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6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 DIANA FRANKLIN,

Case No.

10 Plaintiff,

COMPLAINT

11 v.

Jury Demand

12 ENGINEERING SUPPORT
13 PERSONNEL, INC.

14 Defendants.
15 _____/

16 **JURISDICTION AND VENUE**

17 1. This Court has jurisdiction of this action pursuant to 28 U.S.C. Sections 1331, 1343,
18 2201; Title I of the Americans With Disabilities Act (“ADA”) 42 U.S.C. §§12101-12214; and the ADA
19 Amendments Act of 2008 (ADAAA).

20
21 2. Venue is proper in the Northern District of Nevada pursuant to 28 U.S.C. Section
22 1391(b) because the unlawful acts and practices alleged herein occurred in Northern Nevada, which
23 is within this judicial district.

24 **PARTIES**

25 3. Plaintiff Diana Franklin (“Franklin” or “Plaintiff”) is a disabled, honorably
26 discharged, former Navy veteran and a citizen of the United States residing in Fernley, Nevada. She
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28

1 is a former employee of Engineering Support Personnel, Inc. (“ESP”) located at the Fallon Naval
2 Air Station (“NAS”) in Fallon, Nevada.

3 4. ESP¹ is a United State Department of Defense contractor, a private company, with a
4 primary focus on operating and maintaining aircraft simulators. ESP engineers and technicians
5 operate and maintain training facilities in the United States and worldwide.
6

7 5. Franklin alleges Title I of the ADA applies to ESP and imposes upon ESP the general
8 rule that no employer may discriminate against an employee on the basis of his or her disability.

9 6. Franklin alleges that ESP and/or its agents, employees, and servants performed,
10 participated in, aided and/or abetted in some manner the acts averred herein, which proximately caused
11 the damage averred below and is liable to Franklin for the damages and other relief sought herein.
12 Franklin further alleges that ESP ratified, approved, delegated, and authorized all actions of its agents,
13 employees, and servants.
14

15 **FACTUAL ALLEGATIONS**

16 **Franklin’s Experience and Skills**

17 7. On January 16, 1991, Franklin began active duty with the United States Navy

18 8. On January 31, 2015, Franklin was honorably discharged due to the medical issues
19 developed while deployed to the Middle East.²
20

21 9. Franklin was found in her 2015 predischarge exam to have a host of disabilities of
22 various ratings, including but not limited to, a 30 percent service related disability rating for asthma
23

24 ¹ ESP provides a full spectrum of engineering and technical services, managed to match the
25 unique, local, and one-of-a-kind needs for aviation training for both military and commercial pilots.

26 ² During her 24 years of active service Franklin received numerous Navy commendations
27 including, but not limited to, a Navy Commendation medal, two Joint Service Achievement medals,
28 four Navy and Marine Corps Achievement medals, two National Defense Service medals, a NATO
medal, an Armed Forces Expeditionary medal, a Global War on Terrorism service medal, and a
Global War on Terrorism Expeditionary medal.

1 and bronchitis and a 10 percent service related disability rating for sinusitis.³ Franklin must take
2 extreme precautions and medication to safeguard against respiratory hazards as she has great
3 difficulty breathing during an asthma or bronchial episode.

4 10. In 1992, Franklin graduated with honors from the Navy Aviation “A” School in
5 Millington, Tennessee. Franklin became highly skilled in the area of aviation electrical, electronic,
6 and hydraulic computer repair and software systems.

7 11. Franklin earned an associate’s degree in Electronics Technology in March 2001, a
8 bachelor’s degree in Business Administration in 2003 and a Federal Communications Commission
9 General Radiotelephone Operator License to include Ship Radar Endorsement in 2004.

