

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

KYNDRA ROTUNDA)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	1:09-cv-00752-LMB-TRJ
JOSEPH C. ZENGERLE in his personal capacity,)	
DANIEL D. POLSBY in his personal capacity, and)	
THE RECTOR AND VISITORS OF GEORGE)	
MASON UNIVERSITY,)	<u>JURY TRIAL DEMANDED</u>
Defendants.)	

**FIRST AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND DAMAGES**

A. Jurisdiction and Venue

1. This is an action to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C.

§§ 2000e *et seq.*, as amended, 42 U.S.C. § 1981a, the Equal Pay Act of 1963, 29 U.S.C.

§ 206(d), 42 U.S.C. § 1983, and the common law of the Commonwealth of Virginia. Plaintiff

also seeks relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

2. Jurisdiction over this action is established under § 706(f)(3) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(3), and under 28 U.S.C. §§ 1331 and 1332.

3. The amount in controversy exceeds seventy-five thousand dollars (\$75,000).

4. A substantial part of the acts and omissions alleged herein occurred on the premises of the George Mason University School of Law (hereafter, "Law School") at 3301 Fairfax Drive, Arlington, Virginia, and thus occurred within the Eastern District of Virginia.

5. Pursuant to 28 U.S.C. § 1391(b) and § 706(f)(3) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(3), venue is proper in this District.

B. Parties

6. Plaintiff is an adult woman who resides in Villa Park, California, and is a citizen of the State of California.

7. Defendant The Rector and Visitors of George Mason University (hereafter, “University”)

a. is a corporate body established by Va. Rev. Code § 23-91.24;

b. is an agency of the Commonwealth of Virginia;

c. is engaged in the education of large numbers of college and graduate students, employs persons who are engaged in interstate commerce or in the production of goods for interstate commerce, or employs persons who are employed in an enterprise engaged in interstate commerce or in the production of goods for interstate commerce, and is this an employer within the meaning of the Equal Pay Act;

d. is an employer within the meaning of Title VII of the Civil Rights Act of 1964; and

e. has at all relevant times employed more than 500 employees;

8. The Law School operates under the authority and supervision of defendant University.

9. Defendant Daniel D. Polsby is, and at all times relevant to this Complaint has been, Dean of the Law School.

10. Defendant Polsby resides in or near Fairfax, Virginia, and is a citizen of the Commonwealth of Virginia.

11. Defendant Joseph C. Zengerle was the Director of the Clinic for Legal Assistance to Service Members prior to plaintiff's appointment, and has been the Director after plaintiff's resignation. Defendant Zengerle was employed by the Law School at all times relevant hereto.

12. Defendant Zengerle resides in or near Bethesda, Maryland, and is a citizen of the State of Maryland.

C. Statement of the Case

1. Plaintiff's Background, and Employment

13. Plaintiff Rotunda received a B.A. degree in the field of Political Science from the University of Wyoming in 1996, and was honored as the Outstanding Graduate of her class, and a member of Phi Beta Kappa.

a. Plaintiff received her law degree from the University of Wyoming Law School in 1999, and was "The Outstanding Graduate" of her class, and addressed the class at commencement. She was one of the editors of the Law Review. While she attended law school, she worked as the Director of two Residence Halls, managing dozens of employees and Resident Assistants.

b. After serving in the U.S. Army Judge Advocate General Corps, g, the Governor of Wyoming appointed plaintiff as his Deputy Legal Counsel, and then to a senior policy position as Wyoming's State Planning Coordinator. In this capacity, she traveled with the Governor, and advised him on military issues. She was in charge of his policy, office and responsible for managing a \$1.5 million budget. It was an appointed position and she was the youngest person ever to hold the position of Wyoming State Planning Coordinator (a position the Governor himself had earlier held.) She testified on behalf of the Governor and the State of Wyoming before the U.S. Congressional Committee on Base Closures, with respect to a proposal

to close the Veterans Administration Hospital in Cheyenne, Wyoming. She also testified before the Wyoming Senate.

c. Plaintiff graduated from the U.S. Army Judge Advocate General School on the Commandant's List.

d. Plaintiff served in the Judge Advocate General Corps of the U.S. Army. She had a Top Secret security clearance, and represented hundreds of wounded and disabled troops at Walter Reed Army Medical Center, recovering hundreds of thousands of dollars. She has served in several missions related to the global war on terror, served in Guantanamo Bay, was the legal advisor to a team of investigators pursuing leads in the war on terror; and served as a prosecutor at the Office of Military Commissions.

e. Plaintiff served three tours as part of the Global War on Terror, and earned both the Global War on Terror Service Medal and the Global War on Terror Expeditionary Medal.

f. The Commander of Walter Reed Army Medical Center, who later became the Surgeon General of the Army, appointed her as the Deputy Director of a new center to assist wounded troops and their families in the Spring of 2003, during the Second Iraq War. During this appointment, she was the lawyer assigned to Jessica Lynch after Private Lynch's rescue.

g. From September 2006 through August 2007, plaintiff held the rank of Captain in the U.S. Army Reserves.

h. Plaintiff was selected for promotion to the rank of Major while she was Director of the Clinic for Legal Assistance to Servicemembers, at the earliest possible time she was eligible.

i. Plaintiff's book, HONOR BOUND: INSIDE THE GUANTANAMO TRIALS was selected for publication while she was Director of the Clinic for Legal Assistance to Servicemembers, before it had been completed.

j. As discussed more fully below, plaintiff published a number of Op-Ed articles while she was Director of the Clinic for Legal Assistance to Servicemembers.

k. Plaintiff is a member of the State Bar of Wyoming, the Bar of the District of Columbia, and the State Bar of Virginia.

14. The University issued an official job posting for the position of Director of the Clinic for Legal Assistance to Servicemembers on June 23, 2006. A copy is attached hereto as Attachment A.

15. The June 23, 2006 job posting attached hereto as Attachment A was a full and exhaustive description, specifying the following rights and duties for the position of Director of the Clinic for Legal Assistance to Servicemembers:

a. Supervision and administration of "all aspects" of the operations of the Clinic for Legal Assistance to Servicemembers regarding the civil representation of active-duty members of the armed forces and their families for whom retaining counsel would be an undue hardship;

b. Teaching in the Clinic for Legal Assistance to Servicemembers;

c. Classroom instruction on the Rules of Professional Conduct;

d. Classroom instruction on client interviewing techniques;

e. Classroom instruction on counseling techniques;

f. Classroom instruction on the legal assistance program under Title 10 of the United States Code;

- g. Classroom instruction on substantive practices issues;
- h. Supervision of students with respect to guiding them in the screening of applicants for legal representation by the Clinic for Legal Assistance to Servicemembers;
- i. Supervision of students with respect to decisions on the acceptance of applicants for legal representation by the Clinic for Legal Assistance to Servicemembers;
- j. Recruiting bar members in private practice to work with students in providing legal representation to clients of the Clinic for Legal Assistance to Servicemembers;
- k. Reviewing students' proposed legal advice to clients of the Clinic for Legal Assistance to Servicemembers;
- l. Overseeing the administration of the Clinic for Legal Assistance to Servicemembers;
- m. Overseeing the maintenance of relationships with defense officials and JAG personnel for applicant referrals and other purposes;
- n. Maintaining the space of the Clinic for Legal Assistance to Servicemembers, and of its forms and records;
- o. Organizing educational conferences;
- p. Coordinating publications; and
- q. either being a member of the Virginia Bar or being eligible to join the Virginia Bar.

16. Shortly before plaintiff Rotunda applied for the position of Director of the Clinic, defendant Polsby told plaintiff's husband, Prof. Ronald Rotunda, that plaintiff should apply to become Director of the Clinic because Mr. Zengerle was "moving on" to another position and the Clinic needed a new Director. Defendant Zengerle contacted Plaintiff Rotunda and asked

her to apply for the position. He sent her an electronic link to the University's job description, discussed below.

17. The June 23, 2006 job posting attached hereto as Attachment A did not include any role for defendant Zengerle in the operation or supervision of the Clinic for Legal Assistance to Servicemembers, and made no reference to an Executive Director.

18. The plain and natural reading of the June 23, 2006 job posting attached hereto as Attachment A is that the person chosen as Director would be the highest official responsible for the Clinic and would report to the Dean and officers of the Law School.

19. It is neither a reasonable nor a fair inference from the June 23, 2006 job posting attached hereto as Attachment A that the person chosen as Director would be a mere assistant, "right-hand gal," "gal Friday," or clerical aide, or that the person chosen would report to any person other than the Dean and officers of the Law School.

20. On August 28, 2006, Defendant Zengerle called plaintiff Rotunda on the telephone to offer her the position orally.

a. Defendant Zengerle explained to plaintiff Rotunda that Dean Polsby had told him to make this telephone call on Dean Polsby's behalf, and said that he was Dean Polsby's "delegee."

b. In that conversation, plaintiff Rotunda asked what Mr. Zengerle's role would be in the clinic, if any, and defendant Zengerle orally confirmed that she was the new Director and would be responsible for all aspects of the clinic, and that he would be assuming other administrative duties at the law school.

c. Because the semester was already underway, defendant Zengerle explained, he would assist plaintiff Rotunda and be available as a resource to assist her with the transition.

d. Defendant Zengerle further explained that over time, the “teeter totter would tip” and plaintiff Rotunda would assume full and complete authority for the clinic.

21. Plaintiff Rotunda would never have accepted the position of assistant to defendant Zengerle. She accepted the posted position in reliance on the posted job description attached hereto as Attachment A, defendant Polsby’s statement that defendant Zengerle would be moving on to other duties, and defendant Zengerle’s oral assurance that she would assume his former job, and that he would be moving on to other duties.

22. On September 7, 2006, defendant Polsby offered plaintiff an Administrative / Professional Faculty appointment as Director of the Clinic for Legal Assistance to Servicemembers in the Law School, with a starting date of September 10, 2006, at a salary of \$70,000 per year. A copy of the letter is attached hereto as Attachment B.

23. The September 7, 2006 offer letter attached hereto as Attachment B stated a number of conditions that would have to be met, and stated that it represented the “entire employment agreement.”

24. Plaintiff met all of the conditions and obtained all of the approvals specified in the September 7, 2006 offer letter attached hereto as Attachment B.

25. Plaintiff also became a member of the Virginia Bar as specified in the job posting attached hereto as Attachment A.

26. The September 7, 2006 offer letter attached hereto as Attachment B did not include any role for defendant Zengerle in the operation or supervision of the Clinic for Legal Assistance to Servicemembers, and made no reference to an Executive Director.

27. It is a reasonable and fair inference from the September 7, 2006 offer letter attached hereto as Attachment B that the person chosen as Director would be the highest official responsible for the Clinic and would report to the Dean and officers of the law school.

28. It is neither a reasonable nor a fair inference from the September 7, 2006 offer letter attached hereto as Attachment B that the person chosen as Director would be a mere assistant, "right-hand gal," "gal Friday," or clerical aide, or that the person chosen would report to an Executive Director or to any person other than the Dean and officers of the law school.

29. Plaintiff accepted the appointment on September 9, 2006, and served as the Director of the Clinic for Legal Assistance to Servicemembers from September 10, 2006, until her constructive and actual termination on August 27, 2007.

2. **Defendant Zengerle's Attempts to Expand His Role in Order to spend More Time with Plaintiff, and to Retaliate Against Her for Rejecting His Advances**

30. Shortly after she was hired, defendant Zengerle began discriminating against plaintiff because of her sex, sexually harassing her, creating a sexually hostile working environment. These actions, and the actions of defendant Zengerle's allies, are described more fully in paragraphs 31 through 203 below. When plaintiff Rotunda refused his advances, defendant Zengerle began retaliating against plaintiff by attempting to micro-manage her every move, and by attempting to whittle away at her job description. Defendant Zengerle attempted to create an extensive supervisory role for himself, although defendant Zengerle was only a part-time employee, did not have a lawful appointment to any position, did not have a job description, and

although plaintiff Rotunda's job description had no role for defendant Zengerle and was inconsistent with the role defendant Zengerle tried to create for himself.

31. On July 26, 2007, after plaintiff had informed defendant University and Law School officials that she had hired a lawyer to represent her on her sexual harassment and Equal Pay Act claims:

- a. Defendants Polsby and Zengerle required plaintiff to attend a "mediation" in the presence of University and Law School officials;
- b. In violation of defendant University's own Sexual Harassment Policy applicable to all employees, defendants Polsby and Zengerle barred plaintiff from having her own legal counsel present;
- c. At the meeting, defendant Zengerle told plaintiff that he was changing her job description to allow himself to have an extensive supervisory role over plaintiff.
- d. Specifically, defendant Zengerle announced to plaintiff that he would now:
 - (1) supervise and review her work as Director of the Clinic for Legal Assistance to Servicemembers;
 - (2) sign off on her syllabus for the course she would teach;
 - (3) review her grades; and
 - (4) He would now direct the Clinic and plaintiff would essentially function as his assistant;
- e. Defendant Zengerle tried to pressure plaintiff to agree to these new requirements;

f. Plaintiff would not agree to these changes, and referred instead to her contractual job description provided by the University;

g. Defendant Zengerle ordered Plaintiff to make changes to his listing on the Law School web site, to reflect defendant Zengerle's new supervisory role as he envisioned it.

h. Plaintiff Rotunda would not agree to such changes, particularly since she had retained counsel and believed that her teaching role, Zengerle's teaching role, and Zengerle's efforts to make Rotunda his subordinate were central to her Equal Pay Act claim.

i. Defendant Zengerle in essence simply announced that plaintiff Rotunda's position and contractual job description, and the assurances she had been given, were over.

32. Defendant Polsby, defendant Zengerle, University official Patricia Donini, and Law School Assistant Dean Annamaria Nields insisted that University and Law School officials meet and negotiate directly with plaintiff without any lawyer for her present, and after plaintiff retained counsel, refused to allow her lawyer to witness any of the meetings that they required plaintiff Rotunda to attend.

33. Plaintiff rejected defendant Zengerle's proposed changes to her job description.

34. From September 2006 through August 2007, defendant University, defendant Polsby and defendant Zengerle unilaterally attempted to change the terms and conditions of plaintiff Rotunda's employment by setting up defendant Zengerle as plaintiff's manager, empowering defendant Zengerle to micro-manage plaintiff to the point of (a) plaintiff's having to request permission to keep a doctor's appointment, to attend work-related meetings out of the office (b) by reviewing and approving her syllabus for the courses she would teach, (c) by approving

grades for a class defendant Zengerle did not teach, did not attend, did not observe the performance of students within, and could not possibly have responsible input on, and (d) knowingly requiring plaintiff to submit to repeated, hours-long meetings alone with her harasser, often after the work day was over and on one occasion calling plaintiff in from vacation for a meeting, as a condition of keeping her job.

35. Upon information and belief, defendant Zengerle was a part-time faculty member of the Law School during much or all of the 2006-2007 academic year. He did not have any job description.

36. Shortly after plaintiff filed her EEOC complaint, defendant Zengerle announced that he had the power to issue a letter of reprimand against plaintiff Rotunda, gave her a draft reprimand and a very short period of time to respond, refused to consider her detailed response because it was provided by e-mail and shortly after his self-imposed deadline of 5:00 P.M., and defendant then issued a final letter of reprimand against plaintiff Rotunda, all in retaliation for plaintiff's having file her EEOC complaint. Plaintiff was in reasonable fear that her employment record would be marred by successive unjustified reprimands.

37. On August 27, 2007, plaintiff Rotunda resigned because of the ongoing discrimination, harassment, hostile working environment, and retaliation, her reasonable concern that her employment record would be marred by successive unjustified reprimands, the refusal of defendant Polsby and defendant University to take reasonable action to stop the discrimination, harassment, hostile working environment, and retaliation, their encouragement and enabling of the discrimination, harassment, hostile working environment, and retaliation, and their knowing role in changing the terms and conditions of her employment in order to empower and encourage her harasser, defendant Zengerle, and to enable him to make her life miserable. The resignation,

and constructive and actual termination of plaintiff, are discussed in more detail in paragraphs 180-191 below.

38. Defendant Polsby by his actions and omissions:

- a. enabled and encouraged defendant Zengerle to continue his discrimination, sexual harassment, creation of a sexually hostile working environment, and retaliation, against plaintiff;
- b. made no effort to respond to the merits of any of plaintiff's internal complaints about these matters;
- c. made no effort to respond to the merits of plaintiff's final internal complaint in her August 27, 2007 letter of resignation, which she submitted as a result of her constructive termination;
- d. made no effort to cure the effects of his own discrimination, retaliation, actions and omissions;
- e. made no effort to cure the effects of the defendant University's discrimination, retaliation, actions and omissions;
- f. made no effort to cure the effects of defendant Zengerle's discrimination, sexual harassment, creation of a sexually hostile working environment, and retaliation;
- g. prevented plaintiff from exercising the rights to which she was legally entitled under the policies set forth in Attachment D, the official "George Mason University Sexual Harassment Policy & Grievance Procedures (1994)," approved by the University and by the Faculty Senate in that year and made part of the Faculty and Staff Handbook;

- h. simply accepted plaintiff's resignation on August 27, 2007;
- i. required that plaintiff leave the Law School immediately; and
- j. upon information and belief, directed the confiscation of her

personal files on her computer, including a book she was writing.

These allegations are discussed in more detail in paragraphs 42-203 below.

39. Plaintiff Rotunda is currently a Visiting Assistant Professor at Chapman University School of Law. She founded and directs the Chapman Law School *Military Personnel Law Center & AmVets Legal Clinic*, which began in January, 2009. Under her direction, students in the Clinic represent active duty military families and veterans in all types of civil legal disputes, with a particular emphasis on combat wounded troops. She has coordinated with the National Veteran's Legal Services Program (a National Veterans Group) to produce instructional DVDs, and to author a corresponding outline, about military disability law. These materials are designed to help train lawyers around the country in the representation of service members and their families. She is currently a Major in the Army Reserves, JAG Corps. She has written op-eds for the *Christian Science Monitor*, *The Wall Street Journal*, *The Chicago Tribune*, *The Washington Times*, *The New York Sun*, and *The Orange County Register*, and has been interviewed and quoted in major newspapers, including *USA Today* and *The Washington Post*. She is a regular radio and television commentator regarding military law, and the ongoing trials in Guantanamo Bay. She has appeared on over 20 nationally syndicated radio shows, including but not limited to the Michael Reagan Show, the Dennis Miller Show and the Jim Bohannon Show. She has also appeared on national and international television news programs, including but not limited to Hannity's America, the Brit Hume Report, and Al Jazeera. She has

also testified before Congress about issues related to Guantanamo Bay, and issues impacting U.S. troops.

40. Within only a few months of beginning employment at Chapman, Plaintiff was instrumental in securing nearly 3 million dollars in funding for the clinic she directs at Chapman. After only one semester of operations, the clinic is expanding to include satellite offices at several locations around California. In order to meet the growing demand for services provided by the AMVETS Legal Clinic, Chapman has hired two additional clinical professors to work in the clinic Rotunda directs, and is in the process of hiring a full time office manager, to meet the demand. In spring, 2009, which was the inaugural semester for the clinic, plaintiff Rotunda received perfect teaching evaluations by every student who participated in her clinic, receiving a rating of "10" in every category by every student.

41. Plaintiff's success at Chapman University School of Law, without intervening training, demonstrates that she had had all of the abilities necessary to be as successful as Director of the Clinic for Assistance to Servicemembers at the Law School of the defendant University if she had been free of the interference, harassment, hostile environment, and retaliation caused by defendants Zengerle and Polsby.

3. Defendant Zengerle's Sexual Harassment and Retaliation

42. Defendant Zengerle is a large man, approximately 6 feet and one or two inches tall, and heavy-set.

43. Plaintiff Rotunda is a small woman, 5 feet and ½ inch tall with a slender frame.

44. During the period of plaintiff's employment from about November 1, 2006 to the end of her employment, defendant Zengerle subjected plaintiff to a hostile working environment because she is a woman, and sexually harassed her, through a pattern of activity that included

both overtly sexual behavior, and nonsexual behavior demeaning and humiliating her because she is a woman.

45. Defendant University and defendant Polsby had the ability and opportunity to require defendant Zengerle to stop his unlawful conduct, but chose instead to ignore plaintiff Rotunda's repeated complaints, and to protect defendant Zengerle and allow him to continue in his actions.

46. Defendant Zengerle's pattern of harassment included repeatedly engaging in inappropriate and embarrassing sexually-tinged, demeaning, or retaliatory comments and observations, sometimes in front of her class, students outside of her class, or clerical staff members. The following specific incidents are examples of such remarks, but are not all of these remarks:

a. Defendant Zengerle told plaintiff Rotunda over the telephone when extending the oral job offer that he thought he and she had "chemistry," and asked her to agree;

b. At the same time, defendant Zengerle assured plaintiff Rotunda that he was just there to help her, that he was going to be out of the Clinic, and that after the initial period he would no longer be involved;

c. Shortly thereafter, defendant Zengerle gave plaintiff Rotunda a scarf—and recommended that she wear it with a particular outfit he had observed her wearing earlier;

d. While on a vacation shortly thereafter, defendant Zengerle sent a personal card to plaintiff at her home address, which she had not given him;

e. Defendant Zengerle told plaintiff Rotunda, and others in a public setting, that he considered her his "right-hand gal," and assigned her clerical tasks;

f. Defendant Zengerle told plaintiff Rotunda in private that the two of them should treat their working relationship “like a marriage”;

g. Defendant Zengerle told plaintiff Rotunda in private that he considered himself her “knight and protector”;

h. Defendant Zengerle commented to plaintiff Rotunda in private about her red hair, stating that his wife was a red head but was not as attractive as she used to be;

i. Defendant Zengerle on at least three occasions came into plaintiff Rotunda’s office to talk about how stiff he was from his sessions with his personal trainer, flexing his muscles, bending and stretching in front of her, often while standing in a way that blocked her from leaving the area;

j. Defendant Zengerle showed plaintiff Rotunda a picture of defendant Zengerle’s son with his shirt off, and commented to her about how macho his son is and asked her to agree that his son was attractive;

k. Defendant Zengerle explained that his son had great leeway with his boss (a woman) because his son was particularly attractive;

l. Defendant Zengerle spoke to plaintiff Rotunda’s class and referred to “pillow talk” at plaintiff Rotunda’s home between her husband and herself;

m. Defendant Zengerle told plaintiff Rotunda, a week or two in advance of an early December 2006 planned meeting with a law student and a potential client, that he wanted plaintiff Rotunda to join him without the student, and go to defendant Zengerle’s house after the activity, which was expected to be about in the middle of the day, because his wife was not there and he wanted to have a few beers or drinks with plaintiff Rotunda;

n. Defendant Zengerle made this invitation while effectively

blocking plaintiff Rotunda from moving away, by coming behind her desk, sitting on the corner of her desk, and stretching his leg out so that she could not leave and so that his body would be uncomfortably close to her;

o. Plaintiff Rotunda thought the invitation was inappropriate and sexual in nature, and felt uncomfortable because of the fact of the invitation and because of the manner in which it was made;

p. The night before the meeting, defendant Zengerle called to plaintiff Rotunda at home, spoke briefly to plaintiff's husband, and refused to leave a message;

q. Plaintiff Rotunda and the law student met with the client as scheduled, but without defendant Zengerle.

