

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARK & GALUSHA, LLC
403 King George Road
Suite 201
Basking Ridge, NJ 07920
908-626-1001
908-626-1003 - Facsimile
Attorneys for Plaintiff
Jamison M. Mark, Esq.

MONIQUE S. SIMON,

Plaintiff,

v.

MERCER COUNTY COMMUNITY
COLLEGE & BOARD OF DIRECTORS

Defendants.

CIVIL ACTION NO. 3:10-cv-5505 GEB-DEA

**SECOND AMENDED
COMPLAINT AND JURY DEMAND**

Plaintiff, residing at 153 A Wert Avenue, Hamilton, NJ 08610 as and for her Complaint against Defendant, Mercer County Community College & Board of Directors, does hereby state:

PARTIES

1. Monique Simon, an individual, was an employee of Defendant Mercer County Community College from August 2006 until May 2009.

2. Mercer County Community College, does business in the State of New Jersey with offices located in West Windsor, New Jersey, and is an employer pursuant to 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)).

INTRODUCTION

3. This is a proceeding for damages to redress the deprivation of rights secured to Plaintiff by the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (hereinafter the "ADA").

JURISDICTION AND VENUE

4. The jurisdiction of the Court over this controversy is invoked pursuant to 42 U.S.C. § 12117 and 28 U.S.C. §§ 1331, 1332, 1343(a)(4).

5. Both Plaintiff and Defendant reside, as that term is defined by 28 U.S.C. §1391(c), in the State of New Jersey. Accordingly, venue lies in the United States District Court for the District of New Jersey pursuant to 28 U.S.C. §1391(b).

6. Injunctive and declaratory relief, damages and other appropriate legal and equitable relief are sought pursuant to 42 U.S.C. § 12117.

7. Prior to filing this civil action, on September 11, 2009 Plaintiff filed a written charge under oath asserting disability discrimination and retaliation with the Equal Employment Opportunity Commission (hereinafter the "EEOC") within 300 calendar days of her May 2009 termination.

8. The EEOC, on August 23, 2010, issued a Notice of Right to Sue, which Plaintiff received shortly thereafter. As a

result thereof, Plaintiff has complied fully with the administrative prerequisites of the ADA.

FACTS

9. Plaintiff Monique Simon (hereinafter "Simon") was diagnosed with Active Epstein Barr Virus twenty-one years ago and subsequently Chronic Fatigue Syndrome in August of 2008. She suffers from these disabilities as of this date.

10. Simon was hired by Mercer County Community College (hereinafter "MCCC") as an Assistant Professor of Communications in July 2006.

11. Despite suffering from Epstein Barr, at all times relevant Plaintiff was, and is, fully capable of performing all required aspects of her job at MCCC.

12. Throughout her employment, Plaintiff's performance consistently met MCCC's expectations, and she received stellar performance evaluations. Her employment contract was renewed for 2007-2008 and 2008-2009.

13. At one time, Simon was asked and she accepted the additionally duties of Department Coordinator and Adjunct Faculty Liaison.

14. Simon thrived as Assistant Professor, yet the extra overtime, volunteer hours, and unnecessary but additional duties as Department Coordinator and Adjunct Faculty Liaison exasperated her Epstein Barr causing her constant fatigue.

15. The additional roles of Department Coordinator and Adjunct Faculty Liaison, Simon was to receive either "release time," additional pay or summer pay as compensation.

16. In late spring of 2008, Simon spoke with MCCC Dean Judith Ehresman, and identified and explained the effects of her disability, and requested an accommodation to allow her to step down from the Department Coordinator and Adjunct Faculty Liaison positions, and to work exclusively in her full-time teaching position.

17. After the meeting, Dean Ehresman requested that Simon place her request in writing.

18. In the spring of 2008, as requested Simon submitted a memorandum to Dean Ehresman explaining that due to her Epstein Barr disability, she was unable to continue with the additional roles of Department Coordinator and Adjunct Faculty Liaison, and the she would like to focus exclusively on her teaching duties for which she was hired.

19. After submitting the memorandum, Simon was called into a meeting with Dean Ehresman and Director of Human Resources Eileen Curristine, where Simon again explained that she could only continue working as an Assistant Professor. In response, Dean Ehresman stated that Simon was required to continue with the responsibilities of Department Coordinator and Adjunct Faculty Liaison.

20. Simon was given a second option at this meeting in that she could also resign, or give up her Assistant Professor position, if she was unable to also handle the role of Department Coordinator and Adjunct Faculty Liaison.