10 12. On or about 1992, Franklin was stationed at Sigonella, Naval Air Station in Sicily,
11 Italy. Franklin worked on in depth electronics on fixed wing aircraft, helicopters, autopilot
12 equipment and microminiature repair as well as repair and maintenance of other electronic and
13 navigational equipment. On or about 1996, Franklin was stationed at Naval Air Station Brunswick,
14 Maine where she worked primarily on electrical and electronic repair and troubleshooting on P3
15 patrol aircraft. On or about 2001, Franklin was stationed at the Military Entrance Processing Station
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21 ³ Asthma is a condition in which the airways narrow and swell and may produce extra
22 mucus. This makes breathing difficult and may trigger coughing, a whistling sound (wheezing) and
23 shortness of breath. For some people, asthma is a minor nuisance. For others, it can be a major
24 problem that interferes with daily activities and may lead to a life-threatening asthma attack.

25 Bronchitis is an inflammation of the lining of the bronchial tubes, which carry air to and
26 from the lungs. People who have bronchitis often cough up thickened mucus, which can be
27 discolored. Chronic bronchitis is one of the conditions included in chronic obstructive pulmonary
28 disease (COPD).

 Sinusitis is an inflammation or swelling of the tissue lining the sinuses. Healthy sinuses are
filled with air. But when they become blocked and filled with fluid, germs can grow and cause
infection.

1 in Seattle Washington. Among other duties, Franklin was the systems administrator for
2 approximately 50 computers.⁴

3 13. On or about 2004, Franklin was stationed at the Naval Air Station Whidbey Island,
4 Washington. While stationed on Whidbey Island, Franklin had a Special Operation deployment to
5 Operation Iraqi Freedom and Operation Enduring Freedom locations in the Middle East. Franklin
6 received both “imminent danger” and “hazardous” duty pay for this extremely difficult, dangerous,
7 and highly classified assignment.
8

9 **Franklin Experiences Extreme Health Issues While Serving In The Middle East**

10 14. While located in the Middle East, Franklin’s unit was exposed to three Burn Pits.
11 Burn pits are open-air, uncontrolled areas used by the U.S. military and military contractors
12 primarily in Iraq and Afghanistan military sites. Historically, open-air burn pits have been a means
13 to dispose of metal, rubber, chemicals, paint, medical waste, munitions and unexploded ordinance,
14 petroleum products, human waste, plastics, and various other forms of waste. When these various
15 forms of waste are burned together, burn pits emits toxic substances and carcinogens. Without
16 containment, the airborne pollutants and carcinogens spread and can lead to severe long-term
17 medical conditions due to toxic exposure. The high levels of dust and other existing air pollutants in
18 the Middle East further compounded the effects from the adjacent Burn Pits to create extreme
19 airborne health hazards and a host of other serious health side effects.
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23
24 ⁴ Franklin’s expertise is impressive. She is an electronics technician, aircraft electrician and
25 microcomputer manager specializing in electronic flight controls, navigational equipment, global
26 positioning, computer hardware and software repair systems. She is proficient in the management
27 and administration of Windows, OSX, Linux, Sun Systems, and various other operating
28 environment platforms to include system installation, upgrades, software security maintenance,
software patches, dual platform systems, driver integration, firewalls, and backup implementation.
She also has 14 years experience in the P-3, EP-3 Lockheed Orion and E-6 Boeing 707 aircraft with
organizational and intermediate level maintenance experience, operating, testing, fault isolation,
micro miniature repair including, navigation, GPS, visual displays, flight instruments and computer
systems.

1 15. Franklin worked outside in close proximity to the Burn Pits and slept inside in
2 dilapidated trailers (and tents) without ventilation systems. The pollutants in the air were powerful.
3 Within one month of Franklin’s Middle East experience she developed asthma.⁵ During this time
4 period, Franklin also developed sinus issues and other medical problems causing her to lose 25
5 pounds or fifteen percent of her body weight.
6

7 16. After Franklin’s deployment to the Middle East, within one year, she also developed
8 chronic bronchitis and migraines. In two to three years, she developed joint cartilage deterioration
9 in her spinal column, feet, and knees. In five years, nerves were affected resulting in a nerve-muscle
10 decompression surgery—and several other surgeries over the years including a total hysterectomy
11 in 2014. Prior to Franklin’s deployment to the Middle East, she had none of these medical issues.
12

