

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

Civil Action No. 1:23-cv-02230-DDD-MDB

YARITZA DIAZ,

Plaintiff,

v.

EL PASO COUNTY DEPARTMENT OF HUMAN SERVICES, and SHAWN M. NIELSON,
individually,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff, Yartiza Diaz (“Diaz”) or (“Plaintiff”), by and through her attorney, Scott A. Mayer, Attorney at Law, complaining against Defendant, El Paso County Department of Human Services, (“EPC DHS”) and Defendant Shawn M. Nielson (“Nielson”), individually, submits this First Amended Complaint, and states as follows:

I. NATURE OF THE ACTION

This is a civil action to correct unlawful employment practices, and to make whole the Plaintiff, Yartiza Diaz, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., (“Title VII”), as amended in 1978 by the Pregnancy Discrimination Act (“PDA”) the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as amended, (“ADAAA”), and the Pregnant Workers Fairness Act (“PWFA”), C.R.S. § 24-34-402.3, which prohibit denial of rights guaranteed by these statutes. This is a civil action also enforcing Diaz’s federal right against malicious prosecution under 42 U.S. C. § 1983 and the Fourth and Fourteenth Amendments of the United States Constitution and her Colorado state right against malicious prosecution.

II. JURISDICTION AND VENUE

1. Original federal question jurisdiction over this private suit to enforce civil rights, is conferred on this court by 42 U.S.C. § 12117, 42 U.S.C. § 2000e-5(f)(3), 29 U.S.C. § 626(c)(1), 29 U.S.C. § 2617(a)(2), 28 U.S.C. §§ 1331, and 42 U.S.C. § 1983.

2. Supplemental jurisdiction over the related state law claims under Colorado’s Pregnant Workers Fairness Act, C.R.S. § 24-34-402.3, Colorado Anti-Discrimination Act, C.R.S. § 24-34-401 (“CADA”), and Colorado malicious prosecution common law is conferred by 28 U.S.C. § 1367(a).

3. Venue is properly laid in the U.S. District Court for the District of Colorado, pursuant to 28 U.S.C. § 1391(b), because the unlawful employment practices occurred in and around El Paso County, Colorado where the Plaintiff, Diaz, and the Defendant, EPC DHS, reside, where Diaz formerly worked, where Diaz suffered the unlawful employment practices and violation of her civil rights and the resultant damages, and where Diaz would be employed by EPC DHS in the absence of the unlawful employment practices.

4. On July 8, 2021, Diaz filed a timely Charge with the Equal Employment Opportunity Commission (“EEOC”) against EPC DHS. (Plaintiff’s Exhibits 1 - 5)

5. The EEOC issued a Dismissal and Notice of Rights dated May 31, 2023. (Plaintiff’s Exhibit 6)

III. PARTIES

A. Plaintiff Yaritza Diaz

6. Defendant EPC DHS hired Diaz on April 6, 2009.

7. During her employment, Diaz performed duties as an Income Maintenance Specialist.

8. Diaz resides in Colorado Springs, Colorado.

9. At all times relevant, Diaz worked at EPC DHS's facility located at 1675 W. Garden of the Gods Road, 3rd Floor, Colorado Springs, Colorado 80907.

10. At all times relevant Diaz was an "employee" of EPC DHS, a Defendant in this case, as defined by Title VII, 42 U.S.C. § 2000e (f), and the ADAAA, 42 U.S.C. § 12111(4).

11. Diaz was an individual with a pregnancy related disability within the meaning of the ADAAA, 42 U.S.C. § 12111(a)(1)(2)(4)(8), Title VII/ PDA and Colorado's PWFA.

12. Diaz is protected against pregnancy related disability discrimination under the ADAAA, 42 U.S.C. § 1221(a)(b)(5), Title VII/PDA, Colorado's PWFA, and EPC DHS's policies.

13. Diaz is protected against pregnancy related disability discrimination if she requests a reasonable accommodation based on her pregnancy related disability related to her pregnancy under Title VII/PDA, Colorado's PWFA, and EPC DHS's policies.

14. Diaz is a person protected against sex discrimination based on her sex, female, under Title VII, 42 U.S.C. § 2000e-2 (a) and EPC DHS's policies.

15. Diaz is protected against sex discrimination if she requests a reasonable accommodation based on her pregnancy related disability related to her sex and pregnancy under Title VII/PDA, Colorado's PWFA, and EPC DHS's policies.

16. Diaz is a person protected against national origin discrimination based on her national origin, Panamanian, under Title VII, 42 U.S.C. § 2000e-2 (a) and EPC DHS's policies.

17. Diaz is protected against national origin discrimination if she requests a reasonable accommodation based on her pregnancy related disability related to her national origin under Title VII/PDA, Colorado's PWFA, and EPC DHS's policies.

18. Diaz is a person protected against race discrimination based on her race, Hispanic/Latina, under Title VII, 42 U.S.C. § 2000e-2 (a) and EPC DHS's policies.

19. Diaz is protected against race discrimination if she requests a reasonable accommodation based on her pregnancy related disability related to her race under Title VII/PDA, Colorado's PWFA, and EPC DHS's policies.

20. At all times relevant, Diaz was and is a person protected by the ADAAA, Title VII, the PDA, and Colorado's PWFA against: 1) acts of retaliation and termination based on her pregnancy related disability; 2) acts of retaliation and termination based on her pregnancy, 3) acts of retaliation and termination based on sex; 4) acts of retaliation and termination based on national origin; 5) acts of retaliation and termination based on race; 6) acts of retaliation and termination based on request for reasonable accommodation based on pregnancy related disability; 7) acts of retaliation and termination based on request for reasonable accommodation based on pregnancy related disability related to pregnancy; 8) acts of retaliation and termination based on request for reasonable accommodation based on pregnancy related disability related to sex; 9) acts of retaliation and termination based on request for reasonable accommodation based on pregnancy related disability related to national origin; 10) and acts of retaliation and termination based on request for reasonable accommodation based on pregnancy related disability related to race.

B. Defendant EPC DHS

21. At all relevant times, EPC DHS is the El Paso County Department of Human Services, with its principal place of business in Colorado Springs, Colorado and has continuously been doing business in the State of Colorado, including during Diaz's employment, and has continuously had at least 15 employees.

22. At all relevant times, EPC DHS was an employer under Title VII, 42 U.S.C. §§ 2000e (g) and (h).

23. At all relevant times, EPC DHS was a covered entity under Section 101(2) of the ADAAA, 42 U.S.C. § 12111(2) and Colorado’s PWFA.