21. Despite the fact that the functions of Department Coordinator and Adjunct Faculty Professor were not included in Simon's employment contract, and she both verbally and in writing explained how the additional roles affected her disability and therefore the need for an accommodation, MCCC, Dean Ehresman and HR Director Curristine discriminated against Simone, and albeit failed to act to Simon's request for an accommodation.

22. Two more meetings followed with Simon's union representative Professor Linda Bregstein-Scherr present. The Union ultimately the union filed a grievance on Simon's behalf, which was decided in Simon's favor.

23. The resolution of the grievance determined that no full-time faculty member was *required* to perform administrative duties unless by mutual consent, and it was determined that the faculty members were not expected by the Board of Directors to perform these administrative duties every year as part of their employment.

24. Simon's Epstein Barr worsened, and in August 2008 she was diagnosed with Chronic Fatigue Syndrome and Narcolepsy. As

a result, Simon had several meeting with HR Benefits Manager Margaret Tsui regarding accommodations for her disability. During this time Simon provided Tsui with medical documents, as well as an outline of the ADA policy. They two also discussed the MCCC policy on ADA and taking leave should Simon's condition rise to the leave of a needed absence.

25. After many request and a strongly worded and detailed email by Simon, Dean Ehresman, Eileen Curristine and Margaret Tsui agreed to meet with Simon on October 10, 2008 to discuss potential disability accommodations.

26. During the meeting, Simon outlined her condition, the doctors plan of treatment, and the fact she needed rest to reduce stress and fatigue.

27. Instead of interacting in a process to gather information to formulate a plan to accommodate Simon, HR Curristine asked: "I don't know what you want us to do about it."

28. Instead of responding with a plan of accommodation within a reasonable period of time, Simon was forced to continue with the Department Coordinator and Adjunct Faculty Liaison position, MCCC continued in its campaign of relation and on November 17, 2008, over a month later, Ms. Simon received an e-mail from HR Curristine requesting "more information" regarding her disability and need for an accommodation.

25. Simon again presented MCCC HR representative Tsui with the requested information, though there was no real additional information as Simon had already provided the material to Tsui months earlier.

26. Additionally, during this time, Simon provided a Self-Evaluation for the semester. This analysis included her achievements, as well as her outline of her disability and the efforts undertaken by her to communicate with the school to accommodate her.

27. In response to Simon's self-evaluation, Dean Ehresman ordered Simon to remove from the evaluation all references and documents pertaining to Simon's ADA request for an accommodation.

28. On December 15, 2008, yet with no plan to accommodate Simon, Dean Ehresman provided Simon with a Faculty Evaluation and a Summary Evaluation.

29. Simon's evaluation was poor, and Dean Ehresman did not recommend Simon's re-appointment for the 2009-2010 school year.

30. Contrary to policy, neither of these documents were jointly written and/or agreed upon by the Division Personnel Committee (DPC). Instead only Dean Ehresman's signature was on the forms, clearly done to hide Dean Ehresman's poor evaluation rating from the DPC.

31. Furthermore, neither of these documents mentioned Simon's disability, and/or request for accommodations pursuant to the college's apparent ADA policy, despite Simon including all relevant materials in her self-evaluation.

32. Knowing of the Dean's cavalier conduct and attempt to hide pertinent information from the DPC, Simon provided a copy of the Faculty Evaluation, the Summary Evaluation and the non-re-appointment recommendation from Dean Ehresman to the DPC for their review.

33. Despite Simon including the ADA accommodation request materials in her self-evaluation, she later learned that the DPC had not received any of these documents and knew nothing of Simon suffering from Epstein Barr and Chronic Fatigue Syndrome, or requesting an accommodation due to same.

34. Despite not knowing of her health condition, in response to Simon proving the evaluations, the DPC wrote a response letter to Dean Ehresman dissenting to Dean Ehresman's review, and contested Dean Ehresman's recommendation that Simon not be reappointed.

35. It is believed that due to the strongly worded objections from the DPC to Dean Ehresman's recommendations against Simon, Dean Ehresman, in the present of Professor Alwyn Haywood, disclosed to Simon that Dean Ehresman would change

Simon's evaluation if things "went back to the way they were before."

36. Simon agreed to sign a revised evaluation, one more accurate and outlining the College's accommodation for her, if one was written for her to review.

37. As this was the end of the year, Simon took leave from the Campus over the holidays.

38. On January 13, 2009, a month after evaluations were due, Simon was presented with yet another evaluation (back-dated to December 15, 2008), signed by Dean Ehresman and DPC member Professor Tina LaPlaca (not dated).

38. Along with the new evaluation, Simon was given a newly drafted document which cited "several areas for improvement" in her role as Program Coordinator and required her signature along with Dean Ehresman's.

39. The new evaluation and critique was not something presented before, and was clearly an act of retaliation for Simon's disclosure of the evaluations not provided to the DPC.

40. Simon refused to sign either document as neither provided for the accommodation, and despite being a previously agreed upon condition, now the Program Coordinator was a required position. Simon requested union representation.

41. On January 13, 2009, the Vice president of Academic Affairs, Dr. Donald Generals, e-mailed Simon stating that she

would not be recommended for reappointment due to her failure to sign the documents she was presented with, and suggesting that Simon was a difficult employee.

41. Prior to the start of the new semester, Simon suggested an abbreviated schedule allowing her to teach 10 weeks instead of the 15 scheduled weeks.

42. Knowing that she was being forced to continue with the coordinator position, Simon knew she was physically and mentally incapable of handling the position and the 15 week course, therefore requested the 10 week class.

43. Simon spoke to her liaison and the 15 week course was covered by another professor, and it was agreed that the 10 week course would be handled by Simon.

44. As was customary, courses were switched and covered by liaisons all the time, and Simon had provided ample time for coverage of the course. Despite this, Dean Ehresman wrote a letter to Generals indicating, incorrectly, that she was not notified until the last minute and she had scrambled to find coverage.

45. In reality, Simon already had coverage and the issue of switching courses was not a difficult event to coordinate. Instead the switching of the course, which was permitted to be done by Simon and the other professors, was an act of

accommodation which was not permitted by Dean Ehresman previously.

46. It was learned also during this time, that the Board of Directors had been told by the Dean that Simon had agreed to the prior "new evaluation" but that by not signing it, she was defying the college's requests. In reality, Simon never agreed to the "new evaluation" and in fact, contested it due to its failure to stand by the terms the Dean and Simon had previously agreed to.

47. As a result of the Dean's misrepresentation, and continued retaliation, on January 27, 2009, Simon was presented with a letter stating the Board of Directors had acted not to reappoint her as an Assistant Professor.

48. Upon handing the letter to Simon, Dr. Donald Generals said, "Now what do you have to say about that?!"

49. Dr. Generals then expressed his concern that Simon could finish the spring semester, due to her disability and presented her with two options: (1) to take administrative leave for the spring semester, or (2) to work on a project for Dean Ehresman for the spring semester.

50. Dejected, Simon, an Assistant Professor, chose to take an administrative leave for the spring semester.

51. Simon was not rehired and to this date has been rejected by MCCC for re-employment due to the discrimination and

retaliatory actions of Dean Ehreshman, and incompetency of the MCCC HR staff.

FIRST COUNT

(American's With Disability Act of 1990)

52. Simon repeats and reasserts all allegations and claims as identified above and incorporates same as if fully set forth at length herein.

53. Defendant's activities constitute disability discrimination and/or record of disability discrimination in violation of the ADA.

54. Defendants conduct was malicious, egregious, willful and wanton and in reckless disregard of Plaintiff's rights for which punitive damages are appropriate.

55. As a result of Defendant's actions, Plaintiff suffered injuries, including but not limited to emotional distress, physical distress, humiliation, embarrassment and pain and suffering, as well as a loss of income and benefits.

SECOND COUNT

(American's with Disabilities Act - Retaliation/Termination)

56. Simon repeats and reasserts all allegations and claims as identified above and incorporate same as if fully set forth at length herein.

57. Plaintiff complained and objected to the Dean and Human Resources department of Mercer County Community College's regarding their failure to accommodate her disability.

58. Plaintiff engaged in protected activity by objecting to the Company's refusal to accommodate her.

59. As a result of making these complaints relating to the company's failure to accommodate her disability, Plaintiff was subjected to retaliatory behavior by the Vice President of Academic Affairs, the Dean of MCCC and HR.

60. Plaintiff also suffered an adverse employment action when she was terminated.

61. Defendant's actions were retaliatory in violation of the ADA.

62. Defendants are liable for punitive damages based on their participation and/or willful indifference of upper management and the egregiousness of the acts of retaliation.

63. As a result of defendants' actions, Plaintiff has suffered and continues to suffer economic loss, emotional distress, pain and suffering, humiliation and damage to reputation.