r. On the same day, but after the meeting occurred, defendant Zengerle burst into Rotunda's office, physically towered over plaintiff Rotunda, screaming at plaintiff Rotunda from a foot away, jabbing his finger within six inches of her, and expressed his anger in a tirade that he thought she and he had had "plans," and that she had not gone along with them. He kept screaming at the top of his lungs that he was plaintiff's boss and she had to do what he said. His face was red and his teeth were clenched. Defendant Zengerle placed plaintiff in physical fear for her safety, and she asked him to leave. When he refused to leave, she explained that he was scaring her and that he must leave. Then, defendant Zengerle left her office;

s. Defendant Zengerle discussed the invitation at an official Law School "mediation" imposed on plaintiff Rotunda as a condition of her continued employment, in the presence of University official Patricia Donini and Law School Assistant Dean Annamaria Nields, and said that he understood that plaintiff Rotunda found the invitation uncomfortable and

inappropriate. He added about his proposition that “I wouldn’t take it back. I would do it again and invite you again”;

t. At the same meeting, defendant Zengerle stated in the presence of Ms. Donini and Ms. Niels that he might be like former President Clinton, and might not be able to change;

u. Defendant Zengerle twice insisted that plaintiff Rotunda go on a tour of the building with him and “see where all of the doors lead.” This was an exercise with no justification except the improper one of placing the two of them together in locations without anyone else around;

v. When plaintiff Rotunda refused defendant Zengerle’s advances and suggestions, Defendant Zengerle began to follow a consistent practice of demeaning and marginalizing plaintiff Rotunda:

- (1) by repeatedly calling plaintiff Rotunda his “assistant” although she was in fact running the Clinic and teaching the law school course;
- (2) by repeatedly contradicting and undermining plaintiff Rotunda in front of students;
- (3) by repeatedly asking plaintiff Rotunda to perform needless clerical functions for him, even though defendant Zengerle and plaintiff Rotunda each had secretaries assigned to assist them with clerical functions;
- (4) by untruthfully telling plaintiff Rotunda, in the presence of others, that she was only hired because of her husband’s

status with the Law School;

- (5) by repeatedly yelling loudly, or angrily, or both, at plaintiff Rotunda, often doing so several times in a week;
- (6) by yelling loudly at plaintiff Rotunda when a student or other employee was in the vicinity, yelling things such as “I am your boss!”;
- (7) by repeatedly speaking crudely and using vulgarities to plaintiff Rotunda and yelling loudly enough for others in the vicinity to overhear his outbursts; and
- (8) by assigning plaintiff Rotunda, and his secretary, to decide how defendant Zengerle’s office furniture should be arranged.

47. The remarks described in paragraph 46 above, and their tone and tenor, were unwelcome, made plaintiff Rotunda feel extremely upset, and made her feel as if defendant Zengerle had no respect for her professional achievements and thought she was there as a safe object for his humiliating and embarrassing behavior.

48. The remarks described in paragraph 46, and their tone and tenor, became much worse after plaintiff Rotunda refused defendant Zengerle’s plans for a date in December 2006.

49. In mid-November, 2006, when the Clinic offices were moved to a new building defendant Zengerle demanded a key to my office and the Defendant University, and possibly defendant Polsby, provided defendant Zengerle with a key to the office, making it useless as a refuge from defendant Zengerle’s tirades and threatening physical behavior.

50. On June 7, 2007, plaintiff requested Vice Dean Lerner and Assistant Dean Nields, and later the Equity Office, requesting that it get back the key to her office from defendant Zengerle. She explained her concerns, and explained them again, in a series of e-mails during the following week. She even offered to pay to have the lock changed. Defendants took no action.

51. On a few occasions, defendant Zengerle was so hostile in the tone and tenor of his remarks that he placed plaintiff Rotunda in reasonable fear of her physical safety, to the point that she felt she had no choice but to leave her office and its building, and to work at the main law school building across the parking lot from the building in which plaintiff Rotunda's and defendant Zengerle's offices were located.

52. On July 9, 2007, the first day plaintiff Rotunda was back in the office after defendant University had rejected her complaint of sexual harassment and a sexually hostile working environment, defendant Zengerle saw plaintiff Rotunda outside a student office at the side of a corridor at the Law School, putting her key in the lock of the office. The corridor was six or more feet wide, and there was no furniture or equipment narrowing its effective width between defendant Zengerle and the plaintiff. Although there was ample room for defendant Zengerle to pass by plaintiff Rotunda without touching her, he crowded her against the wall of the corridor and rubbed his entire body against her body with enough pressure that, if she had placed her feet differently, she might have been inadvertently compelled to take a step forward to avoid falling. Defendant Zengerle's action was deliberate, and not accidental. He did not pause, and said nothing.

53. Nine days later, on July 18, 2007 defendant Zengerle stated in a meeting also attended by Law School and University officials that he recalled the incident because he recalled that plaintiff Rotunda was wearing a black skirt at the time.

54. Defendant Zengerle's memory of plaintiff Rotunda's garment on the day he rubbed against her was deeply disturbing to plaintiff Rotunda, and reasonably led her to believe he was obsessed with her.

55. Defendant Zengerle's pattern of harassment included repeatedly engaging in inappropriate and embarrassing sexually-tinged, demeaning, or retaliatory physical conduct that has had the effect of making plaintiff feel anxious and physically insecure. There was no legitimate reason justifying this conduct. In addition to the conduct described in paragraphs 51 through 54 above, the following specific incidents are examples of such conduct, but are not all of this type of conduct:

a. Defendant Zengerle and plaintiff Rotunda worked together on a floor that was ordinarily not occupied by others. Defendant Zengerle routinely called plaintiff into his office for meetings around his conference table, then reached over and closed the door, and then insisted on sitting so close to plaintiff Rotunda that their arms were touching.

b. Defendant Zengerle repeatedly came uncomfortably close to plaintiff Rotunda by coming behind her desk, and within a few inches of her, to use her computer mouse or keyboard, or similar activities bringing him very close to her;

c. On some of these occasions, defendant Zengerle brought himself even closer to plaintiff Rotunda by reaching around plaintiff's body;

d. Defendant Zengerle repeatedly came uncomfortably close to plaintiff Rotunda by requiring her to come behind his desk to lean in close to him to point to

places on the documents on the computer screen, while not moving out of the way but leaning closer to plaintiff;

e. Defendant Zengerle repeatedly came uncomfortably close to plaintiff Rotunda by requiring that they sit side by side while working, so that his arm would touch her arm;

f. On some of these occasions, defendant Zengerle brought himself even closer to plaintiff Rotunda by putting his arm around the back of plaintiff's chair;

g. Defendant Zengerle repeatedly came uncomfortably close to plaintiff Rotunda by requiring that she show him how to use functions on his computer, insisting she put her arms around him to demonstrate the function while he is sitting in his chair;

h. Defendant Zengerle often came behind plaintiff Rotunda's desk and sat on the corner of her desk;

i. Defendant Zengerle sometimes leaned against plaintiff Rotunda's desk with his legs outstretched, pinning plaintiff in and making it difficult for her to escape;

j. Defendant Zengerle informed plaintiff Rotunda in November 2006 that he had met with a Law School official in order to get a floor-to-ceiling wall erected, separating their work stations from the surrounding area. Such a wall would prevent any witnesses to any further physical advances or abusive physical behavior by defendant Zengerle against plaintiff Rotunda behind the wall. Plaintiff Rotunda complained about the plan to create the wall, but Assistant Dean Annamaria Niels informed plaintiff that the wall would go up anyway. Construction had not yet begun by the time plaintiff resigned;

k. When plaintiff Rotunda refused defendant Zengerle's advances and suggestions, Defendant Zengerle began to follow a consistent practice of demeaning and

marginalizing plaintiff Rotunda:

- (1) by making offensive hand gestures with the extended third finger of a closed fist, once using both hands to “flip off” plaintiff simultaneously with each hand;
- (2) by summoning her with a crooked index finger demanding that she drop a call with a client or other business to attend to him immediately
- (3) by telling plaintiff Rotunda that when he crooked his index finger that meant that she was supposed to drop whatever she was doing, come into his office, and see what he needed;
- (4) by repeatedly pointing his finger at plaintiff Rotunda in an angry fashion; and
- (5) by attempting to intimidate plaintiff Rotunda with his size and bulk, by standing over her and placing himself or his face within a few inches of her while yelling at her.

56. The job posting that led to plaintiff Rotunda’s application and hire with defendant University, Attachment A hereto, stated that she would “teach, supervise and administer all aspects of clinic operations” It did not mention any supervision by defendant Zengerle.

57. Defendant Zengerle had no written job description during the period of time in which plaintiff Rotunda was employed by defendant University.

58. Following an academic freedom complaint made by Prof. Ronald Rotunda, the Academic Freedom and Faculty Grievance Committee of the Law Faculty performed an investigation and issued a Report on April 8, 2008. The Report concluded at p. 8:

Kyndra's claim that she believed that she had full authority to conduct the day-to-day operations of CLAS seems well supported; her own position description says so; and we have not located any document defining Zengerle's authority in that regard.

59. Indeed, the report stated that Mr. Zengerle had been employed under a one-year contract from June 2006 to June 2007, and continued at p. 12:

As Zengerle has remained employed during the 2007-08 Academic Year, apparently under this same letter, his continuation or renewal arguably is in violation of the Law School's Bylaws, which limits the Dean's instructional faculty appointments to one year only without separate faculty approval.

(Footnote omitted.)

60. Defendant Zengerle had attended a few classes and then left plaintiff Rotunda entirely in charge while he was on a vacation for some weeks. When he was present, he involved himself in plaintiff's activities in the Fall 2006 semester while he was trying to make sexual advances to her.

61. In December 2006, following plaintiff's thwarting of defendant Zengerle's plans for a drinking date at his home while his wife was absent, defendant Zengerle insisted at the top of his lungs that he was plaintiff's boss.

62. Plaintiff then made her first internal complaint of sexual discrimination, sexual harassment, and the creation of a hostile working environment, on December 13, 2006, as discussed more fully in paragraph 123 below.

63. After plaintiff Rotunda's December 2006 internal complaint, defendant Zengerle retaliated against her by violating the terms of her employment contract and changing his former practices in the following respects:

a. by micro-managing every aspect of plaintiff Rotunda's work and teaching;

b. by objecting to plaintiff's annual two weeks of military duty and insisting until the last minute that he would not teach her classes for her during these two weeks, although Federal law required that she be released for such duty on two weeks' notice and although plaintiff had given defendant Zengerle four months' notice;

c. by requiring in August 2007 that she submit proposed grades for Summer session students to him in advance of transmitting them to the Registrar, notwithstanding that:

- (1) he had not taught any classes in the Summer session;
- (2) he had not attended any classes in the Summer session from beginning to end;
- (3) he had not observed the students in class in the Summer session except for one period of 15 to 20 minutes;
- (4) he had not reviewed the paperwork submitted by students in the Summer session;
- (5) he had not reviewed the work of students in the Clinic in the Summer session; and
- (6) the Law School had sent to plaintiff Rotunda alone the official form for recording grades in the Summer session;

d. by requiring that he approve her syllabus for her classes in advance of transmitting it to the Librarian;

e. by removing her syllabus from the web site of the Law School;

f. by requiring that he approve her class schedule in advance of transmitting it to the Assistant Dean;

g. by requiring her to relinquish all control over the classes she taught;

h. after plaintiff Rotunda filed her charge of discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”), by requiring that she obtain his personal approval for doctor’s appointments and submit medical documentation for such visits thereafter, although Vice Dean Lund had informed her in October 2006 that she simply needed to reflect personal time off on her time card at the end of the month;

i. by requiring that she obtain his personal approval for each occasion on which she left the office, even if she needed to leave the office on Clinic business,;

j. by requiring that she obtain his personal approval for vacation time;
and

k. by requiring that she meet alone with him for hours at a time.

64. After defendant Polsby barred plaintiff Rotunda from using the normal complaint procedures and diverted plaintiff’s internal complaints to an ineffective mechanism virtually guaranteed to reject her complaint, and after that mechanism did in fact reject the complaint, as alleged more fully in paragraphs 131-132 below, defendant Zengerle stepped up the harassing and retaliatory actions described in paragraph 63 above.

65. On Monday, August 13, 2007, the EEOC mailed the official Notice of plaintiff Rotunda’s August 3, 2007, charge of discrimination, harassment, and retaliation, and a copy of the charge, to the University.

a. Under Rule 6(d), Federal Rules of Civil Procedure, mail is presumed received within three days after it is mailed.

b. Upon information and belief, the EEOC’s Notice of the charge, and the charge itself, would have been received by the University no later than Thursday, August 16, 2007.

66. On Monday, August 20, 2007, two business days after the presumptive receipt of the EEOC's Notice of plaintiff's August 3, 2007 charge of discrimination, harassment, and retaliation, and the text of the charge, defendant Zengerle called plaintiff Rotunda to meet with him about grading the Summer School students in the Clinic. This was a pretext. Instead of discussing the stated purpose of the meeting, defendant Zengerle gave plaintiff Rotunda a proposed three-page written reprimand for supposed events of insubordination that had assertedly happened as far back as December 2006. The draft threatened plaintiff with firing if she continued to engage in such asserted insubordination.

67. On August 23, 2007, before 5:00 P.M., plaintiff provided defendant Zengerle by e-mail with an eight-page response to each of his criticisms. Her response included two attachments responding to one of his criticisms by documenting that she had had both a dental appointment and a medical appointment on July 25, 2007. Her response also maintained that Zengerle was retaliating against her because she had recently filed a sexual harassment complaint against him.

68. On Friday, August 24, 2007, defendant Zengerle gave plaintiff Rotunda the formal written reprimand he had earlier presented in draft form.

69. Defendant Zengerle refused to consider this response in good faith, and demonstrated bad faith in his handling of the response:

- a. Defendant Zengerle's cover letter complained that plaintiff had not submitted her response by 5:00 P.M. on August 23, 2007, although plaintiff had in fact done so;
- b. Defendant Zengerle's cover letter complained that plaintiff had submitted her response by e-mail, although he had not previously stated that her response had to be submitted in person;

c. Defendant Zengerle's cover letter failed to mention that defendant Zengerle had left work early on August 23, 2007, and that the only way plaintiff could submit her response thereafter on August 23 was by e-mail;

d. Defendant Zengerle's cover letter and reprimand did not discuss the merits of plaintiff's response, but the cover letter merely said that it would not affect his decision to issue the reprimand even if he were to consider it;

e. Defendant Zengerle's only other statement as to the response was that, since it alleged retaliation, he had forwarded it to the Office of Equity.

70. The proposed and final reprimand were in retaliation for plaintiff's filing of her EEOC charge of discrimination, harassment, and retaliation:

a. The reprimand set forth defendant Zengerle's view that, despite plaintiff's contract and his own statements to the contrary, he was plaintiff's supervisor as to all aspects of the Clinic and had the authority to direct all of her actions in complete detail;

b. The reprimand stated that plaintiff Rotunda had been insubordinate to him in the April 25, 2007 meeting with defendant Polsby, Vice Dean Nelson Lund, and Assistant Dean Nields, but did not mention that at the April 25 meeting defendant Zengerle had acknowledged that he had behaved improperly, defendant Zengerle had apologized to plaintiff, and defendant Zengerle had promised to stop the behaviors she had found objectionable;

c. The reprimand complained that defendant Zengerle had instructed plaintiff to discuss issues with a supervising attorney, and had instead transferred the case to another supervising attorney, but did not mention that the supervising attorney in question was defendant Zengerle's wife, who was adamant that the Clinic should withdraw from representation of the client and who stated that she was willing to withdraw only if the Clinic

did not transfer the matter to another supervising attorney, did not mention defendant Zengerle's conflict of interest in involving his wife in a Clinic matter and taking her side without regard to the interests of the client, and did not mention the ethical problems arising from that situation or that plaintiff's action saved the Clinic from committing an unethical action and from failing to serve the client properly;

d. The reprimand complained that plaintiff Rotunda had made two medical appointments without clearing the appointments with him, although the Law School did not have any such requirement and although plaintiff's contract and normal Law School practice did not provide for or allow that interference with her medical appointments.

e. The reprimand complained that plaintiff Rotunda had refused to accept defendant Zengerle's written position with respect to outside media, but did not mention that defendant Zengerle was referring to his insistence that he be able to publicize case results before they were even finalized, and without obtaining the advance permission of the client. In fact, he did publish case results before they were finalized and without receiving client permission to breach client secrets;

f. The reprimand complained that plaintiff Rotunda had submitted students' grades to the Registrar without first showing them to defendant Zengerle, but failed to mention that he had always previously been content to see the grades after they were submitted and that plaintiff did not know of his change of position until after the grades had been submitted;

g. The reprimand complained that plaintiff Rotunda had sent a requested report to defendant Polsby instead of to defendant Zengerle, but did not mention that

defendant Polsby has requested the report, and that plaintiff had sent the report to both of these defendants in the same e-mail;

h. The incidents described in the reprimand could not in any event be considered acts of insubordination.

i. In fact, at the asserted time of the incidents described in the reprimand, defendant Zengerle was repeatedly stating that plaintiff Rotunda was doing a great job.

71. Upon information and belief, defendant Zengerle made the remarks described in paragraphs 46-48, 51, and 53 above, and engaged in the physical conduct described in paragraphs 51-55 above, and altered the terms and conditions of plaintiff's employment as described in paragraphs 63-64 and 66-70 above, for the purpose of making sexual advances to plaintiff Rotunda, and when these did not get a favorable response and when plaintiff Rotunda complained about his harassment, for the purpose of humiliating, degrading, and embarrassing her in order to punish her and retaliate against her.

72. Defendants' exercise of control to violate the terms of plaintiff Rotunda's employment contract, and their attempts to isolate her physically and subject her to repeated multi-hour meetings alone with defendant Zengerle, changed the substance, nature, terms, and conditions, of her employment.

73. Defendants' exercise of control to violate the terms of plaintiff Rotunda's employment contract, and their attempts to isolate her physically and subject her to repeated multi-hour meetings alone with defendant Zengerle, were tangible employment actions.

74. Defendants' exercise of control to violate the terms of plaintiff Rotunda's employment contract, and their attempts to isolate her physically and subject her to repeated

multi-hour meetings alone with defendant Zengerle, made it materially more difficult for plaintiff to perform her job.

75. Defendant Zengerle has treated female employees differently than he treats male employees by attempting to micro-manage them, control them, and demonstrate his control of them in a demeaning and abusive manner, both at the Law School and at previous employers or organizations.

76. Defendant University was aware of Defendant Zengerle's unequal treatment of women from September 2006 through August 2007, and took no effective action to stop it.

77. Officials of defendant University have attempted to excuse defendant Zengerle's conduct by telling plaintiff that that is just the way defendant Zengerle is.

78. A reasonable person in plaintiff's position would have found defendant Zengerle's conduct, and the above-described conduct of all defendants, objectionable.

4. Defendant University's and Defendant Polsby's Failure to Take Reasonable Steps to Prevent Sexual Harassment

79. Defendant University was under a duty imposed by Title VII of the Civil Rights Act of 1964, and defendant Polsby was under a duty imposed by the Equal Protection Clause of the Fourteenth Amendment to the Constitution, to take reasonable steps to prevent sexual harassment, a sexually hostile working environment, and retaliation from occurring, and to provide a reasonable means of resolving sexual harassment and sexually hostile working environment complaints when they are made.

80. The prevention of sexual harassment and a sexually hostile working environment required, at a minimum, that defendants University and Polsby make a reasonable effort to determine whether a candidate for employment has previously been the subject of sexual harassment complaints, or complaints of a sexually hostile working environment, or whether the

candidate has previously retaliated against persons who complained about such conduct, in past places of employment, and to refuse to hire such candidates.

81. Defendants University and Polsby did not make a reasonable effort, prior to or after hiring defendant Zengerle in each year in which he has been hired, to determine whether defendant Zengerle had previously been the subject of sexual harassment complaints, or complaints of a sexually hostile working environment, or in retaliation against complainants about such conduct, in past places of employment.

82. Upon information and belief, if defendants University and Polsby had made a reasonable effort to determine whether defendant Zengerle had previously been the subject of sexual harassment complaints, or complaints of a sexually hostile working environment, or retaliation against the complainants, in past places of employment, they would have found that he had been the subject of such complaints.

83. The prevention of sexual harassment, a sexually hostile working environment, and retaliation also requires, at a minimum, that defendants University and Polsby take into account complaints of sexual harassment against an existing employee to determine whether the accused harasser may continue or begin new sexual harassment, or continue or engage in a new sexually hostile working environment, or engage in retaliation against complainants against such conduct, thereby endangering female employees of defendants, and discipline or discharge such accused harassers.

84. Defendants University and Polsby chose to ignore plaintiff's and others' complaints of sexual harassment, complaints of the creation of a sexually hostile working environment, and complaints of retaliation, against defendant Zengerle, thereby endangering female employees of defendants.

85. Defendants University and Polsby chose to ignore the sexual harassment complaint procedures described in Attachment D, the official “George Mason University Sexual Harassment Policy & Grievance Procedures (1994),” approved by the University and by the Faculty Senate in that year and made part of the Faculty and Staff Handbook. These procedures were an effective means of investigating and resolving complaints of sexual harassment, complaints of the creation of a sexually hostile working environment, and complaints of retaliation. Defendants instead used a formless *ad hoc* procedure that was virtually guaranteed to protect defendant Zengerle without regard to the merits of the complaints made against him.

86. In September 2007, after defendant Polsby’s and defendant University’s improper diversion of plaintiff Rotunda’s formal complaint of sexual discrimination, sexual harassment, the creation of a sexually hostile working environment, and retaliation, University Provost Peter Stearns requested the University Faculty Senate to change the Law School’s procedures for handling such complaints from the procedures set forth in Attachment D to the type of formless procedure defendant Polsby and defendant University had followed with respect to plaintiff Rotunda’s complaint. The proposal was not accepted.

87. Defendants University and Polsby did not take reasonable and effective steps to prevent sexual harassment of women by defendant Zengerle, or to prevent him from creating a sexually hostile working environment against women, or to prevent him from retaliating against women who complained against him.

88. Defendants University and Polsby did not take reasonable and effective steps to create a reasonable and effective means for the investigation and resolution of complaints of sexual harassment, complaints of the creation of a sexually hostile working environment, and retaliation.

89. Instead, Defendants University and Polsby empowered, encouraged, and enabled defendant Zengerle to step up his sexual harassment of plaintiff Rotunda, to continue and accelerate the creation of a sexually hostile working environment against her, and to continue and intensify retaliation against her.

90. A reasonable person in plaintiff's position would have found the defendant University's and defendant Polsby's acts and omissions objectionable.

5. Defendant University's and Defendant Polsby's Pay Discrimination

91. The duties of plaintiff's position as Director of the Clinic for Legal Assistance to Servicemembers were set forth in the June 23, 2006 job posting attached hereto as Attachment A.

92. From September 2006 through August 2007, plaintiff performed all of the duties in the job posting despite defendant Zengerle's unhelpful interference. Upon information and belief, she performed them at least as well as, if not better than, defendant Zengerle had performed them in prior years or performed them in later years.

93. From September 2006 through August 2007, defendant University relied on plaintiff to perform the duties set forth in the June 23, 2006 job posting attached hereto as Attachment A.

94. Plaintiff developed the lesson plan for each of the classes she taught in the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

95. Plaintiff supervised students guiding the screening of applicants for legal representation by the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

96. Plaintiff decided on acceptance of representation of applicants for legal representation by the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

97. Plaintiff recruited bar members in private practice for the representation of applicants for legal representation by the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

98. Plaintiff reviewed proposed student legal advice for persons represented by the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

99. Plaintiff reviewed all of the papers submitted by students in the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

100. Plaintiff observed the classroom performance of students in the Clinic for Legal Assistance to Servicemembers in all classes from September 2006 through August 2007.

101. Plaintiff observed and reviewed all aspects of the performance of students in the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

102. Plaintiff issued the grades that were recorded unchanged, for the students in the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

103. Plaintiff oversaw the administration of the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

104. Plaintiff maintained relationships with defense officials and military Judge Advocate General personnel for purposes of referrals of applicants for legal representation by the Clinic for Legal Assistance to Servicemembers, and for other purposes, from September 2006 through August 2007.

105. Plaintiff raised funds from both public and private sources for the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

106. Plaintiff maintained the space, forms, and records of the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007.

107. Plaintiff coordinated the publications of the Clinic for Legal Assistance to Servicemembers from September 2006 through August 2007. She prepared a Clinic newsletter that was not issued because defendant Zengerle thought it did not include enough information about him. She wrote Op-Ed articles that were published in the *Wall Street Journal* and the *Christian Science Monitor*.

108. Defendant University paid plaintiff a salary at an annual rate of \$70,000 a year for performing these duties.

109. Upon information and belief, defendant Zengerle performed all or some of the significant duties set forth in the June 23, 2006 job posting attached hereto as Attachment A, during each of the academic years from 2004-2005 to date, although he never became a member of the Virginia Bar.

110. Upon information and belief, during each of the academic years from 2004-2005 to date, defendant Zengerle performed no significant duties other than those set forth in the June 23, 2006 job posting attached hereto as Attachment A.

111. Upon information and belief, during each of the academic years from 2004-2005 to date, defendant University paid defendant Zengerle at a much higher rate of pay than it paid plaintiff Rotunda, even when defendant Zengerle was on part-time status.

112. Upon information and belief, during some of the academic years from 2004-2005 to date, defendant University paid defendant Zengerle at a rate of \$ 131,250 a year, even when defendant Zengerle was on part-time status.

113. Defendant Zengerle was being paid at an annual rate of \$ 131,250 a year as of August 22, 2007.

114. Upon information and belief, after plaintiff Rotunda was constructively and actually discharged, defendant Zengerle again assumed the responsibilities plaintiff Rotunda had held, and continued to be paid at a significantly higher rate than plaintiff Rotunda had received when she performed the job.

115. No legitimate factor other than sex explains the pay disparity between plaintiff Rotunda and defendant Zengerle.

116. Upon information and belief, defendant Zengerle was fired, or forced to resign, from some of his previous positions.

117. Upon information and belief, defendant Zengerle has not capably directed the operations of the Clinic for Legal Assistance to Servicemembers during the period prior to the September 2006-August 2007 period or thereafter.

118. In the course of his work at the Law School, defendant Zengerle engaged in conduct that indicated a basic lack of awareness of the practice of law, a basic lack of awareness of the rules of ethics, and a basic lack of awareness of sound management practices for law offices, including:

- a. the failure to keep client files in good order;
- b. the failure to maintain an accurate list of clients so that plaintiff would be aware of all the clients of the Clinic for Legal Assistance to Servicemembers;
- c. the failure to have a documented system of conflict checking rather than relying on his personal memory;
- d. deliberately publicizing the results of cases without first speaking to the client and obtaining authorization;
- e. breaching attorney-client confidentiality;

- f. ignoring ethical rules when they constrain his impulses;
- g. altering internal e-mails;
- h. instructing plaintiff to lie to school officials;
- i. falsely claiming that plaintiff associated herself with untrue statements he was making at the time;
- j. making a false report by materially exaggerating the activities of the Clinic for Legal Assistance to Servicemembers to a member of Congress and perhaps to others;
- k. attempting to pressure plaintiff into agreeing with the false report, both before and after she complained to defendant Polsby and others about this matter;
- l. demanding that plaintiff reveal her private medical information to him;
- m. ignoring a conflict of interest when he selected his own wife to handle a case and demanded that plaintiff overlook serious problems with her handling of the case and not reassign it to another attorney; and
- n. screaming at plaintiff for refusing to follow his wife's demand that the Clinic fire a client and not secure another supervising attorney for the client.

119. Upon information and belief, defendant Zengerle has not truthfully reported the operations of the Clinic for Legal Assistance to Servicemembers during the academic years prior to the 2006-2007 academic year or thereafter.

120. Upon information and belief, defendant Zengerle has not completed any book or scholarly publication while he has been employed by defendant University.

121. The Academic Freedom and Faculty Grievance Committee of the Law Faculty confirmed problems with defendant Zengerle's performance and understanding, stated that there was an "obvious conflict of interest problem" in defendant Zengerle's intervention in a problem involving his wife, and suggested that there was a need for oversight of the Clinic.

122. The Clinic for Legal Assistance to Servicemembers was the only clinic at the Law School with a full-time faculty member directing the clinic.

6. Plaintiff Rotunda's Internal Complaints

123. On December 13, 2006, Ms. Rotunda made her first complaint to the Law School about defendant Zengerle's conduct. She complained orally to Vice Dean Nelson Lund that Mr. Zengerle had yelled at her, embarrassing her in the hearing of a student she believed was within hearing distance, because she did not go to his house for drinks during the work day when his wife would not be there. Plaintiff Rotunda told him what happened, that serious problems existed with defendant Zengerle, and that it had gotten worse after she thwarted defendant Zengerle's plans for drinks. Vice Dean Lund told her that he recognized the problem, that there was "no easy answer" and that he would work toward a solution and get back to her. He never got back to her.

124. On April 23, 2007, plaintiff Rotunda met with defendant Polsby and complained that defendant Zengerle was out of control, that he had repeatedly been abusive to her, that he was attempting to control every aspect of her work in violation of his job duties and contract, that he had insisted that she drop anything she was doing and attend to him whenever he beckoned his with his finger, that he had become very upset with her when she refused to interrupt a telephone call with a client simply because he had beckoned with his finger, that he repeatedly attempted to treat her as a clerical employee although a clerical employee was assigned to the Clinic, and that defendant Zengerle had anger management problems. Plaintiff informed

defendant Polsby that defendant Zengerle had asked her out and that she had refused. She provided extensive details about defendant Zengerle's conduct, and defendant Polsby took extensive notes. He also informed plaintiff that he had "heard all about it," a statement that plaintiff took to mean that Vice Dean Nelson Lund had reported to defendant Polsby about her December 13, 2006 complaint to Vice Dean Lund. Defendant Polsby told her that he had never observed abusive behavior by defendant Zengerle and could not believe defendant Zengerle had an anger management problem because he had not observed it. Defendant Polsby did not address the obvious conclusion that defendant Zengerle treated women much more harshly than men.

125. Plaintiff Rotunda complained again on April 25, 2007 at a meeting with defendant Dean Polsby, Vice Dean Lund, Ms. Nields, and defendant Zengerle. She complained of the same behaviors she had described to defendant Polsby separately in their April 23, 2007 meeting, including the fact that defendant Zengerle had asked her out and she had refused. Plaintiff Rotunda offered defendant Polsby and each of the others copies of the diary she had kept documenting defendant Zengerle's behavior, but Nelson Lund said he did not think there was a need to get into that and defendant Zengerle, Assistant Dean Annamaria Nields, Vice Dean Lund and defendant Polsby each declined to accept the copies she had brought with her. Mr. Zengerle acknowledged that he had behaved improperly, apologized to plaintiff, and promised to stop the behaviors she had found objectionable. The officials named above then agreed over plaintiff's objection that an appropriate remedy was to require plaintiff to meet with defendant Zengerle for regular lunches together, in order to improve communications.

126. Defendant Zengerle almost immediately breached his promise to stop his objectionable behavior. After defendant Zengerle had engaged in a twenty-minute screaming

tirade against plaintiff for transferring a client from defendant Zengerle's wife to another supervising attorney to avoid the problems caused by defendant Zengerle's wife, as described in more detail in paragraphs 116(m) and (n) above.

127. On June 7, 2007, Ms. Rotunda informed Vice Dean Lerner of the Law School by an e-mail memorandum that the problems of a continuing sexually hostile environment had not been resolved, and that she still had a complaint. Nothing changed for the better as a result of this complaint.

128. Plaintiff Rotunda complained again of a continuing sexually hostile environment on June 12, 2007, in an e-mail to Vice Dean Lerner. Nothing changed for the better as a result of this complaint.

129. On June 13, 2007, plaintiff Rotunda filed her formal internal sexual harassment and sex discrimination complaint with the Office of Equity and Diversity Services pursuant to the procedures set forth in Attachment D, the official "George Mason University Sexual Harassment Policy & Grievance Procedures (1994)," approved by the University and by the Faculty Senate in that year and made part of the Faculty and Staff Handbook.. She expressly checked the boxes for "Sexual Harassment" and "Gender."

130. Defendants University and Polsby were required to follow the procedures set forth in Attachment D, but refused to do so in retaliation for plaintiff's attempt to exercise her rights under Title VII of the Civil Rights Act of 1964, the Equal Protection Clause of the U.S. Constitution, and 42 U.S.C. § 1983.

131. The formality of the process invoked by Ms. Rotunda is described in Attachment D, the official "George Mason University Sexual Harassment Policy & Grievance Procedures

(1994),” approved by the University and by the Faculty Senate in that year and made part of the Faculty and Staff Handbook.

a. The legally required procedure in Attachment D states in Part I on p. 2:

This grievance procedure is intended to provide a fair, prompt and reliable determination about whether the University's sexual harassment policy has been violated. It is available to anyone who, at the time of the alleged harassment, was either employed by or enrolled at GMU or any applicant for employment or enrollment at the university. No University employee or student is exempt from the jurisdiction of this policy.

b. Defendants University and Polsby refused to follow this requirement.

c. The legally required procedure in Attachment D states in Part III on p. 3 that within ten days of filing a formal sexual harassment complaint the President will appoint five members of the Sexual Harassment Board as a Sexual Harassment Hearing Panel, specifies the make-up of the Panel, and provides that the Co-Chairs of the Sexual Harassment Board, who are elected by the forty members of the Board, will select a Presiding Hearings Officer.

d. Defendants University and Polsby did not follow this procedure, and did not involve anyone outside of the respondent-friendly Office of Equity to participate in the investigation or resolution of plaintiff's complaint.

e. The legally required procedure in Attachment D states in Part VI on p. 4 that any attempted informal resolution of a complaint of sexual harassment through mediation must be by agreement, and that in the event of agreement: “If the complainant and respondent agree to pursue mediation, the University Ombudsman will arrange for a mediator who is mutually acceptable to the parties.”

f. Defendants University and Polsby did not follow this procedure, but instead demanded that plaintiff Rotunda submit to “mediation” as a condition of keeping her job.

g. Defendants University and Polsby further demanded, in violation of this procedure, that plaintiff submit to mediation before Patricia Donini, an employee of the Office of Equity who was not acceptable to plaintiff.

h. The legally required procedure in Attachment D states in Part VIII on p. 5 that the respondent must, within ten days of the complaint, respond fully in writing to each allegation of the complaint;

i. Defendants University and Polsby did not follow this procedure, and on information and belief did not require defendant Zengerle to make any written response;

j. The legally required procedure in Attachment D states in Part IV on p. 4 that the respondent’s failure to answer a charge must not prevent the process from proceeding.

k. Defendants University and Polsby did not follow this procedure, and allowed plaintiff’s complaint to be denied on the basis of “insufficient evidence”;

l. The legally required procedure in Attachment D states in Part VIII on p. 5 that: “Failure to respond may result in the hearing proceeding solely on the basis of the complainant's testimony.”

m. Defendants University and Polsby did not follow this procedure, and allowed plaintiff’s complaint to be denied on the basis of “insufficient evidence.”

n. The legally required procedure in Attachment D states in Part IX on p. 5 that: “each party to the proceeding will have the right to object to the appointment of any panel member on the grounds that member's participation would preclude a fair hearing.”

o. Defendants University and Pilsbury did not follow this procedure, and allowed plaintiff's complaint to be denied by undisclosed persons within the Office of Equity.

p. The legally required procedure in Attachment D states in Part VIII on p. 5 that: “All formal complaints will be heard before a Hearing Panel. When a hearing is requested, the co-chairs of the Sexual Harassment Board will name five (5) members from the Board to constitute a Hearing Panel within ten working days after receiving the request.”

q. Defendants University and Pilsbury did not follow this procedure, and allowed plaintiff's complaint to be denied on the basis of “insufficient evidence” without ever holding a hearing to obtain evidence.

r. The legally required procedure in Attachment D states in Part X(A)(2) on p. 7 that: “The complainant and respondent will have the opportunity to hear all testimony, to examine all evidence, to respond to any testimony, and to present evidence and witnesses which advance arguments relevant to the issues in contention.”

s. Defendants University and Pilsbury did not follow this procedure, and did not allow plaintiff even to see the evidence or arguments pursuant to which the Office of Equity denied plaintiff's complaint for “insufficient evidence.”

t. The legally required procedure in Attachment D states in Part X(A)(3) on p. 7 that: “Each party will have the right to be accompanied and advised by two

people at any stage of the proceedings; one or both may be an attorney. However, advisors will not address the Hearing Panel or any of the witnesses. (Section XVI for more detail)”.

u. Defendants University and Polsby did not follow this procedure, and barred plaintiff from having her own counsel accompany her in the forced “mediations” discussing the allegations of her complaint on July 18 and 26, 2007.

132. Defendants University and Polsby failed and refused to use the required Faculty Handbook procedure and diverted the investigation into a formless and unstructured Office of Equity and Diversity Services procedure that was very likely to protect defendant Zengerle regardless of the merits of her complaint. Upon information and belief, the so-called investigation did not obtain a written statement from defendant Zengerle, and did not include serious interviews with at least one of plaintiff’s supporting witnesses. Nothing changed for the better as a result of this complaint.

133. On June 26, 2007, the Office of Equity and Diversity Services issued its findings rejecting for “insufficient evidence” plaintiff’s sexual harassment, hostile environment, and sex discrimination complaint without ever having held a hearing of any kind, without having bothered to investigate many of plaintiff Rotunda’s specific allegations, and without ever having obtained a written response from the harasser to Ms. Rotunda’s complaints, as was required by the rules of the Law School’s Faculty Handbook.

134. The June 26, 2007 decision stated that it “finds insufficient evidence to sustain the allegation of a violation of the George Mason University’s sexual harassment policy,” and “did not find sufficient evidence that the conduct was motivated *on the basis of gender.*” Determination, p. 2 (emphasis in original). The decision found that disputes over responsibilities and authorities, “not gender, are at the heart of this conflict.” Determination, pp. 10-11. The

decision ended by “highly” recommending “that law school administrators arrange for the parties to attend a mediation session with a representative of the Employee Relations division, Deputy Director of Human Resources, Pat Donini,” and by directing administrators to ensure that no retaliation occurs.

135. Following an academic freedom complaint made by Prof. Ronald Rotunda, the Academic Freedom and Faculty Grievance Committee of the Law Faculty performed an investigation and issued a Report on April 8, 2008. The Report concluded that the defendant University had required plaintiff Rotunda to submit to a procedure for the resolution of her sexual discrimination and sexual harassment complaint that was not the proper procedure, and that she had been denied the benefits of the proper procedure.

136. The Report contrasts the formality and protections of the Faculty Handbook procedure, which had long been University policy, with the “entirely different and much more summary process” followed by the Equity Office. See pp. 16-17. The report states at p. 17 that the Equity Office procedure “essentially consist[s] of an informal inquiry that need not follow any particular procedures, except the specification that a represented party may bring her or his adviser to ‘the investigative meeting’ only after providing 72 hours’ advance written notice of that intent to the Equity Office.”

137. Plaintiff Rotunda was never even given an pre-hearing meeting prior to the Equity Office’s June 26, 2007 decision, just an interview.

138. On June 26, 2007, plaintiff Rotunda sent a memorandum to defendant Polsby and Vice Dean Lerner referring to her complaints of sexual discrimination and sexual harassment and proposing that either she or defendant Zengerle or both be relocated and reassigned so that they would not have interactions with each other, and explaining:

. . . I cannot work with, or for, Joe for the reasons stated in my complaint and accompanying evidence.

Mediation just won't work. I'm afraid these problems will persist and escalate, as they did after similar attempts to resolve them earlier. I am extremely concerned about this combative work environment, particularly since I am alone with Joe on a virtually unoccupied floor.

139. Defendant Polsby rejected this complaint and all of plaintiff's suggestions.

140. On June 29, 2007, plaintiff Rotunda sent a letter to Ms. Evola of the Office of Equity and Diversity Services taking issue with the Office's "findings," and pointing out that the Office had not investigated a number of allegations and had misunderstood or misrepresented some basic facts. The letter explicitly referred to the possibility of an EEOC investigation.

141. The defendant University did not respond to plaintiff Rotunda's June 29, 2007 letter.

142. On July 12, 2007, plaintiff Rotunda sent a e-mail to defendant Polsby on the scheduling of the imposed "mediation," the breach of confidentiality by Patricia Donini, the University official who was supposed to conduct the "mediation," stating that plaintiff's husband, Ronald Rotunda, would speak for plaintiff at the mediation, and stating that defendant Zengerle had an "anger management problem."

143. On July 13, 2007 defendant Polsby responded in an e-mail that her e-mail was unsatisfactory, that she was not allowed to have any representative at the imposed "mediation," that Ms. Donini would dictate the ground rules and plaintiff was powerless to change them, that he understood but rejected her complaint that defendant Zengerle had an "anger management problem," and that she needed to forget the past and concentrate on the future.

144. On July 24, 2007, plaintiff sent an e-mail to defendant Polsby, stating that she was uncomfortable meeting in private with defendant Zengerle, and explaining:

Frankly, I'm uncomfortable meeting in private with Joe Zengerle, face-to-face. I do not know why Mr. Zengerle wants to prevent me from bringing my witness. I don't want to meet with my harasser - the one who, on July 9, brushed his body against my body in a wide hallway, then 10 days later admitted it, and remembers the incident because *he remembers that on that day I wore a black skirt*. I find it creepy and scary that he remembered what I wore over a week earlier, when he brushed his body against mine.

145. On July 25, 2007, defendant Polsby responded by e-mail, rejecting plaintiff's complaint and insisting to plaintiff that she "must meet with Joe face to face. This is a requirement of your job." (Emphasis in original.)

146. Defendant Polsby assigned no importance whatsoever to plaintiff's explicit concerns about defendant Zengerle's yelling, inappropriate touching of plaintiff, sexual comments, retaliation, and interference with her work, and assigned no importance whatsoever to plaintiff's reasonable statements that she feared for her physical safety when defendant Zengerle became angry, as he so often did.

147. On July 18, 2007, Ms. Rotunda attended the compulsory "mediation" meeting with defendant Zengerle, University official Patricia Donini, and Law School official Annamaria Nields.

a. Plaintiff attended the meeting without her lawyer, because defendants University and Polsby barred her from having her attorney or even her husband present. Plaintiff complied, under both oral and written protest;

b. Defendant Zengerle recognized at this meeting that he did in fact have an anger management problem;

c. Defendant Zengerle compared his bouts of anger to migraine headaches, stating that his anger came on with the aura of a migraine headache;

d. Defendant Zengerle stated at this meeting that he could not control his anger;

e. Defendant Zengerle stated at this meeting that he would try to control his anger, but might not be able to control it;

f. Defendant Zengerle at this meeting sought to compare himself to Bill Clinton;

g. Defendant Zengerle at this meeting admitted remembering the July 9, 2007 incident described in paragraph 49 above, and stated that he remembered it because of his memory that plaintiff was wearing a black skirt at the time;

h. During this meeting, Assistant Dean Annamaria Nields stated that the defendant University had approved the construction of the wall described in paragraphs 55(j) and 72-74 above, and in paragraphs 147, 166, and 181 below;

i. Plaintiff Rotunda's sense of physical insecurity and fear for her physical safety were increased by defendant Zengerle's apparent obsession with what plaintiff was wearing when he rubbed himself against her, by his admission that he had anger he could not control and might not be able to control, by the acceptance of this situation by officials of the Law School and defendant University, and by the defendant University's plan to encourage defendant Zengerle's unlawful behavior and erode plaintiff's physical security even further by isolating defendant Zengerle and plaintiff Rotunda from the view and intervention of others.

148. On July 26, 2007, Ms. Rotunda attended a second compulsory "mediation" meeting with defendant Zengerle and Law School official Annamaria Nields.

a. Plaintiff again attended the meeting without her lawyer, because defendants University and Polsby barred her from having her attorney or anyone else present. Plaintiff complied, under both oral and written protest;

b. Assistant Dean Nields did not appear to be acting impartially at this meeting. She accompanied defendant Zengerle to the meeting, and the two consulted privately for ten to fifteen minutes before the meeting started;

c. At this meeting, defendant Zengerle repeatedly tried to get plaintiff to agree to a new job description that would give him more authority over her;

d. Defendant Zengerle announced, for the first time, that she was his “co-teacher”;

e. Defendant Zengerle asked plaintiff to change defendant Zengerle’s own job description on the web site, in a manner adding to his authority over her and further diminishing her role and responsibility;

f. Defendant Zengerle asserted a new authority to veto or approve Ms. Rotunda’s grades;

g. The purpose of this meeting was not merely the discussion of clinic business.

h. The meeting involved the same substance as Ms. Rotunda’s internal complaints of discrimination, harassment, a sexually hostile working environment, and retaliation.

i. The defendant University and defendant Polsby were using this meeting to prepare for litigation and to force Ms. Rotunda to attend without her lawyer and make concessions that would weaken her legal position.

149. On July 26, 2007, plaintiff Rotunda’s husband, Prof. Ronald Rotunda, sent an e-mail to defendant Polsby which among other things, described plaintiff Rotunda’s fear of being alone with defendant Zengerle, stating in part that problems with defendant Zengerle began when

defendant Zengerle and plaintiff were moved to the Truland Building, where defendant Zengerle was alone with plaintiff, and continued:

Given that Joe brushed the whole side of his body against Kyndra's body on July 9th, it is no wonder that she is afraid. Joe's response—after feeling empowered with the green light that the university administration has given him—was to simply to say that, sure, it could have happened; *it was the day, he remembered, that she wore the black skirt and the black top.*

Joe could not deny brushing his body against Kyndra's because it is true. He did it. But he added important facts—Joe remembers what Kyndra wore 10 days earlier, when he brushed his body against hers. I hope that you can forgive me if I do not like Joe pawing my wife. I do not remember what Kyndra wore 10 days ago. The fact that Joe does—because that is when he brushed his body against her body in a wide hallway—is something I find creepy.

150. Defendant Polsby responded on July 26, 2007 that he would only discuss the matter with plaintiff Rotunda and not with her husband, Prof. Ronald Rotunda, or her attorney. Defendant Polsby did not thereafter discuss the matter with plaintiff Rotunda.

151. Plaintiff Rotunda's final complaint of sexual discrimination, sexual harassment, and retaliation was her August 27, 2007 letter to defendant Dean Polsby and others. In it, she stated that she was resigning her position and that these problems, and Dean Polsby's and the University's failure to take meaningful action, were the reasons why she was resigning. The letter stated in part:

I resign due to ongoing problems with Joe Zengerle, which I primarily expressed in my EEOC Complaint. I first complained to the University about these problems in December 2006 and several times since then.

The University has done nothing about my complaint other than to encourage and support his efforts to have more contact with me. In fact, he has been retaliating against me in many significant ways. He has subjected me to ex post facto rules regarding my grades, my syllabus and my work. He has issued a written reprimand for conduct that he previously had no objection to prior to my complaint.

Mr. Zengerle has threatened to continue issuing a series of reprimands. It is my belief, that he will terminate me in the near future. In order to avoid negative repercussions that a termination would have on my career, I feel I have no choice but to resign. Clearly remaining in an environment that is not free from harassment and

retaliation is not an option for me.

A copy of the letter is attached hereto as Attachment C.

152. Plaintiff's letter of resignation did not state an effective date, because plaintiff intended to take a few additional days to make sure defendant Zengerle was on top of all cases and all details involving the Clinic, and because of the need to remove her personal possessions and personal files from her computer. Her personal files included lists of plaintiff's passwords for personal accounts, personal financial information, possibly medical information, and the book manuscript on which she was working.

153. Defendant Polsby decided to accept plaintiff's resignation, and unilaterally decided to make it effective immediately.

154. Defendant Polsby did not respond to plaintiff's descriptions of defendant Zengerle's ongoing sexual discrimination, sexual harassment, creation of a sexually hostile working environment, or retaliation, in her August 22, 2007 resignation letter.

155. Notwithstanding defendant Polsby's insistence that plaintiff's resignation be take effect immediately, he assigned her work thereafter, to make sure that the work of the Clinic would be transitioned appropriately. Plaintiff complied with his request, and performed work after her termination.

156. Defendant Polsby never discussed the substance of defendant Zengerle's ongoing sexual discrimination, sexual harassment, and retaliation with plaintiff Rotunda after the April 25, 2007 meeting, and simply reiterated demands that plaintiff Rotunda meet in "mediation" sessions with defendant Zengerle, and that she also spend time in lengthy meetings alone with defendant Zengerle.

157. Defendant Polsby and the defendant University never took any meaningful corrective action to address the complaints plaintiff Rotunda and Prof. Ronald Rotunda had made against defendant Zengerle.

7. **Defendant Polsby's Ratification of Defendant Zengerle's Actions, and Personal Acts of Retaliation**

158. At all times relevant to this Complaint, defendant Polsby had administrative responsibility for, and day-to-day control over, the operations of the Law School.

159. Defendant Polsby had personal knowledge of plaintiff's complaints that defendant Zengerle was sexually harassing her and subjecting her to a hostile work environment:

a. As stated more fully in paragraph 124 above, defendant Polsby attended an April 23, 2007 meeting with plaintiff at which plaintiff discussed defendant Zengerle's improper behavior, and took copious notes;

b. As stated more fully in paragraph 125 above, Dean Polsby attended an April 25, 2007 meeting with plaintiff, Vice Dean Lund, Ms. Nields, and defendant Zengerle to discuss the ongoing problems of defendant Zengerle's sexual discrimination against, and sexual harassment of, plaintiff.

c. Upon information and belief, Vice Dean Lerner shared with defendant Polsby plaintiff's June 7 and June 12 complaints, as described in paragraphs 127 and 128 above, that defendant Zengerle was continuing to engage in harassing and retaliatory behavior;

d. Upon information and belief, defendant Polsby received a copy of plaintiff Rotunda's June 16, 2007 formal complaint of sex discrimination, sexual harassment, the creation of a hostile working environment, and retaliation, as described in paragraph 129 above;

e. Defendant Polsby and defendant University together barred plaintiff from the rights and remedies to which she was legally entitled under Attachment D, the official “George Mason University Sexual Harassment Policy & Grievance Procedures (1994),” approved by the University and by the Faculty Senate in that year and made part of the Faculty and Staff Handbook, as described in paragraphs 130-132 and 135-137 above;

f. Defendant Polsby was listed as a “cc” on the June 26, 2007 determination of the Office of Equity and Diversity Services rejecting for insufficient evidence plaintiff’s claims of sexual discrimination and sexual harassment, but which also described plaintiff’s claims of discrimination and harassment, and her complaints of defendant Zengerle yelling at her, as described in paragraphs 133-134 above.

g. As described in paragraphs 138 and 139 above, on June 26, 2007, plaintiff Rotunda sent a memorandum to defendant Polsby and Vice Dean Lerner referring to her complaints, stating that past efforts to cure the problems with “mediation” sessions had not worked, proposing relocation or reassignments, and stating that she was concerned about working with defendant Zengerle on a largely unoccupied floor, and defendant Polsby rejected these concerns.

h. As stated more fully in paragraphs 140-141 above, plaintiff Rotunda responded in detail to the “insufficient evidence” findings of the Equity Office, and sent a copy to defendant Polsby.

i. As stated more fully in paragraph 142 above, on July 12, 2007 plaintiff Rotunda sent an e-mail to defendant Polsby that, among other things, referred to defendant Zengerle as having an “anger management problem.”

j. As stated more fully in paragraph 143 above, on July 13, 2007 defendant Polsby responded in an e-mail that he had understood her complaint that defendant Zengerle had an “anger management problem,” but that he had never seen anything he would characterize that way in the “many years” he had known defendant Zengerle.

k. As stated more fully in paragraphs 144-145 above, on July 24, 2007, plaintiff complained directly to defendant Polsby by e-mail, stating that she was uncomfortable meeting in private with defendant Zengerle, informing defendant Polsby of defendant Zengerle’s improper physical contact on July 9, 2007, and of his admission of it and apparent obsession with it, and on July 25, 2007, defendant Polsby insisted that plaintiff meet with defendant Polsby “face to face” and that this was a requirement of her job.

l. As described in paragraphs 149 and 150 above, on July 26, 2007, plaintiff Rotunda’s husband, Prof. Ronald Rotunda, sent an e-mail to defendant Polsby which among other things, described plaintiff Rotunda’s fear of being alone with defendant Zengerle, stating in part that problems with defendant Zengerle began when he and plaintiff were moved to the Truland Building, where defendant Zengerle was alone with plaintiff, and continued

m. As more fully described in paragraphs 29, 37-38, and 151-155 above, plaintiff Rotunda’s final complaint of sexual discrimination, sexual harassment, and retaliation was made in her August 27, 2007 letter to defendant Dean Polsby and others.

160. Defendant Polsby had personal knowledge of plaintiff’s complaints that defendant Zengerle was continuing to harass her sexually and subject her to a sexually hostile work environment. See paragraph 159 and its cross-references above.

161. At all times relevant to this Complaint, defendant Polsby had the power and duty to stop sexual harassment and a sexually hostile working environment.

162. Defendant Polsby never took any effective action to stop defendant Zengerle from sexually harassing plaintiff and subjecting her to a hostile work environment.

163. During plaintiff Rotunda's employment, defendant Polsby chose to bar plaintiff Rotunda from using the procedures for resolving complaints of sexual harassment that were outlined in the Faculty Handbook, and to limit her to the far less effective procedures of the Office of Equity and Diversity Services.

164. During plaintiff Rotunda's employment, defendant Polsby chose to require plaintiff Rotunda to meet with defendant Zengerle, University official Patricia Donini, and Law School official Annamaria Nields in an enforced "mediation."

165. It is a reasonable inference that Ms. Donini and/or Ms. Nields would have informed defendant Polsby of the results of the mediation, including the allegations of plaintiff Rotunda and the admissions of defendant Zengerle.

166. During plaintiff Rotunda's employment, defendant Polsby, with full knowledge of plaintiff's complaints of harassment, chose to impose on plaintiff Rotunda the duty of having lengthy, unsupervised meetings alone with defendant Zengerle in an isolated setting, as a condition of keeping her job.

167. Defendant Polsby's alignment of himself with the sexual discrimination, sexual harassment, creation of a sexually hostile working environment, and retaliation of defendants University and Zengerle was so complete that:

a. On August 28, 2007, defendant Polsby personally spoke to the students in the Clinic for Legal Assistance to Servicemembers about plaintiff, and disrespectfully referred to her not as the former Director of the Clinic, but as "Ron's new wife."

b. After plaintiff's constructive and actual termination, upon information and belief he directed the seizure of plaintiff's personal files on the "C" drive of her computer, and directed the interference with plaintiff's personal mail, as described more fully in paragraphs 168 through 179 below.

c. Defendant Polsby repeatedly refused to provide an employment reference for plaintiff Rotunda, and refused to allow another official of the Law School to provide an employment reference for plaintiff Rotunda..

8. Defendant University's and Defendant Polsby's Unreasonable Search, Seizure, and Confiscation of Plaintiff's Files, Invasion of Her Privacy, and Interference with her Mail

168. Plaintiff worked on a book, HONOR BOUND: INSIDE THE GUANTANAMO TRIALS (Carolina Academic Press, 2008) from September 2006 through August 2007. The substance of the book involved issues related to the substance taught or worked on by the Clinic for Legal Assistance to Servicemembers, as well as issues related to classes that defendant Zengerle asked plaintiff to teach in addition to plaintiff's job.

169. The publication of HONOR BOUND was delayed because the defendant University seized plaintiff Rotunda's computer files on the computer she used at work, including the manuscript, and refused to release it unless plaintiff Rotunda agreed to settle her claims against the University, and until all of the files on the computer had been examined by defendants or some of them.

170. The manuscript of HONOR BOUND was the property of plaintiff, and not the property of the University.

171. Despite plaintiff Rotunda's demands for its immediate return, defendant University did not return the manuscript to plaintiff until October 2007, after she had threatened to sue the University to obtain the manuscript.

172. When it was finally published, HONOR BOUND was met with academic praise and received a great deal of favorable media attention, and was used in classes at the Law School. Specifically, Judge Ginsburg of the U.S. Court of Appeals for the District of Columbia Circuit, who is an adjunct professor at the Law School, has used plaintiff Rotunda's book as required reading for his class.

173. If HONOR BOUND had been published while plaintiff was Director of the Clinic for Legal Assistance to Servicemembers, it would have added to the public recognition and prestige of the Clinic.

174. Upon information and belief, plaintiff was entitled to privacy in her personal files on at least the "C" drive of her computer.

175. These files included bank records, and passwords in addition to the manuscript of HONOR BOUND.

176. Defendants University and Polsby had no right to inspect plaintiff's personal files on at least the "C" drive of her computer, or to interfere with her making a copy of her personal files for herself, or to stop her from erasing her personal files after she had made a copy for herself.

177. Plaintiff was put to avoidable concerns over identity theft and invasion of her privacy, and avoidable work reconstructing and changing her passwords, because of the retaliatory seizure of her personal files on at least the "C" drive of her computer.

178. After plaintiff left the law school, the university refused to forward her mail, including her first-class mail, such as letters from her bank, and magazines.

a. Upon information and belief, defendant Polsby directed that all of plaintiff's mail be given to defendant Zengerle.

b. Upon information and belief, defendant Zengerle kept piles of plaintiff's mail unopened, in the Clinic offices, for weeks at a time.

c. These actions are contrary to the established practice of the defendant University and Law School. The established practice, when an employee leaves, is to forward her mail.

d. Plaintiff's husband, Ronald Rotunda, saw defendant Zengerle reach into the mail receptacle and get a letter addressed to plaintiff. The outside of the letter made clear that it was clearly non-clinic business. Mr. Rotunda complained to Karen Newman, an employee of defendant Polsby, but she was not interested in remedying the problem.

e. While Ronald Rotunda was a member of the faculty, he found that an important letter that he was expecting from the D.C. Bar did not arrive, although the D.C. Bar had mailed it weeks earlier. He complained to Karen Newman, who did nothing about it.

f. After Ronald Rotunda complained about this situation to Vice Dean Craig Lerner, Ms. Newman agreed that the law school would allow plaintiff's mail to be delivered.

g. Vice Dean Craig Lerner told Mr. Rotunda that plaintiff had been doing great work and that he did not want her or Mr. Rotunda to leave the Law School.

h. Shortly after that conversation, Vice Dean Lerner told Ronald Rotunda that defendant Polsby had ordered Lerner not to talk to Mr. Rotunda about these matters.

179. On information and belief, the seizure of plaintiff's personal files on at least the "C" drive of her computer, and the interference with her and her husband's mail, could only have happened at the direction of defendant Polsby.

D. Constructive and Actual Termination

180. In July and August 2007, defendant Zengerle made clear to plaintiff Rotunda, to University official Patricia Donini, and to Law School official Annamaria Niels, that he would not change the conduct about which plaintiff Rotunda had complained.

181. Defendant Zengerle's plan to isolate himself and plaintiff Rotunda from the view of others, described more fully in paragraphs 55(j), 72-74, 147, and 166 above, would have made this situation much worse.

182. Upon information and belief, defendant Polsby was aware that defendant Zengerle would not change the conduct about which plaintiff Rotunda had complained.

183. During plaintiff Rotunda's employment, and with the knowledge described in paragraph 159 and its cross-references, and paragraphs 160 through 179 above, defendant Polsby insisted that plaintiff Rotunda submit to repeated lengthy meetings with her harasser, with no one else around, and made this a condition of her continued employment.

184. Defendant Polsby effectively made plaintiff Rotunda's submission to defendant Zengerle's discrimination, harassment, and creation of a hostile working environment a condition of her employment.

185. A reasonable employee, and particularly a reasonable female employee, would have found plaintiff Rotunda's work situation and defendants' failure to correct that work situation, intolerable and would have concluded that there was no reasonable alternative to resigning from plaintiff's position, particularly in light of the threat of further unjustified reprimands.

