

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:16-cv-00654-BO

U.S. EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
BOJANGLES' RESTAURANTS, INC.,)
)
Defendant.)

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S STATEMENT OF
UNDISPUTED FACTS AND PLAINTIFF'S
STATEMENT OF MATERIAL AND
DISPUTED FACTS**

Pursuant to Local Civil Rule 56.1(a)(2), Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC" or "Commission"), responds to Defendant's Statement of Undisputed Material Facts [ECF 27] as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted that Wolfe did not specifically disclose her gender identity on the date Defendant hired Wolfe. Disputed to the extent Defendant's statement suggests Wolfe never disclosed her gender identity during her employment. [See, e.g., App'x 1, Wolfe 77:18-79:23, 128:12-16, 190:2-191:5; App'x 2, Riggins 24:23-25:10, 78:8-9; App'x 3 p.2]. Further disputed that whether Wolfe expressly disclosing her gender identity is relevant, given evidence that Wolfe's coworkers and managers, specifically including Unit Director Riggins, did not regard Wolfe as a heterosexual male. [See, e.g., App'x 2, Riggins 24:16-25:10, 85:16-86:3, 89:11-15, 91:12-20; App'x 4; ECF 29 n.3; see also App'x 1, Wolfe 76:3-8, 83:6-14, 126:12-24, 192:18-193:7; App'x 2, Riggins 48:3-13; App'x 5, Singleton 11:1-

12:18, 16:13-17:2, 35:17-23, 42:24-43:1, 49:10-50:10, 53:12-21]. Further disputed that whether Wolfe did or did not disclose her gender identity even matters given that her coworkers and managers considered Wolfe's sex/gender identity to be contrary to sex stereotypes. [*See id.*]

9. Admitted that Wolfe did not specifically disclose her gender identity to Irwin or ask Irwin to call her a name other than Jonathan during her employment with Bojangles'. Disputed to the extent Defendant's statement suggests Wolfe never disclosed her gender identity during her employment. [*See, e.g.,* App'x 1, Wolfe 77:18-79:23, 128:12-16, 190:2-191:5; App'x 2, Riggins 24:23-25:10, 78:8-9; App'x 3 p.2]. Further disputed that whether Wolfe expressly disclosing her gender identity is relevant, given evidence that Wolfe's coworkers and managers, specifically including Area Director Irwin, did not regard Wolfe as a heterosexual male. [*See, e.g.,* App'x 6, Irwin 20:6-11; App'x 4; ECF 29 n.3; *see also* App'x 1, Wolfe 76:3-8, 83:6-14, 126:12-24, 192:18-193:7; App'x 2, Riggins 48:3-13; App'x 5, Singleton 11:1-12:18, 16:13-17:2, 35:17-23, 42:24-43:1, 49:10-50:10, 53:12-21]. Further disputed that whether Wolfe did or did not disclose her gender identity even matters given that her coworkers and managers considered Wolfe's sex/gender identity to be contrary to sex stereotypes. [*See id.*]

10. Disputed as to Defendant's representation of the cited testimony. As stated in the cited testimony, Wolfe and Riggins worked together some Sundays and when Wolfe's and Riggins' shifts overlapped on other days of the week.

11. Admitted.

12. Admitted.

13. Admitted.

14. Disputed. While women were permitted to wear braids and at least one man was permitted to wear dreadlocks that were similar to Wolfe's braids, Wolfe was instructed by Riggins to *remove* her braids because Riggins "hired a man." [*See* App'x 7; App'x 5, Singleton 17:3-18:10, 57:11-58:2; App'x 1, Wolfe 75:10-18, 76:3-8; *see also* App'x 5, Singleton 16:13-17:2, 42:24-43:1].

15. Admitted.

16. Admitted, but when Wolfe was initially hired, Riggins did not provide Wolfe with any substantive training on Defendant's harassment policy or handbook. [App'x 1, Wolfe 50:9-19, 55:7-56:4, 61:25-62:15]. Instead, Riggins merely gave Wolfe an envelope full of paperwork that Riggins did not review with Wolfe. [*Id.* at 50:17-51:11]. Wolfe, when presented with a copy of the handbook at her deposition, was not sure if the envelope of paperwork Riggins provided to Wolfe on Wolfe's first day of work even contained a copy of Defendant's employee handbook. [*Id.* at 57:7-19].

17. Disputed. Defendant claims to maintain management and hourly employee training records, yet has failed to produce any documentary evidence showing if and when any employee (including Wolfe), supervisor, or manager received harassment training. [App'x 8, 30(b)(6) 39:7-16, 41:16-18, 42:10-12, App'x 9 Req. 14]. Hourly employees did not receive harassment training at Owen Drive. [App'x 5, Singleton 55:8-18].

18. Admitted.

19. Admitted.

20. Disputed. Defendant claims to maintain management and hourly employee training records, yet has failed to produce any documentary evidence showing if and when any employee (including Wolfe), supervisor, or manager received harassment training. [App'x 8, 30(b)(6) 39:7-16, 41:16-18, 42:10-12, App'x 9 Req. 14]. Riggins testified that she received approximately one hour of harassment and handbook training in 2004, and training in 2010 on a number of topics to include harassment. [App'x 2, Riggins 12:4-14:5]. Irwin received harassment training in 2000 and in 2007, and did not receive additional harassment training until April 2013, approximately two months after Defendant terminated Wolfe. [App'x 6, Irwin 85:10-11, 86:5-8, 86:16-20].

21. Admitted.

22. Disputed. Wolfe complained about discrimination at Owen Drive on multiple occasions, including as late as mid-February 2013 and February 21, 2013, and to multiple employees, including Area Director Irwin and Senior Director of Human Resources Eubanks. [*See, e.g.*, App'x 4; App'x 1, Wolfe

81:6-11, 82:3-20, 83:4-14, 85:3-9, 90:22-91:7, 97:12-22, 100:7-101:6, 191:21-192:10, 192:18-193:7; App'x 6, Irwin 19:13-20:5, 20:12-14, 90:23-94:18].

23. Admitted.

24. Admitted.

25. Disputed. While on assignment at Corporation Drive, Wolfe told Area Director Irwin that she (Wolfe) liked working at Corporation Drive because “people didn’t pick on me or try to correct me when I identified as a she.” [App’x 1, Wolfe 191:21-192:10].

26. Admitted.

27. Admitted, except insofar as Defendant characterizes Riggins as a coworker.

28. Disputed. Riggins instructed Wolfe to *remove*, not restrain or cut, Wolfe’s feminine braids because Riggins “hired a man and that is what she expected me to stay as long as I work for her.” [App’x 1, Wolfe 75:11-18, 77:3-8].

29. Admitted that Wolfe called and spoke with Eubanks on February 21, 2013 to complain about harassment at Owen Drive. [App’x 4; App’x 1, Wolfe 96:15-97:4, 97:12-22].

30. Disputed. While Wolfe cannot remember the conversation word-for-word, Wolfe testified that Wolfe and Eubanks discussed “some of the problems that [Wolfe] was having at work” and that Eubanks told Wolfe that Eubanks “would get in contact with the area director or someone to look at what [Wolfe] was complaining about.” [App’x 1, Wolfe 97:12-22, 99:6-10].

31. Admitted that Eubanks took notes from her call with Wolfe of February 21, 2013. *See* App’x 4. Disputed that Eubanks’ independent memory is more accurate than the notes she made at the time of the call. Disputed that Eubanks’ memory of the call is more accurate than Wolfe’s memory of the call; that distinction is inherently a decision for a jury to make.

32. Admitted that Wolfe was upset that she had been told to remove her braids. Disputed that Defendant completely or accurately characterizes the content of the call. As noted below, Eubanks’ notes confirm that Wolfe reported that Assistant Unit Director Janice Locklear told Wolfe that Wolfe “disgusted” her and threatened Wolfe would be terminated. [*See* App’x 4.] Further, Eubanks’ notes

documented that Wolfe had already complained to Area Director Irwin about “derogatory remarks” based on sexual preference. [*See id.*]

33. Admitted that Wolfe and Irwin spoke on February 21, 2013 after Wolfe complained about harassment at Owen Drive to Eubanks. During this call, Irwin initially terminated Wolfe, and hung up the phone before Wolfe had the opportunity to discuss what had occurred inside Owen Drive. [App’x 1, Wolfe 93:3-18]. Approximately 30 minutes later, Irwin called Wolfe back and revoked the termination. [*Id.*] Irwin then advised Wolfe that she (Wolfe) was being transferred from Owen Drive restaurant to restaurant # 735, located at 7661 Raeford Road, Fayetteville, North Carolina 28304. [App’x 1, Wolfe 94:2-12; App’x 6, Irwin 50:13-17].

34. Admitted. Disputed that the transfer was made with Wolfe’s consent or agreement. [App’x 1, Wolfe 88:19-89:16, 94:2-12; App’x 10, Hall 10:5-19, 15:3-11]. Further disputed as to suggestion that the transfer was prompted solely by Wolfe’s entry into Owen Drive, and not also by Wolfe’s complaints to Irwin and Eubanks in February 2013 regarding harassment at Owen Drive.

35. Admitted.

36. Admitted.

37. Admitted that Riggins confronted Wolfe at the Owen Drive restaurant on February 27, 2013. [App’x 2, Riggins 104:16-25; App’x 1, Wolfe 90:11-21, 101:25-102:7].

38. Admitted.

39. Disputed. As Wolfe testified, she did not have the opportunity to place her order given Riggins’ confrontation. [App’x 1, Wolfe 102:20-23].

40. Admitted.

41. Disputed. Wolfe referred to her hair—feminine braids which expressed Wolfe’s gender identity—fourteen times. Wolfe specifically stated, “[W]hen I did my hair it became a big controversy over the whole issue. It became a whole controversy when I did my hair, so that’s what, that’s what led to my transfer to another spot. And when I spoke to the EEOC of North Carolina, they told me I could not have been forced to transfer, but actually I was.” [App’x 1, Wolfe 112:13-21].

42. Admitted that Wolfe did not use the specific terms “gender, gender identity or gender expression” during the service line call; however, disputed that Wolfe did not reference her gender or gender expression. Wolfe’s outward appearance, including her feminine hairstyle, is an expression of her gender. [See App’x 12 p.4]. Further disputed that Wolfe did not reference a complaint of harassment or discrimination; Wolfe informed the operator that when Wolfe was instructed she could not keep her feminine hairstyle, a Bojangles employee stated to Wolfe, “You disgust me.” [App’x 1, Wolfe 109:12-17]. Lastly, Plaintiff disputes the implication of Defendant’s Fact 42 that Wolfe’s complaint to the service line on February 27, 2013 is less credible or less complete because Wolfe did not catalog her numerous past complaints to Defendant’s employees.

43. Admitted that Irwin called Wolfe on February 27, 2013, after speaking with Unit Director Riggins. [App’x 6, Irwin 74:4-9].

44. Disputed. Defendant’s own evidence on this point is conflicting. As stated in Defendant’s June 28, 2013 position statement to the EEOC, “[I]t is uncontroverted that Bojangles’ terminated Mr. Wolfe’s employment because he came to the restaurant (when he was not scheduled to work), was loud and disruptive to the restaurant’s business, held up the line for Bojangles’ paying customers, and was insubordinate to the restaurant’s manager [Unit Director Riggins] in front of Bojangles’ customers.” [App’x 3 p.1]. The position statement further states, “*After learning of the incident [from Unit Director Riggins], [Area Director Irwin] decided to terminate Mr. Wolfe’s employment based on his disruption of Bojangles’ business and service of its customers and his insubordination.*” [Id. p.4 (emphasis supplied)]. After having made the decision to terminate Wolfe based only on Unit Director Riggins’ description of events, “[Area Director Irwin] contacted Mr. Wolfe to discuss the matter.” [Id. p.4].

45. Disputed. Irwin made the decision to terminate Wolfe prior to speaking with Wolfe and based solely on a conversation with Unit Director Riggins. See ¶44, *supra*.

Further pursuant to Local Civil Rule 56.1(a)(2), the EEOC submits in support of its Memorandum in Opposition to Defendant's Motion for Summary Judgment the following material facts, several of which demonstrate genuine issues of material facts that are central to EEOC's allegations in this case:

KEY INDIVIDUALS

46. Jonathan Wolfe ("Wolfe") is a former hourly employee of Defendant, and the individual who filed charge of discrimination 433-2013-01334 ("charge") with the EEOC. [App'x 11]. Wolfe's charge serves as the basis for the EEOC's lawsuit against Defendant.

47. Wolfe is a transgender female, meaning that she was born male but her gender identity is female. [App'x 1, Wolfe 197:20-25]. Wolfe has identified as female since a very young age, and has recognized herself as transgender since high school. [*Id.* at 171:8-172:13, 197:20-25; App'x 12 pp.9-10]. While Wolfe identifies and usually presents as female, she is biologically and legally male. [App'x 1, Wolfe 197:24-198:5]. Wolfe endorses symptoms sufficient to meet the DSM-IV diagnostic criteria for gender dysphoria. [App'x 12 pp.7-9; App'x 13, Muehl 53:13-54:18, 56:20-58:4].

48. At all times relevant, Jeannine Eubanks was Defendant's Senior Director of Human Resources. [App'x 14, Eubanks 8:3-6].

49. At all times relevant, Sharon Irwin (formerly Sharon McCollough) was the Area Director over the region that included Defendant's Owen Drive restaurant. [ECF 27 ¶6]. Irwin had authority to take tangible employment actions against Wolfe. [ECF 1 ¶16; ECF 6 ¶16].

50. At all times relevant, Ella Riggins was the Unit Director of Defendant's Owen Drive restaurant. [ECF 27 ¶5]. Riggins had authority to take tangible employment actions against Wolfe. [ECF 1 ¶16; ECF 6 ¶16].

51. At all times relevant, Janice Locklear was an Assistant Unit Director at Defendant's Owen Drive restaurant. [App'x 2, Riggins 16:6-9]. As an Assistant Unit Director, Locklear had authority to terminate hourly employees for "blatant behavior," and authority to recommend employee terminations to Unit Director Riggins. [App'x 14, Eubanks 79:6-14].

