

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|--------------------------------------|---|--|
| DAVID IGASAKI |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| ILLINOIS DEPARTMENT OF |) | |
| FINANCIAL AND PROFESSIONAL |) | |
| REGULATIONS and LAURA |) | |
| FORESTER, an individual and as Chief |) | |
| of Medical Prosecution at the IDFPR |) | |
| |) | |
| Defendants. |) | |

Case No. 15-C-3693
Honorable Judge Andrea R. Wood

**DEFENDANT IDFPR’S ANSWER TO PLAINTIFF’S
FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES**

NOW COMES Defendant, the ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION (“IDFPR”), by its attorney LISA MADIGAN, Attorney General of the State of Illinois, and for its Answer to Plaintiff’s First Amended Complaint and Affirmative Defenses, states as follows:

INTRODUCTION

1. This action is brought by Plaintiff to secure redress for Defendant’s violation of his civil right to be free from employment discrimination on the basis of his race, sex, disability and age.

ANSWER: Defendant admits that Plaintiff has filed this suit to attempt to redress alleged violations of his civil rights. Defendant denies that it violated any of Plaintiff’s civil rights or that any of Plaintiff’s claims are meritorious.

2. Plaintiff was a staff attorney for the medical prosecutions unit (“Unit”) at the IDFPR. Plaintiff was the only homosexual Asian staff attorney in the Unit and all his supervisors were Caucasian. Further, Plaintiff suffers from Gout and is over the age of forty (40) years old.

ANSWER: Defendant admits that Plaintiff was a staff attorney for the medical prosecutions unit in IDFPR. Defendant admits that Plaintiff is Asian and is over forty years old. Defendant admits that Plaintiff’s supervisors were Caucasian. Defendant lacks knowledge and information sufficient to either admit or deny the remaining allegations in this paragraph.

3. After working for Defendant for approximately twenty (20) years with a long history of good performance reviews, Plaintiff was suddenly unlawfully suspended and subsequently terminated based on his race, sex, disability and age.

ANSWER: Defendant admits that Plaintiff worked for Defendant for approximately twenty years. Defendant admits that Plaintiff was suspended and subsequently terminated due to poor performance which is reflected in his employment record and reviews. Defendant denies that Plaintiff was unlawfully suspended or terminated. Defendant denies the remaining allegations in this paragraph. Defendant denies that Plaintiff’s race, sex, disability or age contributed to Defendant’s decisions regarding Plaintiff’s employment status.

JURISDICTION AND VENUE

4. This court has jurisdiction over Defendants pursuant to 28 U.S.C. § 1331 and 1337 on that this case arises under federal law, specifically, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq* (“Title VII”); Title I of the Americans with Disability Act, 42

U.S.C. § 12101 *et seq* (“ADA”); the Age Discrimination of Employment Act, 29 U.S.C. § 623(a) (“ADEA”); and retaliatory discharge in violation of Title VII. Venue is proper in the Northern District of Illinois, Eastern Division since the unlawful practices occurred within this District pursuant to 28 U.S.C. § 1391(b) and (c). There is supplemental jurisdiction over the state law claims.

ANSWER: Defendant admits that this Court has jurisdiction over Plaintiff’s federal claims. Defendant admits that venue is proper in this case. Defendant denies that any “unlawful practices occurred.” Plaintiff’s state law claim has already been dismissed by this Court [Doc. 31] and is not re-pled in Plaintiff’s First Amended Complaint. Defendant, therefore, provides no response to remaining allegations in this paragraph.

PARTIES

5. Plaintiff is a 62 year-old Japanese American citizen of the United States, residing in the city of Chicago, Illinois, Cook County. Plaintiff worked as an Advanced Program Specialist or Staff Attorney for the Defendants’ Medical Prosecutions Unit (“Unit”). Plaintiff’s job was to try disciplinary hearings and defend against petitions to restore professional licenses in front of the IDFPR’s administrative tribunals. Further, to conduct Informal Conferences and to draft and negotiate Consent Orders and other settlement agreements. Finally, to draft Complaints against professional licensees where appropriate.

ANSWER: Defendant denies that Plaintiff accurately and fully summarized his job duties while working for Defendant. Defendant admits the remaining allegations in this paragraph.

