

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No.: 1:17-cv-1148**

**CHARLENE BOST,**

**Plaintiff,**

**v.**

**SAM'S EAST, INC.; AND WAL-  
MART ASSOCIATES, INC.,**

**Defendants.**

**AMENDED COMPLAINT**

Plaintiff Charlene Bost, by and through her undersigned attorneys, as and for her amended complaint herein against defendants Sam's East, Inc., and Wal-Mart Associates, Inc., filed pursuant to Rule 15(a), states as follows:

**INTRODUCTION**

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C § 12101, et seq. ("ADA"), and the common law of North Carolina.

2. Plaintiff Charlene Bost ("Ms. Bost" or "Plaintiff") was subjected by supervisors, managers, and other employees of defendant Sam's East, Inc. and Wal-Mart Associates, Inc. (as described below, collectively referred to herein as

“Defendant”), over a period of years, to escalating, unrelenting, severe, and pervasive harassment, creating a hostile work environment and constituting unlawful discrimination.

3. Defendant subjected Ms. Bost to such harassment and discrimination, and to a hostile work environment, because of her sex and/or because of her disability.

4. As fully set forth below, Defendant’s harassment of and discrimination against Ms. Bost because of sex included, among other things, harassment and discrimination on the basis of:

- (a) her failure to conform to sex and gender stereotypes,
- (b) her female gender identity,
- (c) her feminine gender expression, and/or
- (d) her being a transgender woman.

5. Defendant’s discrimination against and harassment of Ms. Bost on the basis of disability included discrimination and harassment because she was regarded by Defendant as having gender dysphoria, within the meaning of 42 U.S.C § 12101(3), as also set forth below.

6. Ms. Bost made numerous complaints to Defendant (and filed several charges with the Equal Employment Opportunity Commission [“EEOC”]) regarding the sex-based and/or disability-based harassment and discrimination she suffered, and the hostile work environment. Defendant failed to investigate Ms. Bost's complaints meaningfully, and failed to take prompt and effective action to stop the underlying harassment and discrimination.

7. Defendant retaliated against Ms. Bost for making such complaints and filing such charges, including by unjustly disciplining her (treating her more harshly, in doing so, than her similarly situated co-workers who were not in her protected categories), and by directly threatening, in or about February 2015, to terminate her if she continued making such complaints and charges, or continued complaining about Defendant's failure to address her prior complaints.

8. Defendant also retaliated against Ms. Bost by soliciting fabricated complaints from co-workers and a customer about her attitude and demeanor, in order to provide justification for disciplining and/or terminating her.

9. In the face of these threats—which may have dissuaded a reasonable employee from making or supporting a charge of discrimination—Ms. Bost refused to stop exercising her legally protected right to make complaints and file EEOC charges concerning the harassment and discrimination, concerning Defendant's failure to address her prior complaints, and concerning the retaliation against her.

10. On or about March 17, 2015, approximately one month after threatening Ms. Bost as set forth above, Defendant—acting through Ms. Bost's direct supervisor, who was himself one of the primary harassers of Ms. Bost—illegally terminated Ms. Bost in retaliation for her legally protected complaints, and/or because of sex and disability

## **PARTIES**

11. Plaintiff was an employee of Defendant Sam's East, Inc., in its Sam's Club store (No. 4797) in Kannapolis, North Carolina from March 12, 2004

through March 17, 2015. At all times pertinent to this action, plaintiff was an “employee” within the meaning of 42 U.S.C. § 2000e(f), 42 U.S.C. § 12111(4), and the common law of North Carolina.

12. Defendant Sam’s East, Inc., doing business as Sam’s Club (“Defendant,” “Sam’s Club,” or “Sam’s East, Inc.”), is a wholly owned subsidiary of Wal-Mart Stores, Inc. Defendant has stated through counsel to plaintiff and EEOC that Defendant Sam’s East, Inc. is plaintiff’s employer. Defendant Wal-Mart Associates, Inc., is an affiliate of Defendant Sam’s East, Inc., and also a wholly owned subsidiary of Wal-Mart Stores, Inc.; and has reported to the Internal Revenue Service as plaintiff’s employer for tax purposes. At all times pertinent to this action, both defendants acted as plaintiff’s “employer” within the meaning of 42 U.S.C. § 2000e(f), 42 U.S.C. § 12111(4), and the common law of North Carolina. Accordingly, as stated above, unless otherwise specified, the defendants will be collectively referred to herein as “Defendant.”

13. The Defendant Sam’s East, Inc. is an Arkansas corporation, with a principal office address at 124 West Capitol Avenue, Suite 1900, Little Rock, Arkansas 72201-3717. Defendant Wal-Mart Associates, Inc., is a Delaware corporation with a principal office address at 124 West Capitol Avenue, Suite 1900, Little Rock, Arkansas 72201-3717.

14. Defendant has continuously been doing business in the state of North Carolina, and has continuously employed at least fifteen (15) employees, at all times relevant to this matter.

15. Defendant Sam's East, Inc., owns and operates Sam's Club stores in North Carolina, including the Sam's Club Store No. 4797 where Plaintiff worked and where events relevant to this lawsuit took place, located at 2421 Supercenter Drive Northeast, Kannapolis, North Carolina 28083.

16. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

### **PROCEDURAL HISTORY**

17. Ms. Bost filed her first charge of discrimination with the EEOC alleging violations of Title VII relevant to this action, including discrimination based on sex, hostile work environment, and retaliation by Defendant, on or about July 23, 2014 (EEOC Charge No. 430-2014-1773), *pro se*.

18. Ms. Bost filed her second charge of discrimination with the EEOC alleging violations of Title VII relevant to this action, including hostile work environment and retaliation, on August 11, 2014 (EEOC Charge No. 430-2014-01900), *pro se*, to supplement the allegations of her previous charge.

19. Ms. Bost filed her third charge of discrimination with the EEOC alleging violations of Title VII relevant to this action, including retaliation, on February 23, 2015 (EEOC Charge No. 430-2015-00923), *pro se*, to supplement the allegations of her previous charges.

20. Ms. Bost filed her fourth charge of discrimination with the EEOC alleging violations of Title VII relevant to this action, including discrimination based on sex and retaliation, on March 18, 2015 (EEOC Charge No. 430-2015-

01041), *pro se*—one day after her illegal retaliatory termination by Defendant—to supplement the allegations of her previous charges.

21. Ms. Bost filed her fifth charge of discrimination with the EEOC alleging violations of Title VII and the ADA relevant to this action, including discrimination based on sex (including hostile work environment), retaliation, and disability, on July 12, 2015 (EEOC Charge No. 430-2015-01744), to supplement and clarify the allegations of her previous charges.

22. Upon information and belief, the EEOC provided Defendant with notice of these charges of discrimination and retaliation.

23. Upon information and belief, the EEOC conducted and completed an investigation into Ms. Bost’s charges of discrimination and retaliation against Defendant.

24. On or about August 4, 2017, based on evidence uncovered during the EEOC’s investigation, the EEOC issued letters of determination to Ms. Bost with respect to each of her five EEOC charges filed from July 23, 2014 to July 12, 2015.

25. The August 4, 2017 letters of determination found “reasonable cause” for one or more of the claims asserted in each of those five EEOC charges. Among other things, the letters stated that the EEOC had found evidence substantiating that Defendant had discriminated and retaliated against Ms. Bost, in violation of Title VII in the following ways:

a. Defendant subjected Ms. Bost to a hostile work environment because of her sex;

b. Defendant harassed Ms. Bost by, among other things, repeatedly referring to her using masculine pronouns when speaking with her or providing her written correspondence;

c. Defendant continued making derogatory masculine references to Ms. Bost despite her complaints to have this behavior stopped;

d. Defendant threatened Ms. Bost with retaliation (including discipline and/or termination) if she did not stop making complaints about the discrimination and harassment against her; and

e. Defendant discharged Ms. Bost because she refused to stop exercising her legally protected right to complain to Defendant and to the EEOC about Defendant's wrongdoing.

26. On September 29, 2017, following a failed conciliation process, the EEOC issued Notice of Right to Sue letters to Ms. Bost concerning each of her five charges of discrimination against Sam's Club.

27. Ms. Bost took all necessary steps to exhaust her administrative remedies.

28. Ms. Bost took all necessary steps to fulfill all conditions precedent to the commencement of this lawsuit.

### **JURISDICTION AND VENUE**

29. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the action is based on Title VII of the Civil Rights Act and the Americans with Disabilities Act, and pursuant to 28 U.S.C. § 1337 because the action is based on a federal statute regulating commerce.

30. This Court has subject matter jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367 because the state law claim forms part of the same case or controversy as the federal claims.

31. Venue is proper in the United States District Court for the Middle District of North Carolina pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred within the Middle District of North Carolina.

32. Venue is proper pursuant to 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practices are alleged to have been committed within the Middle District of North Carolina.

### **FACTS**

33. Plaintiff Charlene Bost is a female citizen of the United States.

34. Ms. Bost has a female gender identity.

35. Ms. Bost has a feminine gender expression.

36. Ms. Bost's gender identity and gender expression do not conform to the sex and/or gender stereotypes associated with people who were assigned male at birth.

37. Ms. Bost is a woman who is transgender.

38. From an early age, Ms. Bost experienced significant distress from the sex and/or gender she was assigned at birth, as well as, among other things, a marked incongruence between the sex and/or gender she was assigned at birth and her experienced gender, and a strong desire to be (and to be perceived and treated



as) female. From an early age, she sought to relieve that distress by expressing her gender in as feminine a manner as possible.

### **Sex, Gender, Gender Expression, and Gender Identity**

39. *Sex* is a term that includes gender, gender identity, and gender expression within its meaning.

40. *Sex stereotyping* refers to the application by an employer of stereotypes related to sex to restrict, disparage, or discriminate on the basis of an employee's gender identity or gender expression.

41. *Gender* refers to cultural expectations specific to the sexes.

42. *Gender identity* refers to a person's internal sense of sex, i.e., of being male, female, or other.

43. A person's gender identity is intractably rooted, and cannot be changed.

44. *Gender expression* refers to a person's gender-related appearance and behavior, whether or not it conforms to stereotypes associated with the person's sex assigned at birth.

45. A reference to a person as "*Gender non-conforming*" means that their gender expression does not conform to stereotypes associated with the person's sex assigned at birth.

46. *Transgender people* are individuals who have a gender identity and/or gender expression that does not correspond to the sex to which they were assigned at birth.

47. Harassment and discrimination against transgender and/or gender non-conforming people because of sex stereotyping—and/or because of their gender, gender non-conformity, gender identity, and/or gender expression—all constitute discrimination based on sex within the meaning of Title VII.

### **Gender Dysphoria**

48. *Gender dysphoria* is the formal diagnosis used by physicians and psychologists to describe people who experience significant distress with the sex and/or gender they were assigned at birth, as well as a marked incongruence between their assigned sex or gender and their experienced and/or expressed gender, as manifested in a variety of ways including, among things, a strong desire to be (and/or to be perceived and treated as) another gender.

49. Gender dysphoria is found in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* by the American Psychiatric Association.

50. Based on many scientific studies during the past two decades, gender dysphoria has been identified as resulting from a physical cause, namely a physiological, biological, and/or genetic condition of the brain and neurological system.

51. Scientific studies have shown that transgender people have brain structures that are typical of non-transgender people with the same gender identity. For example, studies have shown that transgender women (i.e., individuals whose sex assigned at birth is male but who have female gender identity) have brain structures that are physically similar to those of non-transgender women.

