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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR MACOMB COUNTY

DARRIN RUSHING,

Plaintiff,

vs.

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

Case No: 2019-001635-CD
Hon. Edward A. Servitto Jr.

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PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, Darrin Rushing, by and through his attorneys, Marko Law, PLLC, and for his First Amended Complaint against the Defendant states as follows:

JURISDICTION AND VENUE

1. Jurisdiction is proper because the amount in controversy exceeds this Court's jurisdictional limit, not including costs, interests, and attorney fees.
2. Venue is proper because Defendant is located in and conducts business in Macomb County, Michigan.

PARTIES

3. Plaintiff is a current and past employee of the Defendant, Michigan Department of Corrections.

4. Defendant, the Michigan Department of Corrections ("MDOC"), is a Michigan governmental agency that employs Plaintiff and conducts business in Macomb County, Michigan.

FACTS

5. Plaintiff has been an employee of Defendant for approximately for 16 years.

6. On or about October 17, 2011, Plaintiff, corrections officer, was injured while performing his job duties and attempting to break up a fight between two violent prisoners.

7. Plaintiff's leg was shattered in the incident by prisoner Gunn, requiring an eight-inch plate to be put in, seven screws to be utilized, two major surgeries, and a recover period.

8. Plaintiff received worker's compensation during his time off recovering from his injuries.

9. Plaintiff returned to work on light duty after approximately seven months. Plaintiff worked in a light duty capacity until November 2013.

10. November of 2013, Plaintiff was moved to the position of prison counselor as an accommodation for his work-related disability by Warden Romanowski.

11. In March of 2015 the new warden, Warden Haas, revoked Plaintiff's accommodation as prison counselor without explanation. Plaintiff was moved back to his correctional officer position by Warden Haas on or around April 2015, without any accommodations that had previously been provided to him.

12. On or around May 2015, prisoner Gunn, the prisoner who assaulted Plaintiff in 2011 and shattered his leg, was returned to the prison where Plaintiff was stationed (Macomb Prison).

13. Administration at Defendants facility informed Plaintiff of the return of the assaulting prisoner.

14. Nevertheless, the Defendant refused and/or failed to provide Plaintiff with any accommodation related to prisoner Gunn returning to his work area. This could have been as simple as a No Contact Order.

15. In fact, Plaintiff had requested a Non-Contact Order (known as a SPON), on several occasions since the incident occurred.

16. MDOC Defendant never responded to Plaintiff's numerous requests for a No Contact Order (IE, an accommodation).

17. Due to Defendants failure to provide Plaintiff with an accommodation and No Contact Order related to the prisoner, Plaintiff encountered the violent prisoner Gunn on multiple occasions between June and July of 2015.

18. Plaintiff suffers from Post-Traumatic Stress Disorder (PTSD), as a result of the assault by the prisoner in October of 2011.

19. Defendant was made aware of Plaintiff's medical conditions as a result of the assault.

20. As a result of the Defendants failure to accommodate the Plaintiff and forcing him to have contact with the violent prisoner who assaulted him, Plaintiff suffered a PTSD episode on July 17, 2015, as a result of his PTSD being triggered by the Defendants failure to accommodate him.

21. Plaintiff's doctor recommended that he take 3 weeks leave as a result of the PTSD.

22. On July 20, 2015, Plaintiff wrote yet another request to Defendant MDOC in writing requesting an accommodation in the form of a No Contact Order with the violent prisoner. This was the 5th attempted request by Plaintiff for an accommodation in the form of a No Contact Order.

23. Defendant failed to respond to Plaintiff's 5th request for an accommodation.

24. Plaintiff returned back to work from medical leave due to his PTSD episode on August 8, 2015.

25. On August 9, 2015, the Plaintiff reported for assignment and again requested an accommodation (this was at least Plaintiff's 6th request).

26. Defendant denied Plaintiff's reasonable request for accommodation.

27. Not only did Defendant deny Plaintiff's request for accommodation, it ordered him to Chow Hall assignment where Plaintiff would come into direct contact with the violent prisoner who previously assaulted him and triggered his PTSD. Defendant's failure to accommodate Plaintiff forced him out of work on stress leave and FMLA leave.

28. Plaintiff was falsely written up for insubordination and for failing to report to an assignment in the Chow Hall without an accommodation and that would medically endanger his life. Plaintiff was retaliated against by being brought up on false disciplinary charges.

29. The first retaliatory action occurred when Plaintiff was falsely accused of threatening the violent prisoner and was disciplined in the form of a five-day suspension.

30. The second false discipline occurred when Plaintiff was accused of using threatening language towards Lieutenant Webster.

31. Plaintiff continued to be subjected to a hostile work environment as a result of his disability.

32. For example, on January 20, 2015, his name was listed on a shift schedule as “suspended,” placing Plaintiff’s character in question and publicizing his false discipline to the other employees.

33. On February 6, 2016, while Plaintiff was at work he was served with a Summons to Appear at court related to a baseless Personal Protection Order filed by James Webster, the same individual who was invoiced with the false discipline of Plaintiff.

34. Plaintiff appeared for his PPO hearing on February 10, 2016, before the Honorable Jennifer Faunce in Macomb County Circuit Court. Judge Faunce denied the PPO request.

35. In December of 2016, Plaintiff applied for a position with the Saint Clair County Sheriff’s Department. The position was for less pay than Plaintiff was currently making in the MDOC. However, Plaintiff was willing to take less money in order to escape the hostile work environment where he was being discriminated and retaliated against.

36. Plaintiff made it to the final interview rounds with Saint Clair County Sheriff’s Department.

37. However, when his interview at Saint Clair County did a reference check with Defendant MDOC, Defendant provided defamatory false information about the Plaintiff which ultimately resulted in him not getting the job.

38. In late 2017, Plaintiff applied for an interview for a promotion to Corrections Program Coordinator.

39. Plaintiff was denied the promotion even though he was the most qualified candidate.

40. As a result of Defendants actions Plaintiff as suffered and will continue to suffer, including but not limited to the following:

- a. Stress;
- b. Improper discipline which caused time off work;
- c. Humiliation;
- d. Non-economic damages;
- e. Failure to be promoted for position;
- f. Damage to reputation and negative stigma;
- g. PTSD and other medical related issues;
- h. All other injuries to be discovered throughout this lawsuit;
- i. Attorney fees and costs;

COUNT I
VIOLATION OF THE PERSONS WITH DISABILITIES
CIVIL RIGHTS ACT M.C.L. §37.1101
(FAILURE TO ACCOMMODATE)

41. Plaintiff hereby reincorporates and re-alleges the foregoing paragraphs as if fully set forth herein.

42. Plaintiff has a disability that substantially limits major life activities.

43. Plaintiff also, or in the alternative, was regarded as having a disability by his employer.

44. Plaintiff was able to fulfill the essential duties of his job with an accommodation, namely, working in the position of Prison Counselor or having a SPON (non-contact order) granted against Prisoner Gunn.

45. Plaintiff requested an accommodation several times during his employment.

46. Plaintiff was never given either of these accommodations and, as a result, missed work, lost wages, and was forced into a traumatic situation on a daily basis.

47. Plaintiff continues to suffer emotional distress, and has suffered pecuniary losses, the value of benefits, and non-pecuniary damages as a result of Defendant's failure to accommodate.

COUNT II
VIOLATION OF THE PERSONS WITH DISABILITIES
CIVIL RIGHTS ACT M.C.L. §37.1101
(RETALIATION)

48. Plaintiff hereby reincorporates and re-alleges the foregoing paragraphs as if fully set forth herein.

49. Plaintiff has a disability that substantially limits major life activities.

50. Plaintiff also, or in the alternative, was regarded as having a disability by his employer.

51. Plaintiff was able to fulfill the essential duties of his job with an accommodation, namely, working in the position of Prison Counselor or having a SPON (non-contact order) granted against Prisoner Gunn.

52. Plaintiff requested an accommodation several times during his employment.

53. Plaintiff was never given an accommodation and was retaliated against for requesting an accommodation.

54. Plaintiff was denied promotional opportunities, written up, and disciplined due in part to his requests for accommodations.

55. Plaintiff continues to suffer emotional distress, and has suffered pecuniary losses, the value of benefits, and non-pecuniary damages as a result of Defendant's retaliation.

COUNT III
VIOLATION OF THE PERSONS WITH DISABILITIES
CIVIL RIGHTS ACT M.C.L. §37.1101
(DISPARATE TREATMENT)

56. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

57. Defendant MDOC is vicariously liable for the violation of Plaintiff's Michigan Persons with Disabilities Civil Rights Act under the doctrine of respondeat superior.

58. Plaintiff's disability was at least one factor that made a difference in Defendants treatment of Plaintiff.

59. Defendant, through its agents, representatives, and employees, was predisposed to discriminate on the basis of his disability and acted in accordance with that predisposition.

60. Defendant, through its agents, representatives, and employees, treated Plaintiff differently from similarly situated employees in the terms and conditions of employment, based on unlawful consideration of his disability.

61. Defendant's actions were intentional in disregard for Plaintiff's rights and sensibilities.

62. As a direct and proximate result of Defendant's unlawful actions, Plaintiff has sustained and continues to sustain injuries and damages.

COUNT IV
VIOLATION OF THE PERSONS WITH DISABILITIES
CIVIL RIGHTS ACT M.C.L. §37.1101
(HOSTILE WORK ENVIRONMENT)

63. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs as if fully set forth within.

64. Defendant MDOC is vicariously liable for the violation of Plaintiff's Michigan Persons with Disabilities Civil Rights Act under the doctrine of respondeat superior.

65. Plaintiff was subjected to unwelcome harassment by Defendant, through its agents, representatives, and employees.

66. The unwelcome conduct complained of was based on Plaintiff's disability.

67. The unwelcome conduct affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with Plaintiff's work performance and/or creating an intimidating, hostile or offensive work environment.

68. As a direct and proximate result of Defendant's unlawful actions, Plaintiff has sustained and continues to sustain injuries and damages.

WHEREFORE Plaintiff requests this honorable Court enter Judgment against Defendant in such an amount as the trier of fact shall deem fair and just, together with interest, costs and attorney fees, and for such other and further relief as this Honorable Court may deem appropriate in equity, fairness, and good conscience.

Respectfully submitted,

/s/ Jonathan R. Marko
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Dated: December 27, 2019

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2019, I presented the foregoing paper to this Court's MiFile System which will send notification of such filing to the above listed attorneys of record.

/s/ Marissa A. Williams

REQUEST FOR JURY TRIAL

Plaintiff, by and through her attorneys, MARKO LAW PLLC, hereby requests a trial by jury in the above-captioned matter.

Respectfully submitted,

/s/ Jonathan R. Marko

Jonathan R. Marko (P72450)

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Dated: December 27, 2019

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2019, I presented the foregoing paper to this Court's MiFile System which will send notification of such filing to the above listed attorneys of record.

/s/ Marissa A. Williams