

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

ADG, LLC, dba GREAT EXPRESSIONS  
DENTAL CENTERS,

Plaintiff,

Case No.: 2:11-cv-15534

v.

JAMES N. WHITE, an individual,

Defendant.

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DEVANEY JACOB WILSON, PLLC  
**JEFFREY D. WILSON (P56376)**  
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*Attorneys for Plaintiff*

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**COMPLAINT FOR DECLARATORY JUDGMENT AND JURY DEMAND**

Plaintiff ADG, LLC dba Great Expressions Dental Centers, by its attorneys, Devaney Jacob Wilson, PLLC, files this Complaint against Defendant James N. White and states as follows:

1. This is an action for a declaration that Plaintiff has not violated federal or state employment laws in connection with Defendant's employment, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. ("DJA"). Plaintiff seeks a declaration that it did not discriminate against Defendant or otherwise violate the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12111 *et seq.* and for such other relief as the Court deems just and proper.

## **PARTIES, JURISDICTION AND BACKGROUND**

2. Plaintiff is a Michigan limited liability company headquartered in Bloomfield Hills, Michigan.

3. Defendant is an individual residing in Roseville, Michigan, and was formerly employed by Plaintiff from August 25, 2008 until July 27, 2009.

4. The jurisdiction of this Court is proper pursuant to 28 U.S.C. § 1331. This Court may declare the rights and obligations of the parties pursuant to 28 U.S.C. §§ 2201 and 2202 because this is a case of actual controversy within the Court's jurisdiction seeking a declaratory judgment that Plaintiff has not violated the ADA.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b), because Defendant resides in this judicial district.

6. Defendant has made numerous public and false allegations that Plaintiff discriminated against him because he is HIV-positive, and has threatened to sue Plaintiff. See, e.g., [http://www.poz.com/articles/detroit\\_hiv\\_lysol\\_401\\_21587.shtml](http://www.poz.com/articles/detroit_hiv_lysol_401_21587.shtml).

7. Defendant, upon information and belief, has fostered an online campaign against Plaintiff seeking to induce other individuals to protest Plaintiff's services, and paint Plaintiff in a false, negative light. This campaign has resulted in a barrage of emails and harassing telephone calls to Plaintiff's employees and shareholders.

8. Defendant, and his attorneys, are attempting to tarnish Plaintiff's public image in the media and have to date not initiated the litigation they repeatedly threaten to commence. Plaintiff, however, has followed its corporate policy of not commenting on employees and former employees in the media, especially on issues related to employees' health status.

9. As a result, Plaintiff finds it necessary to bring this lawsuit to address Defendant's false allegations in the proper forum.

### **FACTUAL ALLEGATIONS**

10. Plaintiff is a dental practice management company, which manages dental practices in Michigan, Connecticut, Florida, Georgia, Massachusetts, Ohio and Virginia. There are over 50 dental practices in Michigan alone, including a facility in Sterling Heights, Michigan, where Defendant formerly worked.

11. Defendant was hired as an at-will employee on August 25, 2008, as a patient coordinator in the Sterling Heights office.

12. In his position of patient coordinator, Defendant's duties consisted of working at the front desk of the Sterling Heights office, answering phones, setting patient schedules and general clerical. Attendance and punctuality was a paramount job requirement of Defendant's position. Defendant agreed to abide by Plaintiff's "Attendance and Punctuality" Policy, which provides that six absences in any consecutive six-month period, or six incidents of lateness in any three-month period, may result in termination of employment.

13. From the very beginning of his employment, Defendant exhibited a chronic tardiness problem, and from August 2008 through April 2009, he was late getting to work or returning from his lunch break 51 times. During that same period, he was absent from work 16 times. Plaintiff's management repeatedly advised Defendant during that time that his attendance needed to improve. For example, in late November 2008, Plaintiff's management personnel advised Defendant of his poor job performance and asked him to improve. The next day, he gave the company a two-week resignation notice. However, on the day before his last day of work,

Defendant asked to rescind his resignation. Plaintiff agreed and permitted him to continue his employment.

