

MARY JO O'NEILL AZ Bar No. 005924
P. DAVID LOPEZ DC Bar No. 426463
LUCILA G. ROSAS CA Bar No. 187345
**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**
Phoenix District Office
3300 North Central Avenue, Suite 690
Phoenix, Arizona 85012
Telephone: (602) 640-5016
e-mail: mary.oneill@eeoc.gov
patrick.lopez@eeoc.gov
lucila.rosas@eeoc.gov

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity)
Commission,)
)
Plaintiff,)
)
vs.)
)
Creative Networks L.L.C., an Arizona)
corporation,)
)
Defendant.

**COMPLAINT AND
JURY TRIAL DEMAND**

NATURE OF THE ACTION

This is an action under Title I and Title V of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Rochelle Duran ("Ms. Duran") and a class of similarly situated individuals who were adversely affected by such practices. Ms. Duran has Sensorineural hearing loss and is hearing impaired. Despite this disability, Ms. Duran seeks to be a productive member of society, which includes

1 working. As alleged with greater particularity below, the Commission alleges Defendant
 2 Creative Networks L.L.C. (“Defendant” or “Creative Networks”) discriminated against
 3 Ms. Duran and a class of similarly situated, disabled individuals, because of their
 4 disability, hearing impairment, by failing to provide a reasonable accommodation during
 5 pre-employment training and pre-employment orientation, and thereby failing to hire
 6 them and discriminating against them, based on their disabilities, during the hiring
 7 process in violation of Section 102 of the ADA, 42 U.S.C. §12112(a). Additionally,
 8 Defendant maintained a policy that is a per se violation of the ADA and has the impact of
 9 not hiring or excluding hearing impaired applicants.
 10
 11

12 **JURISDICTION AND VENUE**

13 1. Jurisdiction of this Court is invoked pursuant to 28 U. S.C. §§ 451, 1331,
 14 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a)
 15 of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12117(a), which
 16 incorporates by reference 42 U.S.C. Section 706(f)(1) and (3) of Title VII of the Civil
 17 Rights Act of 1964 (“Title V II”), §2000e-5(f)(1) and (3), and pursuant to Section 102 of
 18 the Civil Rights Act of 1991, 42 U.S.C. §1981a.
 19
 20

21 2. The employment practices alleged to be unlawful were and are now being
 22 committed within the jurisdiction of the United States District Court for the District of
 23 Arizona.
 24

25 **PARTIES**

26 3. Plaintiff, the Equal Employment Opportunity Commission (the
 27 “Commission”), is the agency of the United States of America charged with the
 28

1 administration, interpretation, and enforcement of Title I of the ADA and is expressly
2 authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a),
3 which incorporates by reference Section 706(f)(1) of Title VII, 42 U.S.C. § 2000e-
4 5(f)(1).

6 4. At all relevant times, Defendant Creative Networks has continuously been
7 an Arizona corporation doing business in the State of Arizona and has continuously had
8 at least fifteen (15) employees.

9 5. At all relevant times, Defendant Creative Networks has continuously been
10 an employer engaged in an industry affecting commerce under Section 101(5) of the
11 ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7),
12 which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C.
13 §§ 2000e(g) and (h).

14 6. At all relevant times, Defendant has been a covered entity under Section
15 101(2) of the ADA, 42 U.S.C. § 12111(2).

16
17
18
19 **STATEMENT OF CLAIMS**

20 7. More than thirty days prior to the institution of this lawsuit, Ms. Duran filed
21 a charge with the Commission alleging violations of Title I of the ADA by Defendant
22 Creative Networks. All conditions precedent to the institution of this lawsuit have been
23 fulfilled.

24 8. Ms. Duran is hearing impaired and is substantially limited in one or more
25 major life activities, including but not limited to the major life activity of hearing. Ms.
26 Duran is a person with a disability as defined by the ADA.
27
28

1 9. On or about April 2005, Ms. Duran applied for a Caregiver, Caretaker,
2 and/or Direct Support Professional position with Defendant Creative Networks.

3 10. Ms. Duran was capable of performing the essential functions of the
4 Caregiver, Caretaker and/or Direct Support Professional position with or without
5 reasonable accommodation
6

7 11. Since at least 2005, Defendant has required that job applicants for
8 Caregiver, Caretaker and/or Direct Support Professionals, including Ms. Duran, to
9 complete 24 or more hours of pre-employment orientation and training.
10

11 12. Since at least 2005, Defendant Creative Networks has had a policy or
12 practice of denying accommodations costing greater than \$200 for interpreting services
13 for hearing impaired applicants to complete pre-employment orientation and training.
14

15 13. Since at least 2005, Defendant Creative Networks has engaged in unlawful
16 employment practices at its , Arizona facility, in violation of Section 102 of Title I and in
17 violation of Title V of the ADA, 42 U.S.C. §§ 12112(a) and 12112(b)(5). These unlawful
18 employment practices include but are not limited to the following:
19

