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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	**Civil Action No. 5:16-cv-01347-MHH**
and	)	
LATONYA HODGES, SALVADORA ROMAN, and ALMA ALLEN,	)	
Plaintiffs-Intervenors,	)	
v.	)	
WAYNE FARMS, LLC,	)	
Defendant.	)	

FIRST AMENDED COMPLAINT IN INTERVENTION

Preliminary Statement

This is an action under Title I of the Americans with Disabilities Act of 1990, as amended ("ADA"), to correct and seek redress for unlawful employment practices. Plaintiffs-Intervenors Latonya Hodges, Salvadora Roman, and Alma Allen are persons with disabilities who were previously employed at Defendant Wayne Farms, LLC's ("Defendant" or "Wayne Farms") chicken processing operations in Decatur, Alabama.

Ms. Hodges', Ms. Roman's and Ms. Allen's employment at Wayne Farms was terminated based on their disabilities, as a result of Defendant's inflexible policy of automatically terminating the employment of any employee who accumulates a certain number of absences within a twelve month period, and as retaliation for Ms. Hodges', Ms. Roman's, and Ms. Allen's exercise of their rights under the ADA. Most of Ms. Hodges', Ms. Roman's, and Ms. Allen's absences from work arose as a direct result of their disabilities, including the need to seek urgent medical care for those disabilities. Despite this, Defendant refused to grant leave that would have prevented Ms. Hodges, Ms. Roman, and Ms. Allen from accruing "occurrences" leading to their termination under Defendant's attendance policy, and refused to reassign Ms. Hodges, Ms. Roman, and Ms. Allen to work duties less likely to exacerbate their disabilities. After refusing to engage in the interactive accommodation process required by the ADA, Defendant fired Ms. Hodges, Ms. Roman, and Ms. Allen based on their disabilities and in retaliation for attempting to secure their rights under the ADA.

Defendant's actions violated the ADA and caused Ms. Hodges, Ms. Roman, and Ms. Allen to suffer damages. Ms. Hodges, Ms. Roman, and Ms. Allen file the instant complaint to intervene and assert their individual claims in the action instituted by Plaintiff Equal Employment Opportunity Commission ("EEOC") against Defendant on August 18, 2016. *See* Doc. No. 1.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a case arising under the laws of the United States, and under 28 U.S.C. § 1343, as a case seeking relief under an Act of Congress providing for the protection of civil rights. Plaintiffs-Intervenors' claims are brought pursuant to 42 U.S.C. § 12117(a) (incorporating by reference 42 U.S.C. § 2000e-5, Title VII of the Civil Rights Act of 1964) and 42 U.S.C. §1981a.

2. Venue lies in this district pursuant to 28 U.S.C. § 1391(b) and the ADA, 42 U.S.C. § 12117(a) (which incorporates 42 U.S.C. § 2000e-5(f)(3)), because the unlawful practices alleged occurred within the jurisdiction of the United States District Court for the Northern District of Alabama, Northeastern Division.

PARTIES

3. Plaintiff Equal Employment Opportunity Commission ("EEOC"), is an agency of the United States of America charged with the administration, interpretation, and enforcement of, *inter alia*, Title I of the ADA, and is authorized to bring this action under 42 U.S.C. § 12117(a) (incorporating 42 U.S.C. § 2000e-5(f) (1), Title VII of the Civil Rights Act of 1964).

4. Plaintiff-Intervenor Latonya Hodges was employed by Defendant as an hourly-wage employee in its chicken processing operations in Decatur, Alabama from December 2010 to June 2011.

5. Plaintiff-Intervenor Salvadora Roman was employed by Defendant as an hourly-wage employee in its chicken processing operations in Decatur, Alabama from June or July 1995 to May 2012.

6. Plaintiff-Intervenor Alma Allen was employed by Defendant as an hourly-wage employee in its chicken processing operations in Decatur, Alabama from October 2003 to June 2016.

7. Defendant Wayne Farms, LLC is the sixth-largest vertically integrated poultry producer in the United States.

8. Defendant has its corporate headquarters in Oakwood, Georgia, and operates poultry processing facilities throughout the southeastern United States.

9. Since at least 1995, Defendant has operated poultry processing operations in Decatur, Alabama.

10. At all times since 2010, Defendant has employed at least 15 employees.

11. At all relevant times, Defendant has been an employer engaged in processing poultry products for human consumption, an industry affecting commerce within the meaning of 42 U.S.C. § 12111(5) and 42 U.S.C. § 12111(7) (incorporating by reference 42 U.S.C. § 2000e(g) and (h)).

CONDITIONS PRECEDENT

12. On or about August 4, 2011, Plaintiff-Intervenor Hodges filed a charge of discrimination with the EEOC alleging violations of her rights under the ADA.

13. On or about October 3, 2012, Plaintiff-Intervenor Roman filed a charge of discrimination with the EEOC alleging violations of her rights under the ADA.

14. In September 2014, the EEOC issued letters stating that it had found reasonable cause to believe that Defendant had violated the ADA with respect to Plaintiffs-Intervenors and a class of former and current employees.

