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8 Attorneys for Plaintiff Gary Elias

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 Gary Elias,

12 Plaintiff,

13 v.

14 Arizona Board of Regents,

15 Defendant.

No.

COMPLAINT

(Jury Trial Demanded)

16 Plaintiff Gary Elias (“Elias”), by and through undersigned counsel, alleges for
17 his Complaint as follows:

18 1. This action is brought pursuant to the Rehabilitation Act of 1973, 29
19 U.S.C. § 701 *et seq.*

20 2. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331.

21 3. Venue is proper in the District of Arizona pursuant to 28 U.S.C. §
22 1391(c).

23 4. Defendant Arizona Board of Regents (“ABOR”) is a public “body
24 corporate” which may sue and be sued pursuant to A.R.S. § 15-1625. ABOR has
25 jurisdiction and control over Arizona’s universities, including Arizona State University
26 (“ASU”).

27 5. ASU is a public metropolitan research university on five campuses across
28 the Phoenix, Arizona metropolitan area, and four learning centers throughout Arizona.

1 Coordinator Carlos Sanchez, who, in turn, began an interactive process with Elias to
2 determine appropriate accommodations.

3 20. On November 7, 2013, Kennard and Sanchez approved of reasonable
4 accommodations for Elias consisting of a flexible work schedule and the ability to work
5 remotely when needed.

6 21. These accommodations worked well for Elias, and Elias was able to
7 perform the essential functions of his job.

8 22. In December of 2014, Lois Sayrs was assigned to be Elias' supervisor.

9 23. Shortly after Sayrs became Elias' supervisor, Elias advised Sayrs of his
10 sleep apnea, his related difficulty getting to work generally before 10:00 a.m., and the
11 accommodations ASU was providing him.

12 24. Elias also requested to continue to use the flexible work schedule ASU
13 had previously approved.

14 25. Sayrs refused Elias' accommodation requests, stating that she liked her
15 staff to all be in the office during regular work hours.

16 26. Sayrs also scheduled meetings at 9:00 a.m. that she required Elias to
17 attend.

18 27. On February 5, 2015, Sayrs sent Elias an email saying she would no
19 longer approve Elias to work remotely from home, and that Elias would now be
20 expected to be in the office during regular work hours.

21 28. As a result of Sayrs' action, Elias experienced severe anxiety, which
22 caused him to have to take a combination of Family and Medical Leave Act ("FMLA")
23 leave and non-FMLA leave from approximately February 5, 2015 to September 8, 2015.

24 29. On or about February 9, 2015, March 26, 2015, May 14, 2015, June 19,
25 2015, August 7, 2015, Elias' psychiatrist, Matthew Markis, D.O., provided ASU
26 documentation in which he noted, in essence, that Elias has a documented history of
27 severe anxiety which, when not managed, causes him difficulties with concentration,
28 managing tasks, completing projects and interacting with others.

1 30. On September 2, 2015, Dr. Markis filled out ASU's Health Care Provider
2 Release to Return to Work/Certificate of Illness, which Elias was required to, and did,
3 turn in to ASU's Human Resources Department.

4 31. In the September 2, 2015 Health Care Provider Release to Return to
5 Work/Certificate of Illness, Dr. Markis noted in a box labeled "Date of Illness or Injury"
6 that Elias' condition was "Chronic, several years"; and that the "[d]uration of symptoms
7 leading to work restrictions cannot be determined."

8 32. Dr. Markis further wrote in an attachment to the September 2, 2015
9 Health Care Provider Release to Return to Work/Certificate of Illness under "Return to
10 Work Restrictions" for Elias the following:

- 11 • Flexible start and stop times to work, while allowing to work from
12 home not to impede deliverables;
- 13 • Ability to take breaks or retreat if experiencing anxiety/panic
14 symptoms;
- 15 • Personal work area to have minimal distractions which may
16 exacerbate anxiety symptoms and affect ability to concentrate;
- 17 • Reevaluate whom employee is reporting to and their management
18 methods. Consider providing sensitivity training or changing who
19 employee reports to if appropriate. Inform manager of panic attack
20 symptoms experienced by employee which may include trembling/
21 shaking, abdominal distress, rapid heart rate and difficulty
22 concentrating/communicating;
- 23 • Provide clear expectations regarding job duties and work priorities
24 in writing, so employee is aware of what is expected of him.
25 Provide constructive feedback prior to corrective action.

26 33. Upon Elias' return from FMLA leave on September 8, 2015, Elias was
27 given a new position as a Data Analyst Research Aide, which required much lower job
28 qualifications than Elias' previous position. Elias met all of the job qualifications for

1 the position.

2 34. However, neither Sayrs nor anyone else from ASU engaged in an
3 interactive process with Elias in order to determine reasonable accommodations for his
4 sleep apnea or his severe anxiety.

5 35. Instead, upon Elias' return to work, Sayrs communicated to Elias that he
6 would have to maintain a regular work schedule of 8 a.m. to 5 p.m.

7 36. On or about September 16, 2015, Elias advised Sayrs that he was having
8 difficulty making it to the office by 8:00 a.m., and requested as a reasonable
9 accommodation that she adjust this requirement.

10 37. Sayrs denied Elias' request despite her knowledge of his sleep disorder,
11 and required him to continue to work from 8 a.m. to 5 p.m.

12 38. As a result, Elias could not manage his condition and experienced severe
13 daytime sleepiness, difficulty concentrating, and significant anxiety.

14 39. On several occasions subsequent to his return to work, including
15 September 24, 2015, Elias contacted ADA Coordinator Norma Abbi for assistance.
16 However, Abbi referred Elias back to Sayrs.

17 40. On September 24, 2015, Sayrs and CABHP Office Manager Nick
18 Klofkorn presented Elias with an undeserved, substandard Annual Performance Review
19 for 2014 rating period.

20 41. The 2014 Annual Performance Review, pursuant to which Elias was given
21 an overall rating of 1.6, which indicates a performance between "inconsistently fulfills
22 performance expectations" and "fails to meet performance expectations" was authored
23 by Sayrs, who had been Elias' supervisor for a total of 18 work days during the review
24 period.

25 42. On September 24, 2015, Sayrs and Klofkorn also issued Elias a
26 "Performance Improvement Plan" for the Database Manager/Program Manager IT
27 position that Elias no longer held.

28 43. On October 7, 2015, Sayrs and Klofkorn placed Elias on administrative

1 leave and notified Elias that his employment would be terminated as of October 21,
2 2015.

3 44. On October 21, 2015, Elias' employment was terminated.

4 **COUNT ONE**

5 **(Discrimination Pursuant to the Rehabilitation Act)**

6 45. Elias incorporates by reference all previous allegations as though set forth
7 fully herein.

8 46. Elias is an individual with a disability for purposes of the Rehabilitation
9 Act.

10 47. Elias was a qualified individual for purposes of the Rehabilitation Act in
11 that with reasonable accommodations he could perform the essential functions of his
12 positions with ASU.

13 48. Elias suffered discrimination because of his disability when Sayrs refused
14 to provide him reasonable accommodations that his supervisors had previously provided
15 him, when she gave him an adverse performance evaluation, and when she and
16 Klofkorn terminated Elias' employment.

17 49. As a result of Sayrs' and Klofkorn's actions, Elias has suffered and
18 continues to suffer lost income and lost earning capacity, lost fringe benefits, mental
19 anguish, emotional distress and harm to reputation.

20 **COUNT TWO**

21 **(Failure to Reasonably Accommodate)**

22 50. Elias incorporates by reference all previous allegations as though set forth
23 fully herein.

24 51. Elias requested of ABOR/ASU accommodations because of his
25 disabilities.

26 52. ABOR/ASU could have made reasonable accommodations that would
27 have enabled Elias to perform the essential functions of his positions.

28 53. ABOR/ASU failed to provide Elias reasonable accommodations.

DEMAND FOR JURY TRIAL

Plaintiff Gary Elias hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this 25th day of August 2017.

ROBAINA & KRESIN PLLC

By /s/ Edmundo P. Robaina
Edmundo P. Robaina
Attorneys for Plaintiff Gary Elias

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff
(s): **Gary Elias**

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Defendant
(s): **Arizona Board of Regents**

County of Residence: Maricopa

Plaintiff's Atty(s):

**Edmundo Robaina
Robaina & Kresin PLLC
5343 North 16th Street, Suite 200
Phoenix, Arizona 85016
(602) 682-6450**

Defendant's Atty(s):

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff: - N/A

Defendant: - N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

442 Employment

VI. Cause of Action:

Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s/ Edmundo P. Robaina

Date: 08/25/17

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014