

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

COVER SHEET

<p>Plaintiff(s)</p> <p>DEBORAH J. McCALL</p> <p>19 JUL 26 AM 9:58 DEPT. OF CIVIL AL.</p>	
	<p>Case Number:</p> <p>GD --- 19 --- 10468</p>
	<p>Type of Pleading:</p> <p>COMPLAINT IN CIVIL ACTION</p>
	<p>Code and Classification:</p>
<p>Vs</p> <p>Defendant(s)</p> <p>UPMC PRESBYTERIAN SHADYSIDE</p>	<p>File on behalf of</p> <p>DEBORAH J. McCALL</p>
	<p>(Name of the filing party)</p>
	<p><input checked="" type="checkbox"/> Counsel of Record <input type="checkbox"/> Individual, If Pro Se</p>
	<p>Name, Address and Telephone Number:</p> <p>James M. Herb, Esq. James M. Herb, P.C. 464 Perry Highway Pittsburgh, PA 15229 Phone 412-931-3344</p>
	<p>Attorney's State ID: 27854</p>
	<p>Attorney's Firm ID: 089</p>

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26 July 2019  
9:58:14  
GD-19-010468

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DEBORAH J. McCALL,	)	
	)	
Plaintiff,	)	CIVIL DIVISION
	)	
vs.	)	NO.
	)	
UPMC PRESBYTARIAN SHADYSIDE,	)	
	)	
Defendant,	)	

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO, OR TELEPHONE, THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

**Lawyer Referral Service  
Allegheny County Bar Association  
11<sup>th</sup> Floor Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
Telephone: 412-261-5555**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DEBORAH J. McCALL,	)	
	)	
Plaintiff,	)	CIVL DIVISION
	)	
vs.	)	NO.
	)	
UPMC PRESBYTARIAN SHADYSIDE,	)	
	)	
Defendant,	)	

**COMPLAINT IN CIVIL ACTION**

AND NOW COMES Plaintiff, above named, by and through her attorney, James M. Herb, Esquire, of James M. Herb, P.C. Attorney-at-Law, and states the following:.

**JURISDICTION**

The Court has jurisdiction of this action pursuant to the Pennsylvania Human Relations Act 43PS951-963.

**BACKGROUND**

1. Plaintiff is Deborah J. McCall, an adult individual who resides at 127 Royal Oak Drive, Apartment D, White Oak, PA 15131.

2. Defendant is UPMC Presbyterian Shadyside which is believed to be a corporation organized and existing under the

UPMC (University of Pittsburgh Medical Center) Health System with a mailing address care of its UPMC Corporate Legal Department, 600 Grant Street, 57<sup>th</sup> Floor, Pittsburgh, PA 15219.

3. In 1998, the Plaintiff was hired by the Defendant to work as a psychiatric nurse at Western Psychiatric Institute and Clinic, a psychiatric hospital owned and operated by UPMC Shadyside.

4. At the time of her hire, Plaintiff had been diagnosed with the following conditions, all of which were known by the Defendant:

- a. Post-traumatic Stress Disorder;
- b. Anxiety Disorder;
- c. Pernicious Anemia;
- d. Neuropathy; and
- e. Spinal stenosis.

5. In 2014, Plaintiff was assaulted by a psychiatric patient at Western Psychiatric Institute and Clinic. She suffered both physical and psychological injuries, as well as exacerbation of pre-existing conditions, which required her to be absent from her employment from November 9, 2014, until January 30, 2015.

6. At the instruction of her employer, the Defendant, Plaintiff utilized FMLA (Family Medical Leave Act) and ATW (Time

Away from Work. These programs allowed Plaintiff to retain her occupation with Defendant but not with pay.

7. In 2015, Plaintiff requested a reasonable accommodation from her immediate supervisors, Leanna Polonka and Susan McCann. Specifically, Plaintiff requested reassignment to a position utilizing her education training and skills, but without patient contact.

8. The Defendant had the opportunity to accommodate Plaintiff's request by placing her in an existing position or creating such a position as it has done on other occasions.

9. Instead of granting her request for reasonable accommodation, the Defendant, by and through its officers, agents, servants, or employees, including Plaintiff's immediate supervisors, extended to Plaintiff the opportunity to "call off" from work when her symptoms were worse, indicating that such call-offs would not be used against her in any employment evaluation.

