No. 26-___

IN THE

Supreme Court of the United States

SEAN R. RAYMOND SR.,

Petitioner,

v.

1199SEIU NATIONAL BENEFIT FUND,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal appellate courts have jurisdiction to review an order denying a weight-of-the-evidence motion for a new trial under Federal Rule of Civil Procedure 59(a).

PARTIES TO THE PROCEEDING

Petitioner is Sean R. Raymond, Sr., who was appellant below and plaintiff in the District Court.

Respondent is 1199SEIU National Benefit Fund, which was appellee below and defendant in the District Court.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

Raymond v. 1199SEIU National Benefit Fund, No. 1:20-cv-10380-GBD-GWG, 2025 WL 588412 (Feb. 24, 2025)

United States Court of Appeals (2d Cir.):

Raymond v. 1199SEIU National Benefit Fund, No. 25-00707, 184 F.4th 42 (July 23, 2026)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Sean R. Raymond, Sr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

INTRODUCTION

This petition seeks resolution of a longstanding circuit conflict over a fundamental question of federal appellate jurisdiction: May a court of appeals review a district court's denial of a weight-of-the-evidence motion for a new trial under Federal Rule of Civil Procedure 59(a)? Eleven circuits say yes. Only the Second Circuit says no.

As the Second Circuit explained in the precedential decision below, "[a]ll of our sister circuits appear to allow review of Rule 59(a) motions where a judge denies a losing party's weight-of-the-evidence motion." App.31a. The Second Circuit alone holds that "such a denial is not reviewable on appeal." App.29a. Despite acknowledging that its precedent on this question is "odd" and "confounding," App.29a, the Second Circuit has repeatedly denied petitions for en banc review to resolve the conflict.

The Second Circuit has never offered a defensible justification for refusing to exercise appellate jurisdiction clearly conferred by Section 1291 of Title 28. It originally grounded its rule in decisions of this Court that do not support it. It then suggested that the rule was compelled by the Reexamination Clause of the Seventh Amendment, only to largely abandon that justification after this Court foreclosed it in *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996).

Most recently, the Second Circuit has suggested that exercising its required duties would be too burdensome, as if "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them" had an exception for judicial workload. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

It is important for this Court to finally resolve the conflict. Appeals of weight-of-the-evidence denials are hard, but not impossible. Litigants are entitled to appellate review, and there is no justification for depriving parties in the Second Circuit of that right. This case presents a clean vehicle to resolve the conflict, because petitioner squarely presented the issue below in seeking a new trial on his disability-discrimination claim, and the jurisdictional question was unambiguously decided in a precedential opinion that leaves no doubt about the Second Circuit's outlier rule. Moreover, especially given that the Second Circuit vacated the district court's summary-judgment ruling against petitioner on a factually related claim, there is a fair prospect that he could prevail on remand should this Court direct the Second Circuit to exercise its jurisdiction.

The Court should grant review.

OPINIONS BELOW

The opinion of the court of appeals, App.3a-32a, is reported at 184 F.4th 42. The decision of the district court denying petitioner's motion for a new trial, App.35a-45a, is unreported but is available at 2025 WL 588412.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2026. App.3a, 33a-34a. Respondent's petition for rehearing was denied on August 13, 2026. App.1a-2a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix to this petition.

STATEMENT

1. Petitioner worked for nearly thirty years for respondent, a union-negotiated health and welfare fund. App.4a, 6a. Most recently, he served as an outreach coordinator, driving to healthcare facilities on Long Island to give presentations on union benefits and pensions. App.4a, 6a. After developing a serious vein condition, petitioner was told by his doctor to avoid prolonged sitting and driving—no more than thirty minutes at a time without taking a break to stretch. App.4a-5a, 7a-10a. While respondent removed the four facilities farthest from petitioner's home from his responsibilities, many of his remaining stops still required drives longer than thirty minutes and on routes that made taking stretch breaks more difficult. App.5a, 9a & n.3, 10a, 25a. Respondent refused petitioner's request for reassignment to a different area involving shorter routes and ultimately terminated him when he could not return "without restrictions." App.13a.

Petitioner sued respondent under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et*

seq., in the United States District Court for the Southern District of New York. App.13a, 64a-75a. Petitioner claimed that respondent had failed to reasonably accommodate him while he was an employee, 42 U.S.C. § 12112(a) and (b)(5)(A), and then had unlawfully discriminated against him by firing him on account of his disability, *id.* § 12112(a), App.13a, 68a-69a.

The district court granted summary judgment to respondent on the failure-to-accommodate claim, concluding that removing only petitioner's four farthest stops was reasonable as a matter of law and that petitioner had not requested any other plausible accommodation. App.13a-15a, 60a-63a. Following a week-long jury trial on petitioner's discrimination claim, the jury returned a verdict for respondent and the court entered judgment. App.16a, 46a.

Petitioner filed a timely motion for a new trial under Rule 59(a). That rule authorizes a court, on motion, to "grant a new trial on all or some of the issues [ ] and to any party." Fed. R. Civ. P. 59(a)(1). The rule specifies that after a jury trial, a court may grant a new trial for "any reason for which a new trial has [previously] been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1)(A).

Petitioner argued that the jury verdict was against the weight of the evidence, App.5a, 16a, a traditional ground to seek a new trial in federal court, *Gasperini*, 518 U.S. at 433. Petitioner explained that respondent's repeated written statements that petitioner could return to work only "without restrictions," and its termination of him for failing to do so, were overwhelming evidence of a per se ADA violation. App.5a, 17a. Respondent's own witnesses

conceded that petitioner was disabled, was good at his job, and was ready to return to work. Pet. C.A. Br. at 43-44, 47 & n.13, 53. And the record showed that reasonable accommodations were available, yet respondent never demonstrated that any of those reasonable accommodations would impose an undue hardship. App.12a-13a, 26a-28a.

The district court denied petitioner's Rule 59(a) motion, concluding, in relevant part, that although "terminating an employee because they cannot return to work with restrictions * * * is a per se violation of the ADA," the "evidence did not support a finding that [respondent] actually had or enforced such a policy." App.17a (quoting App.42a). As the court of appeals would later explain, the district court based that conclusion "not on [respondent's] internal emails in the weeks before [petitioner] was fired that emphasized his need to return without restrictions, but on [respondent's] earlier communications that allowed [petitioner] to return to work with light restrictions." App.17a. The district court went on to find that "the evidence showed that [respondent] *did* attempt to accommodate [petitioner's] prolonged-driving restriction by removing the four farthest stops on his Area I route," and concluded that "it was not unreasonable for the jury to conclude that [respondent] fired [petitioner] not because of his disability, but because he was unwilling or unable to do his assigned job." App.17a-18a (quoting App.42a-43a (emphasis in original)).

2. On appeal, petitioner challenged both the district court's grant of summary judgment as to his failure-to-accommodate claim and its denial of his Rule 59(a) motion for a new trial as to his discrimination

claim. Petitioner argued that respondent's own words established a per se ADA violation, Pet. C.A. Br. at 54-58, and that respondent's witnesses acknowledged that petitioner was disabled, that he was ready to return to work, and that requiring him to return without restrictions likely violated its own Equal Employment Opportunity policy, Pet. C.A. Br. at 43-44, 53, 57-58. Petitioner further explained that the record showed that reasonable accommodations were available, yet respondent never explored them through the interactive process contemplated by federal regulations, see 29 C.F.R. § 1630.2(o)(3), and never showed that any would impose an undue hardship, Pet. C.A. Br. at 49-51. On this record, petitioner argued, a verdict finding petitioner was fired for anything other than his disability was a miscarriage of justice.

In a precedential decision, the court of appeals vacated the district court's entry of summary judgment on petitioner's failure-to-accommodate claim and remanded, "leav[ing] it up to the district court * * * to decide whether to reopen the summary judgment record * * *." App.25a n.8. The court of appeals held that the district court had applied an incorrect legal standard "[b]ecause the district court did not consider whether the route change accommodated [petitioner's] limitations, and instead apparently treated any action that [respondent] took to respond to [petitioner's] request as a reasonable accommodation." App.23a-24a.

The court of appeals, however, dismissed petitioner's appeal of the district court's denial of the Rule 59(a) motion for lack of appellate jurisdiction. App.29a, 34a. The court held that "our precedents

firmly establish that such a denial is not reviewable on appeal." App.29a-30a (citing *Ferreira v. City of Binghamton*, 975 F.3d 255, 265-66 (2d Cir. 2020); and discussing *Ferreira* and *Stonewall Ins. v. Asbestos Claims Mgmt. Corp.*, 73 F.3d 1178, 1199 (2d Cir. 1995), *modified on other grounds*, 85 F.3d 49 (2d Cir. 1996)). It observed that "[w]e have made the (seemingly odd, we think) distinction" that "the reviewability of a Rule 59(a) weight-of-the-evidence decision depends on the outcome of the district judge's decision: If the district judge *overturns* the jury verdict on weight-of-the-evidence grounds, it is reviewable; if the judge *upholds* a jury verdict over a losing party's motion that the verdict contravenes the weight of the evidence, that decision is not reviewable." App.29a-30a (emphasis in original).

Although the court of appeals viewed its precedent as "confounding," it concluded that it was "bound" to apply it. App.29a, 31a. But it noted that the "oddness of this non-reviewability precedent" left the Second Circuit as an extreme outlier: "All of our sister circuits appear to allow review of Rule 59(a) motions where a judge denies a losing party's weight-of-the-evidence motion." App.31a (citing decisions from all other circuits).

Respondent filed a petition for rehearing with respect to the failure-to-accommodate claim. The court of appeals denied the petition. App.1a-2a.

REASONS FOR GRANTING THE PETITION

There exists a longstanding, lopsided circuit conflict over a fundamental question of appellate jurisdiction: whether courts of appeals have jurisdiction to review a district court's denial of a weight-of-the-

evidence motion for a new trial. Nothing in the Constitution, a federal statute, or this Court's decisions supports the Second Circuit's admittedly "odd" rule that such decisions are unreviewable. App.29a, 31a. But the Second Circuit has consistently reaffirmed its outlier position over the course of decades and has repeatedly denied en banc petitions seeking to overturn it. This Court should grant review and confirm that nothing deprives courts of appeals of jurisdiction over denials of weight-of-the-evidence motions.

I. THE SECOND CIRCUIT'S DECISION REINFORCES AN 11-1 CIRCUIT CONFLICT.

The Second Circuit's rule that it lacks appellate jurisdiction to review denials of weight-of-the-evidence motions conflicts with the precedential decisions of every other circuit. It has long been recognized that "the Second Circuit is the most restrictive [circuit]" because "[i]t will review only decisions *granting* new trials and will not review the denial of a new trial on weight of the evidence grounds at all." Cassandra B. Robertson, *Judging Jury Verdicts*, 83 Tul. L. Rev. 157, 194 (2008) (emphasis added).

As the Second Circuit held in this case, its "precedents firmly establish" that "a district court's denial of a Rule 59(a) motion for a new trial on weight-of-the-evidence grounds * * * is not reviewable on appeal." App.29a. The Second Circuit has so held in numerous precedential decisions dating back to at least 1953. See, *e.g.*, *Ferreira*, 975 F.3d at 265; *Rasanen v. Doe*, 723 F.3d 325, 330 (2d Cir. 2013); *Espinal v. Goord*, 558 F.3d 119, 131 (2d Cir. 2009); *Stonewall*, 73 F.3d at 1199; *Binder v. Long Island Lighting Co.*, 57 F.3d 193,

201 (2d Cir. 1995); *Dunlap-McCuller v. Riese Org.*, 980 F.2d 153, 157 (2d Cir. 1992), cert. denied, 510 U.S. 908 (1993); *Newmont Mines Ltd. v. Hanover Ins.*, 784 F.2d 127, 133 (2d Cir. 1986); *Mahoney v. N.Y. Cent. R.R.*, 234 F.2d 923, 924-25 (2d Cir. 1956); *Portman v. Am. Home Prods. Corp.*, 201 F.2d 847, 848 (2d Cir. 1953); see also *Coloritype Co. v. Williams*, 78 F. 450, 452 (2d Cir. 1897) (seemingly stating, without analysis, that any district-court decision on a weight-of-the-evidence motion is not reviewable by the then-existing "writ of error").

Every other circuit has held that it has jurisdiction to review a trial court's denial of a motion for a new trial on weight-of-the-evidence grounds under the abuse-of-discretion standard. See, *e.g.*, *Correia v. Fitzgerald*, 354 F.3d 47, 54 (1st Cir. 2003); *Leonard v. Stemtech Int'l Inc.*, 834 F.3d 376, 386 (3d Cir. 2016), cert. denied, 583 U.S. 1114 (2018); *Bristol Steel & Iron Works v. Bethlehem Steel Corp.*, 41 F.3d 182, 186 (4th Cir. 1994); *Lewis v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 134 F.4th 286, 296-97 (5th Cir. 2025); *Mys v. Mich. Dep't of State Police*, 886 F.3d 591, 599 (6th Cir. 2018); *Abellan v. Lavelo Prop. Mgmt., LLC*, 948 F.3d 820, 830 (7th Cir. 2020); *K7 Design Grp. v. Walmart, Inc.*, 143 F.4th 931, 939 (8th Cir. 2025); *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 728 (9th Cir. 2007); *Escue v. N. Okla. Coll.*, 450 F.3d 1146, 1156-57 (10th Cir. 2006); *Overseas Priv. Inv. Corp. v. Metro. Dade Cnty.*, 47 F.3d 1111, 1113 (11th Cir.

1995); *Langevine v. District of Columbia*, 106 F.3d 1018, 1023 (D.C. Cir. 1997).*

That longstanding, well-recognized division of authority on a basic question of appellate jurisdiction warrants resolution. There appears to be little chance that the Second Circuit, which rarely convenes en banc, will resolve the conflict on its own. It has repeatedly denied en banc petitions on this issue. See Petition for Rehearing En Banc at 3, *Ahsan v. Staples the Off. Superstore E., Inc.*, 710 F. App'x 31 (2d Cir. 2018) (No. 16-4263); Appellant's Petition for Rehearing *En Banc* at 1-2, *McKinney v. Cent. Hudson Gas & Elec. Corp.*, 632 F. App'x 37 (2d Cir. 2016) (No. 15-1188). Any resolution therefore must appear in the pages of the U.S. Reports.

II. THE SECOND CIRCUIT'S JURISDICTIONAL RULE IS WRONG.

The overwhelming majority of circuits are correct that federal appellate courts have jurisdiction to review a district court's denial of a weight-of-the-evidence motion for a new trial.

A. Section 1291 of Title 28 generally provides that "[t]he courts of appeals * * * shall have jurisdiction of appeals from all final decisions of the district courts of the United States." Under that provision, once a final decision is rendered, "claims of district court error at any stage of the litigation may be ventilated." *Digit.*

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* In the cases within its jurisdiction that can involve jury verdicts (patent cases), the Federal Circuit "review[s Rule 59(a)] decisions under regional circuit law." *Adasa Inc. v. Avery Dennison Corp.*, 55 F.4th 900, 913 (Fed. Cir. 2022), cert. denied, 143 S. Ct. 2561 (2023).

Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, 868 (1994); see 15A WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 3905.1 (3d ed.), Westlaw (database updated Apr. 2026). All the court's rulings "merge into the final judgment, at which point they are reviewable on appeal." *Dupree v. Younger*, 598 U.S. 729, 735 (2023). While "[s]ome interlocutory district-court rulings," such as "the denial of summary judgment on sufficiency-of-the-evidence grounds," are "unreviewable after final judgment because they are overcome by later developments in the litigation," *id.* at 734, that is not true of the denial of a Rule 59(a) motion.

The answer to the question here is therefore straightforward. Section 1291 confers jurisdiction on federal circuit courts to review a district court's resolution of a Rule 59(a) motion, and no statute withdraws jurisdiction from denials.

B. Over the years, the Second Circuit has offered various justifications for its outlier rule, but they do not withstand scrutiny.

1. The Second Circuit has stated that its "rule is grounded in the Supreme Court's holding in *Fairmount Glass Works v. Cub Fork Coal Co.*, 287 U.S. 474, 481 (1933) and *United States v. Johnson*, 327 U.S. 106, 111 (1946), upholding district court decisions refusing to grant litigants new trials." *Dunlap-McCuller*, 980 F.2d at 157 (parallel citations omitted); see also, *e.g.*, *Binder*, 57 F.3d at 201; *Portman*, 201 F.2d at 848. That explanation rests on a misreading of those opinions.

It is true that in *Fairmount Glass Works*, this Court recognized "[t]he rule that this Court will not

review the action of a federal trial court in granting or denying a motion for a new trial for error of fact," which "has been frequently applied where the ground of the motion was that the damages awarded by the jury were excessive or were inadequate," and further stated that "[t]he rule precludes likewise a review of such action by a Circuit Court of Appeals." 287 U.S. at 481. But that rule precludes de novo review, not abuse-of-discretion review, which is fundamentally an inquiry into whether the district court reasonably performed its function, not a fresh determination of facts. *Fairmount Glass Works* makes that clear four pages later, where it states "[w]hether refusal to set aside a verdict for failure to award substantial damages may ever be reviewed on the ground that the trial judge abused his discretion, we have no occasion to determine." *Id.* at 485. And the Court later held in *Gasperini* that abuse-of-discretion review is proper. See pp.13-14, *infra*.

Johnson was a criminal case, and it did not involve a weight-of-the-evidence motion. Rather, the convicted defendants sought a new trial on the ground of "newly discovered evidence"—that a trial witness had supposedly perjured himself. *Johnson*, 327 U.S. at 108-09. The district court wrote a detailed opinion rejecting the claim, and this Court held that an appellate court could not set aside the district court's findings unless it "clearly appear[s] that the findings are not supported by any evidence." *Id.* at 112. Although the Court repeated the general rule from *Fairmount Glass Works*, nothing in its holding or analysis indicates that in a civil case an appellate court lacks jurisdiction to review a district court's denial of a weight-of-the-evidence motion to set aside a jury verdict.

2. In later decisions, the Second Circuit suggested that exercising such appellate review would "run[] contrary" to the "role of the jury, as envisioned by the Seventh Amendment." *Binder*, 57 F.3d at 201; see *Stonewall*, 73 F.3d at 1199. But this Court's decision in *Gasperini* forecloses that view.

Gasperini considered whether federal courts sitting in diversity must apply a New York tort-reform law requiring appellate courts to review a civil damages award for excessiveness. 518 U.S. at 418-19. The Court held that the law "can be given effect, without detriment to the Seventh Amendment, if the review standard set out in [New York law] is applied by the federal trial court judge, with appellate control of the trial court's ruling limited to review for 'abuse of discretion.'" *Id.* at 419.

In the course of its discussion, the Court explained the operation of the Seventh Amendment's Reexamination Clause, which provides that "no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." 518 U.S. at 432 (quoting U.S. Const. amend. VII). The Court first noted the settled rule that the Reexamination Clause permits a trial judge to set aside a verdict as "against the weight of the evidence," which includes "overturning verdicts for excessiveness." *Id.* at 433 (quoting *Byrd v. Blue Ridge Rural Elec. Coop., Inc.*, 356 U.S. 525, 540 (1958)). The Court further explained that although "appellate review of a federal trial court's denial of a motion to set aside a jury's verdict as excessive * * * was once deemed inconsonant with the Seventh Amendment's Reexamination Clause," *id.* at 434, the Court had later approved abuse-of-discretion review, *id.* at 434-

35 (citing *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 279 (1989)).

Gasperini then held that "[n]othing in the Seventh Amendment * * * precludes appellate review of the trial judge's denial of a motion to set aside [a jury verdict] as excessive." 518 U.S. at 436 (second and third alterations in original) (citation omitted). Such review, the Court explained, "is reconcilable with the Seventh Amendment as a control necessary and proper to the fair administration of justice." *Id.* (citation omitted).

That interpretation of the Seventh Amendment refutes any suggestion that an appellate court's review of the denial of a weight-of-the-evidence motion would violate the Reexamination Clause. *Gasperini* treated excessiveness motions as a species of weight-of-the-evidence motions, and it concluded that abuse-of-discretion review is constitutional. Nothing in its analysis would distinguish weight-of-the-evidence motions that challenge liability rather than damages.

3. Since *Gasperini*, the Second Circuit has largely moved away from grounding its rule in the Seventh Amendment. But instead of reconsidering the rule, the Second Circuit has suggested that it is justified by the burden that exercising appellate jurisdiction would entail. See, *e.g.*, *DeFalco v. Bernas*, 244 F.3d 286, 325 (2d Cir.), cert. denied, 534 U.S. 891 (2001). According to the Second Circuit, "[r]eviewing a ruling on a 'weight of the evidence' challenge * * * obliges a reviewing court to examine in some detail all of the evidence." *Stonewall*, 73 F.3d at 1199. "That burdensome review is warranted in the rare case where a trial judge rejects a jury's verdict as against the weight of the evidence," the Second Circuit has

declared, "but is not warranted in the far more frequent circumstance where a trial judge denies a 'weight of the evidence' challenge and leaves in place a jury verdict supported by legally sufficient evidence." *Id.*

For a number of reasons, that rationale is insufficient to justify an abdication of appellate jurisdiction. Most clearly, practical considerations cannot override "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colo. River Water Conservation Dist.*, 424 U.S. at 817; see *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014). "Federal courts, it was early and famously said, have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821)). As explained above, Section 1291 confers jurisdiction on federal appellate courts to review orders resolving new-trial motions.

And at any rate, the practical concern is overblown. Federal appellate courts are routinely called upon to review the totality of evidence in the record. For example, where the appellant raises a meritorious claim of instructional or evidentiary error, the appellate court is required to review the record to determine prejudice. See, *e.g.*, *Turley v. ISG Lackawanna, Inc.*, 774 F.3d 140, 152-54 (2d Cir. 2014) (instructional error); *Malek v. Fed. Ins. Co.*, 994 F.2d 49, 55 (2d Cir. 1993) (evidentiary error). Similarly, a claim of legal insufficiency—that no evidence supports the verdict—will often require a substantial review of the evidence in the trial record. See *Reeves v. Sanderson Plumbing*

Prods., Inc., 530 U.S. 133, 150 (2000). So will the review of damages awards, including claims that punitive damages awards violate due process. See *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574-80 (1996). And as the Second Circuit itself has acknowledged, review of the record is required "where a trial judge rejects a jury's verdict as against the weight of the evidence." *Stonewall*, 73 F.3d at 1199.

The burden of reviewing a trial record is properly ameliorated not by forgoing review altogether, but through deferential standards of review and the party-presentation principle. The abuse-of-discretion standard already accounts for the deference owed to the jury and the district judge, who saw the witnesses and the trial firsthand, and lightens the appellate task considerably. See *Hughes v. City of Fort Collins*, 926 F.2d 986, 988 (10th Cir. 1991) ("[T]he deferential abuse of discretion standard enhances the goal of judicial economy and serves to maintain the integrity of the trial and appellate courts."). And appellate courts are not called upon to plumb a trial record without guidance. Rather, when an appellant claims that insufficient evidence supports a verdict, the appellee will point out the portions of the record that it claims justify the verdict, and the appellate court can focus its analysis on that evidence.

In short, Section 1291 requires appellate courts to exercise jurisdiction over orders denying weight-of-the-evidence motions. The Second Circuit's aberrant refusal to do so has no valid justification.

III. THIS CASE IS AN IDEAL VEHICLE TO DECIDE AN IMPORTANT QUESTION.

This case presents an ideal vehicle to resolve the longstanding conflict of authority over the scope of appellate jurisdiction.

A. The pure question of law raised here was adequately presented below. See Pet. C.A. Br. at 40 & n.10. The Second Circuit rendered its holding in a precedential opinion relying on several earlier precedential decisions stretching back decades, and it was outcome-determinative as to petitioner's disability-discrimination claim. App.29a-31a.

The record presents a reasonable prospect that, were this Court to reverse the Second Circuit's appellate-jurisdiction holding, petitioner would prevail on remand. Most clearly, the district court's denial of a new trial rested, in part, on the conclusion that respondent "had already attempted to accommodate [petitioner] in accordance with its legal duty"—a conclusion the Second Circuit has since determined rested on an "incorrect legal standard." App.41a, 23a-24a. In addition, as the panel noted, the district court acknowledged that firing an employee for being unable to return without restrictions is a per se ADA violation, yet found no such policy by allowing "earlier communications" to trump unambiguous "internal emails in the weeks before [petitioner] was fired that emphasized his need to return without restrictions." App.17a (citing App.42a). There is thus a fair chance that the Second Circuit, if instructed to review the trial record, will conclude that the district court's denial of petitioner's Rule 59(a) motion rested on an error of law and a clearly erroneous factual finding, either of which qualifies as an abuse of discretion, see

Zervos v. Verizon N.Y., Inc., 252 F.3d 163, 169 (2d Cir. 2001).

This appeal is interlocutory in that the court of appeals remanded for further summary-judgment practice or a trial on petitioner's failure-to-accommodate claim. App.25a n.8, 31a-34a. But the court of appeals finally disposed of petitioner's discrimination claim by dismissing the appeal. It would disserve judicial efficiency to postpone this Court's review of that aspect of the ruling below until after resolution of the closely related failure-to-accommodate claim—potentially resulting in three trials in the same case.

B. The question presented is important. Depriving litigants in the Second Circuit of the right to appellate review that all other parties in the United States enjoy is inequitable. Moreover, as the Second Circuit here acknowledged, App.29a-30a, the rule is oddly asymmetric: An appellant may challenge the grant of a new-trial motion on weight-of-the-evidence grounds, but not its denial. There is no justification for such a skewed regime of appellate review.

It is true that most appeals of the denial of a new trial on weight-of-the-evidence grounds are denied even in circuits that perform abuse-of-discretion review. That is because the district court's review of the jury's verdict is already deferential, see, *e.g.*, *Farrior v. Waterford Bd. of Educ.*, 277 F.3d 633, 634 (2d Cir.), cert. denied, 536 U.S. 958 (2002), so in a sense appellate review equates to deference squared. But those appeals are sometimes successful. See, *e.g.*, *Doe v. Fairfax Cnty. Sch. Bd.*, 1 F.4th 257, 270 (4th Cir. 2021), cert. denied, 143 S. Ct. 442 (2022); *Bank of Am., N.A. v. JB Hanna, LLC*, 766 F.3d 841, 851 (8th Cir. 2014); *Molski*, 481 F.3d at 732. There is no good

reason to continue to deny parties in the Second Circuit the same opportunity to challenge indefensible civil verdicts.

C. In 2019, this Court denied a petition for a writ of certiorari raising the same circuit conflict. See *Ahsan v. Staples the Off. Superstore E., Inc.*, 586 U.S. 1114 (2019). But in that case, the Second Circuit's decision was nonprecedential, *Ahsan*, 710 F. App'x 31, and the petitioner had raised only a question under the Seventh Amendment, even while acknowledging that the Second Circuit no longer justifies its rule as required by the Seventh Amendment, Petition for a Writ of Certiorari, *Ahsan*, 586 U.S. 1114 (2019) (No. 17-1692), 2018 WL 3084678, at *I, *8. The present petition squarely presents the appellate-jurisdiction question, and it seeks review of a precedential decision that dispels any possible doubt about the Second Circuit's outlier rule.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 11, 2026

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of August, two thousand twenty-six,

Present:

Robert D. Sack,

Myrna Pérez,
Circuit Judges,

Loretta A. Preska,
District Judge.[*]

Docket No. 25-707

SEAN R. RAYMOND SR.,

Plaintiff - Appellant,

v.

1199SEIU NATIONAL BENEFIT FUND,

Defendant - Appellee.

ORDER

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[*] Judge Loretta A. Preska, of the United States District Court for the Southern District of New York, sitting by designation

Appellee, 1199SEIU National Benefit Fund, having filed a petition for panel rehearing and the panel that determined the appeal having considered the request

IT IS HEREBY ORDERED that the petition is DENIED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

[SEAL]

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 25-707-cv

SEAN R. RAYMOND SR.,

Plaintiff - Appellant,

v.

1199SEIU NATIONAL BENEFIT FUND,

Defendant - Appellee.

August Term, 2025

(Argued: January 30, 2026 Decided: July 23, 2026)

Before: SACK AND PÉREZ, *Circuit Judges*, PRESKA, *District Judge*.[1]

Plaintiff-Appellant Sean R. Raymond Sr. ("Raymond") appeals from a July 20, 2023 order of the United States District Court for the Southern District of New York (George B. Daniels, *J.*) granting Defendant-Appellee 1199SEIU National Benefit Fund ("NBF") summary judgment as to Raymond's failure-to-accommodate claim, and from the court's February 24, 2025 order denying Raymond's motion for a new trial under Rule 59(a) as to his disability discrimination claim.

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[1] Judge Loretta A. Preska, of the United States District Court for the Southern District of New York, sitting by designation.

For the reasons set forth below, we agree with Raymond that the district court erred in granting summary judgment to NBF on his failure-to-accommodate claim. However, the district court's denial of Raymond's 59(a) motion as to his disability discrimination claim is not reviewable by this Court. We therefore **VACATE** the district court's entry of summary judgment, **DISMISS** the appeal of the district court's order on Raymond's Rule 59(a) motion, and **REMAND** for further proceedings consistent with this opinion.

LAUREN NOELLE BECK AND CHELSEA SINCOX (Joseph Bacchi, *on the brief*), Quinn Emanuel Urquhart & Sullivan, LLP, New York, NY, *for Appellant*;

RACHEL S. FISCHER (Patrick J. Lamparello, *on the brief*), Proskauer Rose LLP, New York, NY, *for Appellee*.

SACK, *Circuit Judge*:

For nearly 30 years, Plaintiff-Appellant Sean R. Raymond Sr. ("Raymond") worked for Defendant-Appellee 1199SEIU National Benefit Fund ("NBF"). In his most recent role as Outreach Coordinator, Raymond was required to drive to various healthcare facilities in an assigned area on Long Island to give presentations to facility workers on union benefits and pensions. During his employment, Raymond developed a serious vein condition, for which he was hospitalized multiple times. As a result of this illness, Raymond's doctor first approved him to work with "light restrictions," meaning Raymond had to avoid prolonged sitting and driving, and after his condition

worsened, to avoid sitting and driving for longer than thirty minutes at a time. Raymond notified NBF of his limitations, and NBF responded by removing from his service area the four facilities that were furthest away from Raymond's home—leaving many facilities to which it would take Raymond longer than thirty minutes to drive. Raymond protested and requested that NBF reassign him to a different area. NBF refused. Eventually, when Raymond could not return to work under NBF's conditions, NBF terminated his employment. Raymond sued, alleging that (1) NBF failed to provide him with reasonable accommodations as required by the Americans with Disabilities Act ("ADA") and that (2) NBF engaged in unlawful disability discrimination when it terminated him.

The district court (George B. Daniels, *J.*) granted summary judgment to NBF on the reasonable accommodation claim, finding that NBF adequately accommodated Raymond when it removed the four farthest stops from his route, and that Raymond did not demonstrate that he had requested any other plausible reasonable accommodation. The district court allowed the disability discrimination claim to go to trial, where a jury ruled for NBF. After the verdict, Raymond filed a Rule 59(a) motion for a new trial. He argued that the jury's verdict was not supported by the weight of the evidence because NBF did not accommodate Raymond, and that it was clear that NBF required Raymond to either return to work "without restriction" or be terminated, which is a *per se* violation of the ADA. The district court denied this motion, concluding that a reasonable jury could have found that NBF did not fire Raymond due to his disability. Raymond appeals both decisions.

For the reasons set forth below, we agree with Raymond that the district court erred in granting summary judgment to NBF on his failure-to-accommodate claim. However, the district court's denial of Raymond's Rule 59(a) motion as to his disability discrimination claim is not reviewable by this Court. We therefore **VACATE** the district court's entry of summary judgment, **DISMISS** the appeal of the district court's order on Raymond's Rule 59(a) motion, and **REMAND** for further proceedings consistent with this opinion.

BACKGROUND

I. Factual Background

Plaintiff-Appellant Sean R. Raymond Sr. was employed by Defendant-Appellant National Benefit Fund for nearly 30 years. He began his employment in various administrative roles, first working in the supply room and the mail room, and then at a desk job in the claims department. In 2003, Raymond was promoted to Outreach Coordinator. Outreach coordinators engage with healthcare workers to provide union members with information on pension applications and estimates and give presentations to them about those benefits. As part of their job, outreach coordinators frequently visit healthcare facilities to discuss these issues with union members. Usually, a coordinator will visit one facility per day, averaging visits to three or four facilities per week. Due to the travel requirements of the job, the outreach coordinator job description states that employees in this position must be able to "[s]it[] in a normal seated position for extended periods of time." Joint App'x 166.

Outreach coordinators each service nursing homes, hospitals, and other medical and care facilities within a specific zone. Each coordinator is assigned to a specific zone by the Director of Outreach, who was, at all relevant times, Frank Sossi ("Sossi").[2]

After his promotion to Outreach Coordinator, Raymond serviced a variety of zones across New York State, including in upstate New York, Long Island, Brooklyn, and Queens. Between 2010 and 2015, Raymond was at times assigned to Area I, which covered most of Long Island, and at other times to Area J, which covered the borough of Queens and western Long Island. Because Area J covered the most nursing homes—nearly 50—Sossi sometimes staffed the Area with two coordinators who would split the zone. When Raymond worked Area J during this time period, he was assigned to only half of the zone, and he could reach most of the facilities in that half in a forty-five minute drive or less from his home in Elmont, New York. Area I, however, extends to the far eastern tip of Long Island, meaning that visiting some of the facilities required Raymond to drive for several hours from his home.

In 2010, Raymond was diagnosed with superficial thrombophlebitis, which can cause "painful, sometimes life-threatening blood clots." Joint App'x 254. On June 7, 2010, Raymond informed NBF of his diagnosis by sending his employer a notice and proof of claim for disability benefits. Raymond continued his role as Outreach Coordinator after his diagnosis,

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[2] It is unclear how many different zones outreach coordinators service, but it appears there are at least Areas A–J, presumably meaning that there are at least 10 different zones to which a coordinator could be assigned.

and he worked in this role for five years thereafter without incident.

In August 2015, Raymond suffered a pulmonary embolism, which caused life-threatening blood clots that required hospitalization. He was then placed on short-term disability leave for twenty-six weeks, until January 2016. When he returned to work in January, Raymond provided NBF with a doctor's note that stated that he should work with "light duties restrictions," meaning "half of the standing, walking and lifting that he normally does." Joint App'x 696. It also noted that "[s]itting [was] advisable for a period of 4 weeks" before Raymond could "return to normal job duties." *Id*. Because "[Raymond] mostly sits," Sossi acknowledged in an internal email chain that NBF "c[ould] accommodate the request" to limit Raymond's time on his feet. Joint App'x 698. Cleared to return to work with these restrictions, Raymond resumed servicing half of Area J. He manned this zone for two years without any problems.

In 2017, one of Raymond's colleagues left NBF, leaving an area without an outreach coordinator. NBF informed Sossi, who managed coordinator assignments, that it would not authorize him to hire someone new to fill this position. To fix this coverage gap, Sossi shuffled around the existing outreach coordinators. Area J—consisting of 50 facilities fairly close together in Queens and on the western part of Long Island—which was previously serviced by two coordinators was now to be serviced by only one. Sossi gave this new Area J assignment to an outreach coordinator named Lillian Ferraro, with whom he had previously had a romantic relationship. Sossi assigned Raymond to Area I, which although it

contains fewer facilities, covers much more territory than Area J. Joint App'x 249, 2626.[3]



In December 2017, Raymond emailed his supervisors, including Sossi, to express concerns about his reassigned route. He attached to his email a doctor's note that stated that "[i]t should be clearly evident that there are restrictions in his physical activities not only to diminish the recurrence of genetically provoked deep thrombophlebitis of the legs[,] but also life threatening pulmonary embolism." Joint App'x 2548. The note also informed NBF that some of the doctor's instructions should be "strictly followed," such as to "[a]void prolong[ed] walking, standing, sitting (driving) and squatting." *Id.* In response, Sossi acknowledged in an internal email that two of Raymond's assigned facilities were more than ninety minutes away from his home, five were

[3] Although Sossi and NBF never admitted that Area J requires far shorter drives than Area I, the map of Area I and Area J shops above makes that clear.

between an hour and seventy-five minutes away, nine under an hour, and fifteen less than thirty minutes from his home. And, Sossi wrote, because "[t]he job responsibility for an Outreach Coordinator states clearly that there will be extensive travel in the Tri-State area, . . . if [Raymond] or anyone can't meet that requirement then he may want to reconsider being an Outreach Coordinator." Joint App'x 2636.

Despite his concerns, Raymond began servicing Area I on January 8, 2018. On January 12, 2018, Sossi informed Raymond that the four facilities furthest from his house would be serviced by a different outreach coordinator. Raymond worked Area I—minus the four furthest facilities—without incident for six months.

Raymond's condition worsened, however, and, in the spring of 2018, he was hospitalized. On June 20, 2018, Raymond sent NBF a letter from his doctor explaining that Raymond's "left deep venous system . . . is permanently damaged by the phlebitis, so much so that the blood in the left leg is going in reverse instead of draining towards his heart when he is standing." Joint App'x 724. Due to the permanent damage, the doctor "strongly recommend[ed] that [Raymond] should absolutely avoid prolonged continuous standing, walking, sitting or driving without elevating his legs for more than thirty minutes continuously." *Id*. Raymond briefly returned to work, but shortly thereafter, he was hospitalized again, during which his doctor recommended he take short-term disability leave. NBF did not respond to the doctor's note or otherwise contact Raymond to discuss its contents.

Sometime on or around July 27, 2018, Raymond again complained to NBF about his area reassignment and the length of his drives. Although it is not clear exactly what was said, at the very least, he communicated that the new route required "[m]uch longer driving" of sometimes two to three hours, that he "[i]nformed Frank [Sossi]" that he "could not do the amount of driving due to [m]edical reasons" and provided a doctor's note but was "reassigned anyway," and that his leg vein is "now dead." Joint App'x 736. Still having not received a response, on July 31, Raymond sent a letter to NBF's human resources department ("HR") requesting that HR respond to the doctor's note. NBF's Assistant Director of HR Kevin Hurley then called him. Raymond asked Hurley if he could have his old assignment back—in other words, he asked to be assigned back to Area J, which required more frequent but fewer drives than his current Area I assignment. Hurley denied this request, explaining that NBF had already made special exceptions for Raymond when they removed the four furthest facilities from his route.

Following the advice of his doctor, Raymond began short-term disability leave on August 6, 2018. While on leave, his doctor informed NBF's HR that Raymond could return to work as long as he "[a]void[ed] prolonged standing/sitting/squatting." Joint App'x 2615. HR informed Raymond's boss, Sossi, of these limitations via email. Sossi responded five minutes later, explaining that "[t]he position requires sitting, standing and driving for a prolonged period of time" and so "[u]nfortunately [NBF] can't accommodate this request." *Id*.

After this exchange, NBF insisted that Raymond could only return to work if he had a "clearance note

stating . . . no restrictions." Joint App'x 2520; *see also id.* at 2542 (HR explaining that Raymond "can only come back to work . . . if [NBF] ha[s] medical clearance from his doctor . . . with no restrictions"); *id.* at 2555 (Hurley asking if Raymond was "cleared to return with no restrictions").

On January 17, 2019, Raymond emailed Richard Kral, NBF's HR Manager, asking NBF to implement the "reasonable accommodations" that his doctor's note of January 15 had outlined. Joint App'x 191–92. Kral responded that Raymond's "request was discussed with department management[,] and a determination was made that the Fund could not accommodate the request given the fact that these restrictions would negatively impact the ability for [Raymond] to perform the essential functions of [his] job as an Outreach Coordinator." *Id.* at 191.

On February 1, 2019, Raymond sent a letter to NBF's HR Director, Richard Whitter, asking Whitter to reconsider NBF's decision to not accommodate his medical restrictions. In that letter, Raymond explained that company policy states that "an employee with a disability should consult with Human Resources to candidly discuss possible accommodations," and that "the organization will conduct an investigation to identify possible accommodations that will help eliminate the limitations resulting from the disability." Joint App'x 195. He asked whether NBF followed that process when it swiftly denied his request, and if it did, he asked about "what possible accommodations were identified." *Id*. Raymond also suggested some possible accommodations, including adjusting or reallocating assignments so that Raymond had fewer locations that required "extended driving"; alternatively, he proposed moving to a

different position that did not require that much driving. Joint App'x 195–96.

On February 4, Whitter responded that "a determination was made that [NBF] is unable accommodate the request because these restrictions would negatively impact [Raymond's] ability to perform the essential functions of [his] job as an Outreach Coordinator. This determination has not changed." Joint App'x 150. He did not answer Raymond's question about company policy, nor did he engage with either of the two alternative solutions proposed by Raymond.

On February 6, 2019, unable to return to work without any restrictions, Raymond applied for long-term disability leave, and NBF immediately terminated his employment. In a letter notifying Raymond of this decision, Kral explained that Raymond was being fired "[a]s a result of . . . [his] inability to return to work, without any restrictions." Joint App'x 2564. The letter noted that "if in the future [Raymond is] medically cleared to return to employment without restrictions," he was "welcome to apply for any suitable positions." *Id*.

II. Procedural History

On December 8, 2020, Raymond commenced this suit in the Southern District of New York**.** He alleged disability discrimination under the Americans with Disabilities Act, claiming that NBF violated the Act by: (1) denying his request for reasonable accommodations and (2) firing him due to his disability.

After mediation and discovery, NBF moved for summary judgment, seeking dismissal of Raymond's claims in their entirety. On July 20, 2023, the court

(Daniels, *J.*) granted in part and denied in part NBF's motion.

A. Failure-to-Accommodate Claim

The district court granted NBF summary judgment as to Raymond's failure-to-accommodate claim, finding that Raymond failed to show a genuine dispute of material fact that, while employed by NBF, NBF refused to make reasonable accommodations for his disability. Although the district court agreed that Raymond was disabled and that NBF regarded him as disabled, it concluded that NBF "repeatedly accommodated [Raymond's] perceived disability," first by limiting the amount of heavy things Raymond had to carry, then by exempting him from servicing the four farthest facilities.[4] *Raymond v. 1199SEIU Nat'l Benefit Fund*, No. 20-CV-10380 (GBD), 2023 WL 4637626, at *6 (S.D.N.Y. July 20, 2023) ("*Raymond I*").

In reaching this conclusion, the district court noted that "[e]mployers are not required to provide a perfect accommodation," nor are they required to "create a new position for an employee seeking an accommodation." *Id.* The court reasoned that the "only request that [NBF] refused was [Raymond's] transfer back to his previous assignment of Area J." *Id*. It found that this request was "not a plausible 'reasonable accommodation,'" because Raymond did not provide any evidence "that demonstrates [that] Area J as opposed to modified Area I could have resolved issues with his revised restrictions." *Id.*

[4] Unless otherwise indicated, we omit all internal quotation marks, alteration marks, emphases, footnotes, and citations when quoting cases.

From this, Judge Daniels concluded that Raymond "present[ed] no evidence that [NBF] refused to make any specific reasonable accommodation that was necessary to enable [Raymond] to perform the essential functions of his job as an Outreach Coordinator." *Id*. at *7. And as for Raymond's January 17, 2019 email "requesting 'reasonable accommodations'" and his February 1, 2019 letter asking NBF to "identify possible accommodations," the district court found that Raymond did not "reveal any *specific* accommodations that [he] requested which [NBF] failed to provide," and therefore Raymond did not sufficiently allege a genuine dispute of material fact as to whether NBF refused to make reasonable accommodations for his disability. *Id.* On this basis, the district court granted NBF's motion for summary judgment on Raymond's failure-to-accommodate claim.

The district court denied NBF's motion for summary judgment on the disability discrimination claim. In doing so, the court first recognized that Raymond "proffered sufficient evidence that he has a disability under the ADA," and that NBF had notice of Raymond's disability. *Id.* at *4. The court also acknowledged that "[t]he parties do not dispute that Defendant NBF is an employer subject to the ADA." *Id.* Nevertheless, it concluded that NBF failed to meet its burden of "demonstrat[ing] as a matter of law that [Raymond] was not fired because of his disability" by "show[ing] that [he] was either *incapable* or *unwilling* to do his job, . . . provid[ing] a non-discriminatory reason to terminate his employment." *Id.* Similarly, the district court also ruled that "a reasonable jury could find that [Raymond] was qualified to perform essential functions of his job with

reasonable accommodations." *Id.* at *5. This claim therefore proceeded to trial.

B. Disability Discrimination Claim

Trial on Raymond's disability discrimination claim lasted from June 24, 2024, to July 1, 2024. On July 1, the jury returned a verdict for NBF, and the court entered judgment reflecting this verdict on July 2.

On July 30, 2024, Raymond filed a motion for a new trial under Rule 59(a), arguing that the jury's verdict contravened the weight of the evidence. He also asked the district court to amend its summary judgment order on the failure-to-accommodate claim under Rule 59(e). The district court denied Raymond's motion as to both granting a new trial and amending the summary judgment order.

As to the motion for a new trial, the district court found that "[t]here was sufficient evidence introduced at trial to support the jury's verdict that Raymond was not terminated due to his disability." *Raymond v. 1199 SEIU Nat'l Benefit Fund*, No. 20-CV-10380 (GBD) (GWG), 2025 WL 588412, at *2 (S.D.N.Y. Feb. 24, 2025) ("*Raymond II*"). First, it analyzed whether Raymond's proposed alternatives constituted reasonable accommodations under the ADA. It concluded that a reasonable jury could have found that NBF could not have reasonably accommodated Raymond by providing him with shorter driving routes or routes that allowed for frequent breaks, because (1) "[t]here was . . . no evidence presented" at trial—other than Raymond's own testimony—that alternative routes "covered any shorter distances" than his existing assignment; (2) "NBF was not required to reassign other coordinators or 'create' new areas to accommodate Raymond's restrictions";

and (3) "there [was] no evidence that Raymond suggested any . . . other . . . accommodations to NBF, besides returning to his original assignment, which was no longer available." *Id.* at *2, 3. Ultimately, the district court concluded that "NBF had already attempted to accommodate Raymond in accordance with its legal duty when it removed from his route the four farthest facilities in Area I." *Id.* at *3.

Next, the court analyzed whether the evidence presented at trial "unequivocally showed" that Raymond was terminated due to his disability. *Id*. Though it noted that "terminating an employee because they cannot return to work without restrictions . . . is a per se violation of the ADA," the court found that the "evidence did not support a finding that NBF actually had or enforced such a policy." *Id*. The district court based this conclusion not on NBF's internal emails in the weeks before Raymond was fired that emphasized his need to return without restrictions, but on NBF's earlier communications that allowed Raymond to return to work with light restrictions. **[SPA6.]** And it went a step further, finding that not only did the evidence not show that NBF required Raymond to return to work without any restrictions or accommodations, but that "the evidence showed that NBF *did* attempt to accommodate Raymond's prolonged-driving restriction by removing the four farthest stops on his Area I route." *Id.* (emphasis in original). The district court therefore found that "the jury reasonably concluded that NBF's unwillingness to guarantee that Raymond would not have to drive more than thirty minutes at a time was not evidence of NBF's discriminatory animus against the disabled." *Id*. Rather, "NBF was in fact motivated by legitimate business judgment," and so "it was not unreasonable for the jury to conclude that NBF fired

Raymond not because of his disability, but because he was unwilling or unable to do his assigned job." *Id*. The court denied Raymond's motion for a new trial.

The district court then denied Raymond's motion to amend the summary judgment order, finding that "he d[id] not present . . . any new information or evidence that [it] did not already consider at summary judgment." *Id.* at *4. And, reiterating its position in its summary judgment opinion, the district court reasoned that it "properly decided that there was no genuine issue of material fact as to Raymond's failure-to-accommodate claim" because (1) NBF did accommodate Raymond, "most notably by reassigning his four farthest facilities in Area I," and (2) Raymond did not show that he requested any accommodation other than a return to his old Area J assignment. *Id.*

DISCUSSION

I. Applicable Law

A. Standard of Review

"We review *de novo* a district court's decision to grant summary judgment, construing the evidence in the light most favorable to the party against whom summary judgment was granted and drawing all reasonable inferences in that party's favor." *Bey v. City of New York*, 999 F.3d 157, 164 (2d Cir. 2021). Although we resolve ambiguities in favor of the nonmoving party, *Uviles v. City of New York*, 130 F.4th 27, 30–31 (2d Cir. 2025), "conclusory statements, conjecture, or speculation by the party resisting the motion will not defeat summary judgment," *Kulak v. City of New York*, 88 F.3d 63, 70 (2d Cir. 1996). "Summary judgment is required if 'there is no genuine dispute as to any material fact and the

movant is entitled to judgment as a matter of law.'" *United States v. Sum of $185,336.07 U.S. Currency Seized from Citizen's Bank Acct. L7No1967*, 731 F.3d 189, 192 (2d Cir. 2013) (quoting Fed. R. Civ. P. 56(a)).

B. Relevant Law

To prevail on a failure-to-accommodate claim under the ADA, an employee must show that:

> (1) [he] is a person with a disability under the meaning of the ADA;
>
> (2) an employer covered by the statute had notice of his disability;
>
> (3) with reasonable accommodation, [the employee] could perform the essential functions of the job at issue; and (4) the employer has refused to make such accommodations.

McBride v. BIC Consumer Prods. Mfg. Co., 583 F.3d 92, 97 (2d Cir. 2009). For the purpose of summary judgment, the district court in this case concluded that Raymond met his burden on the first two elements—that he is disabled within the meaning of the ADA and that NBF, an employer covered by the ADA, had notice of his disability. His appeal thus turns on the other two factors: whether (1) Raymond could perform his job with a reasonable accommodation and (2) NBF refused to make such accommodations.

In pertinent part, a reasonable accommodation under the ADA is one that "enable[s] an individual with a disability who is qualified to perform the essential functions of that position; or . . . to enjoy equal benefits and privileges of employment." 29

C.F.R. §§ 1630.2(o)(1)(ii)–(iii).[5] Such accommodations may include, but are not limited to, "[j]ob restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities." *Id.* § 1630.2(o)(2)(ii). "A covered entity is required, absent undue hardship, to provide a reasonable accommodation" to any employee who meets the definition of disability under the "actual disability" or "record of" prongs as defined by the regulations. *Id.* § 1630.2(o)(4); *see also id.* § 1630.2(g)(i) & (ii).[6]

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[5] Regulations promulgated by the Equal Employment Opportunity Commission define "essential functions" as "the fundamental job duties of the employment position the individual with a disability holds or desires." 29 C.F.R. § 1630.2(n)(1) (clarifying that the term "does not include the marginal functions of the position"); *id.* § 1630.2(n)(2)–(3) (providing a non-exclusive list of reasons and evidence that would support a finding that a job function is essential). Courts "must give considerable deference to an employer's judgment regarding what functions are essential for service in a particular position." *D'Amico v. City of New York*, 132 F.3d 145, 151 (2d Cir. 1998). Ultimately, however, determining the essential functions of the job is a quintessential fact-bound inquiry best suited for the jury. *See McMillan v. City of New York*, 711 F.3d 120, 126 (2d Cir. 2013).

[6] The regulations provide three alternative prongs of "disability" pursuant to which an individual may establish coverage: (i) the "actual disability" prong; (ii) the "record of" prong; and (iii) the "regarded as" prong. 29 C.F.R. § 1630.2(g)(1)(i)–(iii). These definitions largely mirror and expand upon the statutory definitions of "disability" under the ADA. *See* 42 U.S.C. § 12102(1)(A)–(C). Again, because the district court found that Raymond demonstrated a disability under the ADA,

"The hallmark of a reasonable accommodation is effectiveness." *Dean v. Univ. at Buffalo Sch. of Med. & Biomedical Scis.*, 804 F.3d 178, 189 (2d Cir. 2015). To satisfy the ADA, an "accommodation need not be perfect or the one most strongly preferred by the [plaintiff], but it still must be effective." *Id.* "An *ineffective* 'modification' or 'adjustment' will not *accommodate* a disabled individual's limitations." *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (emphases in original). That is, while an employer need not provide the exact accommodation requested by an employee, if the accommodation does not enable the disabled employee to perform the job's essential functions, that accommodation is not a reasonable one.

Still, a "'reasonable accommodation' does not mean elimination of any of the job's essential functions." *Gilbert v. Frank*, 949 F.2d 637, 644 (2d Cir. 1991). In enacting the ADA, "Congress intended simply that disabled persons have the same opportunities available to them as are available to nondisabled persons." *Wernick v. Fed. Rsrv. Bank of N.Y.*, 91 F.3d 379, 384 (2d Cir. 1996). And to eliminate entirely an essential function of the job would be to favor individuals with disabilities over those without. *See id.* at 384–85.

Ultimately, the process of a failure-to-accommodate claim is as follows:

First, if the employer provided an accommodation, the court examines whether the provided accommodation was reasonable under the ADA—in other

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these nuances are not outcome determinative for purposes of this appeal.

words, whether it was "effective." *See Noll v. Int'l Bus. Machs. Corp.*, 787 F.3d 89, 94–95 (2d Cir. 2015). If so, the inquiry stops there. *See id.* at 94.

If not, then the plaintiff bears the "burden of production," which requires him to show the existence of a "plausible accommodation." *Barnett*, 535 U.S. at 402. To demonstrate the existence of a plausible accommodation at the summary judgment stage, a plaintiff "need only show that an 'accommodation' seems reasonable on its face." *Id.* at 401. Such a showing will "defeat a defendant/employer's motion for summary judgment." *Id.* The burden then shifts to the employer to show, at trial, that a particular accommodation "would cause [the employer] to suffer an undue hardship." *Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 138 (2d Cir. 1995).

With these principles in mind, we turn to the issues before us on appeal.

II. Failure-to-Accommodate Claim

First, we must analyze whether NBF's accommodation—removing the four farthest facilities from Raymond's route—was reasonable under the ADA and our caselaw.[7] Even if we conclude that it was not reasonable, our inquiry does not end there. Because

[7] Because determining the essential functions of Raymond's job is a quintessential fact-bound inquiry best suited for the jury, *see McMillan*, 711 F.3d at 126, for purposes of our assessment of the district court's summary judgment decision on the failure-to-accommodate claim, we assume without deciding that the essential functions of Raymond's job do not require driving for more than thirty minutes uninterrupted because that is a reasonable inference we can draw from the summary judgment record, *see Bey v. City of New York*, 999 F.3d 157, 164 (2d Cir. 2021).

"we may affirm a grant of summary judgment on any basis that finds 'sufficient support in the record, including grounds not relied on by the district court,'" *Dean*, 804 F.3d at 189, we must further consider whether Raymond's proposed accommodations are reasonable on their face, *see Noll*, 787 F.3d at 94.

A. Removal of the Four Farthest Stops

We first conclude that the district court applied an incorrect legal standard when analyzing whether NBF's removal of the four stops was a reasonable accommodation under the ADA.

The district court opinion granting summary judgment to NBF on the failure-to-accommodate claim stated that "[d]efendant repeatedly accommodated [Raymond's] perceived disability." *Raymond I*, 2023 WL 4637626, at *6. It noted that, after Raymond's December 2017 doctor's note recommended against prolonged sitting and driving, NBF reassigned Raymond's four farthest stops to another outreach coordinator. *Id.* The court then declared, without further analysis, that this reassignment "show[s] that [NBF] responded to [Raymond's] expressed needs," providing a reasonable accommodation, and "no reasonable jury could conclude that [NBF] refused to make reasonable accommodations in response to [Raymond's] requests." *Id.* at *6–7. But *any* action taken by an employer, even one that reduces the employee's workload or addresses some of the employee's needs, is not necessarily a reasonable accommodation. Rather, to qualify as a reasonable accommodation, the accommodation "must be effective." *Dean*, 804 F.3d at 189. Or, to state it differently, if the employer's response does not "*accommodate* a disabled individual's limitations," the response is "ineffective." *Barnett*, 535 U.S. at 400.

To be an effective accommodation, then, the removal of the four stops must address Raymond's physical limitations and enable him to perform the essential functions of his job. Because the district court did not consider whether the route change accommodated Raymond's limitations, and instead apparently treated any action that NBF took to respond to Raymond's request as a reasonable accommodation, it applied an incorrect legal standard.

But even using the correct standard, we cannot say whether removing the four stops was a reasonable accommodation. Whether a given accommodation is reasonable is a "'fact-specific' question that often must be resolved by a factfinder." *Noll*, 787 F.3d at 94. In other words, "determinations on this issue must be made on a case-by-case basis," *Wernick*, 91 F.3d at 385, and often cannot be resolved at summary judgment.

Many questions of fact remain. First, the record is unclear as to the extent of Raymond's limitations. While his June 27, 2018 doctor's note does suggest that Raymond cannot drive for more than thirty minutes at a time, it is up to the jury to decide whether the note accurately described Raymond's physical limitations. *See Tafolla v. Heilig*, 80 F.4th 111, 122–23 (2d Cir. 2023); *see also Capobianco v. City of New York*, 422 F.3d 47, 55 (2d Cir. 2005) ("[U]nsworn letters from physicians generally are inadmissible hearsay that are an insufficient basis for opposing a motion for summary judgment."). At trial, NBF would have the opportunity to present any evidence that may contradict the doctor's note, and

the jury, as fact-finder, could determine what weight, if any, to give the note.[8]

Second, even if it were undisputed that Raymond cannot sit for more than thirty minutes at a time, there is a dispute of fact as to whether his assignment in Area I required him to drive uninterrupted for longer than that. By NBF's own account, removing the four farthest stops still left Raymond with at least nine facilities that were over thirty minutes away from Raymond's home. *See* Joint App'x 2636–37 (internal email acknowledging that after the route changes, Raymond's area still included "9 shops less than 1 hour drive" but more than thirty minutes from Raymond's home, "5 shops less than 1:15min drive," and "2 shops more than 1:30 min" from his home). But the parties dispute whether these facility visits required more than thirty minutes of *continuous* driving. *Compare, e.g.*, *id.* at 1081 (fellow Outreach Coordinator testifying that he could "pull over" and "stretch" during his drives), *with id.* at 256 (Raymond's affidavit stating that "outreach coordinators are not permitted to take breaks while traveling"). The extent of Raymond's physical limitations and whether NBF's response reasonably accommodated them are therefore questions of fact for the district court and the jury, as finder of fact, to consider on remand.

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[8] NBF did, at trial, proffer evidence to cast doubt on Raymond's alleged physical limitations. But that evidence does not appear to be in the summary judgment record. We therefore decline to credit it, and leave it up to the district court on remand to decide whether to reopen the summary judgment record (for this and other contested facts) or to proceed to trial on the failure-to-accommodate claim.

B. Raymond's Proposed Accommodations

Even if we cannot conclude that, as a matter of law, NBF provided reasonable accommodations as required under the ADA, NBF can still prevail if Raymond did not meet his burden at the summary judgment stage that any facially reasonable accommodations existed.

The district court determined that Raymond had proposed "only" one alternative accommodation: reassignment back to Area J. *Raymond I*, 2023 WL 4637626, at *6. It concluded that the request was not a "plausible" one because "[t]here is no evidence that Area J is materially different from [NBF's] prior accommodation of removing the four farthest facilities in Area I." *Id*. But there is evidence in the record supporting an inference that Area J requires less driving. A map of Area J and Area I shows that the facilities in Area J are concentrated in Queens and western Long Island, closer to Raymond's home. Area I, by contrast, is spread across middle and eastern Long Island. Even if you remove the four farthest stops, a reasonable jury could interpret the map as showing that, at least measured by distance, Raymond's assignment to Area I requires longer drives than Area J. And Raymond himself testified that Area J would have required "less driving."[9] Joint App'x 109. Raymond also testified that because the drives in Area J allowed him to take local roads, he

[9] The district court acknowledged this testimony, but seems not to have credited it. At the summary judgment stage, this appears to have been error. *See McMillan*, 711 F.3d at 127–28 (relying solely on plaintiff's testimony that his proposed accommodation would allow him to perform the essential functions of his job to defeat summary judgment).

could pull over and rest his legs as needed, which he claimed he could not do in Area I.

NBF argues that Raymond's request to be reassigned back to Area J is not a plausible accommodation because Area J was not a vacant position. It is true that, as an example of acceptable accommodations, the regulations promulgated by the Equal Employment Opportunity Commission ("EEOC") list "reassignment to a *vacant* position." 29 C.F.R. § 1630.2(o)(2)(ii) (emphasis added). And "accommodation is reasonable only if its costs are not clearly disproportionate to the benefits that it will produce." *Borkowski*, 63 F.3d at 138. But we think that NBF's argument is flawed for two reasons.

First, a reasonable jury could conclude that Raymond is not requesting to be transferred to a new position: His position is Outreach Coordinator; he may merely be asking to be given a new *assignment* under that position. Indeed, neither the ADA nor the EEOC regulations define the term "position" or "assignment." So while normally a "plaintiff seeking to hold the employer liable for failing to transfer [him] to a vacant position as a reasonable accommodation must demonstrate that there was a vacant position into which [he] might have been transferred," *Jackan v. N.Y. State Dep't of Lab.*, 205 F.3d 562, 567 (2d Cir. 2000), such a requirement may not apply here.

Second, even if we view the "position" as filled, which ordinarily defeats an employee's claim, a normally unreasonable accommodation can be found to be reasonable, on a case-by-case basis, where the employee's desired accommodation aligns with company practice. *C.f. Barnett*, 535 U.S. at 404–05 (reasoning that while a requested accommodation

may be unreasonable where it requires an employer to bypass its seniority system, that same accommodation may be reasonable if the employer frequently ignores the seniority system such that "one more departure . . . will not likely make a difference"). In other words, if NBF frequently shuffles employees into non-vacant positions, then Raymond's reassignment request might be a plausible accommodation.

It is clear from the record that Sossi, Raymond's boss, frequently reassigned outreach coordinators to different areas**.** What is not clear, however, is whether this was only done to fill existing vacancies, or whether areas were frequently passed between existing outreach coordinators. And that detail matters. "[W]e do not read the ADA as requiring affirmative action in favor of individuals with disabilities, in the sense of requiring that disabled persons be given priority in hiring or reassignment over those who are not disabled." *Wernick*, 91 F.3d at 385. Thus, if NBF never shuffles around the assignments of existing outreach coordinators, then Raymond's proposal to switch back to Area J—which was being serviced by his colleague—would appear to be one that gives him an unfair priority in reassignment. The district court must determine, on remand, whether this request is plausible, keeping in mind that the plaintiff bears only a "light burden of production" as to the facial reasonableness of a proposed accommodation.[10] *McBride*, 583 F.3d at 97 n.3.

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[10] In his email requesting to be moved back to Area J, Raymond also proposed another accommodation in addition to area reassignment—assignment to a different position altogether. *See* Joint App'x 195–96 (Raymond asking whether

III. Disability Discrimination Claim

Raymond also argues that the district court erred in denying his Rule 59(a) motion for new trial. But this denial is not an appealable order.

Our caselaw on this issue is somewhat confounding. Just last year, we concluded that there is "ambiguity in our precedents" regarding whether a district court's denial of a Rule 59(a) motion for a new trial on weight-of-the-evidence grounds is reviewable. *See Ortiz v. Stambach*, 137 F.4th 48, 71 (2d Cir. 2025) (collecting cases). We doubt, though, that our precedents can be viewed that way. Instead, we conclude that our precedents firmly establish that such a denial is not reviewable on appeal.

We have made the (seemingly odd, we think) distinction that:

> appellate review of a district court's decision as to whether a jury verdict was against the weight of evidence "is warranted in the rare case where a trial judge rejects a jury's verdict as against the weight of the evidence . . . but is not warranted in the far more

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NBF considered moving him to a job that "require[d] less extended driving" (internal quotation marks omitted)). Because Raymond "bears the burden of proving that such a vacancy existed," *Jackan*, 205 F.3d at 564, and because Raymond identified no such open positions, this request is not plausible on its face. Additionally, in his briefs before us, Raymond suggests that NBF's "refusal to engage in an interactive process" regarding possible accommodations "resolve[s] the issue in [] Raymond's favor on summary judgment." Appellant's Br. at 38 n.8. At oral argument, however, Raymond's counsel disclaimed an interactive process claim, *see* Oral Arg. at 1:10–1:35, and so we do not consider the issue here.

> frequent circumstance where a trial judge denies a 'weight of the evidence' challenge and leaves in place a jury verdict supported by legally sufficient evidence. In the latter circumstance, the loser's only appellate recourse is to challenge the legal sufficiency of the evidence. The loser is also entitled to argue to the trial judge that the verdict is against the weight of the evidence and to obtain a new trial if the judge can be persuaded, but the denial of that challenge is one of those few rulings that is simply unavailable for appellate review."

Ferreira v. City of Binghamton, 975 F.3d 255, 265–66 (2d Cir. 2020) (quoting *Stonewall Ins. Co. v. Asbestos Claims Mgmt. Corp.*, 73 F.3d 1178, 1199 (2d Cir. 1995)).

In other words, *Ferreira* reads *Stonewall* as saying that the reviewability of a Rule 59(a) weight-of-the-evidence decision depends on the outcome of the district judge's decision: If the district judge *overturns* the jury verdict on weight-of-the-evidence grounds, it is reviewable; if the judge *upholds* a jury verdict over a losing party's motion that the verdict contravenes the weight of the evidence, that decision is not reviewable. That is, if a district court denies a Rule 59(a) motion to vacate a verdict, we cannot review that denial.

Raymond's appeal of the district court's denial of his Rule 59(a) motion on weight-of-evidence grounds is exactly the type of challenge that *Stonewall* and *Ferreira* forbid. Because we cannot review the district court's order, we must dismiss for lack of appellate jurisdiction. *See Dutch Am. Mercantile Corp. v.*

Eighteenth Ave. Land Co., 302 F.2d 636, 637 (2d Cir. 1962).

* * *

We do note, however, what seems to us as oddness of this non-reviewability precedent. All of our sister circuits appear to allow review of Rule 59(a) motions where a judge denies a losing party's weight-of-the-evidence motion. *See, e.g.*, *Correia v. Fitzgerald*, 354 F.3d 47, 54 (1st Cir. 2003); *Leonard v. Stemtech Int'l Inc.*, 834 F.3d 376, 386 (3d Cir. 2016); *Gray v. Bd. of Cnty. Comm'rs of Frederick Cnty.*, 551 F. App'x 666, 675 (4th Cir. 2014); *Foradori v. Harris*, 523 F.3d 477, 497 (5th Cir. 2008); *Mys v. Mich. Dep't of State Police*, 886 F.3d 591, 599 (6th Cir. 2018); *Saathoff v. Davis*, 826 F.3d 925, 933 (7th Cir. 2016); *Russell v. Anderson*, 966 F.3d 711, 724 (8th Cir. 2020); *Williams v. Gaye*, 895 F.3d 1106, 1127 (9th Cir. 2018); *Escue v. N. OK Coll.*, 450 F.3d 1146, 1156–57 (10th Cir. 2006); *Dudley v. Wal-Mart Stores, Inc.*, 166 F.3d 1317, 1320 (11th Cir. 1999); *Curry v. Dist. of Columbia*, 195 F.3d 654, 658–59 (D.C. Cir. 1999); *Lubby Holdings LLC v. Chung*, 11 F.4th 1355, 1361 (Fed. Cir. 2021). But of course, this panel is bound by our current precedent.[11]

CONCLUSION

We have considered the parties' remaining arguments on appeal and conclude that they are without merit. For the reasons explained above, we **VACATE** the district court's entry of summary

[11] We must follow the precedent laid out by our Court "unless and until it is reconsidered by our court sitting in banc (or its equivalent) or is rejected by a later Supreme Court decision." *United States v. Sterkaj*, 138 F.4th 95, 99 (2d Cir. 2025).

judgment, **DISMISS** the appeal of the district court's order on Raymond's Rule 59(a) motion, and **REMAND** for further proceedings consistent with this opinion.

APPENDIX C

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 25-707

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of July, two thousand twenty-six.

Before: Robert D. Sack,

Myrna Pérez,
Circuit Judges,

Loretta A. Preska,
District Judge.[*]

SEAN R. RAYMOND SR.,

Plaintiff - Appellant,

v.

1199SEIU NATIONAL BENEFIT FUND,

Defendant - Appellee.

JUDGMENT

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[*] Judge Loretta A. Preska, of the United States District Court for the Southern District of New York, sitting by designation.

The appeal in the above captioned case from an order of the United States District Court for the Southern District of New York was argued on the district court's record and the parties' briefs.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the district court's entry of summary judgment is VACATED, the appeal of the district court's order on Appellant's Rule 59(a) motion is DISMISSED, and the case is REMANDED for further proceedings consistent with this Court's opinion.

For the Court**:**

Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

[SEAL]

A True Copy

Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

/s/ Catherine O'Hagan Wolfe

[SEAL]

MANDATE ISSUED ON 08/20/2026

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 10380 (GBD) (GWG)

SEAN R. RAYMOND, SR.,

Plaintiff,

-against-

1199SEIU NATIONAL BENEFIT FUND,

Defendants.

MEMORANDUM DECISION AND ORDER

GEORGE B. DANIELS, United States District Judge:

Plaintiff Sean R. Raymond, Sr. ("Raymond") brought this action under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12112-17, against Defendant 1199 SEIU National Benefit Fund ("NBF"). (Compl., ECF No. 1.) Raymond alleged that NBF unlawfully failed to accommodate his disability and terminated his employment due to his disability. *Id.* Before trial, this Court granted NBF summary judgment on the failure-to-accommodate claim; thus, only the wrongful-termination claim proceeded to trial. (Mem. Decision and Order, ECF No. 53.) At the conclusion of a five-day trial, a jury returned a verdict for NBF upon finding that Raymond did not prove by a preponderance of the evidence that he had been discriminated against in violation of the ADA.

Raymond now moves for a new trial pursuant to Federal Rule of Civil Procedure 59. (Mot. for New Trial ("Mot."), ECF No. 143.) Raymond's motion is DENIED.

I. BACKGROUND

Raymond was a long-time employee with NBF. In 2003, he entered the Outreach Department and eventually became an Outreach Coordinator, which required traveling to each of an assigned group of healthcare facilities to speak with union members. (Trial Tr., ECF Nos. 131, 133, 135, 137, 139, at 141:2-6, 255:11-13, 256:3-7.) Raymond was originally responsible for part of Area J; his assignment encompassed facilities that Raymond estimated required about a half-hour commute from his home. (*Id.* at 148:3-6.) In 2010, Raymond developed deep vein thrombosis and post-phlebitic syndrome, which rendered him prone to developing blood clots that could cause a pulmonary embolism. (*Id.* at 66:22-68:14.) In 2015, he suffered a pulmonary embolism. (*Id.* at 268:11-15.) He returned to work after six months of leave. (*Id.* at 151:10-12.)

Then, in 2017, NBF restructured its assignment areas after losing an Outreach Coordinator. (*Id.* at 499:17-502:2.) As part of this restructuring, Raymond was assigned to a new area, Area I. (*Id.*) The previous two parts of Area J were combined and assigned to a different coordinator. (Trial Tr. at 500:1-502:2.) Raymond raised concerns regarding parts of this new assignment and provided NBF with a doctor's note that instructed him to "avoid prolonged walking, standing, sitting, driving, and squatting." (*Id.* at 503:11-18, 547:13-548:5.) In response, NBF accommodated his concerns by reassigning the four farthest facilities in

Area I. (Pl.'s Ex. 3.[1]) Raymond worked this modified Area I for six months without interruption. (Trial Tr. 622:22-623:12.)

After these six months, Raymond provided another doctor's note to NBF that "strongly recommend[ed] that [Raymond] should absolutely avoid prolonged continuous standing, walking, sitting or driving without elevating his legs for more than thirty minutes continuously." (Pl.'s Ex. 4.) Raymond expressed to NBF that he no longer wanted to work Area I; on a contentious phone call with the Assistant Director of Human Resources at NBF, Raymond stated that "he wanted his old assignments back, and he wasn't going to work his new assignments." (Trial Tr. 56:9-11,581:7-8.) Raymond made no other suggestions for possible alternative assignments that would be more feasible for him to serve. (*See id.* at 581-83.) The Assistant Director explained to Raymond that there "was not a significant difference" in the driving distance between the modified Area I and his old assignments. (*Id.* at 581:19-22.) He also explained that there was nothing preventing Raymond from taking as many breaks as he needed while on his route, no matter which Area he was servicing—which Raymond conceded at trial. (*Id.* at 354:21357:4, 582:11-20.) Despite being told that he was allowed to take breaks and that there were no existing alternatives that would require less driving, Raymond continued to insist that he get his old assignments back. (*Id.* at 582:19-20.)

[1] Unless otherwise indicated, citations to exhibits refer to exhibits attached to the parties' respective motions, listed in ECF Nos. 145 and 147.

Raymond then went on short-term disability leave. (Trial Tr. 583:19-584:5.) When he was scheduled to return in 2019, Raymond provided NBF with a third doctor's note that cleared him to "return to work with strict instructions of performing only light duties, including no prolonged driving or sitting of more than thirty minutes." (Pl.'s Ex. 6; Trial Tr. 565:7-15, 583:6-9, 593:10-594:18.) Ultimately, NBF informed Raymond that he would not be able to return to work with "these restrictions," given that many of the facilities were an hour or more from his home. (*See* Pl.'s Ex. 7, 15.) Raymond confirmed that he would not be able to return to his assigned job without these restrictions, then asked for his options "if [his] reasonable accommodations request [was] not approved" in time for him to return to work." (Pl.'s Ex. 9, 14.) NBF explained that he would need to apply for long-term disability if he was unable to return to work. NBF terminated Raymond's employment shortly after. *Id.*

At trial, this Court instructed the jury as to each element of an ADA claim. (Trial Tr. 857:7860:18.) The jury returned a verdict in favor of NBF, finding that Raymond did not prove by a preponderance of the evidence that, under the ADA, NBF discriminated against Raymond by terminating his employment because he was disabled. (*Id.* at 870:9-13.)

II. LEGAL STANDARD

The decision to grant a motion for new trial, pursuant to Federal Rule of Civil Procedure 59(a), rests within the sound discretion of the district court. *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 143 (2d Cir. 1998). Such a motion should not be granted unless the court "is convinced that the jury has reached a seriously erroneous result or that the verdict is a miscarriage of justice." *Kosmynka v. Polaris Indus.*,

Inc., 462 F.3d 74, 82 (2d Cir. 2006) (internal citations omitted); *see DLC Mgmt. Corp. v. Town of Hyde Park*, 163 F.3d 124, 134 (2d Cir. 1998) (stating that a court should only grant such a motion when the jury's verdict is "egregious") (citing *Dunlap-McCuller v. Riese Org.*, 980 F.2d 153, 158 (2d Cir. 1992)). "Unlike judgment as a matter of law, a new trial may be granted even if there is substantial evidence supporting the jury's verdict." *DLC Mgmt. Corp.*, 163 F.3d at 134. The court may independently weigh the evidence and, in doing so, need not view the evidence "in the light most favorable to the verdict winner." *See Martin v. Moscowitz*, 272 F. App'x 44, 47 (2d Cir. 2008) (citing *DLC Mgmt. Corp.*, 163 F.3d at 134).

In order to support a finding of liability under the ADA, Raymond had the burden of proving each of the following elements by a preponderance of evidence: (1) he was or was perceived by his employer to have a disability; (2) that he was a qualified individual, able to perform the essential functions of the job; and (3) that NBF discriminated against Raymond by terminating his employment because of that disability. (Trial Tr. 857:11-19); *see Kinneary v. City of New York*, 601 F.3d 151, 15556 (2d Cir. 2010); 42 U.S.C. § 12112.

III. THE JURY'S VERDICT WAS NOT SERIOUSLY ERRONEOUS

There was sufficient evidence introduced at trial to support the jury's verdict that Raymond was not terminated due to his disability.

A. Raymond's Proposed Accommodations

The parties contest whether Raymond proposed reasonable accommodations under the ADA. In essence, Raymond argued at trial that NBF could have

reasonably accommodated him by either providing him with an assignment that only included "routes under thirty minutes," or one that allowed him to "easily pull over for breaks." (Rep. at 4; *see id.* at 1, 5.) The jury had sufficient evidence to find against Raymond on both these points.

First, there was no evidence that any existing available assignment area included only routes less than thirty minutes from Raymond's home. At trial, Raymond argued that NBF should have reassigned the problematic stops in Area I, reassigned Raymond to his previous assignment (part of Area J), reassigned Raymond to all of Area J, or created a hybrid Area I. (Mot. at 12-13.) But the jury did not find that any of these proposed alternatives were reasonable accommodations. NBF had already reassigned four of the farthest stops in Area I, and Raymond made no effort to identify any specific locations in Area I that were problematic. Raymond's previous assignment, part of Area J, no longer existed as a possible assignment at the time of his employment dispute. There was also no evidence presented that all of Area J, or even a hybrid Area I, covered any shorter distances than the existing Area 1.[2] In fact, NBF explicitly informed Raymond that there "was not a significant difference" in the driving distance between the modified Area I and his old assignments. Raymond was insistent on his previous route. (*Id.* at 581:19-22; *see* Opp. at 10.)

Moreover, NBF was not required to reassign other coordinators or "create" new areas to accommodate

[2] The only evidence Raymond presented on this point was his testimony that his original assignment—half of Area J—contained shorter routes. (*See* Trial Tr. 193:12-16.) But, again, that assignment no longer existed.

Raymond's restrictions. NBF was not required "to create a new position or to eliminate an essential function of a job, as these are not considered reasonable accommodations." *Clark v. Coca-Cola Beverages Ne.*, *Inc.*, No. 20-4040-CV, 2022 WL 92060, at *3 (2d Cir. Jan. 10, 2022). Moreover, in this Circuit, "a plaintiff bears the burden of establishing that a vacancy existed into which [the plaintiff] might have been transferred." *Needle v. Ailing & Cory*, *Inc.*, 88 F. Supp. 2d 100, 106-07 (W.D.N.Y. 2000). In other words, NBF did not have to reassign its other Outreach Coordinators or create a new vacancy for Raymond to move into. Finally, there is no evidence that Raymond suggested any of these other argued accommodations to NBF, besides returning to his original assignment, which was no longer available. Thus, it was reasonable for the jury to conclude that any of Raymond's proposed reassignments, both of himself and other coordinators, were not reasonable accommodations for NBF to make. NBF had already attempted to accommodate Raymond in accordance with its legal duty when it removed from his route the four farthest facilities in Area I.

Raymond also argues that NBF could have reasonably accommodated him by ensuring that he had the ability to take breaks every half an hour. But NBF presented ample evidence at trial demonstrating that Raymond was, in fact, already able to take breaks whenever he needed to. Indeed, Raymond himself testified that there was no NBF rule or policy preventing him from pulling off the highway to take breaks, and that he could have left earlier to ensure that he had enough time to do so. (*See*, *e.g.*, Trial Tr. 354:21-357:4, 582:11-20.) Raymond argued at trial that this was inconvenient because traffic could be much worse by the time he resumed driving; howev-

er, the jury was free to conclude that those arguments at trial were insufficient to render this a nonexistent or unreasonable accommodation, or demonstrate discriminatory animus on the part of NBF.

B. NBF's Termination of Raymond

Raymond argues that the evidence at trial unequivocally showed that he was terminated by NBF because of his disability, in violation of the ADA. (Mot. at 14-16.) Raymond is correct that "terminating an employee because they cannot return to work without restrictions"—in other words, maintaining a "100% healed" policy—"is a per se violation of the ADA." (*Id.* at 14-15.) But the evidence did not support a finding that NBF actually had or enforced such a policy. In fact, NBF points out that Raymond was previously allowed to return to work while disabled because the accommodations NBF offered were more workable. (Opp. at 15.) It was reasonable for the jury to find that NBF did not require Raymond to return without *any* reasonable restrictions or accommodations by crediting NBF's arguments and evidence over Raymond's.

Most importantly, the evidence showed that NBF *did* attempt to accommodate Raymond's prolonged-driving restriction by removing the four farthest stops on his Area I route. And, as discussed above, Raymond presented no evidence that his proposed accommodations, including the full Area J or a "hybrid" Area, would have required less driving time than Area I. He also did not propose any other viable alternatives to NBF; instead, in his conversations with NBF, he insisted that he would only drive his "old assignment"—that is, the half of Area J that no longer existed as a plausible assignment. (Trial Tr. 56:9-11, 501:1-502:2, 581:7-8, 582:19-20.) There was

sufficient evidence at trial for the jury to conclude that NBF was not legally obligated to construct any alternate assignments not proposed at that time.

On this record, the jury reasonably concluded that NBF's unwillingness to guarantee that Raymond would not have to drive more than thirty minutes at a time was not evidence of NBF's discriminatory animus against the disabled—and that NBF was in fact motivated by legitimate business judgment regarding the assignment and allocation of its workforce. Thus, it was not unreasonable for the jury to conclude that NBF fired Raymond not because of his disability, but because he was unwilling or unable to do his assigned job, to service the modified Area I, after NBF had already attempted to reasonably accommodate his physical limitations.

IV. RAYMOND'S RULE 59(e) MOTION IS DENIED

Finally, Raymond moves, under Rule 59(e), to alter or amend this Court's prior grant of summary judgment on Raymond's failure-to-accommodate claim. (Mot. at 16-17.) The standard governing a motion to alter or amend a judgment pursuant to Rule 59(e) is identical to that governing a motion for reconsideration pursuant to Local Civil Rule 6.3. *Sullivan v. N.Y.C. Dep't of Investigation*, No. 12-CV-2564, 2016 WL 7106148, at *3 (S.D.N.Y. Dec. 6, 2016) (quoting *Henderson v. Metro. Bank & Tr. Co.*, 502 F. Supp. 2d 372, 375 (S.D.N.Y. 2007)). Both Rule 59(e) and Local Civil Rule 6.3 "are meant to `ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters.'" *In re AXA Equitable Life Ins. Co. COI Litig.*, No. 16-CV-740, 2018 WL 3632500, at *1 (S.D.N.Y. July 30, 2018) (citation

omitted). "[T]he standard for granting . . . a [Rule 59(e)] motion is strict," and is met only if "the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (citations omitted). "Accordingly, motions that 'simply regurgitate the arguments that this Court previously rejected' should be denied." *Prout v. Vladeck*, 319 F. Supp. 3d 741, 744 (S.D.N.Y. 2018) (citation omitted).

Here, Raymond does not demonstrate that this Court overlooked any controlling decisions or factual matters in its summary judgment decision. He does not point to any specific evidence or data that was newly introduced at trial or went unconsidered at summary judgment; instead, he makes only broad legal arguments that this Court has duly rejected. In fact, the only specific exhibit he cites in this motion is an exhibit that this Court explicitly considered in its summary judgment opinion. (*See* Mot. at 16-17; Mem. Decision and Order, ECF No. 53, at 14. *Compare* Pl.'s Ex. 21 *with* Hurley Ex. M, ECF No. 42-13.[3]) Moreover, Raymond's motion does not identify any specific accommodation that he requested from NBF that he did not present to this Court in his summary judgment briefing or at oral argument. In other words, he does not present to this Court any new information or evidence that this Court did not already consider at summary judgment.

[3] The exhibit in question is a 2019 email chain among NBF employees and Raymond, discussing Raymond's concerns with returning to work after his leave.

Notwithstanding the above, this Court properly decided that there was no genuine issue of material fact as to Raymond's failure-to-accommodate claim. This Court will not rehash its summary judgement decision here, but will reiterate that Raymond's failure-to-accommodate claim failed because, *inter alia*, NBF accommodated Raymond throughout their employment relationship, most notably by reassigning his four farthest facilities in Area I. Moreover, Raymond has presented no evidence that he proposed any specific accommodation to NBF during his employment besides going back to his old assignment—an Area that no longer existed.

V. CONCLUSION

Plaintiff's motion for a new trial is DENIED. The jury's verdict was not seriously erroneous or unsupported by the evidence. The Clerk of Court is directed to close the motion at ECF No. 143.

Dated:

New York, New York

Feb. 24, 2025

SO ORDERED.

/s/ George B. Daniels
GEORGE B. DANIELS
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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20 Civil 10380 (GBD) (GWG)

SEAN R. RAYMOND, SR.,

Plaintiff,

-against-

1199SEIU NATIONAL BENEFIT FUND,

Defendant.

JUDGMENT

It is hereby **ORDERED, ADJUDGED, AND DECREED:** That after a Jury Trial before the Honorable George B. Daniels, United States District Judge, the jury having returned a verdict in favor of Defendant, the Complaint is hereby dismissed. The Clerk of Court is directed to close this action.

DATED: July 2, 2024
New York, New York

So Ordered:

/s/ George B. Daniels
GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE

DANIEL ORTIZ
Acting Clerk of Court

BY: _____
Deputy Clerk

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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20 Civ. 10380 (GBD)

SEAN R. RAYMOND, SR.,

Plaintiff,

-against-

1199SEIU NATIONAL BENEFIT FUND,

Defendant.

MEMORANDUM DECISION AND ORDER

GEORGE B. DANIELS, United States District Judge:

Plaintiff Sean R. Raymond, Sr. brings this suit against Defendant 1199SEIU National Benefit Fund ("NBF") under the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 *et seq*. (Compl., ECF No. 1, at 1-3.) Plaintiff alleges that NBF failed to provide reasonable accommodations for his disability and then terminated his employment because he was disabled. (*Id.* at 4.) Before this Court is Defendant's motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (ECF No. 38.) Defendant's motion for summary judgment as to the discriminatory termination claim under the ADA is DENIED. Defendant's motion for summary judgment as to the failure-to-accommodate claim is GRANTED.

I. BACKGROUND

Defendant NBF is a "self-funded, non-for-profit, multiemployer Taft-Hartley trust fund" that provides health benefits to frontline healthcare workers. (Pl.'s R. 56.1 Counter Statement, ECF No. 46, ¶¶, 3.) Plaintiff Raymond was an employee first hired by NBF in 1988. (*Id.* ¶ 6.) Raymond became an Outreach Coordinator in or around 2007, after holding a variety of roles in the organization. (*Id.* ¶¶ 7-8.) NBF Outreach Coordinators assist members at healthcare facilities concerning issues that relate to benefits they receive from NBF and its affiliated employee benefit funds. (*Id.* ¶¶ 11-12.) The job normally requires that Outreach Coordinators travel to the various assigned facilities in a particular region. (*See id.* ¶¶ 11-14.) Each Outreach Coordinator, including Raymond, receives an NBF car for the exclusive purpose of traveling between assigned facilities to conduct this outreach. (*Id.* ¶ 16.)

