

DOCKET NO. WWM-15-6009136S

MELANIE PEREZ : SUPERIOR COURT  
VS. : JUDICIAL DISTRICT OF  
WINDHAM AT PUTNAM  
STATE OF CONNECTICUT,  
JUDICIAL DEPARTMENT : NOVEMBER 4, 2016

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff hereby submits this Memorandum in opposition to Defendant’s Motion for Summary Judgment (Entry No. 132.00) filed on September 1, 2016. Defendant’s motion should be denied as there are genuine issues of material fact precluding summary judgment.

**BACKGROUND**

Plaintiff, Melanie Perez (“Plaintiff” or “Ms. Perez”) began her employment with the Defendant in May 1993 as a Probation Officer. *Exh. 6*, Deposition of Melanie Perez, p. 12. In approximately 2004, Ms. Perez transferred to Defendant’s Danielson office, where she has continued to work until the current time. *Exh. 6*. at 15. Throughout Plaintiff’s employment with Judicial, she has received positive performance reviews. *Exh. 7*, Deposition of Tina Merchant, at 13.

In approximately 2008, Plaintiff was diagnosed with a moderate to severe hearing loss in both ears, which is a chronic and disabling condition. *Exh. 6* at 20; *Exh. 14* at 8. Though Ms. Perez had disclosed her disability to her supervisor, Tina Merchant, in conversation in 2011, prior to April 2012, Ms. Perez did not request any workplace accommodation related to her disability because she had been able to work around her disability. *Exh. 6*. at 25, 34.

In April 2012, the Danielson probation office where Plaintiff worked was moved to a building located at 190 Main Street in Danielson (hereinafter referred to “190 Main Street”). Prior to the move to 190 Main Street, the Danielson probation office had probation officers assigned at several locations at 183 Main Street, 134 Main Street, and at the Danielson courthouse. *Exh. 7* at 20-21. There are acoustic problems in 190 Main Street that are experienced on both floors of the building where personnel work. *Exh. 7* at 22-24. Plaintiff was initially assigned to a cubicle on the first floor, where she worked until approximately the beginning of May 2012, when she requested a move from that space because she could not hear and was struggling with background noise. *Exh. 6* at 45, 49-51.

On approximately April 19, 2012, Ms. Perez advised her supervisor Scott Bonchuk that she was having a difficult time with background noise in her new workspace. *Exh. 6* at 51. Mr. Bonchuk in turn advised Ms. Merchant of this. *Exh. 7* at 33. On April 24, Ms. Perez again went to Mr. Bonchuk about the noise level. *Exh. 7* at 35. In May 2012, Ms. Perez approached Ms. Merchant and asked that her workspace be moved due to the noise. *Exh. 7* at 36. In May 2012, Ms. Perez was moved to Room 201, in which there were three cubicles. *Exh. 7* at 37.<sup>1</sup> Ms. Perez and two other probation officers shared Room 201. Ms. Perez did not have the ability to close the door or

---

<sup>1</sup> Ms. Merchant testified that the ceilings in 201 and 204 are “lower.” *Exh. 7* at 37. However, there is no evidence this is the case. Moreover, Ms. Perez submits that the ceilings throughout the second floor offices at 190 Main Street are the same height. *Exh. 14*.

<sup>2</sup> For the purposes of a reasonable accommodation claim, Plaintiff need not show an adverse employment action. Nevertheless, as noted herein, there is sufficient evidence for a reasonable factfinder to find that Plaintiff suffered an adverse employment action *and* that Defendant failed to reasonably accommodate Plaintiff’s disability.

<sup>3</sup> Defendant claims that Plaintiff did not notify Defendant until June 12, 2012 that she suffered from hearing loss. (Def. Memo. p. 3). However Defendant admits that on April 24, 2012, Plaintiff “complained...that she was still having trouble hearing.” (Def. Memo. p. 3). Moreover, Plaintiff’s testimony indicates that she notified Ms. Merchant of her disability in mid-2011. *Exh. 6* at 34. The evidence also shows that Plaintiff communicated the fact of her hearing loss to her direct supervisor, Scott Bonchuk, prior

otherwise block out background noise in this space. *Exh. 6* at 48-49. Ms. Perez continued to struggle in Room 201, which no quieter than her previous work area on the first floor, but which was the only alternative she was given at that time. *Exh. 6* at 54-55.

In late May or early June 2012, Ms. Perez notified her supervisor, Scott Bonchuk, that she had a hearing disability for which she required reasonable accommodation. *Exh. 12*. June 6, 2012, Ms. Perez submitted to Mr. Bonchuk a medical note from her physician which identified Ms. Perez's medical condition of bilateral moderate to severe high frequency sensorineural hearing loss and which stated that Ms. Perez was having difficulty hearing in her new workplace, no ability to block out background noise, and difficulty concentrating due to excessive noise. *Exh. 12*. This medical note was in turn provided to Ms. Merchant, to whom Mr. Bonchuk reported and who oversaw the Danielson probation office. *Exh. 7* at 35. The response of Mr. Bonchuk to Ms. Perez's submission of a medical note was to exclaim in an email to Ms. Merchant that Ms. Perez was "really pushing for" an individual office. *Exh. 1*. Ms. Merchant's immediate response to Mr. Bonchuk's email that Ms. Perez was "really pushing for her own space" was that it was not possible to accommodate Ms. Perez. *Exh. 7* at 50.