52. At all times relevant, Shimika Singleton was a shift manager at Defendant's Owen Drive restaurant. [App'x 5, Singleton 5:20-24].

KEY DOCUMENTARY EVIDENCE

53. On May 2, 2013, Wolfe filed charge of discrimination 433-2013-01334 ("charge") with the EEOC. [App'x 11]. The charge alleges with particularity that Wolfe was harassed based on her sex (gender identity) by her Unit Director since October 2012, and that Wolfe had reported the harassment to her Area Director. [*Id.*] The charge also alleges with particularity that Wolfe was transferred on February 21, 2013 and terminated on February 27, 2013 in retaliation for complaining about the harassment. [*Id.*]

54. Defendant submitted a position statement, dated June 28, 2013, to the EEOC during the Commission's investigation of Wolfe's charge. [App'x 3].

55. BOJANGLES-00000212-214 comprises a complete set of handwritten notes created by Senior Director of Human Resources Eubanks. [App'x 4; App'x 14, Eubanks 113:19-114:2; App'x 8, 30(b)(6) 20:10-23, 186:24-187:1]. All of Eubanks' handwritten notes were created from February 21 through February 28, 2013. [App'x 8, 30(b)(6) 187:2-3]. Eubanks' notes were prepared in anticipation of speaking with legal counsel, even though at the time Eubanks prepared the notes she allegedly had no indication that Wolfe intended to file a charge of discrimination with the EEOC. [App'x 14, Eubanks 82:13-16, 138:22-139:22].

56. BOJANGLES-00000025 is a Work Incident Report created by Unit Director Riggins on February 21, 2013 regarding Wolfe. [App'x 15; App'x 8, 30(b)(6) 98:11-100:18].

57. BOJANGLES-00000219 is an email exchange between Senior Director of Human Resources Eubanks and Area Director Irwin. [App'x 7].

EEOC'S STATEMENT OF MATERIAL AND DISPUTED FACTS

58. When Unit Director Riggins first hired Wolfe, Riggins believed Wolfe was a heterosexual male. [App'x 2, Riggins 24:16-18]. However, Riggins perception of Wolfe changed after approximately six months (*i.e.*, in or about October or November 2012) when Wolfe shared a picture of Wolfe presenting as a woman. [*Id.* at 24:23-25:10].

59. During Wolfe's employment, Wolfe shared pictures of Wolfe presenting as a woman with Defendant's employees, including Unit Director Riggins. [App'x 2, Riggins 25:3-10; App'x 3 p.10].

60. Wolfe entered the Owen Drive restaurant presenting as a woman on at least two occasions: in or about October 2012, Wolfe entered the restaurant wearing a woman's wig, and on February 21, 2013, Wolfe entered the restaurant wearing long "feminine" braids. [App'x 1, Wolfe 77:18-79:23; App'x 2, Riggins 78:8-9].

61. Defendant, in its position statement to the EEOC, states that "[s]hortly after he was hired, Mr. Wolfe announced (to use his words) that he was a 'cross dresser.'" [App'x 3 p.2].

62. When Wolfe would identify using her preferred female name, Riggins would correct Wolfe stating, "That's a him. You are a boy." [App'x 1, Wolfe 128:12-16].

63. Certain female coworkers referred to Wolfe as "Dee Dee"—a nickname derived from Wolfe's preferred name, which is De'Ashia—and used feminine pronouns in reference to Wolfe. [App'x 1, Wolfe 190:2-191:5]. Unit Director Riggins repeatedly corrected these coworkers stating, "His name is Jonathan. That's a boy" and "that man [is] he, not she." [*Id.*]

64. Assistant Unit Director Bowden, on at least one occasion, told Wolfe that Wolfe was "going to hell" because "God made [Wolfe] a man" and that that Wolfe needed to pray. [App'x 1, Wolfe 192:18-193:7; *see also* App'x 2, Riggins 48:3-13].

65. Assistant Unit Director Locklear called Wolfe a "sissy" "about 50 or more" times and said, "You're not a girl. Stop acting like a girl. What's the purpose of being gay?" [App'x 5, Singleton 11:1-12:18, 35:17-23].

66. Assistant Unit Director Taylor called and/or referred to Wolfe as a "punk" and "little sissy." [App'x 5, Singleton 49:10-50:10, 53:12-21].

67. In or about October 2012, around the time Riggins' perception of Wolfe changed, Wolfe entered Defendant's Owen Drive restaurant wearing a woman's wig. [App'x 1, Wolfe 77:18-79:23]. Unit Director Riggins saw Wolfe wearing the wig and told Wolfe that she (Wolfe) could never come into

the restaurant dressed as a woman again. [*Id.*] Wolfe complained to Irwin about this incident. [*Id.* at 81:6-9].

68. At some point between October 2012 and December 2012, Wolfe began working as a head cashier. [App'x 2, Riggins 55:18-21, 66:8-10]. Riggins told Wolfe that if Wolfe wanted to run a cash register then she “needed to conform to the identity of a male, to be a male, walk, talk and act like a male.” [App'x 1, Wolfe 126:12-24].

69. From approximately mid-December 2012 through approximately January 5, 2013, Defendant temporarily assigned Wolfe to assist with the opening of Defendant's new Corporation Drive location. [App'x 2, Riggins 53:11-19; App'x 6, Irwin 52:2-22]. Defendant chose Wolfe because she was one of the top two best employees at Owen Drive. [*Id.*]

70. Around February 14, 2013, Area Director Irwin received a call that Wolfe had locked herself in the restroom while working at Owen Drive and needed Irwin's help. [App'x 6, Irwin 19:13-20:5, 90:23-94:18]. Irwin called Wolfe, who said, ““I'm in the bathroom. I'm really scared. I need you to come up here right nowThe two boys in the kitchen are asking me questions and I'm really scared to answer. I'm really uncomfortable. Can you come up here?”” [*Id.* at 93:11-17].

71. Irwin went to the restaurant and learned that Wolfe's coworkers (whose identities Irwin cannot recall) were asking Wolfe personal questions about how Wolfe engages in sexual intercourse. [App'x 6, Irwin 93:25-94:4, 94:19-20]. Wolfe told Irwin that one coworker, Marquis, said Wolfe should commit suicide because Wolfe is “gay.” [App'x 1, Wolfe 82:3-20, 83:4-14, 85:3-9].

72. Irwin, who characterized the event as “one of those kids being kids having conversations that they really shouldn't be having, and it was nothing,” threatened to terminate Wolfe “no questions asked” if a similar incident occurred again, and instructed Wolfe to “man up.” [App'x 6, Irwin 94:5-11, 94:25-95:4; App'x 14, Eubanks 133:11-21].

73. Irwin reported this incident to Senior Director of Human Resources Eubanks the following day. [App'x 6, Irwin 20:12-14].

74. While complaining to Irwin about the coworker around February 14, 2013, Wolfe also complained that “[Riggins] was telling me that she hired me as a man, I got to stay a man if I’m going to work for her.” [App’x 1, Wolfe 83:6-14]. Irwin told Wolfe that Irwin would “launch an investigation” and Wolfe “was not to repeat anything [Wolfe] told [Irwin] to anybody.” [*Id.*]

75. Before Irwin was contacted about this incident, Wolfe reported the coworker’s comments to Assistant Unit Director Taylor. [App’x 1, Wolfe 85:3-9]. Taylor told Wolfe “there was nothing that no one could really do.” [*Id.*].

76. Wolfe also reported the coworker’s comments to Riggins. [App’x 1, Wolfe 85:12-16].

77. It is uncontested that on February 21, 2013, Wolfe entered Defendant’s Owen Drive restaurant wearing women’s braids.

78. Salient facts about the events of February 21, 2013 include the following:

a. Assistant Unit Director Janice Locklear, who was at the counter when Wolfe came in, expressed disgust and told Wolfe that Riggins was going to terminate Wolfe. [App’x 1, Wolfe 74:1-75:9; App’x 4; App’x 5, Singleton 11:1-16]. Locklear told Wolfe, “Why do you have those braids in your head? You’re a boy. You’re not a girl.” [App’x 5, Singleton 11:1-11].

b. Upon seeing Wolfe, Riggins “was shaking her head in disagreeance, and then the first word she said was ‘no.’ . . . [S]he told me that if I wanted to continue with being employed that I need to remove my braids.” [App’x 1, Wolfe 75:10-18]. “She told me no, that she hired a man and that is what she expected me to stay as long as I work for her.” [*Id.* at 76:3-8; *see also* App’x 5, Singleton 16:13-17:2, 42:24-43:1]. “Ms. Riggins told me . . . I had to act like a male, dress, walk and talk like a male.” [App’x 1, Wolfe 88:9-19].

c. While Riggins denies making a comment such as “I hired you as a man, you need to look like a man,” to Wolfe, Riggins admits the following:

A. That's when I made the comment to [Assistant Unit Director Locklear] and [Shift Manager Shimika Singleton]. I think Shimika was there too and said, no, I hired – *I hired a man, so he's a man or something like that.*

Q. You said, "I hired a man, he's a man"?

A. Yeah.

Q. Why did you say that?

A. Because she said something about him coming to work in miniskirts.

[App'x 2, Riggins 85:13-86:3, 89:11-15, 91:12-20].

d. Unit Director Riggins stated that "everybody" made comments about Wolfe's hair, including Assistant Unit Janice Locklear who "said something like I guess next – since you didn't say nothing, I guess next you're going to let them wear miniskirts and stuff in here." [App'x 2, Riggins 85:7-19].

e. Eubanks' handwritten notes from February 21 state, "[Wolfe] did come to the store in a mini-skirt & braids – [Unit Director Irwin] thinks everyone was shocked and comments were made". [App'x 4].

f. Area Director Irwin initially terminated Wolfe on February 21 and hung up the phone before Wolfe had the opportunity to discuss what had occurred inside the Owen Drive restaurant. [App'x 1, Wolfe 93:3-18]. Approximately 30 minutes later, Irwin called Wolfe back and revoked the termination. [*Id.*]

g. Riggins created a Work Incident Report, which is disciplinary record meant to codify employee performance issues, for Wolfe. [App'x 15; App'x 8, 30(b)(6) 98:11-100:18]. The purported basis for the Work Incident Report was Wolfe's failure to appear for a meeting and make cinnamon twists on February 2 – nineteen days before Riggins created the Work Incident Report. [*Id.*] The Work Incident Report is the only disciplinary record in Wolfe's personnel file.

h. Defendant states that Irwin “commenced an immediate investigation of Mr. Wolfe’s complaint that included interviews of Bojangles’ employees who were working at the restaurant during Mr. Wolfe’s visit on February 21.”[App’x 3 pp.3-4]. Further, Senior Director of Human Resources Eubanks believed Irwin was investigating the February 21 incident, stating “I would have anticipated that Sharon was talking to people, getting information, setting up meetings, things like that.” [App’x 14, Eubanks 140:5-17]. Irwin, however, admits she did not investigate the events of February 21. [App’x 6, Irwin 47:13-15, 58:10-16].

i. On February 22, the day after Wolfe was transferred from Owen Drive, Irwin did go to the Owen Drive restaurant to watch audio-less video footage from February 21. [App’x 6, Irwin 31:14-24, 32:15-16, 34:8-13]. The video did not show Wolfe engaging in any behavior that would violate Defendant’s rules or policies. [*Id.* at 34:25-35:2]. Irwin did speak with Riggins about the preceding day, but did not speak with any other employee who was present. [*Id.* at 35:13-19]. Notably, Irwin collected a picture of Wolfe’s braids from Shift manager Singleton, who had directly witnessed the events of February 21, but did not speak with Singleton about what Singleton had observed. [*Id.* at 49:12-17].

79. Between approximately October 2012 and February 27, 2013, Wolfe made numerous verbal complaints about managers and coworkers to Defendant, specifically including the following:

a. Wolfe complained to Riggins about Assistant Unit Director Bowden telling Wolfe that Wolfe was going to hell and needed to pray because “God made me a man.” [App’x 1, Wolfe 192:16-25]. Riggins was aware that on at least one occasion Assistant Unit Director Bowden made comments that “upset” Wolfe. [App’x 2, Riggins 48:3-49:14]. Riggins denies Wolfe complained to her about Bowden, and claims she learned about Bowden’s comments from Assistant Unit Director Locklear. [*Id.*] Riggins does not

recall the content of Bowden's statements and, although the comments upset Wolfe, claims to have never discussed the same with Wolfe. [*Id.*]

b. Wolfe complained to Irwin about the October 2012 incident in which Wolfe entered the Owen Drive restaurant wearing a woman's wig and Riggins told Wolfe that she (Wolfe) could never come into the restaurant dressed as a woman again. [App'x 1, Wolfe 81:6-11].

c. While on assignment at Corporation Drive, and less than *two months* before Wolfe's termination, Wolfe told Irwin that she (Wolfe) liked working at Corporation Drive because "people didn't pick on me or try to correct me when I identified as a she." [App'x 1, Wolfe 191:21-192:10].

d. Wolfe complained to Irwin in or around February 14, 2013— approximately *two weeks* before Wolfe's termination—about coworker harassment and Riggins was "telling me that she hired me as a man, I got to stay a man if I'm going to work for her." *See* ¶¶70-74, *supra*.

e. On February 21 at approximately 9:50 a.m., Wolfe called Defendant's employee hotline, which connected Wolfe with Senior Director of Human Resources Eubanks. [App'x 1, Wolfe 96:15-97:4]. This was the first of two calls between Wolfe and Eubanks in the record. [*Id.*] Wolfe and Eubanks discussed "some of the problems that [Wolfe] was having at work." [App'x 1, Wolfe 97:12-22; App'x 14, Eubanks 102:19-103:7]. During their phone call, Wolfe advised Eubanks that she "talked to [Area Director Irwin] about *derogatory remarks made to him* [sic] *because of sexual preference*." [App'x 4 (emphasis supplied)]. Eubanks told Wolfe that Eubanks "would get in contact with the area director or someone to look at what [Wolfe] was complaining about." [App'x 1, Wolfe 99:6-10].

f. By the time Eubanks spoke with Wolfe, Eubanks had already spoken with Area Director Irwin, who had advised Eubanks that Wolfe is a "good employee, *but*

'bisexual'.” [App’x 4 (emphasis supplied); App’x 14, Eubanks 116:15-19]. Irwin had also reported to Eubanks that Riggins called Wolfe “probably with the intention to terminate Wolfe.” [App’x 4].

g. Also on February 27, after Irwin terminated Wolfe (for the second time in six days), Wolfe “called HR again . . . to try to figure out what was going on, and I mentioned to whoever I spoke to about my complaints and whatever was being done, and that was when I was told that my complaint was never filed. There was never an investigation opened on my claim by [Irwin].” [App’x 1, Wolfe 90:22-91:7, 100:7-101:6].

80. Wolfe and Irwin spoke on February 21, 2013, after Wolfe complained about harassment at Defendant’s Owen Drive restaurant to Eubanks. During this call, Irwin initially terminated Wolfe, and hung up the phone before Wolfe had the opportunity to discuss what had occurred inside the Owen Drive restaurant. [App’x 1, Wolfe 93:3-18]. Approximately 30 minutes later, Irwin called Wolfe back and revoked the termination. [*Id.*] Irwin then advised Wolfe that she (Wolfe) was being transferred from Owen Drive to restaurant # 735, located at 7661 Raeford Road, Fayetteville, North Carolina 28304. [*Id.* at 94:2-12; App’x 6, Irwin 50:13-17].

81. Wolfe did not request and was against the transfer due to lack of reliable transportation. [App’x 1, Wolfe 88:19-89:16, 94:2-12; App’x 10, Hall 10:5-19, 15:3-11].

82. Wolfe was terminated on February 27, 2013. [*See* ECF 1 ¶48; ECF 6 ¶48].

83. When Wolfe was terminated, Senior Director of Human Resources Eubanks “wasn’t convinced there was a reason to terminate [Wolfe]” and believed Irwin was still “on a fact-finding mission at that point.” [App’x 4, Eubanks 140:7-8].

84. On February 28, 2013, the day after Wolfe was terminated, Senior Director of Human Resources Eubanks emailed Area Director Irwin, stating “[Senior Vice President of Human Resources Vickie Smith] was questioning why we wouldn’t let him work with braids. If we allowed women to work with long hair, as long as it is restrained, why wouldn’t we let him?” [App’x 7]. A number of women at

Owen Drive had long braids, and one man had “dreads that's real long down his back” that were similar to Wolfe’s braids. [App’x 5, Singleton 17:3-18:10, 57:11-58:2]. These employees complied with the dress code by putting hair into hairnets. [*Id.*]

85. Also on February 28, 2013, Eubanks, without any indication that Wolfe intended to file a charge of discrimination, contacted counsel to verify whether the termination could give rise to any legal exposure, including whether the actions could give rise to a gender stereotyping claim. [App’x 4; App’x 14, Eubanks 82:13-21, 139:14-142:4]. Eubanks’ handwritten notes from this conversation state, “***NC – no protection gender based – stereotype***”. [App’x 4 (emphasis supplied)].

86. Irwin’s—the individual identified by Defendant as solely responsible for the decision to discharge Wolfe—reason for terminating Wolfe has been inconsistent:

a. On February 28, 2013, the day after Wolfe was terminated, Irwin notified Senior Director of Human Resources Eubanks that Wolfe was terminated for going “into Owen trying to start something with [Riggins] and for spreading gossip.” [App’x 7]. Irwin’s email does not reference or allude to Wolfe cursing at Irwin prior to Irwin’s decision to terminate Wolfe.

b. At deposition, Irwin unequivocally testified: “I terminated [Wolfe] ***solely*** for being disrespectful and cursing at me.” [App’x 6, Irwin 121:7-8 (emphasis supplied)]. Irwin claims that Wolfe cursed at Irwin “nonstop” or “nine or ten” times on February 27, which was out of character for Wolfe. [*Id.* at 21:16-22:16]. Irwin then claimed she had no intention of terminating Wolfe for entering the Owen Drive restaurant on February 27, and that Wolfe was allowed to be in the Owen Drive restaurant on February 27. [*Id.* at 40:12-17, 82:19-83:18].

87. Defendant’s repeatedly articulated reason for terminating Wolfe is inconsistent with Irwin’s testimony that Wolfe was terminated solely for cursing:

a. During the investigation of this Wolfe’s charge, Defendant had taken the position that it terminated Wolfe, “because he came to the restaurant (when he was not

scheduled to work), was loud and disruptive to the restaurant's business, held up the line for Bojangles' paying customers, and was insubordinate to the restaurant's manager [Unit Director Riggins] in front of Bojangles' customers." [App'x 3 at p.1]. The position statement further states, "After learning of the incident [from Unit Director Riggins], [Area Director Irwin] decided to terminate Mr. Wolfe's employment based on his disruption of Bojangles' business and service of its customers and his insubordination." [Id. p.4]. After having made the decision to terminate Wolfe based only on Unit Director Riggins' description of events, "[Area Director Irwin] contacted Mr. Wolfe to discuss the matter." [Id. p.4]. Defendant's position statement makes no reference or allusion to Wolfe purportedly cursing at Area Director Irwin on February 27.

b. Defendant, at deposition, testified that "[Wolfe] was terminated for disruptive behavior, not for the use of inappropriate language." [App'x 8, 30(b)(6) 88:5-7].

c. Eubanks' handwritten notes from her conversation with Irwin on February 28, state "term for insub." and "went to [Owen Drive restaurant] yesterday". [App'x 4]. Eubanks' handwritten notes make no reference or allusion to Wolfe purportedly cursing at Area Director Irwin on February 27.

d. On February 28, 2013, Wolfe was officially terminated by Unit Director Bowden, who was instructed to input a termination record into Bojangles' system. [ECF 28-3 ¶16]. Defendant instructed Bowden to input the following narrative: "[O]n Wednesday February 28th [sic] Jonathan went to store # 274 and caused a disturbance in the store Jonathan came to the store on his day off to talk to other employees that was there and in the process he was very disruptive to the harmony that was in the store causing an uproar resulting in Jonathan being terminated." [App'x 18; *see also* App'x 8, 30(b)(6) 61:21-62:5 ("[I]f Ms. Irwin had informed us that that was the reason for termination that's what would be our system."), 100:19-101:19]. Bowden's dictated

narrative makes no reference or allusion to Wolfe purportedly cursing at Area Director Irwin on February 27.

88. Unit Director Riggins typed and signed a statement dated February 27, 2013 regarding the events at the Owen Drive restaurant. [App'x 16]. Riggins' statement does not reference or allude to Wolfe being loud or interrupting customer service. To the contrary, Riggins' statement stated Wolfe "went on mumbling." Riggins' typed statement also states, "this is not the first time he has lied, ***I did not ask him anything about his hair cause I really don't care about his hair*** so why lie about it, nobody wants to get involved in it again simply because they are all friends just like with Janice and that is a big problem for me simply because its saying you can say whatever you want as long as noone verifys it ,you still keep your job." (emphasis supplied).

89. Christy McDonald, an hourly co-worker, provided a handwritten statement dated February 27, 2013 regarding the events at the Owen Drive restaurant. [App'x 17]. McDonald's statement does not reference or allude to Wolfe being loud or disrupting customer service or restaurant operations.

90. Wolfe's termination record states that she is eligible for rehire. [App'x 18]. When an employee is terminated for cause, s/he is not eligible for rehire. [App'x 14, Eubanks 53:22-54:3].

91. During the relevant time period, Unit Directors were tasked with providing harassment training to hourly employees. [*Id.* at 21:10-22:7]. Defendant, however, had no process for ensuring that hourly workers, such as Wolfe, received harassment training. [*Id.*]

92. Hourly employees did not receive harassment training at Owen Drive. [App'x 5, Singleton 55:8-18].

93. Defendant claims to maintain management and hourly employee training records, yet failed to produce any documentary evidence showing if and when any employee (including Wolfe), supervisor, or manager received harassment training. [App'x 8, 30(b)(6) 39:7-16, 41:16-18, 42:10-12, App'x 9 Req. 14].

94. Defendant likewise failed to produce any documentary evidence showing if and when any supervisor or manager received harassment training. Riggins testified that she received approximately

one hour of harassment and handbook training in 2004, and training in 2010 on a number of topics to include harassment. [App'x 2, Riggins 12:4-14:5]. Irwin received harassment training in 2000 and in 2007, and did not receive additional harassment training until April 2013, approximately two months after Defendant terminated Wolfe. [App'x 6, Irwin 85:10-11, 86:5-8, 86:16-20].

95. When Wolfe was initially hired, Riggins did not provide Wolfe with any substantive training on Defendant's harassment policy or handbook. [App'x 1, Wolfe 50:9-19, 55:7-56:4, 61:25-62:15]. Instead, Riggins merely gave Wolfe an envelope full of paperwork that Riggins did not review with Wolfe. [*Id.* at 50:17-51:11]. Wolfe, when presented with a copy of the handbook at her deposition, was not sure if the envelope of paperwork Riggins provided to Wolfe on Wolfe's first day of work even contained a copy of Defendant's employee handbook. [*Id.* at 57:7-19].

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Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2017, I electronically filed the above **PLAINTIFF'S RESPONSES TO DEFENDANT'S STATEMENT OF UNDISPUTED FACTS AND PLAINTIFF'S STATEMENT OF MATERIAL AND DISPUTED FACTS** with the Clerk of Court using the CM/ECF system, which automatically sends notification of such filing to counsel of record at the email addresses listed below:

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