

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	
MICHAEL JANSSEN,)	
)	
Plaintiff-Intervenor,)	
v.)	Case No.: 1:16-cv-01113-LY
)	
GRANITE MESA HEALTH CENTER LTD.)	JURY TRIAL DEMAND
GRANITE MESA HEALTH CENTER)	
GP INC.; ASISTA CORPORATION;)	
LEGEND HEALTHCARE, LLC;)	
LEGEND OAKS - GRANITE MESA, LLC;)	
THE ENSIGN GROUP, INC.; COPELAND)	
HEALTHCARE, INC.)	
)	
Defendants,)	

[PROPOSED] COMPLAINT IN INTERVENTION

Intervenor Michael Janssen (“Mr. Janssen”) files this Complaint In Intervention and joins with Plaintiff Equal Employment Opportunity Commission (“EEOC” or “the Commission”) in seeking legal and equitable relief, and also asserts his own claims seeking appropriate relief and compensation for harms resulting from unlawful employment practices and retaliation under Title I of the Americans with Disabilities Act, as amended (“ADA”). Defendants Granite Mesa Health Center Ltd., Granite Mesa Health Center GP Inc., and Asista Corporation (collectively, “Granite Mesa”) violated Mr. Janssen’s rights under the ADA when they suspended and, thereafter, terminated Mr. Janssen from his position as a Certified Nursing Assistant (“CNA”) because he is a person living with the human immunodeficiency virus (“HIV”). Prior to termination, Granite Mesa unlawfully made disability-related inquiries and required a medical examination related to

his status as a person living with HIV. In addition, when Mr. Janssen asked Granite Mesa for the purported “company policy” requiring disclosure of private medical information, Granite Mesa retaliated against him, and interfered, coerced, and intimidated him for exercising his rights under the ADA. Mr. Janssen further asserts that Legend Healthcare, LLC, Defendant Legend Oaks - Granite Mesa, LLC, The Ensign Group, Inc., and Copeland Healthcare, Inc. are also liable for Granite Mesa’s ADA violations as successors in interest.

JURISDICTION AND VENUE

1. This Court has jurisdiction of the subject matter of Mr. Janssen’s claims under the ADA pursuant to 28 U.S.C. §§ 1331 and 1343. The action is authorized and instituted pursuant to Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. §2000e-5(f)(1) and (3).

2. The unlawful employment practices alleged in this complaint were committed within the geographic jurisdiction of the United States District Court for the Western District of Texas, Austin Division.

PARTIES

3. Plaintiff EEOC is the agency of the United States of America charged with the administration, interpretation, and enforcement of the ADA.

4. Plaintiff-Intervenor Michael Janssen resides in the City of Austin, Texas. At all relevant times, Mr. Janssen is a person living with HIV and is protected by the ADA from unlawful discrimination based on his HIV-positive status.

5. At all relevant times, Defendant Granite Mesa Health Center Ltd. has continuously been a Texas limited partnership, doing business in the State of Texas and the City of Marble Falls, and has continuously had at least 15 employees.

6. At all relevant times, Defendant Granite Mesa Health Center GP Inc. has continuously been a Texas corporation, doing business in the State of Texas and the City of Austin, and has continuously had at least 15 employees.

7. At all relevant times, Defendant Asista Corporation has continuously been a Delaware corporation, doing business in the State of Texas and the City of Austin, and continuously had at least 15 employees.

8. At all relevant times, Defendant Legend Healthcare, LLC has continuously been a Texas limited liability company, doing business in the State of Texas and the City of Marble Falls, and has continuously had at least 15 employees.

9. At all relevant times, Defendant Legend Oaks - Granite Mesa, LLC has continuously been a Texas limited liability company, doing business in the State of Texas and the City of Marble Falls, and has continuously had at least 15 employees.

10. At all relevant times, Defendant The Ensign Group, Inc. has continuously been a Delaware corporation, doing business in the State of Texas and the City of Marble Falls, and continuously had at least 15 employees.

11. At all relevant times, Defendant Copeland Healthcare, Inc. has continuously been a Nevada corporation, doing business in the State of Texas and the City of Marble Falls, and has continuously had at least 15 employees.

12. At all relevant times, Granite Mesa Health Center Ltd., Granite Mesa Health Center GP Inc., Asista Corporation, Legend Healthcare, LLC, Defendant Legend Oaks - Granite Mesa,

LLC, The Ensign Group, Inc., and Copeland Healthcare, Inc. (collectively, “Defendants”) have continuously been employers engaged in an industry affecting commerce under Sections 101(5) and 101(7) of the ADA, 42 U.S.C. §§ 12111(5) and (7).

13. At all relevant times, Defendants have been covered entities under Section 101(2) of the ADA. 42 U.S.C. §§ 12111(2).

STATEMENT OF FACTS

14. Beginning on or about November 23, 2012, Mr. Janssen was employed as a Certified Nursing Assistant (“CNA”) at a 124-bed skilled nursing facility in Marble Falls, Texas. In his role as a CNA for Granite Mesa, Mr. Janssen performed basic nurses’ aide duties, such as feeding, bathing, toileting, and assisting patients with ambulatory care.

