

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION	)	
	)	Case No. 0:15-cv-02646
Plaintiff,	)	
	)	
and	)	
	)	
BRITNEY AUSTIN,	)	
	)	
Plaintiff/Intervenor,	)	
	)	
v.	)	Judge Ann D. Montgomery
	)	Magistrate Judge Steven E. Rau
DELUXE FINANCIAL SERVICES, INC.	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT IN INTERVENTION OF  
PLAINTIFF/INTERVENOR MS. BRITNEY AUSTIN**

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, and the Americans with Disabilities Act of 1991, as amended, 42 U.S.C. § 12101, *et seq.* (“ADA”). As set forth below, Plaintiff/ Intervenor Ms. Britney Austin (“Plaintiff/ Intervenor”) alleges that Defendant Deluxe Financial Services, Inc. (“Deluxe” or “Defendant”) subjected Ms. Austin to sex discrimination, disability discrimination, and retaliation in violation of Title VII and the ADA.

**PARTIES**

1. Plaintiff, the Equal Employment Opportunity Commission (“EEOC”), is the agency of the United States of America charged with the administration, interpretation

and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3), 42 U.S.C. §§ 2000e-5(f)(1) and (3).

2. Plaintiff/Intervenor Ms. Britney Austin formerly worked for Defendant at a call center it operated in Phoenix, Arizona from October 2007 through July 2011.

3. At all relevant times, Defendant, a Minnesota corporation, with a principal executive address at 3680 Victoria Street N., Shoreview, Minnesota, has continuously been doing business in the state of Minnesota, and has continuously employed at least fifteen (15) employees.

4. 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**

5. Plaintiff/Intervenor Ms. Britney Austin filed a charge of discrimination with the Commission alleging violations of Title VII and the ADA, including retaliation, by Defendant on or about June 28, 2011.

6. The EEOC provided Defendant with notice of the charge of discrimination.

7. EEOC investigated the charge of discrimination.

8. Based on evidence uncovered during the EEOC's investigation, EEOC issued a letter of determination to Deluxe Financial Services, finding reasonable cause to believe that Defendant had engaged in unlawful employment practices prohibited by Title VII, including sex discrimination and retaliation.

9. The Commission's determination included an invitation for Defendant to join the Commission in informal methods of conference, conciliation, and persuasion in an attempt to eliminate and remedy the alleged unlawful employment practices.

10. Defendant participated with EEOC in conciliation, during which process Defendant and EEOC communicated regarding the alleged unlawful employment practices and how to eliminate and remedy them.

11. The Commission and Defendant were unable to reach an agreement acceptable to the Commission through the conciliation process.

12. The Commission sent notice to Defendant that conciliation had failed, and commenced litigation.

13. Plaintiff took all necessary steps to exhaust her administrative remedies.

14. All conditions precedent to the institution of this lawsuit have been fulfilled.

### **JURISDICTION AND VENUE**

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

16. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332, in that Defendant is a citizen of the State of Minnesota, and Plaintiff/Intervenor is a citizen of the State of Arizona, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

17. Venue is proper in the United States District Court for the District of Minnesota pursuant to 28 U.S.C. §§ 1391(b)(2) because a substantial part of the unlawful employment practices are alleged to have been committed within the jurisdiction of the United States District Court for the District of Minnesota.

### FACTS

18. Ms. Britney Austin is a female citizen of the United States.

19. Ms. Austin has a feminine gender expression.

20. Ms. Austin has a female gender identity.

21. Ms. Austin is a transgender woman.

22. Ms. Austin has been diagnosed with gender identity disorder, now known as gender dysphoria.

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

23. *Sex* is an ambiguous term of art that includes gender, gender expression and gender identity within its meaning.

24. *Sex stereotyping* refers to the application by an employer of stereotypes related to sex assigned at birth to restrict or disparage an employee's gender expression or gender identity.

25. *Gender* refers to cultural or attitudinal characteristics (as opposed to physical characteristics) distinctive to the sexes.

26. *Gender expression* refers to a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

27. *Gender identity* refers to characteristics related to a person's internal sense of gender, being male, female, or other.

28. *Gender identity* is intractably rooted in the psyche, and cannot be changed.

29. Transgender individuals are persons who have a gender identity that does not match the sex they were assigned at birth.

30. *Gender dysphoria* (known as gender identity disorder until 2013) is found in the *Diagnostic and Statistical Manual of Mental Disorders Fifth Edition* ("DSM V") of the American Psychiatric Association.

31. Gender dysphoria is the formal diagnosis used by psychologists and physicians to describe persons who experience significant discontent with their biological sex and/or the gender they were assigned at birth.

32. Based on many scientific studies during the past two decades, gender dysphoria has been identified as a gender identity disorder resulting from a physiological condition of the brain and neurological system.

33. Discrimination against transgender persons for being transgender is based on their sex, sex stereotyping, gender, gender expression or gender identity.

34. In the alternative, discrimination against transgender persons diagnosed with gender dysphoria is based on disability, and the discrimination described herein against Ms. Austin was based upon her disability and/or others' perception of Ms. Austin as being disabled.

35. Transgender individuals often seek out legal, social, and medical means of aligning external manifestations of their gender with their gender identity. This process is colloquially known as *gender transition* or *transition*.

36. A core component of gender transition entails publicly expressing one's gender as a member of the gender that comports with one's gender identity.

37. Scientific studies have shown that transgender persons have brain structures that are typical of nontransgender persons with the same gender identity. For example, transgender women (i.e. those assigned male sex at birth but who have female gender identity) have brain structures that are similar to those of nontransgender women. It is appropriate to refer to a transgender woman who has transitioned with female titles, honorifics (e.g., Miss, Ms. or Mrs.), and pronouns (e.g., her, hers, and she).