13 17. On or about 2008, Franklin was stationed at the Travis Air Force Base in Fairfield,
14 California. Franklin worked on classified missions, including the repair and maintenance of
15 electrical, mechanical, hydraulic, and electronic aircraft systems while supervising 60 employees.
16

17 18. On or about 2011, Franklin was stationed at the NAS Fallon, Nevada. Franklin
18 worked as a manager in four departments including quality control, electronic repair encompassing
19 electrician and electronic technicians for the NAS Fallon fighter jet systems.
20

21 19. On January 31, 2015, Franklin was honorably discharged due to the extensive
22 medical issues she developed during her tenure in the Middle East.
23

24 **Franklin’s Recruitment by Scott Leo**

25 20. Prior to Franklin’s discharge, in December, 2014, Franklin was recruited by Scott
26 Leo (“Leo”) to work with him as his subordinate at LB&B Associates Inc., a private defense
27 contractor with a contract at NAS Fallon. Franklin had worked with Leo for years while in the
28

⁵ Franklin was initially put on a rescue inhaler. Later she was put on Advair Diskus when rescue inhalers became ineffective. Advair Diskus is used to treat people with asthma and people with chronic obstructive pulmonary disease (COPD).

1 Navy. Leo had extensive knowledge of Franklin's experience and proficiency in five different types
2 of Naval aircraft, experience in both electrical and electronic aircraft systems, and computers. Leo
3 was aware Franklin had a high level security clearance sustained throughout her Naval career. Leo
4 was also aware of Franklin's respiratory issues and disabilities with regard to breathing, as the two
5 had discussed Franklin's declining health issues when both were on active duty with the Navy.
6

7 21. Leo pressured Franklin to work with him at LB&B. Leo was aware that Franklin had
8 far more experience with computers, electronics, and all manner of aviation than he did. Leo
9 expressed concern to Franklin that he might lose his job as he was having difficulty maintaining
10 LB&B's simulators and had problems on a daily basis.

11 22. Yet despite Leo's pressuring of Franklin, Franklin was not looking for a job.
12 Franklin had serious health issues, some surgery planned, and wanted to give herself time to heal
13 and spend time with her family. Franklin had numerous discussions with Leo about her health
14 issues, especially her respiratory disabilities, letting Leo know she was not in a "hurry" to begin a
15 new job and needed to take care of her health.
16

17 **Scott Leo Assures Franklin Her Disabilities Would Be Accommodated**

18 23. Leo expressed sympathy and made assurances to Franklin that accommodations
19 would be made for Franklin to regularly visit her doctors and take time off as needed. Leo assured
20 Franklin he understood the ease with which her respiratory problems could escalate into dangerous
21 health hazards, including pneumonia as well as other breathing problems. Leo insisted the job
22 would be a "perfect fit" for Franklin.
23

24 24. At Leo's urging, Franklin stopped by the LB&B simulator facility at the NAS Fallon
25 to look at the equipment. Franklin was pleased to find the computers on the trainers were not
26 outdated and agreed to apply for the open position with the understanding she would not begin until
27
28

1 February 2015. Within an hour after submitting her resume Franklin received a call from LB&B's
2 corporate hiring manager. After responding to a series of detailed computer questions, Franklin was
3 hired as a Level II electronics technician.⁶ The hiring manager wanted Franklin to begin
4 immediately but agreed to her need for an accommodation for her upcoming surgery and agreed to
5 her February 2015 start date. The hiring manager made clear Franklin would be offered
6 accommodations as needed for her disability.
7