6. The IDFPR is a government agency that regulates Illinois professionals for the benefit of Illinois consumers. The Unit conducts investigations and prosecutes medical doctors for violating Illinois law.

ANSWER: Defendant admits that IDFPR is a government agency that regulates Illinois professionals. Defendant admits that the Medical Prosecutions Unit prosecutes medical doctors for violating Illinois law, but denies that the Medical Prosecutions Unit was generally responsible for investigating possible violations.

7. At all times relevant, the IDFPR continuously had in excess of twenty (20) employees working in the Northern District of Illinois.

ANSWER: Admit.

8. At all times relevant, Forester is a Caucasian American citizen of the United states (*sic*), resident of Illinois, and was employed as, Chief of Medical Prosecutions at the IDFPR, where some or all of the events in question transpired. At all times relevant, Forester was an attorney practicing law at the IDFPR.

ANSWER: Defendant admits that Forester is a Caucasian American who is a resident of Illinois. Defendant admits that Forester has been employed as the Chief of Medical Prosecutions since February of 2011 and is a practicing attorney with IDFPR. Defendant lacks knowledge and information sufficient to either admit or deny whether “some or all of the events in question” transpired as those “events” are not specified.

STATEMENT OF FACTS

9. Plaintiff is a Japanese American citizen of the United States and thus belongs to a protected class of workers under Title VII.

ANSWER: Admit.

10. Plaintiff consistently scored satisfactory or excellent reviews throughout his twenty (20) year career with the IDFPR. Plaintiff had never once been disciplined.

ANSWER: Defendant denies that Plaintiff scored satisfactory or excellent reviews throughout his entire career with Defendant. Defendant denies Plaintiff was never disciplined.

11. In 2011, Forester became Plaintiff's immediate supervisor when the IDFPR hired her as its new Chief of Medical Prosecutions.

ANSWER: Admit.

12. On February 16, 2012, Forester gave Plaintiff a good annual 2011 review ("2011 Review"), indicating that Plaintiff "exceeded expectations" or "met expectations". However, as a means of degrading Plaintiff, Forester claimed the only reason Plaintiff received this good review was because she had reviewed an "even worse attorney" than the Plaintiff. Plaintiff is a competent and well-reviewed attorney who happens to be slight and soft spoken. Further Plaintiff forms intimate relationships with men rather than women.

ANSWER: Defendant admits that Plaintiff's 2011 review indicated that Plaintiff had "exceeded expectations" or "met expectations". Defendant lacks knowledge and information sufficient to either admit or deny with whom Plaintiff forms intimate relationships. Defendant denies the remaining allegations in this paragraph.

13. In the year following the February 2011 Review, Forester developed a close relationship with Vladimir Lavosky ("Lovosky") another staff attorney in the Unit. Lovosky was the only other person in the Unit who knew Plaintiff was a man associated with a man in a romantic relationship.

ANSWER: Defendant admits that Lovosky was another staff attorney in the Unit at this time but denies that Forester had any relationship with him beyond a normal working relationship as his supervisor. Defendant lacks knowledge and information sufficient to either admit or deny whether Lovosky or any other individuals had knowledge of Plaintiff's romantic relationships.

14. On or about January 31, 2013, Forester gave an extremely bad 2012 performance review to Plaintiff ("2012 Review").

ANSWER: Defendant admits that Forester reviewed Plaintiff in the normal course of business and as her role as supervisor. Defendant admits that Plaintiff received his 2012 performance evaluation on or about January 31, 2013. Defendant denies the characterization "extremely bad".

15. The 2012 Review included alleged 2011 incidents which were never mentioned in her 2012 Review.

ANSWER: Defendant admits that Forester reviewed Plaintiff in the normal course of business and as her role as supervisor. Defendant denies the remaining allegations in this paragraph.

16. Furthermore, the 2012 Review was vague and never specified the cases that Forester claims that Plaintiff performed poorly on.

ANSWER: Defendant admits that Forester reviewed Plaintiff in the normal course of business and as her role as supervisor. Defendant denies the remaining allegations in this paragraph.

17. Forester admonished and publically shamed Plaintiff for this alleged poor performance, but to Plaintiff's knowledge Forester never actually submitted the 2012 Review to the Springfield, Illinois offices as required under department protocol.

ANSWER: Defendant admits that performance reviews are required to be submitted to the IDFPR headquarters in Springfield, Illinois. Defendant admits that Plaintiff was performing poorly at the time of the 2012 review. Defendant denies the remaining allegations in this paragraph.

18. Additionally, Forester created impossible deadlines for Plaintiff alone.

ANSWER: Defendant denies the allegations in this paragraph.

19. Forester constantly humiliated Plaintiff by undermining his authority to direct investigations assigned to him.

ANSWER: Defendant denies the allegations in this paragraph.

20. Furthermore, Plaintiff was the most senior staff attorney working in the Unit and to Plaintiff's knowledge had one of the largest caseloads in the Unit.

ANSWER: Defendant admits that Plaintiff was the most senior staff attorney working in the Unit. Defendant denies the remaining allegations in this paragraph.

21. Despite his seniority and case load, Defendants provided him with the smallest and least accommodating work station. In this regard, even law students were assigned substantially larger work stations than Plaintiff.

ANSWER: Defendant denies the allegations in this paragraph.

22. On or about February 19, 2013, Defendants imposed a six (6) month Corrective Action Plan ("CAP") solely on Plaintiff.

ANSWER: Defendant admits that Plaintiff was put on a corrective action plan beginning on February 19, 2013 specifically to address multiple deficiencies in his performance. Defendant denies that Plaintiff was the only employee placed on a CAP during this approximate time period.

23. From about April 27, 2013, Forester singled out Plaintiff and began to subject him to increasingly longer and more probing case reviews. The reviews increased from forty five (45) minutes in length to four and a half (4 ½) hours in length.

ANSWER: Defendant denies that Defendant Forester “singled out” Plaintiff. Defendant admits that Defendant Forester held case status review meetings with each attorney in her Unit, including the Plaintiff. Defendant admits that occasionally these reviews would last approximately four hours in length. Defendant denies the remaining allegations in this paragraph.

24. On or about August 13, 2013, Defendants extended the CAP for another six (6) months due to Forester’s false claims that Plaintiff failed to comply with the CAP.

ANSWER: Defendant admits that Plaintiff’s corrective action plan was extended for another six months due to poor performance. Defendant denies the remaining allegations in this paragraph.

25. Sometime shortly after Plaintiff complained to IDFPR about the extended CAP, Forester imposed even more work and impossible deadlines on Plaintiff.

ANSWER: Defendant admits that Plaintiff filed a union grievance complaining about the CAP in August, 2013. Defendant denies the remaining allegations in this paragraph.

26. On or about December 12, 2013, Forester gave Plaintiff another poor evaluation (“December 2013 Evaluation”). Plaintiff responded in opposition to the poor evaluation, but Defendants never replied.

ANSWER: Defendant admits that Forester reviewed Plaintiff in the normal course of business and as her role as supervisor. Defendant admits that Plaintiff filed a response in opposition to the poor evaluation. Defendant admits that there is no mechanism for it to reply to Plaintiff's response.

27. Sometime shortly thereafter, Plaintiff immediately filed a complaint with his union steward.

ANSWER: Admit.

28. In early 2014, Forester manufactured a policy in which employees could not work past normal business hours ("No Work Late Policy") and imposed the No Work Late Policy solely on the Plaintiff. Foster publically reprimanded Plaintiff for violating the No Work Late Policy and ordered Plaintiff alone to leave the office on multiple occasions.

ANSWER: Defendant denies that Defendant Forester "manufactured" any policy concerning the employees' working hours. Defendant admits that Defendant Forester encouraged her employees to be present and report during normal working hours unless they received prior approval consistent with Department protocol. Defendant lacks knowledge and information sufficient to either admit or deny whether Defendant Forester asked Plaintiff or any other employees to leave the office. Defendant denies the remaining allegations in this paragraph.

29. Other similarly situated employees regularly violated the No Work Late Policy without reprimand.

ANSWER: Defendant denies the allegations in this paragraph.

30. Around this time the entire floor that Plaintiff worked on became infested with bedbugs. As a result, the bedbugs eventually were transmitted into Plaintiff's home.

ANSWER: Defendant admits that bed bugs were discovered on the 9th floor and that an investigation determined that they originated with Plaintiff. Defendant denies the remaining allegations in this paragraph.

31. Upon information and belief, other similarly situated employees may have also faced similar bedbug issues.

ANSWER: Defendant admits that other employees faced similar bed bug issues in their workplace. Defendant lacks knowledge and information sufficient to either admit or deny whether any other employees had bed bugs transmitted to their homes.

32. Despite Plaintiff curing the bedbug issue on March 3, 2014 via a licensed exterminator, Defendants barred only Plaintiff from the work place ("Involuntary Leave") for the bedbug issue from March 19, 2014 through August 25, 2014.

ANSWER: Defendant admits that Defendant required Plaintiff to prove he was free of bedbugs before returning to work in order to ensure a re-infestation did not occur in the workplace. Defendant admits that Plaintiff was on leave for the dates indicated using his accrued benefit time. Defendant denies the remaining allegations in this paragraph.

33. Defendants forced Plaintiff to use five (5) months of his voluntary leave days for the Involuntary Leave.

ANSWER: Defendant admits that Plaintiff was on leave for five months and was allowed to use his accrued benefit time. Defendant denies the remaining allegations in the paragraph.

34. Further, Defendants ordered Plaintiff to obtain a second, third, and fourth extermination service for bed bugs that no longer existed before allowing him to return to work.

ANSWER: Defendant admits that Defendant required Plaintiff to prove he was free of bedbugs before returning to work in order to ensure a re-infestation did not occur in the workplace. Defendant denies the remaining allegations.

35. For the third extermination, Defendants forced Plaintiff to allow the use of dogs to inspect Plaintiff's home for bed bugs. The exterminator and the dogs were present in Plaintiff's home for over four (4) hours.

ANSWER: Defendant admits that Defendant required Plaintiff to prove he was free of bedbugs before returning to work in order to ensure a re-infestation did not occur in the workplace. Defendant admits offering to pay for an inspection of Plaintiff's home, including the use of specially trained dogs, but denies forcing Plaintiff to accept their offer. Defendant lacks knowledge sufficient to either admit or deny the remaining allegations in the paragraph.

36. Although, the third exterminator reported Plaintiff was in compliance, the Defendant never-the-less rejected the report and did not allow Plaintiff to return to work.

ANSWER: Defendant admits that Defendant required Plaintiff to prove he was free of bedbugs before returning to work in order to ensure a re-infestation did not occur in the workplace. Defendant denies the remaining allegations in this paragraph.

37. On or about August 15, 2014, Plaintiff ordered a fourth exterminator report. The report again indicated Plaintiff was in compliance.

ANSWER: Defendant admits that Defendant required Plaintiff to prove he was free of bedbugs before returning to work in order to ensure a re-infestation did not occur in the workplace. Defendant admits that Plaintiff submitted a fourth exterminator report. Defendant denies the remaining allegations in this paragraph.

38. On or about August 19, 2014, Defendants indicated Plaintiff was finally clear to return to work, but did not allow him to start until August 25, 2014.

ANSWER: Defendant admits that it received the necessary paperwork from Plaintiff for Plaintiff to return to work on or about August 19, 2014 and that he did return to work on August 25, 2014. Defendant denies that it “indicated Plaintiff was finally clear to return to work” on August 19, 2014.

39. On or about October 8, 2014, Forester ordered Plaintiff to report a two hour lunch period even though Plaintiff had only taken a one hour lunch. Plaintiff refused to falsify his

timecard to reflect a two hour lunch. In response, Forester refused to approve Plaintiff's timecard and directed Plaintiff to alter his timecard at least three times thereafter.

ANSWER: Defendant denies the allegations in this paragraph.

40. On or about September 11, 2014, Plaintiff filed a claim with the Illinois Department of Human Rights ("IDHR") and requested a cross claim with the Equal Employment Opportunity Commission ("EEOC").

ANSWER: Defendant lacks knowledge and information sufficient to either admit or deny the allegations in this paragraph.

41. Shortly thereafter, Plaintiff's work environment became even more hostile as Defendants increased Plaintiff's caseload with impossible deadlines and continued to prohibit him to work late.

ANSWER: Defendant admits that Defendant Forester encouraged her employees to be present and report during normal working hours unless receiving prior approval consistent with Department protocol. Defendant denies the remaining allegations in this paragraph. Defendant denies subjecting Plaintiff to any kind of hostile work environment.

42. On or about December 11, 2014, Plaintiff received a poor evaluation ("December 2014 Evaluation") from Defendant.

ANSWER: Defendant admits that Plaintiff was evaluated based on his job performance in or around December, 2014. Defendant denies the allegation to the extent it improperly characterizes his evaluation.

43. The December 2014 Evaluation included information that Forester admitted was irrelevant and also included dates for wrongdoings which occurred when Plaintiff was on leave.

ANSWER: Defendant admits that Plaintiff received his annual performance evaluation in or around December, 2014. Defendant denies the remaining allegations in this paragraph.

44. On or about January 27, 2015, Defendants extended the CAP again, which included false accusations.

ANSWER: Defendant admits that Plaintiff's corrective action plan was extended on or about January 27, 2015 due to poor job performance. Defendant denies the remaining allegations in this paragraph.

45. On or about January 27, 2015, Plaintiff submitted a request for reasonable accommodation based on his Gout diagnosis.

ANSWER: Admit.

46. On or about January 29, 2015, Plaintiff submitted a response to the false accusation listed in the January 26, 2015 CAP.

ANSWER: Defendant admits that Plaintiff submitted a response to his corrective action plan on January 29, 2015. Defendant denies the corrective action plan contained false allegations.

47. On January 29, 2015 Plaintiff received his right to sue letter. This action is filed within 90-days of Plaintiff receipt of the Right to Sue Letter.

ANSWER: Admit.

48. On or about February 6, 2015, Defendants partially denied Plaintiff's request for reasonable accommodations.

ANSWER: Defendant admits that it partially denied Plaintiff's request for accommodations on February 6, 2015. Defendant denies that all of Plaintiff's requests sought "reasonable accommodations".

49. On or about February 13, 2015, Plaintiff responded to the Defendants partial denial of his request for reasonable accommodations.

ANSWER: Defendant admits that Plaintiff responded to the Defendant's partial denial of his request for accommodations on February 13, 2015. Defendant denies that all of Plaintiff's requests sought "reasonable accommodations".

50. On or about March 26, 2015, Defendants terminated Plaintiff's employment.

ANSWER: Admit.

**COUNT I RACE DISCRIMINATION IN VIOLATION OF
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,
AS AMENDED 42 U.S.C § 2000(e) et seq.**

51. Plaintiff hereby incorporates and re-alleges the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

ANSWER: Defendant incorporates its previous responses to paragraphs 1-50.

52. Plaintiff is a Japanese American citizen of the United States and is thus a member of a protected class based on race.

ANSWER: Admit.

53. Plaintiff suffered adverse employment action when Forester wrongfully accused Plaintiff of poor job performance, Defendants imposed a CAP on Plaintiff, forced Plaintiff to take Voluntary Leave pay for the Involuntary Leave imposed on him, and Defendants terminated Plaintiff's employment.

ANSWER: Defendant admits that Plaintiff suffered an adverse employment action when he was terminated from IDFPR. Defendant admits that it imposed a corrective action plan on Plaintiff, but denies that it constituted an adverse employment action. Defendant denies the remaining allegations in this paragraph.

54. Defendant treated other similarly situated Caucasian employees more favorably by providing them with larger work stations, reasonable deadlines, and did not undermine the authority given to them.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies that Plaintiff was treated any differently due to his race.

55. Further in addition to imposing impossible deadlines on the Plaintiff, Forester also enforced the No Work Late Policy only on the Plaintiff alone. As a proximate result of

Defendants actions, Plaintiff has suffered severe economic losses, including loss of employment, damage to his professional reputation, future pay, overtime pay, vacation days, and benefits.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies violating any of Plaintiff's statutory rights.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendants and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies Plaintiff is entitled to judgment in his favor, and further denies Plaintiff is entitled to any relief whatsoever in this case.

COUNT II SEX DISCRIMINATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED 42 U.S.C § 2000(e) et seq.

56. Plaintiff hereby incorporates and re-alleges the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

ANSWER: Defendant incorporates its previous responses to paragraphs 1-50.

57. Plaintiff is a male citizen of the United States and is thus a member of a protected class based on his sex. Plaintiff does not conform to male stereotypes as he is slight, soft spoken and forms relationships with other males. Forester's bias against Plaintiff due to this gender nonconformity was at least a motivating factor in the discriminatory conduct that transpired. In addition to degrading Plaintiff's accomplishment as a well-reviewed employee and attorney,

Plaintiff constantly undermined Plaintiff's authority because his approach did not conform to preconceived notions of masculinity.

ANSWER: Defendant admits that Plaintiff is a male citizen of the United States. Defendant denies the remaining allegations in this paragraph. Defendant denies discriminating against Plaintiff based on his sex. Defendant denies violating any of Plaintiff's statutory rights.

58. Further, Defendant and Forester created a hostile work environment and took adverse employment action against Plaintiff, because Plaintiff failed to conform to their perception of acceptable gender roles.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies discriminating against Plaintiff based on his sex. Defendant denies violating any of Plaintiff's statutory rights.

59. All other employees conform to the sex-role expectation that women should be attracted to and date only men, and that men should be attracted to and date only women. Since Plaintiff failed to conform to either Defendant's or Forester's preconceived definition of male they treated him not only less favorably but with contempt.

ANSWER: Defendant lacks knowledge and information sufficient to either admit or deny to whom other employees are attracted. Defendant denies the remaining allegations in this paragraph. Defendant denies discriminating against Plaintiff based on his sex. Defendant denies violating any of Plaintiff's statutory rights.

60. As a proximate result of Defendant's actions, Plaintiff has suffered severe economic losses, including loss of employment, damage to his professional reputation, future pay, overtime pay, vacation days, and benefits.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies violating any of Plaintiff's statutory rights.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendant and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies Plaintiff is entitled to judgment in his favor, and further denies Plaintiff is entitled to any relief whatsoever in this case.

**COUNT III AGE DISCRIMINATION IN VIOLATION OF
THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C. § 623(a)**

61. Plaintiff hereby incorporates and re-alleges the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

ANSWER: Defendant incorporates its previous responses to paragraphs 1-50.

62. At 62 years old, Plaintiff is covered by ADEA's protected class of workers over 40. Plaintiff was the oldest employee in the Unit at the time of discharge. The remaining employees were all in their early 30's to mid-40's.

ANSWER: Defendant admits that Plaintiff is within the class of workers protected by the ADEA. Defendant admits that Plaintiff was the oldest employee in the Unit at the time of his discharge. Defendant admits that the two staff attorneys currently in the Unit are in their 40's.

63. Plaintiff is well qualified for his position as a Staff Attorney in the Unit.

ANSWER: Defendant denies the allegations in this paragraph.

64. Plaintiff suffered a hostile work environment and adverse employment action when Forester wrongfully accused Plaintiff of poor job performance, Defendants imposed a CAP on Plaintiff, forced Plaintiff to take Voluntary Leave pay for the Involuntary Leave imposed on him, and Defendants terminated Plaintiff's employment

ANSWER: Defendant admits that Plaintiff suffered an adverse employment action when he was terminated from IDFPR. Defendant admits that it imposed a corrective action plan on Plaintiff, but denies that it created a hostile work environment or constituted an adverse employment action. Defendant denies the remaining allegations in this paragraph.

65. Upon information and belief, Defendant has replaced Plaintiff with an employee who is in their early thirties.

ANSWER: Defendant denies the allegations in this paragraph.

66. Defendants unlawfully discriminated against Plaintiff when it created a hostile work environment against the Plaintiff and terminated him based on his age.

ANSWER: Defendant admits that Plaintiff was terminated. Defendant denies the remaining allegations in this paragraph. Defendant denies discriminating against Plaintiff in any manner. Defendant denies violating any of Plaintiff's statutory rights.

67. As a proximate result of Defendants actions, Plaintiff has suffered severe economic losses, including loss of employment, damage to his professional reputation, future pay, overtime pay, vacation days, and benefits.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies Plaintiff suffered any damages as a result of any wrongful actions by Defendant. Defendant denies violating any of Plaintiff's statutory rights.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendants and in favor of Plaintiff in an amount of no less than \$50,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies Plaintiff is entitled to judgment in his favor, and further denies Plaintiff is entitled to any relief whatsoever in this case.

**COUNT IV¹ RETALIATION IN VIOLATION OF TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED,
42 USC § 2000e-3(a). WHISTLEBLOWER PROVISIONS**

68. Plaintiffs hereby incorporate and re-allege the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

ANSWER: Defendant incorporates its previous responses to paragraphs 1-50.

69. On or about September 11, 2014 Plaintiff engaged in a statutorily-protected expression by filing a complaint to the IDHR and the EEOC concerning discrimination covered under Illinois Statute and Title VII as referenced above.

ANSWER: Defendant admits that Plaintiff engaged in statutorily-protected activity by filing a complaint with the IDHR and EEOC, but lacks knowledge and information sufficient to either admit or deny exactly when those complaints were filed. Defendant denies that any discrimination occurred.

70. Shortly thereafter, Plaintiff's work environment worsened dramatically. Forester sharply increased Plaintiff's workload, made Plaintiff's deadlines even more impossible, and ordered Plaintiff to complete tasks outside his job description.

ANSWER: Defendant denies the allegations in this paragraph.

71. Furthermore, Forester's December 11, 2014 evaluation of Plaintiff included false accusations and events which occurred when Plaintiff was on leave.

¹ In Plaintiff's First Amended Complaint, he erroneously numbers his claims of Title VII Retaliation and Disability Discrimination. To avoid any confusion, Defendant has properly labeled these counts in its Answer.

ANSWER: Defendant admits that Defendant Forester completed Plaintiff's annual performance evaluation in or around December 11, 2014. Defendant denies the remaining allegations in this paragraph.

72. On or about January 23, 2015, due to an unknown problem at the IDHR, which shares the same building as the IDFPR, Plaintiff had to refile his claim with the EEOC.

ANSWER: Defendant admits that the offices for IDFPR and IDHR are both located in the same building. Defendant admits that Plaintiff filed a charge of discrimination with the EEOC on or about January 23, 2015. Defendant lacks knowledge and information sufficient to either admit or deny the remaining allegations in this paragraph.

73. On or about January 26, 2015, Defendant renewed Plaintiff's wrongfully imposed CAP and included false and unfair accusations.

ANSWER: Defendant admits that it extended Plaintiff's corrective action plan due to continued poor performance on or about January 26, 2015. Defendant denies the remaining allegations in this paragraph.

74. Moreover, Forester imposed even more impossible deadlines and humiliated Plaintiff by publically forcing only him to leave the office under the No Work Late Policy when other staff attorneys were allowed to stay.

ANSWER: Defendant denies the allegations in this paragraph.

75. Plaintiff suffered further adverse employment action when Defendants eventually terminated his employment on March 26, 2015.

ANSWER: Defendant admits that Plaintiff suffered an adverse employment action when Defendant terminated Plaintiff on March 26, 2015. Defendant denies that this was a “further” adverse employment action, as Plaintiff did not suffer any adverse employment actions prior to this time.

76. At the time of his termination, Defendants were fully aware that Plaintiff filed a claim to the EEOC complaining of discrimination protected under Title VII.

ANSWER: Admit.

77. As a direct result, Defendants terminated Plaintiff for the sole purpose of retaliating against him for reporting Defendants to the EEOC.

ANSWER: Defendant admits that Plaintiff was terminated from his position. Defendant denies the remaining allegations in this paragraph. Defendant denies retaliating against Plaintiff in any manner.

78. Defendants actions constitute unlawful retaliation in violation of the Title VII.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies retaliating against Plaintiff in any manner. Defendant denies violating any of Plaintiff’s statutory rights.

79. Defendants actions were willful within the meaning of Title VII justifying the imposition of liquidated damages.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies violating any of Plaintiff's statutory rights. Defendant denies that Plaintiff is entitled to any damages in this case.

80. As a proximate result of Defendants actions, Plaintiff has suffered severe economic losses, including loss of employment, damage to his professional reputation, future pay, overtime pay, vacation days, and benefits.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies Plaintiff suffered any damages as a result of any wrongful actions by Defendant. Defendant denies violating any of Plaintiff's statutory rights.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendants and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies Plaintiff is entitled to judgment in his favor, and further denies Plaintiff is entitled to any relief whatsoever in this case.

COUNT V DISABILITY DISCRIMINATION
IN VIOLATION OF TITLE I OF THE ADA,
42 U.S.C. § 12101 *et seq*

81. Plaintiffs hereby incorporate and re-allege the allegations of paragraphs 1 through 50 as if the allegations are set forth herein.

ANSWER: Defendant incorporates its previous responses to paragraphs 1-50.

82. Plaintiff has a disability as he was diagnosed with Gout in the hand and wrist which is a permanent and substantially limiting impairment.

ANSWER: Defendant admits that Plaintiff received a provisional diagnosis of Gout in his left hand/wrist. Defendant denies the remaining allegations in this paragraph.

83. Plaintiff is able to perform the essential functions of the job with reasonable accommodations.

ANSWER: Defendant denies the allegations in this paragraph.

84. Plaintiff made a request for reasonable accommodations to the Defendant, thus Defendant was aware of Plaintiff's disability.

ANSWER: Defendant admits that Plaintiff submitted a Reasonable Accommodation Request in January, 2015. Defendant denies that it was "aware of Plaintiff's disability."

85. Defendant partially denied Plaintiff's request and thus failed to make a reasonable accommodation to Plaintiff's known disability.

ANSWER: Defendant admits that it partially denied Plaintiff's requested accommodations. Defendant denies the remaining allegations in this paragraph.

WHEREFORE, Plaintiff prays this Court enters judgment against Defendants and in favor of Plaintiff in an amount of no less than \$100,000 to be determined at trial, award Plaintiff attorney's fees and all costs incurred in pursuing this matter, and any other relief this Honorable Court deems appropriate.

ANSWER: Defendant denies the allegations in this paragraph. Defendant denies Plaintiff is entitled to judgment in his favor, and further denies Plaintiff is entitled to any relief whatsoever in this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that, after trial by jury, this court grant her relief as follows:

- A. Award Plaintiff compensatory damages equal to the additional pay, additional overtime pay, vacation days, and benefits he would have been entitled but for Defendants race discrimination, sex discrimination, age discrimination and retaliatory actions;
- C.² Award Plaintiff front pay damages equal to the lost future wages and benefits that he will be deprived of as a result of the Defendants retaliatory actions;
- D. Award Plaintiff liquidated damages in an amount equal to two times Plaintiff compensatory or economic loss damages;
- E. Reinstate Plaintiff in his former position as staff attorney at the IDFPR.
- F. Awarding Plaintiff all reasonable costs and attorney's fees incurred herein, including reasonable attorneys' fees as authorized by 42 U.S.C. § 1988;

² Plaintiff omits a point "B" in his First Amended Complaint.

- G. Award pre-judgment and post-judgment interest as provided by law; and
- H. Award such other relief as this Court deems just and appropriate.

ANSWER: Defendant denies Plaintiff is entitled to any relief whatsoever in this cause of action.

JURY DEMAND

Defendant demands a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims fail to the extent they are barred by the applicable statutes of limitation.
2. Plaintiff's claims are barred to the extent that he either failed to mitigate any alleged damages, or mitigated alleged damages successfully.
3. The actions taken by Defendant with respect to Plaintiff were taken in good faith and without respect to his race, age, sex, protected activity or disability.
4. Defendant's treatment of Plaintiff was based on legitimate business reasons unrelated to Plaintiff's alleged medical condition, disability, or efforts, if any, to exercise his rights under the ADA.
5. Any accommodation proposed or sought by Plaintiff constituted an undue hardship.
6. Plaintiff's allegations under Title VII, ADEA and ADA are barred to the extent that they did not occur within 300 days of the filing of his charge(s) of discrimination.
7. Plaintiff's claims are barred to the extent they are not like or reasonably related to those allegations in his charge(s) of discrimination.

8. At all relevant times, Defendant has maintained and followed policies prohibiting discrimination.

9. Defendant reserves the right to assert additional affirmative defenses as they are identified during discovery.

LISA MADIGAN
Attorney General of Illinois

Respectfully submitted,

/s/ Adam G. Eisenstein
Adam G. Eisenstein
Assistant Attorney General
Office of the Illinois Attorney General
100 West Randolph Street
13th Floor
Chicago, Illinois 60601
(312) 814-4355