C. Defendant Shawn M. Nielson

24. At all times relevant, Nielson was a Certified Welfare Fraud Investigator, Fraud Prevention and Investigation Unit (“EPC DHS Fraud Unit”), Unit Supervisor, El Paso County Financial Services, employed by EPC DHS, with its principal place of business in Colorado Springs, Colorado and has continuously been doing business in the State of Colorado, including during Diaz’s employment.

IV. STATEMENT OF FACTS

25. At all times relevant, EPC DHS maintained an El Paso County, Colorado Personnel Policies Manual (“Manual”), effective May 9, 2019, stating in pertinent part the following: “*2.01 Equal Employment Opportunity (EEO)*: The County is an equal employment opportunity employer. The County does not discriminate against persons because of . . . race, . . . national origin, . . . disability . . . in making employment decisions, including, . . . discharge. . . . *4.13 Colorado Pregnancy Protection Act* [“PWFA”]: Colorado state law prohibits discrimination on the basis of pregnancy, childbirth, and related conditions. Reasonable accommodations that do not create an undue hardship on the employer are required for these conditions. El Paso County will follow C.R.S. § 24-34-402.3. . . . *6.09 Americans with Disabilities Act (ADA)* [“ADAAA”]: An employee who has a disability, physical or mental limitation that substantially limit the employee’s ability to perform the essential job functions should report those circumstances to the Benefits Division. The Benefits Division encourages all employees to engage in an interactive dialogue process to arrive at accommodations for an individual who has a disability or the above-described limitations. . . . The County recognizes its obligation to its employees with disabilities

to arrive at reasonable accommodations to allow them to perform the essential functions of their job without causing an undue hardship or direct threat to El Paso County. . . . 7.02 *Disciplinary Offenses*: N. . . . retaliation. . . T. Violation of the County’s harassment, anti-discrimination, retaliation or whistleblowing policies. . . . *Chapter IX DEFINITIONS*: Discharge: The termination of an individual’s employment.” (Plaintiff’s Exhibit 8)

26. EPC DHS’s Bi-Weekly Payroll Change Request (“PCR”) defines “Resignation” as a “Termination”. Since the Manual defines “termination” as “discharge”, “resignation” is also a “discharge”. (Plaintiff’s Exhibit 7, pp. 2, 5; Plaintiff’s Exhibit 7, pp. 2, 5)

27. EPC DHS’s January 12, 2009 employment application for Diaz states: “El Paso County is an Equal Employment Opportunity Employer and considers applicants for all positions without regard to race, . . . national origin or any other legally protected status.” (Plaintiff’s Exhibit 7, p. 1)

28. On April 6, 2009, EPC DHS hired Diaz as an Income Maintenance Technician (“IMT”) II, at the El Paso County Department of Human Services. On May 1, 2010, EPC DHS promoted Diaz to IMT III. On April 7, 2020, EPC DHS’s Executive Director Julie Krow (“Krow”) offered Diaz a lateral transfer to the position of Income Maintenance Specialist I, effective March 23, 2020, according to Diaz’s April 10, 2020 PCR. (Plaintiff’s Exhibit 7, pp. 2 – 3; Exhibit 9, p. 1)

29. Diaz’s August 19, 2019 2018-2019 Performance Evaluation her supervisor rated Diaz as a “Solid Performer” and made the following comments in the “*PERFORMANCE FACTORS: Job Knowledge*”: Comments: Ms. Diaz understands the duties and responsibilities of the job. As a result, she is able to act on her own initiative. Ms. Diaz continues to display knowledge of policy and procedures as well as promoting the County’s [sic] mission and values.

Quality of Work: Ms. Diaz consistently demonstrates her commitment to quality. Ms. Diaz is very thorough and accurate and she pays close attention to detail in her work. As a result, her audit rate has improved to a 0% PER 0% CAPER since 7/2018. Ms. Diaz expresses any ideas to improve business processes for the intake unit. *Communication Skills:* Comments: Ms. Diaz has shown to be a valuable asset and always willing to assist others. Ms. Diaz is open to feedback and suggestions to improve her work. *Teamwork & Cooperation:* Comments: Ms. Diaz is an excellent team player and is always offering support to her team members and other departments. She shares ideas and information with team members working well with the entire group. *Judgment & Decision Making:* Comments: Ms. Diaz has no problem identifying issues and seeking resolutions. She always asks questions, seeks feedback and resolutions to complex problems. *Customer Service (both internal and external):* Comments: Ms. Diaz exhibits great customer service abilities and uses strength based language to convey problematic information to families we serve. *Dependability & Reliability:* Comments: Ms. Diaz readily accepts accountability for her own actions and does what is necessary to get her job done. As a result, she is a very effective employee who is viewed by her colleagues as a dependable team member. *Attitude:* Comments: Ms. Diaz has a positive attitude and has a great working relationship with her team and the families we serve. She is open to feedback and works daily to expand her knowledge and skills. *Attendance & Punctuality:* Comments: Ms. Diaz starts work on time and is prepared for the day. She schedules time off in advance and coordinates coverage plan with her teammates.” (Plaintiff’s Exhibit 4, pp. 18 – 25)

30. At all times relevant in 2020, Diaz was pregnant during her last three (3) months of pregnancy, from August 4, 2020 to November 11, 2020.

31. Diaz’s national origin is Panamanian and her race is Hispanic/Latina.

32. Diaz worked for EPC DHS at its place of business, 1675 W. Garden of the Gods Road, 3rd Floor, Colorado Springs, Colorado.

33. On August 4, 2020, Diaz had an email exchange with Marilyn Aona, Economics Benefits Supervisor (“Aona”) regarding Diaz’s online July 28, 2020 PEAK application for medical assistance benefits limited to her pregnancy.

34. In the email exchange, Aona stated: “Good morning! We have started working on this case [July 28, 2020 PEAK application], but there is no income marked for you or Gary [Bates, Diaz’s husband]. We need proof of both of your incomes. Also are you still an LPR”. Diaz replied: “I’m the only one that has income, and, yes I am still an LPR. I was really only applying for me to help cover my pregnancy.” Aona stated: “OK. When did Gary stop being self-employed?” Diaz replied: “Well, I guess he is still considered self-employed, but has not made any money. Last year he made \$10,000 for the entire year.” Aona stated: “How long has he been self-employed? And so far for 2020 he has made \$0?” Diaz countered: “He has considered his self-employed since about 2010, last year was the first year I was able to claim taxes for him that entire time. This year so far he might have made \$500 so far on odd jobs.” (Plaintiff’s Exhibit 4, pp. 1 – 3) Diaz’s July 28, 2020, PEAK application for medical assistance benefits for her pregnancy stated at the top of the application: “Head of Household: Yaritza Diaz”. (Plaintiff’s Exhibit 2, Rebuttal Exhibit F, pp. 7, 9 -10 of 19)

35. The Colorado Medical Assistance Act Presumptive Eligibility Program (“PEP”) is designed for pregnant women. The PEP states: “The PE site will help you fill out the medical assistance application. You can also apply through PEAK and print out your completed application and bring it with you to the PE site.” (Plaintiff’s Exhibit 2, Rebuttal Exhibit D, p.1) Aona did not refer Diaz to a PE site.

