IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONNA L. FREUND,	)	**FIRST AMENDED COMPLAINT**
	)	
Plaintiff,	)	**Civ. Act. No.: 07-1018**
	)	
vs.	)	**Judge: Terrence F. McVerry**
	)	
STRATEGIC ENERGY, LLC,	)	
	)	**Jury Trial Demanded**
Defendant.	)	
	)	**Electronic Filing**

Nature of the Action

This action seeks relief for employment practices made unlawful by the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, *et seq.*, ERISA and the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.*[1]

Jurisdiction and Venue

1. Subject matter jurisdiction vests pursuant to 28 U.S.C. §§ 451, 1331, 1337 and 1343, 29 U.S.C. § 2617, 28 U.S.C. § 1367(a), 29 U.S.C. § 502(a)(3) and § 510.

[1] Plaintiff's claims under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* and the Civil Rights Act of 1991 are still pending before the EEOC. Plaintiff received a Notice of Right to sue on her PHRA claims from the Pennsylvania Human Relations Commission on June 7, 2007. All non-FMLA claims raised in this action flow from employment practices that occurred within 300-days of the filing of Plaintiff's Charge of Discrimination on May 10, 2006. There is no administrative exhaustion requirement for Plaintiff's FMLA claims. At the appropriate time, Plaintiff will file a Second Amended Complaint adding her claims under the ADA.

2. Venue is proper in the Western District of Pennsylvania because Defendant committed unlawful employment practices within the Western District of Pennsylvania, and Plaintiff would have continued worked within the Western District of Pennsylvania but for those unlawful employment practices.

Parties

3. Plaintiff Ronna L. Freund is an adult person who maintains a residence within the Western District of Pennsylvania.

4. Defendant Strategic Energy, LLC ("SEL") is an entity doing business in the Western District of Pennsylvania, and is a covered entity under the FMLA, ADA and PHRA. SEL is majority owned by Great Plains Energy and has approximately $1.3 Billion in annual revenues.

Facts Giving Rise to this Complaint[2]

5. Plaintiff Ronna Freund worked for Defendant SEL for 11 years, rapidly progressing up the ladder from hire date in November 1994 as a Secretary, to the skilled position of Associate Energy Analyst. Plaintiff's tenure at SEL was marked by numerous promotions, consistent annual performance-based bonuses and numerous performance-based annual raises. By every objective measure, including Plaintiff's written performance reviews, Plaintiff was a successful and valuable employee. At the time of her termination on October 20, 2005, Plaintiff's gross compensation was $62,939.56 per year. At all times during Plaintiff's employment, Plaintiff was the primary wage earner for herself, her husband and her daughter.

[2] Unless otherwise stated, the facts averred in this Complaint are based upon the investigation of counsel.

6. At all times relevant to this action, Plaintiff was a qualified individual with disabilities, and was otherwise a protected person, individual and employee under the ADA, FMLA and PHRA.

7. In February, 2001, Plaintiff was diagnosed with metastatic cancer of the left breast consisting of an Infiltrating Ductal Carcinoma.

8. Plaintiff underwent two left segmental mastectomies and a left axillary lymph node dissection in February and March, 2001, which were followed by four aggressive courses of chemotherapy and thirty-three radiation treatments to her left breast.

9. The chemotherapy caused Plaintiff's hair to fall out and impeded her body's production of white blood cells.

10. Plaintiff required Neupogen shots for ten days following each chemotherapy treatment to aid in the production of white blood cells. These shots caused Plaintiff immense pain, for which Plaintiff's doctor's prescribed Oxycontin and Percocet.

11. Plaintiff was off-work on approved short and long-term disability leave (which ran concurrently with 12 weeks of approved FMLA leave) from the date of her cancer diagnosis through December, 2001.

12. At all times, Plaintiff attended to the needs of Strategic's customers, and frequently worked over her lunch hour, stayed late in the day, worked evenings and worked on weekends.