38. It is appropriate for a nontransgender woman to use a women's multi-stall restroom.

39. It is appropriate for a transgender woman who has transitioned to use a women's restroom.

40. It is appropriate for a nontransgender woman to wear traditionally female clothing, such as a skirt.

41. It is appropriate for a transgender woman who has transitioned to wear traditionally female clothing, such as a skirt.

42. Another core component of gender transition is utilizing medical therapies to align the patient's body with the patient's gender identity.

43. Myriad peer-review studies demonstrate that medical therapies, including hormone treatments, are one form of medically necessary care for transgender persons.

44. The American Medical Association, the American Psychological Association, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the World Professional Association for Transgender

Health (“WPATH”) have all publicly endorsed the efficacy of medical therapies, including hormone treatments, for transgender persons.

45. The American Medical Association, the American Psychological Association, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and WPATH all recognize that medical therapies, including hormone treatments, are a form of medically necessary care for transgender persons.

46. The American Medical Association, the American Psychological Association, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and WPATH have all publicly called for both private and public insurers to eliminate transgender-specific exclusions in health insurance plans.

***Ms. Austin’s Employment at Deluxe***

47. Since at least 2010 and continuing until today, Defendant has maintained a companywide policy or practice with respect to transgender employees’ use of restrooms resulting in unlawful employment practices in violation of Title VII and/or the ADA.

48. Defendant used to operate in Phoenix, Arizona, under the name “Deluxe Financial,” and currently operates in twenty-seven (27) locations in the United States.

49. Defendant’s headquarters are located in Shoreview, Minnesota.

50. Ms. Austin began her employment with Defendant Deluxe Financial Services in Phoenix, Arizona, on October 8, 2007.

51. When she applied for work with Defendant and for the first several years of

her employment, Ms. Austin presented as male (e.g., she had a traditionally male name).

52. On or about October or early November 2010, Ms. Austin announced her intention to present as female at work to her local then-supervisor, Mike Jeffers.

53. On or around the middle of November 2010, Ms. Austin began to present female at work.

54. Ms. Austin consistently presented as female at work from November 2010 onward.

55. Around the end of 2010 or beginning of 2011, Rebecca Chavez replaced Jeffers as Austin's immediate supervisor.

56. On or about January 2011, Ms. Austin began hormone therapy as part of her gender transition.

57. Ms. Austin provided Deluxe with documentation of her gender identity disorder diagnosis.

58. On January 19, 2011, Ms. Austin spoke with Cynthia Ridley, the manager assigned to oversee Chavez's team, and to Araceli Hernandez, a Human Resources officer, about her transition.

59. On January 19, 2011, Ms. Austin asked Defendant to be allowed to begin to use the women's restroom on the Defendant's premises after her name change.

60. In the January 19, 2011, meeting, Ms. Austin also asked that her sex-designation be changed in internal personnel and communications systems, including, *inter alia*, personnel profiles, the email server, phone directories, and other personnel and communication systems.

61. Hernandez told Ms. Austin she could not change the status of her sex-



designation in internal records without supplying proof of legal documentation acknowledging her name change.

62. After consulting with Tracy Warn, Human Resources Director for Defendant in Minnesota, Ridley and Hernandez told Ms. Austin that Defendant would not change her sex-designation in internal records from male to female until she “completed the surgery portion of the gender change process.”

63. On January 21, 2011 Ms. Warn, by email, ordered that Ms. Austin be prohibited from using the women’s restroom.

64. Defendant’s asserted reason for this prohibition was its “consideration” of “other employees.”

65. In a meeting between Ms. Ridley and Ms. Austin on or about January 26, 2011, Ms. Ridley told Ms. Austin, “we’ve dealt with this before” after Ms. Austin again requested to use the women’s restroom.

66. Upon information and belief, Ms. Austin is not the first transgender employee at Deluxe Financial who has requested to use a restroom consistent with his or her gender identity, but was prohibited from doing so.

67. On January 26, 2011, Ms. Hernandez and Ms. Ridley told Ms. Austin that she was prohibited from using the women’s restroom on its premises until the “surgery/procedure was complete,” referring to Ms. Austin undergoing genital reconstruction surgery, a form of sex reassignment surgery.

68. Defendant did not preclude female employees who were not transgender from using the women’s restroom.

69. Ms. Austin informed Ms. Ridley and Ms. Hernandez that on February 1, 2011, she was scheduled for a court date to change her name to Britney Erica Austin.

70. On or about February 3, 2011, Ms. Austin provided Deluxe with documentation establishing her legal name change to Britney Austin.

71. On February 7, 2011, Ms. Austin asked her immediate supervisor, Rebecca Chavez, and Ms. Ridley, to change her name and sex-designation in Defendant's internal records.

72. Instead of agreeing to make the requested changes they asked Ms. Austin if she had "the surgery," although they did not specify what type of surgery was intended, implying questions concerning the configuration of Ms. Austin's genitals.

73. They also asked about Ms. Austin's breasts, breast development, and whether she would have breast surgery.

74. Defendant changed Ms. Austin's name only in some records, but intentionally left an erroneous male sex-designation and her former male name on other records.

75. On February 21, 2011, Ms. Austin emailed Ms. Ridley about these additional internal records that needed her female name and female sex-designation reflected, including the company phone system.

76. Nonetheless, Defendant did not change Ms. Austin's name or sex-designation in Defendant's customer phone ordering system or in two internal employee communication systems.

77. On March 18, 2011, Ms. Austin again emailed Defendant and asked that her name be changed to Britney on other internal records where her name was still registering under her former name. Ms. Austin did not receive a response.

78. On March 22, 2011, Ms. Austin emailed Ms. Chavez about correcting her name in internal records. Ms. Austin did not receive a response.

79. On or about May 27, 2011, Ms. Austin again approached Ms. Chavez and asked that her sex-designation be changed on all internal company records and systems. Ms. Chavez made no reply.