15. In November 2014, the EEOC issued notices stating that it had been unable to come to a conciliation agreement with Defendant to resolve the charges filed by Plaintiffs-Intervenors.

16. Based on the charges filed by Plaintiffs-Intervenors Hodges and Roman, the EEOC filed the instant suit on August 18, 2016. *See* ECF No. 1 (EEOC Compl.).

17. In its suit, the EEOC made allegations that Defendant's discriminatory practices impacted not only Plaintiffs-Intervenors Hodges and Roman, but also a class of former and current employees subject to Defendant's attendance policies at its Decatur, Alabama operations. ECF No. 1 at ¶¶ 12-14, 25-30. Accordingly, the EEOC sought relief not only for Hodges and Roman, but also a class of Defendant's former and current employees. *See id.* at 8-9.

18. On or about November 7, 2016, Plaintiff-Intervenor Allen filed a charge of discrimination with the EEOC alleging violation of her rights under the ADA.

19. On or about May 23, 2017, the EEOC issued a Notice of Right to Sue to Plaintiff-Intervenor Allen at her request. *See* Ex. A.

20. All required conditions precedent to the filing of this complaint have occurred.

PLAINTIFFS-INTERVENORS' STATEMENT OF CLAIMS

Defendant's Attendance Policy

21. From at least October 1, 2010, Defendant maintained a uniform attendance policy or policies (hereinafter, the "Attendance Policy"), which dictates termination of employees who accrue more than a certain number of absences (referred to by Defendant's human resources department as "occurrences" or "points") within a twelve-month rolling period.

22. The Attendance Policy in Defendant's Decatur facilities effective October 1, 2010 ("the 2010 Attendance Policy") dictated termination of employees who accrued more than nine occurrences within a twelve-month rolling period.

23. The 2010 Attendance Policy also required that employees with eight occurrences receive "a written warning" and employees with nine occurrences receive a "final written warning."

24. The 2010 Attendance Policy required that if any employee was absent for half or more of a scheduled shift, he or she would accrue an "occurrence" that counted towards the nine-absence maximum.

25. The 2010 Attendance Policy required that if an employee's absence lasted for less than half of the scheduled shift, he or she would accrue a "one-half occurrence" that counted towards the nine-absence maximum.

26. Under the 2010 Attendance Policy, the only exceptions to Defendant's policy of automatically assessing occurrences against an absent employee were: (1) when the absence occurred because of an emergency *and* the Human Resources manager decided in his/her discretion not to assess an occurrence; (2) if a company manager or the plant nurse believed that an employee was ill and instructed the employee to leave for the day (but the policy specified that the employee would accrue "occurrences" for any absences after the day on which the employee was told to leave); (3) holidays; (4) pre-approved vacations; (5) a death in the family, but only if the employee had bereavement/funeral leave; (6) a court subpoena; (7) jury duty; (8) a pre-approved medical leave of absence (which had to be supported by required medical documentation); (9) an absence that qualified for leave under the Family and Medical Leave Act (which had to be supported by "valid medical documentation"); (10) military leave; (11) workers' compensation disability leave; (12) a pre-approved personal leave; and (13) pre-approved mandatory meetings with government agencies.

27. Upon information and belief, Defendant's Decatur facilities include a "Fresh" plant and a "Further Processing" plant.

28. Upon information and belief, Defendant's attendance policies in the Fresh and Further Processing plants began to differ slightly in November, 2013, although both plants maintained an Attendance Policy dictating termination of employees who accumulate a certain number of occurrences.

29. Defendant's Fresh plant adopted an Attendance Policy on or around November 3, 2013 ("the 2013 Fresh Attendance Policy") dictating termination of employees who accrued more than five occurrences within a twelve-month rolling period.

30. The 2013 Fresh Attendance Policy also required that employees with five occurrences receive a "written warning."

31. The 2013 Fresh Attendance Policy required that if any employee was absent for half or more of a scheduled shift, he or she would accrue an "occurrence" that counted towards the five-absence maximum.

32. The 2013 Fresh Attendance Policy required that if any employee left a scheduled shift early, with management's approval, he or she would accrue "one half occurrence" that counted toward the five-absence maximum.

33. Under the 2013 Fresh Attendance Policy, the only exceptions to Defendant's policy of automatically assessing occurrences against an absent employee were the exceptions included in the 2010 Attendance Policy and (1) absences for personal days if sufficient advance notice and "appropriate documentation" were provided,

and (2) "ADA (Americans with Disabilities Act) absences approved by Human Resources in advance."

34. Defendant's Fresh plant adopted an updated Attendance Policy effective August 1, 2014 ("the 2014 Fresh Attendance Policy") that continued to dictate termination of employees who accrued more than five occurrences in a twelve-month period.

35. The 2014 Fresh Attendance Policy was identical to the 2013 Fresh Attendance Policy except that it eliminated the stand-alone ADA exception, edited the medical leave exception to include "leave as a reasonable accommodation under the ADA (Americans with Disabilities Act)," and added an exception for "occupational injury or illness, or related appointments."

