

# Exhibit A

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

DEBRA L. MARQUEZ,

Plaintiff,

v.

VALLEY WIDE HEALTH SYSTEMS, INC.,

Defendant.

CASE NO. 1:24-cv-01003-MDB

**FOURTH AMENDED COMPLAINT**

1. Plaintiff Debra L. Marquez brings this action against Defendant Valley Wide Health Systems, Inc. (“VWHS” or “Defendant”) for age discrimination; disability discrimination, including the failure to accommodate her disability; and retaliation for and interference with her leave under the Family and Medical Leave Act (FMLA); and, for her complaint, Plaintiff alleges as follows:

**Jurisdiction and Venue**

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331.

3. This Court has personal jurisdiction over Valley Wide Health Systems, Inc. and venue is proper in this District under 15 U.S.C. § 22 because the Defendant’s headquarters are in Alamosa, Colorado.

**Parties**

4. Plaintiff Debra L. Marquez is a resident of Alamosa, Colorado.

5. Defendant Valley Wide Health Systems, Inc. is a Colorado nonprofit corporation headquartered in Alamosa, Colorado.

**Facts**

6. Plaintiff is a 68-year-old woman who has been a registered nurse since 1991.

7. Plaintiff was employed by Defendant as a nurse from November 8, 2021 through July 13, 2023, at which point she was terminated.

8. Plaintiff has suffered from Type II Diabetes for about ten years. She relies on an insulin pump to manage her diabetes. Plaintiff must manage her blood sugar and at times this interferes with her ability to get any sleep and care for herself.

9. Plaintiff moved to Alamosa, Colorado around 2018 to care for her dying brother, Chris Marquez.

10. In 2020, Plaintiff's other brother Bob Marquez died from Covid-19.

11. Chris Marquez died seven months later on June 7, 2021.

12. In 2021, Plaintiff attended a career fair and applied for a job as a nurse with Defendant. She had previously worked for Defendant as a nurse 16 years earlier for a period of 18 months.

13. Defendant hired Plaintiff because she was qualified to perform the job.

14. Plaintiff began employment as a nurse with Defendant on November 8, 2021.

15. Plaintiff started in the convenient care clinic despite being hired for the triage position.

16. Plaintiff was 65 years old when she started working for Defendant. Plaintiff was the oldest nurse in the convenient care clinic.

17. Plaintiff had previously worked as a hospice nurse and required training to work in convenient care. Plaintiff received minimal training as a new hire.

18. After only a month in the convenient care clinic, Dr. DeRuiter, one of Defendant's doctors who had been out on vacation, became enraged at a patient's admission paperwork. When other nurses told Dr. DeRuiter that Plaintiff had completed the paperwork in

question, Dr. DeRuiter looked at Plaintiff and yelled “get rid of her now!” This took place in front of patients and other hospital staff.

19. Wendy DeHerrera, Defendant’s Director of Nursing, emailed Plaintiff about this incident on January 8, 2022 apologizing and acknowledging she was trying to improve the new hire training process.

20. Plaintiff moved into a new position as a triage nurse. DeHerrera was her supervisor.

21. In this position, Plaintiff had a reputation as an experienced nurse. Other nurses and hospital workers would come to Plaintiff with questions and to seek advice regarding nursing duties. DeHerrera, by contrast, had far less experience than Plaintiff.

22. In February 2022, Plaintiff received the only performance review she can recall. Nobody told her that there were serious concerns about her performance.

23. Around September 2022, a nurse told Plaintiff that DeHerrera was asking other nurses for indications Plaintiff had done something wrong or made mistakes that could get Plaintiff in trouble.

24. In October 2022, Plaintiff went to Defendant’s Human Resources (“HR”) department seeking accommodations for her diabetes disability. Plaintiff was unable to sleep due to blood sugar and insulin pump complications. She asked for flexible hours or a modified schedule on days she was particularly afflicted by her diabetes diagnosis. Defendant’s HR representatives did not take any notes. They did not follow up with her about her accommodation request.