WHEREFORE, Plaintiff requests judgment against Defendant, compensatory damages (including front pay, back pay, emotional distress and physical distress damages, damages for pain and suffering), punitive damages, attorneys' fees, costs of suit and

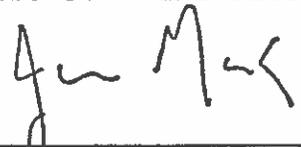
statutory damages pursuant to, and among others, 706(g) & 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) any other relief the Court deems proper and just.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all causes so triable.

MARK & GALUSHA, LLC
ATTORNEYS FOR PLAINTIFF

By: _____


JAMYSON M. MARK, ESQ.

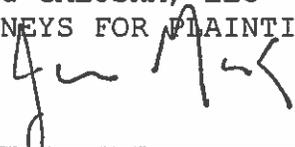
NOVEMBER 28, 2011

CERTIFICATION

I certify that the matter in controversy is not the subject of any other action pending in any court or of pending arbitration proceeding and that no such action or arbitration proceeding is contemplated, except that, upon information and belief Defendant might have erroneously filed an action in the Federal District Court for the District of New Jersey. The Plaintiff knows of no other parties who should be joined in the action.

The foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

MARK & GALUSHA, LLC
ATTORNEYS FOR PLAINTIFF

By: 

JAMISON M. MARK, ESQ.

NOVEMBER 28, 2011

**SETTLEMENT AGREEMENT AND
UNCONDITIONAL GENERAL RELEASE**

MONIQUE S. SIMON

1. **Releasor and Releasees:** The Releasor is Monique S. Simon. The Releasee is the Mercer County Community College ("MCCC" or "the College") all of its departments, divisions, agencies, officials, employees and agents, past and present.

2. **Release:** Monique S. Simon releases and gives up any and all claims and rights which she may have against MCCC. This releases all claims, demands, damages, causes of action, or suits which have been or could have been brought related to the events that gave rise to the Complaint filed in the United States District Court under Civil Action No.

3:10-cv-5505-GEB-DEA: In exchange for the mutual promises and consideration set forth in this Agreement, Monique S. Simon and her successors, heirs, and assigns hereby irrevocably and unconditionally waives, releases and forever discharges any claims or rights, including any and all federal, state, administrative, legal or other type of claim or right, whether known or unknown, which she has or may have against MCCC and which could have been raised in the within matter, including, but not limited to any potential claim relating to the following (along with any amendments thereto):

- (a) The National Labor Relations Act;
- (b) Title VII of the Civil Rights Act of 1964;
- (c) Sections 1981 through 1988 of Title 42 of the United States Code;
- (d) The Employment Retirement Income Security Act of 1974;
- (e) The Immigration Reform Control Act;
- (f) The Americans with Disabilities' Act of 1990;

- (g) The Age Discrimination & Employment Act of 1967;
- (h) The Fair Labor Standards Act;
- (i) The Occupational Safety & Health Act;
- (j) The Family & Medical Leave Act of 1993;
- (k) The Equal Pay Act;
- (l) The New Jersey Law Against Discrimination;
- (m) The New Jersey Minimum Wage Law;
- (n) The Equal Pay Law for New Jersey;
- (o) The New Jersey Worker Health & Safety Act;
- (p) The New Jersey Family Leave Act;
- (q) The New Jersey Conscientious Employee Protection Act;
- (r) Any anti-retaliation provision of any statute or law;
- (s) Any other federal, state or local, civil or human rights law or, any other local, state or federal law, regulation or ordinance, any provision of any federal or state constitution, any public policy, contract, tort, or common law, or any losses, injuries or damages (including back pay, front pay, liquidated, compensatory or punitive damages, attorneys' fees and litigation costs);
- (t) The Federal or New Jersey Constitution;

- (u) Breach of promise, misrepresentation, negligence, fraud, estoppel, defamation, infliction of emotional distress, assault, battery, violation of public policy, discharge without just cause, or other wrongful or constructive discharge;
- (v) Breach of express or implied contract, quantum meruit, or any similar claim.

This Release is a compromise and in full settlement of all claims that Monique S. Simon may have against MCCC.

3. **Terms:** In consideration of releasing the claims enumerated in Paragraph 2 of this Settlement Agreement and Unconditional Release, MCCC agrees to pay Monique S. Simon, in full satisfaction of all claims, including claims for costs and attorneys' fees, a total of **TWO HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$275,000.00)**. This sum represents full payment including all attorney fees, costs and expenses. MCCC further agrees to pay any and all mediation fees owing to Neil H. Shuster for services provided to the parties in reaching this agreement.