80. Because many of Defendant's systems were not updated to reflect Ms. Austin's female sex and name, outside vendors, customers, and colleagues who contacted Ms. Austin referred to her by her former male name, forcing her to correct them and explain that her name is Britney and that she is female.

81. On June 1, 2011—more than seven months after Ms. Austin first explained her gender transition to Defendant's officials and asked to be allowed to use the restroom consistent with the gender identity of female— Ms. Austin approached Ms. Chavez and again asked that she be allowed to use the women's restroom and that all internal records be changed to accurately reflect her name and sex.

82. On June 1, 2011, Austin provided Chavez with another medical note, this one from her doctor not only confirming her diagnosis of gender identity disorder but also requesting that Deluxe change all internal records to reflect Austin's female sex and proper name.

83. During the conversation on June 1st, Chavez asked to see Austin's license.

84. On June 2, 2011, Ms. Austin provided Ms. Chavez with her driver's license. The license was issued to Britney Erica Austin and designated Austin's sex as female.

85. Despite receiving Ms. Austin's medical records, notice of Ms. Austin's legal name change, and a copy of her driver's license, Defendant continued to deny Austin use of the women's restroom on its premises. In addition to denying Ms. Austin access to a restroom that comports with her gender identity, Defendant's agents informed Ms. Austin that she could only use the women's restroom when she had proven that she had undergone "the surgery," implying genital reconstruction surgery.

86. On June 6, 2011, a female employee reported that three days earlier she had seen someone she believed to be Ms. Austin using a women's restroom in a common shared area near the cafeteria, outside of the Deluxe offices, that both Deluxe and other tenants and customers in the building had the right to use.

87. The restroom near the cafeteria was not in the sole ownership, custody, or control of Defendant.

88. Ms. Hernandez immediately reported the incident to Ms. Warn via email, and added: "And just an FYI, the restroom that Britney was using wasn't one of the restrooms in Deluxe, it was in the common area part that we share with Fidelity."

89. On June 13, 2011, Ms. Warn instructed Ms. Hernandez via email to prohibit Ms. Austin from using the common female restroom, even though she acknowledged that "[h]onestly, I am not sure we can mandate her use of the bathroom outside of the call center, but let's keep that to ourselves."

90. Ms. Ridley and Ms. Hernandez informed Ms. Austin that she was not allowed to use the common restroom near the cafeteria although that restroom was outside of Deluxe's sole control.

91. During the conversation, Ms. Austin complained to Ms. Chavez that Defendant was violating her rights by refusing to recognize her gender identity and forcing her to use restrooms inconsistent with her gender identity.

92. Upon hearing Ms. Austin's complaint, Ms. Chavez reiterated that Defendant had a policy of allowing transgender female employees to use the women's restroom only after they presented Defendant with proof that they had undergone "the surgery," implying genital reconstruction surgery.

93. From around the end of 2010 or beginning of 2011 until July 2011, some of Defendant's managers and Ms. Austin's coworkers repeatedly and intentionally referred to Ms. Austin with male pronoun and/or her former male name, and made derogatory statements about her female appearance, even though they knew she had transitioned from male to female and that she wished to be referred to by female pronouns consistent with her gender identity.

94. Co-workers regularly referred to Ms. Austin in a demeaning and derogatory manner. For example, one coworker:

- a. Repeatedly and intentionally referred to Ms. Austin by using male pronouns and/or her former male name;
- b. Referred to Ms. Austin as "boy;"
- c. Called Ms. Austin "Tarzan" to tease her about her hairiness, appearance, and clothes;

d. Called Ms. Austin “Cheetah (a reference to a chimpanzee in the *Tarzan* television series);” and

e. Another co-worker told Ms. Austin that she needed to make her hair more attractive.

95. Coworkers’ harassment of Ms. Austin was done in such an open and notorious manner that Defendant knew or should have known that Ms. Austin was being subjected to a hostile work environment.

96. Supervisors and managers regularly referred to Ms. Austin with male pronouns and/or by her former male name when communicating with each other, even after Austin began to present as female at work.

97. On June 29, 2011, an outside vendor who came to do training for Ms. Austin and her coworkers made fun of Ms. Austin’s female appearance during the staff training, and Ms. Austin’s coworkers laughed at her publicly.

98. On July 7, 2011, Ms. Austin emailed Ms. Chavez and complained about some of the harassing comments.

99. In the email, Ms. Austin asked Ms. Chavez to warn her harassers that they should stop deliberately misgendering her and making offensive comments about her appearance.

100. Upon information and belief, Defendant neither investigated Austin’s complaints nor disciplined any person whom Ms. Austin reported as having made harassing comments.

101. Continuing until late July 2011, when her employment with Defendant ended, Defendant continued to designate Ms. Austin as a male on many

internal records, including the program hosting her personnel records, where her name was changed but not the designation of her sex.

102. Defendant never notified Ms. Austin's health insurance provider of Ms. Austin's sex-designation and name change, even though, according to the provider's policy, it was Defendant's responsibility under the policy to do so.

***Health Insurance Policy***

103. From October 2007 through July 2011 Defendant provided all full time employees at the Phoenix, Arizona location with health insurance.

104. The health insurance plan provided to Ms. Austin and other similarly situated employees had a clause that categorically excluded and/or had the effect of excluding certain health care benefits to all transgender persons regardless of medical necessity.

105. The exclusion described above was designed to exclude all medical transition treatment (including but not limited to pharmaceutical therapies and surgical interventions) for persons diagnosed with gender dysphoria, gender identity disorder, and/or transsexualism.

106. The exclusion described above had the effect of categorically excluding all medical transition treatment (including but not limited to pharmaceutical therapies and surgical interventions) for persons diagnosed with gender dysphoria, gender identity disorder, and/or transsexualism.

107. The exclusion described above had the effect of categorically excluding all medical transition treatment (including but not limited to pharmaceutical therapies and

surgical interventions) for persons who sought treatments that did not “match” the gender with which they were designated on their insurance enrollment paperwork. For example, an enrollee designated as “male” on their insurance enrollment paperwork would be automatically denied treatment for exogenous estrogen therapy prescribed at levels intended to maintain nontransgender female levels of estrogen in the body.

108. The exclusion described above precluded coverage for various medically necessary treatments she needed as part of her medical transition to female. These medically necessary treatments included, but were not limited to, coverage for exogenous hormones and routine blood tests needed to monitor her hormone levels as well as genital reconstruction surgery.

109. Upon information and belief, the health insurance Defendant provided otherwise covered medically necessary exogenous hormone treatments, routine blood tests needed to monitor blood levels as the result of such treatment, and medically necessary reconstruction surgeries including surgeries performed on the genitals of nontransgender male and nontransgender female enrollees.

110. As a result of the exclusion described above, Ms. Austin was forced to pay additional out-of-pocket costs for her hormone therapy and blood level tests.

111. Although her employer told her that she was required to obtain “the surgery,” implying genital reconstruction surgery, in order to have her name changed on corporate records and use a gender-appropriate bathroom, her employer made it impossible to receive coverage for this medically necessary procedure and she was unable to obtain it during her tenure at Deluxe.



112. Upon information and belief, if Ms. Austin were a nontransgender woman, she could have received full coverage for her hormone treatment and blood level tests under Defendant's health insurance plan.

113. Upon information and belief, if Ms. Austin were a nontransgender woman, the health insurance plan described above would have covered medically necessary genital reconstruction surgery.

***Employee Handbook and Severance Agreement***

114. When Ms. Austin started work at Deluxe on October 8, 2007 she was presented with an Employee Handbook.

115. The Employee Handbook contained a section titled "Severance Support Plan" and another titled "Benefit Continuation."

116. According to representations made therein, an employee of Ms. Austin's "job level" was entitled to "one week of Base Pay for each full year of service" and due a minimum of "4 weeks of Base Pay."

117. According to the terms therein, an employee of Ms. Austin's "job level" "will be paid weekly or semi-monthly (twice per month) according to the eligible employee's current pay schedule" and to "18 months COBRA at employee rates, remaining at full COBRA rates."

118. The pertinent sections of the Employee Handbook did not establish a limitation or requirement regarding the signing of any release to receive any of the benefits described therein.

119. Defendant periodically reissued the Employee Handbook to employees at the Phoenix, Arizona location. However, upon information and belief, no version of the reissued Employee Handbook materially altered the terms and conditions placed on the benefits set forth in the “Severance Support Plan” or “Benefit Continuation” sections of the Handbook.

120. On or about June 1, 2011 Defendant reissued the Employee Handbook. As with previous versions of the Handbook, an employee of Ms. Austin’s “job level” was entitled to “one week of Base Pay for each full year of service” and due a minimum of “4 weeks of Base Pay.” According to the terms therein, an employee of Austin’s “job level” “will be paid weekly or semi-monthly (twice per month) according to the eligible employee’s current pay schedule” and to “18 months COBRA at employee rates, remaining at full COBRA rates.”

121. Sometime in May 2011, Defendant disseminated an Employee Communication Handout (“Handout”) with information to employees being laid-off.

122. The Handout specified that “cash severance payments” would be contingent on a signed release.

123. However, the Handout made no representations as to other programs and benefits, including Defendant’s established policy of offering to cover three months of COBRA benefits at the employee rate.

124. Ms. Austin and other employees were told orally that COBRA would be "automatically extended" for 30 days.

125. The Employee Communication Handout requested that employees sign the enclosed paperwork, including a Severance Agreement (hereinafter referred to as “Severance Agreement”), within 45 days.

126. The Severance Agreement contained language that purported to limit or substantially impair employee’s rights to pursue administrative and/or judicial relief for discrimination.

127. For example, the Severance Agreement obligated signers to “waive all my claims against Deluxe, except discrimination claims filed with a federal agency,” which would have precluded this litigation and would have proscribed Ms. Austin’s statutory right to intervene.

128. The Severance Agreement also obligated signers to “not authorize any other party, governmental or otherwise, to seek individual remedies based on My Claims and I waive any rights to damages or other remedies based on My Claims. I agree that Deluxe does not owe Me anything in addition to what I will be receiving.”

129. In exchange for signing the Severance Agreement, signers were promised payment of “severance benefits.” However, the Severance Agreement did not set forth the amount or terms of those benefits. The only language touching on severance benefits stated that, “any severance payments may be discontinued if I breach the terms of this Release . . . if any of my actions prior to or after my release date violate Company policy or reflect negatively on the Company.”

130. The Severance Agreement did not purport to offer additional consideration, beyond that contemplated in the Employee Handbook, in exchange for receipt of severance benefits.

131. On July 28, 2011, Defendant was advised that Ms. Austin had filed a charge of discrimination with the EEOC.

132. On the morning of July 29, 2011— Ms. Austin’s last day of employment at Deluxe— Ms. Hernandez demanded that Ms. Austin leave an employee-appreciation farewell breakfast and come to her office.

133. At the meeting with Ms. Hernandez, Ms. Hernandez presented Ms. Austin with the Severance Agreement and demanded that Austin sign the release.

134. Ms. Hernandez told Ms. Austin that if she did not immediately sign the release, that Austin would not receive severance benefits.

135. Ms. Hernandez also told Ms. Austin that, if she did not immediately sign the release, Ms. Austin would be “immediately terminated” and that such termination would render Ms. Austin “ineligible” for benefits.

136. Upon being presented with the severance agreement, Ms. Austin advised Hernandez that she was represented by counsel and asked Ms. Hernandez to speak to her attorney.

137. Ms. Hernandez declined to do so.

138. Ms. Austin then informed Ms. Hernandez that she would not sign the Severance Agreement.

139. Ms. Hernandez then dismissed Austin from her office.

140. On or about August 1, 2011 Ms. Austin’s attorney wrote to Ms. Hernandez notifying her of dual filing of Ms. Austin’s charge of discrimination with the United States Equal Employment Opportunity Commission, as well as the fact that Ms. Austin had yet to receive severance benefits due to her.

141. Ms. Hernandez did not return counsel's letter or otherwise respond.

142. Ms. Austin was unable to extend her health insurance benefits at the employee subsidized rate for three months, as promised in the Employee Handbook.

143. Ms. Austin also never received payment for four weeks of base pay, as promised in the Employee Handbook.

**COUNT 1**

**Title VII**

**Disparate Treatment Discrimination Because of Sex**

144. Plaintiff/Intervenor repeats and re-alleges each and every allegation contained in paragraphs 1–143 as if fully set forth herein.

145. Defendants engaged in adverse employment actions against Ms. Austin because of her sex and sex stereotyping, including gender, gender expression, and gender identity.

146. Defendant subjected Ms. Austin to disparate terms and conditions because of sex, as set forth in detail above, including but not limited to rest room restrictions, insurance policy exclusions and refusal to make changes to name and gender in Defendant's records and computer systems.

147. Defendant's actions occurred because plaintiff was female, yet Defendant regarded her as male.

148. For example, despite uncontroverted evidence that Ms. Austin's gender identity was female and that Ms. Austin had begun living and working full-time as female as part of her gender transition, Defendant refused to allow Ms. Austin to use the women's restroom and required her to use the men's multi-stall restroom instead.

149. The effect of the practices complained of in the foregoing paragraphs has been to discriminate against Ms. Austin with respect to the terms and conditions of her employment and/or to limit, segregate, and classify Ms. Austin in a way that deprives or tends to deprive her of equal employment opportunities and otherwise adversely affect her status as an employee because of sex.

150. The restroom restrictions subjected certain persons, based on their gender identity, including Ms. Austin, to disadvantageous terms based on sex, as detailed herein, and constituted unlawful sex discrimination in violation of Title VII.

151. As a direct and proximate result of Defendant's unlawful sex discrimination, Ms. Austin incurred damages, including but not limited to, humiliation, loss of enjoyment, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

**COUNT 2**  
**Title VII**  
**Disparate Impact Discrimination Because of Sex**

152. Plaintiff/Intervenor repeats and re-alleges each and every allegation contained in paragraphs 1–143 as if fully set forth herein.

153. Defendant maintained policies and practices that had a disparate impact on persons based on sex and sex stereotyping, gender, gender expression, and/or gender identity, and these policies had a disparate impact on Ms. Austin, as set forth in detail above, including but not limited to restroom policies, insurance policies and policies regarding changes to name and gender in Defendant's records and computer systems.

154. For example, with regard to restrooms:

- a. Deluxe maintained a policy that only allowed persons with genitals that stereotypically matched their gender identity to use sex-segregated multi-stall restrooms that comport with their gender identity.
- b. In order to carry out this policy, Deluxe required some but not all employees to produce evidence of their genital configuration.
- c. While nontransgender persons were permitted to access the sex-segregated facility which matched the gender on their government issued ID, transgender persons were required to produce a medical attestation asserting that the transgender person's genitals stereotypically matched their gender identity.
- d. This policy had a disparate impact on transgender persons because they were forced to supply direct evidence of their genital configuration whereas nontransgender persons need only supply proxy evidence such as a government issued ID.
- e. Deluxe maintained a policy that only allowed persons whom were perceived to have genitals that matched their gender identity to use sex-segregated multi-stall restrooms that comport with their gender identity.
- f. In order to carry out this policy, Deluxe required all employees to produce proxy evidence of their genital configuration such as government issued ID with a gender marker.
- g. However, under this policy transgender persons were required to produce government issued ID as well as a medical attestation asserting that the transgender person's genitals stereotypically matched their gender identity.

- h. This policy had a disparate impact on transgender persons because they were forced to supply direct evidence of their genital configuration whereas nontransgender persons need only supply proxy evidence such as a government issued ID.
- i. Deluxe maintained a policy that only allowed persons who had genitals which actually matched their gender identity access to sex-segregated multi-stall restrooms that comport with their gender identity.
- j. This policy had a disparate impact on transgender persons because transgender persons are more likely than other groups to have a medical condition resulting in gender identity-genital incongruity and thus are more likely than other groups to be excluded from restrooms which comport with their gender identity.
- k. Deluxe maintained a policy wherein corporate headquarters delegated duties to local managers to make case-by-case decisions regarding restroom access for transgender employees.
- l. This policy had a disparate impact upon transgender persons because the degree of discretion delegated to local managers left the implicit bias of local managers unchecked.
- m. As a result, the delegation permitted local managers to craft policies that unfairly targeted transgender employees for exclusion from sex-segregated restrooms.



155. The restroom policy had a disparate impact on certain female persons based on their sex, sex stereotyping, gender, gender identity, and/or gender expression, including Ms. Austin.

156. The creation and maintenance of the restroom policy and practice, and the other policies and practices with regard to insurance and changes of name and gender on corporate records and computer systems, were adverse employment actions.

157. Defendant's actions occurred because plaintiff was female, yet Defendant regarded her as male.

158. As a direct and proximate result of Defendant's unlawful sex discrimination, Ms. Austin incurred damages, including but not limited to, humiliation, loss of enjoyment, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

**COUNT 3**  
**Title VII**  
**Hostile Work Environment Based on Sex**

159. Plaintiff/Intervenor repeats and realleges each and every allegation contained in paragraphs 1–143 as if fully set forth herein.

160. After Ms. Austin disclosed her intent to transition to female on or around October or early November 2010, Defendant's managers and employees instituted a campaign of harassment and bullying on the basis of sex and sex stereotyping, including gender, gender expression, and gender identity, and adopted an attitude of adversarial and hostile demeanor. This harassment continued through Ms. Austin's separation from Defendant in late July 2011.

161. Ms. Austin was targeted for harassment by managers and employees because of her sex, including gender, gender expression, and gender identity.

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

163. The work environment was permeated with discriminatory intimidation, ridicule, and insult, sufficiently severe or pervasive to alter the conditions of Ms. Austin's employment and to create an abusive working environment, as detailed herein.

164. Defendant's agents and Ms. Austin's coworkers, made statements that demeaned Ms. Austin's sex, gender, gender identity and expression, as detailed herein.

165. For example, Ms. Austin was referred to by her former name and with male pronouns, referred as a "boy," called her "Tarzan," called "Cheetah," (a reference to a chimpanzee in the *Tarzan* television series) and teased about her hairiness, appearance, and clothes.

166. Ms. Austin also endured repeated invasive personal questions about the configuration of her genitals from management.

167. Defendants' managers denied the legitimacy of Ms. Austin's feminine gender expression and female gender identity, and encouraged and/or failed to stop others under their direction to do the same.

168. This conduct includes, but is not limited to: Defendant's refusal to permit Ms. Austin to use a restroom which comports with her gender identity; Defendant's agents repeatedly asking Ms. Austin invasive, personal questions about her genital

configuration and repeated insistence that Deluxe was entitled to inquire as to the state of Ms. Austin's genitals; Deluxe's declination to timely amend Ms. Austin's employment and other records to reflect her name and gender change; Defendant's agents misgendering Ms. Austin privately and in front of Ms. Austin's coworkers; and Defendant's maintaining a health benefits plan with a discriminatory exclusion on transition care.

169. Ms. Ridley, Ms. Chavez, and Ms. Hernandez had the power to impose or participate in the discipline of Ms. Austin.

170. Ms. Ridley, Ms. Chavez, and Ms. Hernandez were acting as the Defendant's agent in taking the actions regarding Ms. Austin, as detailed herein.

171. Ms. Ridley, Ms. Chavez, and Ms. Hernandez were acting in the scope of their employment in taking the actions regarding Ms. Austin, as detailed herein.

172. Defendant's managers and/or agents, including upon information and belief Ms. Ridley, Ms. Chavez, and Ms. Hernandez, repeatedly attempted to craft and enforce formal and informal policies with the intended effect of forcing Ms. Austin to suppress her feminine gender expression and female gender identity.

173. This conduct includes, but is not limited to: Defendant's agents crafting an informal policy which banned Ms. Austin from using a women's restroom in a common area not controlled by Deluxe; Defendant's agents enforcing a formal Deluxe policy which required transgender workers to demonstrate they had undergone genital reconstruction surgery in order to use a restroom which comports with their gender identity; and Defendant's agents formulating policies that did not result in the changing

of Ms. Austin's name and gender in Defendant's records and computer systems, and/or failure to permit or require such changes to be made

174. The requirement that Ms. Austin not use female restrooms, and use only a specific multi-stall men's restroom exposed her to disadvantageous terms, as detailed herein.

175. The Defendant provided and maintained a health insurance plan for its employees, including Ms. Austin, that had an explicit exclusion for transgender health care, as detailed herein.

176. The health insurance policy explicitly excluded all transition-related care for transgender persons.

177. As a result of this exclusion, the plan denied care to transgender persons, solely on the basis of sex and regardless of medical necessity.

178. Under the terms of this discriminatory exclusion, Ms. Austin was precluded from coverage for medically necessary care, she was forced to bear out-of-pocket costs, and was subjected to humiliation by being foreclosed coverage for medically necessary care accessible to non-transgender enrollees, which contributed to the hostile work environment.

179. This hostile environment unreasonably interfered with Ms. Austin's ability to perform her job duties, by the disruption of her relationship to Defendant and its management, by the unreasonable criticism and scrutiny of Ms. Austin's gender which flowed directly from Defendant's policies that treated Ms. Austin differently than other female employees, by Ms. Austin's inability to use restrooms appropriate to her gender, by Ms. Austin's need to spend many hours on otherwise unnecessary grievance processes

and other means of seeking relief, by the need to secure funds to cover out-of-pocket medical expenses for medically necessary care which should have been covered by her health plan, by the need to delay and/or forego medically necessary care because she could not afford to pay for this care out-of-pocket, and by other factors.

180. The effects of the hostile environment alleged herein were felt by Ms. Austin daily. For instance, several times a day every work-day Ms. Austin felt humiliation and despair as a result of being unable to use restrooms appropriate to her gender while at work.

181. Additionally, at least once a day, when Ms. Austin took her prescribed exogenous hormone pill, Austin was reminded that the insurance exclusion Defendant maintained debased her medically necessary treatment.

182. Many events contributing to this hostile work environment occurred within the 300 day period prior to Ms. Austin's first charge dated June 29, 2011, including but not limited to the daily humiliation caused by the restroom restrictions and misgendering, the maintenance of the discriminatory insurance policy exclusion, dress restrictions, and other disadvantageous terms, as detailed herein.

183. Ms. Austin perceived the working environment to be abusive or hostile.

184. A reasonable person in Ms. Austin's circumstances would consider the working environment to be abusive or hostile.

185. The actions of Defendant's agents and managers in creating the hostile work environment resulted in tangible job consequences to Ms. Austin, including but not limited to her restriction in regard to using restrooms which comport with her gender and her inability to obtain health care coverage for medically necessary treatments.

186. Defendant's actions occurred because plaintiff was female, yet Defendant regarded her as male.

187. The Defendant was on notice of the hostile work environment, including actual notice by means of complaints made by Ms. Austin to Defendant as detailed herein, and vicariously and constructively by means of the acts perpetrated by Austin's direct supervisors and managers, as detailed herein.

188. The Defendant knew or should have known of the hostile work environment because of Ms. Austin's complaints and the acts perpetrated by Austin's managers and supervisors, as detailed herein.

189. The Defendant made no efforts to stop the hostile environment detailed herein.

190. In the alternative, the Defendant did not undertake prompt and reasonable efforts to sufficient to stop the hostile environment detailed herein.

191. As a direct and proximate result of Defendant's unlawful discrimination, Ms. Austin incurred damages including, but not limited to humiliation, loss of enjoyment of life, damage to her professional reputation, and pecuniary and non-pecuniary losses.

**COUNT 4**  
**Title VII**  
**Retaliation**

192. Plaintiff/Intervenor repeats and re-alleges each and every allegation contained in paragraphs 1–143 as if fully set forth herein.

193. Upon starting work with Defendant in 2008, Ms. Austin was presented with Defendant's Employee Handbook. The Employee Handbook contained express promises

of severance benefits, including at least three months of health insurance under a COBRA plan at the employee rate and, at minimum, four weeks of gross pay.

194. Ms. Austin complained of sex discrimination to her manager, Rebecca Chavez, on July 7, 2011, and Defendant, including Defendant's manager Hernandez, were notified of Ms. Austin's complaint to the EEOC on July 28, 2011.

195. On or about July 29, 2011, Defendant's manager Hernandez presented Ms. Austin with the Severance Agreement and demanded that Ms. Austin sign it. The Severance Agreement conditioned receipt of post-termination benefits on agreement to the releases therein.

196. The refusal to award Ms. Austin severance benefits under the terms and conditions delineated in the Employee Handbook on and after July 29, 2011 was in retaliation for Ms. Austin's complaint of July 7, 2011 and/or Ms. Austin's previous complaints of discrimination which she reasonably believed were in violation Title VII.

197. The refusal to award Ms. Austin severance benefits under the terms and conditions delineated in the Employee Handbook on and after July 29, 2011 was in retaliation for Ms. Austin's participation in a Title VII proceeding by filing a complaint with the EEOC on July 28, 2011.

198. But for Defendant's unlawful retaliation, Ms. Austin would have been awarded her contractually mandated severance benefits, and thereby incurred damages including, but not limited to, lost income, loss of enjoyment of life, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

**COUNT 5**  
**Americans with Disabilities Act**  
**Disparate Treatment Discrimination Because of Disability**

199. Plaintiff/Intervenor repeats and re-alleges each and every allegation contained in paragraphs 1–143 as if fully set forth herein.

200. Defendant perceived that Ms. Austin was an individual with a disability, based on Ms. Austin’s statements to Defendants as set forth above in detail, and based on the questions asked of Ms. Austin by Defendants’ agents regarding surgery.

201. Ms. Austin was qualified to perform her job.

202. Plaintiff was subjected to discrimination, including adverse and/or tangible employment actions such as being denied access to a gender appropriate restroom facility, based on her perceived disability.

203. For example, after Defendant learned of Ms. Austin’s gender identity disorder diagnosis, Ms. Austin was advised that in order for her to use the women’s restroom at work she would have to provide Defendant with a medical attestation asserting that her genitals matched her gender identity.

204. Plaintiff was treated differently because of her perceived disability than less- or non-disabled individuals. For example, Defendant did not require employees without gender identity disorder to provide Defendant with a medical attestation asserting their genitals matched their gender identity in order to use a restroom that comported with their gender identity.

205. The effect of the discrimination complained of above has been to deprive Ms. Austin of equal employment opportunities and otherwise adversely affect her status



as an employee because of her disability in violation of the Americans with Disabilities Act of 1990, as amended.

206. By creating, condoning, and perpetuating discrimination because of Ms. Austin's disability Defendant has acted intentionally, maliciously, and/or recklessly.

207. As a direct and proximate result of Defendant's unlawful disability discrimination, Ms. Austin incurred damages, including but not limited to, humiliation, loss of enjoyment, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

**COUNT 6**  
**Americans with Disabilities Act**  
**Disparate Impact Discrimination Because of Disability**

208. Plaintiff/Intervenor repeats and re-alleges each and every allegation contained in paragraphs 1–143 as if fully set forth herein.

209. Defendant perceived that Ms. Austin was an individual with a disability, based on Ms. Austin's statements to Defendants as set forth above in detail, and based on the questions asked of Ms. Austin by Defendants' agents regarding surgery.

210. Ms. Austin was qualified to perform her job.

211. Plaintiff was subjected to discrimination, including adverse employment actions such as being denied access to a gender appropriate restroom facility, based on her perceived disability.

212. Defendant maintained policies and practices that had a disparate impact on persons based on actual disability and/or perceived disability, and these policies had a disparate impact on Ms. Austin.

- a. Deluxe maintained a policy that only allowed persons with genitals that stereotypically matched their gender identity to use sex-segregated multi-stall restrooms that comport with their gender identity.
- b. In order to carry out this policy, Deluxe required some but not all employees to produce evidence of their genital configuration.
- c. While persons without gender identity disorder were permitted to access the sex-segregated facility which matched the gender on their government issued ID, persons with gender identity disorder were required to produce a medical attestation asserting that the transgender person's genitals stereotypically matched their gender identity.
- d. This policy had a disparate impact on persons with gender identity disorder because they were forced to supply direct evidence of their genital configuration whereas persons without gender identity disorder need only supply proxy evidence such as a government issued ID.
- e. Deluxe maintained a policy that only allowed persons whom were perceived to have genitals that matched their gender identity to use sex-segregated multi-stall restrooms that comport with their gender identity.
- f. In order to carry out this policy, Deluxe required all employees to produce proxy evidence of their genital configuration such as government issued ID with a gender marker.
- g. However, under this policy persons with gender identity disorder were required to produce government issued ID as well as a medical attestation

asserting that the person's genitals stereotypically matched their gender identity.

- h. This policy had a disparate impact on persons with gender identity disorder because they were forced to supply direct evidence of their genital configuration whereas persons without gender identity disorder need only supply proxy evidence such as a government issued ID.
- i. Deluxe maintained a policy that only allowed persons who had genitals which actually matched their gender identity access to sex-segregated multi-stall restrooms that comport with their gender identity.
- j. This policy had a disparate impact on persons with gender identity disorder because such persons are more likely than other groups to have a medical condition resulting in gender identity-genital incongruity and thus are more likely than other groups to be excluded from restrooms which comport with their gender identity.
- k. Deluxe maintained a policy wherein corporate headquarters delegated duties to local managers to make case-by-case decisions regarding restroom access for employees with gender identity disorder.
- l. This policy had a disparate impact upon persons with gender identity disorder because the degree of discretion delegated to local managers left the implicit bias of local managers unchecked.
- m. As a result, the delegation permitted local managers to craft policies that unfairly targeted employees with gender identity disorder for exclusion from sex-segregated restrooms which matched their gender identity.

213. For example, after Defendant learned of Ms. Austin's gender identity disorder diagnosis, Austin was advised that in order for her to use the women's restroom at work she would have to provide Defendant with a medical attestation asserting that her genitals matched her gender identity.

214. As a direct and proximate result of Defendant's unlawful disability discrimination, Ms. Austin incurred damages, including but not limited to, humiliation, loss of enjoyment, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

**COUNT 7**  
**Americans with Disabilities Act**  
**Wrongful Inquiries as to Disability**

215. Plaintiff/Intervenor repeats and re-alleges each and every allegation contained in paragraphs 1–143 as if fully set forth herein.

216. Ms. Austin was qualified to perform her job.

217. As alleged herein, Defendants agents repeatedly asked Ms. Austin whether she had undergone genital reconstruction surgery and requested Austin to present proof of having undergone such surgery.

218. This post-employment medical inquiry was unlawful because it was not job-related or consistent with business necessity.

219. Defendant's agents' questions was a medical inquiry that attempted to establish whether Ms. Austin had phenotypically nontransgender male or female genitalia.

220. The sole reason why Defendant's agents asked Ms. Austin about her genital configuration was to assess Ms. Austin's perceived disability or level or perceived disability, specifically whether Ms. Austin was a female with phenotypically nontransgender female genitals.

221. Defendants routinely accommodated nontransgender persons with phenotypically male and female genitalia by offering them access to sex separated spaces, including but not limited to sex segregated multi-stall restrooms.

222. Ms. Austin was subjected to discrimination, including tangible employment actions, based on the medical inquiry, as detailed herein.

223. The effect of the discrimination complained of above has been to deprive Ms. Austin of equal employment opportunities and otherwise adversely affect her status as an employee because of her disability in violation of the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act of 2008, as amended.

224. By creating, condoning, and perpetuating discrimination because of prohibited medical inquiry, Defendant has acted intentionally, maliciously, and/or recklessly.

225. As a direct and proximate result of the acts complained of herein, Ms. Austin has suffered and will continue to suffer humiliation, loss of reputation, loss of enjoyment of life, and other pecuniary and non-pecuniary losses.

226. By reason of the discrimination suffered by Ms. Austin, she is entitled to all legal and equitable remedies available under the Americans with Disabilities Act, as amended.

**COUNT 8**  
**Americans with Disabilities Act**  
**Retaliation**

227. Plaintiff/Intervenor repeats and re-alleges each and every allegation contained in paragraphs 1–143 as if fully set forth herein.

228. Ms. Austin was qualified to perform her job.

229. Upon starting work with Defendant in 2007, Austin was presented with Defendant’s Employee Handbook. The Employee Handbook contained express promises of severance benefits, including at least three months of health insurance under a COBRA plan at the employee rate and, at minimum, four weeks of gross pay.

230. Ms. Austin complained of disability discrimination to her manager, Rebecca Chavez, on July 7, 2011, and Defendant, including Defendant’s manager Hernandez, was notified of Ms. Austin’s complaint to the EEOC on July 28, 2011.

231. On or about July 29, 2011, Defendant’s manager Hernandez presented Ms. Austin with the Severance Agreement and demanded that Austin sign it. The Severance Agreement conditioned receipt of post-termination benefits on agreement to the releases therein.

232. The refusal to award Ms. Austin severance benefits under the terms and conditions delineated in the Employee Handbook on and after July 29, 2011 was in retaliation for Ms. Austin’s complaint of July 7, 2011 and/or Austin’s previous complaints of discrimination that she reasonably believed was in violation of the ADA.

233. The refusal to award Ms. Austin severance benefits under the terms and conditions delineated in the Employee Handbook on and after July 29, 2011 was in

retaliation for Ms. Austin's participation in an ADA proceeding by filing a complaint with the EEOC on July 28, 2011.

234. But for Defendant's unlawful retaliation, Ms. Austin would have been awarded her contractually mandated severance benefits, and thereby incurred damages including, but not limited to, lost income, humiliation, loss of enjoyment of life, damage to her professional reputation, and other pecuniary and non-pecuniary losses.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff/Intervenor Ms. Britney Austin respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in the unlawful conduct of discriminating against employees who have undergone, or are undergoing, a gender transition.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for employees who have undergone, or are undergoing, a gender transition and which eradicate the effects of its past and present unlawful employment practices.

C. Order other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices.

D. Order Defendant to make Ms. Austin whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in the foregoing paragraphs, including emotional pain, suffering,

inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

E. Order Defendant to pay Ms. Austin punitive damages for its malicious or reckless conduct described in the foregoing paragraphs, in amounts to be determined at trial.

F. Award such additional relief as justice may require, together with the Ms. Austin's costs, disbursements, and attorney's fees in this action.

Dated: October 22, 2015

**/s/ Jill R. Gaulding**

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