

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
CIVIL ACTION NO. 1:21-cv-953**

EMILY BARTELL,)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	(Jury Trial Demanded)
GRIFOLS SHARED SERVICES NA,)	
INC., INTERSTATE BLOOD BANK)	
INC., and BIOMAT, USA, INC.,)	
)	
Defendants.)	
)	

INTRODUCTION

1. Plaintiff Emily Bartell is blind and uses a service animal for assistance with navigation. Ms. Bartell began donating plasma at Defendants’ donation center in Asheville, North Carolina in August 2019. Ms. Bartell donated plasma while accompanied by her service animal until December 2020, when Defendants suddenly told Ms. Bartell she could no longer be assisted by her service animal when donating plasma due to corporate policy.

2. Defendants utilize inaccessible check-in kiosks and refuse to provide Ms. Bartell with accessible formats of the information communicated and collected at its kiosks and other written communications. As a result, Ms. Bartell cannot

independently and privately complete necessary pre-donation paperwork as sighted donors can.

3. Defendants discriminate against Ms. Bartell by prohibiting her from being assisted by her service animal while donating plasma and failing to ensure effective communication with Ms. Bartell. Plaintiff brings this complaint to remedy Defendants' ongoing violations of Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

JURISDICTION AND VENUE

4. Plaintiff brings this action pursuant to Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 *et seq.* and Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794.
5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.
6. Venue is appropriate in the United States District Court for the Middle District of North Carolina pursuant to 28 U.S.C. § 1391(a) & (c) because Defendant Grifols Shared Services NA, Inc. maintains a principal place of business in Durham in the Research Triangle Park.
7. Venue is also appropriate in the United States District Court for the Middle District of North Carolina pursuant to 28 U.S.C. § 1391(d) because Defendant Biomat USA, Inc. operates plasma donation centers across the state, including one

in Winston-Salem, and has sufficient contacts to subject it to personal jurisdiction in this District.

PARTIES

8. Plaintiff Emily Bartell is a resident of Buncombe County, North Carolina.
9. Ms. Bartell is blind and a person with a disability as defined by the ADA and Section 504.
10. Ms. Bartell utilizes a service animal for wayfinding and to navigate her surroundings. The Seeing Eye, a philanthropic organization that breeds and trains service dogs for individuals who experience blindness, individually trained Ms. Bartell's service animal to perform skills and tasks to assist her.
11. Defendants Grifols Shared Services NA, Inc. ("Grifols"), Biomat USA, Inc. ("Biomat"), and Interstate Blood Bank, Inc. ("IBBI") are affiliated entities of the Grifols global healthcare company, "the largest collector of human plasma" in the world. See <https://www.grifols.com/en/from-donors-to-patients> (last visited Dec. 15, 2021).
12. Defendant IBBI, an affiliated entity of Defendant Biomat, a member of the Grifols family, operates the plasma donation center in Asheville, North Carolina where Ms. Bartell donates plasma.
13. Defendants' donation centers are open to the public and pay qualified customers for donating their plasma. Defendants offer the service of plasmapheresis – the

process of separating the fluid portion of human blood – and then pay their customers for their plasma.

14. Grifols uses the collected plasma as source material for medical research and medicine development. In 2020, the U.S. Department of Defense’s Joint Program Executive Office for Chemical, Biological, Radiological and Nuclear Defense (DoD-JPEO-CBRND) and the Biomedical Advanced Research and Development Authority (BARDA) within the U.S. Department of Health and Human Services collaborated with Grifols on COVID-19 treatments that use convalescent plasma or hyperimmune globulin and contributed \$12.7 million to the effort.
15. Defendants are programs or activities that are recipients of federal financial assistance.
16. In late 2020, Ms. Bartell was diagnosed with COVID-19. After she recovered, she enrolled in Defendants’ convalescent plasma program and continued donating plasma, which, on information and belief, was used by Defendants in partnership with the federal government to conduct research using convalescent plasma or hyperimmune globulin to identify and develop COVID-19 treatments. Ms. Bartell donated her convalescent plasma out of a desire to help others affected by the virus.

STATEMENT OF FACTS

Ms. Bartell’s Service Animal

17. Ms. Bartell is blind.

18. Ms. Bartell obtained her service animal, a golden retriever, from the Seeing Eye in 2015. The dog fulfills the same role in Ms. Bartell's life that functioning eyes play in that of a sighted person and is individually trained to help her navigate her surroundings, avoid barriers and hazards, and safely ambulate in the community.
19. Individuals who receive a service animal from the Seeing Eye complete a rigorous training process. Ms. Bartell spent more than three weeks at The Seeing Eye, where she was paired with her service animal, and the two of them were trained to work as a service animal team by a group of trainers.
20. Ms. Bartell's service animal assists her whenever she is out in the community, including at medical appointments. Ms. Bartell's service animal has accompanied her without incident to doctor's visits, dentist appointments, urgent care visits, and physical therapy appointments. Ms. Bartell has blood drawn every three months for testing, and her service animal is present through the entirety of those appointments.

Plasma Donation

21. Ms. Bartell began donating her plasma at Defendants' donation center located at 85 Tunnel Road, Asheville, NC in August 2019. She is a routine donor, donating typically once to twice a week for the past two years.
22. Grifols' website indicates that Defendant IBBI, an affiliated entity of Defendant Biomat, a member of the Grifols family, operates the Asheville plasma donation center.

23. When Ms. Bartell donates, she enters three separate areas. First, she enters a waiting area where donors check in and where sighted donors complete a pre-donation questionnaire at a kiosk. Next, she enters an area where a donation center employee takes the donor's vitals and approves the donor to donate that day. Because Ms. Bartell cannot use the inaccessible kiosks in the waiting area, she completes the pre-donation questionnaire at this stage. A nurse reads the pre-donation questionnaire to her and transcribes Ms. Bartell's oral response to the questionnaire. Finally, donors are taken to the plasma donation floor where the donation procedure takes place.
24. Ms. Bartell enters the plasma donation center in her street clothes and does not don a gown, gloves, hairnet, or shoe protectors. She does not wash her hands or take any infection control precautions at any stage of the plasma donation process.
25. Until December 24, 2020, Ms. Bartell had always been accompanied by her service animal through all three areas and the entire donation process without incident.

No Service Animals Allowed on the Plasma Donation Floor

26. On December 24, 2020, Ms. Bartell went to donate plasma accompanied by her service animal.
27. A plasma donation center employee Ms. Bartell knows as "Nurse Raleigh" approached Ms. Bartell and told her that, due to information the staff received at a recent company training, Ms. Bartell's service animal could no longer accompany

her on the plasma donation floor, the final and lengthiest step of the plasma donation process. However, “Nurse Raleigh” explained that Ms. Bartell’s service animal could accompany her in other areas of the donation center. Ms. Bartell attempted to show “Nurse Raleigh” resources about the ADA and service animals, but “Nurse Raleigh” reiterated that Ms. Bartell’s service animal could not accompany her on the plasma donation floor.

28. While Ms. Bartell donated that day, her service animal was placed in a room Ms. Bartell understands is set aside for training and a donation center employee accompanied Ms. Bartell to and from the donation floor.
29. After Ms. Bartell reunited with her service animal, Ms. Bartell noted that her service animal was acting differently and seemed anxious.
30. Ms. Bartell took her service animal to the veterinarian to have her symptoms inspected. The vet noted that the service animal’s symptoms were consistent with stress colitis, a condition brought on by animals being placed in stressful conditions.
31. Ms. Bartell returned to donate on January 5, 2021. Again, she was accompanied by her service animal. Again, she was informed that her service animal would not be permitted to accompany her on the plasma donation floor. The service animal was again placed in the training room while Ms. Bartell donated her plasma.

32. During this second separation, one of the plasma donation center employees, “Kate,” told Ms. Bartell that the service animal paced nervously while she was isolated in the training room.
33. That evening, the service animal refused to eat her dinner. She also experienced vomiting and diarrhea.
34. Separating Ms. Bartell from her service animal caused harm to the dog. Ms. Bartell depends on her service animal for assistance navigating safely; if the dog is anxious and cannot provide Ms. Bartell assistance or is less effective in providing her assistance, it places Ms. Bartell in danger. Out of concern for her safety and her service animal’s efficacy, Ms. Bartell stopped bringing her service animal with her when she donates plasma.
35. Ms. Bartell must instead rely on donation center staff to assist her and/or use a white cane to navigate her way through the donation center.
36. When Ms. Bartell uses a white cane, it is less effective than when she uses her service animal. When the cane makes contact with an obstacle such as a chair or edge of a doorway, it jabs Ms. Bartell in the stomach or ribs. Due to her disability, Ms. Bartell bruises easily and often ends up with multiple bruises when using the cane.
37. Additionally, the cane only alerts Ms. Bartell to obstacles on the ground and cannot alert her to hanging obstacles. For example, on one occasion Ms. Bartell went to donate plasma, Defendants placed a banner in such a way that it partially

obstructed half of a hallway through which donors travel. Because Ms. Bartell did not have her service animal, and her cane cannot alert her to hanging obstacles, Ms. Bartell collided with the banner.

38. Conversely, when Ms. Bartell is accompanied by her service animal, the dog leads her around all obstacles without Ms. Bartell coming into contact with the obstacles themselves. Ms. Bartell greatly prefers to navigate with the assistance of her service animal over a white cane.
39. On April 13, 2021, counsel for Ms. Bartell sent a letter to Defendants asserting Ms. Bartell's rights to be accompanied by her service animal throughout the plasma donation process and advising that it is unlawful to deny her access with her service animal.
40. In its reply letter dated May 11, 2021, Defendants' counsel stated that service animals cannot accompany handlers to the "secure, highly controlled, aseptic environment managed by professionally trained medical staff" that is the plasma donation floor.
41. Ms. Bartell enters and leaves the plasma donation floor in her street clothes without taking any infection control precautions such as donning a gown, gloves, hair net, shoe covers, hand washing, etc. Donors and staff are currently required to wear masks due to the COVID-19 pandemic but were not required to wear masks prior to the pandemic.

42. At least one other international plasma collection company explicitly allows service animals to accompany donors “throughout the donation process” CSL Plasma, Donor Accessibility, available at <https://www.csplasma.com/donor-accessibility> (last visited Dec. 2, 2021).
43. Guidance from the Centers for Disease Control (CDC) explains that there is no evidence that service animals pose any greater risk than humans of transmitting infections and that they should be allowed access to all care areas where additional precautions, such as donning gowns, are not taken. CDC Guidelines for Environmental Infection Control in Health-Care Facilities at 123 (2003, last updated July 2019). The CDC guidance also explicitly states that service animals may not be excluded in healthcare settings simply because staff are able to perform the same services as the animal. CDC Guidelines at 124.
44. Ms. Bartell is harmed by Defendants’ continuing failure to permit her to be accompanied by her service animal throughout the plasma donation process.

Ms. Bartell’s Requests for Effective Communication

45. Prior to donating plasma, Ms. Bartell must complete pre-screening questionnaires and informed consent forms.
46. Donors complete these forms on electronic kiosks located in the waiting room area of the plasma donation center.
47. Ms. Bartell cannot see the kiosk screen and cannot utilize it to provide the information Defendants require.

48. In September 2020, Ms. Bartell asked Defendants' employee, "Taylor," for an accessible electronic copy of the pre-screening questionnaires and informed consent forms so she could privately and independently review and provide the information Defendant requires of donors. Ms. Bartell has yet to receive accessible formats of Defendants' print materials.
49. Since September 2020, Ms. Bartell has repeated her request for accessible formats of Defendants' print materials, in either Braille or accessible electronic format. Defendants have never provided Ms. Bartell with accessible formats of these materials.
50. Instead, each time Ms. Bartell donates, she must wait for a donation center employee to become available, read the information out loud to her, to which Ms. Bartell then provides oral answers. It typically takes Ms. Bartell 20-30 minutes to provide information that sighted donors provide in less than five minutes using the kiosks.
51. Counsel for Ms. Bartell reiterated her request for accessible materials in correspondence to Defendants on April 13, 2021, and May 28, 2021. These letters also informed Defendants that failing to provide Ms. Bartell with effective, accessible communication was unlawful. Defendants have not addressed Ms. Bartell's continuing requests for effective communication or provided her with accessible formats of its written communications.

52. Ms. Bartell is harmed by Defendants' continuing failure to provide her with accessible formats of its written communications. It takes Ms. Bartell significantly more time to donate plasma compared to sighted donors. Additionally, Ms. Bartell is forced to rely on donation center staff to complete the pre-donation paperwork and to orally provide private information within earshot of other donors, whereas other donors may complete the process privately and independently. It is an affront to her independence and dignity, and the cumbersome process of filling out the required forms in this manner makes her plasma donation experience substantially different from, and more time-consuming than, that of sighted donors.

CLAIMS FOR RELIEF

COUNT I

Violations of Title III of the Americans with Disabilities Act 42 U.S.C. §§ 12181 *et seq.*

53. Plaintiff adopts and restates the allegations set forth in paragraphs 1-52 of this complaint as if set forth fully herein.
54. Ms. Bartell is substantially limited in the major life activity of seeing and is a person with a disability subject to the protections of the ADA. 42 U.S.C. § 12102.
55. A "place of public accommodation" includes places such as a "professional office of a health care provider, hospital, or other service establishment." 42 U.S.C. § 12181(7)(F).

56. Defendants' plasma donation centers are service establishments and places of public accommodation subject to the provisions of the ADA.

Defendants Unlawfully Exclude Service Animals

57. Defendants are prohibited from discriminating against individuals with disabilities and may not deny services, or provide unequal or separate services, facilities, privileges, advantages, or accommodations based on an individual's disability. *See* 42 U.S.C. § 12182.

58. That Defendants will permit individuals accompanied by their service animal access to all areas where plasma donors are permitted to go is presumed. *See* 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(c).

59. Defendants have a policy that prohibits individuals to be accompanied by their service animal in all areas donors are allowed to go and/or refuse to reasonably modify their policies to permit the use of service animals by individuals with disabilities during plasmapheresis in violation of the ADA. *See* 28 C.F.R. § 36.302(a) & (c)(1).

60. Defendants have not conducted an individualized assessment regarding the alleged risk Ms. Bartell's specific service animal poses if she were present on the plasma donation floor. *See* 28 C.F.R. § 36.301(b).

61. Defendant IBBI discriminates against Ms. Bartell and unlawfully denied her access to the donor floor while accompanied by her service animal or failed to

make modifications to policies, practices, and procedures to permit her to be accompanied by her service animal in violation of the ADA.

62. Defendant Biomat failed to ensure that its affiliate, Defendant IBBI, complies with Title III of the ADA or rectify Defendant IBBI's discrimination. *See* 28 C.F.R. § 36.202.
63. Defendant Grifols failed to ensure that its affiliates, Defendant IBBI and Defendant Biomat, comply with Title III of the ADA or rectify Defendants IBBI and Biomat's discrimination. *See* 28 C.F.R. § 36.202.
64. As a result of Defendants' actions and omissions, Ms. Bartell has suffered and will continue to suffer irreparable harm: she has experienced discrimination and unequal access to Defendants' programs, services, or activities. If there is no change in the status quo, Ms. Bartell will continue to be discriminated against.
65. Unless restrained from doing so, Defendants will continue to violate the ADA.
66. Unless enjoined, Defendants' conduct will continue to inflict injuries for which Ms. Bartell has no adequate remedy at law.

Defendants' Failure to Provide Effective Communication

67. Prohibited discrimination by Defendants includes the failure to provide effective communication by "tak[ing] those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services...." 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(a).

68. Auxiliary aids and services include “Brailled materials and displays...large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.” 28 C.F.R. § 36.303(b)(2).
69. Auxiliary aids and services must be provided in “accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” 28 C.F.R. § 36.303(c)((1)(ii).
70. Auxiliary aids and services must also be provided in a manner that affords individuals with disabilities a “like experience” afforded to individuals without disabilities, “including services offered through visual and electronic means like [] self-service kiosks.” Statement of Interest of the United States of America, *Vargas v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 2:19-cv-08108-DMG-MRW at *9 (D. Cal. Sept. 20, 2021).
71. Defendant IBBI discriminates against Ms. Bartell and other blind donors by communicating and collecting information via inaccessible electronic kiosks in violation of the ADA.
72. Defendant IBBI discriminates against Ms. Bartell by failing to provide her with her requested alternative accessible format of its print communications and instead requiring her to provide pre-donation information orally and in manner that denies her independence and privacy in violation of the ADA.

73. Defendant Biomat failed to ensure that its affiliate, Defendant IBBI, complies with Title III of the ADA or rectify its discrimination. *See* 28 C.F.R. § 36.202.
74. Defendant Grifols failed to ensure that its affiliates, Defendant IBBI and Defendant Biomat, comply with Title III of the ADA or rectify Defendants IBBI's and Biomat's discrimination. *See* 28 C.F.R. § 36.202.
75. As a result of Defendants' actions and omissions, Ms. Bartell has suffered and will continue to suffer irreparable harm: she has experienced discrimination and unequal access to Defendants' programs, services, or activities. If there is no change in the status quo, Ms. Bartell will continue to be denied her right to equally effective communication.
76. Unless restrained from doing so, Defendants will continue to violate the ADA.
77. Unless enjoined, Defendants' conduct will continue to inflict injuries for which Ms. Bartell has no adequate remedy at law.

COUNT II
Violations of Section 504 of the Rehabilitation Act
29 U.S.C. § 794

78. Plaintiff adopts and restates the allegations set forth in paragraphs 1-52 of this complaint as if set forth fully herein.
79. Ms. Bartell is substantially limited in the major life activity of seeing and is an individual with a disability subject to the protections of Section 504 and is otherwise qualified for nondiscriminatory services from Defendants. *See* 29 U.S.C. § 794(a); 45 C.F.R. § 84.3.

80. Federal financial assistance is the receipt of funds, services of federal personnel, and/or the receipt of property or an interest in property from the federal government. 45 C.F.R. § 84.3(h).
81. Defendants received federal funding and the services of federal personnel in developing COVID-19 treatments using plasma donated by individual donors recovering from COVID-19, including Ms. Bartell, and is subject to Section 504.
82. In enacting Section 504, Congress established “the policy of the United States” that all entities receiving federal funding must execute their activities in ways that demonstrate “respect for the privacy, rights, and equal access” of individuals with disabilities. 29 U.S.C. § 701(c)(2).
83. Section 504 states: “no otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).
84. Discrimination by a recipient of federal funds includes limiting an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others based on their disability; failing to modify policies, practices, and procedures to permit the use of service animals; and failing to provide appropriate auxiliary aids to ensure effective communication to persons with disabilities. *See* 29 U.S.C. § 794(a); 45 C.F.R. § 85.21(b)(1)(vi); 45 C.F.R. § 85.51(a)(1)(i); 32 C.F.R. § 56.4; 32 C.F.R. § 56.8(a)(1) & (a)(2)(v) & (a)(11).

85. Defendant IBBI discriminates against Ms. Bartell and unlawfully denied her access to the donor floor while accompanied by her service animal or failed to make modifications to policies, practices, and procedures to permit her to be accompanied by her service animal in violation of Section 504.
86. Defendant IBBI utilizes inaccessible kiosks to communicate with donors and otherwise fails to ensure effective communication with Ms. Bartell in violation of Section 504.
87. Defendant Biomat failed to ensure that its affiliate, Defendant IBBI, complies with Section 504 or rectify Defendant IBBI's discrimination. *See* 45 C.F.R. § 84.4(b)(1).
88. Defendant Grifols failed to ensure that its affiliates, Defendant IBBI and Defendant Biomat, comply with Section 504 or rectify Defendants IBBI and Biomat's discrimination. *See* 45 C.F.R. § 84.4(b)(1).
89. As a result of Defendants' actions and omissions, Ms. Bartell has suffered and will continue to suffer irreparable harm: she has experienced discrimination and unequal access to Defendants' programs, services, or activities. If there is no change in the status quo, Ms. Bartell will continue to be denied her rights to be accompanied by her service animal and to equally effective communication.
90. Unless restrained from doing so, Defendants will continue to violate Section 504.
91. Unless enjoined, Defendants' conduct will continue to inflict injuries for which Ms. Bartell has no adequate remedy at law.

92. Defendants' refusal to allow Ms. Bartell access while accompanied by her service animal and failure to communicate with blind donors in an equally effective manner is intentional or with deliberate indifference to Ms. Bartell's protected rights. Counsel for Ms. Bartell informed Defendants that they were violating Ms. Bartell's rights by denying her access with her service animal and failing to provide equally effective communication and offered to work collaboratively to fix the problem. Defendants declined the offer to work collaboratively regarding its service animal policies, never responded to Ms. Bartell's requests for effective communication, and continue to violate the law.
93. Ms. Bartell is harmed by Defendants' discriminatory actions and is entitled to compensatory damages, as well as reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

1. A declaration that Defendants violate Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by denying Plaintiff the right to be accompanied by her service animal at all times while donating plasma;
2. A declaration that Defendants violate Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by communicating with donors via

inaccessible electronic kiosks and by denying Plaintiff auxiliary aids and services needed for effective communication;

3. An injunction ordering Defendants to comply with Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by: a) adopting and implementing policies of nondiscrimination against persons who use service animals and/or to making reasonable modifications to existing policies, practices, and procedures to ensure that individuals with disabilities are not unlawfully denied assistance from their service animal during the plasma donation process; b) adopting and implementing policies requiring procurement and use of accessible kiosks and other technology used for communication with, and collection of information from, donors; c) adopting and implementing effective communication policies of providing accessible formats of written materials for individuals with disabilities who cannot access print; and d) training staff and personnel regarding its nondiscrimination and effective communication policies implemented or adopted;
4. Enter judgment in Plaintiff's favor;
5. Afford Plaintiff a trial by jury;
6. Award Plaintiff compensatory damages pursuant to 29 U.S.C. § 794a;
7. Award Plaintiff the costs of this action and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and 29 U.S.C. § 794a; and
8. Provide such other and further relief as the Court deems to be just and equitable.

This the 16th day of December, 2021.

/s/ Elizabeth Myerholtz
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