

Christopher Lundberg, OSB No. 941084
Email: clundberg@hk-law.com
Matthew E. Malmshaimer, OSB No. 03384
Email: mmalmshaimer@hk-law.com
HAGLUND KELLEY JONES & WILDER LLP
200 S.W. Market Street, Suite 1777
Portland, Oregon 97201
Phone: (503) 225-0777
Facsimile: (503) 225-1257

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

JULEE REYNOLDS, an individual

Plaintiff,

v.

CITY OF PORTLAND, a municipality

Defendant

Case No.:

COMPLAINT

**VIOLATIONS OF TITLE I OF THE ADA,
42 U.S.C. § 12111, et seq., AND COMMON-
LAW NEGLIGENCE**

Jury Trial Requested

INTRODUCTION

Plaintiff Julee Reynolds suffers from a Multiple Chemical Sensitivity condition that is triggered by scent-bearing products such as perfume and hand lotion. The condition causes her to experience symptoms ranging from respiratory distress, dizziness, headaches, and nausea to anaphylaxis. This condition has been recognized by Ms. Reynolds' physician as potentially "life threatening" and, on at least one occasion, has resulted in Ms. Reynolds' hospitalization after a work-place exposure. Defendant City of Portland is aware of all of these facts. Yet despite Ms. Reynolds' repeated requests for the City to protect her from this known hazard by

accommodating her disability, the City has refused to take any meaningful corrective action. As a result, Ms. Reynolds seeks a judgment ordering the City to comply with its legal obligations to protect her and accommodate her disability and compensating her for her noneconomic injuries of \$50,000.

PARTIES

1. Julee Reynolds is an individual and resident of the State of Oregon. At all times material, Ms. Reynolds was employed by the City of Portland in the City's Bureau of Maintenance.

2. The City of Portland is a political subdivision of the State of Oregon. At all times material, it acted through its employees who were acting in the course and scope of their employment and on behalf of the City.

JURISDICTION

3. This Court has original jurisdiction over plaintiff's federal statutory claim under 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f) (3) as incorporated into the ADA by 42 U.S.C. § 12117(a). This Court has supplemental jurisdiction over plaintiff's state law claim under 28 U.S.C. § 1367.

VENUE

4. Venue is appropriate in the District Court of Oregon because all of the defendants reside within the State of Oregon and all of the events giving rise to the claims occurred in Multnomah County in the State of Oregon. 28 U.S.C. § 1391(b); 42 U.S.C. § 2000e-5(f) (3) as incorporated into the ADA by 42 U.S.C. § 12117(a).

ADMINISTRATIVE EXHAUSTION

1. Plaintiff has exhausted her administrative remedies. On May 30, 2012, Ms. Reynolds filed a discrimination complaint with the United States Equal Opportunity Commission. After more than 180 days passed, Ms. Reynolds requested a notice of right to sue. In a letter dated February 20, 2013, the United States Department of Justice Civil Rights Division issued Ms. Reynolds a notice of right to sue.

FACTS

2. Julee Reynolds works for the City of Portland in its Bureau of Maintenance. At all times material, Ms. Reynolds was supervised by Matt Wales, Kelly Shepard, Judy Brown, and/or Jody Yates. Ms. Reynolds began working for the Bureau of Maintenance in August, 2009.

3. Ms. Reynolds suffers from Multiple Chemical Sensitivity (MCS). This condition is triggered by a wide variety of chemicals that are contained in scent-bearing products such as perfume and hand lotion. When active, the MCS causes Ms. Reynolds to suffer significant adverse symptoms, including breathing difficulty, shortness of breath, tightness in her chest, headaches, sneezing, watery eyes, nausea and vomiting. Depending on the nature and extent of the exposure, Ms. Reynolds' symptoms can require that she leave work for the day. On at least one occasion, Ms. Reynolds' reaction caused her to go into anaphylaxis and required admission to the emergency room.

4. Ms. Reynolds' condition has gotten progressively worse over time and with increased exposure to scent-bearing products. Ms. Reynolds cannot tell in advance whether her reaction will be relatively mild, causing her a headache and mild respiratory difficulty, or

whether it will be life-threatening. Accordingly, Ms. Reynolds has structured her life in a way to minimize the possibility of exposure to chemicals that may trigger her allergies.

5. Beginning in 2010, one of Ms. Reynolds' co-workers, Cathy Perry, wore a scented product that triggered a severe reaction in Ms. Reynolds. Initially, Ms. Reynolds requested that Ms. Perry not wear that product any longer. Ms. Reynolds also reported the issue to Mr. Wales. In a physician's order dated July 1, 2010, Ms. Reynolds' physician directed the City that Ms. Reynolds should not be exposed to any scented products in the workplace as such work-place exposure could be "life-threatening."

6. Despite these requests and the physician's orders, between February 2, 2010 and April 25, 2011, Ms. Reynolds was exposed to scented products that triggered an allergic reaction on numerous occasions. Each time, Ms. Reynolds had significant allergic reactions, which became progressively worse over time. After each incident, Ms. Reynolds spoke with and e-mailed Mr. Wales, who responded that he would correct the situation.

7. On June 27, 2011 Ms. Reynolds was subjected to another exposure. On that occasion, Ms. Reynolds suffered an anaphylactic reaction that required her to be hospitalized at the Emanuel Legacy emergency room and ultimately admitted to the intensive care unit. As a result, Ms. Reynolds was unable to return to work until July 1, 2011. Ms. Reynolds received a return-to-work form that released her to full duty, but specified that she was to have "No exposure to fragrances."

8. Shortly after that, Ms. Reynolds met with the City's safety officer, Richard Herrington to discuss ways to limit her exposure to potential allergens. Ms. Reynolds suggested rearranging the workspace, placing fragrance-free signs in her workspace, educating her co-

workers, and enforcing the City's fragrance-free policy. However, the City refused to implement any of these suggestions.

9. In December 2011, Ms. Reynolds heard rumors that her supervisor Mr. Wales was going to move Ms. Perry into the vicinity of Ms. Reynolds' work station. Due to Ms. Perry's continued use of aggravating fragrance bearing products, Ms. Reynolds spoke with Mr. Wales in an effort to persuade him not to make the move. However, rather than reassign Ms. Perry, Mr. Wales told Ms. Reynolds "I am the supervisor and I get to make the decisions" and moved Ms. Perry immediately next to Ms. Reynolds notwithstanding her request or concerns.

10. Subsequently, in an email dated January 3, 2012, Ms. Reynolds formally requested an accommodation under the Americans with Disabilities Act for her allergic condition. Ms. Reynolds' request included rearranging her workspace so that she would not be exposed to people wearing scented products, signage on the door and in her workspace indicating that it is a fragrance free zone, installation of a fan to direct scented materials away from Ms. Reynolds work area, and awareness training for co-workers and other employees to heighten their appreciation of the impact of fragrance bearing products and how to avoid triggering Ms. Reynolds' condition.

11. The City did nothing to address Ms. Reynolds' request for accommodation.

12. On February 28, 2012, Ms. Reynolds submitted a follow-up email to Kelly Shepard and the City HR representative, Vincent Woods. Ms. Reynolds specifically requested that the City implement the proposed accommodations. The City never responded to that email.

13. On March 19, 2012 an attorney for Disability Rights Oregon sent a letter to the City on Ms. Reynolds' behalf. That letter again requested the foregoing accommodations for Ms. Reynolds. In response on April 4, 2012 city representatives met with Ms. Reynolds and told

her that she was suffering from nothing more than allergic symptoms and that, in the City's view, she did not have a disability. Accordingly, they denied Ms. Reynolds' requested accommodations. The City offered, as an alternative, to move Ms. Reynolds' work station to another location in the Bureau of Maintenance office space. However, this was not an effective alternative option because, even in that location, Ms. Reynolds was still routinely exposed to employees who chose to wear scented products, including Ms. Perry.

14. Despite the inadequacy of the new option, Ms. Reynolds accepted the offer to move her work location in hopes that it would provide her with some relief. However, the new location has not significantly ameliorated Ms. Reynolds' condition. Specifically, Ms. Perry and others continue to wear scent-bearing products that trigger reactions in Ms. Reynolds.

15. This exposure has been ongoing and has caused repeated allergic reactions in Ms. Reynolds. As recently as May 3, 2013, Ms. Reynolds has been exposed to fragrance-bearing products in the work place that have triggered an allergic reaction. Ms. Reynolds has continued to report the chemical exposures, but all of her reports have fallen on deaf ears. To date, the City has done nothing to correct or otherwise implement any of the suggested accommodations provided by Ms. Reynolds despite her repeated requests and her continued reports to the City about the ongoing impact of its failure to do so.

16. This ongoing exposure to allergens has triggered repeated allergic reactions, with symptoms including difficulty breathing, shortness of breath, tightness in her chest, headaches, sneezing, watery eyes, nausea and vomiting. The City's continued failure to correct and eliminate these repeated exposures has also caused Ms. Reynolds to suffer significant anxiety and distress in her work out of her fear that a future exposure could result in another

hospitalization or worse. As a result, Ms. Reynolds has suffered non-economic damages in an amount to be specifically proven at trial but currently estimated at \$50,000.

**FIRST CLAIM FOR RELIEF
(Violation of ADA – Failure to Accommodate)**

17. Ms. Reynolds realleges each and every allegation set forth above, and in addition alleges the following facts.

18. As set forth above, Ms. Reynolds has a disability covered by the Americans with Disabilities Act as amended.

19. As set forth above, Ms. Reynolds is capable of performing the essential functions of her position.

20. As set forth above, Defendant intentionally refused to reasonably accommodate Ms. Reynolds' known disability and intentionally failed to engage in the interactive process.

21. As a direct and proximate result of defendant's failure to accommodate Ms. Reynolds' known disability, she has suffered noneconomic damages in an amount to be specifically proven at trial but currently estimated to exceed \$50,000.

22. Ms. Reynolds is entitled to her attorney fees under 42 U.S.C. § 2000e-5(k) as incorporated into the ADA by 42 U.S.C. § 12117(a).

**SECOND CLAIM FOR RELIEF
(Negligence)**

23. Plaintiff realleges each and every allegation set forth above, and in addition alleges the following facts.

24. Defendant has a duty to exercise reasonable care to avert a known and threatened risk of serious harm to Ms. Reynolds arising while she is acting within the course and scope of her employment.

25. As set forth above, Defendant, has repeatedly breached and continues to breach that duty by failing to take reasonable steps to adequately protect Ms. Reynolds from workplace exposure to scent-bearing products.

26. As a direct and proximate result of Defendant's breach, Ms. Reynolds has suffered noneconomic damages in an amount to be specifically proven at trial but currently estimated to exceed \$50,000.


PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against the defendant as follows:

1. For an injunction ordering Defendant to provide Ms. Reynolds with the accommodations she has requested;
2. For Judgment in her favor for monetary damages in an amount to be determined at the time of trial but currently estimated at \$50,000;
3. For plaintiff's reasonable attorney fees;
4. For plaintiff's costs and disbursements incurred in prosecuting this action; and
5. For any other relief the Court deems just, equitable, or appropriate.

DATED this 9 day of May, 2013.

HAGLUND KELLEY JONES & WILDER, LLP

By: 
Christopher Lundberg, OSB No. 94108
clundberg@hk-law.com
Matthew E. Malsheimer, OSB No. 033847
mmalsheimer@hk-law.com
Attorneys for Plaintiff

JS 44 (Rev. 12/12)

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 NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Julee Reynolds</p> <p>(b) County of Residence of First Listed Plaintiff <u>Multnomah</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Christopher Lundberg & Matt Malmshemer Haglund Kelley LLP 200 SW Market Street, Suite 1777, Portland OR 97201 (503) 225-0777</p>	<p>DEFENDANTS City of Portland</p> <p>County of Residence of First Listed Defendant <u>Multnomah</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) James H. Van Dyke, City Attorney 1221 SW 4th Avenue, Rm. 430, Portland OR 97204 (503) 823-4047</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION	FEDERAL TAX SUITS
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
ADA Title I, 42 U.S.C. 12111 et seq

Brief description of cause:
Disability Discrimination -- Failure to Accommodate & Common Law Negligence

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 50,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 5/10/2013 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____