13. In a March 6, 2001 email, Defendant's then President/CEO Richard M. Zomnir, wrote Plaintiff and said:

> Jeanne (Plaintiff's immediate Supervisor) relayed to me how you handled the situation last Friday with First Energy. I have to honestly tell you that it brought a tear to my eyes. I've thought about it several times today and feel compelled to tell you just how much I personally appreciate what you

> did. You are a very special person, without question. I feel very lucky to have you at Strategic Energy and want you to know that, from the bottom of my heart. You are obviously under more stress and pressure than I can imagine, yet you really came through like a true professional. Please know that your efforts are truly appreciated.

14. Plaintiff's Supervisor Jeanne Rudick shared Mr. Zomnir's view, telling Plaintiff in a March 7, 2001 email:

> I had told Rick and Pat about what happened Friday night and over the weekend regarding C/G and your sense of responsibility towards your work. I did this because I thought it was an excellent example of both what a good employee you are and what the word "Accountable" means as we're currently using it. Rick has developed five guiding principles that he wants everyone to try and operate under during the next year. *** One of these is "Accountability" meaning that each of us should take responsibility for not only doing our job, but following through on issues that might come to our attention, but really aren't our responsibility. To me, this means going the extra yard. I think your work ethic and professionalism towards all of your responsibilities is a perfect example of what Rick means by "Accountability." I wanted him to know this.

15. In March, 2002, Strategic moved Plaintiff to a regular part-time schedule consisting of a 30-hour workweek and workdays that began at 9:00 a.m..

16. In December, 2002, Strategic revoked Plaintiff's modified start time and part-time work schedule.

17. Defendant revoked its prior accommodations without first communicating with Plaintiff or her medical providers regarding potential alternative accommodations that would have allowed Plaintiff to continue to perform the essential functions of her position or another vacant, funded position for which she was qualified.

18. Defendant revoked its prior accommodations without explaining how the continued provision of those accommodations caused Defendant undue hardship (of which there was none).

19. Around this time, Defendant began complaining about Plaintiff's attendance.

20. Although Plaintiff received an overall performance rating of "Good" in her 2002 Year-End Performance Review, Plaintiff was given five individual ratings of "Needs Improvement" which related specifically to her needs for medical leave and other reasonable accommodations.

21. Strategic further criticized Plaintiff in her 2003 Mid-Year Performance Review when it stated that "Ronna is not considered reliable by her team members since she has a difficult time getting to work by 8:00 and encounters family or health issues that force her take an unexpected sick or vacation day more often than others."

22. Defendant's discriminatory animus was growing, but Plaintiff had not yet required a sufficient number of medical leaves or other forms of reasonable accommodation, over a sufficient period of time, to cause Defendant to discipline Plaintiff or, as it eventually did, to terminate her employment. Instead, for the time being, Defendant was content to deny Plaintiff the reasonable accommodations referred to above, avoid discussing other potential accommodations with Plaintiff, and to begin the process of "documenting" alleged performance deficiencies for use if and when the need for a pretext arose.

23. Plaintiff's performance in 2003 was exemplary. In her year-end evaluation, Plaintiff received 12 ratings of "Outstanding," 37 ratings of "Good" and zero ratings of "Needs Improvement." The areas on which Plaintiff had previously been scored "Needs Improvement" were now all improved to "Good," and Plaintiff received an overall rating of "Good."

24. Plaintiff surpassed her 2003 successes in 2004. Her 2004 Year-End Review reflects 20 ratings of "Outstanding," 29 ratings of "Good," and zero ratings of "Needs Improvement." Plaintiff's Supervisor expressly commented that "Ronna is very good at what she does. She is a self-starter and takes pride in her work. She is always willing to help out."

25. Unfortunately, in July, 2004, genetic tests revealed that Plaintiff carried the BRCA-1 breast cancer gene, which predisposed Plaintiff to a high risk of developing a new breast cancer, as well as to a high risk of developing ovarian cancer.[3]

26. Plaintiff had two options: wait to see when she would develop a new breast cancer and ovarian cancer, and then undergo additional surgeries, chemotherapies and radiation treatments to attempt to kill the cancers before they killed her, or, as her doctors recommended, take preventive action through the prophylactic, surgical removal of her breasts, ovaries and fallopian tubes – her entire reproductive system.

27. Plaintiff followed her doctors' advice.

28. As a result of her need for additional, radical surgeries, Plaintiff was again medically required to apply for STD and FMLA leave. Both leaves were coordinated and approved, and Plaintiff commenced medical leave on October 4, 2004.

29. Plaintiff's ovaries and fallopian tubes were removed via Salpingo Oophorectomy on October 6, 2004.[4]

30. Plaintiff's breasts were removed via bilateral mastectomy (simple/right and radical/left) with latisimus flap and expanders on October 21, 2004.[5]

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[3] The average woman (without an inherited breast cancer gene abnormality) in the United States has about a 12% risk of developing breast cancer over a 90-year life span. In contrast, women who have an abnormal BRCA1 gene have up to an 85% risk of developing breast cancer by age 70. Women with a BRCA1 abnormality are also at increased risk of developing ovarian cancer. The lifetime risk is about 55% for women with BRCA1 mutations. By comparison, only about 1.8% of women without an inherited BRCA abnormality get ovarian cancer.

[4] Because Plaintiff was premenopausal when her ovaries were removed, the sudden loss of estrogen in her body triggered an abrupt premature menopause (aka "surgical menopause") that involved, and continues to involve, symptoms of hot flashes, vaginal dryness, loss of sex drive and depression. In addition to these symptoms, the loss of her ovaries and the estrogen they produce means that Plaintiff is seven times more likely to develop coronary heart disease, and much more likely to develop bone diseases such as osteoporosis.

31. As a result of Plaintiff's genetic disease, radical surgeries, chemotherapies, radiation therapies and the side-effects of various prescription pain medications, Plaintiff has been substantially limited in major life activities, including, for example, the major life activities of reproduction, apoptosis, concentration and thinking. Plaintiff has also had a record of a disability, and has been treated as having a statutory disability.

32. Plaintiff returned to work in January, 2005.

33. Sometime prior to Plaintiff's return to work, Jon H. Skoog had replaced Jeanne Rudick as Plaintiff's Supervisor.[6] Mr. Skoog's replacement of Ms. Rudick followed in the wake of substantial changes in Defendant's Management Team and Human Resources Staff. Richard Zomnir, the President/CEO who had previously expressed empathy and praise for Plaintiff, was terminated and replaced by Shahid Malik, an industry-insider specializing in "risk management," whose cash compensation in 2006 exceeded $1.7 Million. Defendant also established a separate Human Resources Department under the direction of Janis Shaw, who replaced Kathleen Logan as the Director of Human Resources (Ms. Logan had previously cooperated with Plaintiff's requests for a part-time schedule and 9:00 a.m. start time). Jan L. Fox, Esq. also joined

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[5] The "latisimus dorsi flap" technique for breast reconstruction involves cutting the large muscle running up and down the patient's back, and then stretching it around the ribcage to replace the patient's pectoralis major muscle. This technique is performed to ensure a continuous blood supply to the skin and remaining tissues in the patient's chest, which would otherwise necrotize from the loss of their vascular system.

[6] Defendant has since terminated Mr. Skoog's employment. However, Defendant and Skoog have maintained a cooperative relationship in connection Plaintiff's claims. Plaintiff's counsel contacted Mr. Skoog on May 31, 2006, identified himself as Ms. Freund's lawyer, and attempted to interview Mr. Skoog. Mr. Skoog refused to provide any information to Plaintiff's counsel. Defense counsel subsequently took the position that Plaintiff's contact with Mr. Skoog was improper (she was and is wrong), and sought to deter Plaintiff from further attempts to gather evidence informally from Mr. Skoog prior to initiating suit.

Defendant as Executive Vice-President and In-house counsel, and Andrew J. Washburn joined as CFO.

34. After these substantial changes in Management, and after Mr. Skoog became Plaintiff's new Supervisor, the corporate culture at Strategic Energy changed. For example, when Mr. Skoog was present, all but one of Plaintiff's team members would not speak with her unless it pertained to work. Even when conversations took place, they were short and curt, and different in tone from the conversations Plaintiff enjoyed with her co-workers prior to Mr. Skoog taking over as her Supervisor.

35. From time-to-time, Plaintiff's managers and co-workers observed Plaintiff's head briefly fall and then quickly rise up again as she was seated at her desk, the type of motion made by a person briefly drifting-off and then becoming alert again. This was uncharacteristic behavior which Plaintiff had never exhibited prior to her massive surgeries.

36. After taking over as Ms. Freund's Supervisor, Mr. Skoog made several expressions of hostility toward Plaintiff's disabilities, her need for accommodation and her need for FMLA leave.

37. Illustratively, in Ms. Freund's June, 2005 mid-year review, Mr. Skoog stated:

> I have concerns about Ronna's performance since taking more direct control over the Fuel Management group. Her **health concerns and resulting performance have created a situation that needs significant improvement. During the past couple of months, her attendance and reliability have been compromised.** I have offered to work with her recovery schedule but she continues to be unreliable. **If significant improvement is not made within the next month, correct *[sic]* action will be taken.**

(Emphasis added).

38. On or about July 13, 2005, Plaintiff's doctor restricted Plaintiff from work through to August 31, 2005, due to ongoing complications from her surgeries and the

development of an infected cyst on the back of her left thigh. Plaintiff notified HR Manager Lorinda Ulmer, and faxed Ms. Ulmer a copy of Plaintiff's work restriction.

39. On July 14, 2005, Mr. Skoog called Plaintiff at home and demanded to know why she was not at work.

40. Plaintiff told Mr. Skoog that her doctor had restricted her from work.

41. Mr. Skoog expressed deep frustration and hostility toward Plaintiff's medical needs. He said that he was "getting tired" of Plaintiff being absent, that "Strategic's working hours are from 8 AM to 5 PM," and that he was not going to let Plaintiff make him "feel guilty."

42. Mr. Skoog also told Plaintiff that when she returned to work, she would have no flexibility with her work schedule, and would be required to work 8:00 – 5:00, M-F.

43. In tears, Plaintiff telephoned HR Manager Lorinda Ulmer.

44. Mr. Skoog had already stopped by Ms. Ulmer's office and complained about Ms. Freund's medical leave. Mr. Skoog refused to speak with Plaintiff on the telephone, and insisted that all communications with Plaintiff be via email.

45. In a July 14, 2005 letter, Defendant requested that Plaintiff obtain an executed FMLA Certification of Healthcare Provider form from her doctor.

46. Dr. Dale J. Block forwarded a Certification to Defendant shortly thereafter.

47. Defendant criticized Dr. Block's Certification as being "vague" and "incomplete."

48. Rather than requesting another Certification from Dr. Block, or following the FMLA's prescribed procedures for obtaining a second medical opinion, *see*, 29 C.F.R. § 825.307, Defendant demanded that Plaintiff execute a full authorization for the release of all of her confidential medical records.

49. Defendant demanded that Plaintiff authorize the release of her confidential medical records directly to "Strategic Energy, Two Gateway Center, 603 Stanwix Street, Pittsburgh, PA 15222."

50. Defendant failed to provide Plaintiff with assurances that her medical records would be kept confidential and be sequestered from her other employment records. Nor did Defendant assure Plaintiff that only persons with a specific business need to review Plaintiff's medical records would have access to them.

51. On August 2, 2005, Defendant denied Plaintiff's request for FMLA leave.

52. Defendant stated that it was denying Plaintiff's request for FMLA leave because Plaintiff had already received 12-weeks of FMLA leave from October 4, 2004 through January 3, 2005.

53. On or about August 5, 2005, Plaintiff authorized Dr. Block to release her medical records for the purpose of applying for STD benefits. Plaintiff faxed her medical records to HR Manager Ulmer on or about August 9, 2005.

54. Strategic learned from Plaintiff's medical records that Plaintiff was suffering from both chronic pain and break-through pain[7] directly as the result of her radical, prior surgeries and resultant disabilities.

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[7] Many people with chronic cancer-related pain experience intermittent flares of pain that can occur even though a person is taking analgesic medications on a fixed schedule for pain control. These severe flares of pain are called breakthrough pain because the pain "breaks through" the regular pain medication. About one-half to two thirds of patients with chronic cancer-related pain also experience episodes of breakthrough cancer pain. People experiencing chronic cancer pain should receive pain medications for around-the-clock pain control and a medication specifically for treatment of breakthrough pain.

The characteristics of breakthrough cancer pain vary from person to person, including the duration of the breakthrough episode and possible causes. Generally, breakthrough pain happens fast, and may last anywhere from seconds to minutes to hours. The average duration of

55. Strategic also learned from Plaintiff's medical records that Dr. Block had prescribed steadily increasing doses of Duragesic pain patches for Plaintiff's chronic pain,[8] as well as Percocet to treat Plaintiff's break-through pain.[9]

56. Dr. Block extended Plaintiff's restriction from work through to October 1, 2005.

57. After screening Plaintiff's STD claim through an independent claims consultant, (which Defendant had never before used for Plaintiff), Defendant approved Plaintiff for STD leave through to October 3, 2005.

58. Plaintiff returned to work on October 3, 2005.

59. On October 20, 2005, plaintiff became sick and vomited after eating lunch.

60. Still on her lunch break, Plaintiff told two co-workers that she was going to rest in the file room. Plaintiff specifically requested that one or both of them come get Plaintiff if she had not returned to her desk by the end of the hour.

61. While Plaintiff rested to accommodate the tranquilizing and nauseating effects of her disability-related pain medications, she briefly fell asleep.

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breakthrough pain in one study was 30 minutes. This kind of pain can happen unexpectedly for no obvious reason, or it may be triggered by a specific activity, like coughing, moving, or going to the bathroom. Most people who have breakthrough cancer pain experience several episodes a day. *See*, http://www.cancer-pain.org/treatments/breakthrough.html.

[8] Duragesic pain patches are prescribed to manage persistent moderate to severe chronic pain that requires continuous, around-the-clock opioid administration for an extended period of time, and that cannot be managed solely by other means such as non-steroidal analgesics, opioid combination products, or immediate-release opioids. Duragesic patches contain a high concentration of a potent Schedule II opioid agonist known as fentanyl. Common side-effects of fentanyl are sedation, drowsiness, nausea and vomiting.

[9] Percocet is a narcotic analgesic used to treat moderate to moderately severe pain. It contains two drugs: acetaminophen and oxycodone. Acetaminophen is used to reduce both pain and fever. Oxycodone, a narcotic analgesic, is used for its calming effect and for pain. Common side-effects of Percocet are sedation, drowsiness, nausea and vomiting.

62. A few minutes past her lunch hour, Plaintiff opened her eyes to Janice Shaw (Defendant's Exec. VP of HR and Corporate Services), Mr. Skoog and Ms. Ulmer standing over her.

63. According to Defendant's records, at that very moment, Plaintiff then and there had 5 ½ accrued but unused vacation days, and 1 ½ accrued but unused sick days, due and owing to her.

64. Ms. Shaw instructed Plaintiff to return to her desk and Plaintiff did so.

65. When Plaintiff returned to her desk, she asked a co-worker why no one had come to get her as she had requested. The co-worker replied that Mr. Skoog had found Ms. Freund in the file room and had gone to HR.

66. Approximately 10 minutes later, Ms. Shaw called Plaintiff to her office, where she and Mr. Skoog were waiting.

67. When Plaintiff arrived, she saw a document with her name on it printed on Defendant's stationary on Ms. Shaw's desk. Defendant did not provide a copy of the document to Plaintiff at that time. It did, however, mail Plaintiff a "Severance Agreement and Release" that matched or closely resembled the document Plaintiff saw on Ms. Shaw's desk. The Agreement that Plaintiff received in the mail was signed and dated by Ms. Shaw on October 20, 2005.

68. Ms. Shaw told Plaintiff that she was being terminated for "sleeping on the job."

69. When Plaintiff asked whether Ms. Shaw was kidding, Ms. Shaw repeated that the reason for Ms. Freund's termination was "strictly sleeping on the job."

70. Mr. Skoog did not look at or speak to Plaintiff during the termination meeting.

71. In contravention of Defendant's internal policies, Defendant failed to provide Plaintiff with a pre-termination warning or with progressive discipline.

72. Defendant treated Plaintiff differently than other similarly-situated employees without disabilities who were a few minutes late returning from their lunch break, or a few minutes late arriving at work in the morning, or otherwise a few minutes late in reporting to their desk at a specified time.

73. At the time Defendant terminated Plaintiff's employment, Defendant knew that Plaintiff desired to remain employed, that Plaintiff required reasonable accommodations for her disabilities and the side-effects of her medically necessary treatments for her disabilities, and that reasonable accommodations existed which would have permitted Plaintiff to continue to heal and perform the essential functions of her position or other vacant, funded positions for which Plaintiff was qualified.

74. Defendant also knew from its in-house counsel Jennifer Petrisek, Esq., from its Secretary and Executive Vice President of Marketing, Jan L. Fox, Esq., and from its HR personnel that federal law prohibited Defendant from considering Plaintiff's prior periods of FMLA leave as a negative factor in any employment action against Plaintiff, and that both federal and state law prohibited Defendant from discriminating against Plaintiff on the basis of disability, or from failing to provide Plaintiff with effective reasonable accommodations that did not cause Defendant undue hardship, or from retaliating against Plaintiff in any way for the exercise of her civil rights.

75. Defendant also knew that, under the circumstances, it had a responsibility to initiate an informal interactive discussion with Plaintiff to determine the extent of Plaintiff's limitations and the appropriate reasonable accommodations for Plaintiff's disabilities.

76. Even without the benefit of the interactive process, Defendant possessed enough information about Plaintiff's disabilities, current medical status and work limitations to make informed judgments regarding reasonable accommodations that could have been provided to Plaintiff, and in fact were required to be provided to Plaintiff.

77. Such accommodations included, for example:

a. Applying Plaintiff's then-existing, accrued but unused vacation or sick days to the few extra minutes of lunch break that Plaintiff took to cope with her pain and the side-effects of her medications,

b. Permitting Plaintiff reasonable, intermittent breaks during the work day,

c. Providing Plaintiff with a digital watch with a timer and alarm to wake Plaintiff in the event that she fell asleep during a break,

d. Modifying its stated work rules (which Plaintiff will prove are a pretext) to treat Plaintiff's few extra minutes of lunch break as something other than an immediately terminable event,

e. Reinstating Plaintiff to part-time work,

f. Reinstating Plaintiff to a later morning start time,

g. Assisting Plaintiff in identifying other potential pain medications with less debilitating side-effects,

h. Affording Plaintiff a warning or other pre-termination notice that her particular medical regimen was jeopardizing Plaintiff's employment, and permitting Plaintiff a

reasonable period of time to consult with her doctors to change her medical regimen to one that accommodated Defendant's stated job demands, and so on.[10]

78. Defendant has articulated shifting reasons for its termination decision, telling Plaintiff that she was terminated solely for "sleeping on the job," but later assailing Plaintiff's "attendance" and "reliability" in its Position Statement to the EEOC.

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[10] The EEOC addresses substantively identical facts to those *sub judice* in Question/Answer No. 39 of its Enforcement Guidance on Reasonable Accommodation under the ADA. There the EEOC writes:

> Q. Must an employer provide a reasonable accommodation that is needed because of the side effects of medication or treatment related to the disability, or because of symptoms or other medical conditions resulting from the underlying disability?
>
> A. Yes. The side effects caused by the medication that an employee must take because of the disability are limitations resulting from the disability. Reasonable accommodation extends to all limitations resulting from a disability.
>
> > Example A: An employee with cancer undergoes chemotherapy twice a week, which causes her to be quite ill afterwards. The employee requests a modified schedule -- leave for the two days a week of chemotherapy. The treatment will last six weeks. Unless it can show undue hardship, the employer must grant this request.
>
> Similarly, any symptoms or related medical conditions resulting from the disability that cause limitations may also require reasonable accommodation.
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> > Example B: An employee, as a result of insulin-dependent diabetes, has developed background retinopathy (a vision impairment). The employee, who already has provided documentation showing his diabetes is a disability, requests a device to enlarge the text on his computer screen. The employer can request documentation that the retinopathy is related to the diabetes but the employee does not have to show that the retinopathy is an independent disability under the ADA. Since the retinopathy is a consequence of the diabetes (an ADA disability), the request must be granted unless undue hardship can be shown.

A more detailed analysis of the EEOC's position regarding the duty to reasonably accommodate persons with cancer-related disabilities is set forth in Questions and Answers About Cancer in the Workplace and the Americans with Disabilities Act (ADA), available at www.eeoc.gov/facts/cancer.html.

79. Defendant's actions vis-à-vis Plaintiff were illegal under the PHRA in that Defendant:

a. Failed to consider or provide Plaintiff with reasonable accommodations;

b. Terminated Plaintiff on the basis of disability;

c. Terminated Plaintiff to avoid providing her with a reasonable accommodation;

d. Terminated Plaintiff in retaliation for her requests for and need for reasonable accommodation; and,

e. Interfered with and hindered Plaintiff's efforts to obtain reasonable accommodation.

80. As a result of Defendant's unlawful employment practices, Plaintiff was denied available reasonable accommodations that would have enabled her to perform the essential functions of her job and other jobs for which she was qualified.

81. The unlawful employment practices described above were intentional and made with reckless disregard for Plaintiff's rights under the law.

82. Defendant's actions vis-à-vis Plaintiff were illegal under the FMLA in that Defendant interfered with, restrained and denied Plaintiff in the exercise of her FMLA rights in violation of 29 U.S.C. § 2615(a)(2) by:

a. Discouraging Plaintiff from using FMLA leave in violation of 29 C.F.R. § 825.220(b); and,

b. Demanding access to medical information beyond that permitted by the Healthcare Provider Certification provisions, including specifically 29 C.F.R. § 825.306(b) and § 825.307.

83. Defendant's actions vis-à-vis Plaintiff were further illegal under the FMLA in that Defendant counted Plaintiff's prior use of FMLA leave as a negative factor in terminating Plaintiff's employment in violation of 29 C.F.R. § 825.220(c).

84. Defendant's violations of the FMLA were unreasonable and lacked a good faith basis.

85. At all times material to this action, Plaintiff was a beneficiary under an ERISA plan sponsored by SEL providing short-term and long-term disability benefits.

86. Defendant self-insured against its short-term disability exposure. All STD benefits SEL paid to disabled employees were paid directly out of, and directly reduced, SEL's profits.

87. In addition to the unlawful motives identified above, Defendant terminated Plaintiff in retaliation for, and for the purpose of interfering with, her exercise of ERISA Plan rights. Specifically, Defendant and its agents believed Plaintiff was taking "too much" STD leave, and that Plaintiff had become too costly to continue to employ.

88. Defendant's termination of Plaintiff's employment violated § 510 of ERISA (29 U.S.C. § 1140).

89. As the direct, proximate, foreseeable and intended result of Defendant's unlawful employment practices, Plaintiff has suffered and will continue to suffer economic and personal injuries.

WHEREFORE, Plaintiff respectfully requests the following relief:

a. A preliminary and permanent injunction against Defendant and its directors, officers, owners, agents, successors, employees and representatives, and any and all

persons acting in concert with them, from engaging in the unlawful practices described in this Complaint,

b. A declaration that the practices described complained of in this Complaint are unlawful;

c. Back pay and benefits;

d. Front pay and benefits or other appropriate equitable relief;

e. Compensatory damages;

f. Liquidated damages;

g. Punitive damages (deferred until Plaintiff files a Second Amended Complaint adding claims under the ADA);

h. Pre-judgment and post-judgment interest;

i. An amount necessary to off-set the adverse tax consequences of a lump sum recovery;

j. Reasonable attorney fees and costs of suit; and,

k. Such other relief as this Court deems necessary and proper.

Respectfully submitted,

/s Charles A. Lamberton
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Counsel for Plaintiff
October 24, 2007

CERTIFICATE OF SERVICE: I hereby certify that a true and correct copy of the foregoing was served on counsel for the Defendant via email to cryan@reedsmith.com this 16th day of October, 2007.

s/ Charles A. Lamberton