Raymond began having health issues relating to blood clots in his left leg in 2010. (*Id.* ¶21.) From 2010 to 2015, Raymond worked as an Outreach Coordinator in a territory called Area I, which required the servicing of healthcare facilities in Queens and Long Island. (*Id.* ¶ 33.) In 2015, NBF reassigned Raymond to Area J, which included different healthcare facilities also in Queens and Long Island. (*Id.* ¶ 35.) Raymond went to the hospital for a swollen leg and trouble breathing in August 2015, and he was diagnosed with a pulmonary embolism that caused his hospitalization for approximately ten days. (*Id.* ¶ 24-25.) After going on short-term disability leave for approximately 26 weeks, Raymond came back to work in January 2016 with restrictions from his doctor stating that for the first four weeks following

his return to work, Raymond should perform "half of the standing, walking and lifting than what he normally does" and that "sitting is advisable." (*Id.* ¶¶ 27-28.) NBF Outreach Department Director Frank Sossi informed NBF's human resources department that the outreach department could accommodate these temporary restrictions because Raymond "mostly sits" and that NBF would limit the amount of materials he carried. (*Id.* ¶ 31.)

In early December 2017, NBF decided to further reorganize responsibilities and reassigned Raymond from Area J back to Area I, in addition to reassigning several other Outreach Coordinators to different areas. (*Id.* ¶¶ 38-40.) In response to the reassignment back to Area I and upon Raymond's request, Raymond's doctor faxed a letter to NBF on December 19,2017, stating that, among other things, Raymond must "elevat[e] his legs while sitting" and "avoid[] prolonged walking, standing, sitting, driving, and squatting." (*Id.* ¶¶ 43, 45.) On December 26, 2017, Raymond emailed Richard Kral—a manager in NBF's human resources department—to confirm that NBF received his doctor's letter. (*Id.* ¶ 48.) The two spoke by phone the following day to discuss the purpose or concern behind the December 19, 2017 letter. (*Id.* ¶¶ 49-50.) Raymond characterized the Area I assignment as him being reassigned to the "Hamptons" and was concerned about the reassignment's impact on his health. (*Id.* ¶ 50.) He noted the long drive to and from his home and the restrictions from his doctor regarding prolonged driving. (*Id.*)

In response, on January 12, 2018, NBF notified Raymond that he would be exempted from servicing the four Area I facilities farthest from his home. (*See* Sossi Ex. C, ECF No. 43-3.) Raymond then serviced

this "modified Area I" for more than six months from January to June 2018 without incident. (Pl.'s R. 56.1 Counter Statement ¶ 60.) He then submitted another doctor's note excusing his absence from work from June 18 to 21, 2018, due to an episodic flare-up of his phlebitis with deep-vein thrombosis. (*Id.*)

After Raymond returned to work, his doctor faxed a letter on June 27, 2018, recommending that Raymond "avoid prolonged continuous standing, walking, sitting, or driving without elevating his legs *for more than thirty minutes continuously.*" (*Id.* ¶¶ 61-62 (emphasis added).) On July 31, 2018, Raymond faxed a letter to NBF's human resources department, seeking a response to the June doctor's note. (*Id.* ¶ 64.) Kevin Hurley, an Assistant Director in NBF's human resources department, called Raymond that day "to find out what concern or issue Raymond thought the doctor's notes left open." (*Id.* r 65, 68.) Raymond then "indicated his belief that because the doctor's latest note added the thirty-minute restriction on driving, it showed he could no longer drive his new assignment, the modified Area I." (*Id.* ¶ 66.) When Hurley expressed that the new doctor's note implied Raymond could not work in either Area J or the modified Area I, "Raymond shouted at Mr. Hurley that he should be given his old assignment back in Area J." (*Id.* ¶¶ 67.)

On August 6, 2018, Raymond again went out on short-term disability. (*Id.* ¶ 69.) On September 17, 2018, NBF's human resources department received updated information from Raymond's doctor, who stated that Raymond could return to work if he "avoid[ed] prolonged standing/sitting/squatting" and "heavy lifting" until January 2, 2019. (*Id.* ¶ 70; Hurley Ex. I, ECF No. 42-9.) Sossi subsequently told

his NBF colleagues that the outreach department could not accommodate these restrictions because the Outreach Coordinator position "requires sitting, standing and driving for a prolonged period of time." (Hurley Ex. I.)

Then, on January 15, 2019, when Raymond returned from short-term disability and NBF informed him that he was still assigned to Area I, Raymond submitted another doctor's note confirming that he should perform only light duties, including no prolonged driving or sitting of more than 30 minutes and that these restrictions were "permanent." (*Id.* ¶ 78.) NBF stated it could not accommodate Raymond as an Outreach Coordinator pursuant to these permanent restrictions. (*Id.* ¶¶ 79-80.) Following this notification, Raymond went back on short-term disability and emailed NBF on January 17, 2019, writing, "I am prepared to return to work, but would require reasonable accommodations, which I am requesting by way of this communication." (*Id.* ¶ 82; Hurley Ex. L, ECF No. 42-12.) On January 22, 2019, NBF responded that it could not accommodate Raymond according to the doctor's restrictions, stating that the restrictions "negatively impact[ed]" Raymond's ability to conduct the essential functions of an Outreach Coordinator. (Hurley Ex. L.) NBF also notified Raymond that he would reach the 26-week maximum for short-term disability on February 5, 2019 and could apply for long-term disability benefits with The Standard Life Insurance Company of New York. (*Id.;* Pl.'s R. 56.1 Counter Statement ¶ 84.)

On February 1, 2019, Raymond asked for a reconsideration of his request for "reasonable accommodation[s]." (*See* Hurley Ex. M, ECF No. 42-13.) He had not requested any specific accommodation other

than to return to Area J. (Pl.'s R. 56.1 Counter Statement ¶¶ 82, 86.) Raymond stated that "there [was] no medical limitation on [his] ability to perform [his] job, once he g[ot] to the required location," and expressed his willingness to consult with the human resources department about possible options for accommodations. (Hurley Ex. M.) On February 4, 2019, NBF reaffirmed that it could not accommodate Raymond because the restrictions impeded the essential functions of his job. (Weinberger Ex. J, ECF No. 41-10.) On February 6, 2019, NBF notified Raymond that it was terminating him and closing out his employment record "as a result of [his] short-term disability leave ending" the day prior. (Hurley Ex. N, ECF No. 42-14.)

The Standard Life Insurance later denied Raymond's long-term disability benefits application, finding he was not disabled. (Pl.'s R. 56.1 Counter Statement ¶ 88.) On March 24, 2020, however, the Equal Employment Opportunity Commission ("EEOC") determined based on Raymond's charge that "reasonable cause existed] to believe [NBF] discriminated against [Raymond] on account of his disability in violation of ADA." (EEOC Determination, ECF No. 47-49, at 2.)

On December 8, 2020, Raymond commenced this action against NBF by alleging two causes of action under the ADA: disability discrimination and failure to accommodate. (Compl. at 4.) NBF seeks summary judgment on both of Raymond's claims, amounting to dismissal of Raymond's complaint. (Def.'s Mem. of Law on Mot. Summ. J., ECF No. 39, at 25.) Raymond opposes NBF's motion. (Pl.'s Mem. of Law in Opp'n to Mot. Summ. J. ("Opp'n"), ECF No. 44.) On June 15,

2023, this Court held oral argument on NBF's motion. (*See* Hr'g Tr., ECF No. 51.)

II. LEGAL STANDARDS

A. Summary Judgment

Summary judgment is appropriate only when 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). A fact is "'material' for the purposes of summary judgment when it 'might affect the outcome of the suit under the governing law.' *See Barlow v. Male Geneva Police Officer,* 434 F. App'x 22, 25 (2d Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986)). A dispute of material fact is 'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' *Id.* (quoting *Roe v. City of Waterbury,* 542 F.3d 31, 35 (2d Cir. 2008), *cent. denied,* 558 U.S. 933 (2009)). When considering a motion for summary judgment, the court must "resolve all ambiguities and draw all reasonable inferences in the light most favorable to the party opposing the motion." *Cifarelli v. Village of Babylon,* 93 F.3d 47, 51 (2d Cir. 1996). But "mere conclusory allegations, speculation or conjecture will not avail a party resisting summary judgment." *Id.*

In determining whether a genuine issue of material fact exists, a court must construe the evidence in the light most favorable to the opposing party and draw all reasonable inferences in that party's favor. *Niagara Mohawk Power Corp. v. Jones Chem., Inc.,* 315 F.3d 171, 175 (2d Cir. 2003). However, "a court must not weigh the evidence . . . or resolve issues of fact." *Victory v. Pataki,* 814 F.3d 47, 59 (2d Cir. 2016) (quotation marks and citation omitted). Summary

judgment is therefore "improper if there is any evidence in the record that could reasonably support a jury's verdict for the non-moving party." *Marvel Characters v. Simon,* 310 F.3d 280, 286 (2d Cir. 2002).

B. Claims Under the Americans with Disabilities Act

Under the ADA, a qualified individual is "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). Disability discrimination in violation of the ADA includes the act of "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an . . . employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." *Id.* § 12112(b)(5)(A).

In pleading a prima facie case of disability discrimination under the ADA, Plaintiff must demonstrate (a) "that he is disabled within the meaning of the ADA or perceived to be so by his employer"; (b) "that his employer is subject to the ADA"; "(c) that he was otherwise qualified to perform the essential functions of the job with or without reasonable accommodation; and (d) that he suffered an adverse employment action because of his disability." *Brady v. Wal-Mart Stores, Inc.,* 531 F.3d 127, 134 (2d Cir. 2008).

To establish a claim for failure to accommodate, Plaintiff must demonstrate that (a) he is a person with a disability under the meaning of the ADA; (b)

the employer is covered by the statute and had notice of his disability; (c) with reasonable accommodations, the employee could perform the essential functions of the job at issue; and (d) the employer has refused to make such accommodations. *Noll v. Intl Bus. Machs. Corp.,* 787 F.3d 89, 94 (2d Cir. 2015).

III. DEFENDANT IS NOT ENTITLED TO SUMMARY JUDGMENT ON THE DISABILITY DISCRIMINATION CLAIM

A reasonable jury could find that Plaintiff suffered the adverse employment action of his termination due to his disability. Plaintiff has proffered sufficient evidence that he has a disability under the ADA, as well as that Defendant NBF had notice of his disability. The parties do not dispute that Defendant NBF is an employer subject to the ADA. (*See* Hurley Ex. N; Opp'n at 14.) To win on summary judgment, then, Defendant must demonstrate as a matter of law that Plaintiff was not fired because of his disability. To do so, Defendant must show that Plaintiff was either *incapable* or *unwilling* to do his job, which provided a non-discriminatory reason to terminate his employment. Defendant could not have impermissibly terminated Plaintiff because of his disability. Defendant has not met this burden.

A. Plaintiff Is Disabled Under the ADA and Was Regarded as Disabled

Under the ADA, an individual has a disability if he has (a) "a physical or mental impairment that substantially limits one or more major life activities," (b) "a record of such an impairment," or (c) is "regarded as having such an impairment." 42 U.S.C. § 12102(1). A person meets the requirement of being "regarded as having such an impairment" "if the

individual establishes that he or she has been subjected to an action prohibited under [the ADA] because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity," as long as the impairment is more than minor and possesses "an actual or expected duration" of more than six months. *Id.* § 12102(3).

The record provides ample evidence of Plaintiffs physical impairment, of which Defendant was well aware.[1] Defendant received Plaintiffs statements and doctors' notes that conveyed Plaintiff had "a long-standing history of recurring phlebitis"; he was under "strict instructions of performing only light duties, including no prolonged driving or sitting of more than thirty minutes, no repetitive squatting, and no heavy lifting"; and "these restrictions were permanent." (Hurley Ex. J, ECF No. 42-10; Pl.'s R. 56.1 Counter Statement ¶ 78.) NBF's express acknowledgement of Plaintiffs doctor's notes and its modifications of Plaintiffs assigned territory in removing the four farthest facilities demonstrate that NBF, in the very least, "regarded [Plaintiff] as having such an impairment." 42 U.S.C. § 12102(1)(C). Moreover, a thirty-minute restriction on prolonged driving and sitting is "a physical . . . impairment that substantially limits" a major life activity for practically all Americans, *id.* § 12102(1)(A),[2] and Plaintiff provided extensive

[1] Contrary to Defendant's arguments that Plaintiff's doctors' letters lack medical detail and that his condition was transitory, *(see* Def.'s Mem. of Law on Mot. Summ. J. at 16-18), the record is replete with medical evidence of Plaintiff's physical impairment that demonstrates Plaintiff was disabled under the ADA throughout the relevant period.

[2] "[M]ajor life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating,

doctor's notes evincing "a record of such an impairment," *id.* § 12102(1)(B). Plaintiff is thus disabled—and was perceived to be disabled—within the meaning of the ADA.

B. Genuine Issues of Material Fact Remain as to Whether Plaintiff Was Qualified to Perform the Essential Functions of His Job With Reasonable Accommodations

Traveling distances for more than thirty minutes is an essential function of an NBF Outreach Coordinator. "The term *essential functions* means the fundamental job duties of the employment position the individual with a disability holds or desires." 29 C.F.R. § 1630.2(n)(1). "[A] court must conduct 'a fact-specific inquiry into both the employer's description of a job and how the job is actually performed in practice.'" *McMillan v. City of New York,* 711 F.3d 120, 126 (2d Cir. 2013) (citation omitted). Here, the Outreach Coordinator job description lists "extensive travel" as a requirement. (Pl.'s R. 56.1 Add'l Statement ¶ 5; Hurley Ex. H, ECF No. 42-8 ("The job responsibility for an Outreach Coordinator states clearly that there will be extensive travel in the Tri-State area . . . .").) In practice, Outreach Coordinators receive NBF cars for the express purpose of traveling between assigned facilities. (Pl.'s R. 56.1 Counter Statement ¶ 16.) No genuine dispute exists that Outreach Coordinators must visit their assigned institutions in the Tri-State area in order to educate and help members understand and access their benefits, with the exceptions of protocols during the

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sleeping, *walking, standing, lifting, bending,* speaking, breathing, learning, reading, concentrating, thinking, communicating, and *working."* 42 U.S.C. § 12102(2)(A) (emphases added).

COVID-19 pandemic and occasional permissions to "visit" certain facilities by phone call. (*See id.* ¶¶ 17-20; *see also* Raymond Aff., ECF No. 45, ¶ 3 ("In this role [of Outreach Coordinator], I was assigned to conduct on-site field visits at hospitals or nursing homes . . . .").)

Even with the necessity of travel, however, a reasonable jury could find that Plaintiff was qualified to perform the essential functions of his job with reasonable accommodations. Reasonable accommodation means modifications to the manner in which a position is customarily performed that enable a disabled individual to perform the essential functions of that position. 29 C.F.R. § 1630.2(o)(1)(ii). On January 12, 2018, Defendant notified Plaintiff of the accommodations that he would not be required to service his four farthest institutions, in addition to previously limiting the materials he carried. (Sossi Ex. C; Hurley Ex. C, ECF No. 42-3.) Both parties acknowledge that "Raymond serviced the modified Area I for six months without incident." (PL's R. 56.1 Counter Statement ¶ 60.) Further, Kevin Hurley of NBF's human resources department stated at his deposition that Raymond "would schedule his own meetings at the institutions, and certainly if he needed additional drive time where he needed to stop mid trip, stretch his legs, get some exercise, he could certainly do so."[3] (Hurley Ex. 0, ECF No. 42-15, at

[3] Plaintiff argues that he "easily could have performed his job . . . [had NBF] ma[de] clear that [he] could take breaks without penalty." (Opp'n at 1.) However, the record plainly demonstrates that Plaintiff controlled his daily routine, and that Plaintiff knew he did not need express permission from his employer to take breaks. *(See, e.g.,* Raymond Dep., ECF No. 47-1, at 111:17-21 (Raymond stating that working as an Outreach Coordinator entailed "[m]aking [his] own schedule").)

26:14-19.) It is also undisputed that Raymond had consistently positive performance reviews since becoming an Outreach Coordinator. (*See* Def.'s Reply in Supp. of Mot. Summ. J., ECF No. 48, at 8; Opp'n at 2.) Therefore, a reasonable jury could find that Plaintiff was capable of performing the essential functions of his job, at least with these accommodations of servicing modified Area I and abiding by the doctor's restrictions.

C. Genuine Issues of Material Fact Also Remain as to Whether Defendant Terminated Plaintiff Because He Was Disabled

Defendant has also failed to proffer undisputed evidence that it terminated Plaintiff due to his inability or unwillingness to do his job or due to any other non-discriminatory reason. On January 17, 2019, Plaintiff emailed Defendant that he was "prepared to return to work" from short-term disability but "would require reasonable accommodations." (Hurley Ex. L; *see also* Pl.'s R. 56.1 Counter Statement ¶ 82.) After Defendant rebuffed him by stating that the doctor's restrictions "negatively impact[ed]" his ability "to perform the essential functions" of an Outreach Coordinator, (Hurley Ex. L), Plaintiff again contacted Defendant that "there [was] no medical limitation on [his] ability to perform [his] job, once he g[ot] to the required location," further requesting to consult with the human resources department to discuss a possible solution, (Hurley Ex. M). However, Defendant declined this appeal and terminated Plaintiff's employment prior to his return to work "as a result of [his] short-term disability leave ending." (Weinberger Ex. J; Hurley Ex. N.)

These final email communications show that it is plausible Plaintiff was willing and able to work and was attempting to find a solution that would allow him to perform his duties as an Outreach Coordinator. Therefore, a reasonable jury could conclude that Defendant terminated the qualified Plaintiff due to his disability, and not his incapability or unwillingness to perform his job.

IV. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT ON THE FAILURE-TO-ACCOMMODATE CLAIM

Defendant is entitled to summary judgment on the failure-to-accommodate claim. Plaintiff has demonstrated a disability under the ADA, and Defendant NBF—an employer covered by the ADA—had notice of his disability. *See* discussion *supra* Section III.A. However, Plaintiff cannot establish his failure-to-accommodate claim because Plaintiff cannot demonstrate or raise a genuine dispute of material fact that during his employment Defendant refused to make reasonable accommodations.

Plaintiff bears the burden of production and persuasion as to the existence of some accommodation that would have permitted him to perform the essential functions of his employment. *Molina v. City of Rochester,* 764 F. App'x 49, 50-51 (2d Cir. 2019). "[E]mployers are not required to provide a perfect accommodation or the very accommodation most strongly preferred by the employee." *Noll,* 787 F.3d at 95. Employers also have no obligation to create a new position for an employee seeking an accommodation. *See Parnahay v. United Parcel Serv., Inc.,* 20 F. App'x 53, 56 (2d Cir. 2001).

Defendant repeatedly accommodated Plaintiff's perceived disability. After Plaintiff's hospitalization and return to work in January 2016, Defendant evaluated the first doctor's note that advised Plaintiff should be "[slitting" and perform "Half of the standing, walking and lifting than what [Plaintiff] normally does." (Weinberger Ex. C, ECF No. 41-3, at 2.) Defendant found that it could accommodate Plaintiff's original request because he "mostly sits," and Defendant would limit the amount of materials he carried. (Pl.'s R. 56.1 Counter Statement ¶ 31.) When Plaintiff s doctor faxed a letter to Defendant in December 2017 stating that Plaintiff should also avoid prolonged walking, standing, sitting, driving, and squatting, Defendant exempted Plaintiff from servicing the four farthest facilities that were "about . . . 1 hour and 30 minutes away" from Plaintiff's home. (*See* Sossi Ex. C; Hurley Ex. H.) These accommodations show that Defendant responded to Plaintiff 's expressed needs.

Plaintiff's only request that Defendant refused was Plaintiff's transfer back to his previous assignment of Area J. (*See, e.g.,* Pl.'s R. 56.1 Counter Statement ¶ 82 ("Raymond proposed a route change.").). This request is not a plausible "reasonable accommodation." Plaintiff claims that the June 27, 2018 doctor's note and its inclusion of a time restriction of thirty minutes constitutes a material addition to past restrictions, demanding consideration by Defendant of a new accommodation such as his requested route change. (*See* Hr'g Tr. at 43:7-47:11.) However, as noted by Defendant, "[t]here is nothing in the record that supports Plaintiff's claim that reassignment to Area J would have accommodated his limitations, as

opposed to Area I."[4] (Def.'s Reply in Supp. of Mot. Summ. J. at 5.) Plaintiff has not provided any evidence, such as a map or list of Area J's facilities with driving distances and times, that demonstrates Area J as opposed to modified Area I could have resolved issues with his revised restrictions. There is no evidence that Area J is materially different from Defendant's prior accommodation of removing the four farthest facilities in Area I.[5]

Plaintiff thus presents no evidence that Defendant refused to make any specific reasonable accommodation that was necessary to enable Plaintiff to perform the essential functions of his job as an Outreach Coordinator. Plaintiffs additional argument that he required clearer direction from Defendant that Plaintiff was allowed to take breaks, (*see* Opp'n at 1), is groundless because Plaintiff was in charge of his own travel schedule. (*See* Raymond Dep., ECF No. 47-1, at 111:1721); *see also* discussion *supra* note 3. Moreover, Plaintiffs email to Defendant on January 17, 2019 requesting "reasonable accommodations," as well as Plaintiffs email on February 1, 2019 asking Defendant to "identify possible accommodations" for his disability, do not reveal any *specific* accommodations that Plaintiff requested

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[4] Indeed, Defendant "determined that there was no route that required less travel [from Plaintiff's home] than his assigned route." (Def.'s Mem. of Law on Mot. Summ. J. at 20.)

[5] Modified Area I consisted of 27 locations, (Hr'g Tr. at 10:22-24; Hurley Ex. H), and Area J consisted of 50 to 60 locations, (Hr'g Tr. at 18:22-19:6; Raymond Dep. at 232:16-233:4). Plaintiff conceded at oral argument that the only indication in the record that Area J might have comprised shorter routes for Plaintiff than Area I was "[j]ust his testimony." (Hr'g Tr. at 47:1-11; *see also* Raymond Dep. at 233:24-234:12 (Area *J* "would have been less driving.").)

which Defendant failed to provide. (*See* Hurley Exs. L, M.) Defendant provided accommodations of removing the four farthest facilities in Area I, limiting the materials he carried, and otherwise abiding by the doctor's restrictions. Defendant was not later obligated to switch Plaintiffs routes to his most preferred choosing. *Noll,* 787 F.3d at 95 ("employers are not required to provide . . . the very accommodation most strongly preferred by the employee"). Therefore, no reasonable jury could conclude that Defendant refused to make reasonable accommodations in response to Plaintiffs requests.

V. CONCLUSION

Defendant's motion for summary judgment as to the discriminatory termination claim is DENIED. Plaintiff is disabled under the meaning of the ADA, and a reasonable jury could find that Plaintiff was otherwise qualified to perform the essential functions of his job with accommodations, as well as that he was terminated because of his disability.

Defendant's motion as to the failure-to-accommodate claim is GRANTED because Plaintiff cannot establish or raise a genuine dispute of material fact that Defendant refused to make reasonable accommodations during his employment. Plaintiffs failure-to-accommodate claim is DISMISSED.

The Clerk of Court is directed to close the open motion at ECF No. 38 accordingly.

Dated: July 20, 2023
New York, New York

SO ORDERED.

/s/ George B. Daniels
GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
CIVIL DIVISION

No. 1:20-cv-10380-GBD

SEAN R. RAYMOND SR.,
Plaintiff,

v.

1199SEIU NATIONAL BENEFIT FUND,
Defendant.

Jury Trial: *(check one)* ☒ Yes ☐ No

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Sean R. Raymond Sr.
Street Address	117-31 237th Street
City and County	Elmont/Nassau
State and Zip Code	NY 11003
Telephone Number	(646) 209-5852
E-mail Address	sraymond_sr_@hotmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title *(if known)*. Attach additional pages if needed.

Defendant No. 1

Name	1199SEIU National Benefit Fund
Job or Title *(if known)*	
Street Address	498 7th Avenue
City and County	New York/New York
State and Zip Code	NY 10018
Telephone Number	(646) 473-6206
E-mail Address *(if known)*	

Defendant No. 2

Name	
Job or Title *(if known)*	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address *(if known)*	

Defendant No. 3

Name	
Job or Title *(if known)*	
Street Address	
City and County	

State and Zip Code _____
Telephone Number _____
E-mail Address
(if known) _____

Defendant No. 4

Name _____
Job or Title
(if known) _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address
(if known) _____

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is

Name 1199SEIU National Benefit Fund
Street Address 498 7th Avenue
City and County NY/NY
State and Zip Code NY 10018
Telephone Number (646) 473-6206

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to *(check all that apply)*:

☐ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a

Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

☒ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Other federal law *(specify the federal law)*: _____

☐ Relevant state law *(specify, if known)*: _____

☐ Relevant city or county law *(specify, if known)*: _____

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a

separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

- ☐ Failure to hire me.
- ☒ Termination of my employment.
- ☐ Failure to promote me.
- ☒ Failure to accommodate my disability.
- ☐ Unequal terms and conditions of my employment.
- ☐ Retaliation.
- ☐ Other acts *(specify)*: _____

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s) 2/6/2019

C. I believe that defendant(s) *(check one)*:

- ☒ is/are still committing these acts against me.
- ☐ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

- ☐ race _____
- ☐ color _____
- ☐ gender/sex _____
- ☐ religion _____
- ☐ national origin _____

☐ age *(year of birth)* _____ *(only when asserting a claim of age discrimination.)*

☒ disability or perceived disability *(specify disability)*

Postphlebitic syndrome of the left leg with chronic deep vein thrombophlebitis

E. The facts of my case are as follows. Attach additional pages if needed.

I was employed by 1199SEIU NBF from 1988 until 2/6/19. I am a qualified individual with a disability under ADA Section 101. I've been diagnosed with chronic deep vein thrombophlebitis, requiring daily blood-thinning medicine. My doctor advised me to avoid prolonged sitting, squatting, or standing. When medicated and following my doctor's restrictions, I'm able to perform my job duties as an Outreach Coordinator (OC). The extended drive I must make to get to some sites involves prolonged sitting. (Not all of the 30 or so OC-type jobs require driving). On 1/15/19, I got notice from the employer that they would not accommodate my doctor's restrictions. I asked for reconsideration and a chance to discuss accommodations, as stated in the employer's policy. My request was refused. The employer violated the ADA by (1) denying my request for reasonable accommodation, and (2) terminating my employment on 2/6/19 because of my disability. The employer knows that its actions were wrong because the actions were contrary to the employer's own policies. The employer's own LTD carrier concluded that I could do my job with a simple accommodation. The EEOC concluded there is reasonable cause to believe that violation of the statute occurred. (See attached).

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)* 11/15/2019

B. The Equal Employment Opportunity Commission *(check one)*:

☐ has not issued a Notice of Right to Sue letter.

☒ issued a Notice of Right to Sue letter, which I received on *(date)* 9/16/2020.

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

☐ 60 days or more have elapsed.

☐ less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not

make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I am asking for: (1) full payment of lost wages since termination, with interest since February 2019; (2) payment to fully compensate for the monetary impact of the employer's actions which caused a reduction in the amount of my pension benefit and a significant delay in when that benefit can begin; (3) compensation for emotional distress and ongoing pain and suffering, and for loss of enjoyment of life caused by the employer's actions; (4) an award of punitive damages because the employer knowingly acted contrary to its own policies; and (5) all appropriate litigation expenses, court costs, and attorney fees (if any) as provided in ADA Section 505.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the

complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case–related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:	12/8/2020
Signature of Plaintiff	/s/ Sean R. Raymond Sr.
Printed Name of Plaintiff	Sean R. Raymond Sr.

B. For Attorneys

Date of signing:	
Signature of Attorney	
Printed Name of Attorney	
Bar Number	
Name of Law Firm	
Street Address	
State and Zip Code	
Telephone Number	
E-mail Address	

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To: Sean Raymond, Sr.
117-31 237th Street
Elmont, NY 11003

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	520-2019-05021
EEOC Representative	Perry Canales, Supervisory Investigator
Telephone No.	(929) 506-5318

TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene

later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission
/s/ Perry A, Canales
[Digitally signed by Perry A, Canales. DN: cn=Perry A, Canales, o=Equal Employment Opportunity Commission, ou=New York District Office, email=perry.canales@eeoc.gov, c=US. Date: 2020.09.16 10:58:46 -04'00'] For

Judy A. Keenan,
District Director
9/16/2020
(Date Mailed)

Enclosures(s)

cc: Attn
Union President
1199 SEIU NATIONAL BENEFIT FUND
330 West 42nd Street
New York, NY 10036