

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

Diane Roberts,

Plaintiff,

v.

ABF Freight, Inc., MAX WILSON,
individually, and ROB FORD,
individually,

Defendants.

**COMPLAINT FOR VIOLATION OF NEW MEXICO
HUMAN RIGHTS LAW AND PRIMA FACIE TORT**

COMES NOW the Plaintiff, Diane Roberts, (“Plaintiff” or “Ms. Roberts”), and files the following complaint for violation of New Mexico’s Human Rights Law, Sections 28-1-1, *et seq.*, NMSA 1978, as amended, (the “Act”), and for prima facie tort against Defendants ABF Freight, Inc., (“ABF”), Max Wilson, (“Mr. Wilson”), in his individual capacity, and Rob Ford, in his individual capacity, (“Mr. Ford”, and, together with ABF and Mr. Wilson, the “Defendants”).

JURISDICTION, PARTIES, AND VENUE

1. This case arises under the Act for violation of Plaintiff’s human rights on the basis of her sex, her gender identity, and her disability.
2. Plaintiff has exhausted all her administrative remedies under the Act, and this Court has jurisdiction pursuant to Section 28-1-10 and Section 28-1-3, NMSA 1978.
3. Plaintiff is currently a resident of the City of Moriarty, in Torrance County, New Mexico.
4. ABF is an Arkansas corporation, with its headquarters in Fort Smith, Arkansas. At all relevant times, ABF was licensed to conduct business in the State of New Mexico, and its

registered address is 123 East Marcy Street, Suite 101", Santa Fe, in the County of Santa Fe, New Mexico. At all relevant times, ABF conducted business at 4800 Lincoln Road, N.E., in Albuquerque, in the County of Bernalillo, New Mexico, (the "Albuquerque Facility").

5. At all relevant times, Plaintiff was employed by ABF at its Albuquerque Facility.

6. Mr. Wilson and Mr. Ford were at all relevant times employees of ABF, employed at its Albuquerque Facility.

7. Venue is proper in this Court pursuant to Section 38-3-1(F), NMSA 1978, as Defendant ABF is a non-domestic corporation with a registered agent in Santa Fe, Santa Fe County, and pursuant to Section 28-1-10, because Defendant ABF does business in Santa Fe County.

FACTUAL ALLEGATIONS

8. Plaintiff is a transgendered woman.

9. ABF is a company engaged in the business, among other things, of interstate freight transportation. One of the methods ABF uses to transport freight is by truck. In order to facilitate its business of freight transportation, ABF owns and maintains a fleet of trucks, and employs its own mechanics to maintain those trucks.

10. Plaintiff was employed by ABF starting on about May 7, 2013 to work as a Diesel Technician, engaged in maintaining ABF's trucks. Plaintiff was employed at ABF's Albuquerque Facility.

11. At the time that Plaintiff first became employed by ABF, Plaintiff was presenting as a man, using her former male forename, and wearing men's clothes.

12. At the time she first became employed by ABF, and at all times subsequently, up to and including the date of her termination, Plaintiff had all the skills required to perform her job,

was fully qualified for the position for which she was employed, and performed her job professionally.

13. At the time that Plaintiff first became employed by ABF, Plaintiff did not identify as transgender, and had no plans to transition to her current gender.

14. At the time that Plaintiff first became employed by ABF, there were no female or transgender machinists or employees working in ABF's Albuquerque Facility in the building where Plaintiff worked, (the "Maintenance Facility").

15. At some point during the course of her employment, prior to December, 2015, Plaintiff became aware that she was transgender, and that she wished to transition to female.

16. As part of her transition, Plaintiff needed to begin presenting as a woman, wearing female clothes, changing her name, using female pronouns with respect to herself, and living her public life, outside of her home as well as at her home, as a woman.

17. During December, 2015, Plaintiff, still at that time presenting publicly as a man, discussed her transgender status with members of ABF's Human Resources department, specifically Dan Griesse and Dana Dickson, from ABF's headquarters in Little Rock, Arkansas, and with Larry Trendell, the Terminal Manager at the Albuquerque Facility. She informed them that she wanted to begin transitioning, and presenting herself publicly as a woman, at work. She would also need to be addressed by her new forename, "Diane", when her forename was employed to address her, and to have others employ female pronouns when addressing her.

18. As there were no female employees working at the "Maintenance Facility, there was no female restroom or locker room in the Maintenance Facility.

19. All the managers and supervisors working with Plaintiff, and overseeing her, were also male.

20. Plaintiff spoke to Mr. Griesse and Ms. Dickson about the need for a women's restroom and locker room in the Maintenance Facility, and they agreed that the downstairs restroom at the Maintenance Facility would be converted to a women's restroom, which Plaintiff could use also as a locker room and changing room. As all the mechanics working at the Albuquerque Facility were required to wear uniforms at work that were provided by ABF, ABF, through Mr. Griesse and Ms. Dickson, also agreed to provide Plaintiff with a uniform appropriate for a woman.

21. At the time, Mr. Wilson was Plaintiff's supervisor. Plaintiff did not trust Mr. Wilson, because she had caught him spying on her previously, in November, 2014, while she was using the restroom. This incident occurred before Plaintiff began transitioning publicly, or had declared her intent to begin transitioning. Plaintiff had lodged a formal grievance against Mr. Wilson because of his behavior, but no action was taken. Upon information and belief, others had also complained of similar inappropriate behavior by Mr. Wilson.

22. During a December, 2015, meeting with Mr. Griesse and Ms. Dickson, Plaintiff requested that she be given a different supervisor, other than Mr. Wilson, to whom to report any grievances or issues. She sought this accommodation due to her previous history with Mr. Wilson, and the previous incident of his spying on her. While ABF initially agreed to this request, they failed to honor this promise once Plaintiff publicly came out as a transgender person.

23. Plaintiff and ABF jointly decided that Plaintiff would take several days off at the beginning of February, 2016, during which time her co-workers would be informed of her transition, and after which she would return to work presenting herself as Diane Roberts, and after which she would be addressed using female pronouns, and her new name.

24. ABF further agreed to conduct training of Plaintiff's co-workers while she was absent from work, to ensure that Plaintiff would not suffer discrimination or harassment upon her return to work, presenting as female. Plaintiff requested that ABF bring in expertise from the Transgender Resource Center of New Mexico, ("TGRCNM"), either by having staff from TGRCNM help conduct the training, or by having TGRCNM provide materials for use by ABF staff in the conduct of the training. While Ms. Dickson did reach out to TGRCNM, Mr. Griesse took over responsibility for Plaintiff's transition from Ms. Dickson, and Mr. Griesse did not follow up with Ms. Dickson's initial contact or reach out to TGRCNM, or use any materials from TGRCNM to prepare and make his presentation and training to the other employees of ABF at the Albuquerque Facility with whom Plaintiff worked.

25. During January, 2016, ABF began remodeling the downstairs bathroom in the Maintenance Facility that was to be the women's bathroom, and also Plaintiff's changing area and locker room. Before the alterations, the restroom contained two urinals, suitable only for use by men, but only one was removed. No divider was put up between the remaining urinal and the toilet. The restroom was designated "gender neutral", and not as a women's restroom, in violation of ABF's promise. The bathroom was also made available to all visitors to ABF's Albuquerque Facility, and was the sole restroom available to visitors in the Maintenance Facility. The bathroom was also available for use by, and was used by, other male employees working at the Albuquerque Facility, even though they had their own designated restroom.

26. During the last week of January, 2016, someone drew a penis on the door of the bathroom. ABF had it covered with white-out. At that time, no-one other than Plaintiff's supervisors, as well as Mr. Griesse and Ms. Dickson, knew about Plaintiff's transgender status, or

her intent to come out publicly as a transgender woman, and begin her transition. ABF did not investigate this act of vandalism.

27. At this time, the main locker-room, used by all the other mechanics at the Maintenance Facility, was upstairs, while the now-public restroom where Plaintiff was required to change was downstairs. The uniform company offered to provide storage for clean and dirty uniforms downstairs, in addition to the storage provided upstairs, in order that Plaintiff would not need to go in to the men's locker room, or walk across the Maintenance Facility to deposit her soiled uniforms, but ABF refused to let them do this.

28. ABF had agreed to provide Plaintiff with two weeks' notice prior to her coming out and the scheduling of the training of other employees regarding Plaintiff's coming out, and that Plaintiff would get three (3) days off from work prior to her returning to work presenting as Diane, and so they could conduct the necessary training. But ABF only informed Plaintiff the day before they intended to perform the training, on February 1, 2016, and told her that she could only have two (2) days off. Mr. Wilson stated this was because he needed three mechanics working at all times, and he would be short-staffed if Plaintiff was given the additional day off. However, at other times, including just two weeks after this incident, Mr. Wilson allowed another male mechanic to take time off, even though this meant there would only be two mechanics working on the shop floor. When Plaintiff complained of this to Mr. Griesse, he told her she would have to take the matter up with Mr. Wilson himself.

29. Plaintiff returned to work on or about February 4, 2016, presenting as a woman.

30. On February 8, 2016, Plaintiff had a regularly scheduled day off. She came into work to speak to Mr. Wilson about the issues with the "gender-neutral" restroom that she was being required to use as a changing room and restroom, and ABF's failure to live up to its promise

to provide a women's restroom and changing room. She spoke to him about making modifications to allow her to use the restroom privately, and the fact that the restroom was not being cleaned. During this conversation, Mr. Wilson was very hostile towards plaintiff, continuing to use her former, or "dead", first name, rather than "Diane". He also referred to her as "Sir", a form of misgendering her. He stated that ABF would only put in a women's restroom when they hired a woman, implying that Plaintiff was not one. He did not agree to have the restroom cleaned, and instead informed Plaintiff that she would have to remove the shelf, chair, and small rug she had placed in the restroom, to have a clean place to sit, stand, and put her things while she was changing. Mr. Wilson stated that the items needed to be removed because Plaintiff could not have her private things in a public restroom. At that time, the men's locker room had benches and shelves available to male employees, so that they could have a place to sit and put their things while changing. Plaintiff needed the small rug, in addition to the chair and shelf, because the floor of the restroom was filthy, and Mr. Wilson refused to have it cleaned.

31. On that same day, February 8, 2016, after her conversation with Mr. Wilson, Plaintiff called Ms. Dickson to complain about Mr. Wilson's response, and ABF's failure to live up to the promises made in December, 2015, and of the discriminatory treatment Plaintiff was already receiving, not even a week after she had returned to work. Ms. Dickson did not call Plaintiff back until February 15, 2016, a week later. She told Plaintiff that ABF would not be taking any further action, either to discipline Mr. Wilson, or to address and keep the promises they had made to Plaintiff regarding her restroom, changing area, and uniform. Nor would ABF take any action regarding acts of vandalism which had already begun to occur, such as the removal and hiding of Plaintiff's air freshener.

32. At this time, Plaintiff began experiencing extreme stress from this hostile work environment and harassment, and she sought medical treatment to address this stress, so that she could continue to work. The stress was a direct result of Defendants' behavior, including harassment by Mr. Wilson, and ABF's breach of its promises to Plaintiff to help ensure a smooth transition for her, and equal treatment of her.

33. When Plaintiff returned to work on February 10, 2016, after her regularly scheduled time off, she discovered that the public restroom where she was required to change was a mess. Her air freshener had been torn off the wall and used paper towels had been placed on her chair. Nor had the floor been cleaned.

34. On February 11, 2016, Mr. Ford, the foreman, told Plaintiff that Mr. Wilson wanted to know when they could discuss removing Plaintiff's chair, rug, and shelf from the restroom.

35. Plaintiff was unable to work from February 17 through February 22, 2016, due to the stress she experienced at her workplace, and she called in sick on those days. When Plaintiff returned to work for her next scheduled shift, on February 24, 2016, she provided Mr. Wilson a copy of a doctor's note supporting her absence. Mr. Wilson refused to accept a copy of the doctor's note, and demanded the original, even though it had always been the custom to supply copies, and even though Mr. Wilson had accepted copies from other employees in the past

36. On March 4, 2016, Plaintiff spoke to the uniform delivery company about getting a uniform cut for a woman, as she was still being required by ABF to use the old uniform, which was not appropriate for or comfortable for her body. Following that conversation, Plaintiff's union steward, Sean Genson, told her that there was no women's uniform which met union contract specifications. However, Plaintiff knew that the uniforms being provided to the other employees failed to meet union specifications.

37. Plaintiff also asked the uniform delivery company about using the dirty uniform bin downstairs, so that she would not have to cross the Maintenance Facility, unlike the male employees, to deposit her soiled uniform. The downstairs bin was used for supervisors' uniforms. But the only bin for mechanics' uniforms was upstairs, next to the men's locker room.

38. On March 5, 2016, Mr. Wilson informed Plaintiff that she could not use the downstairs uniform bin, as he did not want grease from her uniform to get on the supervisors' uniforms.

39. Subsequently, the uniform delivery company informed Plaintiff that they had offered to bring an additional bin in downstairs for her, but that Mr. Wilson had refused the offer.

40. On March 10, 2016, Mr. Wilson approached Plaintiff and demanded that she remove her rug, chair, shelf, and air-freshener from the downstairs bathroom where she was required to change.

41. He also issued Plaintiff a new company identification card. But the new card still had Plaintiff's old, male picture, and her old forename. Plaintiff was required to wear this identification visibly when at work. When Plaintiff complained, Mr. Wilson told her that he wanted to wait until her name was legally changed. He stated that Mr. Griesse from the Human Resources department had confirmed this decision.

42. On March 13, 2016, Mr. Ford ordered Plaintiff to remove the chair, rug, and shelf from the restroom. Plaintiff objected and asked him to repeat this order in front of Mr. Genson, the shop steward. Mr. Genson said Plaintiff had to remove these items because the restroom was a public restroom. At this time, the men's restroom was not open to the public, and the downstairs restroom where Plaintiff was required to change was the only public restroom in the Maintenance Facility.

43. On March 26, 2016, the inside handle of the public restroom was covered in grease.

44. On April 10, 2016, Plaintiff approached Mr. Ford and asked that the damaged uniform bin be placed in a public place, as it had been put inside the men's restroom, and Plaintiff had nowhere else to put any damaged uniforms. Damaged uniforms were placed in a different bin than uniforms that were only soiled. In other words, to deposit her damaged uniform, Plaintiff would now have to actually enter the men's restroom.

45. During this conversation, Mr. Ford mis-gendered Plaintiff repeatedly by using male pronouns to address her.

46. The damaged uniform bin was moved to the break room temporarily. However, by April 24, 2016, it had been returned to inside the men's restroom. Plaintiff once again had to enter the men's restroom to dispose of her damaged uniforms.

47. On April 20, 2016, someone placed something foul-smelling in the trash bin in the public restroom where Plaintiff was required to change.

48. On April 21, 2016, Mr. Ford played his radio loudly in his office, so that anyone passing by, or needing to speak to him or outside his office, could hear it. He was playing a radio program that was bashing and insulting the transgender community and transgender people. He did not turn it off until he saw Plaintiff, and subsequently refused to speak to her.

49. On April 22, 2016, Mr. Wilson had meetings of the mechanics to discuss work-related matters. During the course of these meetings, he mis-gendered Plaintiff, using male pronouns to address her. He refused to apologize to Plaintiff for mis-gendering her.

50. On April 29, 2016, Mr. Ford required Plaintiff to start her shift early, in order to complete a task begun by the former shift, and which would ordinarily have been completed by the workers on that shift.

51. On that day, Plaintiff had a safety-related question which she needed Mr. Ford to answer. He again mis-gendered Plaintiff when she asked him her question, and in general addressed her disrespectfully.

52. At the end of her shift on that day, Plaintiff discovered that the air-freshener in the public restroom, which she had placed there because the bathroom was not kept clean, and it was the only place she could change, had been vandalized.

53. During this time, employees at ABF had also been in the habit of keeping the door of the public restroom open. Male employees, including both supervisors and other mechanics, would use the urinal and toilet with the door open, so that Plaintiff could not avoid seeing them.

54. At the end of her shift on April 29, Plaintiff reported to Mr. Ford that her air-freshener had again been vandalized. She also requested that he speak to the male employees about closing the door, as it was the only restroom she could use both for changing and as a restroom, and did not wish to encounter male employees who had left the door open while urinating. The male employees did this deliberately, to harass Plaintiff and create an unpleasant environment for her, as this bathroom was very exposed. They would not have been visible had they used the restroom in the upstairs men's locker room. Plaintiff also felt unsafe changing and using the restroom herself as a result of this harassment. Mr. Ford informed Plaintiff that the door had always been kept open, and would continue to be kept open.

55. Plaintiff complained many times subsequently about the bathroom door being kept open, but ABF refused to take any action to address the situation.

56. On May 6, 2016, Plaintiff was deliberately locked out of the shop floor, and something foul had again been placed in the trash in the restroom designated for her, so that she

could hardly enter the restroom. She reported both of these incidents to Don Berry, the shop foreman, but no action was taken.

57. Later in May, 2016, Plaintiff was again deliberately locked out of the shop floor.

58. On that same day, another male employee, Ron Richerson, was using the public restroom where Plaintiff was required to change, even though facilities were available in the men's locker room, forcing Plaintiff to wait 15 minutes before she could change. Plaintiff later heard him bragging to other employees about how he had made her wait, and made the restroom smell so bad that she couldn't use it.

59. Plaintiff reported these incidents to Mr. Berry. She also informed Mr. Berry that these incidents had caused her to have an anxiety attack, and that she was going home. Plaintiff missed two (2) days of work because of the stress caused by these incidents.

60. Subsequent to these events, ABF claimed to have a meeting with the employees at the Albuquerque Facility to address the situation with the restroom, and the harassment Plaintiff had been suffering. Plaintiff was not invited to and did not attend any such meeting. The incidents of vandalism and harassment continued.

61. Later in May, 2016, one of the employees was playing the radio loudly, tuned to a program that was offensive to the transgender community. This was on the day that the Obama Administration had issued guidance to schools on the use of school restrooms by transgender students. Although Plaintiff complained, the radio remained tuned to this program for approximately three hours at a volume loud enough that Plaintiff was forced to listen to it.

62. On June 18, 2016, it was very hot on the shop floor, and Plaintiff removed the top of her uniform, while still wearing her tank top. Other mechanics working on the floor frequently removed their uniform tops, leaving a tank top or t-shirt underneath, without attracting any

comment or being subjected to discipline. There was nothing improper about Plaintiff's dress or appearance, as she was still wearing her tank top, and only her arms and shoulders were bare. Some of the employees on the shop floor complained to the foreman present at the time, Gary Whitney. Mr. Whitney, Mr. Garrison, and another machinist approached Plaintiff and asked her to put her uniform top back on, which she refused to do.

63. The next day, on June 19, 2016, Plaintiff again worked without her uniform top, but with a tank top on, as other machinists on the shop floor were doing. Adrian Tafoya, a machinist, asked her to put her uniform top on because the other people working on the shop floor were uncomfortable. Plaintiff refused. Later that day, Plaintiff approached Mr. Tafoya and Mr. Whitney, and asked to discuss her uniform top with them. They again stated that the other employees did not want her working without her uniform top on.

64. On June 23, 2016, Plaintiff met with Don Davis, the Director of Maintenance at the Albuquerque Facility, and Michael Larson, the Regional Manager responsible for the Albuquerque Facility. Plaintiff discussed with them what had gone wrong with her coming out, and the fact that ABF had not honored its promises to her to create a women's restroom and changing facility, had failed to provide adequate training to the other employees about the correct way to address her transition, and had failed to provide her with an appropriate uniform. Mr. Larson became very disrespectful and hostile towards Plaintiff, to the point where Mr. Davis had to intervene.

65. At that same meeting, Mr. Larson and Mr. Davis agreed that the process of Plaintiff's coming out had not gone well, and that the restroom/changing room situation was not acceptable. They finally agreed to provide Plaintiff with an appropriate restroom/changing room and uniform, and agreed to conduct further employee training. However, they did not take any steps to do any of these things.

66. On June 29, 2016, it was again very hot on the shop floor. As Plaintiff was coming out of the downstairs bathroom that she was required to use to change, Mr. Ford intercepted her, and told her that she had to wear her uniform top at all times, as there was a new policy. Although the policy was posted to the bulletin board, he refused to provide Plaintiff with her own copy. The policy was put in place solely because of Plaintiff's refusal to be treated differently than the other employees, and wear her uniform top when males were permitted not to do so, and because she refused to put her uniform top on just because the male employees on the shop floor said it made them feel uncomfortable.

67. During a conversation on July 19, 2016, Mr. Wilson again mis-gendered Plaintiff, and refused to correct himself or apologize.

68. During the week of July 21, 2016, all of the employees on the shop floor had their radio stations tuned to the same offensive radio program, which bashed the transgender community. This included the radio closest to the bay where Plaintiff was working. This occurred every day that week, from July 21 on. Although Plaintiff complained, no action was taken to correct the situation. The male employees deliberately took this action in order to harass and intimidate her, and ABF did nothing to stop it. Being forced to listen for a week to a radio program attacking the transgender community was extremely stressful for Plaintiff.

69. On or around July 25, 2016, an employee sabotaged a truck that Plaintiff was working on. She reported the incident on that day to Mr. Wilson and, when he did nothing, to Mr. Davis a couple of weeks later. Neither Mr. Wilson nor Mr. Davis took the complaint seriously, or took any action to follow up, even though this was a matter of employee safety.

70. On July 29, 2016, the air-freshener was once again removed from the downstairs bathroom where Plaintiff was required to change. Because of these incidents, and the stress they were causing me, Plaintiff left work two hours early on that day, and called in sick on the next day.

71. On July 31, 2016, the handle of Plaintiff's tool-box was coated with grease. She reported the incident to Mr. Ford, but he refused to take her seriously, and took no action to follow up on her complaint.

72. Due to the continued harassment and work, from both the other male mechanics and Plaintiff's supervisors, and management's indifference to her complaints and the harassment she was suffering, Plaintiff suffered from extreme depression and lack of sleep, and she was forced to call in sick on August 3, 2016. Plaintiff's doctor recommended that she also call in sick on August 4. Her doctor gave her a note confirming the reasons for her absence from work which she produced when she returned to work on August 6. However, Mr. Wilson reprimanded her for her absences on July 29 and 30, as he claimed that she should have turned in her doctor's note on July 30 for those absences. Formerly, ABF had allowed employees a few days following an absence to turn in the doctor's note. Despite this policy, Mr. Wilson refused to remove the letters of reprimand from Plaintiff's file. Before July 29, Plaintiff had never had an absence that was not excused at the time she was absent.

73. On August 20, 2016, Plaintiff hit her head while at work, and had to go the emergency room. When the hospital released her and she returned to work later that day for her next shift, Mr. Wilson refused to let her work until ABF's own medical provider released her. Because the provider was not able to see Plaintiff until August 23, she missed two days of work. ABF ultimately agreed to reimburse Plaintiff for the two days of missed work, agreeing that Mr. Wilson should not have refused to allow her to return to work based on the hospital's release, and

should not have required a release from ABF's own medical provider. ABF only agreed to pay Plaintiff for this time that she should have been allowed to work two (2) years after they had terminated her. Mr. Wilson took these actions against company policy, and treated Plaintiff differently than other employees, in order to harass her. Mr. Wilson was not disciplined by ABF for his actions, even though ABF admitted his actions were improper by reimbursing her for the missed days of work.

74. Some time in September, 2016, ABF came out with a new policy on cell phones and radios. Employees were now forbidden to carry their cell phones with them, except when arriving at and departing from work. This impacted Plaintiff's safety, as she now felt that she had no way of contacting anyone or calling for help if she were attacked or seriously harassed. Radios were now supposed to be played so that they could only be heard in the immediate vicinity. This policy was not enforced, and Plaintiff still had to listen to other employees' offensive radio programs. The new policy also forbade the use of ear buds or headphones, and so Plaintiff had no way of playing her own radio or to otherwise drown out or block the other employees' radios.

75. On September 9, 2016, Plaintiff was told that the company air freshener in the downstairs bathroom, which she was required to use, could not be turned off, and that she had to remove her own. Later that day, at a shift meeting, Mr. Ford informed Plaintiff that the company air freshener was also being turned off, and that she could not have her own in its place. Plaintiff was informed of these policies in public, in front of other employees. Mr. Ford did this publicly in order to embarrass her in front of the other employees.

76. Plaintiff needed the air freshener because the downstairs bathroom she was required to use was not kept clean, and because the other employees would deliberately foul it in order to humiliate and embarrass her. Because of her complaints, the union finally filed a grievance on

September 11, 2016 regarding the cleaning of all the restrooms. The union won this grievance on October 14, 2016. Until the union won the grievance, the restroom was cleaned only about once a week. After the successful grievance, it was cleaned two times a week. ABF had agreed to have the restroom cleaned twice a day, but the restroom was never cleaned more than twice a week. ABF also agreed to have a “deep clean” of the bathroom, but only the floor was cleaned.

77. Due to the continued stress, Plaintiff called in sick on September 12, 2016. She returned to work on September 13.

78. Many employees refused to work in bays adjoining Plaintiff's. For example, on October 7, 2016, she placed her tool box in a bay before going to get the truck she was to work on. The machinist next to her, Jacob Padilla, yelled at her to move to another bay. She told him that she was already set up to work in that bay, and that there were no other bays available. Mr. Padilla complained to Mr. Whitney about having to work next to Plaintiff, and when a new bay opened up, he moved to that bay. Mr. Whitney spoke to Plaintiff, and said Mr. Padilla disagreed with what she said had happened, and told her that she would have to address Mr. Padilla directly. Plaintiff did not want to do so, because of the aggressive response she expected to get, and because it was not appropriate for Mr. Whitney to refuse to talk to him. ABF did nothing to discipline employees who refused to work in the bays next to me.

79. Later that day, Plaintiff found that the air freshener had once again been removed from the downstairs bathroom that she was required to use. She reported the continued vandalism and harassment to Mr. Whitney, but no action was taken.

80. On October 29, 2016, Plaintiff found that the switch on her drop light had been glued. She reported this incident of vandalism, but ABF took no action to investigate or discipline anyone.

81. In early November, 2016, ABF instituted a new policy regarding reflective safety vests. The smallest vest was too big for Plaintiff, so she brought her own in to work, which was smaller and cut for a woman's build. Plaintiff paid for this vest herself. She wore the vest while working with two different foremen, and neither of them complained. On November 20, 2016, Plaintiff wore the vest for the first time while working with Mr. Ford, and he told her that she could not wear it, and that she had to wear one provided by ABF. He told her this even though male employees were wearing different vests than those provided by ABF, and some were not wearing a vest at all. That night Plaintiff observed a male employee who was not wearing any vest, and on December 1, 2016, she observed three male employees not wearing their vests. During December, 2016, and into 2017, Plaintiff continued to observe male employees not wearing their vests, or wearing non-ABF vests. None of these employees was disciplined or even spoken to about their vests. Mr. Ford singled her out for discipline about her vest in order to harass and intimidate me.

82. During this time, the door of the downstairs restroom that Plaintiff was required to use continued to be propped open, despite her complaints. As it was becoming colder, Plaintiff told Mr. Whitney that Mr. Wilson needed to fix the heater in the downstairs bathroom, which was broken, because of the cold air coming into the restroom from the hallway and the shop floor. The bathroom door continued to be propped open, and the heater was not fixed. Plaintiff was forced to change, and to use the restroom, in a room that was cold and open. The male employees' restroom, being upstairs, was not exposed, and was heated.

83. On January 7, 2017, Plaintiff complained to the foreman on duty, Scott Meyers, that other employees near her were speaking loudly and using offensive language, including the words "fucking faggots", in a way that Plaintiff was deliberately forced to overhear them. Mr. Meyers spoke to the employees, and told Plaintiff that one of them had admitted to using this

language in front of her. However, ABF took no disciplinary action against any of the employees responsible, nor did it conduct any additional training or guidance to address the continued harassment directed against Plaintiff as a transgender person and a woman.

84. On January 12, 2017, ABF finally created a women's changing room. However, Plaintiff still had to use the downstairs restroom, which was gender-neutral and open to the public. And the walls of the changing room were only framed, meaning there was a gap of approximately a foot between the top of the walls and the ceiling, so that Plaintiff was still partially exposed, in that she could be seen by someone looking over the top of the wall. Furthermore, while there were showers in the men's changing room, which was necessary for cleaning up after a shift, there was no shower for women. The women's locker room was also not a separate room, as the men's locker room was, but was located inside a larger work area where male employees were often present outside when Plaintiff was changing. Plaintiff felt neither safe nor private using this changing room, and it was significantly worse than the changing room provided for the men, without showers or even a sink. This occurred almost a year after Plaintiff expressed her intent to transition, and after ABF had promised to provide her with appropriate changing facilities.

85. On January 13, 2017, Plaintiff asked Mr. Whitney if ABF was going to leave the changing room that way, and that the walls needed to go all the way up to the ceiling, so that Plaintiff could have privacy while changing. She also asked for a lock on the door.

86. On January 14, 2017, Plaintiff found that ABF had put a lock on the door. However, Mr. Whitney told Plaintiff that Mr. Wilson refused to make any other changes, such as putting the walls all the way up to the ceiling.

87. On that day, Plaintiff called Ms. Dickson and Mr. Davis to complain about the inferior changing facility, the lack of privacy, and the use of inappropriate language. They did not

take any action in response to these issues and breaches of promise by ABF. She also spoke with the union president, Ernest Dow, who said he would speak to Mr. Wilson about these issues. Plaintiff also informed Mr. Genson about all these issues. Later, Mr. Dow told Plaintiff that Mr. Wilson had agreed to heighten the walls of the changing room to meet the ceiling, and would speak to the other employees about their inappropriate language. Ultimately, the walls were raised to the ceiling. But because the changing room was located within a larger work area, Plaintiff still had less privacy than the men, and the facility was still far inferior to the changing facility provided to the men, as it had no shower, or even a sink to wash up.

88. Plaintiff was out due to illness from January 25 to 28, 2017, and turned in a doctor's note when she returned. She was out due to illness again on February 12, and from February 15 through 17, 2017. Plaintiff again turned in a doctor's note. When she returned to work on February 18, she was reprimanded for taking too many absences since the start of the calendar year. All of Plaintiff's absences were medically necessary, and were supported by a doctor's note. Furthermore, these absences were caused by the stress Plaintiff was suffering due to the harassment and unfair treatment she received at work, and ABF's refusal to address that harassment or to honor its promises to treat her fairly and equally.

89. On March 8, 2017, Plaintiff again spoke to Mr. Davis about the ongoing harassment, and the issues with the downstairs restroom door being propped open. Mr. Davis asked that Plaintiff give him time to fix things, and that he would ensure that the restroom was cleaned and the doorstep removed. He promised that Plaintiff would be given a key to the restroom in order to have privacy and security from the ongoing harassment. He promised to work on having TGRCNM do a workplace training at the Albuquerque facility, in order to address the harassment from the other employees.

90. The doorstep was removed from the restroom, and a small shelf and mirror were installed in the changing room, so that Plaintiff could use the restroom to clean herself after her shift. However, the restroom was not close to the changing room, meaning that Plaintiff had to walk across the Maintenance Facility after cleaning herself, and then change out of her uniform. The facilities provided to her as a woman were still far inferior to those provided to the men. The restroom was not kept clean, and the lock installed on it could be easily opened with a credit card or other object from the outside.

91. No-one from ABF ever contacted TGRCNM to conduct a workplace training.

92. On April 1, 2017, someone glued the lock on Plaintiff's tool box shut. She informed the foreman, Mike Johansen, but ABF took no action.

93. On April 2 and 6, 2017, the air freshener in the downstairs restroom was thrown away.

94. On April 15, 2017, it was hot on the shop floor. Although Plaintiff kept her uniform top on, in accordance with the new policy, she unbuttoned the top two or three buttons. Mike Gibson asked her to button it all the way up, as the male employees were uncomfortable. Male employees were allowed to keep the top buttons of their uniforms unbuttoned. Mr. Meyers and Mr. Johansen called Plaintiff in and Mr. Meyers said she had to button up her uniform top all the way or go home. When Plaintiff protested, they claimed that she was required to do so by the uniform policy. They could not provide her with a copy of any such policy.

95. On April 16, 2017, Plaintiff spoke to Mr. Davis about this incident, and he stated that he did not know of any policy requiring her to keep her uniform buttoned all the way to the top. He promised to follow up on the issue, but he never got back to her.

96. On April 20, 2017, Mr. Johansen told Plaintiff that Mr. Wilson had informed all the employees that the new policy was that uniforms had to be buttoned up all the way. However, no written policy to this effect was ever produced or published or posted on the bulletin board. This “policy” was created by Mr. Wilson in order to harass Plaintiff and embarrass her. Due to the stress of Mr. Wilson’s and other ABF employees’ actions, Plaintiff called in sick from work, and was out until April 23, 2017. ABF continued to allow male employees to wear their uniforms with the top two or three buttons unbuttoned.

97. On April 29, 2017, Mr. Ford mis-gendered Plaintiff during a shift meeting, in front of the other employees. He refused to apologize or correct himself.

98. On May 26, 2017, Plaintiff took Family and Medical (FMLA) leave for a doctor’s appointment. On June 17, 2017, she received a warning from Mr. Meyers for not turning in a fitness for duty form on May 27, 2017, when she returned to work. He informed her that ABF policy required submission of this form every time she was out. Plaintiff was not aware of any such policy. Furthermore, she had been approved for FMLA leave beginning February 27, 2017, and no-one had informed her of this policy, nor had she ever been required to turn in this form before. Mr. Meyers engaged in this conduct in order to harass Plaintiff.

99. Plaintiff requested the form multiple times from Mr. Meyers and Mr. Wilson. Neither of them ever provided it to her. Plaintiff had to call ABF’s Human Resources office and have them mail it to her. Later, Mr. Wilson claimed that Plaintiff had never asked for the form, even though she had requested it from him multiple times. Mr. Wilson engaged in this conduct in order to harass and embarrass her.

100. In August, 2017, another employee, Mike Gibson, complained that Plaintiff had been discussing her sex life with him, despite his asking her not to. Plaintiff had been discussing

personal matters with him, as she had done on previous occasions without complaint, as Mr. Gibson was one of the few employees who was friendly towards Plaintiff. On this occasion, she had not been discussing anything improper with Mr. Gibson.

101. ABF purported to conduct an investigation of Mr. Gibson's complaint by interviewing him and other employees. ABF never sought to interview Plaintiff, or to take her version of the facts. Upon information and belief, it was Mr. Griesse, from the Human Resources department in Little Rock, where ABF was headquartered, and who had initially shown hostility to Plaintiff when she announced her intention to transition her gender, who conducted this investigation. She did not know at the time the investigation was being conducted either that there was an investigation, or that Mr. Griesse, who was not impartial where Plaintiff was concerned, was involved.

102. Plaintiff was subsequently informed, on August 13, 2017, by Mr. Griesse that a complaint had been made against her, but was not informed who the complainant was. Mr. Griesse told Plaintiff that she would be required to respond to his questions. She was told this about half an hour before this interrogation began, at the end of her shift, at approximately 11:30 p.m. When Mr. Griesse informed her that she could have a union representative, Plaintiff requested Mr. Gibson, not knowing that he was the complainant. At that point, Mr. Griesse informed Plaintiff that Mr. Gibson was the complainant.

103. Plaintiff then asked for a shop steward to attend for her, as was required by the union contract. However, because of the hour, and because of the last-minute manner in which the interrogation was arranged, no shop steward was available. Under the union contract, Plaintiff had the right to have a shop steward attend, and she refused to proceed without one. In fact, Mr. Griesse deliberately set the questioning for a time, 11:30 p.m., when he knew no shop steward

would be available. He did this in order harass Plaintiff, and to make sure that she did not receive a fair hearing.

104. Even though Plaintiff refused to be questioned without the contractually required presence of a shop steward, Mr. Griesse continued to question and badger her.

105. On August 23, 2017, Plaintiff was issued a warning letter due to the alleged incident with Mr. Gibson. No other disciplinary action was taken against her as a result of this incident. The letter was issued even though ABF never took Plaintiff's testimony, and never provided her with a proper opportunity to respond to the allegations, with a union representative present.

106. Because of Mr. Griesse's harassment and mis-gendering of Plaintiff, and because of the way he sprang the hearing on her, also refusing to allow her a contractually-required representative, Plaintiff began to have a panic attack. Mr. Griesse initially refused to let her leave, insisting that she answer his questions even without the appropriate representative present. She finally left over his objections, properly refusing to answer Mr. Griesse in the absence of union representation. The union representative whom Mr. Griesse had selected to be attend with Plaintiff, who was not an appropriate official for the circumstances, and not what was required by the union contract, also stated he was not comfortable participating in the proceedings, and wanted to leave. Starting that day, August 13, 2017, due to the over 18 months of constant harassment by other male employees and supervisors, and due to ABF's indifference to, and even encouragement of, that harassment, Plaintiff took FMLA leave.

107. Due to the stress resulting from this harassment, Plaintiff was unable to return to work, and used all her FMLA leave. Pursuant to company policy, while out on FMLA leave, she applied for short-term disability benefits, to which she was entitled.

108. From August 13, 2017, through October 23, 2017, Plaintiff called in on FMLA leave pending approval of her disability claim, or a workmen's compensation claim, for which she had also applied. The workmen's compensation claim was denied by ABF's insurance carrier, South Processing Company, on September 1, 2017.

109. Plaintiff applied for short-term disability on September 21, 2017, based on her post-traumatic stress disorder, which had been caused and exacerbated by ABF and its employees, including Mr. Wilson and Mr. Ford.

110. On October 17, 2017, Plaintiff received a claim number from the short-term disability insurer, but her claim was not yet approved.

111. On October 23, 2017, Plaintiff had used up all her FMLA leave for that year. She therefore called in sick for the remaining days, commencing October 24, 2017, while her short-term disability claim continued to be processed.

112. During the period Plaintiff was absent from work, she consistently informed ABF of her absences, and the reasons for them, and supplied all the paperwork to support the absences that ABF required. She also supplied ABF with all the paperwork relating to her workmen's compensation and short-term disability claims.

113. At no time from August 13, 2017 through November 12, 2017, did ABF request any additional documentation, or inform Plaintiff in any way that she had failed to supply required documentation to support her absences or insurance claims.

114. On November 3, 2017, ABF sent Plaintiff a letter requesting a doctor's note to justify her absence from work for the days commencing October 24, 2017, when she had used up all her FMLA leave. ABF allegedly required new doctor's notes to support her absence following utilization of all her FMLA leave. Plaintiff was required to respond to that letter within 72 hours,

according to its terms. On November 9, ABF sent Plaintiff a second letter, informing her that she had not responded within the 72 hour period, and therefore she was being removed from ABF's seniority list, essentially terminating her employment with ABF.

115. Plaintiff did not receive either the November 3 or November 9 letters until November 13, 2017.

116. On November 13, 2017, Plaintiff called Mr. Genson to find out what was happening, and why she had received these two letters. He told her to call the Human Resources department for clarification.

117. On November 14, 2017, Plaintiff called the Human Resources department and spoke to Tina Hufstetler. Ms. Hufstetler informed her that she had been terminated from her employment at ABF.

118. On November 13, 2017, Plaintiff was informed by the short-term disability insurer that her claim had been approved, with a retroactive date of September 21, 2017. This meant that, retroactively, Plaintiff had not used up all her FMLA leave, as the short-term disability was being used from that date, and not FMLA leave.

119. On November 20, 2017, Plaintiff nevertheless turned in all the documentation relating to her leave, including additional supporting notes from her doctor with respect to her absence from October 24, 2017, forwards. She turned this documentation in to Mr. Genson, who turned it in to ABF.

120. On November 30, 2017, ABF wrote to Plaintiff formally terminating her employment.

121. Plaintiff timely filed a charge of discrimination, (the "Charge"), against Defendants with the Human Rights Bureau of the New Mexico Department of Workforce Solutions, (the

“Bureau”), alleging unlawful discrimination against her by Defendants in the terms and conditions of her employment on the basis of her sex, her gender identity, and her disability and serious medical condition, which was the post-traumatic stress she experienced as a result of Defendants’ discriminatory and harassing behavior towards her from the time she announced her intention to transition up to an including the date of her unlawful termination by ABF. A copy of the Charge is attached hereto as Exhibit A.

122. On July 22, 2019, the Bureau issued its Determination of Probable Cause, finding that Plaintiff was “subjected to discrimination and frequent and pervasive harassment by managers and employees of ABF Freight regarding [her] sex, gender identity, disability and serious medical condition.” Furthermore, the Bureau found that Defendants “repeatedly retaliated against [Plaintiff] for engaging in protected activities (i.e. complaining of discriminatory practices and requesting reasonable accommodations.” A copy of the Determination of Probable Cause is attached hereto as Exhibit B.

123. On August 5, 2019, pursuant to New Mexico law, Plaintiff timely waived her right to a hearing before the Bureau, in favor of a trial in New Mexico’s courts.

COUNT I – UNLAWFUL DISCRIMINATION ON THE BASIS OF SEX

124. Paragraphs 1 through 123 above are alleged again and incorporated herein as though set forth in full.

125. New Mexico law, Sections 28-1-1 through 28-1-15, NMSA 1978, as amended, (the “Human Rights Act”), prohibits discrimination by an employer against an otherwise qualified employee in matters of compensation, terms, conditions, or privileges of employment because of the employee’s sex.

126. The Human Rights Act's prohibition against discrimination on the basis of sex applies to employers with more than four (4) employees. ABF employs more than four (4) employees.

127. Plaintiff is within a class of persons the New Mexico Human Rights Act seeks to protect from discrimination by employers.

128. Defendants discriminated against Plaintiff on the basis of her sex in the following ways:

a. For the initial period of Plaintiff's presenting as a woman, ABF provided no facilities that were provided to its similarly situated male employees, including a women's restroom, a women's changing facilities, and a woman's uniform, and other privileges of employment that were provided to male employees.

b. Even when ABF did provide facilities suitable for women such as Plaintiff, those facilities were different from and inferior to the facilities provided to similarly situated male employees, including a "unisex" bathroom which Plaintiff was required to use, but which could be used by the male employees, whereas Plaintiff could not use the men's restroom. Male employees were provided with a proper changing room, with showers and other facilities for cleaning themselves, whereas Plaintiff was provided a flimsy cubicle with no showers, or any other method of washing up or cleaning herself after her shift. The men's changing room afforded the male employees privacy, whereas the women's changing room was a single cubicle in a larger space, surrounded by other employees, and afforded Plaintiff and other women little privacy. Male employees were provided with appropriate uniforms, but Plaintiff was not provided with uniforms with an appropriate cut for her female build.

c. Male employees were allowed to make adjustments to their uniforms for the sake of comfort, such as removing their uniform tops or unbuttoning the top buttons of their tops, whereas Plaintiff was not permitted to remove the top of her uniform, or to unbutton the top buttons of her uniform.

d. Defendant ABF's reason for requiring and enforcing a different policy with respect to Plaintiff was also based on an improper and discriminatory basis, in that the basis for treating Plaintiff differently was the male employees' discomfort with Plaintiff's appearance.

e. Defendant ABF discriminated against Plaintiff by terminating her employment, in part on the basis of her sex.

f. Defendants Wilson and Ford participated in the discrimination against Plaintiff on the basis of her sex by enforcing discriminatory policies against her, singling her out for discipline in front of other employees, enforcing policies against her differently and more stringently due to her sex, and depriving her of the privileges of her employment due to her sex.

129. Defendants' treatment of Plaintiff, and Defendant ABF's utter lack of response to Plaintiff's complaints of discriminatory treatment, caused Plaintiff severe post-traumatic stress, anxiety, emotional pain and suffering and other compensatory damages in an amount to be proved at trial.

130. ABF's wrongful termination of Plaintiff's employment caused Plaintiff lost wages and benefits, loss of retirement benefits, loss of health care benefits, and other compensatory and pecuniary damages in an amount to be proved at trial. Plaintiff also seeks backpay, attorney's fees, costs, and pre- and post-judgment interest as allowed by law.

**COUNT II – UNLAWFUL DISCRIMINATION ON THE BASIS OF GENDER
IDENTITY**

131. Paragraphs 1 through 130 above are alleged again and incorporated herein as though set forth in full.

132. New Mexico law, Sections 28-1-1 through 28-1-15, NMSA 1978, as amended, prohibits discrimination by an employer against an otherwise qualified employee in matters of compensation, terms, conditions, or privileges of employment because of the employee's gender identity.

133. The Human Rights Act's prohibition against discrimination on the basis of gender identity applies to employers with more than fifteen (15) employees. ABF employs more than fifteen (15) employees.

134. Plaintiff is within a class of persons the New Mexico Human Rights Act seeks to protect from discrimination by employers.

135. Defendants discriminated against Plaintiff on the basis of her gender identity in the following ways:

a. Defendant ABF refused to make reasonable accommodation for Plaintiff during her transition, including refusing to provide adequate facilities for her to use, refusing to conduct sufficient and appropriate training to employees on how to address her transition, refusing to provide her with an appropriate supervisor to whom to report potential abuse.

b. Defendant ABF further discriminated against Plaintiff by refusing to address or investigate her numerous complaints of discrimination and harassment from other ABF employees.

c. Defendant ABF retaliated against Plaintiff when she reported the discriminatory treatment and harassment she faced by arbitrarily changing its policies to permit

the continued discrimination against and harassment of Plaintiff, including changing its uniform policy to forbid the removal of uniform tops, changing its uniform policy again to forbid the unbuttoning of uniform buttons, changing its policy regarding the use of cell phones, changing its policy regarding the use of earbuds, changing its policy regarding safety vests, and changing its policy regarding the playing of radios. All these changes in policy were made with the intent to discriminate against and harass Plaintiff, and all had the effect of discriminating against and harassing Plaintiff.

d. Defendants Wilson and Ford discriminated against Plaintiff by repeatedly misgendering her, refusing to use her female name, refusing to address her with female pronouns, treating her differently, and enforcing policies more strictly against her, than cis-gendered male employees. Defendants Wilson and Ford further discriminated against Plaintiff by singling her out for discipline, shaming her in front of other employees, and refusing to discipline the male employees they supervised who were discriminating against and harassing Plaintiff. Defendants Wilson and Ford further discriminated against Plaintiff by refusing to take her complaints, and threats against her safety, seriously, and by refusing in some instances to investigate or report instances of harassment against Plaintiff.

e. Defendant ABF discriminated against Plaintiff by terminating her employment, in part on the basis of her gender identity.

136. Defendants' discrimination against Plaintiff was conscious, purposeful, intentional, wanton, and reckless.

137. Defendants' treatment of Plaintiff, and Defendant ABF's utter lack of response to Plaintiff's complaints of discriminatory treatment, caused Plaintiff severe post-traumatic stress,

anxiety, emotional pain and suffering and other compensatory damages in an amount to be proved at trial.

138. ABF's wrongful termination of Plaintiff's employment caused Plaintiff lost wages and benefits, loss of retirement benefits, loss of health care benefits, and other compensatory and pecuniary damages in an amount to be proved at trial. Plaintiff also seeks backpay, attorney's fees, costs, and pre- and post-judgment interest as allowed by law.

COUNT III – HOSTILE WORK ENVIRONMENT

139. Paragraphs 1 through 138 above are alleged again and incorporated herein as though set forth in full.

140. New Mexico law, Sections 28-1-1 through 28-1-15, NMSA 1978, as amended, prohibits an employer from allowing the creation or existence of a hostile work environment for an employee on the basis of the employee's sex or gender identity.

141. Plaintiff was subject to severe and pervasive harassment and discrimination on the basis of her sex and gender identity. Among other things, Plaintiff was subjected to harsher discipline than other similarly situated male employees. Plaintiff's property was vandalized, including destruction of her personal property, such as her chair, air freshener, and other personal items, and her car was vandalized multiple times, including being scratched and spat on. Plaintiff was forced to listen to radio programs disparaging and demonizing the transgender community. Plaintiff was forced to listen to conversations among her co-workers disparaging and demonizing the transgender community.

142. Defendants were made aware of the harassment Plaintiff was suffering, but Defendants refused to take Plaintiff seriously, refused to investigate the threats and vandalism

perpetrated against Plaintiff and her property, and refused to discipline employees engaged in harassing and discriminatory behavior against Plaintiff.

143. Defendants', including Defendant ABF's, silence and refusal to support Plaintiff, to investigate or discipline the harassment, was knowing and willful, and encouraged further discrimination against and harassment of Plaintiff. The harassment of Plaintiff was conscious, purposeful, intentional, wanton, and reckless.

144. As a result of this harassment, and being forced to work in a hostile work environment, Plaintiff suffered severe post-traumatic stress, anxiety, emotional pain and suffering, and other compensatory and pecuniary damages in an amount to be proved at trial. Plaintiff also seeks backpay, attorney's fees, costs, and pre- and post-judgment interest as allowed by law.

**COUNT IV – DISCRIMINATION ON THE BASIS OF DISABILITY AND
SERIOUS MEDICAL CONDITION**

145. Paragraphs 1 through 144 above are alleged again and incorporated herein as though set forth in full.

146. New Mexico law, Sections 28-1-1 through 28-1-15, NMSA 1978, as amended, prohibits discrimination by an employer against an otherwise qualified employee in matters of compensation, terms, conditions, or privileges of employment because of the employee's disability or serious medical condition.

147. Plaintiff is within a class of persons the New Mexico Human Rights Act seeks to protect from discrimination by employers.

148. Due to the harassment and discrimination she suffered from the time she announced her transition to Defendants, Plaintiff developed severe post-traumatic stress, which sometimes was so severe that she was unable to perform her duties at work.

149. Defendants wrongly discriminated against Plaintiff on the basis of her disability and medical condition by refusing to make reasonable accommodations to allow Plaintiff to address her condition. Defendants further discriminated against Plaintiff by imposing on her requirements with respect to medical leave which were not imposed on other employees, including requiring doctor's notes at a time and in a manner that was not required of other employees.

150. Defendant ABF discriminated against Plaintiff by terminating her for using Family and Medical Leave, sick leave, other leave, and applying for short-term disability to address her post-traumatic stress and other conditions created by Defendants.

151. Defendants' discrimination was conscious, purposeful, intentional, wanton and reckless.

152. Defendants' discrimination against Plaintiff exacerbated her post-traumatic stress, anxiety, emotional pain and suffering, and other compensatory and pecuniary damages in an amount to be proved at trial. Plaintiff also seeks backpay, attorney's fees, costs, and pre- and post-judgment interest as allowed by law.

COUNT V – PRIMA FACIE TORT

153. Paragraphs 1 through 152 above are alleged again and incorporated herein as though set forth in full.

150. Although acting in an otherwise lawful manner, Defendants intentionally harmed Plaintiff through their acts of discrimination, or acted with the certainty that their conduct would cause harm.

151. Defendants' conduct was not justifiable under all the circumstances.

152. Defendants acted intentionally, knowingly, maliciously, willfully, recklessly, and/or in bad faith.

153. Defendants caused Plaintiff to sustain serious injuries in an amount to be proved at trial.

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants awarding:

a. Damages in amounts to be established at trial, including but limited to lost past, present, and future wages, lost past, present, and future benefits, including health benefits and retirement benefits, expenses incurred by Plaintiff caused by Defendants' acts and omissions, damages for discrimination under the Act, damages for the creation of a hostile work environment, damages for past, present, and future emotional pain and suffering, anxiety and mental anguish, damages for past and present lost earnings and earning capacity, and any other damages proven at trial;

- b. Pre- and post-judgment interest;
- c. Costs and expenses as allowed by law;
- d. Attorneys' fees as allowed by the Act;
- e. Punitive damages; and,
- f. Such other relief as is deemed just and proper by the Court.

Respectfully Submitted,

VIRTUE & NAJJAR, PC

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