- 20 A. Failure to reasonably accommodate and failure to hire Ms. Duran and the
21 class because of Respondent's rigid policy or practice of limiting
22 accommodations to \$200.
- 23 B. Failure to hire Ms. Duran and a class of similarly situated individuals
24 because of their disability, hearing impairment
- 25 C. Maintaining a policy that is a per se violation of the ADA and has the
26 impact of not hiring or excluding hearing impaired applicants.
27
28

1 14. The effect of the policies and practices complained of in paragraph 13 (A)-
2 (C) above has been to deprive Ms. Duran and a class of similarly situated individuals of
3 equal employment opportunities and otherwise preventing or adversely affecting their
4 ability to be hired, because of their disability.

5
6 15. The unlawful employment practices complained of in paragraph 13 (A)-(C)
7 above were and are intentional.

8
9 16. The unlawful employment practices complained of in paragraph 13 (A)-(C)
10 above were and are done with malice or with reckless indifference to the federally
11 protected rights of Ms. Duran and a class of similarly situated individuals.

12
13 **PRAYER FOR RELIEF**

14 Wherefore, the Commission respectfully requests that this Court:

15 A. Grant a permanent injunction enjoining Defendant Creative Networks, its
16 officers, successors, assigns, and all persons in active concert or participation with it,
17 from engaging in disability discrimination and any other employment practice which
18 discriminates on the basis of disability.

19
20 B. Order Defendant Creative Networks to institute and carry out policies,
21 practices, and programs which provide equal employment opportunities for qualified
22 individuals with disabilities, and which eradicate the effects of its past and present
23 unlawful employment practices.

24
25 C. Order Defendant Creative Networks to make whole Ms. Duran and a class
26 of similarly situated individuals by providing appropriate backpay with prejudgment
27 interest, in amounts to be determined at trial, and other affirmative relief necessary to
28

1 eradicate the effects of its unlawful employment practices, including but not limited to
2 rightful place in statement of Ms. Duran or, in the alternative, frontpay.

3 D. Order Defendant Creative Networks to make whole Ms. Duran and a class
4 of similarly situated individuals by providing compensation for past and future pecuniary
5 losses resulting from the unlawful employment practices described in paragraph 13 (A)-
6 (C) above, including medical expenses not covered by Creative Networks' employee
7 benefit plan, in amounts to be determined at trial.
8

9
10 E. Order Defendant Creative Networks to make whole Ms. Duran and a class
11 of similarly situated individuals by providing compensation for past and future non-
12 pecuniary losses resulting from the unlawful practices complained of in paragraph 13
13 (A)-(C) above, including emotional pain, suffering, inconvenience, loss of enjoyment of
14 life, and humiliation, in amounts to be determined at trial.
15

16 F. Order Defendant Creative Networks to pay Ms. Duran and a class of
17 similarly situated individuals punitive damages for its malicious and reckless conduct, as
18 described in paragraph 13 (A)-(C) above, in amounts to be determined at trial.
19

20 G. Grant such further relief as this Court deems necessary and proper in the
21 public interest.
22

23 H. Award the Commission its costs of this action.
24

25 **JURY TRIAL DEMAND**

26 The Commission requests a jury trial on all questions of fact raised by its
27 complaint.
28

1
2 RESPECTFULLY SUBMITTED this 28th day of September, 2009.
3

4 JAMES L. LEE
5 Acting General Counsel

6 GWENDOLYN YOUNG REAMS
7 Associate General Counsel

8 EQUAL EMPLOYMENT
9 OPPORTUNITY COMMISSION
10 131 M Street NE, 5th Floor
11 Washington, DC 20507 0004

12 s/ Mary Jo O'Neill
13 MARY JO O'NEILL
14 Regional Attorney

15 s/ P. David Lopez
16 P. DAVID LOPEZ
17 Supervisory Trial Attorney

18 s/Lucila G. Rosas
19 LUCILA G. ROSAS
20 Trial Attorney

21 EQUAL EMPLOYMENT
22 OPPORTUNITY COMMISSION
23 3300 North Central Ave., Suite 690
24 Phoenix, Arizona 85012-2504
25 Attorneys for Plaintiff
26
27
28

JS 44 (Rev. 12/07)

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Equal Employment Opportunity

(b) Commission

County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

EEOC; Mary Jo O'Neill, P. David Lopez; Lucila Rosas; 3300 N. Central, #690, Phoenix, AZ 85012 602-640-5016

DEFENDANTS

Creative Networks, LLC

County of Residence of First Listed Defendant

Maricopa

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☒ 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)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 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	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 PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 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	☐ 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
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☒ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition		
		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		

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 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Americans with Disabilities Act 42 USC Section 12101, et seq

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: