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14 ALINA SORLING

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 U.S. EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,

19 Plaintiff,

20 v.

21 DIGNITY HEALTH, d/b/a MERCY
22 MEDICAL CENTER, REDDING,

23 Defendants.

Case No. 4:18-cv-04135

**[PROPOSED] Complaint for Damages
and Injunctive Relief for Violations of
the Americans with Disabilities Act of
1990, 42 U.S.C. § 12101, et seq.;
California’s Fair Employment and
Housing Act, Cal. Gov’t Code § 12940, et
seq.; California’s Unfair Business
Practices Act, Cal. Bus. & Prof. Code §
17200, et seq.; and California Public
Policy**

JURY TRIAL DEMANDED

1 Plaintiff-Intervenor Alina Sorling complains and alleges as follows:

2 **NATURE OF THE ACTION**

- 3 1. This is an action to correct and obtain relief from Dignity Health for unlawful acts that
4 infringed Plaintiff-Intervenor Alina Sorling’s civil rights. These unlawful acts, which are more
5 particularly alleged in the Statement of Claims below, include discrimination in hiring, failure
6 to reasonably accommodate, failure to engage in the interactive process, and use of
7 discriminatory qualification standards that unlawfully screened out employees with
8 disabilities. They constitute violations of the Americans with Disabilities Act of 1990 (ADA),
9 violations of the Civil Rights Act of 1991, violations of Section 504 of the Rehabilitation Act of
10 1973 (“Section 504”), violations of California’s Fair Employment and Housing Act (FEHA),
11 unlawful business practices in violation of California’s Unfair Business Practices Act, and
12 violations of California’s public policy.
- 13 2. Alina Sorling was employed by Dignity Health as a Food Service Technician for ten years
14 before she became blind. Rather than engage in the interactive process and provide her with
15 readily available reasonable accommodations that would have enabled her to return to her
16 position, Dignity Health relied on discriminatory qualification standards that unlawfully
17 screened her out of employment opportunities, relied on false assumptions and subjective
18 beliefs about the capacity of blind people to safely work in a class of jobs, and proceeded to
19 unlawfully terminate her employment as a result.
- 20 3. Ms. Sorling seeks declaratory and injunctive relief, compensatory, general, and punitive
21 damages, reasonable attorneys’ fees and costs, as well as other appropriate relief as
22 determined by this court, for Dignity Health’s violations of her rights.

23 **JURISDICTION AND VENUE**

- 24 4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, 1345, and 2201. This
25 action is authorized and instituted pursuant to Section 107(a) of the Americans with
26 Disabilities Act of 1990 (ADA), 42 U.S.C. § 12117(a), and Section 505 of the Rehabilitation Act
27 of 1973, 29 U.S.C. § 794a(a)(2), both of which incorporate by reference Section 706(f)(1) and (3)
28 of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e-5(f)(1) and (3), and

1 pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

- 2 5. This Court has supplemental jurisdiction over Plaintiff-Intervenor’s state law claims pursuant
3 to 28 U.S.C. § 1367(a). Plaintiff-Intervenor’s state law claims all share common operative facts
4 with her federal law claims, and the parties are identical. Resolving all state and federal
5 claims in a single action serves the interests of judicial economy, convenience, and fairness to
6 the parties.
- 7 6. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b), because
8 some of the events giving rise to Plaintiff-Intervenor’s claims occurred in this District, and
9 because Defendant’s corporate headquarters is in San Francisco, California, which is within
10 the jurisdiction of this District.

11 **PARTIES**

- 12 7. Plaintiff-Intervenor Alina Sorling is a person with a disability under Title I of the ADA, the
13 FEHA, and other federal and state disability nondiscrimination laws. She also has a record of
14 disability within the meaning of those laws. She is informed and believes, and thereon alleges,
15 that Defendant also regarded her as disabled within the meaning of those laws.
- 16 8. Sorling is also an otherwise qualified person within the meaning of state and federal disability
17 nondiscrimination laws, including the ADA and FEHA.
- 18 9. Sorling is a “person aggrieved” under 42 U.S.C. § 2000e-5(f)(1), as incorporated by 42 U.S.C. §
19 12117(a).
- 20 10. At all relevant times, Defendant Dignity Health has been operating Mercy Medical Center,
21 an acute care hospital, in Redding, California. At all relevant times, Defendant has
22 continuously been an employer engaged in an industry affecting commerce under Sections
23 101(5) and 101(7) of the ADA, 42 U.S.C. § 12111(5), (7).
- 24 11. At all relevant times, Defendant has had more than 500 employees and has been a covered
25 entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).
- 26 12. At all relevant times, Defendant has been an “employer” under the FEHA, Cal. Gov’t Code
27 § 12926(d).
- 28 13. At all relevant times, Defendant has been a recipient of federal financial assistance under

1 Section 504, 29 U.S.C. § 794(b)(3)(A)(ii).

2 14. All of the acts and failures to act alleged herein were duly performed by and attributable to
3 Defendant.

4 **ADMINISTRATIVE PROCEDURES**

5 15. On January 15, 2016, Plaintiff-Intervenor Alina Sorling timely filed a charge with the U.S.
6 Equal Employment Opportunity Commission (“Commission” or “EEOC”), cross-filed with
7 the California Department of Fair Employment and Housing (“DFEH”), alleging that
8 Defendant discriminated against her because of her disability, in violation of the ADA,
9 Section 504, and FEHA. On March 4, 2016, the DFEH issued a right to sue letter that tolled
10 all state claims while the EEOC continued its investigation.

11 16. By letter dated October 17, 2017, the Commission issued to Defendant a Determination
12 finding reasonable cause to believe that Defendant violated the ADA.

13 17. On November 8, 2017, the EEOC invited Defendant to join with the EEOC in informal
14 methods of conciliation to endeavor to eliminate the discriminatory practices and provide
15 appropriate relief.

16 18. The EEOC communicated with Defendant to provide Defendant the opportunity to remedy
17 the discriminatory practices described in the EEOC’s Determination letter.

18 19. The EEOC was unable to secure from Defendant a conciliation agreement acceptable to the
19 Commission.

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

22 21. On July 11, 2018, the Commission initiated this lawsuit.

23 22. All conditions precedent to Sorling’s intervention in this action have been fulfilled.

24 **STATEMENT OF CLAIMS**

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

27 24. Upon hire, Defendant administered physical tests to measure Sorling’s endurance. Defendant
28 did not test Sorling’s vision. During her ten-year tenure as a Food Service Technician,

1 Defendant never tested Sorling's vision.

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

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

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

10 28. Since at least February 2014, Sorling has been substantially limited in major life activities,
11 including, but not limited to, seeing.

12 29. Since at least January 2015, Sorling has been a qualified individual with a disability under
13 Section 504, 29 U.S.C. §§ 794(a) and 705(20)(F), under sections 3 and 101(8) of the ADA, 42
14 U.S.C. §§ 12102 and 12111(8), and similarly qualified under the FEHA, Cal. Gov't Code §§
15 12926(f), (m), and (p).

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

19 31. Since at least June 2014, the DOR has provided training and tools to assist Sorling to live
20 independently, including nonvisual techniques to work safely in a kitchen and food service
21 environments.

22 32. Defendant has known that Sorling is blind since at least January 2015.

23 33. In or around January 2015, Sorling first met with Defendant's representatives about returning
24 to work as a Food Service Technician.

25 34. In or around February 2015, Sorling met with Defendant's HR Director and Nutrition
26 Department Director to discuss reassuming a Food Service Technician position such as one
27 of the two then-open positions.

28 35. In or around February 2015, Plaintiff-Intervener had greater union seniority than the two

1 applicants who were selected to fill the open Food Service Technician positions that Sorling
2 sought.

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

5 37. As early as February 2015, Sorling explained to Defendant that the DOR provided tools and
6 devices that enabled Sorling to function in her home kitchen and that the DOR would also
7 help to facilitate her return to work.

8 38. As early as February 2015, Sorling asked Defendant to allow the DOR to provide an analyst
9 to perform a workplace assessment to recommend job-specific accommodations. Sorling
10 informed Defendant that the DOR would pay for the analyst.

11 39. In or around March 2015, Defendant denied Sorling's request to allow the DOR-funded
12 analyst to perform a workplace accommodation assessment. Defendant offered no
13 alternatives to the workplace assessment.

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

20 41. Accommodations existed, additional to those proposed by Sorling, that would have enabled
21 her to safely perform the essential functions of a Food Service Technician position, such as
22 hot-oil guards, raised markers for the oven dial to indicate the temperature setting, a talking
23 meat thermometer, a talking food scale, a talking microwave oven, and a microwave oven
24 marked in braille.

25 42. Defendant rejected Sorling's proposals and did not propose any alternatives to accommodate
26 Sorling.

27 43. Defendant failed to engage in a timely, good faith, interactive process to identify or
28 implement effective reasonable accommodations that would have enabled Sorling to perform

1 the essential functions of the Food Service Technician position, in violation of the FEHA,
2 Cal. Gov't Code § 12940(n).

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

5 45. Defendant asserted, without any objective or medical evidence, that the Food Service
6 Technician position requires accurate near and far vision in order to avoid significant risk of
7 substantial harm to employees or others, and that such risk cannot be eliminated or reduced
8 by reasonable accommodation.

9 46. Defendant failed to accommodate Sorling so she could either reassume the Food Service
10 Technician position or be reassigned to another vacant position for which she was qualified,
11 in violation of Sections 102 (a) and (b)(5)(A) of Title I of the ADA, 42 U.S.C. §§ 12112(a) and
12 (b)(5)(A), both directly and as incorporated by Section 504, 29 U.S.C. § 794(d), and in violation
13 of the FEHA, Cal. Gov't Code §§ 12940(a)(1), (m)(1).

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

16 48. Defendant's vision requirement is a standard or criteria that has the effect of discriminating
17 on the basis of disability in violation of Sections 102(a) and 102(b)(3)(A) of Title I of the ADA,
18 42 U.S.C. §§ 12112(a), (b)(3)(A), both directly and as incorporated by Section 504, 29 U.S.C. §
19 794(d).

20 49. 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 and is not
22 job-related and consistent with business necessity in violation of Sections 102(a) and 102(b)(6) of
23 Title I of the ADA, 42 U.S.C. §§ 12112(a) and (b)(6), both directly and as incorporated by
24 Section 504, 29 U.S.C. § 794(d).

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

1 42 U.S.C. §§ 12112(a) and 12112(b)(3)(A) and (b)(6), both directly and as incorporated by Section
2 504, 29 U.S.C. § 794(d), when it terminated Sorling's employment because she does not have
3 20/40 vision.

4 51. Defendant discharged Sorling because of her disability in violation of Section 102(a) of Title I
5 of the ADA, 42 U.S.C. § 12112(a), both directly and as incorporated by Section 504, 29 U.S.C. §
6 794(d), and the FEHA, Cal. Gov't Code § 12940(a)(1), by:

7 a) Applying the 20/40 vision requirement selectively to Sorling when she presented as a
8 blind employee seeking to reassume her role as a Food Service Technician, while not
9 applying the same vision requirement to sighted employees; and

10 b) Concluding that Sorling's vision impairment prevented her from safely performing the
11 essential functions of any position at Defendant despite the availability of reasonable and
12 effective accommodations.

13 52. The effect of the practices complained of in paragraphs 23 through 51 above has been to
14 deprive Alina Sorling of equal employment opportunities and otherwise adversely affect her
15 status as an employee because of her disability.

16 53. The unlawful employment practices complained of in paragraphs 23 through 51 above were
17 intentional.

18 54. The unlawful employment practices complained of in paragraphs 23 through 51 above were
19 done with malice or with conscious or reckless indifference to the protected rights of Alina
20 Sorling.

21 55. The unlawful employment practices complained of in paragraphs 23 through 54 above
22 constitute unlawful or unfair business practices in violation of Cal. Bus. & Prof. Code § 17200,
23 *et seq.*

24 56. The unlawful acts complained of in paragraphs 23 through 55 above constitute a violation of
25 the California public policy barring employers from discriminating against employees
26 because of disability, as demonstrated by the FEHA and the Unfair Business Practices Act.

27 57. As a direct and proximate result of the unlawful acts complained of in paragraphs 23 through
28 56 above, Sorling has suffered and continues to suffer the loss of her primary employment

1 and source of income, including lost wages, employment benefits, and other compensation, in
2 an amount to be proven at trial.

3 58. As a direct and proximate result of the unlawful acts complained of in paragraphs 23 through
4 56 above, Sorling has suffered and continues to suffer injuries, including emotional injuries.

5 59. Sorling is entitled to restitution, compensatory damages, lost wages and benefits, declaratory
6 and injunctive relief, attorneys' fees and costs, and other appropriate relief as determined by
7 this court.

8 60. Sorling is informed and believes, and thereon alleges, that Defendant denies the allegations
9 complained-of herein.

10 61. No plain adequate, or complete, remedy at law is available to Sorling to redress the wrongs
11 complained-of herein.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff-Intervenor Alina Sorling respectfully requests that this Court:

14 62. Issue a declaration of the rights and duties of the respective parties.

15 63. Grant a permanent injunction enjoining Dignity Health, its officers, servants, employees,
16 attorneys, all persons in active concert or participation with it, and successors, from engaging
17 in any employment practice that discriminates on the basis of disability.

18 64. Order Dignity Health to institute and carry out policies, practices, and programs which
19 provide equal employment opportunities for qualified individuals with disabilities, and which
20 eradicate the effects of its past and present unlawful employment practices.

21 65. Grant such other injunctive relief as may be appropriate.

22 66. Order Dignity Health to make restitution to Sorling by providing appropriate back pay,
23 including wages, salary, employment benefits, and other denied or lost compensation, with
24 prejudgment interest, in amounts to be determined at trial, and any additional restitution
25 necessary to eradicate the effects of its unlawful business practices, as cumulatively permitted
26 under Cal. Bus. & Prof. Code §§ 17205 and 17206.1(d).

27 67. Order Dignity Health to make Sorling whole by providing appropriate back pay, including
28 wages, salary, employment benefits, and other denied or lost compensation, with

1 prejudgment interest, in amounts to be determined at trial, and other affirmative relief
2 necessary to eradicate the effects of its unlawful employment practices, including but not
3 limited to front pay, as permitted under 42 U.S.C. § 2000e-5(g)(1).

4 68. Order Defendant to make whole Alina Sorling by providing compensatory damages for past
5 and future pecuniary losses resulting from the unlawful employment practices described in
6 paragraphs 23 through 56 above, including job search and medical expenses, as permitted by
7 Cal. Civ. Code §§ 3281–3283, with prejudgment interest as permitted by Cal. Civ. Code §
8 3288, in amounts to be determined at trial.

9 69. Order Defendant to make whole Alina Sorling by providing compensatory damages for past
10 and future nonpecuniary losses resulting from the unlawful practices complained of in
11 paragraphs 23 through 56 above, including emotional pain, suffering, inconvenience, loss of
12 enjoyment of life, and humiliation, as permitted by Cal. Civ. Code §§ 3281–3283, with
13 prejudgment interest as permitted by Cal. Civ. Code § 3288, in amounts to be determined at
14 trial.

15 70. Order Dignity Health to pay Sorling exemplary and punitive damages, as permitted without
16 limitation under Cal. Civ. Code § 3294(a), and as permitted with limitation under 42 U.S.C. §
17 1981A, with prejudgment interest as permitted by Cal. Civ. Code § 3288.

18 71. Award Sorling her reasonable attorneys’ fees, reasonable expert witness fees, and other costs
19 of this action.

20 72. Award Sorling post-judgment interest.

21 73. Grant such further relief as the Court deems necessary and proper.

22 74. Sorling requests a jury trial on all questions of fact raised by this Complaint.

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DATED: July 25, 2018

Respectfully submitted,

TRE LEGAL PRACTICE

/S/ Timothy Elder

Timothy Elder
Attorney for Plaintiff-Intervenor