8 **Franklin Was Well Qualified For the Position**

9 25. Franklin's tenure at LB&B was a success. Franklin was well qualified for the
10 position. Within four months Franklin was considered a systems expert and was called upon to give
11 technical advice to contractors located at NAS Key West. Franklin got along with the pilots and the
12 workload was easily within her experience and skills. During Franklin's tenure with LB&B,
13 Franklin won five safety awards and two pay raises.
14

15 26. Franklin's job duties included, but were not limited to, training, teaching, and testing
16 approximately 45 pilots, both active and reserve Navy pilots and Navy enlisted and officer system
17 operations, as well as Navy SEALs on a regular basis.⁷ Franklin was the sole expert of the two
18 hired personnel that had computer experience and the qualifications to work, modify, fix and
19 maintain the software and hardware for these exceedingly complex aircraft systems.
20

21 **Franklin Received Appreciation And Never Any Discipline**

22
23 ⁶ The LB&B posting required four years of experience and an associate's degree in
24 electronics technology, aviation experience, computer system experience, proficiency in Windows,
25 Linux and Mac, security patching, an electronics degree and a security clearance. Franklin
possessed all these requirements.

26 ⁷ The fighter jet aircraft trainers are used to teach and test all new pilots on the dynamics,
27 functions, and flight controls in multiple detailed and accurately mapped locations for every
28 weather condition, day and night operations and system failures, such as engine fires, navigational
system failures, landing gear failures or loss of hydraulics. Every new pilot is required to pass these
simulator tests before they fly the actual aircraft, it is also a required refresher for all pilots prior to
each night flight and for every pilot on annual proficiency tests. Franklin was trained to provide
landing and takeoff training to all pilots in the event an instructor pilot was not available.

1 pilots’ families, school children, and the community appreciated Franklin helpful attitude when she
2 provided tours of the facility. Franklin received praise and numerous “thank you” cards for her
3 volunteer work in providing tours on weekends to local Sea Cadets and high school students.

4 32. ESP appreciated her work. At no time did ESP indicate there was a problem with
5 Franklin’s performance. ESP did not discipline Franklin, write her up, counsel her, or advise her at
6 any time of any work related deficiencies. As far as Franklin knew, ESP appreciated her conduct,
7 behavior, and work performance. Franklin enjoyed her job and found it to be an excellent fit for her
8 unique skills and experience—she looked forward to a long career with ESP.
9

10 **Franklin Takes Safety Precautions**

11 33. In late 2016 and late 2017 Leo had bronchitis. Franklin requested several times that
12 Leo “cover his mouth” when he coughed because it would be “easy” for her to get sick as she had
13 serious “lung issues” but Leo refused. Franklin did get sick, developing pneumonia on two
14 separation occasions. After her second bout with pneumonia, Franklin brought in a 32 inch monitor
15 to place between Leo’s desk and her own to act as a shield between them while they worked
16 together in their small mutual workplace.
17

18 34. Franklin’s workspace was within six feet of Leo’s workspace and within six feet of
19 the pilots that came and went into the facility to use the aircraft simulators. Franklin expressed
20 concern to Leo about her respiratory issues and requested that the office ventilation system be
21 examined to ensure adequate function and clean air. Franklin was told by Leo that the ventilation
22 system could not be adjusted as it was set to function for the entire routing area for computer
23 cooling.
24

25 **Covid-19 Places Franklin At Risk, Requests For Accommodations**

26 35. Then came Covid-19. Franklin became concerned about Covid-19 as she understood
27
28

1 her respiratory issues put her at high risk. Franklin asked Leo on several occasions during February,
2 March and early April 2020 if the company had any plans to mitigate possible exposure to Covid-
3 19, especially for employees at high risk. Leo seemed annoyed with her questions and provided no
4 response.

5
6 36. On or about mid-February, 2020, Franklin initiated a conversation with Leo
7 regarding whether she could take time off from work—either with or without pay. Franklin did not
8 want to lose her job but was very concerned about exposure to Covid-19 as she was in every regard
9 at high risk if she contracted the disease.⁸ Leo ignored Franklin’s request for time off of work.

10 37. On or about March 5, 2020, Franklin suggested to Leo that they alternate days in the
11 office. Franklin offered to remain available to consult, problem solve, and trouble shoot on the days
12 when she was not in the office – which was something she was already doing on vacations and days
13 off. Franklin suggested this as a way to mitigate her exposure to Covid-19 until ESP could approve
14 her request for an extended time off. Leo ignored Franklin’s request.

15
16 38. On or about March 13, 2020, the entire military staff in the building housing ESP,
17 with the exception of the Navy pilots that were also commercial pilots, were told to stay at home
18 until further notice because of Covid-19. The Department of Defense also required a Covid-19
19 health assessment screening assessment for NAS Fallon. Before entering the building, military
20 members and civilians were required to answer questions including: “Have you been out of the area
21 in the past 14 days?” “Have you been ill or experienced any Covid-19 symptoms?” Military staff
22 also took temperatures of all entering the building.

23
24 39. On or about March 20, 2020, the Navy issued a statement: “Navy increasing health
25 protection measures on installations to fight Covid 19.” The statement provided a litany of
26 additional protective measures for military personnel and civilians including: social distancing,
27

28 ⁸ ESP did not provide gloves, masks, or hand sanitizer for the office. Franklin asked Leo if
the company would provide these essentials but was ignored and received no response.

1 minimizing attendance at large group gatherings, maintaining six feet from others when possible,
2 teleworking, liberal leave, alternating days off or split shift rotations, and identification of those
3 infected. Further the Navy instructed commanders to identify and track all service members who
4 travel or have a history of travel in the prior 14 days—including travel by military or commercial
5 means with instructions for such persons to take their temperature twice a day and maintaining alert
6 for fever and other Covid symptoms. Franklin continued to express her concerns about the risk she
7 faced if she contracted Covid-19.

9 40. On or about March 23, 2020, Franklin sent a message to Mark Vanminsel COR the
10 liaison officer between the government and ESP. Franklin expressed her concern that her office did
11 not have spray alcohol to kill viruses and worked in “closed quarters.” She added: “No respirators
12 or even the option to have six feet between us. For safety reasons we should not be put in direct risk
13 especially since the pilots that will be using the sim today or for the rest of the week are major
14 airline pilots.” Having received no response from Vanminsel, Franklin telephoned him. Vanminsel
15 made clear this was not an issue he was interested in. Vanminsel advised Franklin to talk to Scott
16 Leo.

18 41. On March 25, 2020, Franklin informed Leo she had purchased a bottle of alcohol
19 and would be sanitizing the office and sim area. Leo reimbursed Franklin for the alcohol out of ESP
20 petty cash.

22 42. Franklin again initiated several discussions with Leo regarding what
23 accommodations ESP would make in the work environment. As Franklin requested masks, gloves,
24 and discussed the need for some PPE, Leo again appeared annoyed. Franklin urged Leo to call ESP
25 to discuss with the company safety measures and the purchase of necessary items to maintain safety
26 in the work environment.⁹

28 ⁹ Franklin purchased gloves and brought them to work as did Leo. Neither Franklin or Leo were able to find appropriate face masks as stores and online distributors were sold out.

1 43. Franklin again asked Leo for time off, either with or without pay. Franklin explained
2 that this extended time off would not cause an undue hardship on ESP as there was a general
3 slowdown and one of the simulators was out of commission.¹⁰ Franklin reminded Leo of her
4 respiratory disabilities and her at risk status with Covid-19. Leo again appeared annoyed.
5 discussions with Leo at the time of her initial hiring, requesting that he call ESP and discuss
6 preventative measures and accommodations for her disabilities. Leo appeared irritated and made
7 plain he would not contact ESP's home office.
8

9 44. At no time did Leo initiate with Franklin the required Americans with Disabilities
10 "interactive process" to discuss Franklin's need for accommodation, her disability, and the risks she
11 would face without accommodations.
12

Incident With Pilot

13 45. On or about March 31, 2020, a Navy reservist, who was also a commercial pilot,
14 entered Franklin's small workspace with his uncontrolled eight year old son. The reservist was not
15 wearing a face mask or gloves. The reservist demanded an unscheduled flight on the simulator.
16 Franklin asked the pilot when he had last flown and he replied: "Yesterday." Franklin asked if he
17 had been tested for Covid-19 and he angrily replied he had not. The pilot came within two feet of
18 Franklin and coughed. Franklin next asked if he had taken the Navy mandated Covid-19 safety
19 survey to get into the building as required. The pilot did not respond. Franklin explained to the pilot
20 she was at high risk for Covid. During this time, the pilot's son was moving around the simulator,
21 touching everything and running towards Franklin. This gravely concerned Franklin.
22
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25
26 ¹⁰ At the time Franklin was expressing the need for time off, ESP's workload decreased
27 dramatically. The slowdown was the result of Covid-19, the stay at home orders from Department
28 of Defense, and the cancellation by an outside company of an upgrade completion to the simulator
systems. Franklin believed taking time off during this period would not cause an undue burden
because work was down and she would continue to remain available for consultation,
troubleshooting and maintenance issues.

1 46. The pilot became visibly upset with Franklin’s reasonable safety concerns. The pilot
2 yanked gloves out of a box for himself and his son. Both the pilot and his son got into the simulator.
3 After the pilot and his son were finished, as they were walking out, Franklin sprayed some of the
4 surfaces they had touched without gloves, then closed the room door while she sanitized the
5 simulator room and the remaining surfaces.
6

7 **Franklin Expresses Serious Need For Accommodation**

8 47. On April 1, 2020, Franklin called Leo to again request time off. Franklin reiterated
9 her at-risk status and the danger she faced if exposed to Covid-19. Franklin reiterated that if she was
10 exposed to Covid-19, with her respiratory disability, she could die. Leo advised Franklin that she
11 could take the day off. Franklin asked about the status of her request for a prolonged time off the
12 job, explaining she would at all times be available to consult telephonically and troubleshoot. Leo
13 did not respond.
14

15 48. Franklin’s request for time off was a request for an accommodation for her disability.

16 49. Also on April 1, 2020, ESP’s CEO John Russell sent an email regarding Covid-19 to
17 a variety of individuals including Scott Leo who forwarded it to Franklin. Russell stated “The
18 government considers you and our contracts mission essential and they and I consider your health
19 important.” Russell continued in that vein, urging employees to keep up with their “planned
20 maintenance” and to keep working on the essential tasks they were performing.
21

22 50. On the evening of April 1, 2020, Franklin notified Leo by email of what had
23 transpired on March 31st with the pilot. Franklin told Leo the pilot arrived without mask, gloves or
24 sanitizer and the child ran rampant around the facility touching everything. Franklin pointed out this
25 conduct represented “a hazard” for the company, the contract, and both the Department of the Navy
26 and Department of Defense. Franklin attached to her email a memo dated March 30, 2020 from the
27
28

1 Under Secretary of Defense regarding the risks presented by the Covid-19 pandemic.¹¹ Following
2 up on her request for an extended time off, Franklin made clear that continuing at work during this
3 time period was “dangerous” for her and she could “risk” her health, wellbeing or safety because
4 pilots disregarded policies, Department of Navy requirements, and CDC guidelines.

5
6 51. Leo told Franklin that ESP was now investigating Franklin because the pilot she
7 referenced had complained that she had “sprayed alcohol on him.” Franklin was shocked at the
8 accusation. Franklin denied she had sprayed alcohol on anyone and insisted would not do such a
9 thing.

10 52. On April 2, 2020, Franklin received an email from Leo advising there was “no need”
11 for Franklin to come to work and she could “stay at home with pay until further notice.” Leo
12 included the caveat that Franklin was to be restricted from VFC-13 and other trainer spaces and
13 work areas and if Franklin needed to pick up personal items, base security would escort her to and
14 from the squadron parking lot.

