

No. 25-1451

ORAL ARGUMENT REQUESTED

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,  
Plaintiff-Appellant,

v.

A & A APPLIANCE, INC.,  
Defendant-Appellee.

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On Appeal from the United States District Court  
for the District of Colorado  
Case No. 1:23-cv-02456-DDD-CYC  
Hon. Daniel D. Domenico, U.S. District Judge

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OPENING BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION AS PLAINTIFF-APPELLANT

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## STATEMENT OF PRIOR OR RELATED APPEALS

There are no prior or related appeals.

## STATEMENT OF JURISDICTION

This case arises under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 *et seq.* The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 12117(a) (incorporating 42 U.S.C. § 2000e-5(f)(1), (3)). On September 3, 2025, the district court granted summary judgment to A & A Appliance, Inc. (“Appliance Factory”) and entered final judgment. Appx.23-24.<sup>1</sup> On October 1, 2025, the Equal Employment Opportunity Commission (“EEOC”) moved pursuant to Federal Rule of Appellate Procedure 4(a)(5) to extend the deadline for filing the notice of appeal for thirty days due to an ongoing federal government shutdown. Appx.24. On October 3, 2025, the district court extended the deadline to December 4, 2025. Appx.24-25. On December 3, 2025, the EEOC filed a timely notice of appeal. Appx. 25. This Court has jurisdiction under 28 U.S.C. § 1291.

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<sup>1</sup> References to “Add.\_\_\_\_” are to the pages of the Addendum attached to this brief. References to “Appx.\_\_\_\_” are to the pages of the EEOC’s Appendix.

## STATEMENT OF THE ISSUES

1. Could a reasonable jury find that Karima Javanzad notified Appliance Factory of her disability when she communicated throughout her leave of absence about her ongoing illness, including her severe gastrointestinal pain, weakness, shortness of breath, and intermittent inability to speak or swallow?

2. Could a reasonable jury find that Javanzad adequately requested a plausibly reasonable accommodation under the ADA when she asked for “a few weeks” of additional leave, and Appliance Factory was prepared to grant her up to four more weeks of leave if she had asked pursuant to the Family and Medical Leave Act?

## STATEMENT OF THE CASE

### I. Course of Proceedings

This is an ADA employment discrimination case alleging that a retailer failed to provide a reasonable accommodation for an employee’s disability, discharged her because of her disability, and retaliated against her for having sought a reasonable accommodation. *See* Appx.27; *see also* 42 U.S.C. §§ 12112(a), (b)(5); 12203(a). The EEOC alleges that Karima Javanzad, a sales associate, had a disability within the meaning of the ADA

because of her chronic gastrointestinal pain, body weakness, shortness of breath, and intermittent inability to speak or swallow. Appx.30-31.

Javanzad's employer, Appliance Factory, granted her twelve weeks of leave under the Family and Medical Leave Act ("FMLA"), 29 U.S.C.

§§ 2601 *et seq.*, but refused to grant an additional few weeks pursuant to the ADA – even though Javanzad explained that she needed a few more weeks to resolve her health issues, Appx.229, 233, and even though her termination letter stated that Appliance Factory would have been able to grant up to four weeks of additional leave if her symptoms were related to her FMLA-qualifying condition, Appx.212. The district court granted summary judgment to Appliance Factory. Add.1; Appx.135. The EEOC appealed. Appx.148.

## **II. Statement of the Facts<sup>2</sup>**

Appliance Factory, a retailer of household products including major household appliances and mattresses, hired Javanzad as a sales associate in February 2019. Appx.257. Javanzad worked in Appliance Factory's

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<sup>2</sup> We present these facts in the light most favorable to the EEOC as nonmovant, consistent with the standard of review for a grant of summary judgment. *See Jenny v. L3Harris Techs., Inc.*, 144 F.4th 1194, 1196 n.1 (10th Cir. 2025).

Thornton, Colorado store. *Id.* According to Appliance Factory, Javan zad was “an excellent and productive employee.” *Id.*

#### **A. March 2020**

In March 2020, Javan zad’s son became sick and Javan zad took leave to care for him. Appx.149. She then became sick as well. Appx.150. On Tuesday, March 24, she emailed Human Resources Representative Sherry Coudayre (then called Sherry Ewing) that she had been sick for three days but hoped to return to work by the end of the week. *Id.* Two days later, she emailed Coudayre that she had gone to the emergency room because she was “really sick” with a cough and shortness of breath. Appx.152. She stated that the doctor had advised her to stay home until she felt better. *Id.*

On Monday, March 30, Javan zad emailed again, stating that she had gone to the emergency room four times because she could not breathe, that she was “still suffering,” and that she felt like dying. Appx.151. “I have never been so sick,” she said. *Id.* Javan zad reported that the doctor told her that he suspected COVID-19 because she had “all the symptoms,” but that hospitals did not have tests. Appx.152.

The following day, Javan zad provided a note from her primary care provider, stating, “Mrs. Javan zad has symptoms consistent with infection

from COVID-19. It is my medical opinion that Ms. Javan zad should remain out of participation until 10 days from onset of symptoms, or 72 hours after fever, shortness of breath and deep cough have resolved. If you have any questions or concerns, please don't hesitate to call." Appx.154.

Coudayre suggested that, in light of Javan zad's illness, Javan zad should apply for leave under the FMLA. Appx.155. Javan zad declined at first, because she was optimistic that she would be able to return to work in just a few days. Appx.157. When this proved to be untrue, she submitted an FMLA application as requested. *See* Appx.204. Appliance Factory suggested that she fill out the medical certification herself if she was unable to get it to her doctor, so she did. Appx.153, 159-62. Appliance Factory granted her twelve weeks of leave, expiring on June 8. Appx.210.

## **B. April and May 2020**

Over the next two and a half months, Javan zad struggled with extreme stomach pain, severe acid reflux, difficulty breathing, difficulty swallowing, and vocal cord dysfunctions causing an intermittent inability to speak. Appx.165, 190, 235-37. The symptoms were sometimes better and sometimes worse, but she was always sick. Appx.168-69. She had preexisting gastrointestinal issues, which became much worse after her

presumptive COVID-19 infection. Appx.238. Her stomach hurt so badly that she cried every day, fearing that she had cancer and was going to die. Appx.163, 171-72. The lack of a diagnosis exacerbated her anxiety, which, in turn, exacerbated her symptoms. Appx.252-53.

Javanzad applied to the Colorado Department of Labor and Employment (“CDLE”) in late April for unemployment benefits. Appx.179-87. The form stated that, in order to receive benefits, she must be “able to work, available to start a job right away, [and] actively looking for work.” Appx.180, 187. Javanzad believed that these statements were true if a potential employer granted her the appropriate accommodations and did not require her to walk or speak to customers for extended periods. Appx.242, 277; *see also* Appx.160 (self-assessment of limitations).

Javanzad wrote on the unemployment application that she did not have a disability, Appx.183, but later testified at her deposition that this was because she considered “disability” to mean needing a wheelchair or being blind. Appx.245. She denied on the application that she needed a leave of absence because of her health but explained immediately afterwards on the same application that she needed it because “We all got the COVID-19 and my kids school is closed.” Appx.185.

Javanzad stayed in close contact with Coudayre during her leave. *See* Appx.256 (Appliance Factory’s position statement to EEOC) (“From the start of her FMLA leave in March to about the end of May, [Appliance Factory] and Mrs. Javanzad kept in constant communication in the form of text messages, emails, and phone conversations.”). On April 13, she wrote that she was feeling “much better” and that she was ready to return to Appliance Factory. Appx.175. She attached a note that her primary care physician, Dr. Genevieve Ochs, had written at her request releasing her to work with no restrictions. Appx.177, 246. Coudayre asked Terry Shull, Javanzad’s supervisor, to make arrangements for Javanzad’s return. Appx.175.

On April 16, Javanzad emailed Coudayre to say that her “body got weak again” and that her doctor had told her this was normal as she was “still recovering from this illness.” Appx.276. On April 19, she emailed again stating, “I have some bad news. I think I have to stay on FMLA a few more weeks because I can’t find daycare due to school closures.” Appx.178.

On April 21, Javanzad emailed Coudayre saying that she would be able to return to work on May 11 because her husband would return from his job in Florida on May 10. Appx.188. She added that her children’s

school would end on May 21 and that her husband would be able to watch the children then. *Id.* Coudayre responded, “I have informed the necessary managers that you will be out until May 21st and returning May 22nd.” *Id.*

On May 12, Javanzad told Coudayre that she had been wrong about the state of her health. Appx.189. She wrote, “I’m still not feeling well. Every day I wake up thinking that I will get back to normal but I am still not well. My stomach has a problem after I encountered the virus.” *Id.* She continued, “My doctor scheduled an endoscopy next week, maybe they can figure out what’s causing the pain.... I will [let] you know what’s going on.” *Id.* She then asked, “I also want to know how long more do I have on the FMLA and if I used the whole 12 weeks can I extend it?” *Id.* Coudayre did not answer this question. Instead, she replied, “You still have time remaining from the 12 weeks, so let’s see what happens with your doctor before we discuss any other steps.” *Id.*

### **C. June 2020**

On June 1, Javanzad received an email from the CDLE asking her to explain why she was still eligible to receive unemployment benefits. Appx.214-16. Javanzad responded the next day that she had no current work restrictions but that her job was in sales, and “since I had the COVID

I have difficulty breathing [and] it's difficult for me to wear the mask for a long period of time." Appx.214. She expressed the hope that her upcoming endoscopy would lead to proper treatment. *Id.* Javanzad added that she was able to work and was "open to any job available." *Id.* She attached a statement from Dr. Ochs confirming her ability to work. Appx.259-60.

Javanzad testified that she was being truthful with CDLE because she would have been able to work with appropriate accommodations.

Appx.167. "I was able to work if I do something that is not requiring too much talk[ing]," she explained. Appx.277. Dr. Ochs noted that Javanzad probably would have needed breaks for shortness of breath, as well as part-time and light duty because her symptoms were worse with exertion.

Appx.260-61. Dr. Ochs testified, "I guess my understanding of unemployment benefits is that you have to be able to do something, not necessarily the job that you were previously doing. So, yes, I would imagine she would like to return to a form of work." Appx.259.

Javanzad and Coudayre played "phone tag" on June 1. Appx.202. That evening, Javanzad emailed Coudayre that, due to her inability to obtain a negative COVID test prior to her endoscopy, her gastroenterologist, Dr. Emily Ward, had rescheduled the procedure to June

9. *Id.* She attached a note that Dr. Ochs had written at her request on May 13 stating, “It is my medical opinion that Karima Javan zad should remain out of work until her symptoms have improved and she has the results of her planned procedures.” Appx.191, 203. (The note said “procedures” in the plural in case Javan zad would need follow-up testing after the endoscopy. Appx.192.) Dr. Ochs added that if Coudayre had any questions or concerns, she should not hesitate to call. Appx.203. Coudayre testified that she questioned the continued validity of a note that had been written two weeks earlier, Appx.221-22, but she did not call Dr. Ochs for clarification, Appx.266. Javan zad closed her email by asking, “if the FMLA is over and I needed more time, what’s my options?” Appx.202.

Coudayre texted at 7:41 a.m. on June 2, “I saw your email but need to speak with you on the phone. Please call me today, thanks!” Appx.204. Phone records obtained from Appliance Factory’s cell phone provider indicate that Coudayre and Javan zad then had a five-minute phone conversation at 12:03 pm. Appx.209; *see also* Appx.149 (identifying Coudayre’s phone number ending in 7143); Appx.173 (identifying Javan zad’s phone number ending in 8160). The phone records are consistent with Javan zad’s testimony that she spoke with Coudayre on the

phone in late May or early June. Appx.228, 250-51. They are also consistent with Coudayre's statement in the termination letter that she wrote on June 10 that "[o]n or about June 1, 2020, you and I spoke about your FMLA." See Appx.212.

Coudayre testified that she did not remember the June 2 phone call, but she conceded that it appeared to have happened. Appx.268. "I'm almost certain that we ended up talking again," she said. Appx.267. Prior to this lawsuit, Appliance Factory agreed. During the EEOC's investigation, Appliance Factory wrote in its position statement that Coudayre and Javanzad "connected on the phone" *after* June 1. Appx.258.

As Javanzad described the June 2 call, Coudayre told her, "You're in trouble. You're collecting unemployment, and you need to go back to work." Appx.230. Javanzad responded that she had been in contact with the CDLE and "there is no issue." *Id.* She also told Coudayre that she wanted to return to work but was still too ill to do so. Appx.232-34. She explained to Coudayre, "I'm not feeling good. I can't breathe. I have difficulty speaking. That's why I'm not able to speak." Appx.230; *see also* Appx.234 (reporting stomach pain, difficulty speaking, difficulty breathing). She added that she would need a few days of leave before the

endoscopy and possibly “a few weeks” afterwards to obtain results.

Appx.163, 228, 233, 239. She needed the results to get treatment and relief before going back to work. Appx.163, 228, 233, 239. She asked Coudayre, “Can you please give me an answer ... I want extra time.” Appx.230.

Javanzad testified that Coudayre responded, “Let me talk to my boss.” Appx.231, 254.

Coudayre consulted with the general counsel “about where we were as far as the leave, and ... the emails [Javanzad] was sending, and that’s where we decided that we wanted the phone call.” Appx.274. From that point on, Coudayre did not put any substantive conversations with Javanzad in writing. Appx.269. “We wanted a phone call,” Coudayre reiterated. *Id.* Coudayre left a message for Javanzad and, in Coudayre’s words, the two of them played “phone tag” – which, Coudayre acknowledged, meant that Javanzad “also call[ed] me back.” Appx.224.

On June 5, Javanzad emailed, “I saw your missed call and I wasn’t able to respond because I have difficulty speaking. It happened yesterday and today again. Please email me and let me know what I need to do and what my options are.” Appx.217. Coudayre did not email Javanzad as requested, Appx.269-70, although she acknowledged later that she could

have done so, Appx.208, 223, 265. “[W]e did insist on a phone call,” she testified. Appx.270.

On June 8, Javanzad emailed, “I haven’t heard from you regarding my options after FMLA ended. I am sorry I couldn’t speak to you over the phone because some days I have difficulty speaking. I did, however, send an email. I was also wondering if I can go on leave of absence since today is the last day for the FMLA. What’s the company’s policy on that?” Appx.210.

Coudayre did not answer this question. Instead, she responded on June 9 with an email stating, “You were expected to return to work yesterday Monday 6/8, and we have your Product Specialist position still open for you. If you are unable to return, I understand if you need to resign at this time. If you choose to resign, you are welcome to give me a call when you are able to return to work and we can discuss having you rejoin our team! It’s easier to discuss things over the phone if possible.” Appx.210.

Appliance Factory decided to terminate Javanzad on June 10. Appx.207. Coudayre emailed Javanzad a letter that day stating that Appliance Factory had “provided you the requisite 12 weeks FMLA leave

and ... an opportunity to extend that FMLA time for an additional four weeks if the triggering condition for FMLA was extended by your medical provider." Appx.211-13. Erroneously identifying the "triggering condition" as "fear of exposure to COVID," Appx.206, Coudayre said that Javanzad "requested an extension of FMLA, not for COVID-19 reasons, but for a gastrointestinal disorder unrelated to COVID-19," and therefore Appliance Factory "could not offer you additional FMLA leave time for your gastrointestinal disorder."<sup>3</sup> Appx.212. She added, "You have not contacted me or anyone else at [Appliance Factory] re your return to work[.]" *Id.* The termination letter concluded, "[Appliance Factory] has done what is required of it under the FMLA [and] has no choice [but] to terminate your employment." Appx.213. Coudayre testified that she never considered Appliance Factory's obligations under the ADA and never engaged in the interactive process to seek a reasonable accommodation. Appx.225, 270.

#### **D. Diagnosis and Treatment**

Javanzad correctly predicted that she would have been able to return to work after only "a few weeks" of additional leave. *See* Appx.228, 233,

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<sup>3</sup> Coudayre later testified, "I did not know if it was related or unrelated.... I clearly did not edit the paper very well." Appx.275.

239. Prior to the endoscopy, Dr. Ochs had tentatively diagnosed Javan zad with gastritis and acid reflux. Appx.196, 201. This would have explained not only Javan zad's stomach pain, but potentially also her difficulty speaking if the reflux had reached her vocal cords. Appx.219. Gastritis is normally treatable with omeprazole, Appx.264, and Dr. Ochs prescribed this for Javan zad, Appx.190. Although Dr. Ochs told her that she should take the omeprazole daily, Javan zad did not absorb this information. Appx.240-41. She believed that the medication worked like Advil and took it only as required to address pain. *Id.* Dr. Ochs testified she was "not surprised" that Javan zad thought this, because "patients forget a lot of the things we tell them." Appx.193. Javan zad's symptoms continued, so Dr. Ochs ordered an endoscopy to rule out more serious problems. Appx.198.

As Dr. Ochs had suspected, the endoscopy found that Javan zad had gastritis. Appx.218. It also revealed "mucosal changes including ringed esophagus," suggesting "eosinophilic esophagitis" and raising the possibility of "some abnormal process." Appx.262. Dr. Ward ordered a follow-up biopsy, *id.*, which determined that Javan zad's esophagus was largely normal. Appx.196, 199-200, 218, 220. This finding meant that Javan zad did

not have any “serious pathology.” Appx.200. However, the biopsy did show “cellular inflammation consistent with chronic active gastritis.” Appx.263.

Immediately after the endoscopy, Dr. Ward went over the results with Javanzad and emphasized to her the importance of taking omeprazole twice a day, every day. Appx.243, 255. Armed with this information, Javanzad began to take the omeprazole correctly. Appx.244, 255. She testified, “I took it every day, and then I got better.” Appx.244. She estimated that it took only “a few weeks” before her symptoms resolved sufficiently that she could have returned to work. *Id.*

### **E. Litigation**

Javanzad filed a charge of discrimination with the EEOC, Appx.226-27, resulting in the instant lawsuit. The EEOC’s first amended complaint alleged that Appliance Factory had violated the ADA by failing to reasonably accommodate Javanzad’s disability, and by discharging her on the basis of her disability and in retaliation for engaging in protected activity. Appx.27.

The complaint stated that on May 13, 2020, Coudayre had refused to answer Javanzad's question about leave. Appx.32-33 ¶¶ 41-42. Then, the complaint described the following communications:

43. On June 1, 2020, [Coudayre] sent Javanzad a text message and asked Javanzad to call about her FMLA leave.

44. Later the same day, in a text message to [Coudayre], Javanzad advised that she was available to speak on the telephone.

45. [Coudayre] did not call after Javanzad's text advising of her availability to speak on the telephone.

46. Javanzad followed up with an email to [Coudayre] on June 2, 2020, and attached a doctor's note advising that Javanzad remain out of work until her symptoms had improved and she had completed her planned procedures.

47. In the June 2, 2020, email to [Coudayre], Javanzad again asked about her options for extending leave after her FMLA had expired.

48. After [Coudayre] and Javanzad were unable to connect via telephone, Javanzad sent an email to [Coudayre] on

June 5, 2020. In the email, Javan zad explained that she was having difficulty speaking and could not talk on the telephone.

Appx.33.

Appliance Factory moved for summary judgment, arguing that “Javan zad did not request or require any accommodation and instead – at best – chose not to return to work because she had not yet received the final results from a 12-minute diagnostic procedure, which confirmed she had ‘nothing’ going on with her.” Appx.61-62. According to Appliance Factory, the EEOC failed to produce any evidence of a qualifying disability, and Appliance Factory could not have known about a disability in any event because Javan zad “did not receive a confirmed diagnosis of gastritis until June 17, which was after her separation.” Appx.69-70. Appliance Factory also argued that Javan zad never requested a reasonable accommodation because her request for “a wholly indeterminate extension of leave” was not reasonable. Appx.76. Finally, Appliance Factory argued that the EEOC was judicially estopped from arguing that Javan zad and Coudayre had spoken on the phone at any time between June 1 and June 5 because, Appliance Factory said, the complaint said otherwise. Appx.107 ¶ 25.

The EEOC countered that there were factual disputes concerning whether Javanzad had a qualifying disability and whether she requested a reasonable accommodation. Appx.81. The EEOC rejected Appliance Factory's interpretation of the complaint as preclusive, Appx.122, and cited phone records showing that Javanzad and Coudayre had spoken for five minutes on June 2, Javanzad's testimony that she spoke with Coudayre over the phone in late May or early June, and Coudayre's admission in the termination letter that she and Javanzad spoke "around June 1." Appx.84-85 ¶¶ 25, 38; *see also* Appx.209 (phone records); Appx.228 (testimony); Appx.212 (termination letter). Disputing Appliance Factory's claim that Javanzad had requested indefinite leave, the EEOC stated, "Javanzad specifically communicated to HR she needed two-to-three weeks of additional leave to undergo her endoscopy and receive the results." Appx.98. The EEOC argued that Javanzad's request for a few additional weeks of leave was reasonable, that Appliance Factory failed to engage in the interactive process, and that Appliance Factory's stated reason for firing Javanzad was pretextual. Appx.81, 97, 100.

### III. District Court's Decision

The district court granted Appliance Factory's motion for summary judgment. Add.1; Appx.135. First, the court rejected the EEOC's failure-to-accommodate claim. To succeed on this claim, the court explained, "Plaintiff must present evidence that Ms. Javan zad requested an accommodation based on a disability." Add.5; Appx.139. The court appeared to question why the EEOC contended that Javan zad had a disability, stating, "it's not clear if Ms. Javan zad's disability was COVID-19, vocal cord paralysis, or gastritis." Add.7; Appx.141.

Leaving open the question of whether Javan zad actually had a disability, the court held that what mattered was whether Javan zad had adequately *communicated* to Appliance Factory that she had a disability and that she needed a reasonable accommodation for her disability. Add.10-11; Appx.144-45. "Given the lack of a formal diagnosis until after she was terminated (June 17 – gastritis) and Ms. Javan zad's inconsistent representations regarding her ability to return to work," the court said, "Defendant cannot be found to have been on notice of a disability that required accommodation under the ADA." Add.7; Appx.141.

Likewise, the court held that Javanzad failed to request a reasonable accommodation in a sufficiently clear manner. *See* Add.8; Appx.142.

“Ms. Javanzad never made an explicit request for an accommodation from Defendant – even for an additional leave of absence – until her FMLA leave expired,” the court said. *Id.* Her inquiries about how much leave she had left and her options once the FMLA leave expired “were insufficient to establish a recognized accommodation request,” the court continued. *Id.*

Moreover, the court added, even though a defined period of leave can be a reasonable accommodation, “Ms. Javanzad never provided Defendant any details about her expected leave of absence or when it might conclude.” *Id.*

Appliance Factory’s awareness that Javanzad had “health issues,” the court said, was not enough to impose liability under the ADA. Add.10 & n.2; Appx.144 n.2.

For these same reasons, the court also granted summary judgment on the disparate treatment and retaliation claims. Add.9; Appx.143. The disparate treatment claim failed, the court held, because “Plaintiff cannot show Ms. Javanzad put Defendant on notice of a disability that required accommodation under the ADA.” *Id.* The retaliation claim failed as well, the court held, because “[t]o qualify as protected activity, ‘a plaintiff must

show an adequate request for an accommodation.” Add.10; Appx.144 (quoting *Winston v. Ross*, 725 F. App’x 659, 664 (10th Cir. 2018)). “[I]t is not the employer’s responsibility to anticipate the employee’s needs and affirmatively offer accommodation,” the court concluded, “if an employee does not make known her disability and request assistance.” *Id.* (quoting *Dinse v. Carlisle Foodservice Prods. Inc.*, 541 F. App’x 885, 890 (10th Cir. 2013)).

The court then denied as moot the parties’ motions to strike and exclude expert testimony. Add.11; Appx.145. Those motions, the court said, “relate exclusively to the nature of Ms. Javanzad’s disability and when she could have returned to work, not whether Ms. Javanzad communicated a disability or a request for accommodation to Defendant.” Add.10-11; Appx.144-45.

### STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo. *Snyder v. Beam Techs., Inc.* 147 F.4th 1246, 1253 (10th Cir. 2025). It may affirm only when the record shows that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.* The Court

must view the record in the light most favorable to the non-movant and must make all reasonable inferences in the non-movant's favor. *Id.*

### **SUMMARY OF ARGUMENT**

Summary judgment was not appropriate here. Applying the correct legal standards under the ADA and viewing the facts in the light most favorable to the EEOC, as required, a reasonable jury could find that Javanzad put Appliance Factory on notice that she needed a reasonable accommodation for one or more disabilities, and that Appliance Factory failed to engage in the interactive process, leading to denial of a reasonable accommodation and unlawful termination.

First, the district court applied the wrong legal standard by requiring an employee seeking a reasonable accommodation to notify their employer not only of their impairment and its effects, but also to provide a diagnosis. The ADA Amendments Act of 2008 (“ADAAA”) expressly states that “disability” must be construed expansively, in favor of broad coverage. Consistent with this purpose, the statute defines disability in terms of “impairments,” not diagnoses. This makes sense. If the reasonable-accommodation requirement applied only when an employee has a diagnosis, then the ADA would be of no help to an employee with an

undiagnosed but obvious physical or mental impairment, even when the employee's limitations are self-evident.

The court's opinion also would eliminate an employer's responsibility to engage in the interactive process in many instances. An employee need not use magic words when notifying an employer of a disability or requesting a reasonable accommodation. As long as the employee provides enough information to convey a generalized notion about their health condition, the limitations it creates, and the need for related assistance, the employer has an obligation to inquire further. Refusing to do so violates an employer's obligation to participate in the interactive process in good faith.

Viewing the facts in the light most favorable to the EEOC, a reasonable jury could find that Javanzad gave Appliance Factory enough information about her illness that Appliance Factory knew that she had an impairment that substantially limited her in at least one major life activity. At a minimum, Appliance Factory knew enough that it should have asked more questions if necessary. Likewise, a jury could find that Appliance Factory knew that Javanzad was requesting leave because she needed time to investigate what was wrong, determine a course of treatment, and then

get well. Thus, a jury could find that she adequately requested a reasonable accommodation, and that Appliance Factory was at fault for not engaging in the interactive process – resulting in its failure to provide a reasonable accommodation, and leading to Javanzad’s discriminatory and retaliatory termination.

For the following reasons, the EEOC asks this Court to vacate the grant of summary judgment and remand for further proceedings.

## ARGUMENT

**I. A reasonable jury could find that Javanzad notified Appliance Factory of her disability by telling Coudayre about her physical impairments and the limitations they caused.**

**A. A reasonable jury could find that Javanzad had a disability.**

The district court expressly declined to determine whether Javanzad did, in fact, have a disability. Add.10-11; Appx.144-45. Rather, it characterized the “dispositive issue” as “whether Ms. Javanzad *communicated* a disability,” not “the nature of [her] disability.” *Id.*

(emphasis added). Notwithstanding its framing of the issues, the district court’s statement that “it’s not clear if Ms. Javanzad’s disability was COVID-19, vocal cord paralysis, or gastritis,” Add.7; Appx.141, suggests that it may have doubted whether the EEOC had established that Javanzad

had a qualifying disability. Moreover, the court's analysis of what Javanzad had to communicate to her employer suggests underlying misconceptions about the nature of qualifying disabilities under the ADA as amended. *See* Add.7; Appx.141 (citing cases pre-dating 2008 amendments to the ADA). Because the district court's apparent misunderstanding of a "disability" under the ADA may have played some role in its analysis, we briefly review the statute's history and purpose.

Congress enacted the ADA in 1990 in part "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." Pub. L. No. 101-336, § 2(b)(1), 104 Stat. 327 (codified at 42 U.S.C. § 12101(b)(1)). The statute defined "disability" to include "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." *Id.* § 3(2)(A) (codified at 42 U.S.C. § 12102(1)(A)).

Courts initially interpreted this provision narrowly, reasoning that the terms "substantially" and "major life activity" must "be interpreted strictly to create a demanding standard for qualifying as disabled." *Toyota Motor Mfg., Ky., Inc., v. Williams*, 534 U.S. 184, 197 (2002). EEOC regulations likewise provided that "substantially limit[ed]" meant "[u]nable to

perform a major life activity that the average person in the general population can perform”; or “[s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity” as compared to the average person in the general population. 29 C.F.R. § 1630.2(j) (2001).

In 2008, Congress rejected these interpretations and enacted the ADA Amendments Act (“ADAAA”) to “reinstat[e] a broad scope of protection.” Pub. L. No. 110-325, § 2(b)(1), 122 Stat. 3553 (codified at 42 U.S.C.A. § 12101 note); *see also id.* § 2(a)(8) (EEOC’s definition of “substantially limits” was “inconsistent with congressional intent, by expressing too high a standard”). The amended statute and its implementing regulations now emphasize that the term “substantially limits” must be construed broadly. *See* 42 U.S.C. § 12102(4)(A) (“The definition of disability in this chapter shall be construed in favor of broad coverage ... to the maximum extent permitted by the terms of this chapter.”); *id.* § 12102(4)(B) (“The term ‘substantially limits’ shall be interpreted consistently with the findings and

purposes of the [ADAAA.]”); 29 C.F.R. § 1630.2(j)(1)(i) (2025)

(“‘Substantially limits’ is not meant to be a demanding standard.”).<sup>4</sup>

The ADAAA also expanded the definition of “major life activities” to include “the operation of a major bodily function, including but not limited to ... “digestive...neurological, brain, [and] respiratory ... functions.”

42 U.S.C. § 12102(B). The regulations provide that “[a]n impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.” 29 C.F.R. § 1630.2(j)(1)(ii) (2025). Rather, “[a]n impairment is a disability ... if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.”

*Id.* The statute specifies that “[a]n impairment that is episodic or in

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<sup>4</sup> These regulations are entitled to deference because Congress expressly gave the EEOC the authority to define “disability” under the ADA. *See* 42 U.S.C. § 12205a (granting EEOC “the authority to issue regulations implementing the definitions of disability in [42 U.S.C. § 12102] (including rules of construction) ... consistent with the [ADAAA]”); *Sutherland v. Peterson’s Oil Serv., Inc.*, 126 F.4th 728, 738 n.5 (1st Cir. 2025) (holding that EEOC definition of “disability” is entitled to deference because “[t]his is a quintessential example of Congress ‘expressly delegat[ing] to an agency the authority to give meaning to a particular statutory term’” (alteration in original) (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024))).

remission is a disability if it would substantially limit a major life activity when active.” 42 U.S.C. § 12102(4)(D); *see* 29 C.F.R. § 1630.2(j)(1)(vii) (2025) (same).

Accordingly, it is generally now a straightforward matter for an individual to establish that she has a disability. *See Felkins v. City of Lakewood*, 774 F.3d 647, 652 (10th Cir. 2014) (“The ADAAA conveyed ‘the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and ... that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.’” (quoting Pub. L. No. 110-325, § 2(b)(5), 122 Stat. 3553 (codified at 42 U.S.C.A. § 12101 note))).

Here, based on Javanzad’s testimony, contemporaneous statements, and medical evidence, a reasonable jury could have found that the EEOC made this straightforward showing. To the extent Appliance Factory challenges this evidence based on Javanzad’s credibility, that, too, is a jury question. *See Helvie v. Jenkins*, 66 F.4th 1227, 1235 (10th Cir. 2023).

The existing record contains evidence showing that Javanzad’s acid reflux caused severe pain, affecting her digestive system and impairing her

ability to sleep, Appx.163, 165, 171-72, 234-35, 237; that it caused her enormous anxiety, affecting her thinking, Appx.163, 171-72, 231, 238; and that it intermittently prevented her from swallowing (affecting her digestive system), Appx.237; eating (digestive system), Appx.237, speaking (ability to communicate), Appx.164-65, 174, 230-32, 234-35, 237; and breathing (arguably, the most significant “major life activity” of all), Appx.170, 230, 234-35, 237-38. *See generally* 29 C.F.R. § 1630.2(i) (2025) (describing “major life activities”). Thus, a jury could reasonably find that some or all of these impairments – whether viewed individually or collectively – were qualifying disabilities. We respectfully ask this Court to so hold. In the alternative, if the Court believes the admitted evidence was insufficient to permit a reasonable jury to find a disability, we urge the Court to remand with instructions for the district court to consider the question in the first instance, including addressing whether to admit the expert reports that speak to disability.

**B. Putting an employer on notice of a disability does not require a diagnosis.**

The district court acknowledged that “there is no doubt Defendant knew Ms. Javanзад had health issues,” Add.10; Appx.144, but said that this

was inadequate to create ADA liability because of “the lack of a formal diagnosis until after she was terminated,” Add.7; Appx.141. That was incorrect. Requiring a diagnosis poses an impossible hurdle for individuals who are ill from an unknown cause – contravening congressional intent to expand the ADA’s reach. *See* 29 C.F.R. § 1630.2(j)(1)(iii) (2025) (“The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether an individual’s impairment substantially limits a major life activity.”); *see also supra* pp. 27-29 (Congress intended broad coverage).

The ADA defines “disability” not in terms of diagnoses, but in terms of “impairments.” *See* 42 U.S.C. § 12102(1). EEOC regulations do the same. *See* 29 C.F.R. § 1630.2(j)(1)(ii) (2025). This Court has recognized that some impairments are so obvious that a diagnosis would be superfluous. *See Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 997 (10th Cir. 2019) (arm pain, and neck pain do not require medical evidence because they are “most amenable to comprehension by a lay jury” (citation omitted)). Other impairments may carry a diagnosis but nonetheless require more evidence to establish a disability. *See Kulasa v. Wyndham Vacation Rentals N. Am.*,

*LLC*, No. 20-1402, 2021 WL 3832343 (10th Cir. Aug. 27, 2021) (unpublished) (holding that plaintiff “failed to adequately establish any limitations arose out of his ADHD”).

The pertinent question is not the name of a diagnosis, but an impairment’s effects on an individual. See *Hrdlicka v. Gen. Motors, LLC*, 63 F.4th 555, 568 (6th Cir. 2023) (“[A] diagnosis is not necessary for an ADA claim to succeed.”); *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 314 (3d Cir. 1999) (as long as an employer is aware that an individual has health problems which cause significant limitations, “it is not essential that [they know] the specific name of [the employee’s] condition”); *Grabowski v. QBE Americas, Inc.*, No. 15-12318, 2017 WL 1077667, at \*5 (E.D. Mich. Mar. 22, 2017) (unpublished) (“The fact that a formal diagnosis had not yet been made due to the timing of the appointment with the neurologist is of little consequence, and at most, it would create a genuine issue of material fact.”).

Thus, an employee need not give their employer a diagnosis in order to communicate that they have a disability. It is “reasonable to conclude ... that an employer is on notice of a disability if an employee’s symptoms are ‘severe enough to alert’ it, giving it either knowledge or ‘some generalized

notion' of the disability." *Yarberry v. Gregg Appliances, Inc.*, 625 F. App'x 729, 737 (6th Cir. 2015) (internal citation omitted). As the Sixth Circuit has explained, "[A]n employee is not required to use the word 'disabled' to put his or her employer on notice" of a disability. *Hrdlicka*, 63 F.4th at 567. Rather, the employer must "know enough information about the employee's condition to conclude that he is disabled." *Id.*

**C. A reasonable jury could find that Javanзад communicated enough information for Appliance Factory to know that she had a disability.**

A reasonable jury could find that Javanзад told Appliance Factory enough for Coudayre to know that Javanзад had a disability within the meaning of the ADA. For two and a half months, Javanзад kept Appliance Factory informed about her ongoing symptoms. *See* Appx.256 (Appliance Factory stating that Javanзад and Coudayre "kept in constant communication"). The district court did not mention all of Javanзад's communications with Coudayre, and it failed to view those it did mention in the light most favorable to the EEOC.

On March 26, Javanзад told Coudayre that she had gone to the emergency room because she was "really sick" with a cough and shortness of breath. Appx.152. On March 30, she reported that she had gone to the

emergency room four times because she could not breathe, that she was “still suffering,” and that she felt like dying. Appx.151. She said that the doctor in the emergency room said she had “all the symptoms” of COVID-19, *id.*, and her primary care provider sent a note the next day saying the same thing, Appx.154. The district court did not describe how sick she was and did not mention the doctor’s note. *See* Add.5; Appx139.

Turning to April and May, the court described Javanзад’s communications in a light most favorable to Appliance Factory, not to the EEOC. *See* Add.5-6; Appx.139-40. The court’s bare-bones recital of the facts omitted all of the details that Javanзад shared with Appliance Factory, including information about her stomach pain and her struggles breathing and speaking. *See id.* For instance, it did not mention that on April 1, Javanзад emailed, “I saw my doctor yesterday and she said that I’m getting better and it will take a few days for the shortness of breath and the cough to go away. She advised me [to] stay [home for a] few days until my cough is better.” Appx.153. Javanзад did feel better for part of April, and she did plan to return to work, Appx.176, but the court did not recognize that she continued to explain the ups and downs of her illness and recovery.