36. Diaz's supervisor, Meghan Dawkins, recommended to Diaz to apply for the medical assistance benefits solely to cover her pregnancy. (Plaintiff's Exhibit 3, Rebuttal Exhibit X, p. 1; Plaintiff's Exhibit 7, p. 2)

37. The email exchange only lasted from 11:15 a.m. to 11:28 a.m. (Plaintiff's Exhibit 4, pp. 1 – 3)

38. On August 4, 2020, at 11:43 a.m., Aona sent Diaz a letter stating that Aona approved Diaz's PEAK application for medical assistance benefits for the balance of Diaz's pregnancy effective September 1, 2020, but did not approve benefits for her husband because as of August 31, 2020, Aona decided he allegedly was over the income limit, despite the fact Diaz did not request medical assistance benefits for her husband. (Plaintiff's Exhibit 4, pp. 4 - 5)

39. On October 2, 2020, after EPC DHS gave Diaz a September 14, 2020 letter of intent to terminate Diaz based on the EPC DHS Fraud Unit Investigation Report, Aona sent Diaz a letter informing her that her husband was within income limits for eligibility to receive medical assistance benefits retroactive to September 1, 2020, contrary to Aona's August 4, 2020 referral of Diaz to the EPC DHS Fraud Unit to investigate her for underreporting her husband's income. (Plaintiff's Exhibit 3, Rebuttal Exhibits T, p. 2, U, V) Aona did not disclose the October 2, 2020 letter to the EPS DHS Fraud Unit before or after the EPS DHS Fraud Unit Investigation Report was issued.

40. On October 13, 2020, Plaintiff's counsel sent Kirkman an email informing her of the October 2, 3, and 5, 2020 letters to Diaz stating in part: "Note – On 10/3 and/or 10/5/2020 Mrs. Aona sent the 10/2/2020 letter to Mrs. Diaz which reversed her 8/4/2020 denial of Medicaid to Gary Bates and confirmed her approval of Medicaid for Mrs. Diaz." Plaintiff's counsel asked Kirkman to reconsider termination of Diaz as a result of these letters, August 4, 2020, and October

2, 3 and 5, 2020. Plaintiff's counsel also attached the four (4) letters to his email to Kirkman. The next day, October 14, 2020, Kirkman replied: "I need to share your most recent documents with Ms. Krow. I don't think I will get to talk to her before 1:30." (Plaintiff's Exhibit 5, pp. 33 – 34)

41. After Aona's August 4, 2020 email exchange with Diaz, Aona decided on August 4, 2020 Diaz's husband was over the income limits, and also on August 4, 2020, Aona made a written Investigation Referral to the EPC DHS Fraud Unit to investigate Diaz for underreporting her husband's income for a period covering Diaz's first medical assistance benefits application for her family, but not for Diaz from April 2013 which closed on March 31, 2019, and for the current Diaz's approved medical assistance benefits application approved for Diaz by Aona also on August 4, 2020, intended by Diaz to solely cover the balance of Diaz's pregnancy, and not for her family. (Plaintiff's Exhibit 4, pp. 1, 4 – 6)

42. Aona based her referral to the EPC DHS Fraud Unit on Aona's allegation she received notice from another unidentified supervisor who suspected Diaz's husband was self-employed, triggering Aona to email Diaz on August 4, 2020, not to verify Diaz's income since Aona knew Diaz was currently employed by EPC DHS, at a minimum, by Diaz's email address, but rather, to verify her husband's income information based on the unknown supervisor's belief Diaz's husband was self-employed, corroborated by Diaz in the email exchange with Aona, which Aona did not disclose in her Referral to the EPC DHS Fraud Unit. (Plaintiff's Exhibit 4, pp. 1 - 3, 6)

43. Aona's claim Diaz under reported her husband's income in her Referral to the EPC DHS Fraud Unit was based on Aona's incorrect conclusion, not on Diaz's statement to her about her husband's self-employment, which Aona ignored, that Diaz's husband had zero income in 2020 in the August 4, 2020 email exchange. (Plaintiff's Exhibit 4, pp. 3, 6)

44. Colorado's Medical Assistance Rule, 10 CCR 2505-10, 8.100.2, B, states: "Additional Verification – No other verification shall be required of the client [Diaz] unless the information is found to be questionable on the basis of fact. Questionable is defined as tangible information that contradicts statements, documents, or file records." (Plaintiff's Exhibit 2, Rebuttal Exhibit C, p. 7)

45. On August 5, 2020, Dr. David Stark, Diaz's physician, Centura Health, provided Diaz a letter to give to EPC DHS which stated the following: "Yaritza Diaz is under my care for her pregnancy. Please allow her to continue to work from home through her pregnancy. We support her concern for the safety of her health and her unborn child." (Plaintiff's Exhibit 4, p. 8)

46. On August 6, 2020, pursuant to the Vulnerable Employee Program, Diaz sent Dr. Stark's letter to EPC DHS's Human Resources, Benefits, by EPC DHS email, a few hours before EPC DHS placed Diaz on paid administrative leave. (Plaintiff's Exhibit 4, p. 7)

47. After receipt of Diaz's Dr. Stark letter, Human Resources, Benefits Division, did not engage in an interactive dialogue process to arrive at accommodations for Diaz's at risk pregnancy as required by EPC DHS's 2019 Personnel Policies Manual, Section 6.09, Americans with Disabilities Act (ADA), the ADAAA, and the PWFA. EPC DHS did not claim Diaz's request for reasonable accommodation by Dr. Stark for Diaz to continue working at home for the duration of her pregnancy, was an undue hardship or a direct threat to El Paso County. (Plaintiff's Exhibit 8, p. 4)

48. On August 6, 2020, Diaz was given a letter signed by Krow, Executive Director, EPC DHS, informing Diaz that since Diaz was being investigated [by the EPC DHS Fraud Unit] based on information that could impact Diaz's employment, EPC DHS placed Diaz on paid administrative leave until further notice, pursuant to El Paso County's Personnel Policies Manual,