15
16 **One Day After Expressing Urgent Need For Accommodation, ESP Fires Franklin**

17 53. On April 2, 2020, in the afternoon, Franklin received an email from Leo advising her
18 that her employment with ESP was terminated. Leo explained that Franklin would need to make
19 arrangements with base security and himself when she wanted to collect her personal items.
20 Franklin was shocked. Not long before her termination, Franklin had received a new title by the
21 Federal level Aviation F-5 Simulator Program Manager, Regional System Administrator for the
22 local simulators, after an evaluation visit. This new title was not given by ESP but at several levels
23 above ESP.
24

25 54. On April 2, 2020, in the evening, Franklin emailed Leo asking for the reason for her
26 termination? Leo did not respond.
27

28

¹¹ The memo confirmed that commanders and supervisors were authorized to grant weather and safety leave to civilian employees who are not designated as emergency employees.

- 1 • **Rapport with pilots**—Franklin believes she had an excellent rapport with all pilots
2 save and except one pilot who from the beginning of her employment was extremely
3 difficult for her to work with.
- 4 • **Amazon Eyeglasses**—Franklin obtained prescription Bluetooth glasses in early
5 February 2020 from Amazon. The glasses did not record anything either visually or
6 audibly. Franklin was able to make calls, set reminders, and add to her to-do list. The
7 glasses eliminated the need to wear headphones or ear buds by directing sound to her
8 ears. The glasses had no camera or display and could not possibly have recorded
9 conversations or photographed materials.

10 **58.** Franklin alleges she was terminated because she expressed an urgent need for an
11 accommodation for her disability. Franklin alleges the reasons provided for her termination are
12 pretextual. Franklin expressed the seriousness of her need for accommodation on several occasions,
13 with the last time being April 1. Franklin was terminated on April 2.

14 **59.** On or about mid-September 2020, Franklin filed her Complaint of Discrimination
15 with the Nevada Equal Rights Commission. On or about November 16, Franklin signed her Charge
16 of Discrimination. On or about November 19, 2020, Franklin received her Right-to-Sue Notice.

FIRST CAUSE OF ACTION

(Title I of the ADA – Discriminatory Termination)

17
18 60. Plaintiff Diana Franklin realleges all preceding paragraphs and incorporates them by
19 reference.

20 61. Title I of the ADA prohibits discrimination against a qualified individual on the basis of
21 disability in regard to ...discharge of employees ...and privileges of employment.” 42 U.S.C § 12112(a).

22 62. Title I of the ADA provides that “[n]o covered entity shall discriminate against a
23 qualified individual on the basis of disability in regard to job application procedures, the hiring,
24 advancement, or discharge of employees, employee compensation, job training, and other terms,
25 conditions, and privileges of employment.” 42 U.S.C § 12112(a).

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1 63. Congress made it clear in the ADAAA that “the definition of disability ... shall be
2 construed in favor of broad coverage of individuals... to the maximum extent permitted. 42 U.S.C §
3 12102(4)(A).

4 64. To prevail on a claim of unlawful discharge under the ADA, the plaintiff must establish
5 that she is a qualified individual with a disability and her employer terminated her because of her
6 disability.

7 65. An employer has an affirmative duty to provide reasonable accommodations to
8 individuals with disabilities. 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. § 1630.9(a).

9 66. Reasonable accommodations may include modified work schedules. 42 U.S.C. §
10 12111(9)(B); 29 C.F.R. § 1630.2(o)(ii). The ADA contemplates that employers may need to make
11 reasonable shift changes in order to accommodate a disabled employee’s disability-related difficulties in
12 getting to work.

13 67. The ADA defines discrimination to include an employer’s failure to make a reasonable
14 accommodation. The ADA treats the failure to provide a reasonable accommodation as an act of
15 discrimination if the employee is a qualified individual, the employer receives adequate notice and a
16 reasonable accommodation is available that would not place an undue hardship on the operation of the
17 employer’s business.

18 68. Reasonable accommodations include “[m]odifications or adjustments that enable a
19 covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are
20 enjoyed by other similarly situated employees without disabilities.” 29 C.F.R. § 1630.2 (o)(1)(iii).

21 69. An ineffective modification is not an accommodation. An appropriate reasonable
22 accommodation must be effective, in enabling the employee to perform the duties of the position. An
23 ineffective modification will not accommodate a disabled individual’s limitations.

1 70. Once an employee requests an accommodation..., the employer must engage in an
2 interactive process with the employee to determine the appropriate reasonable accommodation.
3 Employers are required to engage in an “interactive process” in good faith to identify and implement
4 appropriate reasonable accommodations when on notice of an employee’s need for accommodation.
5

6 71. This interactive process requires: (1) direct communication between the employer and
7 the employee to explore in good faith the possible accommodations; (2) consideration of the employee’s
8 request; and (3) offering an accommodation that is reasonable and effective. The duty to accommodate
9 is a continuing duty that is not exhausted by one effort.

10 72. Franklin is a qualified individual because of her unique experience, education, training,
11 and expertise which ideally suited for the precisely position she held and because she had been doing the
12 exact same position for five years without problem or incident. During that time period Franklin was not
13 subject to discipline, warnings, or progressive discipline of any sort.
14

15 73. Franklin’s disability, breathing, was well known in her records, her discussions with
16 Leo, and her application for employment. Franklin’s severe respiratory problems including asthma and
17 bronchitis. Franklin is limited in the major life activity of breathing. When she is exposed to people who
18 cough, or exhibit symptoms of respiratory distress, she is highly likely to become sick and have
19 difficulty breathing. Franklin’s impairment prevents her from being exposed to people who are sick with
20 respiratory illness or Covid-19 and its accompanying problems. An average person can safely risk
21 exposure to people with respiratory issues with minimal precautions, but Franklin risks pneumonia,
22 hospitalization, and a potential fatality with the same exposure.
23

24 74. Franklin not only had an actual disability but was regarded as having such a disability.

25 75. Franklin was terminated because she requested a reasonable accommodation for her
26 disability.
27
28

1 76. Franklin’s request for accommodation was reasonable on its face.

2 77. Franklin’s request for an accommodation triggered a duty by EPS to engage in an
3 “interactive process” through which ESP and Franklin would come to understand Franklin’s needs and
4 reason for accommodation and work together.

5 78. Neither ESP nor its agents or representatives at any time engaged in the interactive
6 process with Franklin. ESP ignored Franklin’s request for accommodation, an extended time off
7 whereby she would remain on call to remotely assist with hardware and software repair. ESP’s failure to
8 engage in the interactive process put Franklin’s safety at risk as well as the safety of anyone entering the
9 ESP facility.
10

11 79. ESP’s terminated Franklin almost immediately after her request for accommodation.
12 Franklin’s request for accommodation was the cause in fact and the proximate cause of her termination.
13

14 80. Providing reasonable accommodation for Franklin would not have created an undue
15 burden on ESP as her requests occurred at the height of the Covid-19 shelter in place directives when
16 fewer pilots were requesting use of the facility, fewer individuals were allowed inside the facility, there
17 existed an overall work slowdown, and one of the simulators was not functional for training.

18 81. Plaintiff Franklin was a qualified individual capable of performing the essential
19 functions of the Electronics Technician III position she held for ESP. Franklin possessed the requisite
20 skill, experience, education and other job-related requirements of the employment position of
21 Electronics Technician III. With or without accommodation Franklin was capable of doing her job.
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23 82. Franklin alleges that but-for her disability and her requests for accommodation she
24 would not have been terminated.

25 83. Franklin alleges she was terminated based on her disability, the perception that she
26 needed accommodations that ESP was unwilling to provide.
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