15. Mr. Janssen successfully performed his job duties as a CNA for Granite Mesa.

16. On or about September 16, 2013, Mr. Janssen was diagnosed with HIV.

17. On or about September 16, 2013, Mr. Janssen met with and disclosed his HIV status to the Director of Nursing (“Director”) at the Marble Falls facility owned and operated by Granite Mesa. The Director informed Mr. Janssen that she did not believe his HIV status would impact his employment, but she would need to speak with Chris Behrmann, the Administrator of the Marble Falls facility (“Administrator”).

18. Upon information and belief, the Director informed the Administrator that Mr. Janssen disclosed he was HIV-positive.

19. At all relevant times, the Director and Administrator were agents of Granite Mesa.

20. Granite Mesa had no reasonable belief based on objective evidence that Mr. Janssen’s ability to perform the essential functions of his job as a CNA would be impaired by his HIV.

21. Granite Mesa had no reasonable belief based on objective evidence that Mr. Janssen's HIV posed a significant risk to the health and safety of himself or others, including his coworkers or the patients he treated as a CNA

22. On or about September 17, 2013, Mr. Janssen arrived for his scheduled shift at the Marble Falls facility. The Administrator told Mr. Janssen that he was required to provide information about his HIV status, including information regarding his CD4 cell count and viral load, in accordance with Granite Mesa "company policy."

23. Granite Mesa suspended Mr. Janssen on or about September 17, 2013, because of his disability.

24. The Administrator advised Mr. Janssen that he would not be permitted to return to work unless and until he provided the requested information regarding his HIV status, including information regarding his CD4 cell count and viral load.

25. On or about September 18, 2013, Mr. Janssen requested a copy of the Granite Mesa "company policy" that required Mr. Janssen to provide information about his HIV status, including information regarding his CD4 cell count and viral load.

26. On or about September 18, 2013, Granite Mesa summarily discharged Mr. Janssen because of his disability, because he did not submit his HIV test results and lab work, and because he requested Granite Mesa's written policy regarding requiring a health care worker to submit information about an HIV diagnosis, including information regarding CD4 cell count and viral load.

27. Granite Mesa's actions in making disability-related inquiries, requiring a medical examination, suspending and thereafter terminating Mr. Janssen are based on misconceptions,

outdated beliefs, and irrational fears rather than current medical science and objective information regarding HIV.

28. Granite Mesa Health Center Ltd., Granite Mesa Health Center GP Inc., and Asista Corporation are an integrated enterprise and/or joint employer.

29. On September 23, 2013, a new company called Legend Oaks - Granite Mesa, LLC (“Legend Oaks”) was created and registered by Legend Healthcare, LLC (“Legend”).

30. On December 3, 2013, Legend Oaks purchased the Marble Falls, Texas nursing facility from Granite Mesa Health Center Ltd. and began operating the facility in Marble Falls, Texas. Both Legend Oaks and Legend are liable for ADA violations set forth in this Complaint as successors in interest.

31. On April 6, 2016, the Marble Falls, Texas nursing facility was sold again, by Legend to The Ensign Group, Inc. and Copeland Healthcare, Inc. which continue to operate the facility in Marble Falls, Texas. The Ensign Group, Inc. and Copeland Healthcare, Inc. are liable for ADA violations set forth in this Complaint as successors in interest.

32. More than thirty days prior to the institution of this lawsuit, Mr. Janssen filed timely charges of discrimination with the Commission, EEOC Charge Nos. 451-2014-01410, 451-2014-02330, 451-2014-02332, 451-2014-02323 (collectively, “EEOC Charges”) alleging, *inter alia*, that Mr. Janssen had been subjected to unlawful disability discrimination in violation of the ADA by Granite Mesa and Legend Healthcare, LLC.

33. On or about August 14, 2015, the EEOC issued letters of findings related to the EEOC Charges finding reasonable cause that Mr. Janssen’s rights under the ADA were violated.

34. Through Plaintiff EEOC, Mr. Janssen engaged in conciliation efforts with the Defendants (except successors The Ensign Group, Inc. and Copeland Healthcare, Inc.) On or about

March 4, 2016, Mr. Janssen learned that EEOC's efforts to conciliate the EEOC Charges were unsuccessful.

35. Plaintiff EEOC initiated an action in this Court against Defendants on September 29, 2016, identifying Mr. Janssen as the Charging Party. Mr. Janssen adopts by reference, and does not repeat herein, the facts and claims asserted by Plaintiff EEOC.

36. Mr. Janssen has exhausted the administrative remedies available to him. All conditions precedent to the institution of this suit have been fulfilled.

CAUSE OF ACTION

Count 1: Violation of the Americans with Disabilities Act Prohibited Disability-Related Inquiries and Request For Medical Exam (42 U.S.C. §§ 12101 *et seq.*)

37. Mr. Janssen realleges and incorporates the allegations in paragraphs 1-36 as if fully set forth herein.

38. Mr. Janssen is a qualified individual with a disability as defined in 42 U.S.C. §§ 12102 and 12111(8).

39. On or about September 18, 2013, Granite Mesa required a medical examination and made inquiries of Mr. Janssen as to the nature and severity of his disability in violation of Section 102(d)(4)(A) of the ADA. 42 U.S.C. § 12112(d)(4)(A).

40. The disability-related inquiries and medical examination, including the blood lab test results, required by Granite Mesa were neither job-related nor consistent with business necessity given Mr. Janssen's job duties as a CNA.

41. At the time of the prohibited disability-related inquiries and request for medical examination, Mr. Janssen was an employee of Granite Mesa.

42. The effect of the unlawful employment practices complained in paragraphs 37-41 has been to deprive Mr. Janssen of employment opportunities and otherwise affect his status as an employee.

43. The unlawful employment practices complained of in paragraphs 37-41 above were intentional.

44. The unlawful employment practices complained of in paragraphs 37-41 above were done with malice or reckless indifference to the federally protected rights of Mr. Janssen.

Count 2: Violation of the Americans with Disabilities Act
Prohibited Disability Discrimination
(42 U.S.C. §§ 12101 *et seq.*)

45. Mr. Janssen realleges and incorporates the allegations in paragraphs 1-36 as if fully set forth herein.

46. Mr. Janssen is a qualified individual with a disability as defined in 42 U.S.C. §§ 12102 and 12111(8).

47. At all times relevant to this action, Mr. Janssen was able to safely perform the essential functions of his job as a CNA without an accommodation for his disability.

48. In September 2013, Granite Mesa suspended and, thereafter, terminated Mr. Janssen on the basis of his HIV-positive status in violation of Sections 102(a) and (b) of the ADA. 42 U.S.C. §§ 12112(a) and (b).

49. The effect of the unlawful employment practices complained in paragraphs 45-48 has been to deprive Mr. Janssen of employment opportunities and otherwise affect his status as an employee.

50. The unlawful employment practices complaint of in paragraphs 45-48 above were intentional.

51. The unlawful employment practices complaint of in paragraphs 45-48 above were done with malice or reckless indifference to the federally protected rights of Mr. Janssen.

Count 3: Violation of the Americans with Disabilities Act
Prohibited Retaliation and Coercion
(42 U.S.C. §§ 12101 *et seq.*)

52. Mr. Janssen realleges and incorporates the allegations in paragraphs 1-36 as if fully set forth herein.

53. On or about September 18, 2013, Mr. Janssen opposed Granite Mesa's act or practice of making disability-related inquiry or requiring him to submit to a medical examination by questioning the need for his private medical information and requesting Granite Mesa's "company policy" regarding requiring such information from employees who are HIV-positive.

54. On or about September 18, 2013, Granite Mesa retaliated against Mr. Janssen following his good faith objections and decision to ask for Granite Mesa's "company policy" by terminating him in violation of Section 503(a) of the ADA. 42 U.S.C. § 12203(a).

55. On or about September 18, 2013, Granite Mesa interfered, coerced, and intimidated Mr. Janssen for exercising his right under the ADA not to be subject to unlawful disability-related inquiries and medical exams in violation of Section 503(b) of the ADA. 42 U.S.C. § 12203(b)

56. The effect of the unlawful employment practices complained in paragraphs 52-55 has been to deprive Mr. Janssen of employment opportunities and otherwise affect his status as an employee.

57. The unlawful employment practices complaint of in paragraphs 52-55 above were intentional.

58. The unlawful employment practices complaint of in paragraphs 52-55 above were done with malice or reckless indifference to the federally protected rights of Mr. Janssen.

JURY TRIAL DEMAND

59. Pursuant to Federal Rule of Civil Procedure 38(b)(1), Plaintiff-Intervenor Michael Janssen requests a trial by jury on all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Mr. Janssen respectfully requests that this Court:

A. Order Defendants to reinstate Mr. Janssen to his position as a CNA and to provide appropriate back pay, prejudgment interest, and/or other affirmative relief necessary, including but not limited to front pay, to eradicate the effects of Defendants' unlawful employment practices;

B. Order Defendants to make whole Mr. Janssen by providing compensation for past and future pecuniary losses resulting from unlawful employment practices, including relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial;

C. Order Defendants to provide Mr. Janssen compensation for nonpecuniary damages resulting from the unlawful employment practices described above, including damages for emotional pain, suffering, anxiety, stress, inconvenience, mental anguish, loss of enjoyment of life, humiliation, and other dignitary harms;

D. Order Defendants to pay Mr. Janssen punitive damages for engaging in discriminatory practices with malice or reckless indifference to his federally protected rights in an amount to be determined at trial;

E. Order Defendants to institute and implement policies that provide equal employment opportunities for all current and future employees living with HIV;

F. Award Mr. Janssen costs and attorneys' fees; and,

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

Dated: November 29, 2016

Respectfully submitted,

LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.

/s/ Paul D. Castillo

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* Admission *pro hac vice* forthcoming

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