In conjunction with the medical note, Ms. Perez requested a quiet workspace where she could block out noise. Plaintiff suggested that she could be moved to the lower basement level of the building where space was available and where one of the two COLLECT computers in the building is located. Ms. Merchant responded that if Ms. Perez wanted her own office, she would have to move to Willimantic. *Exh. 7* at 39. Ms. Perez also suggested being moved to the Putnam courthouse or the Danielson courthouse. Each of Plaintiff's suggestions was rejected. *Exh. 7* at 40. Ms. Perez later suggested she

be moved into Room 206, which was also rejected. **Exh. 7** at 41. During the course of May and June 2012, Ms. Perez suggested the following reasonable accommodations: move to Room 107 at 190 Main Street (the room housing one of two COLLECT terminals), moving to one of the two interview rooms in the building, moving the one of the courthouses, and moving to empty space on the basement level of 190 Main Street. **Exh. 8** at 57-58. All of these suggestions were dismissed out of hand by Defendant. **Exh. 8 at 57-60.**

On June 29, 2012, Ms. Perez sent Mr. Ciarciello, at his request, the medical note she had previously provided to Mr. Bonchuk. **Exh. 16.** In July 2012, Ms. Perez provided Mr. Ciarciello with additional information including an accommodation request form completed by her physician as well as an employee accommodation request form in which Ms. Perez detailed her need for reasonable accommodation for her disability. **Exh. 17; Exh. 18.**

In August 2012, Ms. Perez was moved into Room 204, which contained two cubicle workspaces. While Ms. Perez felt that Room 204 would not address her need for accommodation any more than did Room 201, she was willing to give it a try. **Exh. 14** at 22. Initially, Ms. Perez was the sole occupant of Room 204. After just a few days, a second probation officer was assigned to Room 204. **Exh. 6** at 56-57. With a second probation officer in the same office, Ms. Perez, because of the inability to block out background noise, experienced difficulty hearing conversations on the telephone or in person while her officemate was speaking on the telephone or in person during the course of the workday. **Exh. 6** at 63-64; **Exh. 14** at 25-26, 30.

Shortly thereafter, Ms. Merchant spoke with Mr. Ciarciello about moving Ms. Perez to Room 204, which housed two cubicles. Ms. Merchant advised Mr. Ciarciello that Ms. Perez could be placed in one of the two cubicles in Room 204 and the other could be left vacant, giving Ms. Perez her own workspace. Mr. Ciarciello rejected that suggestion offhand, stating that “he didn’t want to give [Ms. Perez] her own office yet.” *Exh. 7* at 42. In August 2012, Ms. Merchant asked Mr. Ciarciello again about leaving the second cubicle in Room 204 vacant so Ms. Perez would have her own office. Mr. Ciarciello again rejected this suggestion. *Exh. 7* at 43-44. Mr. Ciarciello did not analyze whether it would pose a burden to Defendant to place Ms. Perez in Room 204 by herself. *Exh. 8* at 54-56.

Ms. Perez also requested a transfer to the Rockville office, which was rejected. *Exh. 7* at 45. Ms. Merchant advised her supervisor, Michael Kelleher, that Ms. Perez inquired about moving to the Putnam courthouse. Mr. Kelleher rejected this. *Exh. 7* at 46. Mr. Keleher was aware that Ms. Perez was requesting a move as a reasonable accommodation for her disability, having been advised so by Ms. Merchant. *Exh. 2*. Mr. Keleher made no suggestions at any time about how to accommodate Ms. Perez, taking the position that Defendant had done enough. *Exh. 7* at 51.

On October 1, 2012, Mr. Ciarciello met with Ms. Perez at 190 Main Street. *Exh 6* at 94-95. Ms. Perez showed Mr. Ciarciello her current workspace and explained why it was not working for her and showed him the workspaces, including Room 107, where she suggested she could be moved. *Exh. 6* at 96. Mr. Ciarciello decided, without doing any investigation, that it would be too burdensome to move Plaintiff to any of the locations within 190 Main Street that she had suggested. *Exh. 8* at 63, 65-70. Plaintiff

sought the assistance of her union but Defendant refused to even communicate with Plaintiff's union representatives regarding her requests for reasonable accommodation. On January 28, 2013, Plaintiff filed a complaint of discrimination with the Connecticut Commission on Human Rights and Opportunities. *Exh. 13*. Defendant refused to consider reasonable accommodations suggested during 2013 through the CHRO process and refused to participate in mediation through the CHRO. Ultimately, in April 2014, after a factfinding hearing, Defendant was finally prevailed upon to investigate the reasonable accommodation Ms. Perez had been requesting for nearly two years: a move to Room 107 where she could have an office without an officemate and the moving of the COLLECT terminal to Room 110. Defendant was advised on May 13, 2014 that Room 110 was being approved to house the COLLECT computer as a result of the audit. *Exh. 19*. It took Defendant another five months to actually move Plaintiff into Room 107, despite the fact that the physical requirements of the move with minimal at most. Since October 20, 2014, Ms. Perez has been assigned to Room 107, which previously housed one of the two COLLECT computers in the building along with the office's warrant files. *Exh. 7* at 28. In order to accommodate Ms. Perez by moving her to Room 107, the COLLECT computer previously housed in Room 107 was moved to Room 110 and the warrant files previously housed in Room 107 were moved to Room 110 and to filing cabinets in the area of the warrant officer's workspace. *Exh. 7* at 28-29.

### **SUMMARY JUDGMENT STANDARD**

Connecticut Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to

judgment as a matter of law. The trial court must view the evidence in the light most favorable to the nonmoving party and the moving party has the burden of showing the nonexistence of a material fact and entitlement to judgment as a matter of law. *Leisure Resort Technology, Inc. v. Trading Cove Associates*, 277 Conn. 21, 30-31 (2006). In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact, but rather to determine whether any such issues exist. *Telesco v. Telesco*, 187 Conn. 715, 718 (1982). “‘Issue of fact’ encompasses not only evidentiary facts in issue but also questions as to how the trier would characterize such evidentiary facts and what inferences and conclusions it would draw from them.” *United Oil Co. v. Urban Redevelopment Commission*, 158 Conn. 364, 379 (1969).

Summary judgment is appropriate only if a fair and reasonable person could conclude only one way. *Dugan v. Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815 (2003); *Miller v. United Technologies Corp.*, 233 Conn. 732, 751-52 (1995). “The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact....” *Martel v. Metropolitan District Commission*, 275 Conn. 38, 46-47 (2005), *quoting*, *Allstate Ins. Co., v. Barron*, 269 Conn. 394, 405-406 (2004) (internal citations omitted).

It is well settled law that “[s]ummary judgment is inappropriate where the inferences that the parties seek to have drawn deal with questions of motive, intent and

subjective feelings and reactions.” *Tryon v. North Branford*, 58 Conn.App. 702, 707, 755 A.2d 317 (2000). “A question of intent raises an issue of material fact, which cannot be decided on a motion for summary judgment.” *Picataggio v. Romeo*, 36 Conn.App. 791, 794, 654 A.2d 382 (1995).

**DEFENDANT VIOLATED THE CONNECTICUT FAIR EMPLOYMENT  
PRACTICES ACT IN FAILING TO PROVIDE REASONABLE  
ACCOMMODATION FOR PLAINTIFF’S DISABILITY**

General Statutes § 46a–51(15) provides the definition of “physically disabled” for purposes of the CFEPA and states: “ ‘Physically disabled’ refers to any individual who has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.” This definition is broader than that under the Americans with Disabilities Act (ADA). *Seely v. Winchester Electronics Corp.*, CV116008102, 2013 WL 4504830 (Conn. Super. Ct. Aug. 2, 2013), citing *Beason v. United Technologies Corp.*, 337 F.2d 271, 278 (2d Cir.2003). Defendant concedes that Ms. Perez is disabled person within the meaning of CFEPA.

Thus, as a person with a disability as defined under CFEPA, Ms. Perez is a covered person entitled to (1) a good faith interactive process and (2) a reasonable accommodation, as noted by the Connecticut Supreme Court in *Curry v. Goodman*, 286 Conn. 390 (2008).

Once a disabled individual has suggested to his employer a reasonable accommodation, federal law requires, and we agree, that the employer and the employee engage in an “informal, interactive process with the qualified individual

with a disability in need of the accommodation ... [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.” 29 C.F.R. § 1630.2(o)(3). In this effort, the employee must come forward with some suggestion of accommodation, and the employer must make a good faith effort to participate in that discussion. See *Humphrey v. Memorial Hospitals Assn.*, 239 F.3d 1128, 1137 (9th Cir.2001), cert. denied, 535 U.S. 1011, 122 S.Ct. 1592, 152 L.Ed.2d 509 (2002); see also *Saksena v. Dept. of Revenue Services*, supra, Commission on Human Rights & Opportunities, Opinion No. 9940089 (citing employer's duty to engage in interactive process in good faith).

*Curry v. Goodman*, 286 Conn. at 416.

“In order to survive a motion for summary judgment on a reasonable accommodation claim, the plaintiff must produce enough evidence for a reasonable factfinder to find that (1) she is disabled within the meaning of the [statute], (2) she was able to perform the essential functions of the job with or without a reasonable accommodation, and (3) [the defendant], despite knowing of [the plaintiff's] disability, did not reasonably accommodate it.” *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 415, 944 A.2d 925, 940 (2008).<sup>2</sup> Defendant concedes that Plaintiff satisfies the first and second elements in this case. Defendant also concedes that it had knowledge of Ms. Perez’s disability.<sup>3</sup>

---

<sup>2</sup> For the purposes of a reasonable accommodation claim, Plaintiff need not show an adverse employment action. Nevertheless, as noted herein, there is sufficient evidence for a reasonable factfinder to find that Plaintiff suffered an adverse employment action *and* that Defendant failed to reasonably accommodate Plaintiff’s disability.

<sup>3</sup> Defendant claims that Plaintiff did not notify Defendant until June 12, 2012 that she suffered from hearing loss. (Def. Memo. p. 3). However Defendant admits that on April 24, 2012, Plaintiff “complained...that she was still having trouble hearing.” (Def. Memo. p. 3). Moreover, Plaintiff’s testimony indicates that she notified Ms. Merchant of her disability in mid-2011. *Exh. 6* at 34. The evidence also shows that Plaintiff communicated the fact of her hearing loss to her direct supervisor, Scott Bonchuk, prior to providing him with a medical note on June 6, 2012. *Exh. 12*.

Finally, there is sufficient evidence for a factfinder to determine that Defendant, despite knowing of Plaintiff's disability as discussed above, failed to provide reasonable accommodation. Furthermore, as will be shown, it is clear that a good faith interactive process would have identified a reasonable accommodation before Plaintiff was forced to go without reasonable accommodation for nearly two and a half years before she was finally provided a reasonable accommodation that was available all along.

A refusal to accommodate may be found in an outright refusal to provide the work modification requested or in the unreasonable delay in providing the accommodation.

Under the fourth prong of the prima facie test, a refusal of a request for a reasonable accommodation "can be both actual or constructive, as an indeterminate delay has the same effect as an outright denial." *Groome Res. Ltd. L.L.C. v. Parish of Jefferson*, 234 F.3d 192, 199 (5th Cir.2000); see also *Scoggins v. Lee's Crossing Homeowners Ass'n*, 718 F.3d 262, 271–72 (4th Cir.2013) (finding that, after the plaintiffs made a request for an accommodation in writing, the defendants twice tabled the plaintiffs' request for 15 months, and had still not acted on the plaintiffs' request at the time the district court granted summary judgment in favor of the defendants, the defendants had constructively denied the plaintiffs' request); *Astralis Condo. Ass'n v. Sec'y, U.S. Dep't of Hous. & Urban Dev.*, 620 F.3d 62, 69 (1st Cir.2010) (rejecting the defendant's argument that "it should not be held responsible because it never expressly refused to accommodate the complainants," where the defendant had not responded to the plaintiff's request for a reasonable accommodation "for at least a year prior to the commencement of [a] HUD investigation"); *Taylor v. Hous. Auth. of New Haven*, 267 F.R.D. 36, 69–70 (D.Conn.2010) ("Plaintiffs assert that [one of the plaintiffs] was constructively denied a reasonable accommodation by [the defendant's] failure to respond to her request for mobility counseling before she filed suit.... The Court does not intend to cast doubt on the proposition that delay may eventually become a denial."), *aff'd sub nom. Taylor ex rel. Wazyluk v. Hous. Auth. of City of New Haven*, 645 F.3d 152 (2d Cir.2011).

*Logan v. Matveevskii*, 57 F.Supp.3d 234, 258 (S.D.N.Y. 2014).

Here, as set forth above, Ms. Perez suggested several facially reasonable

---

accommodations for her disability, including moves to the Putnam and Danielson courthouses, remaining alone in Room 204, assignment to one of the two interview rooms at 190 Main Street, assignment to a vacant space on the basement level, assignment to Room 107 at 190 Main Street, and assignment to Room 110 at 190 Main Street. Judicial therefore, was required to engage in the interactive good faith process to identify reasonable accommodations for Ms. Perez's disability. Judicial did not make a good faith effort to participate in the discussion and shut down the discussion several times before a reasonable accommodation was provided.

Ms. Perez's burden in establishing a prima facie case for reasonable accommodation is not a heavy one. "On the issue of reasonable accommodation, the plaintiff bears only the burden of identifying an accommodation, the costs of which, facially, do not clearly exceed its benefits." *Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d at 139. Reasonable accommodation is defined by the ADA to include "making existing facilities used by employees readily accessible to and usable by individuals with disabilities" and "acquisition or modification of equipment or devices and other similar accommodations for individuals with disabilities." 42 U.S.C. §12111(9). Defendant repeatedly rejected repeated requests by Plaintiff for reasonable accommodation without analyzing their viability. Likewise, Plaintiff's request for reimbursement for a hearing aid was reasonable on its face. While the law does not require the employer to provide a device such as a hearing aid if it is used both on and off the job, in this case, Plaintiff's hearing aid was used only on the job. *Exh.* 6 at 102-104. Plaintiff was not provided with reasonable accommodation until more than two years after she indicated her need for accommodation, despite the fact that reasonable accommodations that would fully meet

her needs – including the one she was finally granted – were available at all times.

**DEFENDANT FAILED TO ENGAGE IN THE INTERACTIVE GOOD FAITH  
PROCESS**

As noted above, CFEPA requires an interactive good faith process to identify reasonable accommodations. “Failure of the employer to engage in the interactive process alone may be sufficient grounds for denying a defendant's motion for summary judgment, because it is, at least, some evidence of discrimination.” *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 418 (2008) (internal citations omitted). It is evident from the record that Defendant did not engage in the interactive process in good faith.

It is also the case that the interactive good faith process is not satisfied by initial, temporary accommodations alone. Initial attempts to accommodate do not circumvent “the requirement to make a good faith effort to engage in an interactive process . . . to determine whether the employer might make some other reasonable accommodation on a more permanent basis,” *Curry v. Alan S. Goodman, Inc.*, 286 Conn. at 417-418.

Providing a reasonable accommodation is a “continuing” duty of an employer that is “not exhausted by one effort.” *Ralph v. Lucent Tech., Inc.*, 135 F. 166, 172 (1st Cir. 1998).<sup>4</sup>

---

<sup>4</sup> When an individual with a disability has requested a reasonable accommodation to assist in the performance of a job, the employer, *using a problem solving approach*, should: (1) Analyze the particular job involved and determine its purpose and essential functions; (2) Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation; (3) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and (4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer. 29 C.F.R. Pt. 1630, App. § 1630.9 (emphasis added).

Defendant's obligations to provide reasonable accommodations did not end with moving Plaintiff's workspace once in 2012.

A party that obstructs or delays the interactive process does not act in good faith. *Beck v. University of Wisconsin Bd. of Regents*, 75 F.3d 1130, 1135 (7th Cir. 1996). "The interactive process requires communication and good-faith exploration of possible accommodations between employers and individual employees, and neither side can delay or obstruct the process." *Humphrey v. Mem'l Hosps. Ass'n*, 239 F.3d 1128, 1137 (9th Cir. 2001). "The interactive process begins when an employee requests an accommodation. Once this process has begun, "both the employer and the employee have a duty to act in good faith," *Conneen v. MBNA America Bank, N.A.*, 334 F.3d 318, 333 (3d Cir.2003), and the absence of good faith, including unreasonable delays caused by an employer, can serve as evidence of an ADA violation. *See, e.g., Picinich v. United Parcel Serv.*, 321 F.Supp.2d 485, 514 (N.D.N.Y.2004).

A delay of even a few months in providing reasonable accommodation can constitute a failure to accommodate. *Lewis v. Boehringer Ingelheim Pharm., Inc.*, 79 F. Supp. 3d 394, 410-11 (D. Conn. 2015). *See Valle-Arce v. Puerto Rico Ports Auth.*, 651 F.3d 190, 200-01 (1st Cir. 2011)(five month delay responding to most recent formal request and then granting accommodation requested only after plaintiff filed an administrative charge); *O'Toole v. Ulster Cty.*, 2014 WL 4900776, at \*8 (N.D.N.Y. Sept. 30, 2014)(six month delay in providing ergonomic workstation establishes a failure to reasonably accommodate); *Schilling v. Louisiana Dep't of Transp. & Dev.*, 2014 WL 3721959, at \*9-12 (M.D. La. July 28, 2014) *order amended on reconsideration*, 2014 WL 3854619 (M.D. La. Aug. 4, 2014)(eight month delay in providing reasonable

accommodation of handicapped parking space during which time employer failed to engage in interactive process state claim for failure to accommodate); *Fol v. City of New York*, 2003 WL 21556938, at \*7-8 (six to eight month delay in providing ergonomic workstation could allow finding of failure to accommodate); *Martyne v. Parkside Med. Servs.*, 2000 WL 748096, at \*7 (N.D. Ill. June 8, 2000) (jury could reasonably conclude that four to five month delay in allowing modification to schedule after flatly denying request without discussion was failure to accommodate); *Hartsfield v. Miami-Dade County*, 90 F.Supp.2d. 1363, 1371–73 (S.D. Fla. 2000) (granting summary judgment on employee's claim that ten-month delay in providing special equipment and training violated the ADA); *James v. Frank*, 772 F. Supp. 984, 992 (S.D. Ohio 1991) (holding that a seven-month delay in providing a disabled worker with a chair with arms and wheels, as an accommodation, was not reasonable). In some cases, delays of thirty to sixty days may be unreasonable. *Battle v. United Parcel Serv., Inc.*, 438 F.3d 856, 862-64 (8th Cir. 2006) (sixty days delay in responding to plaintiff's clarified request for accommodation found unreasonable by jury); *Vanhorn v. Hana Grp., Inc.*, 979 F. Supp. 2d 1083, 1096 (D. Haw. 2013) (a one month delay in the provision of a reasonable accommodation is sufficient to impose liability for failure to engage in the interactive process where the accommodation requested was reasonable). See *Worthington v. City of New Haven*, 1999 WL 958627, at \*14 (D. Conn. Oct. 5, 1999) (city of New Haven “dragged its feet” and provided partial accommodation after repeated requests, including filing grievance, two years following initial request resulted in liability)

An “employer fails to engage in the interactive process as a matter of law where it rejects the employee's proposed accommodations .... and offers no practical alternatives.’

*Barnett*, 228 F.3d at 1116-17.” Here, Defendant simply refused to accommodate Ms. Perez without engaging in the interactive good faith process. Each and every request for accommodation was denied. Defendant made no suggestions for alternative reasonable accommodations. Therefore, Defendant’s bald and unsupported assertion that it engaged in an interactive good faith process in an effort to accommodate Plaintiff clearly fails. “Failure of the employer to engage in the interactive process alone may be sufficient grounds for denying a defendant's motion for summary judgment, because it is, at least, some evidence of discrimination.” *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 418 (2008) (internal citations omitted). It is evident from the record that Defendant did not engage in good faith in the interactive process. Therefore, and because a number of genuine issues of material fact exist here, Defendant’s motion must be denied.

Where there is a genuine dispute about whether the employer acted in good faith, summary judgment will typically be precluded. *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685 (7th Cir.1998)(Refusing to grant an employer summary judgment because it may not have participated in good faith in finding accommodations); *Baert v. Euclid Beverage, Ltd.*, 149 F.3d 626 (7th Cir.1998)(Refusing to grant an employer summary judgment because disputes of fact remained about which party caused the breakdown in the interactive process). See also *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 318 (3d Cir. 1999)

There is substantial evidence that Defendant failed to act in good faith and that it failed to engage in the interactive process with Ms. Perez regarding her request for accommodation. As discussed above, Tina Merchant, who oversaw the Danielson office, had identified in July 2012 an office within 190 Main Street where Plaintiff could be

assigned without an officemate as an accommodation for her disability. Mark Ciarciello forbade Ms. Merchant from providing this accommodation, despite the fact that, within Ms. Merchant's analysis, it was reasonable and did not pose any problems at the time. At all times, it was possible to move Ms. Perez into Room 107, but Defendant refused to even consider that move and failed to conduct even the barest of inquiries into the viability of that move. Mr. Ciarciello testified that, shortly after meeting with Ms. Perez in October 2012, he made it clear to Ms. Perez that she could ask for accommodation but that he "took off the table that or made it clear that...an individualized office wasn't something that [he] was going to grant through this process." *Exh. 8* at 73-74. Ms. Perez was never told why her request for an individual office was being denied. *Exh. 8* at 85.

In January 2013, prior to the filing of Plaintiff's CHRO complaint, a representative of the union to which Ms. Perez belongs contacted Regional Manager Michael Keleher to discuss the matter of Plaintiff's request for accommodation. Mr. Keleher refused to meet with Plaintiff or the union. *Exh. 6* at 113-114. Even after Plaintiff filed a complaint of discrimination with the CHRO, Defendant continued to simply refuse any accommodations without suggesting new ones or otherwise engaging in good faith. In fact, Defendant refused to attend a mediation session at the CHRO based on Mr. Ciarciello's position that he was unwilling to "negotiate with" Ms. Perez. *Exh. 6* at 113-115.

Defendant attempts to foist blame onto Ms. Perez for the breakdown of the interactive process. For example, in his Affidavit, Mark Ciarciello claims that "After it was decided not to move forward with the partitions, Ms. Perez did not complain about her accommodations until the CHRO factfinding and mediation in April 2014." Def. Exh.

D at ¶ 31. Mr. Ciarciello's statement is easily proved false. In mid-March 2013, shortly after Ms. Perez had filed her complaint of discrimination with the CHRO, Ms. Perez was told that her workspace would be measured by an outside vendor for sound reducing panels. After the vendor visited to take measurements, Ms. Perez never heard another word about her request as part of the interactive process. Indeed, Ms. Perez did not learn even that the request had been denied until testimony was given in regards to her complaint of discrimination.

The record demonstrates repeated efforts by Ms. Perez throughout 2013 and 2014 to obtain reasonable accommodation for her disabilities because what had been provided to her was not effective and did not accommodate her disability. Even Mr. Ciarciello concedes that Ms. Perez was "always cooperative" during the process. *Exh. 8* at 74. In April 2013 the CapTel phone was installed at Ms. Perez's workstation. Ms. Perez was told at that time that there was no one at Judicial who she could contact with technical support issues. *Exh. 6* at 73-74. After unsuccessfully attempting to resolve the problems with the CapTel phone with its manufacturer, Ms. Perez contacted Defendant's IT department on approximately six occasions in the months after the phone was installed. *Exh. 15*. Ms. Perez also testified that she communicated to Mr. Ciarciello long before April 2014 that she was having problems with the phone. *Exh. 6* at 74. Mr. Ciarciello testified in April 2014 that he was aware of problems with Ms. Perez's CapTel phone. *Exh. 14* at 31-32. Further, Ms. Perez made Ms. Merchant aware in December 2013 that she was unable to access her voicemail due to the CapTel phone not being compatible with the system. *Exh 14* at 50