36. Defendant's Further Processing plant also adopted an Attendance Policy effective August 1, 2014 ("the 2014 Further Processing Attendance Policy") that, like the 2010 Attendance Policy, dictated termination of employees who accrued more than nine occurrences in a twelve-month period.

37. The 2014 Further Processing Attendance Policy was identical to the 2010 Attendance Policy except that it edited the medical leave of absence exception to include "leave as a reasonable accommodation under the ADA (Americans with Disabilities Act)."

38. Defendant's Further Processing Plant then adopted an Attendance Policy effective July 6, 2015 ("the 2015 Further Processing Attendance Policy") that was identical in all relevant ways to the 2014 Further Processing Attendance Policy.

39. Upon information and belief, written warnings and other documentation issued pursuant to the Attendance Policy are retained in an employee's file and thus can adversely affect an employee's ability to seek promotions or other opportunities or benefits available within Defendant's operations.

Plaintiff-Intervenor Latonya Hodges

40. Plaintiff-Intervenor Latonya Hodges was employed by Defendant as an hourly-wage worker in its chicken processing operations in Decatur, Alabama from December 2010 to June 2011.

41. At the time of hire by Defendant in 2010 up through the present, Ms. Hodges suffered and continues to suffer from asthma.

42. Asthma is a chronic lung disease that narrows and inflames the airways.

43. Ms. Hodges' asthma substantially limits her major life activities, including the major life activity of breathing.

44. From the time she began employment with Defendant in 2011 through the present, Ms. Hodges was and continues to be qualified for an hourly worker job at Defendant's poultry processing operations because she can perform the essential functions of this job with or without a reasonable accommodation.

45. Early on in her employment with Defendant, Ms. Hodges notified at least one of her supervisors that she had asthma.

46. Ms. Hodges also visited the plant nurse on at least one occasion when she experienced asthma symptoms at work.

47. As an hourly worker, Ms. Hodges was assigned to work at varying tasks and in different locations in Defendant's Decatur facilities, including weighing and inspecting chicken, packing chicken, and handling boxes for packing chicken.

48. Under Defendant's Attendance Policy, Ms. Hodges accumulated several "occurrences" (also known as "points") directly related to her asthma, including for absences on days when she had to leave work early or was unable to report to work due to asthma attacks or other symptoms of her asthma.

49. Ms. Hodges brought doctor's notes to work to document that some of her absences were related to her asthma. On at least one occasion, she also requested of her supervisors that she not receive a "point" for an absence related to her disability.

50. On at least one occasion, Ms. Hodges informed her direct supervisor that the conditions in certain areas of Defendant's facilities exacerbated her asthma, and asked to be reassigned to work in other locations in the facilities.

51. Upon information and belief, while Ms. Hodges was employed by Defendant, Defendant's Decatur operations encompassed over 300,000 square feet

of processing space, which contained several different processing lines and numerous other work areas.

52. Upon information and belief, while Ms. Hodges was employed by Defendant, Defendant employed hundreds of hourly workers in its Decatur operations to perform different tasks in multiple locations throughout the facilities.

53. While Ms. Hodges was employed by Defendant, Defendant had the capacity to reassign its hourly workers to perform different tasks in different locations of its facilities, including to the ability to reassign Ms. Hodges to work areas and tasks that were much less likely to aggravate her asthma, and the ability to assign other workers to cover Ms. Hodges' tasks during her disability-related absences.

54. Defendant's supervisors refused to grant Ms. Hodges' request to change work areas, and did not offer any alternative arrangements or engage in further discussion about how to accommodate Ms. Hodges' asthma.

55. When Ms. Hodges requested information regarding how many "occurrences" she had accumulated under Defendant's Attendance Policy, her supervisors refused to tell her.

56. On the morning of June 21, 2011, Ms. Hodges was working at Defendant's plant. She began having asthma symptoms and reminded her supervisors that she had asthma. She told her supervisors she needed to leave the plant to get medical attention.

57. Ms. Hodges' supervisors notified her that if she left, this would constitute a tenth "occurrence" under Defendant's Attendance Policy and would result in her being terminated.

58. Ms. Hodges left her work assignment and immediately went to a local emergency room, where she was treated for respiratory problems.

59. Defendant terminated Ms. Hodges' employment on or around June 21, 2011.

60. Had she not been terminated, Ms. Hodges could have continued performing the essential functions of the hourly worker job for Defendant with or without the reasonable accommodations, including but not limited to: reassignment to different tasks or work locations in the plant, or not assessing "occurrences" against Ms. Hodges for her disability-related absences.

Plaintiff-Intervenor Salvadora Roman

61. Plaintiff-Intervenor Salvadora Roman was employed by Defendant as an hourly-wage poultry processing employee in Defendant's chicken processing plant in Decatur, Alabama from June or July 1995 to May 2012.

62. During Ms. Roman's nearly seventeen years working for Defendant, Defendant assigned her to varied tasks, including cutting and deboning various parts of the chicken and inspecting chicken parts.

63. In 2011, Defendant assigned Ms. Roman to perform a particular task on the deboning line. To perform this task, Ms. Roman had to remove bones from chicken parts at a rapid rate by making frequent, repetitive manual movements.

