UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

BRADLEY SEFF,

Plaintiff,

vs.

BROWARD COUNTY, a political subdivision of the state of Florida,

Defendant.
_____/

COMPLAINT - CLASS ACTION

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, BRADLEY SEFF, sues the Defendant, BROWARD COUNTY, a political subdivision of the State of Florida, and for his cause of action, declares and avers as follows:

PRELIMINARY STATEMENT

1. This action seeks declaratory, injunctive and equitable relief, equitable and compensatory damages, costs and attorney's fees, in connection with Broward County's "voluntary" wellness program, which program violates the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq*., as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12102 et seq. (hereinafter referred to as "the ADA").

JURISDICTION

2. This action arises under the ADA. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) and 42 U.S.C. § 12117.

3. All administrative requirements have been exhausted and a Notice of Right to Sue was issued by the United States Department of Justice on or about July 26, 2010,

based upon a charge of discrimination timely filed with the Equal Employment Opportunity Commission.

VENUE

4. Venue is proper in Broward County, Florida because the unlawful employment action giving rise to this lawsuit occurred in Broward County, Florida.

PARTIES

5. Plaintiff, BRADLEY SEFF (hereinafter referred to as "Plaintiff" or "SEFF"), is a citizen and resident of Broward County, Florida, within the jurisdiction of this Court, and otherwise *sui juris* in all respects.

6. Defendant, BROWARD COUNTY (hereinafter referred to as "Defendant" or "BROWARD"), is a political subdivision of the State of Florida and within the jurisdiction of this Court.

7. At times material hereto, SEFF was, and continues to be, an "employee" within the meaning of the ADA.

8. At times material hereto, BROWARD was, and continues to be, an "employer" within the meaning of the ADA.

FACTUAL ALLEGATIONS

9. Since approximately February 4, 2002, SEFF has been employed by BROWARD as a Real Time Reporter.

10. In or about October 2009, BROWARD disseminated information about its open enrollment process for 2010 health insurance benefits. Part of this open enrollment process included a "voluntary" wellness program, which required participating employees to complete a biometric screening (finger stick for glucose and

cholesterol) and online Health Risk Assessment.

11. Broward's stated objective of the biometric screening and Health Risk Assessment was to provide its employees an awareness of how to live and/or achieve a healthier lifestyle.

12. While BROWARD promotes its wellness program as "voluntary," if an employee enrolled in BROWARD's health insurance chooses not to participate in the biometric screening *and* Health Risk Assessment, a $20 bi-weekly charge is incurred by the non-participating employee, in addition to the bi-weekly premium the employee pays for health insurance.

13. SEFF did not participate in the "voluntary" wellness program.

14. As of June 2010, BROWARD began deducting twenty dollars ($20.00) from SEFF's pay as a result of his non-participation in the "voluntary" wellness program.

15. SEFF has suffered damages as a result of BROWARD's above-described surcharge based on SEFF's non-participation in the "voluntary" wellness program.

16. SEFF has retained the undersigned counsel

CLASS ACTION ALLEGATIONS

17. SEFF, pursuant to Rule 23 of the Federal Rules of Civil Procedure, seeks to have this action maintained as a class, comprised of all current and former employees of Defendant who are/were employed by BROWARD and enrolled in its health insurance since the inception of the 2009-2010 "voluntary" wellness program (the "Rule 23 Class"). Alternatively, SEFF, pursuant to Rule 23 of the Federal Rules of Civil Procedure, seeks to have this action maintained as a class, comprised of all current and former employees of Defendant who are/were employed by BROWARD

and enrolled in its health insurance since the inception of the 2009-2010 "voluntary" wellness program, and who have incurred the twenty dollar ($20.00) charge for failing to participate in the biometric screening *and* Health Risk Assessment (the "alternative Rule 23 Class").

18. Upon information and belief, there are over 5,000 persons in the Rule 23 Class. Additionally, upon information and belief, there are approximately 267 persons in the alternative Rule 23 Class.

19. SEFF believes the larger class is appropriate since it is impossible to know whether and to what extent BROWARD employees participated in the "voluntary" wellness program out of fear of losing twenty dollars ($20.00) from their pay each and every pay period on a go-forward basis. An award of declaratory and injunctive relief, as well as compensatory damages, would be appropriately awarded to these individuals despite the lack of any surcharge (since they participated in the "voluntary" wellness program, although perhaps against their will).

20. The persons either in the Rule 23 Class or alternative Rule 23 Class are so numerous that joinder of all members is impractical.

21. There are questions of law and fact common either to the Rule 23 Class or alternative Rule 23 Class that predominate over questions solely affecting SEFF, including, but not limited to:

    a. Whether BROWARD's "voluntary" wellness program violates the ADA's proscription against making disability-related inquiries or conducting medical examinations;

    b. The nature and extent of the class-wide injury and the appropriate measure

of damages for either class; and

c. Whether declaratory and/or injunctive relief is warranted.

22. SEFF's claim for ADA discrimination is typical of the claims of the Rule 23 Class or alternative Rule 23 Class that he seeks to represent. SEFF and the members of the Rule 23 Class or alternative Rule 23 Class all are current and former employees of Defendant who are/were employed by BROWARD and enrolled in its health insurance since the inception of the 2009-2010 "voluntary" wellness program. Declaratory relief is particularly appropriate with respect to the Rule 23 Class or alternative Rule 23 Class.

23. SEFF will fairly and adequately represent and protect the interests of the Rule 23 Class or alternative Rule 23 Class.

24. SEFF has retained the undersigned counsel who is competent and experienced in complex class actions and in labor and employment law litigation.

25. A class action is superior to all other available methods for the fair and efficient adjudication of this claim, particularly in the context of a civil rights claim where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court.

26. The members of the Rule 23 Class or alternative Rule 23 Class have been damaged and are entitled to recovery as a result of Defendant's common and uniform practices, policies and procedures.

27. The expense and burden required in individual prosecution of this litigation may well exceed the relative damages suffered by any of the individual Rule 23 Class or alternative Rule 23 Class members.

28. Additionally, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in the inconsistent judgment about Defendant's practices.

COUNT I - DISABILITY DISCRIMINATION UNDER THE ADA

29. SEFF incorporates as if fully realleged herein paragraphs 1 through 28.

30. BROWARD's "voluntary" wellness program violates SEFF's rights under the ADA. Specifically, BROWARD's "voluntary" wellness program, which requires participating employees to complete a biometric screening (finger stick for glucose and cholesterol) and online Health Risk Assessment, and penalizes those employees who choose not to participate in the biometric screening and Health Risk Assessment by deducting twenty dollars ($20.00) bi-weekly from the non-participating employee's pay each and every pay period, violates the ADA's prohibition against medical examinations and disability-related inquiries, 42 U.S.C. §12112.

31. Defendant engaged in discriminatory acts and conduct against SEFF with malice and/or with reckless indifference to SEFF's rights under the ADA.

32. SEFF has suffered direct pecuniary losses as a result of BROWARD's above-described violations of the ADA.

33. SEFF has suffered, is now suffering, and will continue to suffer emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses as a direct result of BROWARD's discriminatory acts and conduct.

34. SEFF will suffer future pecuniary losses as a direct result of BROWARD's discriminatory acts and conduct.

35. SEFF has no plain, adequate, or complete remedy at law to redress the wrongs

alleged and is now suffering and will continue to suffer irreparable injury from his treatment by BROWARD unless BROWARD is enjoined by this Court.

WHEREFORE, Plaintiff, BRADLEY SEFF, individually and on behalf of the Rule 23 Class or alternative Rule 23 Class, prays that this Honorable Court:

A. Certify this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Designate SEFF as the representative of the Rule 23 Class or alternative Rule 23 Class and the undersigned counsel as counsel of record to the Rule 23 Class or alternative Rule 23 Class;

C. Declare BROWARD's conduct to be in violation of SEFF's civil rights;

D. Enjoin BROWARD from engaging in such conduct;

E. Award equitable damages in the form of back pay;

F. Award compensatory damages;

G. Award expenses, including reasonable attorney's fees; and

H. Grant such other and further relief as may be deemed just and proper in the premises.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated: August 10, 2010
Boca Raton, FL

Respectfully submitted,

s/ Daniel R. Levine

DANIEL R. LEVINE, ESQ.
Fla. Bar No. 0057861
E-mail: drlevine@sbwlawfirm.com
SHAPIRO, BLASI, WASSERMAN & GORA, P.A.
7777 Glades Road, Suite 400
Boca Raton, FL 33434
Telephone:(561) 477-7800
Facsimile:(561) 477-7722

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

BRADLEY SEFF,

(b) County of Residence of First Listed Plaintiff Broward
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Daniel R. Levine, Esquire, Shapiro Blasi Wasserman & Gora, P.A.
7777 Glades Road, Suite 400, Boca Raton, FL 33434
(561) 477-7800 - Main Number; (561) 477-7722 - Fax Number

DEFENDANTS

BROWARD COUNTY,

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: ☐ MIAMI- DADE ☐ MONROE ☑ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☑ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☒ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus-Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☐ YES ☑ NO

JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause **(Do not cite jurisdictional statutes unless diversity)**:

42 U.S.C. § 12101 (Americans With Disabilities Act of 1990)

LENGTH OF TRIAL via 3-4 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ 1,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE August 10, 2010

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFP _____

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

BRADLEY SEFF,

Plaintiff

v.

BROWARD COUNTY, a political subdivision of the state of Florida,

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

BROWARD COUNTY
c/o Mayor Ken Keechl
Broward County Governmental Center
115 S. Andrews Avenue
Room 412
Fort Lauderdale, FL 33301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel R. Levine, Esquire
Shapiro Blasi Wasserman & Gora, P.A.
7777 Glades Road
Suite 400
Boca Raton, FL 33434

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 08/10/2010

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: