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JS 44 (Rev. 12/07) (CAND Rev 1/10)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS: U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DEFENDANTS: WALGREEN CO.
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
350 The Embarcadero, Suite 500
San Francisco, CA 94105
(415) 625-5651

JSC E-filing ADR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury
PERSONAL INJURY: 362 Personal Injury—Med. Malpractice, 365 Personal Injury—Product Liability, 368 Asbestos Personal Injury Product Liability, 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
PRISONER PETITIONS: 510 Motions to Vacate Sentence, Habeas Corpus: 530 General, 535 Death Penalty, 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition
FORFEITURE/PENALTY: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Laws, 640 R.R. & Truck, 650 Airline Regs., 660 Occupational Safety/Health, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 730 Labor/Mgmt. Reporting & Disclosure Act, 740 Railway Labor Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act
IMMIGRATION: 462 Naturalization Application, 463 Habeas Corpus—Alien Detainee, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 810 Selective Service, 850 Securities/Commodities/Exchange, 875 Customer Challenge 12 USC 3410, 890 Other Statutory Actions, 891 Agricultural Acts, 892 Economic Stabilization Act, 893 Environmental Matters, 894 Energy Allocation Act, 895 Freedom of Information Act, 900 Appeal of Fee Determination Under Equal Access to Justice, 950 Constitutionality of State Statutes

2011-11-10

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 another district (specify)
6 Multidistrict Litigation
7 Judge from Magistrate Judgment
Transferred from
Appeal to District

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C §1(a) [Americans with Disabilities Act of 1990]; 42 U.S.C §1981a [Title I, Civil Rights Act of 1991]
Brief description of cause:
Unlawful employment practices on the basis of disability discrimination.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)
[X] SAN FRANCISCO/OAKLAND
[] SAN JOSE
[] EUREKA

DATE: 9/8/2011
SIGNATURE OF ATTORNEY OF RECORD: [Signature]

1 WILLIAM R. TAMAYO -- #084965 (CA)
2 JONATHAN T. PECK -- #12303 (VA)
3 DAVID F. OFFEN-BROWN -- #63321 (CA)
4 CINDY O'HARA -- #114555 (CA)
5 EQUAL EMPLOYMENT OPPORTUNITY
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7 San Francisco District Office
8 350 The Embarcadero, Suite 500
9 San Francisco, California 94105-1260
10 Telephone: (415) 625-5653

11 Attorneys for Plaintiff

E-filing

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

JSC

14 EQUAL EMPLOYMENT OPPORTUNITY
15 COMMISSION,

16 Plaintiff,

17 v.

18 WALGREEN CO.,

19 Defendant.

Civil Action No. **11 44 70**

COMPLAINT

Civil Rights - Employment Discrimination

DEMAND FOR JURY TRIAL

20 NATURE OF THE ACTION

21 This is an action under Title I of the Americans with Disabilities Act of 1990, and Title I
22 of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of
23 disability and to provide appropriate relief to Charging Party Josefina Hernandez who was
24 adversely affected by such practices. Charging Party Hernandez, a qualified individual with a
25 disability, was discriminated against by not having her disability accommodated and being
26 discharged based on her disability.

27 JURISDICTION AND VENUE

28 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337,
1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the
Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12117(a), which incorporates by

1 reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42
2 U.S.C. § 2000e-5(f)(1) and (3) and pursuant to Section 102 of the Civil Rights Act of 1991, 42
3 U.S.C. § 1981a.

4 2. Venue is proper in the United States District Court for the Northern District of
5 California because the unlawful employment practices alleged herein were committed the State of
6 California, in the County of San Mateo, California, within the jurisdiction of the United States
7 District Court for the Northern District of California. Venue is therefore proper in the
8 United States District Court for the Northern District of California.

9 **INTRADISTRICT ASSIGNMENT**

10 3. This action is appropriate for assignment to the San Francisco/Oakland Division of
11 this Court because the unlawful employment practices alleged were committed within San Mateo
12 County, within the jurisdiction of the San Francisco/Oakland Division.

13 **PARTIES**

14 4. Plaintiff, the Equal Employment Opportunity Commission (Plaintiff or
15 Commission) is the agency of the United States of America charged with the administration,
16 interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this
17 action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference
18 Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

19 5. At all relevant times, Defendant Walgreen Co. (hereinafter Defendant or
20 Defendant Walgreens), has continually been an Illinois corporation doing business in the State of
21 California and the City of South San Francisco, and has continuously had at least 15 employees.

22 6. At all relevant times, Defendant Walgreens has continuously been engaged in an
23 industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section
24 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Section 701(g) and
25 (h) of Title VII, 42 U.S.C. § 2000e(g) and (h).

26 7. At all relevant times, Defendant Walgreens has been a covered entity under
27 Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

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1 **STATEMENT OF CLAIMS**

2 8. More than thirty days prior to the institution of this lawsuit, Charging Party
3 Josefina Hernandez (Charging Party Hernandez) filed a charge with Plaintiff Commission
4 alleging violations of Title I of the ADA by Defendant Walgreens. All conditions precedent to
5 the institution of this lawsuit have been fulfilled.

6 9. Since at least September 17, 2008, Defendant Walgreens has engaged in unlawful
7 employment practices at its South San Francisco, California facility, in violation of Section 102
8 of Title I of the ADA, 42 U.S.C. 12112(a). These practices have included but are not limited to
9 discharging Charging Party Hernandez because of her disability, and failing to accommodate her
10 disability. Charging Party Hernandez, who suffers from diabetes, was discharged, instead of
11 accommodated, by Defendant Walgreens after almost eighteen years of employment for
12 consuming a food product, valued by Defendant Walgreens at \$1.39, prior to purchasing it, to
13 stabilize her blood sugar in the midst of an attack of hypoglycemia (low blood sugar) caused by
14 her diabetes.

15 10. The effect of the actions complained of in paragraph 9 above has been to deprive
16 Charging Party Hernandez of equal employment opportunities and otherwise adversely affect her
17 status as an employee because of her disability.

18 11. The unlawful employment practices complained of in paragraph 9 above were
19 intentional.

20 12. The unlawful employment practices complained of in paragraph 9 above were
21 done with malice or with reckless indifference to the federally protected rights of Charging Party
22 Hernandez.

23 **PRAYER FOR RELIEF**

24 Wherefore, the Commission respectfully requests that this Court:

25 A. Grant a permanent injunction enjoining Defendant, its officers, agents, successors,
26 assigns, and all persons in active concert or participation with it, from terminating the
27 employment of an employee because of disability, failing to reinstate and failing to accommodate
28 because of disability, and engaging in any other employment practice which discriminates on the

1 basis of disability.

2 B. Order Defendant to institute and carry out policies, practices, and programs which
3 provide equal employment opportunities for qualified individuals with disabilities, and which
4 eradicate the effects of its past and present unlawful employment practices.

5 C. Order Defendant to make whole Charging Party Hernandez by providing
6 appropriate back pay and benefits with prejudgment interest, and other affirmative relief
7 necessary to eradicate the effects of its unlawful employment practices, including but not limited
8 to reinstatement and/or front pay and other appropriate relief to be determined at trial.

9 D. Order Defendant to make whole Charging Party Hernandez by providing
10 compensation for past pecuniary losses resulting from the unlawful employment practices
11 described above, including out-of-pocket medical expenses and costs associated with job search,
12 in an amount to be determined at trial.

13 E. Order Defendant to make whole Charging Party Hernandez by providing
14 compensation for past and future nonpecuniary losses resulting from the unlawful practices
15 complained of above including, but not limited to, emotional pain and suffering, mental anguish,
16 inconvenience, loss of enjoyment of life and humiliation, in amounts to be determined at trial.

17 F. Order Defendant to pay Charging Party Hernandez punitive damages for the
18 malicious and reckless conduct described above, in amounts to be determined at trial.

19 G. Grant such further relief as the Court may deem just and proper in the public
20 interest.

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H. Award the Commission its costs of this action.

DEMAND FOR JURY TRIAL

The Commission demands a jury trial on all questions of fact raised by its complaint.

P. DAVID LOPEZ
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

**Equal Employment Opportunity
Commission**
131 M Street, N.E.
Washington, DC 20507

Date: September 8, 2011

/S/ William R. Tamayo

WILLIAM R. TAMAYO
Regional Attorney

Date: September 8, 2011

/S/ David F. Offen-Brown

DAVID F. OFFEN-BROWN
Supervisory Trial Attorney

Date: September 8, 2011

/S/ Cindy O'Hara

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Senior Trial Attorney

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