

**HARDWICK COLLIER, LLC**

**BY: VIRGINIA HARDWICK, ESQ. (Attorney I.D. No. 202649)**

**TIFFANIE C. BENFER, ESQ. (Attorney I.D. No. 202096)**

**JOYCE L. COLLIER, ESQ. (Attorney I.D. No. 54324)**

179 North Broad Street  
Doylestown, PA. 18901

Attorneys for Plaintiff

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

**JULIE DIAZ**

49 E. Saucon Street,  
Hellertown, PA 18055

Plaintiff,

v.

**SAUCON VALLEY MANOR, INC.**

1177 6<sup>th</sup> Street  
Whitehall, PA 18052

and

**NIMITA KAPOORATIYEH**

**A/K/A NEMITA ATIYEH**

**A/K/A NEMO AIYAH**

1177 6<sup>th</sup> Street  
Whitehall, PA 18052

Defendants.

---

No. 12-cv-00433

Jury Trial Demanded

**AMENDED COMPLAINT**

**I. INTRODUCTION**

1. This action for equitable, monetary, and other relief is brought by Plaintiff, Julie Diaz, to redress intentional violations by Defendants, Saucon Valley Manor, Inc. and Nimita Kappooratiyeh, a/k/a Nemita Atiyeh, and a/k/a Nemo Aiyah, of rights secured by the laws of the United States and the statutory and common law of the Commonwealth of Pennsylvania.

## **II. JURISDICTION**

2. This action is brought pursuant to the Americans with Disabilities Act of 1990 (ADA) and the Americans with Disabilities Amendments Act (ADAAA), 42 U.S.C. §§ 12101, et seq.; the Family Medical Leave Act (FMLA), 29 U.S.C. § 1601, et seq.; to 28 U.S.C. §1331; the Pennsylvania Human Relations Act (PHRA), 42 P.S. §951, et seq., as amended, 1991; and § 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794.

3. Plaintiff, Julie Diaz, has exhausted federal and state administrative remedies. Plaintiff filed her charge with the Equal Employment Opportunity Commission (“EEOC”), Charge No. 530-2011-00649, on or around October 21, 2010, and it was dual filed with the Pennsylvania Human Rights Commission (“PHRC”), Complaint No. 201005436. On November 4, 2011, the EEOC issued a Right-to-Sue letter. This suit is timely filed.

4. State law claims asserted under the PHRA and Pennsylvania common law are before this Honorable Court pursuant to 28 U.S.C. §1367, supplemental jurisdiction.

## **III. VENUE**

5. All actions complained of herein took place within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania as the place in which the claims arose, and the place where Saucon Valley Manor, Inc. conducts business.

6. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. §1391(b) and 42 U.S.C. §2000e-5(f)(3).

## **IV. PARTIES**

7. Plaintiff, Julie Diaz (hereinafter “Plaintiff or “Ms. Diaz”) is an adult female who currently resides at 49 E. Saucon Street, Hellertown, Pennsylvania 18055.

8. Defendant Saucon Valley Manor, Inc. (hereinafter “Saucon Valley”) is a corporation of the Commonwealth of Pennsylvania with a principal place of business at 1177 6<sup>th</sup> Street, Whitehall, Pennsylvania 18052, and is an employer within the meaning of the applicable legislation cited herein.

9. Saucon Valley Manor, Inc. receives Medicare and is therefore a recipient of federal funding under the Rehabilitation Act of 1973, 29 U.S.C.A. § 794.

10. Defendant Nemita Kapooratiyeh, a/k/a Nemita Atiyeh, and a/k/a Nemo Aiyah, is the President of Saucon Valley Manor, Inc., 1177 6<sup>th</sup> Street, Whitehall, Pennsylvania 18052.

#### **V. FACTUAL BACKGROUND**

11. In December 2007, Ms. Diaz was employed by Saucon Valley as a cook at its facility located at 105 Main Street, Hellertown PA 18005.

12. From 2007 through 2010, Ms. Diaz never received a negative performance evaluation.

13. From 2007 through 2010, Ms. Diaz had no problem with attendance or tardiness.

14. Plaintiff’s direct supervisor was Cindy Fox, the Dietary Manager.

15. In March 2009, Ms. Diaz was allegedly “randomly tested” for alcohol at work, and the test came back positive. Ms. Diaz was sent home and received a verbal written warning.

16. On March 1, 2010, Ms. Diaz’s father died.

17. On March 2, 2010, Ms. Diaz went to work despite being distraught over the devastating news of her father’s death.

18. Ms. Fox sent Ms. Diaz home shortly after Ms. Diaz arrived at work on March 2nd.

19. After she arrived at home on March 2, 2010, Ms. Diaz received a call from Melissa Stroble, a supervisor. Ms. Stroble informed Ms. Diaz that she was fired for being intoxicated at work.

20. Ms. Diaz informed Ms. Stroble she had not been drinking and that her father had died the day before.

21. Ms. Stroble offered Ms. Diaz the opportunity to be tested for alcohol. Ms. Diaz agreed to be tested.

22. Within minutes of Ms. Diaz's telephone conversation with Ms. Stroble, a Saucon Valley employee arrived at Ms. Diaz's house and drove her to Bethlehem Medical Center for a U.S. DOT Breath Alcohol Test.

23. The test results were "negative".

24. On information and belief, Ms. Diaz's negative test results were passed onto the Defendant almost immediately.

25. On the afternoon of March 2, 2010, Ms. Diaz contacted Ms. Stroble because no one from Saucon Valley had contacted her. Ms. Diaz informed Ms. Stroble that she had passed the test. Ms. Stroble indicated that she already knew the results.

26. Ms. Stroble instructed Ms. Diaz to contact Nemita Atiyeh, the President of Saucon Valley, to discuss the status of her job.

27. On March 2, 2010, Ms. Diaz contacted Ms. Atiyeh directly and informed her that her father had passed away the day before. Ms. Atiyeh told Ms. Diaz that she could have her job back.

28. Ms. Diaz met with Carloyn (LNU) in Human Resources to drop off her father's obituary in order to get paid for grievance time off. At this meeting, Carolyn (LNU) presented Ms. Diaz with a document. Carolyn (LNU) informed Ms. Diaz that Ms. Atiyeh insisted that Ms. Diaz had to sign the document in order to keep her job.

29. On June 10, 2010, Ms. Diaz received her yearly evaluation. She received excellent in all seven categories and her overall performance was rated excellent. Ms. Diaz was also praised for taking charge in Ms. Fox's absence while Ms. Fox was out on a medical leave of absence for surgery.

30. In June 2010, Ms. Diaz informed Ms. Fox that she would need to take medical leave in July 2010 in order to receive treatment at an in-patient treatment center of alcoholism.

31. Ms. Fox informed Ms. Diaz that this would not be a problem and her job would be there when she returned.

32. Ms. Diaz asked Ms. Stroble and Ms. Fox for the documents necessary to take a leave of absence.

33. Ms. Stroble and Ms. Fox told Ms. Diaz not to worry about the paperwork because Ms. Diaz did not know the exact date when she would begin her leave of absence.

34. Ms. Diaz suffers from alcoholism that substantially limits her major life activities. By way of example, it eventually severely impacted her ability to sleep and eat over an extended period of time.

35. On July 23, 2010, Ms. Diaz entered Keystone Center, an in-patient treatment rehabilitation facility (hereinafter "facility").

36. On information and belief, Ms. Atiyeh instructed Ms. Fox to request documentation from the treatment center that reflected the date Ms. Diaz entered the program and the date she was to be released.

37. In response, the treatment center faxed a letter dated July 23, 2010 to the Defendant, Saucon Valley Manor, Attn: Neno, that stated, "Julie Diaz was admitted to the Intensive Inpatient Program at Keystone Center on July 23, 2010 and she is scheduled to be discharged on August 23, 2010."

38. On three separate occasions, Ms. Fox spoke with Ms. Diaz while she was staying at the treatment center.

39. The third conversation between Ms. Fox and Ms. Diaz took place on or about Thursday, August 19, 2010, while Ms. Diaz was still at the treatment center. Ms. Fox informed Ms. Diaz that Ms. Atiyeh had terminated her employment.

40. Ms. Fox informed Ms. Diaz that she was terminated because she took a leave of absence to receive treatment at an inpatient treatment facility.

41. At the time Ms. Diaz was terminated, she had been out of work on FMLA leave for 30 days.

42. Ms. Diaz has a disability as defined by the ADAAA Act, and as defined by the PHRA.

43. Ms. Diaz is a qualified person with a disability in that she had a substantial impairment of the major life activities of sleeping and eating.

44. Ms. Diaz was a qualified person with a disability in that she could perform the essential functions of her job with a reasonable accommodation, a leave of absence for less than 30 days in order to attend an inpatient treatment program.

45. Ms. Diaz's request for leave of absence in order to attend inpatient treatment for alcoholism was a reasonable accommodation.

46. Ms. Diaz had a history of impairment of a major life activity and/or was regarded by Defendants as having such impairment.

47. Defendants terminated Ms. Diaz's employment because of her disability or because the Defendants regarded her as disabled. Plaintiff was informed that she was being terminated for seeking treatment for alcoholism.

48. Saucon Valley terminated Ms. Diaz's employment in retaliation for exercising her rights under FMLA. Ms. Diaz was terminated while out on FMLA leave.

49. As a direct and proximate result of the unlawful employment practices of Saucon Valley, Ms. Diaz has suffered damages including but not limited to lost income, lost benefits, emotional distress, and loss of enjoyment of life.

### COUNT I

#### **PLAINTIFF'S CLAIMS UNDER THE AMERICANS WITH DISABILITIES ACT**

**42 U.S.C. § 12101, et seq.**

#### **AGAINST DEFENDANT SAUCON VALLEY**

50. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

51. At all times material hereto, Plaintiff is, and was a qualified individual with a "disability" within the meaning of the ADA, as amended by the ADA-AAA, as defined at 42 U.S.C. § 12102(2), 29 C.F.R. § 1630.2(g), in that she has a physical or mental impairment that limits one or more of her major life activities, has a record of such impairments, and/or is perceived and regarded by Defendants as having such an

impairment. Plaintiff is substantially limited in the major life activities of eating and sleeping.

52. Mr. Diaz was wholly qualified to perform her former position with the Defendant, Saucon Valley. Ms. Diaz performed her job without receiving any negative feedback for three years prior to the events addressed in this complaint.

53. To date, no questions as to Mr. Diaz's qualifications or performance have surfaced.

54. Ms. Diaz was subject to adverse employment action, termination, as a result of her disability.

55. Defendant's deliberate discrimination and harassment of Plaintiff including but not limited to terminating her employment because of her disability, her record of disability and/or her perceived disability is unlawful discrimination and is in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et. seq. This conduct has caused Plaintiff to suffer emotional distress, mental anguish, monetary loss, wage loss, loss of self-esteem, personal humiliation, and loss of enjoyment of life.

**WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley for compensatory and punitive damages in an amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorneys fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.



**COUNT II**

**PLAINTIFF'S CLAIMS UNDER THE PENNSYLVANIA HUMAN  
RELATIONS ACT (43 P.S. §951, et seq.)  
AGAINST DEFENDANT SAUCON VALLEY**

**Disability Discrimination**

56. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

57. Pennsylvania's Human Relations Act, 43 P.S. §951, et seq, provides for compensatory damages in appropriate cases of violation of the Act's prohibition of discrimination based on a disability.

58. Defendant's deliberate discrimination of Plaintiff through termination of her employment because of her disability, her record of disability and/or her perceived disability is unlawful discrimination and is in violation of the Pennsylvania Human Relations Act, 43 P.S. § 951 et seq. This conduct has caused Plaintiff to suffer emotional distress, mental anguish, monetary loss, wage loss, loss of self-esteem, personal humiliation, and loss of enjoyment of life.

59. The egregious nature of Defendant's illegal misconduct and the extent of Plaintiff's financial, physical, and emotional injuries and damages justify a recovery of monetary damages for the value of Plaintiff's claims, and the facts and circumstances of this case entitle Plaintiff to additional damages under state law.

**WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley for compensatory and punitive damages in an amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this

action, reimbursement of back pay with interest, front pay, attorney's fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

### COUNT III

#### **PLAINTIFF'S CLAIMS UNDER THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. § 12101, et seq. AGAINST DEFENDANTS SAUCON VALLEY**

##### **Failure to Accommodate and Retaliation for Requesting an Accommodation**

60. Plaintiff incorporates by reference herein the preceding paragraphs of this complaint.

61. At all times material hereto, Plaintiff was a qualified individual with a "disability" within the meaning of the ADA, as amended by the ADAA, as defined at 42 U.S.C. § 12102(2), 29 C.F.R. § 1630.2(g), in that she has a physical impairment that limits one or more of her major life activities, and that she was capable of performing the essential functions of her job with a reasonable accommodation.

62. Plaintiff advised Defendant of her need for a reasonable accommodation in the form of a leave of absence for 30 days in order to attend an impatient treatment program.

63. Defendant failed to engage in an interactive process with Plaintiff and failed to provide a reasonable accommodation.

64. Defendant terminated Ms. Diaz while she was receiving in patient treatment for her disability.

**WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley, for compensatory and punitive damages in an

amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorney's fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

#### COUNT IV

### **PLAINTIFF'S CLAIMS UNDER THE PENNSYLVANIA HUMAN RELATIONS ACT (43 P.S. §951, et seq.) AGAINST DEFENDANT SAUCON VALLEY**

#### **Failure to Accommodate and Retaliation for Requesting an Accommodation**

65. Plaintiff incorporates by reference herein the preceding paragraphs of this complaint.

66. At all times material hereto, Plaintiff was a qualified individual with a "disability" within the meaning of the Pennsylvania Human Relations Act, in that she has a physical impairment that limits one or more of her major life activities, and that she was capable of performing the essential functions of her job with a reasonable accommodation.

67. Plaintiff advised Defendants of her need for a reasonable accommodation in the form of a leave of absence for 30 days in order to attend an impatient treatment program.

68. Defendants failed to engage in an interactive process with Plaintiff and failed to provide a reasonable accommodation.

69. Defendant terminated Ms. Diaz while she was receiving in patient treatment for her disability.

**WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley for compensatory and punitive damages in an

amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorney's fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

### COUNT V

#### **PLAINTIFF'S CLAIMS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993, 29 U.S.C. § 2601 et seq. AGAINST ALL DEFENDANTS**

70. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

71. The Family Medical Leave Act 29 U.S.C. § 2615(a)(2) ("FMLA") makes it unlawful for an employer to interfere with an employee's right to take a leave of absence under the FMLA.

72. On information and belief, Defendants' actions in terminating Ms. Diaz less than 30 days after she went on FMLA leave was intended to interfere with Ms. Diaz's right to take the leave.

73. The Family Medical Leave Act 29 U.S.C. § 2615(a)(2) ("FMLA") makes it unlawful for an employer to retaliate against an employee because the employee has taken or sought a leave under FMLA.

74. Ms. Diaz was subjected to adverse action in that her employment was terminated because she took a leave of absence to which she was entitled under FMLA.

75. Defendant, Ms. Atiyeh, as President of Saucon Valley, acted in the interest of her employer Saucon Valley with regard to the actions she took concerning Ms. Diaz. Ms. Atiyeh was in whole or in part responsible for the decision to terminate Ms. Diaz and

for the notification of Plaintiff's termination in violation of the Family Medical Leave Act, 29 U.S.C. § 2601, et seq.

76. Defendants' deliberate retaliation and interference is a violation of the Family Medical Leave Act, 29 U.S.C. § 2601, et seq. This conduct has caused Plaintiff to suffer emotional distress, mental anguish, monetary loss, wage loss, loss of self-esteem, personal humiliation, and loss of enjoyment of life.

77. **WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendants, in their joint and several capacities, for compensatory and punitive damages in an amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorneys fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

#### COUNT VI

#### **PLAINTIFF'S CLAIMS UNDER § 504 OF THE REHABILITATION ACT OF 1973, 29 U.S.C.A. § 794 AGAINST DEFENDANT SAUCON VALLEY**

78. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

79. Ms. Diaz is an individual with a disability within the meaning of the Rehabilitation Act of 1973, 29 U.S.C.A. § 705(20), in that her alcoholism is an impairment, which substantially limits one or more of her major life activities.

80. As of June 2010, the plaintiff was a qualified person within the meaning of § 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794, in that she could perform the essential functions of her position as a cook despite the disability.

81. By failing to accommodate Plaintiff's disability, the defendant, under color of law, violated § 504.

82. In failing to accommodate Plaintiff's disability, Defendant acted with malice.

83. **WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley for compensatory and punitive damages in an amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorneys fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

**HARDWICK COLLIER, LLC**

BY: 

**JOYCE L. COLLIER, ESQUIRE**

Attorneys for Plaintiff

Dated: March 29, 2012

**HARDWICK COLLIER, LLC**

**BY: VIRGINIA HARDWICK, ESQ. (Attorney I.D. No. 202649)**

**TIFFANIE C. BENFER, ESQ. (Attorney I.D. No. 202096)**

**JOYCE L. COLLIER, ESQ. (Attorney I.D. No. 54324)**

179 North Broad Street  
Doylestown, PA. 18901

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JULIE DIAZ**

49 E. Saucon Street,  
Hellertown, PA 18055

Plaintiff,

v.

**SAUCON VALLEY MANOR, INC.**

1177 6<sup>th</sup> Street  
Whitehall, PA 18052

and

**NIMITA KAPOORATIYEH**

**A/K/A NEMITA ATIYEH**

**A/K/A NEMO AIYAH**

1177 6<sup>th</sup> Street  
Whitehall, PA 18052

Defendants.

No. 12-cv-00433

Jury Trial Demanded

**CERTIFICATION OF SERVICE**

I, JOYCE L. COLLIER, ESQUIRE, hereby certify that a true and correct copy of Plaintiff's Amended Complaint was served via First Class Mail to the following:

John K. Baker, Esquire  
White and Williams LLP  
3701 Corporate Parkway, Suite 300  
Center Valley, PA 18034-8233

BY:   
**JOYCE L. COLLIER, ESQUIRE**  
Attorney for Plaintiff

Dated: March 29, 2012