25. In November 2022, Plaintiff again sought assistance from Defendant’s HR department. Plaintiff followed up on her disability accommodation request and reported a hostile

work environment under DeHerrera. Defendant did not follow up with Plaintiff about either issue.

26. Plaintiff went to HR a third time to no avail. Defendant never followed up on or granted Plaintiff's accommodation request.

27. Because Defendant never engaged in the interactive process and never provided a reasonable accommodation, Plaintiff was forced to continue working her normal schedule despite her disability. To the extent Defendant asserts Plaintiff had performance issues during this time, they would be traceable to Defendant's failure to accommodate.

28. Following her brothers' deaths, Plaintiff was diagnosed with complex grief Post-Traumatic Stress Disorder ("PTSD").

29. Plaintiff's PTSD symptoms became increasingly severe. Plaintiff suffered from suicidal ideation and panic attacks. She is substantially limited in her ability to care for herself, eat, sleep, walk, concentrate, communicate, and work.

30. After suffering a nervous breakdown, Plaintiff went to the HR department for help filling out Family and Medical Leave Act ("FMLA") paperwork. HR told Plaintiff to work with her mental health provider to fill out the paperwork. Plaintiff sought help from her mental health provider and requested FMLA leave. Despite recognizing that Plaintiff's PTSD was a disability, nobody employed by Defendant instigated the interactive process to determine whether Plaintiff's PTSD might require a reasonable accommodation.

31. In March 2023, Plaintiff requested leave under FMLA related to her PTSD diagnosis.

32. Defendant sent her an FMLA policy packet on March 24, 2023.

33. Four days later, on March 28, 2023, DeHerrera announced a policy whereby she would “graph” the two triage nurse’s performance against each other. The policy was unfairly stacked against Plaintiff given her known disability and decision to take FMLA leave.

34. On March 30, 2023, Plaintiff wrote an email to DeHerrera questioning the policy, expressing concern it would not accurately capture Plaintiff’s performance and observing “all that will do is cause animosity between the two [triage nurses].” Plaintiff reminded DeHerrera she was “taking leave for my issues.”

35. On April 13, 2023, DeHerrera signed Plaintiff’s application for FMLA.

36. That same day, DeHerrera gave Plaintiff a written “final warning” for “several occurrences where Deb has had inappropriate reactions to communication and/or information. The most recent being an email she sent on 3/30/2023. These reactions do not represent the team model which can interfere with service to patients.” While labeled a final warning, it was not. DeHerrera had not previously given Plaintiff a warning.

37. On information and belief, this “final warning” was pretextual and based not on Plaintiff’s performance but on her age, her disabilities, her need for accommodation, and her decision to take FMLA leave. DeHerrera instituted the performance graphing policy and issued the warning only after Plaintiff had told the hospital about her PTSD disability and exercised her right to take FMLA leave.

38. Two months later, around June 2023, another nurse informed Plaintiff she was likely going to be terminated. The informant nurse explained DeHerrera wanted to “get rid of the old nurses because “they are always sick and calling off.”

39. At roughly the same time, Plaintiff was informed that DeHerrera was contacting Plaintiff's prior employers asking for information on any workplace errors. To her knowledge, Plaintiff had never been written up in her previous 32 years as a nurse.

40. Around June 29, 2023, DeHerrera informed Plaintiff that she had investigated Plaintiff's patient charting and found an error. DeHerrera had never investigated Plaintiff's charting before. Plaintiff asked for the reason for the investigation, stating: "I have been here for a year and a half and you have never questioned my charting." DeHerrera replied "it is customary in all areas to do chart reviews periodically. There was a concern yesterday regarding follow-up for the patient and I was to review the documentation, so I followed through with that request."

41. On information and belief this investigation was pretextual and based not on Plaintiff's performance but because of her age, her disabilities, her need for accommodation, and her decision to take FMLA leave her disability and related decision to take FMLA leave.

42. Plaintiff was notified she would be terminated on July 11, 2023. DeHerrera told Plaintiff it was because she had violated HIPPA by placing a note in her brother's chart that he needed an insulin refill. On information and belief, this was pretextual as Plaintiff had medical power of attorney for her brother, something which the hospital knew and had on file.

43. Plaintiff was terminated two days later, on July 13, 2023.

44. Plaintiff was 66 years old on the date she was terminated.

45. Cathy Medina was the other triage nurse. She is also in her 60s, roughly two years younger than Plaintiff. She was let go from her regular triage position two weeks after Plaintiff.

46. Plaintiff is not aware of any other younger nurses that were terminated during the relevant period.

47. Plaintiff has suffered tremendous harm as a result of Defendant's unlawful termination. She has been unable to obtain other employment. She was denied unemployment benefits. She cannot afford to pay for her rent and basic needs and is at risk of losing her apartment. She has experienced increased anxiety, grief, and agoraphobia.

**First Claim for Relief –  
Failure to Accommodate under Americans with Disabilities Act (ADA),  
42 U.S.C. § 12112(b)(5)**

48. Plaintiff incorporates all allegations above into this claim.

49. Plaintiff's diabetes diagnosis is a disability as defined by the ADA because it substantially limits her ability to sleep, eat, and care for herself.

50. Plaintiff's PTSD is a disability as defined by the ADA because it substantially limits her ability to care for herself, eat, sleep, walk, concentrate, communicate, and work.

51. Plaintiff was qualified to perform the essential functions of her job as a triage nurse with a reasonable accommodation. She had worked as a nurse for three decades and often helped advise other nurses at VWHS. Defendant hired her as a nurse and transferred her to triage because she was qualified. Plaintiff received one performance review, and there was no indication of a serious concern about her.

52. Plaintiff requested the reasonable accommodation of an adjusted schedule. Defendant's HR representative assured her this sounded reasonable but never followed up.

53. Despite three separate visits to Defendant's HR Department, the Defendant never provided an accommodation for Plaintiff's diabetes. Defendant never engaged in the requisite interactive process to consider Plaintiff's requested accommodations.

54. Defendant also never instigated the interactive process regarding Plaintiff's PTSD diagnosis despite knowing of the diagnosis and that her PTSD constituted a disability. Because Defendant never instigated the interactive process, there was never any effort to determine



whether a reasonable accommodation might allow Plaintiff to continue working despite her PTSD diagnosis without having to take FMLA leave.

55. To the extent Defendant asserts Plaintiff was terminated for performance-related issues, any such alleged performance-related issues cannot be disentangled from Defendant's failure to accommodate.

56. Plaintiff has suffered damages, including but not limited to, loss of her job and related income, mental and emotional distress, and reputational harm.

**Second Claim for Relief –  
Disability Discrimination under ADA,  
42 U.S.C. § 12112(a)**

57. Plaintiff incorporates all allegations above into this claim.

58. Plaintiff suffers from PTSD, which is a disability as defined by the ADA because it substantially limits her ability to care for herself, eat, sleep, walk, concentrate, communicate, and work.

59. Plaintiff was qualified to perform the essential functions of her job as a triage nurse with a reasonable accommodation. She had worked as a nurse for three decades and often helped advise other nurses at VWHS. Defendant hired her as a nurse and transferred her to triage because she was qualified. Plaintiff received one performance review, and there was no indication of a serious concern about her performance.

60. Plaintiff sought partial leave under the FMLA due to her PTSD.

61. Plaintiff's partial FMLA leave allowed her a flexible schedule to attend appointments and manage her condition so she could perform the essential functions of her job.

62. Plaintiff suffered discrimination by Defendant because of her disability. The day Plaintiff's supervisor signed off on her FMLA, her supervisor pretextually gave her a "final warning" despite not having issued any previous warnings. While Plaintiff was on FMLA, her

supervisor pretextually investigated her medical charting to search for errors, and pretextually asserted she was being fired for an alleged HIPPA violation despite her having medical power of attorney for her brother whose chart she placed a note in.

63. Plaintiff was terminated during her disability related leave.

64. Plaintiff was terminated because of her disability.

65. Plaintiff has suffered damages, including but not limited to, loss of her job and related income, mental and emotional distress, and reputational harm.

**Third Claim for Relief –  
Discrimination under Age Discrimination in Employment Act (ADEA),  
29 U.S.C. § 623(a)(1)**

66. Plaintiff incorporates all allegations above into this claim.

67. Plaintiff was 65 at the time she was hired by Defendant and thus within ADEA's protected class of individuals 40 years or older at all times during the relevant period.

68. Defendant was qualified for her position as a triage nurse because she had worked as a nurse for three decades and often helped advise other nurses. Plaintiff's supervisor told Plaintiff she was "an asset to Valley-Wide, with all of [her] nursing knowledge and experience."

69. Plaintiff suffered an adverse employment action when she was terminated by her Defendant employer on July 13, 2023.

70. Shortly before Plaintiff's termination, an informant told Plaintiff she was likely going to get terminated because Plaintiff's supervisor wanted to "get rid of the old nurses."

71. The other nurse in her 60s was terminated from her position roughly two weeks later.

72. Plaintiff is not aware of nurses younger than 40 being similarly terminated.

73. Plaintiff has suffered damages, including but not limited to, loss of her job and related income, mental and emotional distress, and reputational harm.

**Fourth Claim for Relief –  
Retaliation under Family and Medical Leave Act (FMLA),  
29 U.S.C. §§ 2615(a)(1)**

74. Plaintiff incorporates all allegations above into this claim.

75. Plaintiff engaged in a protected activity by taking FMLA leave so she could attend appointments for her serious PTSD condition—a condition that caused suicidal ideation and panic attacks.

76. Defendant took an action that a reasonable employee would have found materially adverse when it terminated Plaintiff on July 13, 2023.

77. That Plaintiff's termination was related to her exercise of FMLA rights is shown by the following facts: Plaintiff was terminated while on partial FMLA leave; she was pretextually given a first and "final" warning by her supervisor on the day she was awarded leave; and while Plaintiff was on FMLA, her supervisor pretextually investigated her medical charting to search for errors, and pretextually asserted she was being fired for an alleged HIPPA violation despite her having medical power of attorney for her brother whose chart she placed a note in.

78. Plaintiff has suffered damages, including but not limited to, loss of her job and related income, mental and emotional distress, and reputational harm.

**Fifth Claim for Relief –  
Interference with FMLA,  
29 U.S.C. §§ 2615(a)(1)**

79. Plaintiff incorporates all allegations above into this claim.

80. Defendant approved Plaintiff's FMLA leave—a temporary and part-time leave to manage her PTSD symptoms.

81. Defendant interfered with Plaintiff's ability to take FMLA leave because it terminated her during her FMLA leave.

82. That Plaintiff's termination was related to her exercise of FMLA rights is shown by the following: Plaintiff was terminated while on partial FMLA leave; she was written up by her supervisor on the day she was awarded leave; and Plaintiff's work was randomly investigated by her supervisor during her FMLA leave period.

83. Plaintiff has suffered damages, including but not limited to, loss of her job and related income, mental and emotional distress, and reputational harm.

### **Prayer for Relief**

Plaintiff respectfully request that this Court enter judgment against Defendant and provide the following relief:

84. A judgment by this Court in her favor and against Defendant for all actual damages, compensatory damages, consequential damages, and incidental damages in amount to be proved at trial;

85. An award to Plaintiff of all applicable prejudgment and post-judgment interest to the extent permitted by law; and

86. An award to Plaintiff for all reasonable attorneys' fees, costs of suit, including, without limitation, expert witness fees, depositions costs, and all other costs incurred in connection with the prosecution of this action, and as allowable by statute or contract;

87. Injunctive relief barring Defendant from disadvantaging Plaintiff in seeking further employment; and

88. Any other relief the Court may deem appropriate, or Plaintiff may seek after additional information is learned.

### **Jury Trial.**

Plaintiff requests a trial by jury.

Dated: January 24, 2025

/s/ Samara R. Hoose

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