64. As a result of this strenuous, fast-paced deboning work, Ms. Roman began to suffer from severe wrist and hand pain. Ms. Roman was diagnosed with carpal tunnel syndrome in March 2012, several months after she had begun experiencing severe wrist and hand pain.

65. Carpal tunnel syndrome occurs when the median nerve, which runs from the forearm into the palm of the hand, becomes pressed or squeezed at the wrist. Severe pain, a swelling sensation, and numbness in the wrists and/or hands are some of the symptoms frequently associated with the syndrome.

66. Ms. Roman experienced these symptoms, including severe pain, swelling and numbness in her hands. Carpal tunnel syndrome is a physical impairment that has substantially limited Ms. Roman's major life activities, including her performance of certain manual tasks, from at least 2011 onward.

67. From the time she began employment with Defendant in 1995 through the present, Ms. Roman was and continues to be qualified for an hourly worker job at Defendant's poultry plant because she can perform the essential functions of this job with or without a reasonable accommodation.

68. As a direct result of Ms. Roman's carpal tunnel syndrome and its symptoms, Roman missed days and partial days of work.

69. When Ms. Roman missed work because of doctor's appointments related to treatment of her carpal tunnel symptoms, she informed her Wayne Farms supervisors of the reasons.

70. On multiple occasions when Ms. Roman missed work because of doctor's appointments related to her carpal tunnel symptoms, she brought doctors' notes to her supervisors in order to explain the absences.

71. Ms. Roman also went to see Defendant's in-plant nurse at least once to seek treatment for her carpal tunnel symptoms.

72. Even when Ms. Roman presented her supervisors with doctor's notes as explanations for missing work, she accrued "occurrences" under Defendant's Attendance Policy.

73. In April 2012, Ms. Roman was summoned by a supervisor and a manager to an in-person meeting. There, the supervisor informed her that she had accrued the maximum number of "occurrences" or "points" allowed and would be terminated for additional absences.

74. At that meeting, Ms. Roman again explained to the supervisor and manager that she had missed work days due to her disability. She also explained that her disability had worsened since she was assigned to the task she was performing on

the deboning line. Ms. Roman asked if she could be reassigned to other tasks that she could more easily perform with her hand impairments.

75. Upon information and belief, while Ms. Roman was employed by Defendant, Defendant's Decatur operations encompassed over 300,000 square feet of processing space, which contained several different processing lines and numerous other work areas.

76. Upon information and belief, while Ms. Roman was employed by Defendant, Defendant employed hundreds of hourly workers in its Decatur operations to perform different tasks in multiple locations throughout its facilities.

77. While Ms. Roman was employed by Defendant, Defendant had the capacity to reassign its hourly workers to perform different tasks in different locations of the plant, including to the ability to reassign Ms. Roman from her specific task on the debone line to another task, and the ability to assign other workers to cover Ms. Roman's tasks during her disability-related absences.

78. Neither the supervisor nor the manager would agree to change Ms. Roman's work assignment.

79. Neither the supervisor nor the manager offered any additional accommodations of Ms. Roman's disability or engaged in further discussion about accommodations that might enable Ms. Roman to continue working for Defendant.

80. In early May 2012, Ms. Roman's disability caused her to seek medical attention and to be absent from work for approximately two to three consecutive days.

81. During or immediately following those absences, Defendant terminated Ms. Roman's employment in early or mid-May 2012.

82. When Ms. Roman attempted to return to work at Defendant's operations in early or mid-May 2012 following her disability-related absences, a security guard and a human resources representative of Defendant told her that she was no longer employed by Defendant.

83. Had she not been fired, Ms. Roman could have continued performing the essential functions of the hourly worker job for Defendant with or without reasonable accommodations, including but not limited to: reassignment to different tasks or work locations in the plant or not assessing "occurrences" against Ms. Roman for disability-related absences.

Plaintiff-Intervenor Alma Allen

84. Plaintiff-Intervenor Alma Allen was employed by Defendant as an hourly-wage poultry processing employee in Defendant's chicken processing plant in Decatur, Alabama from October 2003 to June 2016.

85. From at least 2005 up through the present, Ms. Allen suffered and continues to suffer from diabetes.

86. Diabetes is a group of diseases that impair the body's ability to produce or respond to the hormone insulin, resulting in abnormal metabolism of carbohydrates and elevated levels of glucose in the blood and urine.

87. Ms. Allen's diabetes substantially limits her major life activities, including the major life activity of endocrine function.

88. During the latter part of her employment with Defendant, and lasting for approximately one year, Ms. Allen suffered from chronic foot problems that eventually required surgery. Following the surgery, Ms. Allen was restricted from working in very cold environments.

89. Ms. Allen's foot problems substantially limited her major life activities, including the major life activity of standing.

90. From the time she began employment with Defendant in 2003 through the present, Ms. Allen was and continues to be qualified for an hourly worker job at Defendant's poultry processing operations because she can perform the essential functions of this job with or without a reasonable accommodation.