In addition, the court embraced Appliance Factory's focus on Javanzad's April 19 statement that she needed more leave because of problems with childcare, Appx.178, but did not acknowledge that she had already explained on April 16 that she was still sick and weak because she was recovering from COVID-19, Appx.276. She wrote, "I felt [a] little better these last few days, then my body got weak again. I spoke to my doctor on the phone and she said it's normal because [my] body is still recovering from this illness." *Id.* Her communications after April 19 focused on her poor health. On May 12, for instance, she emailed, "I'm still not feeling well. Every day I wake up thinking that I will get back to normal but I am still not well. My stomach has a problem after I encountered the virus." Appx.189.

On June 2, Javanzad told Coudayre on the phone that she wanted to return to work but was still too sick to do so. Appx.230. The district court did not mention this call at all.<sup>5</sup> See Appx.135-45. Javanzad told Coudayre

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<sup>5</sup> Given the lack of explanation, it is impossible to know whether the court simply overlooked this critical piece of evidence, or whether it agreed with Appliance Factory's argument that the EEOC was judicially estopped from referring to this call because the "[c]omplaint alleges Javanzad and HR did not speak on the phone from June 1-5." Appx.107. But the EEOC never

during that call, “I’m not feeling good. I can’t breathe. I have difficulty speaking.” Appx.230. On June 5 and June 8, Javanzad again told Coudayre that she sometimes had difficulty speaking. Appx.210, 217.

There is no evidence that Appliance Factory knew Javanzad had denied having a disability in her application for unemployment benefits, and it is unclear whether the district court thought this mattered. But even if Appliance Factory did know, what Javanzad said to the CDLE could not defeat Appliance Factory’s knowledge that Javanzad had a disability as defined by the ADA. Javanzad told CDLE that she was not disabled, but she testified that she thought “disabled” meant needing a wheelchair or

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denied that such a call occurred, and the language of the complaint does not compel that interpretation. *See* Appx.33. Accordingly, judicial estoppel does not apply. *See Wells Fargo Bank, N.A. v. Mesh Suture, Inc.*, 31 F.4th 1300, 1313 (10th Cir. 2022) (judicial admission is “an *express waiver* made by the party or his attorney conceding for the purposes of the trial the truth of some alleged fact” (emphasis added)). The operative complaint’s omission of a reference to a June 2 call does not qualify as an express waiver.

Moreover, other evidence demonstrates Appliance Factory’s acknowledgement that the call occurred. This evidence includes phone records from Appliance Factory’s telephone provider confirming a five-minute conversation on June 2, Appx.209, Appliance Factory’s position statement to the EEOC discussing a June 2 phone call, Appx.258, the termination letter in which Coudayre referenced a call “[o]n or about June 1,” Appx.212, and Coudayre’s testimony that “I’m almost certain that we ended up talking again,” Appx.267.

being blind, which did not apply to her. Appx.245. She is a layperson, not an attorney.

Javanzad also told CDLE that she was able to work – and she later explained in her deposition that she could have done so *in a job that would accommodate her health needs*. Appx.242, 277. The district court characterized her statements to CDLE (that she could work) and to Appliance Factory (that she needed leave) as “inconsistent representations regarding her ability to return to work.” Add.7; Appx.141. However, as the Supreme Court has explained, representations about one’s ability to work in public-benefits applications versus one’s representations in ADA claims may not be inconsistent even when they seem so at first blush. *See Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 802-03 (1999).

In *Cleveland*, the Supreme Court held that an ADA plaintiff who was receiving Social Security benefits based on her representation to the Social Security Administration that she was “totally disabled” was not judicially estopped from asserting in her ADA case that she could have worked with a reasonable accommodation. *Id.* at 797. Unlike the ADA, the Court observed, the Social Security Act “does *not* take the possibility of ‘reasonable accommodation’ into account, nor need an applicant refer to

the possibility of reasonable accommodation when she applies for [benefits].” *Id.* at 803. Thus, the Court held, “an ADA suit claiming that the plaintiff can perform her job *with* reasonable accommodation may well prove consistent with a [Social Security] claim that the plaintiff could not perform her own job (or other jobs) *without* it.” *Id.*

So too here. A reasonable jury could find that Javanzad was able to work *with* a reasonable accommodation, so that her statement to CDLE was truthful. A jury could also find that, because Appliance Factory refused to grant her a reasonable accommodation, Javanzad’s representation to Appliance Factory that she could not work was truthful as well.

It is true that some of Javanzad’s symptoms, including stomach pain, are often associated with non-disabling conditions. The EEOC’s regulations acknowledge that “not every impairment will constitute a disability.”

29 C.F.R. § 1630.2(j)(1)(i) (2025), *id.* § 1630.2(j)(1)(v). Nonetheless, Javanzad had stomach pain that was so severe that she “was waking up in the middle of the night, freaking out, because I thought I had cancer.”

Appx.163. She testified, “I can’t work out. I can’t sleep. I can’t eat. I have constant pain. Sometimes I’m [un]able to talk. Sometimes my vocals just shut down. I can’t socialize.” Appx.237.

Looking at the evidence in the light most favorable to the EEOC, a jury could find that Appliance Factory knew Javanzad endured intermittent flare-ups that were disabling when active. That is sufficient notice of a disability under the ADA. *See* 42 U.S.C. § 12102(4)(D) (“An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”); 29 C.F.R. § 1630.2(j)(1)(vii) (2025) (same). Jurors could reasonably find that Appliance Factory should have known that severe stomach pain lasting for months at a time, an intermittent struggle to breathe, and a repeated inability to speak or swallow created a substantial limitation on at least one major life activity, whether considered alone or together. *See Owens v. Governor’s Office of Student Achievement*, 52 F.4th 1327, 1335 (11th Cir. 2022) (“[T]o put her employer on notice of her disability, an employee must identify – at least in broad strokes – the limitations her mental or physical condition imposes.”).

Dr. Ochs told Coudayre to call if she had any questions, but Coudayre did not do so. Appx.177, 271. A jury could interpret this as a breakdown in the interactive process attributable to Appliance Factory. *See EEOC v. Wal-Mart Stores East, L.P.*, 113 F.4th 777, 788 (7th Cir. 2024)

("[W]hen clarification is needed as to the nature of an employee's disability or the particular accommodation required, it is the employer's responsibility to solicit that information from the employee."); *EEOC v. Sears, Roebuck & Co.*, 417 F.3d 789, 804 (7th Cir. 2005) ("[A]n employer cannot shield itself from liability by choosing not to follow up on an employee's request for assistance, or by intentionally remaining in the dark."); *Taylor*, 184 F.3d at 314 ("If there was any further information that the school district felt it needed to justify an accommodation, it was incumbent on the school district to ask for it").

Rather than calling Dr. Ochs or emailing Javanzad with follow-up questions, Coudayre insisted on having a phone call with Javanzad – immediately after Javanzad told her that she was unable to speak. *See* Appx.205, 210. This is hardly the action of an employer seeking to learn more. *See* Appx.270 (Coudayre testifying as Fed. R. Civ. P. 30(b)(6) representative, "[W]e weren't even at the interactive process yet."). On these facts, a reasonable jury could find that Javanzad did enough to put Appliance Factory on notice of her disability.

**II. A reasonable jury could find that Javanzad adequately requested a reasonable accommodation.**

**A. Javanzad tied her need for leave to her ongoing health problems.**

The ADA requires employers to make “reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the business of [the employer].” 42 U.S.C.

§ 12112(b)(5)(A). “[A]n employee need not use magic words” in requesting a reasonable accommodation, but “must convey to the employer a desire to remain with the company despite his or her disability and limitations.”

*Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1172 (10th Cir. 1999) (en banc);

*see also EEOC v. C.R. England, Inc.*, 644 F.3d 1028, 1049 (10th Cir. 2011)

(stating that reasonable accommodation request “does not have to ...

formally invoke the magic words ‘reasonable accommodation’”); EEOC

Enforcement Guidance, *Reasonable Accommodation and Undue Hardship*

*Under the Americans with Disabilities Act*, 2002 WL 31994335, at \*4 (Oct. 17,

2002) [“Enforcement Guidance”] (“To request accommodation, an

individual may use ‘plain English’ and need not mention the ADA or use the phrase ‘reasonable accommodation.’”).

It is essential to a reasonable accommodation request that an employee “make clear that the employee wants assistance *for his or her disability.*” *C.R. England*, 644 F.3d at 1049 (citation omitted); *see also* Enforcement Guidance, 2002 WL 31994335, at \*4 (employee must alert their employer that they need “an adjustment or change at work for a reason related to a medical condition”). Failure to make this link dooms a reasonable-accommodation claim. *See Dinse v. Carlisle Foodservice Prods. Inc.*, 541 F. App’x 885, 892 (10th Cir. 2013) (“Mr. Dinse made clear that the laptop request was entirely unrelated to the difficulties his disability created.”).