4 **Employment Reference:** If Monique S. Simon seeks an employment reference from MCCC, she will instruct the person or entity seeking the reference to direct the reference request to the College's Human Resources Director. In response to such inquiries or request the College's Human Resources Director will inform the requestor that it is MCCC's policy to verify dates of employment, job title, salary, and time of separation. The College will release only that information unless disclosure of more information is compelled by appropriate legal process.

5. **Taxes:** Monique S. Simon shall be solely responsible for the payment of appropriate taxes on this settlement, if any, and agrees and understands that MCCC has not made any representation regarding the tax treatment of the sums paid pursuant to this

agreement. In the event a claim for such taxes, and/or penalties and interest, is assessed by any taxing authority, Monique S. Simone agrees to, and hereby holds MCCC harmless and will indemnify MCCC against any and all tax liability, interest and/or penalties as due thereon. Simon however will not be responsible for any portion of the payment which is considered employer side taxes, such as Federal Insurance Contributions Act (FICA) should it be determined by a taxing authority that taxes should have been classified as a taxable wages.

6. **Attorneys' Fees:** This Agreement includes all claims for attorneys' fees and costs.

7. **No Admission of Liability:** This Agreement constitutes a settlement of disputed claims. This agreement does not and shall not constitute an admission of any kind by either party and shall not be used by any party or any other person or entity in any litigation or proceeding for that purpose.

8. **Public Interest:** Settlement of this matter is in the public interest as it avoids the financial, legal and administrative burden which will result from continued litigation.

9. **Board Approval:** This Agreement has been approved by Resolution by the Board of Trustees of the College.

10. **Assent to Terms:** All parties hereby acknowledge having entered into this Agreement with a full understanding of their rights and having been fully informed of the implications of same by legal counsel. No party enters into this Agreement under duress. All parties enter this Agreement by their free will and volition. All parties were given the opportunity to fully consider the terms and conditions of this Agreement. Any party may revoke their consent to this Agreement within seven (7) days from the execution thereof by delivering written notification of revocation to the other parties. It is understood that if this Agreement is revoked by any party, it will not be effective or enforceable.

11. **Dismissal of Lawsuit:** Monique S. Simon hereby authorizes and instructs her legal counsel of record to sign a Stipulation of Dismissal with Prejudice and Without Costs as to all claims against the MCCC in the matter docketed as **Monique S. Simon v. Mercer County Community College & Board of Directors:** bearing Civil Action No. 3:10-cv-5505- GEB-DEA, in the District Court of New Jersey, and to provide same to legal counsel for MCCC at the time of execution of this Settlement Agreement and Release. The Stipulation of Dismissal shall be filed by counsel for MCCC upon tender of the settlement check to legal counsel for Monique S. Simon.

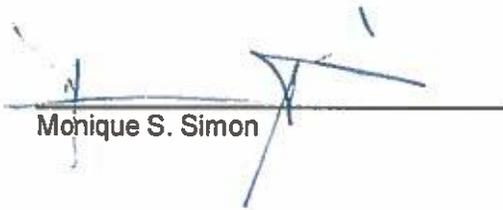
12. **Non-Assignment:** None of the benefits being given herein have been assigned or are subject to alienation (i.e., personal bankruptcy, internal revenue service lien, child support, etc.).

13. **Entire Agreement:** This Agreement represents the entire understanding of the parties as to the agreed upon terms of settlement and may be modified only in a subsequent written instrument, duly executed by the parties. No other representations of any kind shall be binding upon the parties. Monique S. Simon represents and agrees that she will not contact, solicit, or discuss with any person, past, current or future employee this matter or the terms of this settlement.

14. **Severability:** In the event that a court or agency of competent jurisdiction shall deem any part of this Agreement to be contrary to law, the remaining portions of the Agreement shall **remain in full force and effect.**

15. **Governing Law:** This Agreement and all provisions hereof shall be governed by and construed under the laws of the State of New Jersey.

16. IN WITNESS WHEREOF, the parties have knowingly and voluntarily executed and delivered this Settlement Agreement and Unconditional General Release on the dates set forth below.


Monique S. Simon

By: 
Gwendolyn Harris, Chairperson
Board of Trustees, Mercer County
Community College

Dated: 7/23/2014

ATTEST:
By: 
Diane Badessa, Board Secretary,
Mercer County Community College

Dated: 9/23/14

DIANE BADESSA
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires Feb. 13, 2017