendant did not test Sorling's vision. During her ten-year tenure as a Food Service Technician,
12 Defendant never tested Sorling's vision.

13 15. The Nutrition Services Department employs Food Service Technicians in the cafeteria at
14 Mercy Medical Center to perform various jobs, including patient and visitor food preparation,
15 cleaning and sanitizing equipment and the cafeteria, dishwashing, and/or operating the cash register.

16 16. For ten years, Sorling successfully worked in various Food Service Technician positions.
17 Sorling worked in positions involving, among other tasks, grilling food, operating the cash register
18 and stocking and cleaning the cafeteria.

19 17. In or around February 2014, Sorling lost almost all vision in both eyes due to an illness.

20 18. Since at least February 2014, Sorling has been substantially limited in major life activities,
21 including but not limited to, seeing.

22 19. Since at least January 2015, Sorling has been a qualified individual with a disability under
23 sections 3 and 101(8) of the ADA, 42 U.S.C. §§ 12102 and 12111(8).

24 20. Beginning in or around February 2014, Sorling was on unpaid leave to rehabilitate after her
25 illness. During her leave, Sorling worked with the California Department of Rehabilitation Services
26 (DOR) to adapt to her disability.

27 21. Since at least June 2014, the DOR has provided training and tools to assist Sorling to live

1 independently, including nonvisual techniques to work safely in a kitchen and food service
2 environments.

3 22. Respondent has known that Sorling is blind since at least January 2015.

4 23. In or around January 2015, Sorling first met with Defendant representatives about returning
5 to work as a Food Service Technician.

6 24. In or around February 2015, Sorling met with Defendant's HR Director and Nutrition
7 Department Director to discuss reassuming a Food Service Technician position, including two open
8 positions.

9 25. During a February 2015 meeting with Defendant's representatives, Sorling confirmed that
10 her doctor did not medically restrict her ability to return to work.

11 26. As early as February 2015, Sorling explained to Defendant that the DOR provided tools and
12 devices that enabled Sorling to function in her home kitchen and that the DOR would also help to
13 facilitate her return to work.

14 27. As early as February 2015, Sorling asked Defendant to allow the DOR to provide an analyst
15 to perform a workplace assessment to recommend job-specific accommodations. Sorling informed
16 Defendant that the DOR would pay for the analyst.

17 28. In or around March 2015, Defendant denied Sorling's request to allow the DOR-funded
18 analyst to perform a workplace accommodation assessment. Defendant offered no alternatives to the
19 workplace assessment.

20 29. Between February and May 2015, Sorling notified Defendant about potential
21 accommodations that would enable her to perform the essential functions of the Food Service
22 Technician position, including, but not limited to, a talking digital thermometer, a talking cash
23 register, a bar code scanner, a talking credit card terminal, and an iPhone enabled with software
24 applications for item recognition. She also suggested that Defendant speak directly with the DOR
25 analyst to learn about additional accommodations.

26 30. Accommodations existed, additional to those proposed by Sorling, that would have enabled
27 her to safely perform the essential functions of a Food Service Technician position, such as hot oil

1 guards, raised markers for the oven dial to indicate the temperature setting, a talking meat
2 thermometer, a talking food scale, a talking microwave oven, and a microwave oven marked in
3 braille.

4 31. Defendant rejected Sorling's proposals and did not propose any alternatives to accommodate
5 Sorling.

6 32. Defendant failed to engage in a good faith interactive process to identify and failed to
7 implement a myriad of reasonable accommodations that would have enabled Sorling to perform the
8 essential functions of the Food Service Technician position.

9 33. By letter dated June 9, 2015, Defendant informed Sorling that they could not accommodate
10 her based on her vision impairment and terminated her employment.

11 34. Defendant failed to accommodate Sorling so she could either reassume the Food Service
12 Technician position or be reassigned to another vacant position for which she was qualified, in
13 violation of Sections 102 (a) and (b)(5)(A) of Title I of the ADA, 42 U.S.C. §§ 12112(a) and
14 (b)(5)(A).