A reasonable jury could find that Javanzad adequately tied her requests for additional leave to her disability. Her inquiries about leave were all made in the context of describing her ongoing health problems. *See supra* pp. 4-13 (describing communications). On May 12, Javanzad explained that she was still ill and that her doctor was scheduling an endoscopy to try to figure out what was wrong. Appx.189. She asked Coudayre in that same email, “I also want to know how long more do I

have on the FMLA and if I used the whole 12 weeks can I extend it?" *Id.*

Likewise on June 1, Javanzad emailed a note from Dr. Ochs recommending that Javanzad remain on leave "until her symptoms have improved and she has the results of her planned procedures." Appx.203. In her cover letter, Javanzad asked, "[I]f the FMLA is over and I needed more time, what's my options?" Appx.202.

On June 2, Javanzad told Coudayre that she was too sick to return to work. Appx.209 (T-Mobile record of June 2 phone call); Appx.233-34. She explained, "I have stomach pain; I have difficulty speaking; difficulty breathing." Appx.234. She told Coudayre that she needed a few days of leave before the endoscopy and possibly "a few weeks" afterwards to obtain results and get treatment. Appx.163, 228, 233, 239. She asked, "Can you please give me an answer ... I want extra time." Appx.230. A jury could find not only that this communication specifically linked Javanzad's request for leave to her illness, but also that it provided an estimated end date in the near future. *Cf. Freeman v. City of Cheyenne*, No. 23-8022, 2024 WL 464069, at \*1 (10th Cir. Feb. 7, 2024) (unpublished) (no ADA violation where employee sought indefinite leave and "did not indicate when she might be able to return to work").

Again, on June 5 and June 8, Javanzad told Coudayre that she was having ongoing health problems and that she needed more leave. On June 5, she emailed about her difficulty speaking and said, “It happened yesterday and today again. Please email me and let me know what I need to do and what my options are.” Appx.217. On June 8, she again mentioned her difficulty speaking and asked, “I was wondering if I can go on leave of absence today since today is the last day for the FMLA. What’s the company’s policy on that?” Appx.210.

Javanzad’s inquiries were far more specific about seeking an accommodation for her disability than those that were held inadequate in the cases the district court cited. *See* Add.8; Appx.142 (citing *C.R. England*, 644 F.3d at 1049, and *Edmonds-Radford v. Sw. Airlines Co.*, 17 F.4th 975, 992-93 (10th Cir. 2021)); Add.10 n.2; Appx.144 n.2 (citing *Dinse v. Carlisle Foodserv. Prods.*, 541 F. App’x at 890). The request in *C.R. England* was inadequate because the employee said only that he needed “family time” and “home time,” and did not connect his need to his medical impairment. 644 F.3d at 1049-50. The request in *Edmonds-Radford* failed because the employee sought permission for additional training without disclosing her disability, and thus did not link her request to a medical condition. 17 F.4th

at 993. And the request in *Dinse* failed because the employee asked for a laptop to work from home following surgery in order to help him return to work sooner, not to help him with disability-related issues. 541 F. App'x at 892. Thus, unlike Javanzad, the employee did not put the employer on notice that the request was disability-related. *Id.* at 891-92.

**B. A jury could find that Javanzad's request for "a few more" weeks of leave was plausibly reasonable under the ADA.**

A jury could find that Javanzad's repeated requests for additional leave were "plausibly reasonable," which is all that is required to state a prima facie case. See *Herrmann v. Salt Lake City Corp.*, 21 F.4th 666, 674 (10th Cir. 2021). "It is well-settled that a request for leave may lead to a 'reasonable' accommodation – such a request may allow an employee sufficient time to recover from an injury or illness such that the employee can perform the essential functions of the job (i.e., attend work) in the future." *Id.* at 676 (citation omitted). Although a request for indefinite leave is unreasonable as a matter of law, it is reasonable to request leave if an employee provides "an expected duration of the impairment." *Id.* (citation omitted). With that information, "an employer can[ ] determine whether an

employee will be able to perform the essential functions of the job *in the near future.*" *Id.* at 676-77 (citation omitted).

In *Punt v. Kelly Services*, 862 F.3d 1040 (10th Cir. 2017), this Court held that a leave request was "not plausibly reasonable on its face" because the employee gave her employer no idea of when she would need leave or how much leave she would need. *See id.* at 1050-51. In contrast, Javanzad's request was time-limited and the scheduling was clear – she told Coudayre during their June 2 phone call that she would need a few days before her June 9 endoscopy, and "possibly a few weeks" afterwards to address her health problems. Appx.228, 233, 239.

Appliance Factory was prepared to give Javanzad up to four more weeks of leave, but only if she satisfied what it believed to be an FMLA requirement: that leave could only be extended for the same reason that it was initially granted. Appx.212, 272-73. It denied Javanzad's request because it believed she initially took leave for reasons related to COVID-19 and that her current leave request was unrelated. Appx.212. Appliance Factory admits that it never considered its obligations under the ADA. Appx.225. Setting aside Appliance Factory's understanding of the FMLA, the fact that it would have considered granting four more weeks of leave

under that statute forecloses the argument that granting “a few weeks” of leave under the ADA would have been unreasonable on its face.

At a minimum, a jury could find that Javan zad’s leave requests were specific enough that they triggered the ADA’s mandatory “interactive process,” requiring Appliance Factory to ask follow-up questions, potentially contact Javan zad’s medical providers, and work with her to determine whether a reasonable accommodation would be possible. *See Dansie v. Union Pac. R.R. Co.*, 42 F.4th 1184, 1193 (10th Cir. 2022) (“We require an employer and employee to engage in what we call ‘the interactive process’ to determine an appropriate position.”); *Aubrey v. Koppes*, 975 F.3d 995, 1007 (10th Cir. 2020) (“The interactive process requires the good faith participation of both the employer and employee.”).

In contravention of this obligation, Appliance Factory insisted on communicating with Javan zad only on the phone even after she repeatedly said that she had difficulty speaking – a symptom of her disability. Appx.205, 217, 210. Appliance Factory’s refusal to communicate by email in this circumstance does not suggest a good-faith effort to understand Javan zad’s limitations or needs. To the contrary, it is an example of Appliance Factory’s admitted refusal to engage in the interactive process.

*See* Appx.270 (“[W]e weren’t even at the interactive process yet.”). Thus, a jury could reasonably find Appliance Factory at fault for the breakdown of the interactive process and blame Appliance Factory for failing to provide a reasonable accommodation in violation of the ADA.

### CONCLUSION

For the foregoing reasons, the judgment of the district court should be vacated and the case remanded for further proceedings. The district court has not yet ruled on whether Javanzad had a disability. We urge this Court to hold that, based on the existing record, the EEOC has already raised a jury question regarding that point. In the alternative, we ask that the Court remand with instructions for the district court to consider the admissibility of the expert evidence pertaining to that issue.

Respectfully submitted,

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March 12, 2026

## STATEMENT REGARDING ORAL ARGUMENT

The EEOC requests oral argument. This appeal raises issues that are critical to the EEOC's enforcement efforts, including an employer's responsibilities under the ADA when the employee seeking a reasonable accommodation does not yet have a diagnosis. The Court's articulation of what an employee must do to notify an employer of a disability and to request a reasonable accommodation is likely to have wide-ranging impact. The appeal is also fact-intensive, requiring close examination of the record. The EEOC would welcome the opportunity to assist the Court in resolving these issues correctly.

# **ADDENDUM**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Daniel D. Domenico**

Civil Action No. 1:23-cv-02456-DDD-MEH

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

A&A APPLIANCE, INC. d/b/a  
APPLIANCE FACTORY OUTLET, INC.,

Defendant.

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**ORDER ON MOTIONS**

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Plaintiff Equal Employment Opportunity Commission and Defendant A&A Appliance have both moved for summary judgment and to strike or exclude the testimony of certain experts in an employment-disability dispute. Because Plaintiff cannot make a prima facie case that Defendant was aware of a disability or a request for accommodation, the case fails as a matter of law. Defendant's motion for summary judgment is therefore granted and the expert motions are moot.

**BACKGROUND**

Karima Javanzad was employed by Defendant A&A Appliance, Inc. from February 2019 to June 2020. Doc. 128 at 2; Doc. 140 at 2. In April 2020, Ms. Javanzad requested a twelve-week leave of absence under the Family Medical Leave Act. Doc. 21 at 6; Doc. 140 at 2. The reasons for Ms. Javanzad's request appear to have varied but included either contracting COVID-19 (Doc. 21 at 6), caring for her son with COVID-19 or pneumonia (Doc. 21 at 6; Doc. 131 at 3–4), or ailing from a

gastrointestinal disorder (Doc. 21 at 8). On April 6, 2020, Ms. Javanzad was granted retroactive leave from March 15 to June 7. Doc. 21 at 6; Doc. 129-1 at 2; Doc. 129-6 at 2. Throughout May and early June, Ms. Javanzad communicated with Defendant in a series of emails, phone calls and text messages regarding the details of her leave, when it would expire, and whether her leave could be extended. Doc. 128 at 2; Doc. 140 at 2–3. On June 10, Defendant sent a letter to Ms. Javanzad informing her that she was terminated for failing to return to work following the expiration of her FMLA leave. Doc. 128 at 2; Doc. 140 at 3; Doc. 129-6 at 2–3. The letter also stated that though Defendant provided Ms. Javanzad an opportunity to extend her leave “if the triggering condition for FMLA was extended by [her] medical provider,” it could not grant her additional leave for her gastrointestinal disorder, which was unrelated to COVID-19. Doc. 128 at 2; Doc. 140 at 3.

