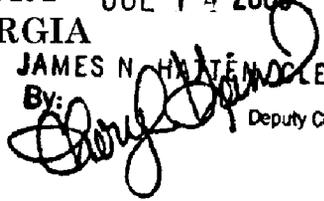


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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUL 14 2008

JAMES N. HARTMAN, CLERK
By:  Deputy Clerk

MARCIA WALDEN,)
)
Plaintiff,)
)
v.)
)
CENTER FOR DISEASE)
CONTROL AND PREVENTION,)
COMPUTER SCIENCES)
CORPORATION, CHRISTIE)
ZERBE, Center for Disease)
Control and Prevention Project)
Officer for Occupational Health)
and Preventive Services, *in her*)
individual and official capacities,)
and JOHN DOE, Center for)
Disease Control and Prevention)
Official, *in his individual and*)
official capacities,)
)
Defendants.)
)

Case No. **108-CV-2278**

JEC

Jury Trial Demanded

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF AND DAMAGES**

PRELIMINARY STATEMENT

1. Plaintiff Marcia Walden ("Ms. Walden") is a licensed associate professional counselor. She is also a devout Christian who believes that it is

immoral to engage in same-sex sexual relationships. Consequently, it would violate her sincerely held religious precepts to use her skills and abilities as a counselor to encourage or otherwise facilitate such relationships.

2. A prospective client sought counseling from Ms. Walden regarding her troubled same-sex relationship. Because of her sincerely held religious beliefs, Ms. Walden referred the prospective client to another counselor within her company who does not share her religious convictions. This referral caused Defendants Center for Disease Control and Prevention (“CDC”), Computer Sciences Corporation (“CSC”), Christie Zerbe (“Ms. Zerbe”), and John Doe (“Mr. Doe”) (collectively referred to as “Defendants”) to conspire to terminate her position as a counselor with CSC because of her religious convictions concerning same-sex relationships and her refusal to promote or encourage those relationships. As a result, Defendants have illegally discriminated against Ms. Walden in violation of the First and Fifth Amendments of the United States Constitution and the Religious Freedom Restoration Act. In addition, CSC has violated Title VII of the Civil Rights Act of 1964.

JURISDICTION AND VENUE

3. This civil rights action raises federal questions under the First and Fifth Amendments of the United States Constitution, the Religious

Freedom Restoration Act, 42 U.S.C. § 2000(bb) *et. seq.*, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

4. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331, 1343, 2201–2202. This Court has authority to award the requested declaratory relief pursuant to 28 U.S.C. § 2201–2202 and 5 U.S.C. § 702; the costs and attorneys’ fees pursuant to 28 U.S.C. § 2412, 42 U.S.C. § 1988, and 42 U.S.C. § 2000e-5(k); and damages pursuant to 42 U.S.C. § 1981a and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendants CDC and CSC maintain physical locations in this district and all Defendants reside in the State of Georgia. Furthermore, venue is proper because the acts described in this Complaint occurred in this district.

IDENTIFICATION OF PARTIES

6. Plaintiff Marcia Walden is a citizen of the United States and a resident of Georgia. She holds a Masters Degree in Professional Counseling and is a licensed associate professional counselor in Georgia.

7. Defendant Center for Disease Control is an agency of the federal government. CDC is one of the major operating components of the United States Department of Health and Human Services. CDC’s mission is to

promote health and quality of life by preventing and controlling disease, injury, and disability. CDC is headquartered in Atlanta, Georgia, and has its principal place of business at 1600 Clifton Road, Atlanta, GA 30333.

8. Defendant Computer Sciences Corporation is a private business entity incorporated under Nevada law. CSC is a global consulting, systems integration, and outsourcing company, which employs more than 90,000 employees worldwide. CSC's mission is to provide customers in industry and government with solutions to meet their strategic goals and enable them to profit from technological innovation. CSC is headquartered in Falls Church, Virginia, and has its principle place of business at 3170 Fairview Park Drive, Falls Church, VA 22042. CSC additionally maintains an office at 2 Ravinia Drive, Suite 1150, Atlanta, GA 30346.

9. Defendant Christie Zerbe is a federal government official employed by CDC. She serves as CDC's Project Officer for Occupational Health and Preventive Services. Ms. Zerbe is the CDC official responsible for managing CDC's counseling services contract with CSC. She maintains an office at 1600 Clifton Road, Atlanta, GA 30333.

10. Defendant John Doe is a federal government official employed by CDC. Ms. Walden is unable to confirm Mr. Doe's identity, but upon information and belief, she believes that he, in conjunction with other CDC

officials, demanded that CSC remove her from its contract with CDC, ultimately resulting in her termination. Upon information and belief, Ms. Walden believes that Mr. Doe maintains an office at 1600 Clifton Road, Atlanta, GA 30333.

STATEMENT OF FACTS

11. On February 6, 2007, Ms. Walden began working for CSC as a counselor for the Employee Assistance Program (“EAP”).

12. CSC has a contract with CDC to provide counseling services to CDC employees under the terms of the EAP. Ms. Walden’s job as a counselor required her to counsel federal CDC employees struggling with, among other things, stress, depression, grief, or troubled relationships.

13. On Tuesday August 21, 2007, a federal CDC employee (referred to herein as Jane Doe (“Jane”) for purposes of anonymity), who was seeking counsel regarding her same-sex relationship, scheduled a 10:00 a.m. appointment to meet with Ms. Walden.

14. Ms. Walden is a Christian who sincerely believes that it is immoral to engage in same-sex sexual relationships. Ms. Walden concluded that Jane’s desire to obtain same-sex relationship counseling conflicted with her religious beliefs. Ms. Walden decided that it was in Jane’s best interests

to refer her to a colleague. Ms. Walden believed that her religiously based conflict ethically obligated her to refer Jane to another counselor.

15. Ms. Walden disclosed her religiously based conflict to Jane, and explained that it would be unfair to Jane for her to serve as Jane's counselor. Ms. Walden nevertheless emphasized her desire to help Jane, and offered to refer Jane to one of the other counselors. Jane agreed to a referral, and Ms. Walden referred her to another counselor, Ken Cook ("Mr. Cook").

16. Jane met with Mr. Cook during his next available appointment, which was just minutes later, approximately 10:10 a.m. Jane acknowledged that her counseling experience with Mr. Cook was "exemplary." Later that day, Mr. Cook told Ms. Walden that she had done the "right thing" by referring Jane to him.

17. Later that day, Jane called Ms. Walden's supervisor at CSC, Gordon Hughes ("Mr. Hughes"), and complained regarding Ms. Walden's decision to refer her to Mr. Cook. Jane stated that Ms. Walden's inability to counsel her was due to alleged "homophobia." Jane urged Mr. Hughes that it is inappropriate for CDC to employ a counselor who is seemingly unable to counsel employees regarding same-sex sexual relationships. Jane stated her desire to file a "formal complaint" against Ms. Walden.

18. Mr. Hughes indicated that he was “very concerned” about Ms. Walden’s actions and considered the situation to be “very serious.” Mr. Hughes informed Ms. Walden that Jane had made a complaint.

19. Ms. Walden told Mr. Hughes that her decision to refer Jane to Mr. Cook was based on a religiously based conflict, and not because of discriminatory animus against Jane’s alleged “sexual orientation.” Ms. Walden emphasized that she had counseled other individuals involved in same-sex relationships for various reasons, but noted that she could not counsel a client when the goal is to repair or otherwise facilitate a same-sex relationship, because that goal is at odds with her religious principles.

20. Following this incident, Ms. Walden endured religiously based questioning from her CSC supervisors including Mr. Hughes. Mr. Hughes asked Ms. Walden why she told Jane about her religiously based conflict; he told Ms. Walden that if a similar situation arose in the future, Ms. Walden should tell the client something else—for example, that she was not experienced in relationship counseling—instead of discussing her religiously based conflict. Ms. Walden explained that she could not in good conscience comply with Mr. Hughes’ request because it is inappropriate to misrepresent her conflicts to prospective or current clients.

21. On Friday, August 24, 2007, CSC Medical Director, Eli Warnock (“Mr. Warnock”), and CSC Project Manager, Doug Shelton (“Mr. Shelton”), met with Ms. Walden and informed her that she was being suspended without pay (*i.e.*, placed on administrative leave) during the investigation of Jane’s allegations of “sexual orientation” discrimination.

22. During the week of August 27, 2007, Ms. Walden repeatedly interacted with CSC Employee Relations Specialist, Jacqueline Byrum (“Ms. Byrum”). Like Mr. Hughes had done before, Ms. Byrum implied that Ms. Walden should not discuss her religiously based conflict with clients, advising that instead Ms. Walden should say that she was not experienced in relationship counseling. Ms. Walden again stated that she could not, consistent with her ethical obligations, intentionally mislead her prospective clients.

23. A few days later, Ms. Byrum called Ms. Walden once more. During that call, Ms. Byrum told Ms. Walden that sometimes counselors need to set aside their religious beliefs to help their clients. Although Ms. Byrum began this investigation into Jane’s allegations against Ms. Walden, she never completed her investigation or issued a final conclusion regarding Jane’s allegations.

24. CDC's contract with CSC gives CDC the express authority to remove any CSC employee from performing work on its account.