14. Defendant's attendance problems, unfortunately, did not improve. Throughout early to mid 2009, Defendant received five separate written disciplinary warnings about his tardiness and attendance problems, yet Defendant continued to violate the company's attendance policy.

15. Starting on July 16, 2009, Defendant did not show up to work for 11 days, allegedly because of an unspecified illness. On July 22, Plaintiff received a note from Henry Ford Macomb Hospital, Outpatient Behavioral Medicine Department, but the note indicated that Defendant was seen only on July 16 and 17, and was not able to return to work until evaluated by a different physician on July 29.

16. Because of Defendant's excessive absences and tardiness, which far exceeded Plaintiff's attendance policy, and after giving Defendant many opportunities to improve (including a July 13 written warning of possible termination if absences continued), Plaintiff terminated his employment on July 27. Plaintiff's decision was *not* based on Defendant's disability or because of the reasons for his absences and tardiness.

17. After his termination, Defendant filed a charge of discrimination with the Equal Employment Opportunity Commission. He alleged that he was discriminated against because of his HIV-positive status, and that he was denied a reasonable accommodation by Plaintiff. The EEOC issued a preliminary "reasonable cause" determination *but chose not to pursue the matter further*, and issued a right to sue letter to Defendant on November 15, 2011.

18. Despite the allegations Defendant made to the EEOC, and the continued allegations he makes in media publications, Defendant never requested and was not denied any

reasonable accommodation for his disability. In fact, Plaintiff sympathized with Defendant and attempted to accommodate any absences that were related to his HIV-positive condition.

19. Despite the allegations Defendant made to the EEOC, and the continued allegations he makes in media publications, Plaintiff did not discriminate against Defendant because of his disability, and did not commit the scurrilous allegations appearing in such publications.

20. Defendant never reported any alleged harassment or hostile work environment complaints to management representatives of Plaintiff, which would have allowed Plaintiff to investigate any claims of harassment on the basis of Defendant's disability.

21. Regular attendance was an essential function of Defendant's employment with Plaintiff.

22. Regular attendance is an essential function of most jobs, especially those positions which must be done on the employer's premises. *See Gantt v. Wilson Sporting Goods Co.*, 143 F.3d 1042, 1047 (6th Cir. 1998) ("An employee who cannot meet the attendance requirements of the job at issue cannot be considered a 'qualified' individual protected by the ADA."). Employers are not required to provide an unlimited absentee policy to employees as an accommodation under the ADA. *Buckles v. First Data Resources, Inc.*, 176 F.3d 1098 (8th Cir. 1999); *see also Kiphart v. Saturn Corp.*, 251 F.3d 573, 584 (6th Cir. 2001); *Brenneman v. MedCentral Health Systems*, 366 F.3d 412 (6th Cir. 2004).

23. Given the nature of the patient coordinator position (which Defendant held), unscheduled absenteeism and tardiness has severe adverse consequences on Plaintiff's ability to operate and provide quality patient care.

**COUNT I  
DECLARATORY RELIEF**

24. Plaintiff incorporates by this reference the allegations of ¶¶ 1-23 as if fully set forth here.

25. Plaintiff has not violated the ADA or any other employment law in connection with Defendant's employment or termination of employment. Defendant disagrees and has made it clear he intends to initiate litigation in the future.

26. An actual and present controversy exists between the parties within the meaning of the Declaratory Judgment Act, and therefore a declaration by this Court is necessary to resolve this controversy.

WHEREFORE, Plaintiff respectfully requests that this Court, pursuant to 28 U.S.C. §§ 2201 and 2202 enter judgment and declare that Plaintiff lawfully terminated Defendant's employment, that Plaintiff did not violate Defendant's rights under the ADA, that Defendant's repeated accusations of employment discrimination are false, and award such further relief that this Court deems just and proper.

Respectfully submitted,

**DEVANEY JACOB WILSON, PLLC**

*/s/ JEFFREY D. WILSON*

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Dated: December 19, 2011

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all claims raised in this Complaint.

Respectfully submitted,

**DEVANEY JACOB WILSON, PLLC**

*/s/ JEFFREY D. WILSON*

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2011, I electronically filed the foregoing document with the Clerk of the Court using the ECF system.

By: /s/ JEFFREY D. WILSON  
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