In response to Defendant’s termination, in December 2020 Ms. Javanzad filed a charge with Plaintiff stating Defendant discriminated against her based on her disability and in retaliation for requesting a reasonable accommodation. Doc. 128 at 3; Doc. 140 at 3. After investigating the charge, Plaintiff sent Defendant a Letter of Determination stating it found reasonable cause to believe Defendant discriminated against Ms. Javanzad because of her disabilities and inviting it to engage in conciliation. Doc. 128 at 3–4; Doc. 140 at 3–4. When conciliation between the parties failed, Plaintiff filed the current action against Defendant alleging violations of the Americans with Disabilities Act, including failing to accommodate her disabilities, terminating her because of her disabilities (disparate treatment), and retaliating against her after she requested reasonable accommodations. Doc. 21 at 8–12. Following discovery, Plaintiff moved for partial summary judgment on twelve of Defendant’s affirmative defenses, Doc. 128, while Defendant moved for summary judgment on all of Plaintiff’s ADA claims. Doc. 131.

## LEGAL STANDARD

A district court must grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party moving for summary judgment bears the burden of demonstrating that no genuine dispute of material fact exists. *Adamson v. Multi Cmty. Diversified Servs., Inc.*, 514 F.3d 1136, 1145 (10th Cir. 2008). A fact is material if it could affect the outcome of the suit under the governing law, and a factual dispute is genuine if a rational jury could find for the nonmoving party on the evidence presented. *Id.* If a reasonable juror could not return a verdict for the nonmoving party, summary judgment is proper, and there is no need for a trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

In deciding whether the moving party has carried its burden, courts do not weigh the evidence and instead must view it and draw all reasonable inferences from it in the light most favorable to the nonmoving party. *Adamson*, 514 F.3d at 1145; *Scott v. Harris*, 550 U.S. 372, 378 (2007). But a nonmovant’s unsupported conclusory allegations or mere traces of evidence are not sufficient to demonstrate a genuine factual dispute. *Maxey v. Rest. Concepts II, LLC*, 654 F. Supp. 2d 1284, 1291 (D. Colo. 2009); *Scott*, 550 U.S. at 380 (“The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.”).

## DISCUSSION

### I. Defendant’s Motion for Summary Judgment (Doc. 131)

Defendant moves for summary judgment on all of Plaintiff’s claims arguing there is no evidence Ms. Javanzad had a qualifying disability under the ADA, that she never provided notice of or requested a

reasonable accommodation, and that her termination came in response to her choosing not to return to work. Doc. 131 at 9–11, 13–16, 18–19. Plaintiff contends summary judgment is not appropriate because disputes of material fact exist for each of its claims. Doc. 142 at 15, 20, 24. I agree with Defendant.

Plaintiff's first claim contends Defendant discriminated against Ms. Javanzad in violation of the ADA by failing to accommodate her disability. An employer violates the ADA by failing to make reasonable accommodations to the known physical or mental disabilities of an otherwise qualified individual with a disability, unless such accommodations would pose an undue hardship on the employer. 42 U.S.C. § 12112(b)(5)(A); *Punt v. Kelly Servs.*, 862 F.3d 1040, 1048 (10th Cir. 2017). Unlike a disparate-treatment claim, a failure-to-accommodate claim does not require proof of discriminatory animus—any failure to provide reasonable accommodations to an otherwise-qualified individual will be sufficient. *Id.* at 1048.

Under the Tenth Circuit's modified<sup>1</sup> burden-shifting framework for a failure-to-accommodate claim, an employee must first make a prima facie case that she (1) is disabled, (2) is otherwise qualified, and (3)

<sup>1</sup> The usual *McDonnell Douglas* framework is inapplicable to a failure-to-accommodate claim because “Congress has already determined that a failure to offer a reasonable accommodation to an otherwise qualified disabled employee is unlawful discrimination,” and so a court does not need “to probe the subjective intent of the employer.” *Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1178 n. 12 (10th Cir. 1999) (en banc) (emphasis in original). Accordingly, the Tenth Circuit has adopted a modified burden-shifting framework to assess such claims, not to decide what inferences the jury can draw about an employer's intent, as in a typical *McDonnell Douglas* case, but “to provide a useful structure by which the district court, when considering a motion for summary judgment, can determine whether the various parties have advanced sufficient evidence to meet their respective traditional burdens to prove or disprove the reasonableness of the accommodations offered or not offered.” *Id.*

requested a plausibly reasonable accommodation. *Punt*, 862 F.3d at 1050. “Once the employee produces evidence sufficient to make a facial showing on ... her prima facie case, the burden of production shifts to the employer to present evidence either (1) conclusively rebutting one or more elements of plaintiff’s prima facie case or (2) establishing an affirmative defense, such as undue hardship or one of the other affirmative defenses available to the employer.” *Smith*, 180 F.3d at 1179. “If the employer does either of the above, summary judgment will be appropriate for the employer unless the employee then presents evidence establishing a genuine dispute regarding the affirmative defenses and/or rehabilitates any challenged elements of ... her prima facie case sufficiently to establish at least a genuine dispute of material fact as to such challenged elements.” *Id.*

To succeed on its failure-to-accommodate claim, therefore, Plaintiff must present evidence that Ms. Javan zad requested an accommodation based on a disability. *See Edmonds-Radford v. Southwest Airlines, Co.*, 17 F.4th 975, 992 (2021) (citing *Punt*, 862 F.3d at 1048 (“The employer must of course know of the employee’s disability and of the accommodation the employee wishes to receive in order to have any responsibility for providing such an accommodation.”)). Plaintiff has not met this burden.

Neither party disputes the below facts:

- Ms. Javan zad requested leave from work on March 17, 2020 due to her son’s illness. Doc. 131 at 2–3; Doc. 142 at 1.
- While on leave to care for her son, Ms. Javan zad also became sick and suspected she had contracted COVID-19. She informed Defendant on March 26 and 30 that she went to the emergency room several times but no tests for COVID-19 were available. Doc. 131-6 at 5.
- On April 5, Ms. Javan zad submitted paperwork to Defendant requesting FMLA leave based on her suspicion of contracting

COVID-19. Doc. 131-10 at 4.

- On April 6, 2020, Ms. Javanзад was granted retroactive leave from March 15 to June 7. Doc. 21 at 6; Doc. 129-1 at 2; Doc. 129-6 at 2.
- On April 17, Ms. Javanзад emailed Defendant a note from her primary care provider stating she “may return to full duty immediately with no restrictions.” 131-14 at 2–3.
- On April 19, Ms. Javanзад emailed Defendant to say she could not return to work as planned due to childcare issues. Doc. 131-6 at 2.
- On April 21, Ms. Javanзад applied for unemployment benefits, stating she did not have a disability, her leave of absence was not due to her health, but also noting she and her family had COVID-19. 131-17 at 6, 8.
- On April 21, Ms. Javanзад informed Defendant she would return to work on May 11. Defendant noted that her leave would extend until May 22. Doc. 131-19 at 2.
- On May 12, Ms. Javanзад informed Defendant she was not feeling well and that her doctor scheduled an endoscopy the following week. She also asked how much FMLA leave she had remaining and “if I used the whole 12 weeks can I extend it?” Doc. 131-21 at 2.
- On May 12, Ms. Javanзад asked her primary care physician to draft a note to excuse her from work because she “still [didn’t] feel good,” *see* Doc. 131-22 at 6, which was completed the following day. Doc. 131-24 at 3. This note was not given to Defendant until June 1. Doc. 131-24 at 2–3.
- On May 18, Ms. Javanзад asked her primary care physician to complete a Medical Statement that included, among other information, an affirmation that she was able to return to work so she could “continue receiving unemployment.” Doc. 131-11 at 22.
- On June 1, in response to inquires from Defendant, Ms. Javanзад emailed her doctor’s note to Defendant for the first time, stated her endoscopy was scheduled June 9 (the day after her expected return to work), and asked “if the FMLA is over and I needed more time, what’s my options?” Doc. 131-24 at 2.
- On June 2, 4, 5, Defendant called and texted Ms. Javanзад requesting a return call. Doc. 131 at 6; Doc. 142 at 4–5.
- On June 2, Defendant provided her May 13 doctor’s note to the Colorado Department of Unemployment and stated she did not

“have any [work] restrictions” but noting her difficulty breathing due to COVID and that she had to attend an endoscopy on June 9. Doc. 142 at 4–5.

- On June 8, Ms. Javanzad did not return to work as expected and instead emailed Defendant asking “if I can go on leave of absence since today is the last day for the FMLA.” Doc. 131-29 at 2.
- On June 9, Defendant informed Ms. Javanzad by email that she had exhausted her FMLA leave and requested that she call to discuss her held-open position. *Id.*
- Ms. Javanzad did not respond to Defendant’s June 9 email. Doc. 131 at 7; 142 at 5.
- Prior to her June 9 endoscopy, Ms. Javanzad was never tested and did not receive confirmation that she contracted COVID-19. Doc. 142 at 6.
- On June 10, Ms. Javanzad was terminated by email with an attached letter for failing to return to work. Doc. 131-30 at 2–4.

Based on the above and Plaintiff’s response, it’s not clear if Ms. Javanzad’s disability was COVID-19 (Doc. 142 at 10, 11, 13), vocal cord paralysis (Doc. 142 at 10, 12, 13), or gastritis (Doc. 142 at 7). Given the lack of a formal diagnosis until after she was terminated (June 17—gastritis, *see* Doc. 131-23 at 14) and Ms. Javanzad’s inconsistent representations regarding her ability to return to work, *see supra*, Defendant cannot be found to have been on notice of a disability that required accommodation under the ADA. *See Robertson v. Las Animas Cnty. Sheriff’s Dep’t*, 500 F.3d 1185, 1196 (10th Cir. 2007) (“when an individual’s disability is not obvious, the individual must inform its employer of the disability before the employer can be held liable under the ADA for failing to provide a reasonable accommodation”); *see also Nguyen v. City & Cnty. of Denver*, 286 F. Supp. 3d 1168, 1184 (D. Colo. 2017) (same); *see also Burns v. City of Columbus, Dep’t of Pub. Safety, Div. of Police*, 91 F.3d 836, 844 (6th Cir. 1996) (explaining that if the plaintiff presented no evidence to contradict that the employer was unaware of a disability and if the disability was not diagnosed until after termination, a prima

facie case of discrimination cannot be made).

But even assuming Ms. Javanzad was disabled by contracting COVID-19, Plaintiff still fails to make a prima facie case for failure to accommodate. “[B]efore an employer’s duty to provide reasonable accommodations ... is triggered under the ADA, the employee must make an adequate request,” making clear that she wants assistance for her disability.” *E.E.O.C. v. C.R. England*, 644 F.3d 1028, 1049 (10th Cir. 2011); see also *Beck v. Univ. of Wis. Bd. of Regents*, 75 F.3d 1130, 1135 (7th Cir. 1996) (“An accommodation is something concrete—some specific action required of the employer.”). “The request for accommodation must be sufficiently direct and specific, giving notice that [the employee] needs a special accommodation.” *C.R. England*, 644 F.3d at 1049 (internal quotation marks omitted). Ms. Javanzad never made an explicit request for an accommodation from Defendant—even for an additional leave of absence—until after her FMLA leave expired. See Doc. 131-29 at 2. Also, Ms. Javanzad’s inquiries about her remaining leave time and options following FMLA leave expiration were insufficient to establish a recognized accommodation request. See Doc. 131-21 at 2; Doc. 131-24 at 2; *C.R. England, Inc.*, 644 F.3d at 1049 (affirming summary judgment for employer and explaining “the employer must know of both the disability and the employee’s desire for accommodations for that disability”); *Punt*, 862 F.3d at 1050 (same); see also *Edmonds-Radford*, 17 F.4th 975, 992–93 (10th Cir. 2021) (affirming summary judgment for employer on the ground that a request for more training was an insufficient request for accommodation because “she must have also informed [her employer] that the request [] was made to accommodate a disability.”). And Ms. Javanzad never provided Defendant any details about her expected leave of absence or when it might conclude. Though a request for leave may be a reasonable accommodation under the ADA, such a request is not reasonable “unless the employee provides an expected duration of

her impairment.” *Freeman v. City of Cheyenne*, No. 23-8022, 2024 WL 464069, at \*5 (10th Cir. Feb. 7, 2024) (affirming summary judgment for employer where employee requested additional leave after her FMLA but failed to provide the expected duration of her impairment); *see also Cassie v. City & Cnty. of Denver*, No. 20-CV-02952-MEH, 2023 WL 5507788, at \*23–24 (D. Colo. 2023) (expected duration is necessary to “determine whether an employee will be able to perform the essential functions of the job in the near future and therefore whether the leave request is a ‘reasonable’ accommodation”); *Punt v. Kelly Servs.*, No. 14-CV-02560-CMA-MJW, 2016 WL 67654, at \*9 (D. Colo. 2016) (employee “failed to state how far into the future her treatment would last, how much time away from work any radiation session would take, and how much time, if any, the additional appointments and tests may take”).

Plaintiff’s second and third claims (disparate treatment and retaliation) fail for the same reasons. To survive summary judgment on an ADA disparate treatment claim, a plaintiff must raise genuine issues of material fact regarding whether she (1) had a disability; (2) was otherwise qualified, with or without reasonable accommodation, to perform the essential functions of her job; and (3) was fired because of her disability. *Hawkins v. Schwan’s Home Serv., Inc.*, 778 F.3d 877, 883 (10th Cir. 2015). As discussed above, Plaintiff cannot show Ms. Javanzad put Defendant on notice of a disability that required accommodation under the ADA. *See Edmonds-Radford*, 17 F.4th at 992 (affirming summary judgment on disparate treatment claim because decision-making employers had no knowledge of employee’s disability before terminating her).

Regarding Plaintiff’s retaliation claim, as with its other claims, it is Plaintiff’s burden to establish a prima facie case. *Foster v. Mountain Coal Co.*, 830 F.3d 1178, 1186 (10th Cir. 2016). To do so, Plaintiff must

prove (1) Ms. Javanзад was engaged in a protected activity, (2) she was subjected to an adverse employment action, and (3) there was a causal connection between the protected activity and the adverse action. *Id.* at 1187. To qualify as protected activity, “a plaintiff must show an adequate request for an accommodation.” *Winston v. Ross*, 725 F. App’x 659, 664 (10th Cir. 2018) (citing *Foster*, 830 F.3d at 1187). As noted above, Plaintiff has not provided sufficient evidence to allow a reasonable juror to conclude that Ms. Javanзад made a disability-based accommodation request. While there is no doubt Defendant knew Ms. Javanзад had health issues<sup>2</sup>, “it is not the employer’s responsibility to anticipate the employee’s needs and affirmatively offer accommodation” if an employee does not make known her disability and request assistance. *Dinse*, 541 Fed.Appx. at 890 (citing *Koessel v. Sublette Cnty. Sheriff’s Dep’t*, 717 F.3d 736, 745 (10th Cir. 2013)). This necessarily dooms Plaintiff’s retaliation claim so it fails as a matter of law.<sup>3</sup>

## II. Expert Motions (Docs. 102, 103, 104, 133)

The parties’ motions to strike and exclude testimony from disclosed experts relate exclusively to the nature of Ms. Javanзад’s disability and

<sup>2</sup> Plaintiff contends this evidence creates a genuine issue of material fact regarding Defendant’s notice of a disability. *See* Doc. 142 at 15–21. But that is conclusory and against established law, *viz.*, that Ms. Javanзад’s inquiries into her options for additional leave qualify as a request for a disability-related accommodation under the ADA. *See Dinse v. Carlisle Foodservice Prods. Inc.*, 541 Fed.Appx. 885, 890 (10th Cir. 2013) (“it is the request *for an accommodation* for an employee’s disability that triggers an employer’s duty to engage in the interactive process, not an awareness of a disability that may (or may not) necessitate an accommodation.” (emphasis in original)).

<sup>3</sup> Since all of Plaintiff’s claims fail as a matter of law, its partial motion for summary judgment regarding Defendant’s affirmative defenses is moot. Also, Plaintiff’s motion for leave to file a surreply in opposition to Defendant’s motion for summary judgment, Doc. 161, is granted, and I have considered it.

when she could have returned to work, not whether Ms. Javanzad communicated a disability or a request for accommodation to Defendant. The expert testimony, then, does not bear on the dispositive issue in the case. *See supra* at I. Accordingly, the parties' expert motions are moot.

### CONCLUSION

It is ORDERED that:

Defendant's Motion for Summary Judgment, **Doc. 131**, is **granted**;

Plaintiff's Motion for Partial Summary Judgment, **Doc. 128**, is **moot**;

Plaintiff's Motion for Leave to File a Surreply, **Doc. 161**, is **granted**;

Defendant's Motion to Strike, **Doc. 133**, is **moot**;

Plaintiff's Motion to Exclude Testimony, **Doc. 102**, is **moot**;

Defendant's Motion to Exclude Testimony, **Doc. 103**, is **moot**;

Defendant's Motion to Exclude Testimony, **Doc. 104**, is **moot**; and  
the Clerk of Court is directed to close this case.

DATED: September 3, 2025

BY THE COURT:



\_\_\_\_\_  
Daniel D. Domenico  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:23-cv-02456-DDD-CYC

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

A&A APPLIANCE, INC. d/b/a  
APPLIANCE FACTORY OUTLET, INC.,

Defendant.

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FINAL JUDGMENT

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In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is entered.

Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Order on Motions, filed September 3, 2025, by the Honorable Daniel D. Domenico, United States District Judge, and incorporated herein by reference as if fully set forth, it is hereby

ORDERED that judgment is hereby entered in favor of Defendant, A&A Appliance, Inc., d/b/a Appliance Factory Outlet, Inc., and against Plaintiff, Equal Employment Opportunity Commission, on Defendant's Motion for Summary Judgment.

It is further

ORDERED that plaintiff's complaint and action are dismissed without prejudice.

DATED at Denver, Colorado this 3rd day of September, 2025.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

*s/ Robert R. Keech*

\_\_\_\_\_  
Robert R. Keech,  
Deputy Clerk

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) because it contains 9,655 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Book Antiqua 14 point.

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March 12, 2026

## CERTIFICATE OF PRIVACY REDACTIONS

I certify that all required privacy redactions have been made, as required by 10th Cir. R. 25.5 and ECF User Manual, Section II, Part J(a).

s/Gail S. Coleman

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March 12, 2026

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## CERTIFICATE OF SERVICE

I certify that on this 12th day of March, 2026, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I also certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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