52. Discrimination against people diagnosed with gender dysphoria or regarded as having gender dysphoria constitutes discrimination based on disability within the meaning of the ADA.

### **Misgendering**

53. It is necessary and proper for an employer or co-worker to refer to an employee who is a transgender woman with the appropriate female titles, honorifics (e.g., Miss, Ms., or Mrs.), and pronouns (e.g., her, hers, and she). Conversely, it is necessary and proper to avoid or cease using male honorifics and pronouns for such an employee.

54. It is also necessary and proper, when an employee who is a transgender woman or is gender non-conforming has requested that she be addressed and referred to by a new first name or nickname—and that she no longer be addressed or referred to by her former male first name (i.e., the first name which may be listed on the employer's records), or by male honorifics and pronouns—for the employer to honor that request and direct co-workers to honor it, whether or not the employee has had a formal, court-ordered name change.

55. Persistent misgendering of a transgender or gender non-conforming employee by an employer or by co-workers (i.e., the persistent failure to use the appropriate first name, honorifics, and/or pronouns, etc.) can create or contribute to a hostile work environment, and constitute sex-based harassment and discrimination within the meaning of Title VII, as well as disability discrimination within the meaning of the ADA.

### **Ms. Bost's Employment with Sam's East, Inc.**

56. On or about March 12, 2004, Ms. Bost was hired by Defendant to work as a cashier at the Sam's Club Store No. 4797 in Kannapolis, North Carolina.

57. For the next four years after she was hired, Ms. Bost continued to work as a cashier and in other customer-facing positions, and was recognized as an exemplary employee.

58. In or about May 2008, Ms. Bost was promoted to Checkout Supervisor ("COS") (a title later changed to Member Service Supervisor ("MSS")), in which capacity she worked even more closely with customers, and continued to be recognized as an exemplary employee.

59. Ms. Bost continued to work as a Member Service Supervisor at Sam's Club Store No. 4797 in Kannapolis, North Carolina until March 17, 2015, when she was illegally terminated.

### **Ms. Bost's Gender Expression During Her Employment**

60. By the time of her promotion to Checkout Supervisor (later Member Service Supervisor) in 2008, Ms. Bost had already begun to live full-time as a woman in her personal life.

61. Around the time of Ms. Bost's promotion in 2008, she also began gradually to express her female gender identity at work more openly, by wearing

makeup, a feminine hairstyle, and more feminine clothing. Her gender expression at work became more openly feminine over time, particularly in about 2010 and thereafter, including her increasing use of jewelry, perfume, lip gloss, nails and nail polish, etc., and her longer hair with braids.

62. At various times after 2008—and more often as her gender expression gradually became more openly feminine—Ms. Bost informed various Sam’s Club co-workers, as well as managers, supervisors, and other Sam’s Club employees, that she was transgender and/or a transgender woman, and explained, among other things, how difficult it was for her not to be able to be herself at work (*i.e.*, not to be able to express her gender in a more completely and openly feminine way) as she was able to be in her personal life outside work, as well as the distress it caused her to be perceived and/or treated as male at Sam’s Club.

63. In addition, upon information and belief, other Sam’s Club employees (including both co-workers, and managers/supervisors), as well as customers who dealt with Ms. Bost, came to know or perceive over time that Ms. Bost was transgender and/or a transgender woman even without being so informed by Ms. Bost, because it was obvious to them from her unambiguously feminine gender expression and presentation at work. Indeed, many customers (and some co-workers) instinctively and automatically addressed and referred to Ms. Bost with female honorifics and pronouns without being requested to do so.

64. Upon information and belief, even Sam's Club employees and customers who neither knew nor perceived that Ms. Bost was transgender and/or a transgender woman, perceived her to be gender non-conforming in that her openly feminine gender expression clearly and obviously did not conform to stereotypes associated with the male sex. Indeed, "gender non-conforming" was the term she used in describing herself to some customers and employees, in order to avoid a more lengthy explanation.

65. Upon information and belief, Ms. Bost was regarded by Defendant and its managers, supervisors, and employees, at all relevant times, as having gender dysphoria, in that she was regarded as having the symptoms and/or characteristics constituting gender dysphoria as alleged above, including, without limitation, being regarded as having a marked incongruence between her assigned sex and/or gender and her expressed or experienced gender; a strong desire to be perceived and/or treated as female and to express her gender in a feminine way, and/or as experiencing significant distress from being perceived and/or treated as male.

66. In or about 2008, after Ms. Bost's gender expression at Sam's Club had started to become openly feminine, she made a request to Defendant's management (specifically, among others, to individuals who then held the positions of General Manager, lead Checkout Supervisor, and Assistant Store

Manager) that her former male name no longer be used by Defendant, including to identify her on her name badge at work. She asked that instead her name on the badge be changed to the name “Charlie,” which was the name she was then using in her life as a woman outside work (also spelled Charli or Charlee).

67. In 2008 and thereafter, Ms. Bost also explained on a number of occasions to members of Defendant’s management (including, most frequently, to the lead Checkout Supervisor who was Ms. Bost’s direct supervisor for a number of years), that given the distress she experienced from being perceived and/or treated as male, she not only wanted her badge changed, and to be called “Charlie” rather than her former male name, but that she also disliked being addressed and/or referred to with male honorifics (i.e., “Mr.” or “sir”), and male pronouns (i.e., “he” and “him”), and wanted other employees to stop using those terms. Instead, she wanted her co-workers and supervisors simply to call her “Charlie.”

68. At that time, however, despite her unambiguously female gender identity, and her increasingly feminine (and clearly gender non-conforming) gender expression, Ms. Bost did not expressly request Defendant to address her with female honorifics, or with female pronouns.

69. Among other things, upon information and belief, there was no non-discrimination policy in effect at Sam’s Club at that time prohibiting discrimination on the grounds of gender identity or gender expression. Acting

justifiably in reliance thereon, Ms. Bost was aware that any such request would be denied, both because there was no corrective mechanism available, and because of the evident prejudice against persons who were transgender and/or gender non-conforming, and against persons who had (or were perceived as having) the symptoms and/or characteristics constituting gender dysphoria as alleged above. Because of that prejudice, she was aware that many people would use female honorifics and other terms for her only sarcastically, in order to mock her—which happened in any event, as set forth below. Therefore, she asked simply that Defendant address and refer to her as “Charlie,” and not as a man, or as “Sir.”

70. Defendant initially complied with Ms. Bost’s request that her former male name no longer be used, including on her name badge, and changed the badge in or about 2008 to read “Charlie.” A number of Ms. Bost’s co-workers and supervisors, as well as many customers, were supportive of her gender and gender expression. In fact, several customers later complained to Defendant when they saw Ms. Bost being mistreated.

71. From that time forward, Ms. Bost did her best to avoid using or signing her former male name at work, whether in signing emails, or in complaints to management about the harassment, discrimination, and retaliation she suffered, or in other written communications. Where possible, she used that name only in



documents for which she believed, accurately or otherwise, that her original name was legally required.

### **Defendant's Harassment of and Discrimination Against Ms. Bost**

72. After Ms. Bost began to express her female identity openly at work, and to adopt a feminine gender expression, she began experiencing harassment and discrimination by Defendant's employees—including both co-workers, and managers/supervisors—because of her sex (including her non-conforming gender and gender expression), and/or her disability (i.e., her perceived gender dysphoria).

73. At first, the harassment of Ms. Bost based on her sex and/or perceived disability largely emanated only from co-workers rather than managers or supervisors. As one example, in or about May 2008, two of Ms. Bost's co-workers made derogatory, laughing comments about transgender people (including a reference to a "woman with a penis") in Ms. Bost's presence. Ms. Bost reported this incident (as she did numerous other such incidents during her employment) to a Sam's Club manager, but, upon information and belief, the incident was never investigated, and no action was taken to address it.

74. As Ms. Bost's gender expression gradually became more feminine, as described above, the harassment and discrimination she suffered at Sam's Club because of her gender (and/or her perceived gender dysphoria) escalated in

frequency, and began to emanate from managers/supervisors as well as co-workers. ). Indeed, the more Defendants' managers, supervisors, and employees who were hostile to Ms. Bost perceived her as experiencing distress from being treated as male, the more they continued to do so, and the worse the harassment and discrimination became. Over time, the incidents of harassment became increasingly severe and pervasive, with her work environment becoming increasingly and unrelentingly hostile, until Ms. Bost was unlawfully terminated in March 2015. Nonetheless, given her strong need to be (and to express herself as being) herself at work as in her personal life, and given that it would have been far too painful for her to reverse course, she persisted in her increasingly feminine gender expression throughout that period, despite such harassment and discrimination.

75. Although Ms. Bost repeatedly reported the harassment to management, Defendant never took any meaningful action to investigate or address her complaints, or correct the overall pattern of pervasive hostility in her work environment—let alone the prompt and effective action to stop it which the law requires.

76. Specifically, despite the change on Ms. Bost's name badge and her repeated pleas to Defendant to respect her request to address and refer to her only as "Charlie," and not to address her as "Sir" or with other male references, many

Sam's Club supervisors, managers, and other employees exhibited open and increasing hostility towards Ms. Bost, particularly as her gender expression became more openly feminine in about 2010 and thereafter, and particularly as such persons perceived her as suffering increasing distress from being addressed with male references or otherwise being treated as male. In or about 2011, a then-General Manager told her that other employees said inappropriate things about her behind her back almost every single day.

77. For example, such employees harassed Ms. Bost and treated her with flagrant disrespect by deliberately referring to her by her former male name instead of as "Charlie," and by addressing her as "man" and with other masculine references (e.g., "sir") and pronouns, both orally (ignoring her name badge) and in emails and other written documents—including in disciplinary "write-ups." Such pervasive misgendering continued, uninterrupted and unabated—despite all of Ms. Bost's complaints—until Ms. Bost's unlawful termination in March 2015. To the extent such employees addressed her as "Ma'am," they did so only mockingly and sarcastically.

78. Indeed, the deliberate misgendering of Ms. Bost went so far as to include certain supervisors' and other employees' repeated mocking use of *both* male and female honorifics in addressing Ms. Bost, at the same time—as in "Ma'am, I mean Sir," or "Sir, I mean Ma'am"—in a pretense of confusion

designed to amuse themselves, while humiliating Ms. Bost by treating her as a freak. It was clear to Ms. Bost and any reasonable observer, from the exaggerated tone of voice and facial expressions used by these employees, that the intent was to mock, embarrass and humiliate her, and she felt it keenly.

79. The disparagement and harassment of Ms. Bost because of her sex and/or her perceived disability (constituting a hostile work environment), becoming more severe and more pervasive as time went on, went beyond the consistent misgendering of Ms. Bost by refusing to address and refer to her as “Charlie” instead of using her former male name. It also involved the repeated use of degrading, humiliating, and dehumanizing insults, slurs, and epithets relating to Ms. Bost’s sex and gender, all of which directly targeted her on that basis, all of which were intended to (and did) cause her to experience distress, and all of which were both offensive and unwelcome to her.

80. The following specific incidents of the continual (and escalating) harassment of Ms. Bost from 2011-2015 by Defendant’s employees (including both co-workers and managers/supervisors), comprise only a few examples among the many such incidents that occurred—all of which, taken as a whole (together with the repeated improper use of her former male name), contributed to and constituted the unrelentingly hostile and abusive environment that permeated her workplace:

a. In 2011, one of Ms. Bost's co-workers reported to her that while she was out of work on a medical leave (which had nothing to do with her gender or with being transgender), other Sam's Club employees had made a series of derogatory comments about her based on her gender and gender expression while she was out of work, including one co-worker's comment, "Ain't nothing wrong with that faggot, *he* just wants time off," referring to Ms. Bost.

b. Also in 2011, a cashier at Sam's Club, apropos of nothing, mocked Ms. Bost's gender expression by saying to her, "You are such a queen."

c. In the summer of 2012, in a break room, a Sam's Club employee made derogatory and hostile comments about transgender people in front of Ms. Bost—knowing that she was present—talking about someone he had supposedly met at a club the night before; his comments included saying "I thought I was talking to a fine female, came to find out she had a dick, I was so disappointed," while smirking and laughing.

d. In the spring of 2013, a Sam's Club employee interrupted an employee orientation to publicly mock Ms. Bost, stating audibly, in a mock-horrified voice, "What is *that*? What the hell is *that*?"

e. In the summer of 2013, another Sam's Club employee came up to Ms. Bost and said, "Why do you have on so much makeup? Why do you wear so much?"

f. In September 2013, a Sam's Club cashier referred to Ms. Bost as "that shim," which is a highly derogatory slur for transgender women (derived from combining the words "she" and "him").

g. In late 2013, one of Ms. Bost's supervisors, Assistant Store Manager Rodney ("Keyno") Morrison, said to Ms. Bost, "Even though you aren't 'right,' you shouldn't be treated wrong," in front of a customer, referring to her feminine gender expression. However, despite his saying that Ms. Bost shouldn't be "treated wrong," this was only one of a number of occasions on which Mr. Morrison made offensive and derogatory comments to Ms. Bost about her gender and/or gender expression, as by telling her that she wore so much jewelry that she should go shopping at Tiffany's with Mr. Morrison's wife.

h. Mr. Morrison also treated Ms. Bost more harshly in general than other employees— also, upon information and belief, because of her sex (including her gender and gender expression) and/or her disability (her perceived gender dysphoria). For example, in or about August 2013, he sent Ms. Bost outside during a thunderstorm while lightning was occurring to organize shopping carts (which was not her job in the first place as a Member Service Supervisor), and, when Ms. Bost told him that it was against Sam's Club policy to send employees outside when there was lightning, responded (also in front of a customer) that she would be the only employee he sent outside in those conditions.

i. In March 2014, a customer heard a Sam’s Club employee use a disparaging epithet (“faggot”) towards Ms. Bost, and filed a complaint with Defendant.

j. On or about June 19, 2014, a Sam’s Club employee walked up to Ms. Bost, looked in her pockets, and said, “Hey man, you know that’s perfume in your pocket?” and, after Ms. Bost responded by saying “Excuse me?,” asked her “Why do you have perfume in your pocket?” A Sam’s Club manager standing nearby apparently thought this was funny, and started laughing.

k. On or about July 22, 2014, Ms. Bost heard a co-worker say to a customer, as Ms. Bost walked by, “Here comes that *thing* with an attitude.”

l. In 2014, a Sam’s Club employee commented that Ms. Bost supposedly didn’t “know if he wants to be a man or a woman.”

m. On or about November 23, 2014, another co-worker called Ms. Bost a “cover girl” while laughing at her—upon information and belief, referring to the makeup she wore, and to her feminine gender expression in general.

n. In 2014, a Sam’s Club employee said to a customer, in reference to Ms. Bost’s gender expression, “Oh that little faggot, he walks around twitching his behind.”

o. On or about March 11, 2015, a coworker laughed while mocking Ms. Bost by saying to her, sarcastically and repeatedly, “Yes, Ma’am”—upon

information and belief, based on his exaggerated tone of voice and facial expression, in order to amuse himself and another co-worker who was also present. As alleged above, this was only one of many examples of Sam's Club employees either misgendering Ms. Bost directly by addressing her as "Sir" or "man" or by her former male name, or mocking her by calling her "Ma'am" or "Madam" in a sarcastic tone of voice, or pretending confusion by calling her both "Ma'am" and "Sir" in succession --, all of which was intended to, and did, cause her to experience distress.

p. Also in early March 2015, a customer complimented Ms. Bost to a cashier, saying "She's doing a great job." The cashier responded, with obvious sarcasm, "She?" and added, in words or substance, that with respect to Ms. Bost's gender one could "take your choice."

81. In addition to the foregoing, Ms. Bost was subjected to repeated sex- and/or disability-based harassment in 2014 and 2015 by Michael Russo, an Assistant Manager with Defendant who became Ms. Bost's direct supervisor in or about May 2014. As further set forth below, Mr. Russo not only severely harassed Ms. Bost himself (harassment that became even more severe the more he perceived her to suffer distress because of it), but did nothing to correct or prevent others' harassment that he observed (or about which Ms. Bost complained to him)—effectively condoning and encouraging such harassment. Instead, he



retaliated against Ms. Bost for her complaints, including by unjustly disciplining her, by encouraging and soliciting the filing of complaints against her by her co-workers, and, ultimately, by unlawfully terminating her in March 2015.

82. Mr. Russo's harassment of Ms. Bost because of her sex and/or her disability, which began soon after he became her direct supervisor in or about May 2014, included the following:

a. On multiple occasions in 2014 and 2015, Mr. Russo openly referred to Ms. Bost as "it" in talking to other Sam's Club employees. Mr. Russo's use of that egregiously dehumanizing and degrading term against a transgender woman such as Ms. Bost not only constituted severe sex-based harassment by itself, but, in light of his status as a manager, served to (and was intended to) encourage others to follow his lead, thereby perpetuating and magnifying the hostility of Ms. Bost's work environment. For example, one of Ms. Bost's fellow Member Service Supervisors who was present when Mr. Russo called Ms. Bost "it" also referred to Ms. Bost as "it" on multiple occasions, as did a cashier who, in early March 2015, referred to Ms. Bost as "he, she, whatever you want to call *it*."

b. In written communications and reports, as well as orally, Mr. Russo frequently used Ms. Bost's former male name to refer to her.

c. On multiple occasions after Mr. Russo became Ms. Bost's direct supervisor in May 2014, he harassed her by addressing her, in a sarcastic tone of

voice, as “Ma’am,” and as “Ma’am I mean Sir”—upon information and belief, based on his exaggerated tone and facial expression, mocking her gender not only for his own entertainment (and to cause her to experience distress) but to try to amuse any other Sam’s Club employees who were present. As with referring to Ms. Bost as “it,” Mr. Russo’s pretense of confusion regarding Ms. Bost’s gender served to encourage other employees to harass her in precisely the same way, and they repeatedly did so.

d. On repeated occasions, Mr. Russo openly laughed at Ms. Bost, and made disparaging gestures towards her (often in front of Ms. Bost’s co-workers), actions which also, upon information and belief based on his tone and facial expression, as well as his hand gestures, were intended to mock Ms. Bost’s gender and gender expression.

e. Upon information and belief, despite Mr. Russo’s evident prejudice and hostility towards Ms. Bost’s gender and gender expression, and his sex-based (and/or disability-based) harassment of her by reason of her gender and gender expression, he was, simultaneously, sexually attracted to her. Accordingly, he also repeatedly engaged in sex-based harassment of Ms. Bost by reason of such attraction, including making unwelcome physical advances towards her, and otherwise bestowing unwanted attention of a sexual nature upon her. Among other things, he repeatedly made off-color comments and jokes to her (including about

his genitals, as when, in or about July 2014, he looked down at his groin in front of Ms. Bost and referred to himself as the “Italian Stallion”) in an apparent attempt to provoke her sexual interest.

f. In addition, on multiple occasions, he initiated unwelcome physical contact with Ms. Bost—including deliberately bumping into her so he could feel her body against his, squeezing after her into small spaces so he could press against her and have an excuse to bump and/or touch her buttocks, and placing his hands on top of hers.

g. Ms. Bost refused to engage in off-color conversations with Mr. Russo, and immediately rejected all of his attempts to initiate physical contact. Nonetheless, he continued to try to engage Ms. Bost in such off-color conversations, and to initiate such contact, throughout the period until he terminated Ms. Bost—all while continuing at the same time to mock and harass her because of her gender and gender expression (and/or her perceived gender dysphoria), as set forth above. Thus, Mr. Russo’s sex-based harassment of Ms. Bost created and contributed to her hostile and abusive work environment in both respects.

### **Defendant’s Failure to Address and Remedy Plaintiff’s Complaints**

83. Ms. Bost made numerous reports and complaints to Defendant (in writing, orally, and by voicemail) concerning the severe and pervasive sex-based

and/or disability-based harassment and discrimination she suffered, either promptly after incidents of harassment and discrimination occurred or promptly after she learned about them (if they occurred outside her presence). In addition, she raised the harassment and discrimination against her in the charges she filed with the EEOC beginning in July 2014, as alleged above.

84. Defendant took no meaningful action to investigate or address Ms. Bost's complaints, let alone the required prompt and effective action to stop the harassment (as by disciplining Ms. Bost's harassers), and to prevent future harassment (as by training its employees).

85. Upon information and belief, Defendant never investigated the continuing harassment of Ms. Bost, over a period of years, as a cumulative whole. Nor did Defendant investigate (let alone take meaningful action to remedy) the pervasive hostility of Ms. Bost's work environment, as created by that ongoing harassment.

86. To the contrary, Defendant treated each of Ms. Bost's complaints as a relatively trivial, isolated incident: it either ignored her complaints entirely, or told her that Defendant would look into those complaints (but never followed up with her), or simply accepted the individual denials of wrongdoing by Ms. Bost's harassers on a "he said, she said" theory, which allowed Defendant to conclude,

repeatedly, that the incidents of harassment supposedly could not be substantiated—thereby leaving Ms. Bost entirely unprotected.

87. Ms. Bost also repeatedly complained about Defendant’s ongoing failure to take prompt and effective action with respect to the complaints she had already made. Those complaints, too, were ignored.

88. In a prime example of Defendant’s failure to take seriously Ms. Bost’s complaints regarding the harassment against her, Defendant’s Human Resources Manager, Ms. Kellie Covington, told Ms. Bost in late November 2014—over a speakerphone, so that her comments were audible to Ms. Bost’s co-workers—that she supposedly “should not be offended” by comments concerning her gender or gender expression, because she was “glamorous.”

89. Upon information and belief, out of all of the many incidents of harassment about which Ms. Bost complained, only one resulted in any discipline being imposed upon the harasser.

90. Even in that case, the discipline was relatively lenient: the co-worker who referred to Ms. Bost in September 2013 as “that shim” (an egregiously derogatory slur for transgender women) was required to apologize to Ms. Bost, and was given a so-called “written coaching” (i.e., the first level of written discipline)—even though, as a newly-hired cashier still within her 90-day

probationary period, far more severe discipline could have been imposed given the serious nature of the complaint, including termination.

91. No other corrective action was taken, and, to the best of Ms. Bost's knowledge, not one of the innumerable other incidents of harassment she suffered resulted in any written discipline or other corrective action whatsoever.

92. In addition, Defendant did not even pretend to investigate (let alone to take prompt and effective action to remedy) any of Ms. Bost's complaints concerning her repeated harassment by her direct supervisor, Mr. Russo, as alleged above.

93. Ms. Bost also faced the problem that Defendant's usual procedures required her to report to Mr. Russo any complaints concerning harassment by co-workers for whom he was also the supervisor. She recognized that it was, and would continue to be, a futile act for her to bring complaints about her co-workers' harassment to her supervisor, when that supervisor was himself personally hostile towards her because of her gender, and was harassing her on a regular basis. Therefore, in July 2014, Ms. Bost asked the store manager for permission to report further harassment issues and incidents directly to her or to another manager, instead of to Mr. Russo.

94. The store manager refused this request, and stated that Ms. Bost was required to continue to report further incidents to Mr. Russo regarding co-workers

whom Mr. Russo also supervised. Ms. Bost complained about this issue further, to Human Resources and the Director of Operations, but received no response.

Accordingly, she was forced to continue to bring to Mr. Russo her complaints regarding co-workers who were also under his supervisory authority, including regarding harassment by such co-workers. He continued to disregard all or most of such complaints (to the extent he did not actively condone or participate in the very harassment about which she was complaining).

95. In failing to take meaningful action to investigate Ms. Bost's complaints, or to stop the harassment against her and remedy the hostile work environment she suffered, Defendant completely ignored the non-discrimination policy in effect at Wal-Mart beginning in 2011, expressly prohibiting discrimination and harassment on the basis of gender identity or gender expression—a policy which applied by its terms to Defendant.

96. Thus, upon information and belief, Wal-Mart Stores, Inc., the parent company of Defendant Sam's East, Inc., instituted a non-discrimination policy on or about September 19, 2011 (*before* the bulk of the harassment and discrimination against Ms. Bost alleged herein) that specifically added gender identity and gender expression to Wal-Mart's list of prohibited bases for discrimination, which already included discrimination on grounds of sex and disability.

97. Indeed, Wal-Mart’s non-discrimination policy, by its own terms, was supposedly one of “zero tolerance”:

We will not tolerate any form of discrimination or harassment in any aspect of our business. This means that we strictly prohibit any discrimination or harassment, as described below, by or directed at any associate, job applicant, customer, member, supplier or person working on behalf of Walmart.

98. Wal-Mart’s non-discrimination policy—including the provision expressly prohibiting “discrimination or harassment” on the grounds of “gender identity or expression”—expressly stated that it applied to Wal-Mart’s subsidiaries, including Defendant.

99. However, upon information and belief, Defendant failed to distribute or communicate to its own employees the Wal-Mart policy prohibiting such discrimination and harassment, or otherwise make its employees aware that corrective action with respect to such discrimination and harassment was reasonably available at Sam’s Club.

100. Whether through negligence or deliberate omission, the non-discrimination policy set forth in Defendant’s own employee handbook, entitled the “Welcome to Sam’s Club Participant Guide,” distributed to all Sam’s Club employees, never added gender identity or gender expression to its list of prohibited bases for discrimination and harassment, either when Wal-Mart revised



its policy to add those grounds in 2011—as Defendant should have done—or at any other time during Plaintiff’s employment.

101. Upon information and belief, Defendant’s employee handbook continued to omit any mention of gender identity or gender expression as prohibited bases for discrimination or harassment up to at least March 2016.

102. Nor, upon information and belief, did Defendant train its employees about the fact that Wal-Mart’s non-discrimination policy (applicable by its terms to Defendant) had, beginning in 2011, specifically prohibited discrimination and harassment on grounds of gender identity or gender expression—i.e., the precise kind of harassment to which Ms. Bost was continually subjected from 2011-2015.

103. Defendant also failed to meaningfully enforce Wal-Mart’s updated non-discrimination policy. Thus, to the extent that Defendant engaged in *pro forma* investigations of Ms. Bost’s complaints as described above, those investigations largely consisted, upon information and belief, of asking the persons investigated if they had harassed Ms. Bost, accepting their denials that they had done so, and asking each person to sign an acknowledgment form stating that they “acknowledge[d] and underst[oo]d” Defendant’s non-discrimination policy as quoted on that form.

104. However, the acknowledgment forms which Defendant used, at least through mid-2014 (three years after the new non-discrimination policy went into

effect), quoted an outdated non-discrimination policy that did not include gender identity or expression among the prohibited bases for discrimination or harassment, thereby rendering such signed acknowledgments effectively meaningless to prevent future harassment of Ms. Bost.

105. Ms. Bost became aware of the fact that Wal-Mart's non-discrimination policy had added gender identity and expression as prohibited bases for discrimination or harassment, and applied by its terms to Defendant, only because she researched the provisions of Wal-Mart's policy on her own, on the Internet.

106. In September 2013, shortly after a coworker called her a "shim," Ms. Bost suggested in writing to one of Defendant's managers that training Defendant's employees (including during the orientation process) on applicable non-discrimination policies would help prevent such incidents of harassment from happening again.

107. In response, instead of instituting any kind of formal training process, Defendant asked Ms. Bost herself to give a 10-minute presentation to a group of managers and other employees about Defendant's applicable non-discrimination policies, including the prohibition of discrimination or harassment on grounds of gender identity or expression.

108. By making this request, Defendant improperly placed on Ms. Bost the burden and responsibility of taking action to prevent her own harassment—a legal obligation that belonged only to Defendant.

109. Ms. Bost complied with Defendant's request and gave the 10-minute presentation concerning applicable non-discrimination policies, to an audience that contained only 10 to 15 people, mostly team leaders. She received no follow-up from Defendant concerning the presentation, and was not asked to repeat it.

110. Upon information and belief, the presentation that Ms. Bost gave was the only training on the subject of Defendant's non-discrimination policies (let alone on gender identity or gender expression discrimination) that was provided to employees of Defendant during her entire 11-year tenure at Sam's Club, except, with respect to plaintiff, for three brief computer training sessions she received on the subject of sexual harassment after she was first hired in 2004.

111. Upon information and belief, as set forth on Ms. Bost's computer-based learning record, she received more than 400 computer training sessions during her employment on various job-related subjects, but only those three related to the subject of discrimination or harassment.

112. Ms. Bost's presentation, made at Defendant's request, did not meet Defendant's legal obligation to take prompt and effective action (through training or otherwise) not only to correct harassment but to prevent future harassment, and

was ineffective to achieve that result. The sex-based and/or disability-based harassment of Ms. Bost, and the hostile work environment she suffered as a result, continued unabated for the remainder of her employment.

**Defendant’s Unlawful Retaliation Against  
And Retaliatory Discharge Of Ms. Bost**

113. Instead of responding to Ms. Bost’s complaints (and the EEOC charges she filed) by taking prompt and effective action to stop the ongoing, severe, and pervasive harassment of her, and the hostile work environment she suffered, Defendant unlawfully retaliated against her for making such complaints and filing such charges, by, among other things:

a. unjustly disciplining her and subjecting her to heightened scrutiny compared to similarly situated employees who were not in her protected categories (in particular, treating her far more harshly than her co-workers who had been harassing her, unchecked, for years);

b. soliciting fraudulent or fabricated complaints from co-workers about her supposedly “disrespectful” attitude and demeanor, in order to provide justification for disciplining or terminating her;

c. directly threatening to terminate her if she continued making such complaints and charges, or continued complaining about Defendant’s failure to address her prior complaints; and

d. unlawfully terminating Ms. Bost when she refused to stop exercising her legally protected right to make complaints and file EEOC charges concerning the harassment, concerning Defendant's failure to address her prior complaints, and concerning the retaliation against her.

114. Upon information and belief, Defendant's primary agent in its retaliation against Ms. Bost for her complaints, including in Defendant's retaliatory termination of Ms. Bost, was her direct supervisor, Mr. Russo—who himself became one of her principal harassers by reason of her sex and/or disability after he became her supervisor in May 2014, and was the subject of many of her complaints, as set forth above.

115. As Ms. Bost's direct supervisor, and a Sam's Club Assistant Manager, Mr. Russo had the authority to take (and did take) tangible employment actions with respect to Ms. Bost that affected her economically and resulted in significant changes in her employment status—such as by disciplining her through the issuance of “written coachings” that would eventually subject her to termination if accumulated in sufficient numbers within a 12-month period, by determining the contents of her annual performance review and thereby controlling whether or not she received a raise, and, most importantly, by having the power to terminate her once she had accumulated a sufficient number of written coachings.

116. As such, Mr. Russo acted for Defendant, and Defendant is liable for the actions he took against Ms. Bost.

117. Defendant's written disciplinary policy in effect at all relevant times was entitled the "Coaching for Improvement Policy" (the "Policy"). It provided, among other things, that managers and supervisors were authorized to issue "written coachings" to employees (as opposed to lesser reprimands), when their job performance, among other things, "fails to meet the reasonable expectations and standards for all associates in the same or similar positions," or their conduct violated company policy.

118. The Policy provided that there were three successive levels of written coaching—First Written coaching, Second Written coaching, and Third Written coaching—and that an employee could receive only one written coaching at each level within a given 12-month period for performance or conduct issues, or for failure to correct issues identified in previous coachings.

119. According to the Policy, an employee who had already been issued the three levels of written coaching in a given 12-month period was subject to termination if their conduct or performance justified another written coaching within that period.

120. Prior to 2014, Ms. Bost had never received three levels of written coaching in any given 12-month period during her decade of employment, and had only received two levels of written coaching in a 12-month period once.

121. Beginning in July 2014 (after Mr. Russo's harassment of Ms. Bost had already begun, and she had already complained about it), Mr. Russo issued two written coachings to Ms. Bost himself, and engineered the issuance of a third, in a period of less than five months—first on July 22, 2014, next on August 6, 2014, and third on November 29, 2014.

122. At that point, Ms. Bost was subject to termination by Defendant at any time in the next seven months—i.e., at any time before the end of the 12-month period beginning on July 22, 2014—that Mr. Russo (or any other manager or supervisor) chose to assert, for almost any reason (legitimate or otherwise), that her job performance failed to meet reasonable expectations.

123. Upon information and belief, Mr. Russo, acting in concert with other Sam's Club supervisors, managers, and/or employees, issued or engineered each of the three written coachings in retaliation for Ms. Bost's complaints and/or EEOC charges regarding the harassment and discrimination against her (and/or as further harassment and discrimination directly by reason of her sex and/or disability).

124. Upon information and belief, each such coaching was intended to deter Ms. Bost from complaining further (whether about Mr. Russo or any other Sam's Club employee), and may have dissuaded a reasonable worker from making or supporting a charge of discrimination or harassment.

125. In addition, each such written coaching was either entirely unjustified, or reflected relatively trivial complaints concerning Ms. Bost's performance, for which she received heightened scrutiny and disparately harsh treatment in retaliation for her complaints (and/or as further harassment and discrimination directly by reason of her sex and/or disability).

126. Thus, the discipline to which Defendant subjected Ms. Bost, in the form of the three written coachings, was far harsher than that meted out to similarly situated employees who were outside her protected categories, who were accused of equivalent or far worse infractions—including Ms. Bost's many harassers, over a period of years (including Mr. Russo), whose unlawful actions were largely ignored, and only one of whom received any discipline at all.

127. Moreover, each of the three written coachings misgendered Ms. Bost, and used her former male name, throughout. Therefore, each such coaching itself represented further sex-based and/or disability-based harassment of Ms. Bost.



128. Upon information and belief, Mr. Russo issued Ms. Bost's first written coaching to her on July 22, 2014, in retaliation, among other things, for at least three complaints which Ms. Bost had made about Mr. Russo in the previous few weeks, and/or a complaint she had made a few hours earlier after a co-worker, as alleged above, had referred to her as a "thing."

129. The purported infraction underlying the first coaching involved Ms. Bost's \$82.84 error in mistakenly keying a "rewards check," and her alleged attempt thereafter to correct the error by "overriding" the cash register manually.

130. The alleged manual override was something Ms. Bost did not do and, upon information and belief, could not possibly have done because she lacked the proper computer permissions. Defendant provided no proof supporting this allegation. Indeed, Mr. Russo and Kellie Covington (Human Resources Manager) admitted to Ms. Bost that the alleged "manual override" was not possible, and issued a revised first written coaching on August 9, 2014 in an attempt to retroactively correct the accusation. Therefore, the first written coaching was unwarranted.

131. The first written coaching represented disparately harsh treatment, and heightened scrutiny, of Ms. Bost in any event: upon information and belief, Defendant's own policies did not permit the issuance of written coachings for key errors of less than \$100. Such a minor infraction, if punished at all, should have

resulted in a so-called “pink slip,” three of which were required in a 60-day period to justify a written coaching.

132. Upon information and belief, the unjustified first written coaching may have dissuaded a reasonable worker from making or supporting a charge of discrimination.

133. Upon information and belief, Mr. Russo issued Ms. Bost’s second written coaching to her on August 6, 2014, in retaliation for the complaints Ms. Bost had made in the interim about him and other employees—including, among other things, Ms. Bost’s EEOC charge filed July 23, 2014, which specifically alleged, among other things, that Mr. Russo had subjected her to a hostile work environment.

134. The purported infraction underlying the second written coaching was Ms. Bost’s alleged failure to complete her “one on one” paperwork with the Sam’s Club cashier teams. However, her paperwork was actually complete except for one employee with whom she had not yet been able to meet because of Defendant’s own scheduling procedures: she had not been scheduled to work on the same day as that employee during the relevant time-period.

135. Therefore, the second written coaching was also unjustified, and reflected disparately harsh treatment and heightened scrutiny of Ms. Bost in any event: upon information and belief, her alleged infraction would not ordinarily

have resulted in a written coaching absent Mr. Russo's retaliatory motives, as well as his hostility (and the hostility of other Sam's Club employees, including managers and supervisors) towards Ms. Bost, by reason of her sex and/or disability.

136. Upon information and belief, the unjustified second written coaching may have dissuaded a reasonable employee from making or supporting a charge of discrimination.

137. On leaving work the day she received the second written coaching (August 6, 2014), Ms. Bost overheard Mr. Russo admit, in talking to a Lead Member Service Supervisor, that his motive in issuing the second written coaching to Ms. Bost (among others issued that day to other employees) was to retaliate against Ms. Bost and silence her complaints: he stated, in words or substance, "That new coaching should shut Charlie up for a while. It won't seem as obvious with the others included."

138. The second written coaching did not have its intended effect of deterring Ms. Bost from continuing to exercise her legal right to engage in protected activities, including continuing to complain to Defendant and to file charges with the EEOC concerning the unlawful discrimination, harassment, and retaliation to which she was subjected by Defendant—but may have dissuaded

most reasonable employees from making or supporting further charges of discrimination.

139. Accordingly, between the issuance of the second written coaching on August 6, 2014, and the issuance of the third written coaching on November 23, 2014, Ms. Bost made at least eight complaints to Defendant concerning the continuing harassment and retaliation (including regarding the issuance of the second written coaching), as well as Defendant's failure to take action to address her previous complaints.

140. In addition, on August 11, 2014, Ms. Bost filed her second charge of discrimination with the EEOC alleging violations of Title VII relevant to this action, including hostile work environment and retaliation.

141. Rebecca Whitley, a General Manager with Defendant, issued the third written coaching to Ms. Bost—the final level of coaching available before an employee's termination, as alleged above—on November 29, 2014, falsely alleging that on November 23, 2014, Ms. Bost was “rude and disrespectful” to a cashier in asking her why she had moved to a different register from the one to which Ms. Bost had assigned her. According to the third written coaching, Ms. Bost's conduct made her co-workers' “feelings . . . hurt and they feel belittled.” The document stated that “Leaders are expected to be professional and respectful

to all associates and members,” and warned Ms. Bost that the next step “if behavior continues” would be termination.

142. Upon information and belief, Ms. Whitley issued the third written coaching to Ms. Bost on or about November 29, 2014, at the behest of and/or in concert with Mr. Russo, in retaliation for Ms. Bost’s continued pursuit after the second written coaching of complaints and EEOC charges concerning Defendant’s harassment, discrimination, and retaliation (as well as its failure to take any action on Ms. Bost’s previous complaints),

143. Upon information and belief, on or about November 23, 2014 (the same day as the incident purportedly underlying the third written coaching), Mr. Russo, after learning about the incident, saw it as an opportunity, in the guise of investigating that incident, to solicit and/or bribe Ms. Bost’s co-workers to file fabricated complaints against her, which would support the issuance of a third written coaching to her and, ultimately, facilitate his termination of her.

144. In his memorandum dated the next day (November 24, 2014), Mr. Russo characterized his actions as “collect[ing] witness statements from all involved,” which supposedly supported the conclusion that Ms. Bost was “disrespectful to . . . his [sic] fellow associates.”

145. In fact, upon information and belief, after hearing about the incident on November 23, 2014, Mr. Russo—who had, upon information and belief,

already been soliciting Ms. Bost's co-workers since approximately October 2014 to submit complaints about her—immediately did so again. Upon information and belief, he promptly gathered a group of Ms. Bost's co-workers (whom he believed to be hostile towards Ms. Bost by reason of her gender) near the service desk, and directed them to write statements complaining about Ms. Bost's supposed rudeness and disrespect towards co-workers during the alleged incident, telling them to “think of something to write” and he would take care of the rest.

146. Upon information and belief, when one employee expressed confusion, he stated to her, in words or substance, “there is a certain MSS that nobody wants around here,” and “you know you could help us with that problem.” When she continued to refuse, he called her a “rat” and threatened to fire her.

147. Upon information and belief, Mr. Russo bestowed certain favors upon employees who agreed to submit complaints about Ms. Bost, such as, for example, giving them permission to sit and eat at the membership desk (which was strictly prohibited under Defendant's rules, and considered a “coachable” offense), and offering one employee a promotion to Member Service Supervisor (which that employee duly received), in exchange for fabricating a complaint against Ms. Bost.

148. Upon information and belief, Ms. Whitley had no personal knowledge of the November 23, 2014 incident, and relied, in issuing the third

written coaching, on the several fabricated “witness” statements against Ms. Bost which Mr. Russo solicited on that date—all of which used similar language regarding Ms. Bost’s alleged attitude and demeanor, including the words “disrespectful,” “disrespect,” “belittle,” and/or “embarrassed”—as well as on Mr. Russo’s own memorandum dated November 24, 2014 (which stated that as a result of the incident he intended to coach Ms. Bost on “respect for the individual”).

149. Mr. Russo’s November 24 memorandum also evidenced his continuing hostility and resentment towards Ms. Bost in general: the memorandum not only reported on the November 23 incident, but complained that Ms. Bost had been disrespectful to Mr. Russo as well as to her co-workers on that date, by interrupting a meeting he was in with other managers in order to report the incident, and by addressing one of the other managers rather than Mr. Russo himself, supposedly failing to make eye contact with Mr. Russo at any time. Mr. Russo stated, “I felt that approaching another manager regarding my department was disrespectful and was an attempt to undermine my position.”

150. Mr. Russo’s claim that Ms. Bost was disrespectful towards him on November 23, 2014 was inaccurate. However, as set forth above, Ms. Bost had long been aware that complaining to Mr. Russo (as her supervisor) regarding the conduct of her co-workers was a futile act given that Mr. Russo was himself

personally hostile towards her because of her gender and/or gender expression, and was himself harassing her on a regular basis.

151. The third written coaching was fatally tainted as a result of Ms. Whitley's reliance on Mr. Russo's memorandum, and on the fabricated employee complaints against Ms. Bost which Mr. Russo had solicited.

152. However, regardless of whether Ms. Bost was actually "disrespectful" in questioning a cashier on November 23, 2013, the third written coaching demonstrates on its face Defendant's disparate treatment of Ms. Bost compared to similarly situated employees not within her protected categories.

153. The contrast is clear between, on the one hand, Defendant's eagerness to issue the final disciplinary precursor to termination to Ms. Bost for allegedly being rude and disrespectful to one co-worker six days earlier, and, on the other hand, Defendant's repeated failure to take any action whatsoever—let alone the prompt and effective action it was legally required to take—to stop the severe and pervasive harassment (and extreme "disrespect") to which Ms. Bost was subjected over a period of years by multiple employees (including her own supervisor) who were outside her protected categories, because of her sex and/or disability.

154. The third written coaching also highlights the contrast between Defendant's high level of professed concern for the hurt feelings of similarly



situated employees who were outside Ms. Bost's protected categories and were allegedly being treated with disrespect, and the non-existent level of concern which Defendant showed at all times for Ms. Bost's "hurt feelings" from being subjected to an unrelentingly hostile work environment as detailed above.

155. Upon information and belief, after the issuance of the third written coaching, Mr. Russo not only continued to harass Ms. Bost himself as set forth above, but continued to retaliate against her by soliciting a series of fabricated complaints against her by her co-workers, all alleging variations on the theme of Ms. Bost's supposedly rude and/or disrespectful demeanor, her "rolling her eyes" at people, etc. None, even if accurate, justified either further discipline or termination, and several exhibited hostility towards Ms. Bost's gender expression, and/or to LGBT people in general.

156. Upon information and belief, Mr. Russo also retaliated against Ms. Bost by soliciting and persuading a Sam's Club customer to file a completely false and fabricated complaint against her, in early February 2015, asserting that whenever he came to Sam's Club, Ms. Bost supposedly "chase[s] me to hug me every time I pass by" her register, without his consent.

157. Ms. Bost never engaged in this alleged conduct towards this (or any other customer); she neither "chased" this customer nor hugged him, with or without his consent. She had no interest in or attraction towards this customer

(sexually or otherwise), who, upon information and belief, was notorious among Sam's Club employees for attempting to engage in inappropriate conversations with them, including bragging about his sexual prowess with both women and men, and claiming that he "was the best" in bed. Indeed, this customer had himself attempted on more than one occasion to hug Ms. Bost without her consent, but succeeded only partially, as she did not cooperate.

158. Defendant falsely asserted to Ms. Bost that video surveillance footage confirmed the customer's allegations that Ms. Bost had engaged in inappropriate physical contact with him, without his consent, but never provided her with any such evidence—producing instead a video that supposedly showed the customer taking "unnatural routes" to avoid Ms. Bost's work station upon entering and leaving Sam's Club. Upon information and belief, no evidence exists (or could possibly exist) supporting the baseless claim that Ms. Bost ever engaged in the alleged behavior.

159. Upon information and belief, the customer who made this complaint admitted to another Sam's Club employee in advance of submitting the complaint against Ms. Bost that it would be a fabrication, stating "I am going to try to get Charlie to hug me." In fact, upon information and belief, Mr. Russo, in concert with at least one other Sam's Club manager, attempted to tape the anticipated encounter, but not only did Ms. Bost not hug the customer, but the camera failed to

function—contrary to Defendant’s false claim that a tape existed confirming Ms. Bost’s alleged misconduct.

160. The issuance of the third written coaching on November 29, 2014 may have dissuaded most reasonable employees from making or supporting further charges of discrimination, but did not deter Ms. Bost from persisting in her legally protected right to complain about Defendant’s harassment, discrimination, and retaliation—all of which continued unabated after November 29, 2014. Therefore, she continued to submit such complaints.

161. On or about February 18, 2015, Defendant unlawfully retaliated against Ms. Bost through its Senior Human Resources Manager, Mr. Michael Little, who telephoned her and expressly threatened to terminate her if she continued making complaints to Defendant, or continued complaining about Defendant’s failure to investigate or otherwise address her prior complaints.

162. On or about February 21, 2015, Mr. Russo further retaliated against Ms. Bost by giving her a negative annual performance review, resulting in her not receiving an annual wage increase for the first time since she began her employment with Defendant almost eleven years earlier.

163. In the face of these additional retaliatory threats and actions—which may have dissuaded most reasonable employees from making or supporting further charges of discrimination—Ms. Bost refused to stop exercising her legally

protected right to make complaints and file EEOC charges concerning the harassment and discrimination, concerning Defendant's failure to address her prior complaints, and concerning the retaliation against her. Among other things, on February 23, 2015, she filed her third charge of discrimination with the EEOC alleging violations of Title VII relevant to this action, including retaliation.

164. On March 17, 2015, Mr. Russo, acting for Defendant, unlawfully terminated Ms. Bost in retaliation for her legally protected complaints and EEOC charges, and/or because of her sex and disability.

165. When he unlawfully terminated Ms. Bost, Mr. Russo cited to her, as justification for the termination, unspecified "multiple complaints" by Ms. Bost's co-workers, as well as the customer complaint falsely alleging that Ms. Bost had initiated unwanted physical contact with him, as described above. In other words, he relied on the very same fabricated complaints against Ms. Bost which he had solicited himself.

166. Defendant is liable for all of Mr. Russo's actions alleged herein.

## **Defendant's Retaliatory Objection to Ms. Bost's Application for Unemployment Benefits**

167. On March 18, 2015, the day after Ms. Bost was terminated, she filed her fourth charge of discrimination with the EEOC, alleging retaliation by Defendant including her illegal termination.

168. Shortly after Ms. Bost filed her fourth charge of discrimination with the EEOC, she applied for unemployment benefits.

169. A few weeks later, the North Carolina Department of Employment and Workforce (the "Department"), notified Ms. Bost that Defendant objected to her request for unemployment benefits.

170. Defendant's objections were based on the discriminatory and/or retaliatory written coachings that Ms. Bost had received as set forth above, and in so objecting to her request for benefits, Defendant's actions constituted further discrimination and retaliation.

171. Upon information and belief, the Department conducted an investigation into Defendant's objection to Ms. Bost's request for unemployment benefits.

172. During the pendency of the investigation, Ms. Bost notified the Department of the discrimination she experienced while working for Defendant, and advised the Department that she believed Defendant had terminated her because of discrimination and/or retaliation.

173. Shortly thereafter, the Department found Ms. Bost eligible for unemployment benefits.

## **CAUSES OF ACTION**

### **COUNT 1**

#### **Title VII**

#### **42 U.S.C. § 2000e, et seq.**

#### **Hostile Work Environment Because of Sex**

174. Plaintiff incorporates by reference paragraphs 1-4, 6-47, and 53-173 as if fully set forth herein.

175. Ms. Bost is a member of a protected category with regard to sex.

176. From in or about 2011 until Ms. Bost's termination in 2015, Defendant's managers, supervisors, and employees instituted and pursued a campaign of harassment and discrimination against Ms. Bost on the basis of sex, including sex stereotyping—and including because of her gender, gender non-conformity, gender identity, and/or gender expression—and adopted adversarial attitudes and hostile demeanors. This harassment was frequent, severe and pervasive, and continued unabated until Ms. Bost's discharge by Defendant.

177. Ms. Bost was targeted for harassment and subjected to a hostile work environment by managers, supervisors, and employees because of her sex, including sex stereotyping—and including because of her gender, gender non-conformity, gender identity, and/or gender expression.

178. The harassing and discriminatory acts involved the same type of employment actions, occurred frequently, were perpetuated and/or directed by the same core group of managers, supervisors, and employees, were egregious, numerous and concentrated, and formed part of the same hostile work environment, as detailed herein.

179. The discriminatory acts were unwelcome to Ms. Bost.

180. Discriminatory intimidation, ridicule, and insult permeated the work environment, and were sufficiently severe or pervasive to alter the conditions of Ms. Bost's employment and to create a hostile and abusive working environment, as detailed herein.

181. Defendant's managers, supervisors, and employees made statements that demeaned and disparaged Ms. Bost's sex, including her gender, gender identity, and gender expression, as detailed herein.

182. Defendant's managers and supervisors denied the legitimacy of Ms. Bost's female gender identity and feminine gender expression, and encouraged and/or failed to stop others under their direction from doing the same.

183. This hostile environment unreasonably interfered with Ms. Bost's ability to perform her job duties, by disrupting her relationship to Defendant and its management, by the unreasonable criticism and scrutiny of Ms. Bost's gender and gender expression which flowed directly from Defendant's failure to take

prompt and effective action to stop the hostile work environment, by Ms. Bost's need to spend many hours on otherwise unnecessary grievance processes and other means of seeking relief, amongst other reasons.

184. The effects of the hostile work environment alleged herein were felt by Ms. Bost daily. For instance, Ms. Bost felt humiliation and despair as a result of her reasonable fear of continued harassment at any moment, and by her being referred to continually and intentionally by the wrong name as well as the numerous slurs, insults, and mocking references to her gender and gender expression as set forth above.

185. The hostile work environment was severe and pervasive, as alleged above.

186. Multiple events contributing to this hostile work environment occurred within the 180-day period prior to Ms. Bost's first relevant EEOC charge.

187. Ms. Bost perceived the working environment to be abusive and hostile.

188. A reasonable woman in Ms. Bost's circumstances would consider the working environment to be abusive or hostile.

189. Defendant's actions occurred because of Ms. Bost's sex, in that she was female, but Defendant regarded her as male.



190. Ms. Bost was the object of Defendant's harassment by reason of her sex.

191. Defendant was on notice of the hostile work environment, including actual notice by means of complaints made by Ms. Bost to Defendant as detailed herein, and by means of Ms. Bost's EEOC charges filed during her employment, as well as vicariously and constructively by means of the acts perpetrated by Ms. Bost's direct supervisor and other managers, as detailed herein.

192. Defendant did not undertake prompt and effective actions sufficient to stop the discrimination and harassment or the hostile work environment detailed herein, or to prevent future discrimination and harassment.

193. As a direct and proximate result of Defendant's illegal harassment and discrimination, Ms. Bost incurred damages including but not limited to lost income and benefits, humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

## **COUNT 2**

### **Title VII**

**42 U.S.C. § 2000e, et seq.**

### **Discriminatory Discharge Because of Sex**

194. Plaintiff incorporates by reference paragraphs 1-4, 6- 47, and 53-173, as if fully set forth herein.

195. Ms. Bost is a member of a protected category with regard to sex.

196. Ms. Bost was terminated by Defendant, as detailed above.

197. Ms. Bost did not engage in any of the infractions and other offenses alleged by Defendant in the written disciplinary coachings, in the fabricated complaints by co-workers and a customer, in the negative annual performance review which she received, and/or in Defendant's explanation to Ms. Bost of the reasons for her termination, as alleged herein, and Defendant's decision-makers with regard to her termination were aware of this.

198. However, even if Ms. Bost did engage in any of the infractions and other offenses as alleged by Defendant, such infractions and offenses were not comparable in seriousness to misconduct of similarly situated employees outside of the protected category to which she belonged.

199. Defendant purported to terminate Ms. Bost by reason of her alleged infractions, offenses, and other supposed misconduct, including as alleged in complaints by co-workers and a customer.

200. Ms. Bost's termination as a result of her alleged misconduct was more severe than the discipline imposed on similarly situated employees who were outside of her protected category who engaged in misconduct of comparable seriousness (and, in fact, of far greater seriousness, as detailed herein).

201. Ms. Bost was unlawfully terminated by Defendant because of her sex.

202. As a direct and proximate result of Defendant's unlawful and discriminatory discharge of Ms. Bost, Ms. Bost has incurred damages including but not limited to lost income and benefits, humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

### **COUNT 3**

#### **Title VII 42 U.S.C. § 2000e, et seq. Retaliatory Hostile Work Environment**

203. Plaintiff incorporates by reference paragraphs 1-4, 6-47, and 53-173, as if fully set forth herein.

204. Defendant's acts complained of above effectively deprived Ms. Bost of equal employment opportunities as an employee because of retaliation for her complaints of discrimination, in violation of Title VII, and Title I of the Civil Rights Act of 1991.

205. Ms. Bost engaged in activities protected by Title VII by complaining to Defendant, including to Defendant's supervisors and managers, about the sex-based harassing and discriminatory practices and the sex-based hostile work environment described herein, by opposing said practices and the

hostile work environment directed at her, and by filing administrative charges with the EEOC during her employment.

206. Ms. Bost's exercise of protected rights was known to Defendant because the complaints were made to Defendant, and to those committing harassing acts in retaliation for her complaints, because they were made aware that she had made complaints about sex-based harassment, prior to the occurrence of the retaliatory harassing acts.

207. Ms. Bost's exercise of protected rights was also known to Defendant because of the administrative charges she filed with the EEOC during her employment, and to those committing harassing acts in retaliation for her administrative charges, because they were made aware that she had filed administrative charges about sex-based harassment, prior to the retaliatory harassing acts.

208. Following and because of Ms. Bost's exercise of her protected rights, Defendant's managers, supervisors, and employees instituted and pursued a campaign of retaliatory harassment and discrimination against Ms. Bost, and adopted adversarial attitudes and hostile demeanors. This harassment was frequent, severe and pervasive, and continued unabated until Ms. Bost's discharge by Defendant.

209. Ms. Bost was targeted for harassment and subjected to a hostile work environment by managers, supervisors, and employees in retaliation for her exercise of her protected rights.

210. The harassing acts involved the same type of employment actions, occurred frequently, were perpetuated and/or directed by the same core group of managers, supervisors, and employees, were egregious, numerous and concentrated, and formed part of the same hostile work environment, as detailed herein.

211. Following and because of Ms. Bost's Title VII protected conduct, Ms. Bost was threatened with and subjected to a hostile environment by Defendant, including:

- a. Defendant's baseless written disciplinary coachings of Ms. Bost;
- b. Defendant's solicitation of fabricated complaints from co-workers and customers about Ms. Bost's conduct, attitude, and demeanor in order to provide justification for disciplining and/or terminating her;
- c. Defendant's express threat made to Ms. Bost that she would be terminated if she continued making complaints to Defendant or continued complaining about Defendant's failure to investigate or otherwise address her prior complaints; and

d. Defendant's negative annual performance review of Ms. Bost, which resulted in her not receiving an annual wage increase for the first time during her employment.

212. The harassing acts may have dissuaded a reasonable employee from making or supporting a complaint of harassment or discrimination.

213. Discriminatory intimidation, ridicule, and insult permeated the work environment, and were sufficiently severe or pervasive to alter the conditions of Ms. Bost's employment and to create a hostile and abusive working environment, as detailed herein.

214. This hostile environment unreasonably interfered with Ms. Bost's ability to perform her job duties, by disrupting her relationship to Defendant and its management, which flowed directly from Defendant's failure to take prompt and effective action to stop the hostile work environment, by Ms. Bost's need to spend many hours on otherwise unnecessary grievance processes and other means of seeking relief, amongst other reasons.

215. The effects of the hostile work environment alleged herein were felt by Ms. Bost daily. For instance, Ms. Bost felt humiliation and despair as a result of her reasonable fear of continued harassment at any moment.

216. The hostile work environment was severe and pervasive, as alleged above.

217. Multiple events contributing to this hostile work environment occurred within the 180-day period prior to Ms. Bost's first relevant EEOC charge.

218. Ms. Bost perceived the working environment to be abusive and hostile.

219. A reasonable woman in Ms. Bost's circumstances would consider the working environment to be abusive or hostile.

220. Defendant's actions occurred because of retaliation for Ms. Bost's exercise of her protected rights.

221. Defendant was on notice of the hostile work environment, including actual notice by means of complaints made by Ms. Bost to Defendant as detailed herein, and by means of Ms. Bost's EEOC charges filed during her employment, as well as vicariously and constructively by means of the acts perpetrated by Ms. Bost's direct supervisor and other managers, as detailed herein.

222. Defendant did not undertake prompt and effective actions sufficient to stop the hostile work environment detailed herein, or to prevent future discrimination and harassment.

223. The retaliatory actions taken against Ms. Bost may have dissuaded a reasonable employee from making or supporting a complaint of harassment or discrimination.

224. Ms. Bost did not engage in any of the infractions and other offenses alleged by Defendant in the written disciplinary coachings, in the fabricated complaints by co-workers and customers, and/or in the negative annual performance review which she received, and those taking part in such actions against Ms. Bost were aware of this.

225. However, even if Ms. Bost did engage in any of the infractions and other offenses as alleged by Defendant, such infractions and offenses were not comparable in seriousness to misconduct of similarly situated employees outside of the protected category to which she belonged.

226. Ms. Bost suffered more severe discipline (including termination) as a result of her alleged misconduct than similarly situated employees who engaged in prohibited conduct of comparable seriousness (and, in fact, of far greater seriousness, as detailed herein).

227. As a direct and proximate result of Defendant's illegal retaliatory hostile work environment imposed on Ms. Bost, Ms. Bost has incurred damages including but not limited to lost income and benefits, humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and other pecuniary and non-pecuniary losses, which damages would not have occurred but for Defendant's illegal retaliatory hostile work environment.



## **COUNT 4**

### **Title VII 2 U.S.C. § 2000e, et seq. Retaliation and Retaliatory Discharge**

228. Plaintiff incorporates by reference paragraphs 1-4, 6-47, and 53-173, as if fully set forth herein.

229. Defendant's acts complained of above effectively deprived Ms. Bost of equal employment opportunities as an employee because of retaliation for her complaints of discrimination in violation of Title VII, and Title I of the Civil Rights Act of 1991.

230. Ms. Bost engaged in activities protected by Title VII by complaining to Defendant, including to Defendant's supervisors and managers, about the harassing and discriminatory practices and the hostile work environment described herein, by opposing said practices and the hostile work environment directed at her, and by filing administrative charges with the EEOC during her employment.

231. Ms. Bost's exercise of protected rights was known to Defendant and Defendant's decision-makers in regard to her termination (and the other retaliatory acts set forth herein), because the complaints were made to Defendant and Defendant's decision-makers with regard to her termination, prior to her termination (and prior to such other retaliatory acts).

232. Ms. Bost's exercise of protected rights was also known to Defendant and Defendant's decision-makers with regard to her termination (and the other retaliatory acts set forth herein) because of the administrative charges she filed with the EEOC during her employment, of which Defendant and Defendant's decision-makers were made aware.

233. Following and because of Ms. Bost's Title VII protected conduct, Ms. Bost was threatened with and subjected to tangible or adverse employment actions by Defendant, underlying and culminating in her retaliatory discharge, including:

a. Defendant's baseless written disciplinary coachings of Ms. Bost, which were a predicate to her termination;

b. Defendant's solicitation of fabricated complaints from co-workers and a customer about Ms. Bost's conduct, attitude, and demeanor in order to provide justification for disciplining and/or terminating her;

c. Defendant's express threat made to Ms. Bost that she would be terminated if she continued making complaints to Defendant or continued complaining about Defendant's failure to investigate or otherwise address her prior complaints;

d. Defendant's negative annual performance review of Ms. Bost, which resulted in her not receiving an annual wage increase for the first time during her employment; and, finally,

e. Defendant's termination of Ms. Bost because of and in retaliation for her complaints—a termination purportedly based, among other things, upon the baseless and retaliatory written coachings and fabricated complaints against her as detailed herein.

234. The retaliatory actions taken against Ms. Bost may have dissuaded a reasonable employee from making or supporting a complaint of harassment or discrimination.

235. Ms. Bost did not engage in any of the infractions and other offenses alleged by Defendant in the written disciplinary coachings, in the fabricated complaints by co-workers and a customer, in the negative annual performance review which she received, and/or in Defendant's explanation to Ms. Bost of the reasons for her termination, as alleged above, and Defendant and Defendant's decision-makers in regard to her termination were aware of this.

236. However, even if Ms. Bost did engage in any of the infractions and other offenses as alleged by Defendant, such infractions and offenses were not comparable in seriousness to misconduct of similarly situated employees outside of the protected category to which she belonged.

237. Ms. Bost suffered more severe discipline (including termination) as a result of her alleged misconduct than similarly situated employees who were outside of her protected category who engaged in prohibited conduct of comparable seriousness (and, in fact, of far greater seriousness, as detailed herein).

238. As a direct and proximate result of Defendant's illegal retaliation against Ms. Bost and retaliatory discharge of her, Ms. Bost has incurred damages including but not limited to lost income and benefits, humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and other pecuniary and non-pecuniary losses, which damages would not have occurred but for Defendant's illegal retaliation and retaliatory discharge.

## **COUNT 5**

### **Americans with Disabilities Act 42 U.S.C. § 12101, et seq. Hostile Work Environment**

239. Plaintiff incorporates by reference paragraphs 1-173, as if fully set forth herein.

240. Ms. Bost is within the ADA's protected class because she was regarded by Defendant and its managers, supervisors, and employees as disabled, in that she was perceived as having gender dysphoria as alleged above.

241. From in or about 2011 until Ms. Bost's termination in 2015, Defendant and its managers, supervisors, and employees instituted and pursued a

campaign of harassment and discrimination against Ms. Bost on the basis of her perceived disability, and adopted adversarial attitudes and hostile demeanors. This harassment was frequent, severe and pervasive, and continued unabated until Ms. Bost's discharge by Defendant.

242. Ms. Bost was subjected to such harassment and discrimination in her workplace by Defendant and its managers, supervisors, and employees because of her perceived disability.

243. The harassing and discriminatory acts involved the same type of employment actions, occurred frequently, were perpetuated and/or directed by the same core group of managers, supervisors, and employees, were egregious, numerous and concentrated, and formed part of the same hostile work environment, as detailed herein.

244. The harassing and discriminatory acts, , all of which were intended to (and did) cause Ms. Bost to experience distress, were unwelcome to her.

245. Ms. Bost's workplace environment during her employment by Defendant was permeated with discriminatory harassment, intimidation, ridicule, and insult that were sufficiently severe and pervasive to alter the conditions of Ms. Bost's employment and create a hostile and abusive working environment.

246. Defendant did not undertake prompt and effective efforts sufficient to stop the hostile work environment detailed herein.

247. This hostile work environment unreasonably interfered with Ms. Bost's ability to perform her job duties, by disrupting her relationship to Defendant and its management, by the unreasonable criticism and scrutiny of Ms. Bost's protected complaints, which flowed directly from Defendant's failure to take prompt and effective action to stop the hostile work environment, by Ms. Bost's need to spend many hours on otherwise unnecessary grievance processes and other means of seeking relief, amongst other reasons.

248. The effects of the hostile work environment alleged herein were felt by Ms. Bost daily. For instance, Ms. Bost felt humiliation and despair as a result of her reasonable fear of continued harassment at any moment.

249. The hostile work environment was severe and pervasive, as alleged above.

250. Multiple events contributing to this hostile work environment occurred within the 180-day period prior to Ms. Bost's first relevant EEOC charge.

251. Ms. Bost perceived the working environment to be abusive and hostile.

252. A reasonable woman in Ms. Bost's circumstances would consider the working environment to be abusive or hostile.

253. Defendant was on notice of the hostile work environment, including actual notice by means of complaints made by Ms. Bost to Defendant as detailed herein, as well as vicariously and constructively by means of the acts perpetrated by Ms. Bost's direct supervisor and other managers, as detailed herein

254. As a direct and proximate result of Defendant's illegal hostile work environment, Ms. Bost incurred damages including but not limited to lost income and benefits, humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and pecuniary and non-pecuniary losses, which damages would not have occurred but for Defendant's illegal hostile work environment.

## **COUNT 6**

### **Americans with Disabilities Act 42 U.S.C. § 12101, et seq. Discriminatory Discharge**

255. Plaintiff incorporates by reference paragraphs 1-173 as if fully set forth herein.

256. Ms. Bost is within the ADA's protected class because she was regarded and perceived by Defendant and its managers, supervisors, and employees as disabled, in that she was perceived as having gender dysphoria as alleged above.

257. Ms. Bost was qualified to perform the essential functions of her job with or without reasonable accommodation.

258. Ms. Bost was discharged by Defendant, as described above.

259. Ms. Bost did not engage in any of the infractions and other offenses alleged by Defendant in the written disciplinary coachings, in the fabricated complaints by co-workers and a customer, in the negative annual performance review which she received, and/or in Defendant's explanation to Ms. Bost of the reasons for her termination, as alleged above, and Defendant's decision-makers in regard to her termination were aware of this.

260. However, even if Ms. Bost did engage in any of the infractions and other offenses as alleged by Defendant, such infractions and offenses were not comparable in seriousness to misconduct of similarly situated employees outside of the protected category to which she belonged.

261. Defendant purported to terminate Ms. Bost by reason of her alleged infractions, offenses, and other supposed misconduct, including as alleged in complaints by co-workers and a customer.

262. Ms. Bost's termination as a result of her alleged misconduct was more severe than the discipline imposed on similarly situated employees who were outside of her protected category who engaged in misconduct of comparable seriousness (and, in fact, of far greater seriousness, as detailed herein).



263. Ms. Bost was unlawfully terminated by Defendant because she was perceived as disabled, in that she was regarded by Defendant and its employees, supervisors and managers as having gender dysphoria.

264. As a direct and proximate result of Defendant's unlawful termination of Ms. Bost by reason of her perceived disability, she incurred damages including but not limited to lost income and benefits, humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and other pecuniary and non-pecuniary losses, which damages would not have occurred but for Defendant's unlawful termination of her.

#### **COUNT 7**

**Americans with Disabilities Act  
42 U.S.C. § 12101, et seq.  
Retaliatory Hostile Work Environment**

265. Plaintiff incorporates by reference paragraphs 1-173 and 240-254, as if fully set forth herein.

266. Defendant's acts complained of above effectively deprived Ms. Bost of equal employment opportunities as an employee because of retaliation for her complaints of discrimination, in violation of the ADA.

267. Ms. Bost engaged in activities protected by the ADA by complaining to Defendant, including to Defendant's supervisors and managers, about the harassing and discriminatory practices based on her perceived disability, and the hostile work environment based on her perceived disability, as described

herein, by opposing said practices and the hostile work environment directed at her.

268. Ms. Bost's exercise of protected rights was known to Defendant because the complaints were made to Defendant, and to those engaging in the retaliatory harassing acts, because they were made aware of her complaints, prior to the retaliatory harassing acts.

269. Following and because of Ms. Bost's exercise of her protected rights, Defendant's managers, supervisors, and employees instituted and pursued a campaign of retaliatory harassment and discrimination against Ms. Bost, and adopted adversarial attitudes and hostile demeanors. This harassment was frequent, severe and pervasive, and continued unabated until Ms. Bost's discharge by Defendant.

270. Ms. Bost was targeted for harassment and subjected to a hostile work environment by managers, supervisors, and employees in retaliation for her exercise of her protected rights.

271. The harassing acts involved the same type of employment actions, occurred frequently, were perpetuated and/or directed by the same core group of managers, supervisors, and employees, were egregious, numerous and concentrated, and formed part of the same hostile work environment, as detailed herein.

272. Following and because of Ms. Bost's ADA protected conduct, Ms. Bost was threatened with and subjected to a hostile environment by Defendant, including:

- a. Defendant's baseless written disciplinary coachings of Ms. Bost;
- b. Defendant's solicitation of fabricated complaints from co-workers and customers about Ms. Bost's conduct, attitude, and demeanor in order to provide justification for disciplining and/or terminating her;
- c. Defendant's express threat made to Ms. Bost that she would be terminated if she continued making complaints to Defendant or continued complaining about Defendant's failure to investigate or otherwise address her prior complaints; and
- d. Defendant's negative annual performance review of Ms. Bost, which resulted in her not receiving an annual wage increase for the first time during her employment.

273. The harassing acts may have dissuaded a reasonable employee from making or supporting a complaint of harassment or discrimination.

274. Discriminatory intimidation, ridicule, and insult permeated the work environment, and were sufficiently severe or pervasive to alter the conditions of Ms. Bost's employment and to create a hostile and abusive working environment, as detailed herein.

275. This hostile environment unreasonably interfered with Ms. Bost's ability to perform her job duties, by disrupting her relationship to Defendant and its management, which flowed directly from Defendant's failure to take prompt and effective action to stop the hostile work environment, by Ms. Bost's need to spend many hours on otherwise unnecessary grievance processes and other means of seeking relief, amongst other reasons.

276. The effects of the hostile work environment alleged herein were felt by Ms. Bost daily. For instance, Ms. Bost felt humiliation and despair as a result of her reasonable fear of continued harassment at any moment.

277. The hostile work environment was severe and pervasive, as alleged above.

278. Multiple events contributing to this hostile work environment occurred within the 180-day period prior to Ms. Bost's first relevant EEOC charge.

279. Ms. Bost perceived the working environment to be abusive and hostile.

280. A reasonable woman in Ms. Bost's circumstances would consider the working environment to be abusive or hostile.

281. Defendant's actions occurred because of retaliation for Ms. Bost's exercise of her protected rights.

282. Defendant was on notice of the hostile work environment, including actual notice by means of complaints made by Ms. Bost to Defendant as detailed

herein, as well as vicariously and constructively by means of the acts perpetrated by Ms. Bost's direct supervisor and other managers, as detailed herein.

283. Defendant did not undertake prompt and effective actions sufficient to stop the hostile work environment detailed herein, or to prevent future discrimination and harassment.

284. The retaliatory actions taken against Ms. Bost may have dissuaded a reasonable employee from making or supporting a complaint of harassment or discrimination.

285. Ms. Bost did not engage in any of the infractions and other offenses alleged by Defendant in the written disciplinary coachings, in the fabricated complaints by co-workers and customers, and/or in the negative annual performance review which she received.

286. However, even if Ms. Bost did engage in any of the infractions and other offenses as alleged by Defendant, such infractions and offenses were not comparable in seriousness to misconduct of similarly situated employees outside of the protected category to which she belonged.

287. Ms. Bost suffered more severe discipline (including termination) as a result of her alleged misconduct than similarly situated employees who engaged in prohibited conduct of comparable seriousness (and, in fact, of far greater seriousness, as detailed herein).

288. As a direct and proximate result of Defendant's illegal retaliatory hostile work environment imposed on Ms. Bost, Ms. Bost has incurred damages including but not limited to lost income and benefits, humiliation, loss of

enjoyment of life, emotional distress, damage to her professional reputation, and other pecuniary and non-pecuniary losses, which damages would not have occurred but for Defendant's illegal retaliatory hostile work environment.

## **COUNT 8**

### **Americans with Disabilities Act 42 U.S.C. § 12101, et seq. Retaliation and Retaliatory Discharge**

289. Plaintiff incorporates by reference paragraphs 1-173 and 240-254, as if fully set forth herein.

290. Defendant's acts complained of above effectively deprived Ms. Bost of equal employment opportunities as an employee because of retaliation for her complaints of discrimination in violation of the ADA.

291. Ms. Bost engaged in activities protected by the ADA by complaining to Defendant, including to Defendant's supervisors and managers, about the harassing and discriminatory practices based on her perceived disability, and the hostile work environment based on her perceived disability, as described herein, by opposing said practices and the hostile work environment directed at her.

292. Ms. Bost's exercise of protected rights was known to Defendant because the complaints were made to Defendant, and to Defendant's decision makers with regard to her termination (and the other retaliatory acts set forth

herein, who were made aware of the complaints prior to her termination (and prior to such other retaliatory acts).

293. Following and because of Ms. Bost's ADA protected conduct, Ms. Bost was threatened with and subjected to tangible or adverse employment actions by Defendant, underlying and culminating in her retaliatory discharge, including:

- a. Defendant's baseless written disciplinary coachings of Ms. Bost, which were a predicate to her termination;
- b. Defendant's solicitation of fabricated complaints from co-workers and a customer about Ms. Bost's conduct, attitude, and demeanor in order to provide justification for disciplining and/or terminating her;
- c. Defendant's express threat made to Ms. Bost that she would be terminated if she continued making complaints to Defendant or continued complaining about Defendant's failure to investigate or otherwise address her prior complaints;
- d. Defendant's negative annual performance review of Ms. Bost, which resulted in her not receiving an annual wage increase for the first time during her employment; and, finally,
- e. Defendant's termination of Ms. Bost in retaliation for her complaints—a termination purportedly based, among other things, upon the

retaliatory written coachings and fabricated complaints against her as detailed herein.

294. The retaliatory actions taken against Ms. Bost may have dissuaded a reasonable employee from making or supporting a complaint of harassment or discrimination.

295. Ms. Bost did not engage in any of the infractions and other offenses alleged by Defendant in the written disciplinary coachings, in the fabricated complaints by co-workers and a customer, in the negative annual performance review which she received, and/or in Defendant's explanation to Ms. Bost of the reasons for her termination, as alleged above, and Defendant's decision-makers in regard to her termination were aware of this.

296. However, even if Ms. Bost did engage in any of the infractions and other offenses as alleged by Defendant, such infractions and offenses were not comparable in seriousness to misconduct of similarly situated employees outside of the protected category to which she belonged.

297. Ms. Bost suffered more severe discipline (including termination) as a result of her alleged misconduct than similarly situated employees who were outside of her protected category who engaged in prohibited conduct of comparable seriousness (and, in fact, of far greater seriousness, as detailed herein).



298. As a direct and proximate result of Defendant's illegal retaliation against Ms. Bost and retaliatory discharge of her, Ms. Bost has incurred damages including but not limited to lost income and benefits, humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and other pecuniary and non-pecuniary losses, which damages would not have occurred but for Defendant's illegal retaliation and retaliatory discharge.

## COUNT 9

### North Carolina Common Law Wrongful Discharge

299. Plaintiff Ms. Bost incorporates by reference paragraphs 1-173, 195-201, and 256-263, as if fully set forth herein.

300. Ms. Bost was an employee of Defendant from approximately March 12, 2004 until March 17, 2015.

301. Ms. Bost was wrongfully terminated on March 17, 2015.

302. Ms. Bost's wrongful discharge occurred in violation of the public policies announced in N.C. Gen. Stat. Ann. § 143-422.2.

303. N.C. Gen. Stat. Ann. § 143-422.2 states, in relevant part:

It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, **sex** or **handicap** by employers which regularly employ 15 or more employees.

*(Emphasis added).*

304. The right to be free from sex discrimination in the workplace, including sexual harassment is the public policy of North Carolina.

305. The right to be free from discrimination based on disability (also known as “handicap”) in the workplace is the public policy of North Carolina.

306. These public policies were applicable to Ms. Bost’s wrongful termination.

307. Ms. Bost, who was a member of protected categories by reason of her sex and disability as alleged herein, was protected by these policies against sex and disability discrimination in the workplace.

308. Defendant’s motivation in terminating Ms. Bost violated North Carolina’s public policy against sex and disability discrimination in the workplace.

309. By reason of her wrongful termination, Ms. Bost incurred damages including but not limited to lost income and benefits, humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

### **MANDATORY RECOVERY OF ATTORNEY FEES AND COSTS**

310. Plaintiff incorporates by reference all previous paragraphs as if fully set forth herein.

311. Plaintiff has a mandatory entitlement to recover attorney fees and costs pursuant to provisions of Title VII and the Americans with Disabilities Act.

### **JURY DEMAND**

312. Plaintiff hereby demands a trial by jury of all issues triable by a jury.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Charlene Bost respectfully requests that this Court:

A. Declare that the acts, practices, and omissions complained of herein are illegal and violate Title VII, the ADA, as well as North Carolina common law;

B. Permanently enjoin Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them from engaging in the illegal conduct of discriminating against employees who are transgender and/or gender non-conforming;

C. Order Defendant to institute and carry out policies, practices, programs, and training which provide equal employment opportunities for employees who are transgender and/or gender non-conforming, and which eradicate the effects of Defendant's past and present illegal employment practices;

D. Order Defendant to institute and carry out policies, practices, programs, and training which provide equal employment opportunities for employees with disabilities (including employees who have or are regarded as having gender dysphoria), including the provision of reasonable accommodations, and which eradicate the effects of Defendant's past and present illegal employment practices;

E. Order other affirmative relief necessary to eradicate the effects of Defendant's illegal employment practices;

F. Direct Defendant to pay Ms. Bost her past and future pecuniary losses resulting from the illegal conduct and practices complained of herein, including back pay and front pay;

G. Direct Defendant to pay Ms. Bost for her past and future non-pecuniary losses resulting from the illegal conduct and practices complained of herein, including humiliation, loss of enjoyment of life, emotional distress, damage to her professional reputation, and other compensatory damages, in an amount to be determined at trial;

H. Direct Defendant to pay Ms. Bost punitive and exemplary damages for its malicious or reckless conduct complained of herein, in an amount to be determined at trial;

I. Award Ms. Bost attorneys' fees, costs, and disbursements as provided by law; and

J. Award such additional relief as justice may require.

Dated: April 5, 2018

Respectfully submitted,

**/s/ Robert M. Elliot**

Robert M. Elliot Bar Number: 7709

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## CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/Robert M. Elliot  
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