10. In 2016, Plaintiff was assaulted for a second time by a psychiatric patient at Western Psychiatric Institute and Clinic. In addition to exacerbating her pre-existing conditions and THE concussive symptoms, which she suffered in the first assault, she suffered a labral tear to her right hip. Her psychological and physical injuries required her to again miss work while she recovered.

11. The Plaintiff's medical , psychological, and psychiatric impairments are permanent conditions which substantially limit her ability to concentrate in high stress situations, particularly with patient contact, and impair her ability to walk, stand, bend, stoop, and ambulate.

12. While severe and permanent, her medical, psychological, and psychiatric impairments do not prevent the Plaintiff from performing the essential functions of a registered nurse with reasonable accommodation.

13. In 2016, the Plaintiff again requested from her employer a reasonable accommodation being the transfer to a position without patient contact. Again, the Defendant had the ability and opportunity to grant Plaintiff's request and place her in an existing or create a position without patient contact for her.

14. The Defendant has failed and refused to respond to Plaintiff's most recent request for a reasonable accommodation.

15. As a result of a lack of response, the Plaintiff initiated an intake petition with the Pennsylvania Human Relations Commission. The Pennsylvania Human Relations Commission issued to her a right to sue letter dated July 26, 2018.

**COUNT I - DEBORAH McCALL vs UPMC PRESBYTERIAN SHADYSIDE -**

**VIOLATION OF THE HUMAN RELATIONS ACT**

16. Plaintiff incorporates by reference Paragraphs 1-15 as if the same were more fully set forth herein at length.

17. Plaintiff believes and therefore avers that the Defendant violated the Pennsylvania Human Relations Act by failing to grant her a reasonable accommodation due to her physical and psychological disabilities.

18. Plaintiff believes and therefore avers that she has been a victim of discrimination, as a result of her physical and psychological disabilities.

19. Despite the fact the Defendant by and through its employees, including the supervisors of Plaintiff, indicated that she could take time off work without it being counted against her, Plaintiff believes and therefor avers that her missed work at the direction of her employer was cited as a negative against her in her written evaluations.

20. Plaintiff believes and therefore avers that she has been further discriminated against on the basis of retaliation for requesting an accommodation due to her physical and psychological disabilities.

WHEREFORE, Plaintiff prays that the Court grant her all remedies available under the Pennsylvania Human relations Act, including without limitation: specific relief, injunctive

relief, compensatory damages, and reasonable attorney fees and costs.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "James M. Herb".

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James M. Herb, Esquire  
Attorney for Plaintiff



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	)	
UPMC PRESBYTARIAN SHADYSIDE,	)	
	)	
Defendant,	)	

**VERIFICATION**

I verify that the statements made in the forgoing Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 PA C.S. §4904 relating to unsworn falsifications to authorities.

DATE: 7-22-19

*Deborah J. McCall*  
DEBORAH J. McCALL

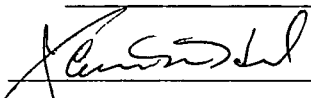
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UPMC PRESBYTARIAN SHADYSIDE,	)	
	)	
Defendant,	)	

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: James M. Herb, Esq.

Signature: 

Name: James M. Herb, Esq.

Attorney No: 27854

# Supreme Court of Pennsylvania

Court of Common Pleas

Civil Cover Sheet

ALLEGHENY

County

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

## Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition  
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:  
DEBORAH J. McCALL

Lead Defendant's Name:  
UPMC PRESBYTERIAN SHADYSIDE

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested: ☐ within arbitration limits  
☒ outside arbitration limits (check one)

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: JAMES M. HERB, ESQUIRE

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**Nature of the Case:** Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

### TORT (do not include Mass Tort)

- ☐ Intentional  
☐ Malicious Prosecution  
☐ Motor Vehicle  
☐ Nuisance  
☐ Premises Liability  
☐ Product Liability (does not include mass tort)  
☐ Slander/Libel/ Defamation  
☒ Other: employment discrimination

### CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other  
☐ Employment Dispute: Discrimination  
☐ Employment Dispute: Other  
☐ Other:

### CIVIL APPEALS

- Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☐ Statutory Appeal: Other

- ☐ Zoning Board  
☐ Other:

### MASS TORT

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:

### REAL PROPERTY

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:

### MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☒ Other: SA HARB

### PROFESSIONAL LIABILITY

- ☐ Dental  
☐ Legal  
☐ Medical  
☐ Other Professional: