

<p>MARYANNE KLEMMER,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>MGM RESORTS INTERNATIONAL and MITCHELL INTERNATIONAL, INC.</p> <p style="text-align: center;">Defendants.</p>	<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY</p> <p style="text-align: center;">CIVIL ACTION</p> <p style="text-align: center;"><b><u>VERIFIED COMPLAINT</u></b></p> <p style="text-align: center;"><b><u>JURY TRIAL DEMANDED</u></b></p>
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Plaintiff Maryanne Klemmer ("Plaintiff" or "Ms. Klemmer"), by and through her counsel, complain against Defendant, MGM Resorts International ("MGM") and Mitchell International, Inc. ("Mitchell International") (collectively "Defendants") as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over all claims under the Americans with Disabilities Act because it is a federal statute.
2. This Court has supplemental jurisdiction over Plaintiff's statutory and common law claims pursuant to 28 U.S.C. § 1367.
3. Venue is proper under 28 U.S.C. Section 1391(b) because Defendant is located in this District and because a substantial part of the events giving rise the claim occurred in this District.

**PARTIES**

4. Defendant MGM is a multinational corporation that owns the Borgata casino in Atlantic City. MGM is Plaintiff's former employer.
5. Defendant Mitchell International is a corporation focused on managing automotive insurance claims and collision repair processes. Upon information and belief, Mitchell maintained a contract with MGM by which it "evaluated" Ms. Klemmer's request for an accommodation, which was made in New Jersey, and Mitchell evaluated Ms. Klemmer's medical information and told MGM that Ms. Klemmer should not be accommodated to work at the Borgata.
6. Plaintiff Maryanne Klemmer is a former employee of MGM who worked at the Borgata casino in Atlantic City.

#### **Factual Allegations**

##### **Ms. Klemmer's Disability**

7. Ms. Klemmer has a long and complicated medical history due to her allergies to a wide range of pharmaceuticals.
8. Her first allergic reaction was in 1968 when she was a teenager. She was given penicillin and had an anaphylactic reaction. Her mother brought her to an emergency room where she was treated with Benadryl and epinephrine until the danger passed and her reaction subsided.
9. The experience was terrifying for Ms. Klemmer and she avoided antibiotics completely for fear of another allergic

reaction. However, in 1988, she had to take augmentin for a respiratory infection and had another allergic reaction that sent her to the emergency room for emergency medical care.

10. In the early 90s, Ms. Klemmer had an allergic reaction to Ceclor. Her reaction was, again, anaphylactic and she was rushed to the emergency room for emergency medical care.

11. In 2003, Ms. Klemmer had an anaphylactic allergic reaction to an influenza vaccine.

12. In 2013, Ms. Klemmer went to a doctor for treatment of a torn meniscus (an injury sustained at work). The doctor gave her a cortisone injection and Ms. Klemmer had an allergic reaction to the cortisone injection. Her general practice doctor, Doctor Dennis Piccone, diagnosed her with an allergic reaction to the cortisone shot which caused her blood pressure to elevate to 167/110 and remain high. Ms. Klemmer suffered other symptoms from the allergic reaction as well, including severe headache and neurological complications. Dr. Piccone prescribed medication to control the allergic reaction.

13. The allergic reaction persisted and Ms. Klemmer went to the hospital, where she was admitted due to the severity of the reaction. The doctor there, Doctor Arnold Bacarro,

confirmed that she was experiencing an allergic reaction to the cortisone shot, which was causing her high blood pressure, severe headache, and other neurological and systemic symptoms.

14. At the hospital, Dr. Jeffrey Boxman, a neurologist, also confirmed that Ms. Klemmer was experiencing an allergic reaction to the cortisone shot.

15. Ms. Klemmer was in the hospital for 7 days and was eventually transferred to the Mayo clinic for treatment.

16. The cortisone shot contained multiple ingredients, most notably propylene ethylene glycol ("PEG"), that are also present in the covid-19 vaccines. Ms. Klemmer's allergy and immunology doctor, Dr. Romanoff's believes she is likely allergic to the covid-19 vaccines because of those ingredients.

17. While in the hospital for her reaction to the cortisone shot, Ms. Klemmer also learned that she is allergic to latex and the dyes used for MRI contrasts. As a result of her treatment, her entire body became covered in hives and inflammation, among other symptoms.

18. In 2017, Ms. Klemmer received a flu shot, which caused an allergic reaction. Dr. Romanoff, Ms. Klemmer's allergy and immunology specialist treated her for the allergic reaction. Ms. Klemmer was out of work for 5 days due to

her allergic reaction to the flu vaccine. Her throat felt like it was going to close and she had to take Benadryl every two hours to keep the reaction controlled enough so she could stay out of the hospital.

19. Due to Ms. Klemmer's history of allergic reactions to a broad range of pharmaceuticals, she is under the care of an allergy and immunology specialist. Ms. Klemmer's medical history makes it dangerous for her to take any pharmaceuticals unless she *knows* her body will not close her throat and prevent her from breathing. This is her doctor's advice to her.

20. Ms. Klemmer is vigilant about what goes into her body because she is allergic to so many medications, dyes, and latex. Ms. Klemmer *never* takes a new drug or medicine without speaking with her doctor about the ingredients and her allergies. Even when taking an antihistamine to treat an ongoing allergic reaction, Ms. Klemmer must ensure that the medication she takes is dye-free and free of other ingredients that may be responsible for her prior allergic reactions.

21. In February 2021, Ms. Klemmer asked her primary care physician if she should receive a covid-19 vaccine. He advised her that it was contraindicated for her and that she should not receive any of them.

**Ms. Klemmer's employment with MGM/the Borgata and her initial request for an accommodation under the ADA**

22. Ms. Klemmer is licensed to supervise the gambling floors of casinos. She has worked in the casino industry since 1979. To become key licensed, Ms. Klemmer had to become licensed in every casino game and be qualified by the state. The license has to be maintained and renewed. Ms. Klemmer is able to perform all of her job duties so long as she is not required to take pharmaceuticals that her doctors have told her might kill her.
23. Ms. Klemmer began working at the Borgata Casino in April 2015 as a floor supervisor. In 2016, the Borgata was acquired by MGM.
24. Ms. Klemmer transferred from the Borgata to another MGM casino near Washington D.C. where she worked as pit manager, but transferred back to the Borgata casino in May 2019.
25. Ms. Klemmer was working as a floor supervisor at the Borgata when the covid pandemic began.
26. In March 2020, Ms. Klemmer was temporarily laid off when the Borgata closed due to covid.
27. When the casinos began to reopen, Ms. Klemmer reached out to the Borgata to ask them if she could come back. She spoke with James Bruno, the vice-president of table games

at the Borgata. He told Ms. Klemmer that they were bringing people back in a specific order and that she would be called when they were ready to bring her back.

28. Because Borgata was not ready to bring her back, Ms. Klemmer began working for Ocean Casino in February 2021. Her job at the Ocean Casino was as a part-time floor supervisor. It was less money and fewer benefits than her job at the Borgata had been.

29. On October 20 2021, Andrea Philips of the Borgata called Ms. Klemmer and told her that the Borgata was ready to bring her back as an employee.

30. Ms. Klemmer immediately accepted and was scheduled to come in for "processing" on October 26, 2021 and orientation on November 1, 2021.

31. Ms. Klemmer resigned from her position at Ocean casino on October 22, 2021 to go back to the Borgata.

32. On October 26, 2021, Ms. Klemmer reported for processing. She was called into a room with 6-7 other employees who were being processed as well as 3 human resource proctors.

33. The employees being on-boarded were told to sit down at a computer to fill out all the necessary paperwork. The human resource employees gave Ms. Klemmer a "reinstatement letter" and asked her for her documents so they could be

scanned and entered into the system.

34. Ms. Klemmer gave the human resource employee her social security card and I-9 and the human resource employee left to go scan the documents.

35. Shortly thereafter, the employee came back and asked Ms. Klemmer: "Where's your vaccine card?"

36. Ms. Klemmer, surprised by the question, stated that she did not have one. One of the human resource proctors asked her why she did not have a card and she responded that she was not vaccinated. The human resource proctor told her that she has to be vaccinated, and Ms. Klemmer responded, "I can't. I'm allergic."

37. Because the room was small and all the people in it were just a few feet away from each other, the conversation between Ms. Klemmer and human resources was overheard and other people began reacting and querying Ms. Klemmer on why she did not know that MGM had instituted a mandate that all employees take the covid-19 vaccines. People stopped working on their computers to watch the interaction between Ms. Klemmer and the human resource employee.

38. It created a spectacle and Ms. Klemmer was deeply embarrassed and humiliated at being singled out in this way.

39. The human resource employee told Ms. Klemmer that she



needed to call "Mr. Bruno," gave Ms. Klemmer his phone number, and told her that she had to leave without completing the on-boarding process.

40. Ms. Klemmer called Mr. Bruno that day and left a message. She received a phone call back from Jim Drew, who was the talent acquisition manager.

41. Ms. Klemmer explained to Mr. Drew that she cannot receive the covid-19 vaccines due to her disability. Mr. Drew told her that it was "out of [his] hands" and "in Vegas."

**How MGM handled Ms. Klemmer's requests for an ADA accommodation**

42. On October 27, 2021, an MGM paralegal named Graham Theriault emailed Ms. Klemmer a form that she was required to have her doctor complete to support her request for an ADA accommodation. The email gave her 14 days to submit the completed request.

43. Ms. Klemmer immediately brought the form to her doctor, Doctor Dennis Piccone, who has been her doctor for 40 years, who is familiar with Ms. Klemmer's history of severe allergic reactions to pharmaceuticals, and who had already advised her that her disability prevented her from taking any of the available vaccines. Dr. Piccone was on vacation that day, but completed the form as soon as he returned from vacation. Ms. Klemmer submitted the completed form to

MGM on November 3, 2021.

44. Dr. Piccone answered all of MGM's questions and established Ms. Klemmer's disability clearly.

a. Dr. Piccone stated that Ms. Klemmer could not take any of the covid-19 vaccines because she has "multiple allergies and anaphylaxis to numerous medications and injections in the past."

b. He answered the question as to whether there was a covid-19 vaccine that she could receive, "no."

c. In answer to a question as to whether she had a physical or mental condition that prevented vaccination, he stated "potential anaphylaxis could be life-threatening!"

d. In identifying the specific physical condition that prevents Ms. Klemmer from receiving a covid-19 vaccine, Dr. Piccone wrote: "Severe and well documented allergies to multiple medications as well as [history] of anaphylaxis are lifelong problems."

e. When asked to explain how the physical condition limits Ms. Klemmer's major life activities, he stated: "Potential anaphylaxis could be life-threatening."

45. On November 4, 2021 at 6:30 pm, Dana Howell, vice president and legal counsel for MGM, emailed Ms. Klemmer and told her that MGM "intends to submit your request for

exemption from the COVID-19 vaccines (as well as the documentation you have submitted to date) to a third-party healthcare provider for review." The email went on to say "[i]f you would like the third-party healthcare provider who is reviewing your request to consult with your specific healthcare provider prior to arriving at a decision or position contrary to your healthcare provider's submission" that Ms. Klemmer had to submit a HIPPA release. The email warned that if the HIPPA release were not received *by the next day* that MGM "will move forward with the third-party healthcare provider review and will obtain that opinion without consultation with your healthcare provider."

46. MGM provided Ms. Klemmer with a pre-filled HIPAA Authorization form. The form required that Ms. Klemmer agree to allow a corporation called Mitchell International, Inc. to review her medical records and information and required Ms. Klemmer to agree to that statement that: "I understand that it is possible that information used or disclosed with my permission may be redisclosed by the recipient and is no longer protected by the HIPPA Privacy Standards."

47. The form required her to agree that she was authorizing the release of "physical or sexual abuse, alcoholism, drug

abuse, sexually transmitted diseases, abortion or mental health treatment.”

48. Ms. Klemmer ran around like crazy to comply with MGM’s tight deadlines. She faxed the HIPPA form to her doctor and then back to MGM. Ms. Klemmer was deeply uncomfortable faxing her personal information to unknown entities because the form contained her medical information and social security number.

49. Ms. Klemmer, eager to begin working again, followed up regularly with MGM and her doctor to see if her request had been considered yet. Dr. Piccone told her that nobody from MGM had reached out to him concerning her accommodation request.

50. On November 11, 2021, Dr. Piccone’s office contacted Ms. Klemmer and told her that nobody from MGM had contacted Doctor Piccone’s office. Upon information and belief, no one from or on behalf of MGM ever contacted Dr. Piccone’s office concerning his request for Ms. Klemmer to be accommodated.

51. On November 11, 2021, Ms. Klemmer received an email from Dana Howell stating that “an independent medical review” had decided that Ms. Klemmer did not have a “contraindication” to the covid-19 vaccines.

52. Ms. Klemmer was given until the “end of day” the next

day to respond and was told that MGM would make a decision on November 13, 2021.

53. Ms. Klemmer wrote back that her allergist and her neurosurgeon would confirm her allergies and support her request for an accommodation, but that she could not reach them on such short notice, and requested more time.

54. On November 12, 2021, Ms. Klemmer reached out to her allergist, Dr. Nicholas Romanoff. Dr. Romanoff had been Ms. Klemmer's allergist since 2013, when she had the allergic reaction to the cortisone shot and contrast dyes.

55. Ms. Klemmer took the first possible appointment with Dr. Romanoff and went to see him on November 15, 2021.

56. Dr. Romanoff counseled Ms. Klemmer that in his opinion, the covid-19 vaccines were contraindicated for her due to her allergies and prior reactions to pharmaceuticals containing PEG. The entire office stayed late that day so Dr. Romanoff could complete MGM's paperwork in support of Ms. Klemmer's request for an accommodation.

57. On November 15, 2022, Dr. Romanoff submitted a letter to MGM that stated at the very top in italics, "It is medically contraindicated for Maryanne Klemmer to receive the current COVID-19 vaccines, Pfizer-BioNTech, Moderna, and J&J."

58. The letter went on to explain that Ms. Klemmer has had anaphylactic reactions to influenza

vaccines during the years 2003 and 2017, manifest with urticarial, throat swelling, difficulty breathing, and severe headache, requiring hospitalization and neurological consultation. In addition, she has had an unpredictable idiosyncratic reaction to presumably safe medications used in allergy therapy, including steroid and local anesthetic producing similar symptoms.

59. The letter stated that the PEG component of the vaccines may trigger an anaphylactic reaction in Ms. Klemmer.

60. Dr. Romanoff stated that his medical opinion was "based on personal clinical experience with adverse reactions to viral vaccines and a review of the current literature." Dr. Romanoff included his literature references in the letter.

61. On November 16, 2021, Ms. Klemmer received another email from MGM telling her that they intended to send her medical information to a "third party" and that Ms. Klemmer had to sign another HIPPA waiver if she wanted MGM's "third party" to speak with her doctor before issuing an opinion that Ms. Klemmer should take the covid-19 vaccines despite her doctors' medical advice. Ms. Klemmer returned the form, feeling coerced and that she had no choice.

62. On November 19, 2021, Ms. Klemmer received an email from Dana Howell stating that the unnamed "medical doctor that is Board Certified in Allergy and Immunology has not changed their opinion" and that the unnamed third-party

doctor "has indicated that you [Ms. Klemmer] do not have a medical condition that is contraindicated to receiving the vaccination against COVID-19" and that she could "safely receive" a vaccine, in the unnamed, anonymous doctor's opinion.

63. The email stated that Ms. Klemmer did "not meet the medical criteria for COVID-19 vaccine exemption."

64. On November 23, 2021, MGM issued a formal letter denying Ms. Klemmer's request for an ADA accommodation. The letter stated that the anonymous

medical doctor that is Board Certified in Allergy and Immunology has indicated that you do not have a medical condition that is contraindicated to receiving the vaccination against COVID-19, and that there are multiple COVID-19 vaccines currently approved in the United States that you could safely receive, including Pfizer, Moderna, or Jansen.

65. The letter stated that Ms. Klemmer's allergy specialist, Dr. Romanoff, who specifically stated that the vaccines were contraindicated for Ms. Klemmer was not correct and that the fact that she has "reactions to medications in general...is not a specification of a recognized contraindication to the COVID-19 vaccines."

66. The letter stated "we have denied your accommodation request for exemption from the COVID-19 Vaccination Policy" and told Ms. Klemmer that to keep her position she must

take the pharmaceuticals that her doctors advised her are contraindicated due to her allergies and that might kill her.

67. Ms. Klemmer took the advice of her doctors and chose not to risk her life.

68. MGM rescinded Ms. Klemmer's job offer.

69. Upon information and belief, within a few months, MGM was hiring people to work for the Borgata without regard to vaccination status.

70. Neither Borgata, nor MGM, ever called Ms. Klemmer to offer her her job back after the vaccination mandate was dropped.

71. After MGM refused to accommodate Ms. Klemmer's disability, Ms. Klemmer went back to Ocean and asked to return to work there. Ocean refused to have her back because she had quit to work for the Borgota.

72. Borgata had told the state that they had hired Ms. Klemmer so her unemployment was frozen by the state. This resulted in tremendous financial hardship for Ms. Klemmer through November and December 2021.

73. In January 2022, Ms. Klemmer secured a job at the Tropicana casino. She is working as a table games floor supervisor. At Borgota, had a stable schedule that was the same every week. At Tropicana, Ms. Klemmer is paid roughly



the same amount, but she does not have any benefits. In addition her schedule is volatile and stressful.

74. Upon information and belief MGM only required new and rehired employees who began working after August 2021 to take the covid-19 vaccines, not new and rehired employees who were brought back prior to the mandate. Thus, upon information and belief, there were unvaccinated people working at the Borgota who were unvaccinated and had no exemptions at the same time that Ms. Klemmer's request for accommodation was denied.

75. As a consequence of MGM's failure to accommodate Ms. Klemmer, she suffered severe mental anguish. She experiences sleepless nights, nightmares, anxiety, fatigue, loss of appetite, loss of weight, and flashbacks to prior allergic reactions, among other symptoms. Her physical, mental, and emotional well-being has deteriorated since MGM discriminated against her. Ms. Klemmer's doctor diagnosed her with anxiety and prescribed anti-anxiety medication to help her cope with the mental, emotional, and physical effects of MGM's discrimination and outrageous treatment toward her.

**CAUSES OF ACTION**

**COUNT ONE**

**(against MGM)**

**ADA- FAILURE TO ACCOMODATE**

76. Plaintiff repeats and realleges each of the preceding paragraphs.

77. Ms. Klemmer has a disability. She is prone to anaphylaxis and allergic reactions to a wide variety of pharmaceuticals and her allergy doctor has pinpointed PEG as a particular risk for her. Ms. Klemmer's hypersensitivity and history of anaphylactic reactions is a "lifelong" condition, as relayed by Dr. Piccone in his letter to MGM asking that Ms. Klemmer be accommodated. This substantially affects her daily life activities because she must be vigilant about all medications. She does not take new medication without discussing the risk of an allergic reaction with her doctors.

78. On October 26, 2021, Ms. Klemmer was forced to leave her onboarding because she was not vaccinated. She was not vaccinated because of her disability, which she told an MGM employee.

79. Ms. Klemmer was not infected with covid or otherwise ill during the onboarding. She was not a direct threat.

80. Forcing Ms. Klemmer to leave the onboarding was prohibited discrimination. MGM could have accommodated her without any burden to MGM.

81. Ms. Klemmer submitted two doctors' notes asking for her

to be accommodated from having to take the covid-19 vaccines as a condition of employment. Dr. Romanoff said specifically that all of the vaccines are contraindicated for Ms. Klemmer. Dr. Piccone repeatedly and clearly stated that the pharmaceuticals could result in a life threatening reaction for Ms. Klemmer and that she must not take them. Both doctors clearly set forth her disability.

82. Both of the doctors are very familiar with Ms. Klemmer's history and Dr. Romanoff is a specialty doctor for her disability. Both of Ms. Klemmer's doctors advised her that taking a covid-19 vaccine could result in a life-threatening reaction given her medical history and disability.

83. MGM and its unnamed third-party reviewer rejected Ms. Klemmer's request for an accommodation on the basis that, in the unnamed reviewer's opinion, Ms. Klemmer's doctors, who have been caring for her for a combined 50 years, were wrong. If Ms. Klemmer insisted on following her doctors' advice, then she could not work at the Borgata.

84. MGM improperly set the standard for an accommodation to its pharmaceutical mandate as "having a contraindication" instead of having a disability that prevents vaccination, MGM disregarded its duties under the ADA to accommodate individuals with a disability.

85. Ms. Klemmer still should have been accommodated even under MGM's improper standard because her allergy and immunology specialist doctor stated that all of the covid-19 vaccines are "contraindicated" for her.
86. Upon information and belief, MGM lifted its vaccination requirements shortly after rejecting Ms. Klemmer's request for an accommodation, but did not contact Ms. Klemmer to return to work.
87. As a consequence of MGM's prohibited discrimination, Ms. Klemmer has been damaged.

**COUNT TWO**  
**(against MGM)**  
**ADA- VIOLATION OF §12203 (b)**

88. Plaintiff repeats and realleges each of the preceding paragraphs as if set forth at length herein.
89. Ms. Klemmer was engaged in ADA protected activity when she applied for an accommodation for her disability.
90. Under the ADA, MGM had an obligation to treat her medical records as confidential and Ms. Klemmer had a right to have her medical records treated as confidential.
91. Contrary to Ms. Klemmer's right to privacy, MGM told Ms. Klemmer that it intended to release her medical records and information to an unnamed "third party" regardless of her consent and that if she did not complete a HIPAA authorization, the third party would evaluate her request

without reaching out to her doctor if there were any questions.

92. MGM told Ms. Klemmer that her medical records were going to be released to and reviewed by an unnamed third party and that her doctor would not be contacted at all unless she signed a HIPPA authorization.

93. Threatening Ms. Klemmer to coerce her into signing a HIPPA authorization so that her medical information would be released to unknown third parties unlawfully interfered with Ms. Klemmer's exercise of rights under the ADA.

94. As a consequence of MGM's interference and coercion, Ms. Klemmer has been damaged.

**COUNT THREE**  
**(against MGM)**  
**ADA- PROHIBITED INQUIRIES**

95. Plaintiff repeats and realleges each of the preceding paragraphs as if set forth at length herein.

96. All inquiries MGM made after receiving Ms. Klemmer's first doctor's note were prohibited inquiries because there was no legitimate reason for MGM to request further information. Dr. Piccone's original letter provided MGM with sufficient information to know that Ms. Klemmer has a disability and required reasonable accommodation.

97. Both HIPPA forms were prohibited inquiries.

98. The inquiry during Ms. Klemmer's onboarding as to why

she was not vaccinated was a prohibited inquiry because it was likely to, and did, elicit personal information about Ms. Klemmer's disability.

99. Ms. Klemmer was damaged by all of these, and other, prohibited inquiries.

**COUNT FOUR**  
**(Against both Defendants)**  
**ADA- PROHIBITED CONTRACT**

100. Plaintiff repeats and realleges each of the preceding paragraphs as if set forth at length herein.

101. Upon information and belief, MGM maintained a contract with Mitchell International that had the effect of violating the ADA because it involved the unlawful disclosure of confidential medical records of applicants and employees who applied for an ADA accommodation.

102. As a consequence of MGM's prohibited contract, Ms. Klemmer has been damaged.

**COUNT FIVE**  
**(against MGM)**  
**ADA- REGARDED-AS CLAIM**

103. Plaintiff repeats and realleges each of the preceding paragraphs as if set forth at length herein.

104. At the same time that MGM refused to recognize Ms. Klemmer's disability for purposes of determining whether it must accommodate her, MGM wrongfully regarded Ms. Klemmer as having a different disability. Specifically,

MGM wrongfully regarded Ms. Klemmer as having a substantial impairment to her immune system due to not being vaccinated and discriminated against her on this basis.

105. Ms. Klemmer was damaged by MGM's discrimination against her based on the fact that it wrongfully regarded her as disabled in this way.

**COUNT SIX**  
**(against MGM)**  
**DISCRIMINATION BASED ON AGE IN VIOLATION OF ADEA**

106. Plaintiff repeats and realleges each of the preceding paragraphs.

107. Ms. Klemmer is 67 years old.

108. Upon information and belief MGM's order of bringing people back was based on, or had a disproportionate impact on, workers over age 40.

109. Upon information and belief, MGM used Ms. Klemmer's inability to take any of the covid-19 vaccines as a pretext to discriminate against older workers.

110. Upon information and belief, Ms. Klemmer was replaced by someone who was younger than she.

111. As a result of MGM's discrimination against her based on age, Ms. Klemmer has been damaged.

**COUNT SEVEN**  
**(against MGM)**  
**NEW JERSEY LAW AGAINST DISCRIMINATION**

112. Plaintiff repeats and realleges each of the preceding

paragraphs.

113. Plaintiff is protected from discrimination based on her age, disability, and medical conditions under the New Jersey Law Against Discrimination.

114. As a result of MGM's discrimination against her based on her medical conditions and disability, Ms. Klemmer has been damaged.

**COUNT EIGHT**  
**(against both Defendants)**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

115. Plaintiff repeats and realleges each of the preceding paragraphs.

116. On December 8, 2021, MGM emailed Ms. Klemmer welcoming her back, despite the fact that MGM had unlawfully rescinded her offer of employment the prior month.

117. Well into December, MGM was posting information around the Borgata with Ms. Klemmer's name stating that she was an employee there and expected at meetings. Several of Ms. Klemmer's former coworkers reached out to her asking why they saw information around the Borgata stating she was hired back but she was not attending required meetings.

118. Ms. Klemmer repeatedly had to explain to people that she had a disability that prevented her from taking the covid-19 shots and that MGM had refused to accommodate her.

119. MGM's conduct, alleged in this count and others, was



extreme, outrageous, and in reckless disregard of the high degree of probability that emotional distress would follow.

120. As a result of MGM's conduct, Ms. Klemmer has been damaged.

**COUNT NINE**  
**(against both Defendants)**  
**CIVIL CONSPIRACY**

121. Plaintiff repeats and realleges each of the preceding paragraphs.

122. Upon information and belief MGM and Mitchell International entered into a contract whereby Mitchell International would "evaluate" requests for accommodation from the covid-19 vaccines.

123. Upon information and belief, MGM and Mitchell International wished to deny requests for accommodation to the covid-19 vaccines and worked together to contrive ways to do this even though Ms. Klemmer required an ADA accommodation and could have been accommodated.

124. Upon information and belief, MGM and Mitchell international entered into an agreement whereby MGM employees would be forced to disclose private medical information in violation of their privacy rights under the ADA.

125. Mitchell Corporation and MGM entered into this agreement knowing that it intended to unlawfully deny disabled

employees their statutory rights.

126. It was foreseeable that MGM and Mitchell International's agreement to deprive Ms. Klemmer of her rights would result in emotional distress.

127. MGM and Mitchell International's outrageous actions in furtherance of the conspiracy proximately caused Ms. Klemmer's emotional distress.

128. MGM and Mitchell International's conduct, alleged in this count and others, was extreme, outrageous, and in reckless disregard of the high degree of probability that emotional distress would follow.

**JURY DEMAND**

Plaintiff demands a jury.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff requests the following relief:

129. Declare that MGM violated the ADA by failing to accommodate Ms. Klemmer, engaging in prohibited inquiries about her disability, maintaining an unlawful contract, and engaging in retaliatory and coercive conduct because she requested an accommodation;

130. Declare that MGM violated the New Jersey Law Against Discrimination by failing to accommodate Ms. Klemmer's

- request for an accommodation;
131. Declare that MGM violated the ADEA by taking adverse action against Ms. Klemmer based on her age;
132. Award Ms. Klemmer consequential damages;
133. Award Ms. Klemmer pre-judgment and post-judgment interest;
134. Award Ms. Klemmer punitive damages;
135. Award Ms. Klemmer attorney's fees;
136. Grant any and all other such relief as this Court deems just and equitable.

Respectfully submitted,

Dated: December 16, 2022

s/ Dana Wefer, Esq.

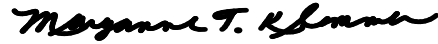
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**COMPLAINT VERIFICATION**

I have personal knowledge of myself, my activities, and my intentions, including those set out in the Verified Complaint. If called on to testify I would competently testify as to the matters

stated herein and in the Verified Complaint. I verify and declare under penalty of perjury under the laws of the United States of America that the factual statements in the Verified Complaint concerning myself, my activities, and my intentions are true and correct.

Dated: December 16, 2022



Maryanne Klemmer

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

The matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Dated: December 16, 2022

s/ Dana Wefer, Esq.

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