25. On August 30, 2007, Defendant Christie Zerbe—the CDC employee responsible for overseeing its contract with CSC—sent an email to CSC management, demanding that CSC “remove” Ms. Walden from CDC's contract because of her religiously motivated actions in referring Jane to another counselor. Upon information and belief, Ms. Walden believes that Defendant John Doe also participated in this decision.

26. On August 30, 2007, CSC Director Gary Reed—the account director in charge of CSC's account with CDC—sent an email to Ms. Byrum directing her to proceed with the termination of Ms. Walden as soon as possible under CSC's human resources policies.

27. Although CSC was well aware of Ms. Walden's religious beliefs and her job-related conflict, CSC never offered to accommodate Ms. Walden's religious beliefs and practices. CSC did not consider transferring Ms. Walden to another account or another division within the company but, instead, quickly terminated her employment.

28. On September 10, 2007, at the conclusion of the two-week suspension period, Mr. Hughes and Mr. Shelton met with Ms. Walden at a CDC office location. At that time, Mr. Shelton told Ms. Walden that she was

terminated. Mr. Shelton stated that even though CSC had not completed its investigation of Jane's allegations, it did not matter to the future of Ms. Walden's employment because CDC demanded Ms. Walden's termination.

29. On December 11, 2007, Ms. Walden filed a formal complaint against CSC with the Equal Employment Opportunity Commission ("EEOC"). In that complaint, Ms. Walden asserted that CSC discriminated against her because of her religious beliefs in violation of Title VII of the Civil Rights Act of 1964.

30. On April 16, 2008, the EEOC sent a "right to sue" letter to Ms. Walden. Ms. Walden received that letter on April 18, 2008. Ms. Walden commenced this action within ninety days of that date.

**FIRST CAUSE OF ACTION
RETALIATION FOR EXERCISE OF FREE SPEECH RIGHTS**

31. All preceding paragraphs are incorporated by reference, the same as if pleaded in full.

32. Defendants are all governmental actors for purposes of Ms. Walden's termination. CDC is an agency of the federal government. Ms. Zerbe and Mr. Doe are federal government officials. CSC and CDC maintain a symbiotic relationship for purposes of administering the EAP and,

particularly, for purposes of hiring and firing counselors. CDC and CSC acted in concert to deprive Ms. Walden of her constitutional rights.

33. Defendants retaliated against Ms. Walden for exercising her free speech rights under the First Amendment.

34. Ms. Walden's referral of Jane is activity protected by the Free Speech Clause of the First Amendment.

35. Ms. Walden exercised her right to speak truthful statements about her religiously based professional conflict.

36. Ms. Walden exercised her right not to speak in furtherance of a same-sex relationship. This decision not to speak lies beyond the authority of the government to compel or punish.

37. Ms. Walden exercised her right not to speak by refusing to misrepresent the religious basis for her professional conflict. Defendants retaliated against her for that constitutionally protected conduct.

38. Ms. Walden's termination amounts to an adverse action against her.

39. Defendants terminated Ms. Walden because of her constitutionally protected conduct.

40. Defendants do not have a legitimate, nondiscriminatory reason for terminating Ms. Walden.

**SECOND CAUSE OF ACTION
RETALIATION FOR EXERCISE OF FREE EXERCISE RIGHTS**

41. All preceding paragraphs are incorporated by reference, the same as if pleaded in full.

42. Defendants are all governmental actors for purposes of Ms. Walden's termination. CDC is an agency of the federal government. Ms. Zerbe and Mr. Doe are federal government officials. CSC and CDC maintain a symbiotic relationship for purposes of administering the EAP and, particularly, for purposes of hiring and firing counselors. CDC and CSC acted in concert to deprive Ms. Walden of her constitutional rights.

43. Defendants retaliated against Ms. Walden for exercising her free exercise rights under the First Amendment.

44. Ms. Walden's referral of Jane is activity protected by the Free Exercise Clause of the First Amendment.

45. Ms. Walden sincerely believes that using her counseling skills to restore or in any way facilitate Jane's same-sex relationship would directly violate her religious convictions.

46. Ms. Walden's termination amounts to an adverse action against her.

47. Defendants terminated Ms. Walden because of her constitutionally protected conduct.

48. Defendants do not have a legitimate, nondiscriminatory reason for terminating Ms. Walden.

**THIRD CAUSE OF ACTION
VIOLATION OF FREE EXERCISE RIGHTS**

49. All preceding paragraphs are incorporated by reference, the same as if pleaded in full.

50. Defendants are all governmental actors for purposes of Ms. Walden's termination. CDC is an agency of the federal government. Ms. Zerbe and Mr. Doe are federal government officials. CSC and CDC maintain a symbiotic relationship for purposes of administering the EAP and, particularly, for purposes of hiring and firing counselors. CDC and CSC acted in concert to deprive Ms. Walden of her constitutional rights.

51. Defendants' actions have unduly burdened Ms. Walden in the exercise of her religious beliefs and practices.

52. Defendants imposed an unconstitutional choice on Ms. Walden, forcing her either to adhere to her religious beliefs and forgo future employment with Defendants or, alternatively, to violate her religious principles and maintain her job.

53. Defendants terminated Ms. Walden because of her religious beliefs and religiously motivated conduct. These actions violated her free exercise rights.

**FOURTH CAUSE OF ACTION
VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION ACT
42 U.S.C. § 2000(bb) et. seq.**

54. All preceding paragraphs are incorporated by reference, the same as if pleaded in full.

55. Defendants are all governmental actors for purposes of Ms. Walden's termination. CDC is an agency of the federal government. Ms. Zerbe and Mr. Doe are federal government officials. CSC and CDC maintain a symbiotic relationship for purposes of administering the EAP and, particularly, for purposes of hiring and firing counselors. CDC and CSC acted in concert to deprive Ms. Walden of her constitutional rights.

56. Ms. Walden sincerely believes that using her counseling skills to restore or in any way facilitate Jane's same-sex sexual relationship would directly violate her religious convictions.

57. Defendants terminated Ms. Walden for referring Jane to another counselor and for communicating her religiously based conflict to Jane.

58. Ms. Walden's termination has placed and is continuing to place a substantial burden on her free exercise rights.

59. There is no compelling state interest sufficient to justify the Defendants' discriminatory treatment of Ms. Walden based upon her religious beliefs.

60. Defendants' termination of Ms. Walden is not the least restrictive means to accomplish any asserted government interest and thus violates the Religious Freedom Restoration Act.

**FIFTH CAUSE OF ACTION
VIOLATION OF FIFTH AMENDMENT DUE PROCESS RIGHTS**

61. All preceding paragraphs are incorporated by reference, the same as if pleaded in full.

62. CDC, Ms. Zerbe, and Mr. Doe violated Ms. Walden's due process rights under the Fifth Amendment.

63. Ms. Walden has a Fifth Amendment right to hold specific private employment free from unreasonable governmental interference.

64. CDC, Ms. Zerbe, and Mr. Doe have unconstitutionally interfered with Ms. Walden's private employment with CSC by demanding, and successfully obtaining, her removal from the contract for counseling services.

**SIXTH CAUSE OF ACTION
TITLE VII RELIGIOUS DISCRIMINATION**

65. CSC engaged in unlawful religious discrimination against Ms. Walden in violation of Title VII of the Civil Rights Act of 1964.

66. Ms. Walden maintains sincerely held religious beliefs that same-sex relationships are immoral and that she cannot use her skills as a counselor to encourage or otherwise facilitate such relationships.

67. Ms. Walden's religious beliefs conflicted with Jane's request for same-sex relationship counseling.

68. Ms. Walden informed CSC management of her religious beliefs. CSC informed CDC of Ms. Walden's religious beliefs.

69. CSC terminated Ms. Walden for failing to provide same-sex relationship counseling to Jane.

70. CSC neglected its duty to accommodate Ms. Walden's religiously based employment conflict.

71. CSC would not have been unduly burdened by the accommodation of Ms. Walden's religiously based employment conflict.

WHEREFORE, Ms. Walden prays for relief against Defendants as hereinafter set forth in the prayer for relief.

JURY DEMAND

Ms. Walden demands a jury trial on all issues for which a jury trial is available.

PRAYER FOR RELIEF

Ms. Walden respectfully prays that this Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendants' actions as herein described violated her rights under the First and Fifth Amendments of the United States Constitution;
- c. Declare that Defendants' actions as herein described violated her rights under the Religious Freedom Restoration Act;
- d. Declare that CSC's actions as herein described violated her rights under Title VII of the Civil Rights Act of 1964.
- e. Award compensatory damages;
- f. Award punitive damages;
- g. Award nominal damages for the violation of her First and Fifth Amendment rights;
- h. Award the costs of litigation, including reasonable attorneys' fees and expenses pursuant to 28 U.S.C. § 2412, 42 U.S.C. § 1988, and 42 U.S.C. § 2000e-5(k); and
- i. Grant such other and further relief to which she may be entitled, or as this Court deems necessary and proper.

Respectfully submitted,



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+Of Counsel, not admitted to practice in this jurisdiction

**Pro hac vice* admission pending

VERIFICATION

I, Marcia Walden, a citizen of the United States and a resident of the State of Georgia, have read the foregoing Verified Complaint for Declaratory Relief and Damages and declare under the penalty of perjury and under the laws of the United States that the foregoing is true and correct.

Dated this 1st day of July, 2008.


Marcia Walden
Marcia Walden