In August 2013, a CHRO representative relayed Ms. Perez's suggestion for

several different reasonable accommodations to Defendant. *Exh. 3; Exh. 4; Exh. 8* at 94. Defendant rejected these suggestion, stating that they had previously been requested and denied, and gave them no new consideration. In October 2013, Ms. Perez specifically requested that she be moved into Room 107 and that the COLLECT computer be moved from Room 107 to Room 110. *Exh. 8* at 100. No action was taken to investigate or analyze this request and it was simply rejected out of hand. *Exh. 8* at 100-101. In April 2014, Ms. Perez yet again requested, this time through CHRO proceedings and with the assistance of counsel, that she be moved into an individual office. Several specific suggestions were given. Defendant continued to drag its feet, initially rejecting each and every proposal out of hand. Even after Defendant was finally prevailed upon to investigate the reasonable accommodations suggested by Plaintiff, it still took six months between the time of the CHRO factfinding conference in April 2014 and the move of Plaintiff's workspace in late October, 2014, despite the fact that Defendant had confirmation by May 13, 2014 that it was possible to accommodate Plaintiff by moving her into the former COLLECT office in Room 107.

Throughout the over two years that Plaintiff went without reasonable accommodation, none of Defendant's agents involved in responding to Plaintiff's request for accommodation actually made any inquiries into whether or where the COLLECT computer could be moved to make room for Ms. Perez. *Exh. 14* at 17. Similarly, Mr. Ciarcello, who later complained that the doctors note Ms. Perez provided<sup>5</sup> was vague,

---

<sup>5</sup> The medical information submitted by Ms. Perez, *Exh. 16* and *Exh. 17*, coupled with Ms. Perez's detailed explanations regarding her needs, was more than sufficient to explain to Defendant what reasonable accommodations were appropriate and would be effective.

did not request additional information from the doctor to clarify the request. *Exh. 14* at 20. Neither did Mr. Ciarciello investigate whether there was space for Plaintiff at any of the offsite locations she had suggested. *Exh. 8* at 88. Furthermore, once Ms. Perez filed her CHRO complaint, Ciarciello shut down the process totally. *Exh 14* at 53-54. The record is rife with the complete failure by Defendant to do anything but reject Ms. Perez's suggestions without actually considering them.

The accommodation Ms. Perez was eventually granted was available at all times throughout the relevant period and therefore should have been the subject of an interactive good faith dialogue and should have been provided in 2012, instead of over two years later. *See, e.g., Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 312 (3d Cir.1999) (noting that a party that delays the "interactive process" of finding a mutually acceptable accommodation is not acting in good faith and may violate the ADA); *Beck v. University of Wisconsin Bd. of Regents*, 75 F.3d 1130, 1135 (7th Cir.1996) (noting that in evaluating whether a request for a reasonable accommodation was denied, a court should determine whether a party delayed the process in bad faith).

Defendant claims that it participated in the interactive good faith process when it "investigated different rooms within the Danielson location that the plaintiff requested including the basement and room 206 and the defendant investigated purchasing and installing partitions. " (Def Memo 25). The evidence in this matter shows that there was no true investigation into Plaintiff's requested accommodations. Likewise, the fact that Defendant stopped communicating with Plaintiff regarding her request for sound reducing partitions is evidence of a lack of good faith on the part of Defendant. Furthermore, once the proposal regarding sound reducing partitions was rejected as being

too costly, no effort was made to provide Ms. Perez with accommodation with respect to her physical work space until after April 2014. **Exh. 8** at 90-91.

**ACCOMMODATIONS PROVIDED BY DEFENDANT DID NOT  
SUFFICIENTLY ADDRESS PLAINTIFF’S DISABILITY**

Defendant claims both that the accommodation of a move to an individual office was not reasonable and that another accommodation provided by the Defendant fulfilled its obligation under CFEPA. “If an accommodation other than the one requested is provided, that accommodation must sufficiently address the limitations of the disabled employee. *See E.E.O.C. v. Sears, Roebuck & Co.*, 417 F.3d 789, 802 (7th Cir.2005).” *Scalera v. Electrograph Sys., Inc.*, 848 F. Supp. 2d 352, 368 (E.D.N.Y. 2012).

In February 2013, Ms. Perez requested a “telephone amplifier and/or captioned telephone (on [her] computer).” Ms. Perez was not consulted regarding the specifications of the telephone that was ordered for her. (Def. Exhs. D-7, D-9). The telephone she received in April 2013 did not have amplification nor did it connect with her computer. **Exh. 14** at 26-27. The CapTel phone that was installed at Ms. Perez’s workstation was not fully compatible with the telephone system in the Danielson probation office. **Exh. 6** at 71-72; Exh. 14 at 27-29. 51-52

Likewise, occasional use of interview rooms was not an effective or reasonable accommodation. The interview rooms and conference room “were being used all day long...on a daily basis” by the Probation Officers at 190 Main Street. **Exh 7** at 51. No consideration was given to converting one of those three rooms to an office for Ms. Perez. **Exh. 7** at 51-52. Plaintiff received questioning and criticism on the occasions when she did reserve the interview and conference rooms, with her supervisor questioning whether she truly needed to use the room and admonishing her that other

coworkers might want to use the rooms during times she reserved them. *Exh. 10.*

Moreover, Ms. Perez's work and her medical condition were such that occasional use of the interview or conference rooms was simply not sufficient under the circumstances.

*Exh. 14* at 33-34. Additionally, there was not a computer in the first floor interview room until April 2014. *Exh. 11.*

While assigned to Room 204 with another probation officer for over two years, Ms. Perez experienced so much difficulty with the lack of accommodation for her hearing disability that she resorted to making telephone calls from the bathroom. *Exh. 6* at 77. The only accommodation Ms. Perez was given between August 2012 and August 2014 was the CapTel phone. *Exh. 6* at 69, 79-80.

Defendant makes repeated references to the Dragon voice recognition software that it provided for Ms. Perez to use in the course of her work. While Defendant apparently references the provision of this software in an attempt to bolster its claim that it accommodated Ms. Perez's disability, there is, in reality, no dispute that the request for or installation of the Dragon software had nothing whatsoever to do with Ms. Perez's disability. *Exh. 6* at 38-39; *Exh. 7* at 31.

Defendant's suggestion of transfer to the Willimantic office was not reasonable. A transfer to Willimantic would result in Ms. Perez having a daily commute of over one hundred miles, nearly twice the length of her current commute which would result in her incurring not only additional travel costs but also additional childcare expenses as well as a loss of time to spend with her family. *Exh. 6* at 89-90; *Exh 14* at 48

**DEFENDANT CANNOT ESTABLISH ITS AFFIRMATIVE DEFENSE OF  
UNDUE HARDSHIP**

“On the issue of reasonable accommodation, the plaintiff bears only the burden of identifying an accommodation, the costs of which, facially, do not clearly exceed its benefits.” *Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d at 139. “If the plaintiff meets that burden, the analysis shifts to the question whether the proposed accommodation is reasonable; on this question the burden of persuasion lies with the defendant.” *Jackan v. New York State Dep't of Labor*, 205 F.3d 562, 566 (2d Cir. 2000).

“If the plaintiff succeeds in establishing a *prima facie* case of disability discrimination, the burden shifts to the employer to demonstrate that the employee's proposed accommodation would have resulted in undue hardship.” *Parker v. Columbia Pictures Industries*, 204 F.3d at 332. The ADA defines “undue hardship” as “an action requiring *significant difficulty or expense*, when considered in light of the facts set forth in subparagraph (B).” 42 U.S.C. § 12111(10)(A) (emphasis added).<sup>6</sup> “‘Undue hardship’ is an employer's affirmative defense, proof of which requires a detailed showing that the proposed accommodation would ‘requir[e] significant difficulty or expense’ in light of specific enumerated statutory factors. *Lovejoy-Wilson v. NOCO Motor Fuel, Inc.*, 263

---

<sup>6</sup>Subparagraph B of that subsection, in turn, states that the factors to be considered in determining whether an accommodation would pose an undue burden on a covered entity include the following: the nature and cost of the accommodation needed under this chapter; the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity. 42 U.S.C. § 12111(10)(B).

F.3d at 221; *see* 42 U.S.C. § 12111(10)(A)-(B) (identifying relevant factors to include (1) the employer's type of operation, including its composition, structure, and the functions of its workforce; (2) the employer's overall financial resources; (3) the financial resources involved in the provision of the reasonable accommodation; and (4) the impact of such accommodation upon the employer's operation).” *Rodal v. Anesthesia Group of Onondaga*, 369 F.3d at 121-122.

Defendant has not identified, and will be unable to identify, any hardship that would result from affording Plaintiff any of the requested accommodations. “Courts are somewhat skeptical of hypothetical hardships that an employer thinks might be caused by an accommodation that has never been put into practice.” *Picard v. St. Tammany Parish Hosp.*, 611 F. Supp. 2d 608, 622 (E.D. La. 2009) *citing* *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126, 135 (1<sup>st</sup> Cir. 2004). Because undue hardship is an affirmative defense, an employer seeking summary judgment on that ground had the heavy burden of establishing that “every reasonable jury would find that the request accommodation would pose an undue hardship. *Picard*, 611 F. Supp. 2d at 622; *see also* *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 410, (2008); *see also* *US Airways, Inc. v. Barnett*, 535 U.S. 391, 401–402 (2002). Defendant has failed to meet its burden of showing that providing a quiet workspace Plaintiff would have resulted in undue hardship. Therefore, there is at least a genuine issue of material fact as to whether reasonable accommodation could have been provided.

With respect to the soundproofing panels, notably the only one of the suggested accommodations that actually had a cost associated with it, Defendant has failed to

establish its burden to show that every reasonable jury would find that a cost of approximately four thousand dollars posed an undue hardship.

Defendant claims that moving Plaintiff to the basement, to an interview, and to the COLLECT room each constituted an undue burden on Defendant. There is no evidence whatsoever that there was any hardship associated with these accommodations. The wiring work for Rooms 107 and 110 related to the move was done in house by Defendant. *Exh. 9* at 14-16. There was no financial cost to Defendant associated with moving Ms. Perez to Room 107 and the COLLECT computer to Room 110. *Exh. 9* at 30-31, 33-34. There has been no hardship, problem, or disruption related to the COLLECT computer being moved from Room 107 to Room 110. *Exh. 9* at 17. There were no problems associated with arranging for IT wiring for the move. *Exh. 9* at 21-22. No reason has been identified by Defendant why it took several months to perform the move after approval was obtained to move the COLLECT terminal from Room 107 to Room 110. *Exh. 9* at 22.

**DEFENDANT RETALIATED AGAINST PLAINTIFF IN VIOLATION OF  
CFEPA**

“In order to establish a *prima facie* case of retaliation, [a plaintiff] must show that: (1) [ ]he engaged in a protected activity; (2) h[is] employer was aware of this activity; (3) the employer took adverse employment action against h[im]; and (4) a causal connection exists between the alleged adverse action and the protected activity.” *Douglas v. City of Waterbury*, 494 F. Supp. 2d 112, 123 (D. Conn. 2007).

Plaintiff engaged in protected activity when she requested reasonable accommodation for her disability. *Gatlin v. Vill. of Summit*, 2015 WL 8780551, at \*5-6

(N.D. Ill. Dec. 15, 2015) (requesting an accommodation is protected activity). There is no dispute that Defendant was aware of this activity, as the request for accommodation was submitted to Defendant in writing in numerous ways. See e.g. *Exh. 12, Exh. 16, Exh. 17, Exh. 18*.

The issue of whether an employee suffered a materially adverse employment action is a question of fact, left to a factfinder. See *Burlington Northern, supra*, 548 U.S. at 70-72; *Crawford v. Carroll*, 529 F.3d 961-973 (11<sup>th</sup> Cir. 2008) (“it is for a jury to decide whether anything more than the most petty and trivial actions against an employee should be considered materially adverse...”). In the context of a retaliation claim, an adverse employment action is defined more broadly than in the discrimination context and is defined as an action that “might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (internal quotations omitted). “For purposes of a retaliation claim, an adverse action need not be an action that affects the terms and conditions of employment, such as a hiring, firing, change in benefits, reassignment or reduction in pay.” *White v. City of Middletown*, 45 F. Supp. 3d 195, 217 (D. Conn. 2014). “[R]etaliatory work assignments,” are a “classic and widely recognized example of forbidden retaliation.” *White v. City of Middletown*, 45 F. Supp. 3d 195, 218 (D. Conn. 2014) (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)). A less desirable and more arduous work assignment was held in *White v. City of Middletown, supra*, to fall “squarely within the category” of prohibited retaliatory actions. Alleged retaliatory actions cannot be considered in a vacuum and must be considered within the entire factual context underlying the claims. *White v. City of Middletown*, 45 F. Supp. 3d

at 217-218. Here, the reassignment of Ms. Perez to what her supervisor concedes was a more challenging assignment cannot be considered without considering that Plaintiff had specifically requested not to be assigned to that caseload. On these facts, a reasonable factfinder could conclude that reasonable employee might be dissuaded from bringing a complaint of discrimination by reassignment to a less desirable and more arduous assignment to which the employee specifically requested not to be assigned. *Exh. 15* ¶¶ 9, 11. The fact that Ms. Merchant shunned Plaintiff and ignored her after Plaintiff engaged in protected activity likewise must be considered in analyzing Plaintiff's retaliation claim. Furthermore, it must be considered that, after transferring Plaintiff to a more arduous caseload, Defendant denied her the opportunity to receive specialized training that other probation officers assigned to specialized caseloads were routinely permitted. *Exh. 15* ¶ 10. In the instant matter, Plaintiff has demonstrated that she suffered more than a trivial, petty action against her employment when she was transferred to a less desirable assignment and not provided adequate training for her new assignment. As such, there is a genuine issue of material fact as to whether Plaintiff suffered an adverse employment action.

Finally, there is evidence sufficient to establish the causation element of the analysis and to preclude summary judgment. “[T]he inquiry into whether temporal proximity establishes causation is factual in nature. There is no “bright line to define the outer limits beyond which a temporal relationship is too attenuated to establish a causal relationship between [protected activity] and an allegedly retaliatory action.” *Ayantola v. Bd. of Trustees of Technical Colleges*, 116 Conn. App. 531, 539 (2009). “A causal connection may be established either indirectly by showing that the protected activity was followed

closely by discriminatory treatment, or through other evidence such as disparate treatment of fellow employees who engaged in similar conduct, or directly through evidence of retaliatory animus directed against a plaintiff by a defendant.” *Martin v. Town of Westport*, 108 Conn. App. 710, 719 (2008). Here, the retaliatory transfer to a more arduous caseload came in August 2012, only approximately two months after Plaintiff requested reasonable accommodation.

Plaintiff’s testimony, as cited by Defendant (Def. Memo 13), demonstrates that Plaintiff was shunned by her supervisor, Tina Merchant, after she had requested reasonable accommodation and had gone beyond Ms. Merchant’s authority. *Exh 6* at 116. Likewise, the reaction of Plaintiff’s direct supervisor to Plaintiff’s request for reasonable accommodation constitutes evidence of unlawful motive. See *Exh. 1*.

Once a plaintiff has established a prima facie case of retaliation, a presumption of retaliation is created. *Levy v. Commission on Human Rights & Opportunities*, 236 Conn. 96, 108 (1996). After a plaintiff establishes a prima facie case of retaliation, the employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the adverse employment action. *Craine v. Trinity College*, 259 Conn. 625, 637, (2002). Here, Defendant claims that it made the decision to transfer Plaintiff to the mental health caseload based on subjective opinions about Plaintiff’s “style.”

Nevertheless, even if Defendant did offer a legitimate, non-retaliatory reason, based on the circumstances here, a reasonable finder of fact could conclude that such reason was pretext for retaliation as there is evidence of retaliatory intent here. Firstly, the decision to take adverse employment action against Plaintiff was made by Defendant

almost immediately after Plaintiff's request for accommodation for her disability. Secondly, the behavior of Ms. Merchant shunning Plaintiff immediately after Plaintiff went to Defendant with a request for reasonable accommodations, along with Mr. Bonchuk's negative response to Plaintiff's submission of a medical request for accommodation constitutes evidence of retaliatory intent. As such, at the very least, there is a genuine issue of material fact as to whether Defendant's proffered reason for the adverse employment actions here is pretext for discrimination.

Defendant claims that the decision to transfer Plaintiff to the mental health caseload was made in June 2012, prior to her request for accommodation. However, Plaintiff notified Mr. Bonchuk at the beginning of June 2012 that she required accommodation for a medical condition. Defendant has not produced any evidence demonstrating that the decision was made before Plaintiff made her request. In fact, even assuming *arguendo* that the decision was made in June, that only placed the decision temporally closer to Plaintiff's request for accommodation at the beginning of the month. There is therefore a genuine issue of material fact as to the veracity of Defendant's asserted non-discriminatory reason for the reassignment.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that Defendant's Motion for Summary Judgment be denied and Plaintiff be permitted to present her claims at trial.

PLAINTIFF,  
MELANIE PEREZ

By: s/ Magdalena B. Wiktor  
Magdalena B. Wiktor, Esq.  
Madsen, Prestley & Parenteau, LLC  
105 Huntington Street  
New London, CT 06320  
Tele: (860) 442-2466  
Fax: (860) 447-9206  
E-mail: mwiktor@mppjustice.com

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage prepaid, to the following counsel of record on this 4<sup>th</sup> day of November, 2014:

Josephine Graff, Esq.  
Office of the Attorney General  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

s/Magdalena B. Wiktor  
Magdalena B. Wiktor