91. Ms. Allen informed Defendant of her diabetes diagnosis in 2005, and of the restrictions against working in very cold areas of the plant that accompanied that diagnosis. Various of Ms. Allen's supervisors and managers were aware of the diabetes-related restriction against working in the cold.

92. Ms. Allen's supervisors and managers, including Human Resources personnel and line supervisors, were aware of her foot problems and her inability to work standing up all day or in very cold environments.

93. As an hourly worker, Ms. Allen was assigned to work at varying tasks and in different locations in Defendant's Decatur facilities, including working on the line handling raw chicken, packing cooked chicken into bags and boxes, breaking down boxes and disposing of used boxes.

94. When Ms. Allen missed work because of doctor's appointments related to treatment of her disabilities, she brought doctor's notes to her supervisors to explain the absences.

95. When Ms. Allen missed work because of the severity of the symptoms related to her disabilities, she informed Defendant of the reason for her absences.

96. On at least one occasion, Ms. Allen requested of her supervisors that she not receive an "occurrence" or "point" for an absence related to her disabilities.

97. Ms. Allen also asked for time off from work to attend doctor's appointments, requests which were frequently denied by Ms. Allen's supervisors, causing her to forego medical care related to the treatment of her disabilities.

98. Under Defendant's Attendance Policy, Ms. Allen accumulated several "occurrences" (also known as "points") directly related to her disabilities including for absences on days when she had to attend doctor's appointments related to

treatment of her disabilities, or was unable to report to work due to the severity of the symptoms related to her disabilities.

99. Ms. Allen also made requests of supervisors and managers that she not be assigned to work in very cold parts of the plant due to the medical restrictions related to her disabilities.

100. Upon information and belief, while Ms. Allen was employed by Defendant, Defendant's Decatur operations encompassed over 300,000 square feet of processing space, which contained several different processing lines and numerous other work areas.

101. Upon information and belief, while Ms. Allen was employed by Defendant, Defendant employed hundreds of hourly workers in its Decatur operations to perform different tasks in multiple locations throughout its facilities.

102. While Ms. Allen was employed by Defendant, Defendant had the capacity to reassign its hourly workers to perform different tasks in different locations of the plant, including to the ability to reassign Ms. Allen from one specific task to another task, and the ability to assign other workers to cover Ms. Allen's tasks during her disability-related absences.

103. Defendant's supervisors regularly assigned her to work in very cold areas of the plant, and did not offer any alternative arrangements or engage in further discussion about how to accommodate Ms. Allen's disabilities.

104. Ms. Allen's supervisors and managers also told Ms. Allen on more than one occasion that she was required to rotate throughout the plant and could not be assigned to one specific area.

105. On at least one occasion, Ms. Allen was sent home from work for the day without pay instead of being reassigned to less cold areas of the plant.

106. On at least one occasion, Ms. Allen informed the Human Resources department about her frequent assignment to very cold areas of the plant despite her work restrictions.

107. On at least one occasion, personnel from Defendant's Human Resources department told Ms. Allen that there was no position for her at Defendant's facility because of her disabilities-related work restrictions, and that such restrictions would not be honored by Defendant.

108. During the last approximately eight months of Ms. Allen's employment with Defendant, she was repeatedly informed that there was no position for her on her usual line or in that facility generally, and was sometimes required to leave that line to go work in a colder area of the plant.

109. On the date of her termination in early June, 2016, personnel from Defendant's Human Resources department told Ms. Allen that she had accumulated 14 points, or occurrences, and that she should resign. Ms. Allen declined to resign from her job with Defendant.

110. Defendant then terminated Ms. Allen's employment on that same day in or around early June, 2016.

111. Had she not been terminated, Ms. Allen could have continued performing the essential functions of the hourly worker job for Defendant with or without reasonable accommodations, including but not limited to: reassignment to different tasks or work locations in the plant, or not assessing "occurrences" against Ms. Allen for her disability-related absences.

COUNT I

Violation of the ADA, 42 U.S.C. § 12112(b)(5)(A): Failure to Make Reasonable Accommodations

(All Plaintiffs-Intervenors)

112. As set forth in paragraphs 45 through 60 above, despite knowing of Plaintiff-Intervenor Hodges' disability, Defendant refused to accommodate Ms. Hodges' requests that she be permitted to change work assignments or perform other tasks, failed to grant Ms. Hodges unpaid leave or otherwise exempt Ms. Hodges' disability-related absences from the inflexible application of Defendant's Attendance Policy, and refused to engage in interactive discussions with Ms. Hodges regarding possible accommodations of her disability.

113. Providing such accommodations would not constitute an undue hardship to Defendant within the meaning of the ADA and its implementing regulations.

114. As set forth in this Count, Defendant's conduct towards Ms. Hodges violated the ADA's requirement, pursuant to 42 U.S.C. § 12112(b)(5)(A), that an employer make reasonable accommodations to the known physical limitations of an otherwise qualified individual with a disability who is an employee.

115. As set forth in paragraphs 68 through 83 above, despite knowing of Plaintiff-Intervenor Roman's disability, Defendant refused to accommodate Ms. Roman's requests that she be permitted to change work assignments or perform other tasks, failed to grant Ms. Roman unpaid leave or otherwise exempt Ms. Roman's disability-related absences from the inflexible application of Defendant's Attendance Policy, and refused to engage in interactive discussions with Ms. Roman regarding possible accommodations of her disability.

116. Providing such accommodations would not constitute an undue hardship to Defendant within the meaning of the ADA and its implementing regulations.

117. As set forth in this Count, Defendant's conduct towards Ms. Roman violated the ADA's requirement, pursuant to 42 U.S.C. § 12112(b)(5)(A), that an employer make reasonable accommodations to the known physical limitations of an otherwise qualified individual with a disability who is an employee.

118. As set forth in paragraphs 91 through 111 above, despite knowing of Plaintiff-Intervenor Allen's disabilities, Defendant refused to accommodate Ms. Allen's requests that she be permitted to change work assignments or perform

other tasks, failed to grant Ms. Allen unpaid leave or otherwise exempt Ms. Allen's disability-related absences from the inflexible application of Defendant's Attendance Policy, and refused to engage in interactive discussions with Ms. Allen regarding possible accommodations of her disabilities.

119. Providing such accommodations would not constitute an undue hardship to Defendant within the meaning of the ADA and its implementing regulations.

120. As set forth in this Count, Defendant's conduct towards Ms. Allen violated the ADA's requirement, pursuant to 42 U.S.C. § 12112(b)(5)(A), that an employer make reasonable accommodations to the known physical limitations of an otherwise qualified individual with a disability who is an employee.

COUNT II

Violation of the ADA, 42 U.S.C. § 12112(b)(3)(A):
Use of Standards, Criteria or Methods of Administration that Have the Effect of Discrimination on the Basis of Disability

(All Plaintiffs-Intervenors)

121. Throughout Plaintiffs-Intervenors Roman's, Hodges', and Allen's employment with Defendant, Defendant maintained and applied an Attendance Policy that mandated that employees receive "occurrences" or points for each full or partial shift missed from work, as set forth in paragraphs 21 to 39.

122. As set forth in paragraphs 26, 33, 35, and 37-38, Defendant's Attendance Policy contains certain exceptions, but until at least 2013 in the Fresh plant and 2014 in the Further Processing plant, the policy did not contain any specific exception for individuals with disabilities who accrue absences related to their disabilities.

123. Unless Defendant determines, according to its sole discretion, that an employee's absence fits within one of the specific exceptions to its Attendance Policy, Defendant assesses "occurrences" against employees who are absent for work for reasons related to their disabilities.

124. Defendant applied the policies set forth in paragraphs 21 to 39 to Plaintiffs-Intervenors' disability-related absences, causing Plaintiffs-Intervenors to accrue "occurrences" as a direct result of their disabilities.

125. Despite the fact that many of the "occurrences" accrued by Plaintiff-Intervenor Roman were directly related to and/or caused by her disability, Defendant applied its Attendance Policy to Ms. Roman and terminated Ms. Roman's employment because she accrued ten or more "occurrences."

126. Despite the fact that many of the "occurrences" accrued by Plaintiff-Intervenor Hodges were directly related to and/or caused by her disability, Defendant applied its Attendance Policy to Ms. Hodges and terminated Ms. Hodges' employment because she had accrued ten or more "occurrences."

127. Despite the fact that many of the "occurrences" accrued by Plaintiff-Intervenor Allen were directly related to and/or caused by her disabilities, Defendant applied its Attendance Policy to Ms. Allen and terminated Ms. Allen's employment because she had accrued ten or more "occurrences."

128. As set forth in this Count, Defendant's Attendance Policy, as set forth in paragraphs 21 through 39 and as applied to Plaintiffs-Intervenors, violated the ADA's prohibition, pursuant to 42 U.S.C. § 12112(b)(3)(A), on the use of standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability.

129. Use of such standards, criteria, or methods of administration was not job-related and consistent with business necessity, as required by the ADA and its implementing regulations.

COUNT III

Violation of the ADA, 42 U.S.C. § 12112(b)(6): Use of Qualification Standards or Other Selection Criteria

(All Plaintiffs-Intervenors)

130. As set forth in paragraphs 21 through 39, Defendant's Attendance Policy constitutes a qualification standard or other selection criteria.

131. As set forth in paragraphs 21 through 39, Defendant's use of its Attendance Policy screens out or tends to screen out persons with disabilities because such

individuals are more likely to accrue disability-related absences from work than non-disabled persons.

132. By applying its Attendance Policy to Plaintiffs-Intervenors' disability-related absences, Defendant's use of its policy screened out Plaintiffs-Intervenors from employment with Defendant.

133. As set forth in this Count, Defendant's use of its Attendance Policy with respect to assessing "occurrences" for Plaintiffs-Intervenors' disability-related absences violated the prohibition of the ADA, pursuant to 42 U.S.C. § 12112(b)(6), against using a qualification standard or other selection criteria that screens out or tends to screen out persons with disabilities.

134. Use of such standards, criteria, or methods of administration was not job-related and consistent with business necessity, as required by the ADA and its implementing regulations.

COUNT IV

Violation of the ADA, 42 U.S.C. § 12112(a), (b)(1): Discrimination Against and Limitation or Classification of Persons with Disabilities

(All Plaintiffs-Intervenors)

135. As set forth in paragraphs 45 through 46, 49 through 50, and 56 through 58, Plaintiff-Intervenor Hodges informed her supervisors that she had asthma and visibly displayed asthma symptoms in Defendant's plant.

136. As set forth in paragraph 54, Defendant refused to consider changing Ms. Hodges' work assignment.

137. As set forth in paragraph 55, Ms. Hodges' supervisors also refused to respond to Ms. Hodges' questions about how many "occurrences" she had accumulated under the Attendance Policy.

138. In June 2011, Defendant terminated Ms. Hodges' employment immediately after Ms. Hodges experienced a severe asthma attack while at work and left to go to the emergency room.

139. As set forth in paragraphs 69 through 71 and 74, in the last few months of her employment with Defendant, Plaintiff-Intervenor Roman repeatedly notified Defendant of her worsening carpal tunnel symptoms and her need to miss work to seek medical care for her symptoms.

140. Despite Ms. Roman's nearly seventeen-year record of employment with Defendant, Defendant refused to consider changing her work assignment, refused to forgive disability-related absences, and terminated her employment.

141. As set forth in paragraph 82, when Ms. Roman attempted to enter Defendant's plant in May 2012, Defendant refused to let her return to work.

142. As set forth in paragraphs 91 through 92, Plaintiff-Intervenor Allen informed Defendant of her diabetes and its attendant work restrictions, and of her foot problems and the impact on her ability to work standing up for long periods of time.

143. Despite the fact that Ms. Allen had worked for Defendant for over a decade, Defendant refused to consider changing her work assignment, refused to forgive disability-related absences, and terminated her employment.

144. As set forth in this Count, Defendant's discharge of Plaintiffs-Intervenors Hodges, Roman, and Allen constituted discrimination on the basis of their disabilities in violation of 42 U.S.C. § 12112(a).

145. As set forth in this Count, Defendant's conduct towards Plaintiffs-Intervenors Hodges, Roman, and Allen limited and/or classified them in a manner that adversely impacted their employment opportunities.

COUNT V

Violation of the ADA, 42 U.S.C. § 12203: Retaliation

(All Plaintiffs-Intervenors)

146. As set forth in paragraphs 45 through 60, after Plaintiff-Intervenor Latonya Hodges brought her disability to the attention of Defendant and attempted to secure a reasonable accommodation, Defendant refused to accommodate her, refused to

exempt her absences from its Attendance Policy, refused to provide her with information about the number of "occurrences" on her attendance record and terminated her employment.

147. Defendant's actions as set forth in paragraphs 51 through 59 constituted coercion, intimidation, and interference on account of Ms. Hodges' efforts to exercise and enjoy her rights under the ADA, in violation of the ADA, 42 U.S.C. § 12203(b).

148. As set forth in paragraphs 69 through 83, after Plaintiff-Intervenor Salvadora Roman brought her disability to the attention of Defendant and attempted to secure a reasonable accommodation, Defendant refused to accommodate her, refused to exempt her absences from its Attendance Policy, terminated her employment, and refused to allow her to return to work.

149. Defendant's actions as set forth in paragraphs 73 through 82 constituted coercion, intimidation, and interference on account of Ms. Roman's efforts to exercise and enjoy her rights under the ADA, in violation of the ADA, 42 U.S.C. § 12203(b).

150. As set forth in paragraphs 91 through 110, after Plaintiff-Intervenor Alma Allen brought her disabilities to the attention of Defendant and attempted to secure a reasonable accommodation, Defendant refused to accommodate her, refused to

exempt her absences from its Attendance Policy, encouraged her to apply for short-term disability benefits instead of working, and terminated her employment.

151. Defendant's actions as set forth in paragraphs 97 through 98 and 100 through 110 constituted coercion, intimidation, and interference on account of Ms. Allen's efforts to exercise and enjoy her rights under the ADA, in violation of the ADA, 42 U.S.C. § 12203(b).

COUNT VI

Violation of the ADA, 42 U.S.C. § 12112(b)(5)(B): Denial of Employment Opportunities Based on Need for Reasonable Accommodation

(All Plaintiffs-Intervenors)

152. As set forth in paragraph 49, Plaintiff-Intervenor Hodges sought not to receive "occurrences" under Defendant's Attendance Policy for disability-related absences.

153. As set forth in paragraph 50, Plaintiff-Intervenor Hodges also sought to be reassigned to other tasks within Defendant's operations that did not aggravate her disability.

154. As set forth in paragraphs 51 through 60, Defendant denied Plaintiff-Intervenor Hodges a change in work assignments and also applied its Attendance

Policy to assess "occurrences" for her disability-related absences because it was unwilling to meet Ms. Hodges' needs for reasonable accommodations.

155. When Defendant denied Plaintiff-Intervenor Hodges the opportunity to change work assignments, assessed "occurrences" for Ms. Hodges' disability-related absences, and terminated Ms. Hodges in June 2011, Defendant denied Ms. Hodges employment opportunities based on its need to make reasonable accommodations to Ms. Hodges' physical impairments, in violation of the ADA, 42 U.S.C. § 12112(b)(5)(B).

156. As set forth in paragraph 69 through 70, Plaintiff-Intervenor Roman sought not to receive "occurrences" under Defendant's Attendance Policy for disability-related absences.

157. As set forth in paragraphs 73 through 74, Plaintiff-Intervenor Roman also sought to be reassigned to other tasks within Defendant's operations that did not aggravate her disability.

158. As set forth in paragraphs 72 through 82, Defendant denied Plaintiff-Intervenor Roman a change in work assignments and also applied its Attendance Policy to assess "occurrences" for her disability-related absences.

159. As set forth in paragraph 82, Plaintiff-Intervenor Roman also sought to re-enter Defendant's Decatur plant as an employee after incurring ten or more "occurrences" under Defendant's Attendance Policy.

160. As set forth in paragraph 82, Defendant refused to allow Plaintiff-Intervenor Roman to return to work in its operations.

161. When Defendant denied Plaintiff-Intervenor Roman the opportunity to change work assignments, assessed "occurrences" for Ms. Roman's disability-related absences, terminated her in May 2012, and refused to allow her to re-enter employment with Defendant, Defendant denied Ms. Roman employment opportunities based on its need to make reasonable accommodations to Ms. Roman's physical impairments, in violation of the ADA, 42 U.S.C. § 12112(b)(5)(B).

162. As set forth in paragraph 96, Plaintiff-Intervenor Allen sought not to receive "occurrences" under Defendant's Attendance Policy for disability-related absences.

163. As set forth in paragraphs 99 and 106, Plaintiff-Intervenor Allen also sought to be reassigned to other tasks within Defendant's operations that did not aggravate her disabilities.

164. As set forth in paragraphs 98, 103 through 105, and 107 through 108, Defendant denied Plaintiff-Intervenor Allen a change in work assignments and also applied its Attendance Policy to assess "occurrences" for her disability-related absences because it was unwilling to meet Ms. Allen's needs for reasonable accommodations.

165. When Defendant denied Plaintiff-Intervenor Allen the opportunity to change work assignments, assessed "occurrences" for Ms. Allen's disability-related absences, and terminated her in June 2016, Defendant denied Ms. Allen employment opportunities based on its need to make reasonable accommodations to Ms. Allen's physical impairments, in violation of the ADA, 42 U.S.C. § 12112(b)(5)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs-Intervenors respectfully request that this Court:

A. Grant the relief requested by the EEOC in the Prayer for Relief set forth in its Complaint of August 18, 2016 (Doc. 1 at pp. 8-10) and in any amended pleadings filed by the EEOC in this case;

B. Order Defendant to make Plaintiffs-Intervenors whole by compensating them for past and future pecuniary losses resulting from the unlawful employment practices described in this complaint, including lost wages;

C. Order Defendant to make Plaintiffs-Intervenors whole by compensating them for non-pecuniary losses resulting from the unlawful employment practices described in this complaint, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation in amounts to be determined at trial;

D. Order Defendant to pay Plaintiffs-Intervenors punitive damages for its malicious and reckless conduct described herein;

E. Award Plaintiffs-Intervenors their costs in this action and attorneys' fees to the maximum extent authorized by law; and

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

Respectfully submitted this 26th day of July, 2017.

/s/ Sara Zampierin
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Counsel for Plaintiffs-Intervenors

CERTIFICATE OF SERVICE

I certify that on July 26, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Kristi L. Graunke
Kristi L. Graunke

EXHIBIT A

Notice of Right to Sue

EEOC Form 161-B (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE *(ISSUED ON REQUEST)*

To: **Alma Allen**
C/o Sarah M. Rich
Southern Poverty Law Center
150 E. Ponce de Leon Ave., Suite 340
Decatur, GA 30030

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

From: **Birmingham District Office**
Ridge Park Place
1130 22nd Street
Birmingham, AL 35205

EEOC Charge No.	EEOC Representative	Telephone No.
420-2017-00377	**Glenda J. Muldrow, Investigator**	**(205) 212-2138**

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- [X] More than 180 days have passed since the filing of this charge.
- [ ] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- [X] The EEOC is terminating its processing of this charge.
- [ ] The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- [ ] The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.
- [ ] The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Delner Franklin-Thomas

Delner Franklin-Thomas,
District Director

MAY 23 2017
(Date Mailed)

Enclosures(s)

cc: **Wayne Farms, LLC**
C/o Jeremy Kilburn
General Counsel
4110 Continental Drive
Oakwood, GA 30566

Sarah M. Rich
Staff Attorney
Immigrant Justice Project
Southern Poverty Law Center
150 E. Ponce de Leon Ave., Suite 340
Decatur, GA 30030

Enclosure with EEOC
Form 161-B (11/09)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.