

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 362 Personal Injury - Med. Malpractice 610 Agriculture 422 Appeal 28 USC 158 400 State Reapportionment
120 Marine 315 Airplane Product Liability 365 Personal Injury - Product Liability 620 Other Food & Drug 423 Withdrawal 410 Antitrust
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability 625 Drug Related Seizure of Property 21 USC 881 430 Banks and Banking
140 Negotiable Instrument 330 Federal Employers' Liability 370 Other Fraud 630 Liquor Laws 820 Copyrights 440 Commerce
150 Recovery of Overpayment & Enforcement of Judgment 340 Marine 371 Truth in Lending 640 R.R. & Truck 830 Patent 450 Commerce
151 Medicare Act 345 Marine Product Liability 380 Other Personal Property Damage 650 Airline Regs. 840 Trademark 460 Deportation
152 Recovery of Defaulted Student Loans (Excl. Veterans) 350 Motor Vehicle 385 Property Damage Product Liability 660 Occupational Safety/Health 850 Securities/Commodities/Exchange 470 Racketeer Influenced and Corrupt Organizations
153 Recovery of Overpayment of Veteran's Benefits 355 Motor Vehicle 390 Other Personal Property Damage 690 Other 875 Customer Challenge 12 USC 3410 480 Consumer Credit
160 Stockholders' Suits 360 Other Personal Injury 710 Fair Labor Standards Act 861 HIA (1395ff) 890 Other Statutory Actions
190 Other Contract 441 Voting 720 Labor/Mgmt. Relations 862 Black Lung (923) 891 Agricultural Acts
195 Contract Product Liability 442 Employment 730 Labor/Mgmt. Reporting & Disclosure Act 863 DIWC/DIWW (405(g)) 892 Economic Stabilization Act
196 Franchise 443 Housing/Accommodations 740 Railway Labor Act 864 SSID Title XVI 893 Environmental Matters
210 Land Condemnation 444 Welfare 790 Other Labor Litigation 865 RSI (405(g)) 894 Energy Allocation Act
220 Foreclosure 445 Amer. w/Disabilities - Employment 791 Empl. Ret. Inc. Security Act 870 Taxes (U.S. Plaintiff or Defendant) 895 Freedom of Information Act
230 Rent Lease & Ejectment 446 Amer. w/Disabilities - Other 900Appeal of Fee Determination Under Equal Access to Justice
240 Torts to Land 440 Other Civil Rights 510 Motions to Vacate Sentence 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 462 Naturalization Application 463 Habeas Corpus - Alien Detainee 465 Other Immigration Actions

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BOBBIE E. BURNETT	:
	:
Plaintiff	:
	:
	: Civil Action
vs.	: No.
	:
	:
CITY OF PHILADELPHIA-FREE	:
LIBRARY; BOARD OF TRUSTEES OF THE	:
FREE LIBRARY OF PHILADELPHIA;	: <b>JURY TRIAL DEMANDED</b>
FREE LIBRARY OF PHILADELPHIA	:
FOUNDATION; CITY OF PHILADELPHIA,	:
JOSEPH HILTON; BRUCE SIEBERS;	:
RHONDA MCPHAIL; and JULIE DOTY	:
	:
Defendants	: <b>COMPLAINT</b>

**Introduction**

1. This is a civil rights Complaint for money damages for the extraordinary injuries suffered by plaintiff, Bobbie E. Burnett, who was subjected to ongoing, continuous, pervasive and outrageous discrimination, harassment and hostile workplace policies and practices for more than seven years in the workplace, during and following her corrective surgical transition from male body to female.

2. Plaintiff is an employee of the Free Library System in Philadelphia, Pennsylvania, and started her employment in 1991.

3. Ten years later, in 2001, she notified her supervisors that she was a transsexual person, and intended to transition from male to female.

4. Prior to this notice, plaintiff had been a respected member of the staff at the Whitman Branch, had gotten along with her co-workers and had received regular satisfactory performance evaluations.

5. Subsequent to beginning her transition, she found herself the subject of outrageous verbally abusive, and sometimes physically threatening, harassment from co-workers and supervisors alike. She has been treated differently and abusively simply because she was perceived as either a masculine female or a feminine male - or both simultaneously.

6. Defendants' response evidenced a discriminatory pattern and policy, intentionally undertaken to create a hostile environment calculated to cause plaintiff intense emotional distress and force her to leave defendants' employment. Said response to the situation is outlined in more detail below but, for example, defendants transferred plaintiff to different branches eight times rather than enforce its non-discrimination and non-harassment policies regarding her co-workers' conduct, denied her the use of public or staff restrooms, devalued her work evaluations, restricted plaintiff's speech in a discrimination manner, dictated "acceptable" and gender stereotypical modes of dress and grooming, and fostered a hostile work environment by permitting co-workers and management alike to confront plaintiff over slights and petty disputes in offensive, disruptive and sometimes violent over-reacting manners.

7. Additionally, each formal demand made by plaintiff during Philadelphia Commission for Human Relations (hereinafter referred to as "PCHR") sponsored negotiations inevitably resulted in retaliatory administrative disciplinary charges being brought against her for petty incidents that would not warrant such treatment against other individuals, and which actually also involved other co-workers who were not similarly disciplined.

8. Plaintiff had sexual reassignment surgery in November 2003, but the harassment and discrimination continued, and has been ongoing to the present day.

9. Plaintiff filed three separate complaints in 2003 and 2004 with the Philadelphia Commission on Human Relations, alleging discrimination based on gender identity, sex, sex-stereotyping and retaliation, in violation of the Philadelphia Fair Practices Ordinance and Title VII of the Civil Rights Act of 1964, respectively.

10. The charges were extensively investigated by PCHR, and final findings that probable cause for the complaints existed were issued by the Commission on January 15, 2009 in response to all three complaints.

11. Plaintiff believes and therefore avers that preliminary findings of probable cause were submitted to the City of Philadelphia Law Department for final review and vetting in late 2006 or early 2007; however, the City of Philadelphia Law Department, in its investigative function and role assisting the PCHR in its investigation, as a matter of policy, wrongfully

refused for over two years, despite numerous inquiries, to approve the findings for final release by the PCHR.

12. Plaintiff believes that the City of Philadelphia Law Department had a conflict of interest in this matter, as it has also represented defendant Free Library in defending against the charges and negotiating settlement, and it conspired with the Free Library to needlessly continue plaintiff's suffering at the hands of Library personnel and management, to force her to resign her position with the Library, and to deny her the due process necessary to resolve this matter administratively, in violation of 42 U.S.C.A. 1983.

13. As a result of the Defendants' actions, plaintiff has been forced to seek ongoing psychological and psychiatric treatment dealing exclusively with the issues arising out of the hostile environment that has been created by defendants in her workplace, at costs to her; she has been forced to take extended medical leave for over six months without pay.

14. Her constant forced and wrongful shuffling from one branch to another has created undue burden and expense, with loss of privileges at new branches such as overtime, etc.

15. She has also lost wages from unwarranted disciplinary actions, time needed off to pursue her PCHR complaints, and other similar matters.

16. Plaintiff also believes and therefore avers that defendants' actions are outrageous and warrant the imposition of exemplary/punitive damages.

**Jurisdiction**

17. This action is brought pursuant to 42 U.S.C.A. § 1983, 42 U.S.C.A. § 1985(2), 42 U.S.C.A. § 2000e-2, and the Philadelphia Code § 9-1103(A). This Court has jurisdiction under 28 U.S.C.A. § 1331 and 28 U.S.C.A. § 1343. Municipal and state claims herein arise out of a common nucleus of operative facts and this Court, therefore, has jurisdiction over the entire matter under F.R.C.P. 54(b). Plaintiff has exhausted all administrative remedies having filed timely charges of discrimination with the EEOC and having received a "Right to Sue" letter issued on or about June 26, 2009.

**Parties**

18. Plaintiff at all times relevant was a resident of Pennsylvania, and was employed as a city employee by the City of Philadelphia-Free Library.

19. Defendant City of Philadelphia-Free Library is a governmental entity that jointly operates the Philadelphia Free Library system with the Free Library Trust, using public monies, and hires individuals separately from the Free Library Trust.

20. Defendant Free Library Trust is a non-profit organization that jointly operates the Philadelphia Free Library system with the City of Philadelphia-Free Library, using private donations, and hires individuals separately from the City of Philadelphia-Free Library.

21. Defendant City of Philadelphia is a political subdivision of the Commonwealth of Pennsylvania, which oversees both the City of Philadelphia-Free Library and the Free Library Trust, and the City of Philadelphia Law Department.

22. Defendants Joseph Hilton, Bruce Siebers, Rhonda McPhail and Julie Doty are supervisory and administrative personnel, employed by defendants the City of Philadelphia, the City of Philadelphia-Free Library, and/or the Free Library Trust.

23. The discriminatory and unlawful acts complained of herein were performed by defendants through the actions of their agents, employees, officers, directors and others acting on their behalf.

24. At all times pertinent to this case, defendants and their agents acted under the color of state law.

**Facts**

25. This case involves the ongoing discriminatory treatment of plaintiff Bobbie E. Burnett, a male-to-female transsexual person, by her employer, the City of Philadelphia.

26. Plaintiff was hired by the Free Library as Robert Burnett on June 15, 1991, in the position of Library Assistant 1-HT.

27. Plaintiff received satisfactory performance evaluations and raises over the next ten years, up to and including January 4, 2001, and had attained the position of Library Assistant 1-FT.

28. Plaintiff was initially assigned to perform her duties at Central Library Book-stacks. Plaintiff worked Sunday premium overtime at the Central Library since passing her probation in December 1991.

29. In 1999, plaintiff was transferred to the Whitman branch. In 2001, she continued working Sundays at Central Branch.

30. At no time between 1991 and 2001 was plaintiff formally disciplined for unacceptable behavior as a result of disputes with coworkers or supervisors, or as a result of conversations with co-workers or supervisors regarding her religious beliefs or any other subject.

31. At no time between 1991 and 2001 was plaintiff informally admonished for unacceptable behavior as a result of disputes with coworkers or supervisors, or as a result of conversations with co-workers or supervisors regarding her religious beliefs.

32. Between 1991 and 2001, plaintiff enjoyed a respectful and open relationship with her co-workers and management, and was a valued member of the staff.

33. On June 15, 2001, plaintiff informed her supervisor at the Whitman Branch, Lynn Pearson, that she was a transsexual person and had undertaken a course of treatment that would result in her transition from male to female. Pearson was shocked but initially supportive, and the two had a discussion regarding the timetable for the transition.



34. On the same day, the security guard at the branch, Vanessa Burns was also informed of plaintiff's impending transition. Burns reacted in an opposite manner, and indicated that she would still respect plaintiff as a person but that she was now damned to hell.

35. Other staff members were told by both plaintiff and Pearson over the course of the next few days, with the exception of Ms. Rachubinski, the Children's Librarian, who was informed by Pearson alone, due to Rachubinski's known propensity for "problem" attitudes. Other staff took the news in stride, at least outwardly.

36. Shortly after Pearson informed the Library Administration of Plaintiff's impending change, plaintiff received a call from Jacques Peterman, the Assistant Director of Public Service at the Central Library, who informed her that there was a directive dictating that until she has genital surgery, she would be required to use the men's room when doing her Sunday shift at Central Branch. Plaintiff protested and offered viable alternative accommodations, but Peterman was adamant. Plaintiff indicated that she would use an out-of-the way non-designated staff restroom located elsewhere in the building, pending staff complaints, of which there were none.

37. Using a male-only restroom would have jeopardized her treatment, as she was entering the Real Life Test phase of her treatment, which requires her to live and perform as a female

100% for at least one year to prepare her for life after sexual reassignment surgery.

38. On August 15, 2001, Plaintiff completed her change in appearance from male to female.

39. In or about September 2001, plaintiff was told through defendant Hilton that she was to be transferred to a non-public department until her appearance as a woman was judged to be "acceptable" enough for her to work at a public agency.

40. Plaintiff challenged this decision as being discriminatory, and it was subsequently not instituted at that time.

41. Through this period at Whitman Branch, co-worker Burns expressed her displeasure and non-acceptance of plaintiff's transition often and vocally, privately and publicly, in the following ways:

- a. by intentionally using inappropriate pronouns when referring to plaintiff; and,
- b. by stating openly that, according to her religious beliefs, plaintiff could never be a woman, and it would be a lie and a violation of her religion to say "she" in reference to plaintiff.

42. At plaintiff's request, Pearson acted to resolve the situation by suggesting that Burns use "Bobbie" when referring to plaintiff, but Burns intentionally failed to do so regularly.

43. When plaintiff complained to Pearson about the disrespect, Pearson told her that this was the way Burns felt and

that plaintiff had to respect Burns' religious beliefs, a position that was memorialized in a memo from Pearson to plaintiff on December 5, 2001.

44. Also in the fall of 2001, plaintiff was publicly admonished, in front of other staff, to not "violate" the space of patrons. The admonishment arose after plaintiff patted the hand of an elderly patron who had been quite congenial toward plaintiff, both before and after her transition.

45. Plaintiff's "enthusiastic friendliness," as noted in her performance evaluation just prior to her transition, had become a "violation of patron's space" post transition.

46. From that point forward, Pearson became short with plaintiff, remonstrating her publicly and loudly for perceived slights and errors, and generally creating a stressful environment to work in.

47. In or about April 2002, an incident with a young male patron who carried on disrespectfully and mockingly regarding plaintiff led Pearson to lash out at plaintiff publicly, loudly and very abusively, and caused her to cease all interactions with plaintiff beyond those minimally necessary to perform the duties of her position.

48. In late summer 2002, a co-worker, Marian Ghormley, reported that plaintiff had touched her inappropriately twice during incidents where they had bumped into each other while passing in a narrow hallway and later in an entrance to the

public service counter. The incident was investigated, but Ghormley could not attest that the touching was intentional.

49. Also in late summer of 2002, plaintiff was subsequently barred from using any of the public restrooms in the Whitman branch, male or female, which were single use facilities, locked and accessible only with a Branch Head's master key or by electric buzzer actuated by a staff member. Pearson alluded to the possibility that a patron might be offended, despite the fact that plaintiff had been using the public ladies room when staff room was not available, for several months already with no complaint.

50. On the same day she was barred from using the restrooms, plaintiff was also barred from working in the Children's Library section of the Whitman branch, for fear that she might cause offense to a parent or inappropriately touch one of the children.

51. In August 2002, plaintiff initiated a meeting with Joseph Hilton, North South Area Administrator, to find out what was going on at Whitman, and he told her that co-workers had been complaining about plaintiff having personal conversations with them that "exceeded their comfort zones", although they never told plaintiff so themselves. Plaintiff was instructed to cease all such conversations with her co-workers. Defendant Hilton allowed that the only exception to this rule was to talk about her continuing weight loss, because all women talk to each other about diet and dieting.

52. On August 23, 2002, plaintiff was transferred from the Whitman branch to the Library for the Blind branch located on Walnut Street, Philadelphia. The transfer was effective immediately.

53. Plaintiff believes and therefore avers that she was transferred because Pearson was fearful she might touch patrons inappropriately, that she may be attacked by a patron, and that her presence might cause other co-workers to be less effective at their jobs. Additionally, the new assignment was to a mostly bulk mailing facility where few sighted patrons ever frequented, and plaintiff would be out of the public eye.

54. However, the branch location was a less desirable location in that her duties involved a substantial amount of heavy lifting, pushing, pulling and bending, tasks that were difficult for plaintiff because of her health. Plaintiff was forced to take two weeks medical leave from work during her duration at this assignment due to the physical rigors of the job.

55. Plaintiff filed her first complaint with the Philadelphia Commission on Human Relations on January 31, 2003 alleging discrimination because of her gender identity.

56. Following her transfer to the Blind branch, plaintiff quickly became the subject of ongoing and continuous discrimination, ridicule and harassment brought against her by a co-worker, Arvil Bishop, with defendant employers allowing or encouraging such misconduct.

57. Some of the discriminatory harassments Bishop directed against plaintiff included, but were not limited to:

- a. although plaintiff's supervisor, Renee Snowten, directed that plaintiff could use the unisex restroom in the basement of the branch, Bishop complained that the unisex restroom was the men's room and that plaintiff should not use it;
- b. Bishop objected to the plaintiff's presence in the stacks break room located on the basement level;
- c. Bishop quarreled with plaintiff over small issues, such as use of a chair in the aforementioned break room, to the point where threats of physical violence were made; and,
- d. Bishop physically intimidated plaintiff, such as pounding loudly on the restroom door and trying to force it open while plaintiff was occupying the same.

58. Plaintiff's supervisor responded to the situation created by Bishop in a discriminatory manner, to wit:

- a. directing *plaintiff to NOT use the unisex bathroom* in the basement;
- b. directing *plaintiff to NOT use the break room* in the basement; and,
- c. warning that further incidents would result in disciplinary actions being taken against both parties.

59. On July 8, 2003, plaintiff filed a second complaint against defendants with the Commission on Human Relations, based on gender identity and retaliation.

60. In November 2003, plaintiff had sexual reassignment surgery in Montreal, Quebec, Canada, and returned to work from medical leave in February 2004.

61. Plaintiff was transferred from the Library for the Blind to the Roxborough branch on March 15, 2004.

62. Roxborough branch location was a less desirable location because it is located 11 miles away from plaintiff's home, and is the second most difficult location to get to from plaintiff's home of all branches, and was already overstaffed prior to plaintiff's arrival.

63. On April 5, 2004, plaintiff's supervisor, Joseph Paradin, advised plaintiff that Anne Humphries, Area Administrator North West Area Administration, had directed him to watch plaintiff carefully for three weeks and to poll the branch staff for complaints about her.

64. Plaintiff was subsequently admonished during an official meeting with Paradin, Branch Head, Ann Humphries, Area Administrator, and Eugene Horsley, Shop Steward, for a complaint received from a co-worker, and a visiting Guard Supervisor, and was warned that that any other such behavior would result in formal disciplinary proceedings.

65. Plaintiff's actions that defendants complained of were:

- a. gesturing to offer a hug to a co-worker; and,
- b. when asked by a co-worker why she was using the ladies' restroom, she responded that it was "her time of the month".

66. On May 7, 2004, plaintiff filed a third complaint against defendants with the Commission on Human Relations, based on sex (gender), sex stereotyping, gender identity and retaliation. The complaint was amended in June 2004, to include subsequent discriminatory events.

67. During the week of June 14, 2004 to June 18, 2004, plaintiff was "temporarily assigned" to the Nicetown-Tioga branch.

68. On June 14, 2004, plaintiff was informed that she was being transferred to Greater Olney branch, due to her allegedly offending the entire staff at Roxborough.

69. At her June 14, 2004 meeting at Nicetown-Tioga Branch with Repman, Humphries, and the Union Representative where her transfer was announced, Repman further admonished plaintiff in a gender stereotypical fashion, stating, "If you really want to be a woman, well then you are a woman. If you want to be a lady, then you should..." and listed several items of behavior and appearance she considered examples of "lady-like" behavior, suggesting that plaintiff was being transferred because she was not sufficiently "Lady-like" to suit Repman.



70. During her time at Nicetown-Tioga, plaintiff was verbally harassed by teenagers in the street while being walked to her car by branch head F. Bonifante.

71. Prior to her transfer to Greater Olney branch, as a result of the harassment she previously experienced at Nicetown-Tioga, plaintiff voiced concern over her physical safety at Greater Olney Branch, both inside and outside the branch, but was transferred there by defendant employers in an effort to force her to quit or resign.

72. Two weeks into her assignment at Greater Olney, plaintiff was harassed by a group of adult men.

73. Due to incidents compromising her safety, the continuing harassments and the multiple continuing transfers, plaintiff sought and received psychiatric treatment for her depression at the designated Worker's Compensation hospital and then at the crisis center, completed the examination and admission process related to in-patient treatment for depression, but declined a three-day admission. She instead began a regimen of outpatient treatment for depression.

74. Plaintiff's two week medical leave turned into a leave of nearly 49 days' duration, during which part of the time she was also admitted for short-term in-patient care.

75. During her leave, plaintiff filed a claim for workers' compensation, which was denied.

76. However, plaintiff was directed to consult with defendants' health clinic, and she met with Dr. Hays.

77. Upon Dr. Hays' direction, plaintiff was compelled to remain on medical leave until Dr. Hays approved her to return to work.

78. Plaintiff didn't return to work until August 2004.

79. Prior to returning to work in August 2004, plaintiff met with Dr. Hays, Kevin Vaughn, Assistant Director, Helen Miller, Director of Public Services, Gloria Arrington, HR Supervisor, along with Matthew Cowell, PCHR Investigator, Lillian Randolph, union representative, and her own legal counsel.

80. At said meeting, plaintiff was offered a choice of three locations to which she would be transferred to, none of which were ideal and none of which had been pre-cleared by branch supervisors.

81. Plaintiff was transferred to the Northeast Regional Library.

82. While at NE Regional, plaintiff's performance was under constant heightened scrutiny and was questioned on several occasions.

83. Additionally, plaintiff was subjected to continual verbal abuse from one security guard and subject to minor insults from several other coworkers in their obviously intentional inappropriate use of pronouns and other intentional comments directed to plaintiff.

84. In Spring 2005, plaintiff found the brake lines on her vehicle, parked in the parking lot of the facility, had been cut.

A report was filed with her supervisor and with the Philadelphia Police Department.

85. In early 2006, through the auspices of the PCHR, plaintiff submitted a settlement demand of her three administrative charges filed against defendants.

86. In Spring 2006, plaintiff was charged with striking a coworker, as retaliation for failing to settle and dismiss her claims, after she touched a co-worker on the back of the hand with a book.

87. Once again, in the spring of 2006, plaintiff found the brake line of her vehicle cut under the same circumstances a before, while parked in the facility's parking lot. A report was again filed with her supervisor, the Library Administration, and with the Philadelphia Police Department

88. Plaintiff's depression continued and was exacerbated by the brake cutting incidents and the harassments and continuous petty insults which defendant employers refused to cut short.

89. In Spring 2006, plaintiff took two weeks medical leave due to depression.

90. Plaintiff was transferred to Frankford branch and returned there from her medical leave.

91. While at Frankford branch for three weeks, a hearing was held on the alleged striking incident at NE Regional, and plaintiff was suspended for 2 days for the touch on the back of a co-worker's hand.

92. Also, while at Frankford, she had not been given a key to the branch so she could let herself in when arriving each morning, forcing her to stand outside while waiting for someone else to arrive. She was given a key after numerous requests. Plaintiff was being treated differently than all other employees who had been given keys.

93. Plaintiff also received numerous offensive phone calls, consisting of heavy breathing when she got on the line.

94. At plaintiff's request, she was transferred to the Overbrook Park branch in the summer of 2006.

95. Unbeknownst to plaintiff at the time, the staff at Overbrook had been told that plaintiff's transfer was to be only temporary.

96. Problems immediately arose between plaintiff and one particular security guard, Arthur Gaffney.

97. Gaffney continuously subjected plaintiff to discrimination consisting of verbal abuse, harassment and belittling behavior in front of other staff.

98. The harassments escalated when Gaffney threw out a batch of fruit plaintiff had brought to work and placed in the break room refrigerator for the entire staff to share. Gaffney began screaming at plaintiff, calling her "freak," "man in women's clothes", and "nigger" in front of staff in the workroom and in the public areas of the branch.

99. With her supervisor's permission, plaintiff left the branch for the rest of the day.

100. Gaffney was transferred to another branch and was replaced by James West.

101. Plaintiff was also subjected to harassment by co-workers Latonya Brewer and Gayle Jackson, who belittled and criticized her performance and efforts to other co-workers and in front of supervisors and patrons. This was not done to her by her co-workers because of her performance or efforts, but rather because she appeared different. Plaintiff filed complaints with her direct supervisor Ishmailia Williams and the branch manager Bruce Siebers.

102. On March 5<sup>th</sup>, 2007, Plaintiff met with PCHR investigator to discuss settlement demands for withdrawal of plaintiff's three administrative charges brought against defendants.

103. Also in March 2007, an incident arose while Siebers was on vacation. Plaintiff arrived for work one morning and did not have the alarm code with her to allow her to enter the building. Nobody else arrived before 9 am, and plaintiff called the West Area Region office and Christine Kottcamp, acting West Area administrator drove up to Overbrook Branch to let plaintiff in the building. West, Brewer and Jackson arrived after Kottcamp at the branch and were reprimanded.

104. Subsequently the harassments from West, Jackson and Brewer escalated, ending soon thereafter in a confrontation wherein Jackson roughly poked plaintiff, and plaintiff called her a "bitch".

105. As a result of the altercation, plaintiff was charged in March 2007 by Siebers with using offensive language and faced a proposed 5 day suspension. Plaintiff believes that the charge was drafted by Kottcamp and signed by Siebers at Hilton's direction.

106. A hearing was held on April 26, 2007, before Robert Bradley, HR Director, in which plaintiff was represented by counsel. Discovery of evidence to be used against plaintiff at the hearing, such as written witness statements, had been withheld from plaintiff prior to the hearing, and witnesses requested by plaintiff were not permitted to be present.

107. However, upon cross-examination of witnesses that were called by the defendants, evidence was presented indicating that profanity was regularly bandied about by the Branch manager Bruce Siebers at the branch, and that several parties were culpable in the incident.

108. Plaintiff was subsequently subjected to the discipline of written warning.

109. The harassments from West, Brewer and Jackson continued, and plaintiff filed several complaints with Siebers. The offending parties were directed to not hang around the front desk when plaintiff was assigned there, unless they also had been assigned there.

110. In the due course of time, Jackson was transferred from the branch.

111. A new supervisor, Rhonda McPhail, replaced Williams as plaintiff's supervisor, who had been built up by Siebers to be a "Dragon lady" who would change the way things operated at the branch.

112. On October 27, 2007, plaintiff scheduled an emergency appointment with her mental health counselor for 1 o'clock p.m. on the same day, with Siebers' approval.

113. When McPhail discovered from Brewer that plaintiff had had scheduled an appointment on short notice, she spoke to plaintiff and upbraided her.

114. Plaintiff was quite shaken and distraught by the incident, adding to her existing emotional distress, and requested to speak a second time with Siebers privately.

115. In the privacy of Siebers' office, plaintiff lost her composure and requested quite emphatically that he keep McPhail from harassing her as other co-workers had, that she did not want to see an escalation of work issues, and said he needed to "f...g fix it."

116. Plaintiff's emergency appointment turned into a two month medical leave.

117. A conference was scheduled between defendants and plaintiff, while plaintiff was on medical leave, in an attempt to settle the administrative claims plaintiff brought against defendants. No resolution was reached.

118. While plaintiff was on medical leave, she was charged by Siebers, who himself routinely used profanity, with using profanity and acting in a threatening manner.

119. After a perfunctory hearing upon her return from medical leave, plaintiff was suspended for 2 days.

120. In April 2008, Bruce Siebers, with McPhail present, informed plaintiff that she would receive a bad annual performance rating for the 2008 year. Although plaintiff had been out of work on certified sick leave, suffering with clinical depression, she would receive a bad review because her absence had affected the quality and quantity of her work

121. In Spring 2008, the harassments continued, including, but not limited to:

- a. West and Brewer saying in plaintiff's presence, "any man wearing a wig is going to Hell";
- b. after an earlier altercation regarding plaintiff's direction of a patron to West for help and use of a stool at the front desk, West damned plaintiff to Hell;
- c. several amenities, such as a fan and two height adjustable chairs, were removed from the front desk area and the employee workroom by West and hidden in various locations in the basement; and,
- d. West, Brewer and McPhail in turn went out of their way to demonstrate that they would not touch any object that came into contact with plaintiff.



122. Plaintiff filed four different complaints with Human Relations, with results unknown and apparently limited to more retaliation.

123. After yet another altercation that resulted from using an available stool at the front desk, West again became loud and threateningly abusive. McPhail interceded and told plaintiff that she had made a "serious error," and threatened to have plaintiff removed from the branch by arrest if she touched the chair again. At that point, Siebers directed plaintiff to leave the Branch immediately.

124. On August 25, 2008, plaintiff filed a written complaint to Hilton, informing him that McPhail was denying her daily restroom breaks, and that Siebers was either ineffectual or unwilling at resolving the situation, or condoning the actions.

125. At the end of August 2008, plaintiff was temporarily transferred without notice to Paschaville Branch for 3 weeks.

126. When leaving Overbrook for the last time as an assigned staff member, plaintiff said to Mr. West; "Have a nice weekend". West retorted, "Burn in Hell," and McPhail, the supervisor, grinned approvingly.

127. On September 18, 2008, plaintiff was transferred to the Rodriguez branch.

128. Plaintiff subsequently filed her fourth complaint with the PCHR, alleging sexual discrimination and harassment, religious discrimination and harassment, and discrimination based on gender identity, which was cross-filed with the Equal

Employment Opportunity Commission (hereafter referred to as "EEOC").

129. Defendants, through Hilton, claimed that Marcellus Cheek, a guard at Rodriguez Branch, filed a complaint alleging sexual harassment against plaintiff.

130. However, Cheek never made a formal complaint, and only made a passing reference to the allegedly offending joke to management during a non-related phone conversation. Moreover, when Cheek discovered that defendants intended to charge plaintiff with sexual harassment, he indicted his unwillingness to file a complaint or cooperate with prosecution of a complaint, but defendants proceeded anyway.

131. As part of her investigation into the matter, defendant Doty approached plaintiff to discuss the matter and misrepresented that the discussion was informal, and plaintiff discussed the joke incident with her, without a union representative being present, under the belief that the "informal" discussion was not part of a formal investigation which would have triggered her contractual right to have a union representative.

132. Subsequently, Doty reversed herself, and declared that the discussion was part of a formal investigation, that plaintiff was being charged with an infraction and that a disciplinary hearing would be convened.

133. On or about November 5, 2008, after a hearing presided over by the charge complainant, defendant Doty, plaintiff was

given a written warning of sexual harassment, for use of inappropriate language during a joke-telling session with co-workers.

134. On February 19, 2009, the head of the Rodriguez Branch, Erik Eskin, informed plaintiff that her 2008 Performance Review was available for review.

135. The Performance Review, completed by Eskin but based on events at Overbrook as told to Eskin by Siebers, graded plaintiff poorly on nine separate categories, none of which were valid or supported by personnel records.

136. Plaintiff acknowledged receipt of the performance evaluation and sought an appellate hearing to challenge the poor evaluation.

137. Prior to the appellate hearing, plaintiff requested from defendants' Human Relations Department copies of time sheets and other relevant records, documents that would show that many of the categories in which plaintiff was graded poorly were, in fact, performed well. The request was denied.

138. In March 2009, plaintiff attended a meeting with defendants' representative to try to settle the administrative complaints plaintiff had filed against defendants. Although a tentative agreement was reached, defendants subsequently informed plaintiff that it could not meet the terms agreed upon. Plaintiff sought "right-to-sue" letters from the relevant agencies on March 31, 2009.

139. The appellate review hearing was held in late April 2009, before Doty, Hilton, Siebers and Eskin, with union representation present.

140. Siebers offered false testimony in some instances as to actions which actually took place in 2007 and were never challenged prior to then.

141. As to other issues, Siebers presented a manila envelope that he said contained at least ten negative memoranda supposedly given to plaintiff, and allegedly initialed by her, regarding the issues that formed the basis of the poor performance evaluation.

142. Plaintiff was unaware of any such negative memoranda being given to her. When she asked at the hearing to see the memoranda, Siebers refused, stating that he had left the original copies in the file back in his office. Hilton further refused to provide copies of the alleged memos to plaintiff or to the union representative, either during or following the hearing.

143. The poor performance evaluation was summarily sustained.

144. Plaintiff believes, and therefore avers, that Siebers drafted the negative performance evaluation, and provided false testimony, at the insistence of and in cooperation with Hilton.

145. Hilton also compelled Barbara Paquette, head of the Paschaville Branch, to draft an unsatisfactory performance report for the three weeks plaintiff was stationed there before being permanently assigned to Rodriguez Branch.

**First Cause of Action -- Discrimination  
TITLE VII**

146. Paragraphs 1 through 145 are incorporated herein as if fully set forth below.

147. Defendants have created, permitted and fostered a work environment hostile to plaintiff, on the basis of her sex, and her failure to conform to sexual stereotypes and religious beliefs, to wit:

a. Defendants have failed to establish set policies and/or guidelines relating to co-workers' interactions with plaintiff based on her sex and/or her failure to conform to sexual and gender stereotypes regarding appearance and behavior;

b. Defendants have demonstrated a preference for the religious convictions of some of plaintiff's co-workers, to plaintiff's detriment, and have undertaken to penalize plaintiff in accordance with the religious conventions of some of plaintiff's co-workers;

c. Defendants have treated plaintiff adversely based upon their preconceived stereotype of proper female and/or male appearance and/or behavior;

d. Defendants have demonstrated a pattern and policy of retaliating against plaintiff for pursuing her rights under Title VII, The Constitution of the United States and the Commonwealth of Pennsylvania, and the laws of the Commonwealth and the City of Philadelphia,

and of delaying reasonable resolution of plaintiff's complaints; and

e. Followed a policy with regard to Plaintiff to not comply with the Philadelphia Fair Practices Ordinance, § 9-1102(h.1).

**Second Cause of Action - Constitutional Torts  
42 USC § 1983 Federal Constitutional Claims**

148. Paragraphs 1 through 147 are incorporated herein as if fully set forth below.

149. Defendants Hilton, Siebers, McPhail and Doty, in their official capacity and their individual capacity, have undertaken actions against plaintiff under color of state law that have infringed on plaintiff's constitutional rights, to wit:

- a. they have infringed on her right of expression guaranteed under the First Amendment of the United States Constitution;
- b. they have denied her due process rights in disciplinary and other actions, in violation of the Fourteenth Amendment of the United States Constitution;
- c. they have denied her equal protection under the laws, in violation of the Fourteenth Amendment of the United States Constitution; and,
- d. they have infringed on her right of religious expression guaranteed under the First Amendment of the United States Constitution.

**Third Cause of Action -- Conspiracy  
42 USC § 1983 Federal Constitutional Claims**

150. Paragraphs 1 through 149 are incorporated herein as if fully set forth below.

151. Defendants Hilton, Siebers, McPhail and Doty, in their official capacity and in their individual capacity, have conspired to deprive Plaintiff of her Constitutional Rights, to wit:

- a. they conspired and cooperated with each other to institute disciplinary proceedings and undertook other disciplinary efforts solely for the purpose of retaliating against plaintiff for bringing discrimination charges against the defendants and for refusing to settle said claims on terms detrimental to her self interests;
- b. they conspired and cooperated with each other to withhold important key evidence from plaintiff in relation to said disciplinary proceedings;
- c. they conspired and cooperated with each other to produce false documentation and evidence against plaintiff in relation to said disciplinary proceedings;
- d. they conspired and cooperated with each other to obtain false testimony against plaintiff in relation to said disciplinary efforts; and,
- e. they undertook the aforesaid effort in order to deprive defendant of her constitutional property rights to her employment and benefits with defendants.

**Fourth Cause of Action - State/Municipal Claims  
Violations of the Philadelphia Fair Practices Ordinance**

152. Paragraphs 1 through 151 are incorporated herein as if fully set forth below.

153. Defendants have created, permitted and fostered a work environment hostile to plaintiff, on the basis of her gender identity, as defined by the Philadelphia Fair Practices Ordinance, § 9-1102(h.1), to wit:

- a. Defendants have failed to establish set policies and/or guidelines relating to co-workers' interactions with plaintiff based on her gender identity;
- b. Defendants have demonstrated a preference for the prejudicial beliefs regarding transgendered persons of some of plaintiff's co-workers, to plaintiff's detriment, and have undertaken to penalize plaintiff in accordance with the prejudicial beliefs of said coworkers;
- c. Defendants have treated plaintiff discriminatorily and adversely based upon their preconceived stereotypes of plaintiff's gender and gender identity; and,
- d. Defendants have demonstrated a pattern and policy of retaliating against plaintiff for pursuing her rights under the Philadelphia Fair Practices Ordinance, § 9-1100 et seq.

154. Said actions are a violation of the Philadelphia Fair Practices Ordinance, § 9-1103(A)(1), which prohibits employment



discrimination based upon gender identity, and, the Philadelphia Fair Practices Ordinance, § 9-1103(A)(6), which prohibits retaliatory actions against an employee who asserts her rights under the ordinance.

**Fifth Cause of Action - Intentional Infliction of Emotional Distress**

155. Paragraphs 1 through 154 are incorporated herein as if fully set forth below.

156. The aforesaid intentional and discriminatory policy, pattern and practice of harassment creating a hostile workplace environment was intentionally undertaken to inflict extreme emotional distress on plaintiff in order to force her resignation.

157. Plaintiff has suffered severe emotional distress as a result of defendants' actions.

**Sixth Cause of Action - Punitive Damages**

158. Paragraphs 1 through 157 are incorporated herein as if fully set forth below.

159. The aforesaid intentional and discriminatory policy, pattern and practice of harassment creating a hostile workplace environment are of such extreme and outrageous nature as would allow an award of punitive damages.

**WHEREFORE**, plaintiff requests this Honorable Court to grant judgment for compensatory and punitive damages in her favor, together with attorney's fees, and costs of suit.

Respectfully submitted,

/s/ John Wendell Beavers  
John Wendell Beavers, Esq.  
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Attorneys for Plaintiff

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1011 N. Randolph St., Philadelphia PA

Address of Defendant: City Hall, Philadelphia PA

Place of Accident, Incident or Transaction: \_\_\_\_\_  
*(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities? Yes  No

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases  
(Please specify)

B. *Diversity Jurisdiction Cases:*

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases  
(Please specify)

**ARBITRATION CERTIFICATION**

*(Check Appropriate Category)*

I, \_\_\_\_\_, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 9/24/09 John Wendell Beavers, Esq. 23671  
 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 9/24/09 John Wendell Beavers, Esq. 23671  
 Attorney-at-Law Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Bobbie E. Burnett	:	CIVIL ACTION
	:	
v.	:	
	:	
City of Philadelphia – Free Library, <i>et al.</i>	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( X )

<u>9/24/09</u>	<u>John Wendell Beavers, Esq.</u>	<u>Plaintiff</u>
<b>Date</b>	<b>Attorney-at-law</b>	<b>Attorney for</b>
<u>215-732-0600</u>	<u>215-732-7810</u>	<u>trial.lawyer@verizon.net</u>
<b>Telephone</b>	<b>FAX Number</b>	<b>E-Mail Address</b>