Section 7.03. The letter further informed Diaz the following: “You are to turn over immediately any and all County property and equipment you have in your possession to include your identification ID, name tag, building access card, cell phone, laptop, memory stick (if applicable), etc., to the Human Resources Department located at 2880 International Circle, Suite N040, Colorado Springs, CO 80910. Effective immediately, you are not to access or use any County system, to include, but not be limited to, County email, department databases, laptops, cell phones, etc. You are not allowed on County premises pending the outcome of this investigation.” (Plaintiff’s Exhibit 4, p. 9)

49. On August 6, 2020, Diaz wrote: “I turned this letter [Dr. Stark’s letter] in to Human Resources a few hours before being put on administrative leave. This is leading me to also believe they don’t want to deal with a pregnant woman & taking the opportunity to terminate me. None of the issues cited by policy pertain to the application submitted on peak. [I]t (sic) appears they are targeting me work ethics.” (Plaintiff’s Exhibit 4, p. 7)

50. On September 1, 2020, Defendant notified Diaz by letter of a pre-termination meeting to discuss six (6) performance issues: 1) On July 28, 2020, Diaz allegedly submitted her PEAK application online while still on the clock.; 2) Diaz allegedly falsely stated on her PEAK application that she was not working, even though she was employed by EPC DHS.; 3) Diaz allegedly underreported her husband’s income on her PEAK application and in her interview with Aona.; 4) Diaz allegedly failed to report monthly gift income of \$1,200.00 on her PEAK application.; 5) Diaz allegedly failed to report monthly rent income of \$1,200.00.; and 6) Diaz allegedly was approved for medical assistance benefits when she was allegedly not financially eligible for the program. (Plaintiff’s Exhibit 9)

51. On September 4, 2020, Diaz had a pre-termination meeting with Human Resources and Krow. (Plaintiff's Exhibit 9, p. 1)

52. On September 14, 2020, Diaz received by email a letter from Krow, "Subject: Notice of Intent to Terminate Employment" based on the six (6) performance issues. (Plaintiff's Exhibit 3, Rebuttal Exhibit X)

53. Diaz was an individual with an at risk pregnancy disability and pregnant within the meaning of the ADAAA, 42 U.S.C. § 12111(a)(1)(2)(4)(8), PDA, PWFA, and EPC DHS policies.

54. On July 28, 2020, August 4 and 6, 2020, and September 4, 2020, EPC DHS was aware of Diaz's at risk pregnancy disability and pregnancy: 1) On July 28, 2020, Diaz stated in her PEAK application for temporary secondary medical assistance benefits for pregnancy: "*Pregnancy Information* – Person: Yaritza Diaz Age 38; Due Date: 12/01/2020; Number of Babies: 1; Has Yaritza's pregnancy ended?: No."; 2) On August 4, 2020, Diaz told Aona: "I was really only applying for me to help cover my *pregnancy*." 3) On August 6, 2020, Diaz wrote: "I turned this letter [Dr. Stark's August 5, letter requesting reasonable accommodation for Diaz who was "under my care for her *pregnancy*."] in to Human Resources a few hours before being put on administrative leave." 4) Krow stated in her September 14, 2020 letter to Diaz that at the September 4, 2020 pre-termination meeting, Diaz told her: "You explained that you are *pregnant* and supervisor Meghan Dawkins suggested you could apply for Medical Assistance as secondary insurance." (Plaintiff's Exhibit 2, Rebuttal Exhibit F, p. 10 of 19; Plaintiff's Exhibit 3, Rebuttal Exhibit X, p. 2; and Exhibit 4, pp. 1, 7 – 8) (emphasis added)

55. Diaz is a person protected from sex discrimination based on her sex at the time of the events complained of, denial of reasonable accommodation, retaliation, and termination, within the meaning of Title VII, 42 U.S.C. § 2000e-2 and EPC DHS policies.

56. During Diaz's employment, EPC DHS was aware of Diaz's sex, female.

57. Diaz is a person protected from national origin discrimination based on her national origin at the time of the events complained of, denial of reasonable accommodation, retaliation, and termination, within the meaning of Title VII, 42 U.S.C. § 2000e-2 and EPC DHS policies.

58. During Diaz's employment, EPC DHS was aware of Diaz's national origin, Panamanian.

59. Diaz is a person protected from race discrimination based on her race at the time of the events complained of, denial of reasonable accommodation, retaliation, and termination, within the meaning of Title VII, 42 U.S.C. § 2000e-2 and EPC DHS policies.

60. During Diaz's employment, EPC DHS was aware of Diaz's race, Hispanic/Latina. (Plaintiff's Exhibit 2, Rebuttal Exhibit F, p. 9 of 19)

61. Diaz is a person protected from retaliation for being a person with an at risk pregnancy disability, a person whose sex is female, a person with a national origin, Panamanian, and a person whose race is Hispanic/Latina, a person who requests a reasonable accommodation because of her at risk pregnancy disability, and a person who requests reasonable accommodation because of an at risk pregnancy disability related to her sex, national origin, and race. ADAAA, 42 U.S.C. § 12112(a)(b)(5), Title VII, 42 U.S.C. § 2000e-2(a), PDA, PWFA, and EPC DHS policies.

62. On September 16, 2020, pursuant to El Paso County Personnel Manual 2019, Chapter VII, Discipline and Employee Grievances, Policy No. 7.06 (2) Diaz filed with EPC DHS's Human Resources, an appeal of EPC DHS's intent to terminate Diaz and a request for hearing. Diaz's appeal letter stated eleven (11) reasons not to terminate her, including, but not limited to, the following: "1) DHS's reasons in the September 1, 2020 'Notice of Pre-Termination Meeting'

for terminating my employment are false and unsupported by evidence and documentation that I allegedly provided false information on my Medicaid PEAK application for Medical Assistance for secondary insurance, allegedly misled the department during my interview with a supervisor, and that I allegedly received benefits I was not entitled to receive. . . 6) DHS's reasons for its intent to terminate my employment violate El Paso Personnel Manual's prohibition of discrimination based on sex, female, sex, pregnancy, national origin, Hispanic/Latina, retaliation, and harassment.. . 8) DHS's reasons for its intent to terminate my employment violate Title VII, Civil Rights Act of 1964, prohibition of discrimination based on sex, female, sex, pregnancy, national origin, Hispanic/Latina, retaliation and harassment.. . 10) DHS's intent to terminate my employment is discriminatory based on the foregoing policies and laws because DHS committed disparate treatment of me since similarly situated white non-Hispanic males and/or females were treated differently from me by getting better treatment than me by either not being charged or by receiving a lighter discipline than termination. 11) I have had excellent performance reviews for the past 11 years of my employment. I am an exemplary employee and have never been accused of any wrongdoing in the past and I did not commit any of the alleged wrongdoing. I love my job and just want to return to work and assist the citizens of El Paso County.” (Plaintiff's Exhibit 4, pp. 11 – 12)

63. Diaz did not receive medical assistance benefits after Aona's August 4, 2020 medical assistance approval and did not receive medical assistance benefits from the 2013 medical assistance benefits application, the only application investigated in the Investigation Report. (Plaintiff's Exhibit 3, Rebuttal Exhibits P – Q)

64. On November 2, 2020, Diaz involuntarily resigned since EPC DHS gave Diaz the choice to be terminated or resign. EPC DHS's PCR defines resignation as termination and termination as discharge. (Plaintiff's Exhibit 7, pp. 2, 5; Plaintiff's Exhibit 8, p. 7)

65. On July 7, 2021, Diaz's counsel sent to Kirkman, on August 30, 2021 to Nielson, and on September 8, 2021 to Rachel Powell ("Powell"), the criminal division Senior Deputy District Attorney, documents rebutting the EPC DHS Fraud Unit's Investigation Report conclusions in support of a no prosecution decision. (Plaintiff's Exhibit 10 (Rebuttal Statement); Plaintiff's Exhibits 2 – 5 (Documents in support of Rebuttal Statement); and Plaintiff's Exhibit 11, pp. 5 – 8, 10 – 12) Aside from the introductory headings and conclusions, these documents are the same documents attached to Diaz's July 8, 2021 EEOC Charge in support the EEOC making a finding of discrimination. (Plaintiff's Exhibits 1 – 5)

66. The documents sent to Kirkman, Nielson, and Powell were summarized in the July 7, 2021 Rebuttal Statement, *XIII. CONCLUSION* as follows: "The '[Investigation Report] Case Summary, Fourth Paragraph – Conclusion' (DHS Exhibit 5A, Bates 27) ninth line's speculative 'position' that Yaritza Diaz manipulated the Medicaid system 'fraudulently' is clearly false because it [is] (sic) undisputed: 1) she had no knowledge of any rent payments to Gary; 2) she had no knowledge of any deposits made in his joint account with his mother; 3) Gary had no reportable income based on his loss as proven by their joint 2019 tax return provided to [Fraud Field Investigator Tony] Rasnake; and 4) Gary's inheritance was received by him on April 16, 2019 (DHS Exhibit 5F, Bates 354) after the first application closed on March 31, 2019 based on the above. Therefore, based on the foregoing, no overpayments occurred and no restitution is owed. Yaritza Diaz lawfully obtained all of the medical assistance benefits for her family." (Plaintiff's Exhibit 10, p. 22)

67. This Conclusion was based in part on the following: “3. Gary’s income was the only issue being investigated by the fraud investigators: ‘Confidential Investigations Report: This office received allegations that the client, Yaritza Diaz, is not reporting her husband’s income.’ (DHS Exhibit 5C, Bates 35) However, the investigation was flawed because the issue did not include allegations that the client, Yaritza Diaz, is not reporting her husband’s income known to her, but rather, just assumed that she did. The investigation knew that it had to prove scienter, i.e., that YD had knowledge of Gary’s income because the Case Summary conclusions assumed YD had knowledge by erroneously imputing Gary’s knowledge to her: “She intentionally failed to report the monthly gift income of \$2400 per month [to Gary, conveniently omitted by [Tina] Werle, [DHS Investigator]], which clearly required YD to have knowledge. In fact, the investigation proved YD had no knowledge of Gary’s alleged rent income as shown below. 4. Investigator Rasnake corroborated, verified and confirmed what YD truthfully told Aona that Gary had no income from April 2013 to June 2020: ‘I am unable to confirm any income for Gary’. (DHS Exhibit 5C, Bates 41) and see also DHS Exhibit 5E, Bates 66-68, ‘Gary Inc. blank Apr – 13 – Jun – 20’; YD Rebuttal Exhibits M and N) 5. Therefore, the fraud investigation did not meet its burden of proof when the very DHS technician Aona who made the 08/04/2020 Investigation Referral that Gary’s alleged income may not have been reported by YD was the same technician who made the opposite conclusion when she sent a letter to YD on October 2, 2020 informing her that Gary’s income made him eligible, entitled and qualified for MA benefits back to September 1, 2020. This approval letter rebuts Aona’s Investigation Referral and the investigation proving YD in fact truthfully reported Gary’s lack of income to Aona on 08/04/2020 and to Investigator Rasnake when she supplied him with hers and Gary’s 2019 tax return proving Gary

had no reportable income but rather suffered a loss, ignored in the Case Summary. (YD Rebuttal Exhibits M, N, T, U & V)” (Plaintiff’s Exhibit 10, pp. 7 – 8)

68. The rebuttal documents sent to Kirkman, Nielson, and Powell (Plaintiff’s Exhibits 2 – 5, 10), the same documents attached to Diaz’s EEOC Charge (Plaintiff’s Exhibits 1 – 5), not only established the EPC DHS Fraud Unit’s Investigation Report’s conclusions were false but also established Diaz’s alleged performance issues triggering Diaz’s administrative leave were not supported by the false conclusions of the Investigation Report.

69. Instead of firing Diaz, EPC DHS should have retracted its September 14, 2020 Intent to Terminate letter based on the documents sent to Kirkman and Nielson, should have reinstated Diaz, and should have made her whole with full back pay and fringe benefits.

70. EPC DHS constructively discharged Diaz in retaliation for asserting her ADAAA disability, PDA, PWFA, and reasonable accommodation rights.

71. EPC DHS disparately treated Diaz based on her at risk pregnancy disability, pregnancy, sex, national origin, and race because she was denied reasonable accommodation and terminated, while reasonable accommodation was provided for similarly-situated non-pregnant or pregnant females, male, non-Panamanian, or non-Hispanic/Latina employees, who were not terminated or criminally prosecuted.

72. EPC DHS caused Diaz embarrassment, humiliation, insult, and emotional suffering and caused Diaz great emotional distress when it denied her reasonable accommodation, terminated her, and retaliated against her.

73. EPC DHS’s denial of her request for a reasonable accommodation was due to her at risk pregnancy disability, her pregnancy, her sex, female, national origin, Panamanian, and race, Hispanic/Latina.

74. Diaz's disability related at risk pregnancy was unrelated to her ability to perform the essential functions of her job with or without a reasonable accommodation.

75. Diaz's ability to perform the essential functions of her job were unrelated to her pregnancy, sex, national origin, or race.

76. Diaz's work performance from the time she was hired on April 6, 2009 through November 2, 2020, met EPC DHS's expectations.

77. Similarly situated employees without a disability, not pregnant or pregnant females, male, non-Panamanian, and non-Hispanic/Latina were not retaliated against, denied reasonable accommodation, or terminated.

78. Diaz was constructively discharged and terminated by EPC DHS on November 2, 2020 due to her at risk pregnancy disability related to her pregnancy.

79. Diaz was constructively discharged and terminated by EPC DHS on November 2, 2020 due to her at risk pregnancy disability related to her sex, female.

80. Diaz was constructively discharged and terminated by EPC DHS on November 2, 2020 due to her at risk pregnancy disability related to her national origin, Panamanian.

81. Diaz was constructively discharged and terminated by EPC DHS on November 2, 2020 due to her at risk pregnancy disability related to her race, Hispanic/Latina.

82. As a result of her constructive discharge and termination, Diaz suffered lost wages and fringe benefits plus embarrassment, humiliation, insult and emotional suffering and caused Diaz great emotional distress.

83. On October 2, 2020, Kirkman sent an email to Andy Vaughn, at the time, Senior Deputy District Attorney, Criminal Division, El Paso County Attorney Office ("Vaughn") and copied Diaz's attorney of record in this case, with a subject line which stated: "*Yaritza Diaz*

prosecution – Medicaid overpayment filing.” The email stated: “Hi Andy. I spoke with Ms. Diaz’s attorney this morning. I gave him your name and told him you were reviewing the matter for filing. I told him I did not want to run afoul of the civil/criminal case conflict rule – and that I take no position on the prosecution. I told him that was completely up to you. His name is Scott Mayer. For several reasons, the appeal hearing set for Tuesday is being continued. You should not wait for an outcome of the appeal hearing to decide what you want to do. It is important to keep your decisions separate from employment decisions.” (Plaintiff’s Exhibit 11, p. 1)

84. On October 19, 2020, Kirkman sent an email to Vaughn, copying Nielsen, informing them: “Andy, I spoke with Shawn Nielson, Investigations Manager for DHS. . . .Mr. Mayer is putting together a packet of information which I will forward to DHS Investigation upon receipt. As you stated you wanted all reasonable information prior to making a filing decision. I am requesting you hold off until you receive this additional information. Please contact Mr. Mayer directly about any concerns you may have.” (Plaintiff’s Exhibit 11, pp. 2 - 3)

85. On October 19, 2020, Vaughn replied to Kirkman’s email, copying Nielsen, as follows: “Thanks Lisa. My office will not be doing anything until (or if) we get an official case submission [from Nielson].” (Plaintiff’s Exhibit 11, p. 2)

86. On December 22, 2020, Vaughn sent an email to Diaz’s counsel, copying Kirkman, as follows: “I am not aware of any official filings with this office [from Nielson]. I am sure Lisa will correct me if I am wrong.” (Plaintiff’s Exhibit 11, p. 4)

87. On July 7, 2021, Plaintiff’s counsel, sent three (3) emails to Kirkman with attachments of the July 7, 2021 Rebuttal Statement to the EPC DHS Investigation Report and Rebuttal Exhibits A – Z. (Plaintiff’s Exhibits 2 – 5, 10; Plaintiff’s Exhibit 11, pp. 5 - 7)

88. On August 30, 2021, 2:39 p.m., Diaz’s counsel sent an email to Nielson, *Subject: Fw: Yaritza Diaz’s Packet of Information #3*, stating in pertinent part as follows: “Please see the last email of the string I sent to Lisa [July 7, 2021] to give to you to send with our packet to the DOA. Hopefully, you will conclude not to pursue criminal charges against Mrs. Diaz. Also, Mrs. Diaz filed an EEOC charge [on July 8, 2021] against El Paso County Department of Health being handled by one of the DA’s in the Civil Division.” (Plaintiff’s Exhibit 11, pp. 7 – 8)

89. On August 30, 2021, 3:37 p.m., one (1) month after Diaz filed her EEOC Charge, Nielson replied in an email to Diaz’s counsel, copying Diana May, El Paso County Attorney, Rachel Powell, El Paso County Senior Deputy District Attorney, Criminal Division, and Casey Campbell, Paralegal, El Paso County District Attorney’s Office “to let you know we have filed our criminal case with the DAO” against Diaz based on EPC DHS’s Fraud Unit’s Investigation Report on Diaz. (Plaintiff’s Exhibit 11, p. 9)

90. On September 8, 2021, Plaintiff’s counsel sent to Powell three (3) emails with attachments of the July 7, 2021 Rebuttal to DHS Investigation Report and Rebuttal Exhibits A – Z that Plaintiff’s counsel sent to Kirkman on July 7, 2021. (Plaintiff’s Exhibits 2 – 5, 10, 11, pp. 10 – 12)

91. Between July 8, 2021, the date Diaz filed her EEOC Charge, and August 30, 2021, the date Diaz’s counsel informed Nielson of Diaz’s EEOC Charge, Nielson was on notice of Diaz’s EEOC Charge. (Plaintiff’s Exhibits 1, p. 1, and 11, p. 8)

92. By September 14, 2020, the date Krow sent Diaz the Intent to Terminate letter and August 30, 2021, Nielson read and approved the Fraud and Investigations Unit Investigation Report on Diaz.

93. On August 30, 2021, Nielson filed her EPC DHS Fraud Unit’s criminal case, based on her EPC DHS Fraud Unit’s Investigation Report, with the El Paso County District Attorney Office. (Plaintiff’s Exhibit 11, p. 9)

94. Instead of filing the EPC DHS Fraud Prevention and Investigations Unit “criminal case” with the EPC District Attorney’s Office, Nielson should have followed Diaz’s counsel request “not to pursue criminal charges”, and should have retracted EPC DHS Fraud Prevention and Investigation Unit’s criminal case submission with the District Attorney’s Office based on the documents rebutting the EPC DHS Fraud Unit’s Investigation Report. (Plaintiff’s Exhibits 2 - 5, 10, 11, p. 8)

95. On or about August 30, 2021, EPC DHS’s Nielson, filed “our criminal case” with the El Paso County District Attorney’s Office, which caused EPC DHS’s and Nielson’s criminal prosecution of Diaz for felony theft from May 5, 2022 to August 28, 2023, in retaliation for Diaz’s filing her July 8, 2021 EEOC Charge of discrimination against EPC DHS, which showed the EPC DHS Fraud Prevention and Investigation Unit Investigation Report fraud allegations against Diaz were false. (Plaintiff’s Exhibits 1 – 5, 11, p. 9)

96. Diaz’s EEOC retaliation claim against EPC DHS is like or related to the EEOC Charge claims and supporting documents which include Kirkman’s October 2, 2020, email to Vaughn entitled: *Yaritza Diaz prosecution – medicaid overpayment filing*. The EEOC Charge and the criminal prosecution are both based on the EPC DHS Fraud Unit’s Investigation Report finding alleged “medicaid overpayment filing” based on Diaz’s alleged under reporting of her husband’s income, both false findings of the Investigation Report. (Plaintiff’s Exhibits 1 – 5, p. 30, and 11, p.1)

97. EPC DHS's filing of "our criminal case" against Diaz with the EPC District Attorney's Office on or about August 30, 2021, which caused Diaz's criminal prosecution, was a continuing violation from on or about August 30, 2021 to August 28, 2023, the date the criminal court judge dismissed Diaz's criminal prosecution with prejudice. (Plaintiff's Exhibit 11, p. 9, and 12, p. 11)

98. Diaz suffered damages as a result of the embarrassment, humiliation, insult and emotional suffering, as well as lost employment opportunities, as a result of EPC DHS and Nielson filing of "our criminal case" against Diaz in retaliation for Diaz's EEOC Charge. (Plaintiff's Exhibit 11, p. 9)

99. On May 5, 2022, a felony complaint alleging theft was filed against Diaz by the El Paso County District Attorney's Office in the El Paso County District Court titled *People of the State of Colorado v. Yaritza Carmen Diaz*, Case No. 2022 CR 002356. (Plaintiff's Exhibit 12, pp. 1, 4)

100. On June 21, 2022, El Paso County Magistrate Hillary Gurney denied Diaz's motion to grant her a travel permit to travel outside the United States to Panama, restricting her right to travel outside the jurisdiction, and Diaz remained bound to appear and answer the People's criminal felony theft charge. (Plaintiff's Exhibit 12, pp. 12 – 14)

101. On March 13, 2023, Diaz pled not guilty. (Plaintiff's Exhibit 12, p. 8)

102. On August 28, 2023, Diaz, by her attorney, William Beck, appeared before the criminal court judge as reflected in the certified docket sheet minute order dismissing Diaz's criminal case, a favorable termination of criminal prosecution which ended without a conviction, as follows: "BILLINGS VELA/XK/FTR 9:33AM DIV1 (S405) DDA BYRNE HRVP 8/28/2023 DPWC ATTY BECK; DEFT PRESENT VIA WEBEX; DDA BYRNE REQ CLARIFICATION

WHY THE COURT DENIED NOTICE; COURT NOTICE DENIED AS LATE; PPLS COUNSEL CANNOT ANNOUNCE READY TO PROCEED; DEF REQ CASE BE DISMISSED; COURT GRANTS MOTIONS FOR CASE BE DISMISSED AND CASE IS CLOSED; GRANT SEALING ORDER AND WAIVE FILING FEES; DEF COUNSEL TO SUBMIT SEALING ORDER; BOND RELEASED/XK.” (Capitalization in original) (Plaintiff’s Exhibit 12, p. 11)

103. On or about August 30, 2021, Nielson caused the malicious prosecution of Diaz when she “filed our criminal case with the DAO”. (Plaintiff’s Exhibit 11, p. 9)

104. But for Nielson’s August 30, 2021 criminal case submission with the Investigation Report to the El Paso County District Attorney’s Office, Vaughn’s office would not have prosecuted Diaz. (Plaintiff’s Exhibit 11, pp. 2, 4)

105. On August 28, 2023, the malicious prosecution of Diaz terminated in Diaz’s favor when the criminal court judge dismissed Diaz’s prosecution with prejudice, and her prosecution ended without a conviction. (Plaintiff’s Exhibit 12, p. 11)

106. Since the alleged probable cause for Diaz’s prosecution was the EPC DHS Fraud Prevention and Investigation Unit Investigation Report alleging Diaz committed theft was false, no arguable probable cause supported Diaz’s prosecution.

107. Nielson acted maliciously since Nielson caused Diaz’s prosecution without arguable probable cause, a prosecution based instead on Nielson’s knowledge the Investigation Report was based on false evidence Diaz committed theft based on Diaz’s documents rebutting the Investigation Report, rebuttal documents received by EPC DHS, Kirkman, Powell, and Nielson approximately nine (9) months prior to Diaz’s prosecution. (Plaintiff’s Exhibits 1 – 5, and 11, pp. 5 –12)

108. Diaz suffered damages as a result of the embarrassment, humiliation, insult and emotional suffering, as well as lost employment opportunities, as a result of the malicious prosecution of Diaz by Nielson.

109. Nielson caused the malicious prosecution of Diaz in violation of 43 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

COUNT I – ADAAA

Failure to Accommodate

110. Diaz incorporates by reference paragraphs 1 - 109 as if fully stated herein.

111. EPC DHS's failure to accommodate Diaz's pregnancy discriminated against her on the basis of her at risk pregnancy disability in violation of the ADAAA as well as the PDA, PWFA, and EPC DHS policies.

COUNT II – ADAAA

Termination/Constructive Discharge

112. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

113. EPC DHS constructively discharged and terminated Diaz, rather than accommodating her pregnancy in violation of Sections 102(a) and 102(b)(3)(A) and (b)(5)(A) of Title I of the ADAAA, 42 U.S.C. §§ 12112(a) and 12112(b)(3)(A) and (b)(5)(A) (“ADAAA”) as well as the PDA, PWFA, and EPC DHS policies.

114. EPC DHS's termination of Diaz discriminated against her based on her pregnancy disability in violation of the ADAAA.

COUNT III – ADAAA

Retaliation

115. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

116. EPC DHS's denial of Diaz's request for reasonable accommodation was in retaliation for asserting protected activity when she requested reasonable accommodation pursuant to her ADAAA, PDA, PWFA, and EPC DHS policies rights, prior to EPC DHS notice to her of its intent to terminate her which discriminated against her on the basis of her pregnancy disability in violation of the ADAAA as well as the PDA, PWFA, and EPC DHS policies.

117. EPC DHS constructively discharged and terminated Dickson in retaliation for asserting her ADAAA, PDA, and PWFA disability and reasonable accommodation rights and discriminated against her on the basis of her pregnancy disability in violation of the ADAAA as well as the PDA, PWFA, and EPC DHS policies.

COUNT IV – TITLE VII and PDA

Failure to Accommodate

118. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

119. EPC DHS's failure to accommodate Diaz discriminated against her on the basis of her sex, pregnancy, race, and national origin in violation of Title VII and the PDA, as well as the PWFA, and EPC DHS policies.

COUNT V – TITLE VII and PDA

Termination/Constructive Discharge

120. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

121. EPC DHS's termination and constructive discharge of Diaz discriminated against her on the basis of her sex, pregnancy, race, and national origin in violation of Title VII and PDA, as well as PWFA, and EPC DHS policies.

COUNT VI – TITLE VII and PDA

Retaliation

122. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

123. EPC DHS’s denial of Diaz’s request for reasonable accommodation was in retaliation for asserting protected activity when she requested reasonable accommodation prior to EPC DHS notifying her of its intent to terminate her which discriminated against her on the basis of her sex, pregnancy, race, and national origin in violation of Title VII and the PDA, as well as PWFA, and EPC DHS policies.

124. EPC DHS constructively discharged and terminated Diaz in retaliation for asserting her Title VII and PDA rights and discriminated against her on the basis of her sex, pregnancy, race, and national origin in violation of Title VII and PDA, as well as PWFA, and EPC DHS policies.

COUNT VII – ADAAA, Title VII, and PDA

Retaliation for Filing EEOC Charge

125. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

126. On or about August 30, 2021, one (1) month after Diaz filed her EEOC Charge, EPC DHS’s Nielson filed “our criminal case” with the El Paso County District Attorney’s Office, which caused EPC DHS’s and Nielson’s criminal prosecution of Diaz for felony theft from May 5, 2022 to August 28, 2023, in retaliation for Diaz’s filing her July 8, 2021 EEOC Charge of discrimination against EPC DHS.

127. The EEOC Charge established the EPC DHS Fraud Prevention and Investigation Unit Investigation Report fraud allegations against Diaz were false.

128. Diaz suffered damages as a result of the embarrassment, humiliation, insult and emotional suffering, as well as lost employment opportunities, as a result of EPC DHS and Nielson filing of “our criminal case” against Diaz in retaliation for Diaz’s EEOC Charge.

COUNT VIII - 42 U.S.C. §1983 and Fourth and Fourteen Amendments

Malicious Prosecution

129. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

130. Nielson caused Diaz’s criminal prosecution.

131. Diaz’s prosecution terminated in favor of Diaz since the prosecution ended without a conviction.

132. No probable cause supported Diaz’s prosecution.

133. Nielson acted with malice for causing Diaz’s criminal prosecution which lacked probable cause.

134. Diaz suffered damages as a result of the embarrassment, humiliation, insult and emotional suffering, as well as lost employment opportunities, as a result of the malicious prosecution of Diaz by Nielson.

COUNT IX – Colorado Tort

Malicious Prosecution

135. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

136. Nielson contributed to bringing the prior action, the criminal prosecution of Diaz.

137. The prior action ended in favor of Diaz.

138. No probable cause supported the prior action, the criminal prosecution of Diaz.

139. Nielson acted with malice for causing the prior action, the criminal prosecution of Diaz, which lacked probable cause.

140. Diaz suffered damages as a result of the embarrassment, humiliation, insult and emotional suffering, as well as lost employment opportunities, as a result of the malicious prosecution of Diaz by Nielson.

COUNT X – Colorado PWFA, C.R.S. § 24-34-402.3

Pregnancy Discrimination

141. Diaz incorporates by reference paragraphs 1 – 109 as if fully stated herein.

142. EPC DHS's failure to make a reasonable accommodation to perform the essential functions of the job to Diaz for her health conditions related to her pregnancy or the physical recovery from childbirth discriminated against her on the basis of her at risk pregnancy disability in violation of the PWFA, Section (1)(a)(I), a discriminatory and unfair employment practice. (PWFA, Section (5))

143. EPC DHS took adverse action against Diaz when it denied her reasonable accommodation request related to her pregnancy, physical recovery from childbirth, or a related condition in violation of the PWFA, Section (1)(a)(II), a discriminatory and unfair employment practice. (PWFA, Section (5))

144. EPC DHS took adverse action against Diaz when it terminated Diaz who requested reasonable accommodation related to her pregnancy, physical recovery from childbirth, or a related condition in violation of the PWFA, Section (1)(a)(II), a discriminatory and unfair employment practice. (PWFA, Section (5))

145. EPC DHS took adverse action against Diaz when it denied Diaz's request for reasonable accommodation in retaliation for asserting protected activity when she reasonable accommodation in violation of the PWFA, Section (1)(a)(II), a discriminatory and unfair employment practice. (PWFA, Section (5))

146. Since Diaz requested reasonable accommodation when she submitted her doctor's letter to EPC DHS Human Resources, Benefits, EPC DHS failed to engage in a timely, good faith, and interactive process to determine effective, reasonable accommodations for Diaz for conditions

related to pregnancy, physical recovery from childbirth, or a related condition in violation of the PWFA, Section (2), a discriminatory and unfair employment practice. (PWFA, Section (5))

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Court:

- A) Grant a permanent injunction enjoining EPC DHS, its directors, officers, employees, agents, successors, heirs and assigns, and all persons in active concert or participation with them, from engaging in, ratifying, or refusing to correct, employment practices which discriminate in violation of the ADAAA, Title VII, PDA, and PWFA;
- B) Order EPC DHS to institute and implement, training programs, policies, practices, and programs designed to ensure the company provides equal employment opportunities for pregnant females with disabilities related to pregnancy;
- C) Order EPC DHS to make whole Yartiza Diaz, by providing reinstatement, appropriate back pay with prejudgment interest, and front pay in lieu of reinstatement if reinstatement is not ordered, in amounts to be determined at trial, and all other affirmative legal and equitable relief necessary to eradicate the effects of its unlawful employment practices;
- D) Order EPC DHS and Nielson to pay Plaintiff liquidated, compensatory, and punitive damages in an amount to be determined at trial;
- E) That EPC DHS be directed to pay to Diaz a sum equal to the damages she has suffered as a result of the embarrassment, humiliation, insult and emotional suffering as a result of the ADAAA, Title VII, PDA, and PWFA violations committed against her by EPC DHS;
- F) Order EPC DHS to pay Plaintiff the reasonable attorney's fees and costs and other legal expenses incurred by Plaintiff in this matter;

- G) Order EPC DHS to remove and expunge, or to cause to be removed and expunged, all negative, discriminatory, and/or defamatory memoranda and documentation from Plaintiff's record of employment;
- H) Order EPC DHS to pay Plaintiff an additional amount to offset the negative tax consequences of the balance of the court's award, in order to effectuate the essential purpose of the remedial goal expressed in the statutes, of making whole the victim of discrimination; and
- I) Award such other legal and equitable relief as the court deems appropriate and just.

A jury trial is demanded as to all issues triable to a jury.

Dated: February 15, 2024

Respectfully submitted,

s/Scott A. Mayer

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