15 35. Since at least January 2015, Defendant has claimed that it requires accurate near and far
16 vision, defined as 20/40 vision for the Food Service Technician position.

17 a. Defendant's vision requirement is a standard or criteria that has the effect of
18 discriminating on the basis of disability in violation of Sections 102(a) and
19 102(b)(3)(A) of Title I of the ADA, 42 U.S.C. §§ 12112(a), (b)(3)(A).

20 b. Defendant's vision requirement is a qualification standard, employment test, or other
21 selection criteria that screens out or tends to screen out individuals with disabilities
22 and is not job-related and consistent with business necessity in violation of Sections
23 102(a) and 102(b)(6) of Title I of the ADA, 42 U.S.C. §§ 12112(a) and (b)(6).

24 36. Defendant's 20/40 vision requirement is a qualification standard for the Food Service
25 Technician position that Sorling could not meet because of her disability. Defendant's imposition of
26 the 20/40 vision requirement was not job-related or consistent with business necessity. Defendant
27 violated Sections 102(a) and 102(b)(3)(A) and (b)(6) of Title I of the ADA, 42 U.S.C. §§ 12112(a)

1 and 12112(b)(3)(A) and (b)(6), when it terminated Sorling's employment because she does not have
2 20/40 vision.

3 37. Defendant discharged Sorling because of her disability in violation of Section 102(a) of Title
4 I of the ADA, 42 U.S.C. § 12112(a) by:

- 5 a. Applying the 20/40 vision requirement selectively to Sorling when she presented as a
6 blind employee seeking to reassume her role as a Food Service Technician, while not
7 applying the same vision requirement to sighted employees; and
8 b. Concluding that Sorling's vision impairment prevented her from safely performing
9 the essential functions of any position at Defendant despite the availability of
10 reasonable and effective accommodations

11 38. The effect of the practices complained of in paragraphs 13 through 37 above has been to
12 deprive Alina Sorling of equal employment opportunities and otherwise adversely affect her status
13 as an employee because of her disability.

14 39. The unlawful employment practices complained of in paragraphs 13 through 37 above were
15 intentional.

16 40. The unlawful employment practices complained of in paragraphs 13 through 37 above were
17 done with malice or with reckless indifference to the federally protected rights of Alina Sorling.

18 **PRAYER FOR RELIEF**

19 Wherefore the Commission respectfully requests that this Court:

- 20 A. Grant a permanent injunction enjoining Dignity Health, its officers, servants, employees,
21 attorneys, all persons in active concert or participation with it, and successors, from engaging
22 in any employment practice that discriminates on the basis of disability.
23 B. Order Dignity Health to institute and carry out policies, practices, and programs which
24 provide equal employment opportunities for qualified individuals with disabilities, and which
25 eradicate the effects of its past and present unlawful employment practices.
26 C. Order Dignity Health to make whole Alina Sorling by providing appropriate back pay with
27 prejudgment interest, in amounts to be determined at trial, and other affirmative relief

1 necessary to eradicate the effects of its unlawful employment practices, including but not
2 limited to front pay.

3 D. Order Defendant to make whole Alina Sorling by providing compensation for past and future
4 pecuniary losses resulting from the unlawful employment practices described in paragraphs
5 13 through 40 above, including job search and medical expenses, in amounts to be
6 determined at trial.

7 E. Order Defendant to make whole Alina Sorling by providing compensation for past and future
8 nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 13
9 through 40 above, including emotional pain, suffering, inconvenience, loss of enjoyment of
10 life, and humiliation, in amounts to be determined at trial.

11 F. Order Dignity Health to pay punitive damages for its malicious and reckless conduct, as
12 described in paragraphs 13 through 40 above, in amounts to be determined at trial.

13 G. Grant such further relief as the Court deems necessary and proper in the public interest.

14 H. Award the Commission its costs of this action.

15 I. The Commission requests a jury trial on all questions of fact raised by this Complaint.

16 Dated: July 11, 2018

Respectfully submitted,
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