186. Defendant University, defendant Polsby, and defendant Zengerle each had an opportunity to withdraw the discriminatory terms and conditions of plaintiff Rotunda's employment both before and after plaintiff Rotunda's resignation.

187. Defendant University, defendant Polsby, and defendant Zengerle chose not to withdraw the discriminatory terms and conditions of plaintiff Rotunda's employment either before or after plaintiff Rotunda's resignation.

188. Defendant University constructively terminated plaintiff Rotunda.

189. Defendant Polsby constructively terminated plaintiff Rotunda.

190. Defendant Zengerle constructively terminated plaintiff Rotunda.

191. Independently of plaintiff's constructive termination in her August 27, 2007 letter of resignation, defendant Polsby's decision to make it effective immediately was a termination.

E. Exhaustion

192. Plaintiff filed an EEOC charge of discrimination on August 3, 2007. A true and correct copy of this charge is attached hereto as Attachment E.

193. The August 3, 2007, charge of discrimination named the Arlington County Human Rights Commission as a deferral agency.

194. The EEOC's regulation, 29 C.F.R. § 1601.80, lists the Arlington County Human Rights Commission as a deferral agency.

195. Plaintiff filed an amended EEOC charge on February 22, 2008. A true and correct copy of this charge is attached hereto as Attachment F.

196. The amended charge relates back to the original August 3, 2007, charge of discrimination.

197. The amended charge named the Commonwealth of Virginia Human Rights Council as a deferral agency.

198. The United States Court of Appeals for the Fourth Circuit has held that the Commonwealth of Virginia Human Rights Council is a deferral agency within the meaning of § 706(e)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e)(1).

199. The 300-day charge-filing requirement of § 706(e)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e)(1), applies to plaintiff's charges of discrimination.

200. On July 8, 2009, plaintiff Rotunda requested the issuance of a Notice of Right to Sue. On July 9, 2009, Plaintiff received the Notice. A copy of the Notice is attached hereto as Attachment G.

F. Effect of Defendants' Actions on Plaintiff

201. Plaintiff was not able to obtain employment for the 2007-2008 academic year, and did not have a full-time job until she started work at Chapman University School of Law on August 1, 2008.

202. As a result of the actions of defendants described above, plaintiff suffered mental anguish, embarrassment, and humiliation. Her physical and mental condition deteriorated as a result of the harassment, sexually hostile working environment, and retaliation, with an increased heart rate, increased blood pressure, and depression, all of which are medically documented.

203. Plaintiff's physician informed her that she needed to leave her employment for the sake of her health.

G. Plaintiff's First Cause of Action: Against the Defendant University under Title VII of the Civil Rights Act of 1964 as to Sexual Discrimination in the Conditions of Employment

204. Plaintiff incorporates the allegations of paragraphs 1-203 above, with the same force and effect as if they had been re-pleaded here.

205. Defendant University violated Title VII by treating plaintiff Rotunda less favorably than it treated male employees, and by knowingly tolerating defendant Zengerle's treatment of plaintiff Rotunda less favorably than he treated male employees, because of her sex.

H. Plaintiff's Second Cause of Action: Against the Defendant University under Title VII of the Civil Rights Act of 1964 as to Sexual Harassment

206. Plaintiff incorporates the allegations of paragraphs 1-203 and 205 above, with the same force and effect as if they had been re-pleaded here.

207. Defendant University violated Title VII by knowingly tolerating defendant Zengerle's sexual harassment of plaintiff Rotunda.

208. Defendant University violated Title VII by failing to take appropriate corrective action to prevent sexual harassment from occurring.

209. Defendant University violated Title VII by failing to address plaintiff Rotunda's complaints seriously and by failing to take appropriate corrective action.

210. Defendant University violated Title VII by insisting, after it knew of the sexual harassment, that plaintiff Rotunda spend lengthy periods alone with her harasser.

211. Defendant University violated Title VII by planning to wall plaintiff and her harasser off by themselves, where passing students and employees would not see what was occurring, and by revealing those plans to plaintiff.

I. Plaintiff's Third Cause of Action: Against the Defendant University under Title VII of the Civil Rights Act of 1964 as to Pay Discrimination

212. Plaintiff incorporates the allegations of paragraphs 1-29, 31-35 and 91-122 above, with the same force and effect as if they had been re-pleaded here.

213. Defendant University violated Title VII by intentionally paying plaintiff Rotunda less than defendant Zengerle for the same or greater work, because of her sex.

J. Plaintiff's Fourth Cause of Action: Against the Defendant University under Title VII of the Civil Rights Act of 1964 as to Actual and Constructive Termination

214. Plaintiff incorporates the allegations of paragraphs 1-203, 207-211, and 213 above, with the same force and effect as if they had been re-pleaded here.

215. Defendant University violated Title VII by actually and constructively terminating her from her position on August 27, 2007.

K. Plaintiff's Fifth Cause of Action: Against the Defendant University under Title VII of the Civil Rights Act of 1964 as to Retaliation

216. Plaintiff incorporates the allegations of paragraphs 1-203, 207-211, 213, and 215 above, with the same force and effect as if they had been re-pleaded here.

217. Defendant University violated § 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), by tolerating, engaging and continuing to engage in these actions, by increasing their severity after she complained, and by denying plaintiff the benefit of the legally required procedures set forth in Attachment D, in order to retaliate against her for her opposition to sexual discrimination, sexual harassment, the creation of a sexually hostile working environment, and retaliation, and for her participation in the Title VII enforcement process by filing an EEOC charge, and by complaining internally, and testifying, and participating in internal investigations and proceedings about these matters.

L. Plaintiff's Sixth Cause of Action: Against the Defendant University under The Equal Pay Act of 1963

218. Plaintiff incorporates the allegations of paragraphs 1-29, 31-35 and 91-122 above, with the same force and effect as if they had been re-pleaded here.

219. Defendant University violated the Equal Pay Act by paying plaintiff Rotunda less than it paid defendant Zengerle for the performance of equal work, requiring equal skill, effort, and responsibility, under the same working conditions, within the meaning of the Equal Pay Act.

M. Plaintiff's Seventh Cause of Action: Against Defendant Polsby in his Personal Capacity, under the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983, for Pay Discrimination

220. Plaintiff incorporates the allegations of paragraphs 1-29, 31-35 and 91-122 above, with the same force and effect as if they had been re-pleaded here.

221. Defendant Polsby violated the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983 by intentionally determining the pay rate for plaintiff Rotunda at a rate less than the rate paid to defendant Zengerle, because of her sex.

N. **Plaintiff's Eighth Cause of Action: Against Defendants Polsby and Zengerle in their Personal Capacities, under the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983, for Knowingly Tolerating Sexual Discrimination and Sexual Harassment and Failing to Take Adequate Action to Stop It**

222. Plaintiff incorporates the allegations of paragraphs 1-203, 207-211, 213, 215, and 217 above, with the same force and effect as if they had been re-pleaded here.

223. During plaintiff Rotunda's employment, defendant Polsby knew or should have known that defendant Zengerle was discriminating against plaintiff, harassing her, and creating a hostile working environment, because of her sex.

224. During plaintiff Rotunda's employment, defendant Polsby knew or should have known that sexual discrimination, sexual harassment, and the creation of a hostile working environment based on sex against an employee of State government was in violation of 42 U.S.C. § 1983.

225. During plaintiff Rotunda's employment, defendant Polsby had the power to enquire further and to stop any such discrimination, harassment, or hostile working environment.

226. During plaintiff Rotunda's employment, defendant Polsby chose not to enquire further, and chose not to stop any such discrimination, harassment, or hostile working environment.

227. It is a reasonable inference that defendant Polsby's knowing diversion of plaintiff Rotunda's complaint of sexual harassment and a hostile working environment to a procedure he knew or should have known was far less effective than the procedure specified in the Faculty

Handbook, was an effort to cover up defendant Zengerle's actions and provide improper protection to defendant Zengerle.

228. Defendant Polsby's actions and omissions tolerated and enabled the sexual harassment and hostile working environment to continue as to plaintiff Rotunda.

229. Defendants Polsby's and Zengerle's actions and omissions, in their personal capacities, violated the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

O. Plaintiff's Ninth Cause of Action: Against Defendants Polsby and Zengerle in their Personal Capacities, Under the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983, for Actual and Constructive Termination

230. Plaintiff incorporates the allegations of paragraphs 1-203, 207-211, 213, 215, 217, and 219-229 above, with the same force and effect as if they had been re-pleaded here.

231. Defendants Polsby and Zengerle violated the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983 in their personal capacities, by actually and constructively terminating plaintiff Rotunda from her position on August 27, 2007.

P. Plaintiff's Tenth Cause of Action: Against Defendants Polsby and Zengerle in their Personal Capacities, Under the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983, for Retaliation

232. Plaintiff incorporates the allegations of paragraphs 1-203, 207-211, 213, 215, 217, 219-229, and 231 above, with the same force and effect as if they had been re-pleaded here.

233. Defendants Polsby and Zengerle violated the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983, in their personal capacities, by tolerating, engaging and continuing to engage in these actions, by increasing their severity after she complained, and by denying plaintiff the benefit of the legally required procedures set forth in Attachment D, in order to retaliate against her for her opposition to sexual discrimination, sexual

harassment, the creation of a sexually hostile working environment, and retaliation, and for her participation in the Title VII enforcement process by filing an EEOC charge, and by complaining internally, and testifying, and participating in internal investigations and proceedings about these matters.

Q. Plaintiff's Eleventh Cause of Action: Against Defendant Zengerle in his Personal Capacity for Common-Law Assault

234. Plaintiff incorporates the allegations of paragraphs 1-55, 60-61, 63(k), and 64-75 above, with the same force and effect as if they had been re-pleaded here.

235. Defendant Zengerle's actions were intended to cause either harmful or offensive contact with plaintiff Rotunda, or to create in her the apprehension of such contact, and did in fact create in plaintiff's mind a reasonable apprehension of an imminent battery.

236. Defendant Zengerle's actions constituted the common law tort of assault under Virginia law.

R. Plaintiff's Twelfth Cause of Action: Against Defendant Zengerle in his Personal Capacity for Common-Law Battery

237. Plaintiff incorporates the allegations of paragraphs 1-29, 52-54, and 147(i) above, with the same force and effect as if they had been re-pleaded here.

238. Defendant Zengerle's rubbing of his body against plaintiff Rotunda's body on July 9, 2007 was an unwanted and extremely offensive touching of plaintiff's body to which plaintiff did not consent and that she has not excused. There was no justification for this touching of plaintiff's body.

239. Defendant Zengerle's actions constituted the common law tort of battery under Virginia law.

S. Plaintiff's Thirteenth Cause of Action: Against Defendants Polsby and Zengerle in their Personal Capacities Under the First and Fourth Amendments, as Incorporated by the Fourteenth Amendment, and 42 U.S.C. § 1983 for Violation of Plaintiff's Privacy Interests, and Unreasonable Search, Seizure, and Confiscation of Her Personal Computer Files and Mail

240. Plaintiff incorporates the allegations of paragraphs 1-29 and 168-179 above, with the same force and effect as if they had been re-pleaded here.

241. Defendants Polsby and Zengerle violated the First and Fourth Amendments to the Constitution, as incorporated by the Fourteenth Amendment, and 42 U.S.C. § 1983, in their personal capacities, by unreasonably searching and seizing, and refusing to return immediately, plaintiff Rotunda's personal files on her computer, by setting unlawful conditions before her manuscript of Honor Bound would be returned, by failing to this day to return her other personal information, by failing to take steps sufficient to assure her that her personal information would be protected, and by interference with her personal mail and refusal to forward her personal mail as soon as it was received.

T. Prayer

WHEREFORE, plaintiff Rotunda respectfully requests that this Court grant the following relief:

1. Declare that defendants violated the prohibitions of discrimination, sexual harassment, and the creation of a hostile working environment in Title VII of the Civil Rights Act of 1964 and in 42 U.S.C. § 1983;

2. Declare that defendants University and Polsby violated the prohibition against pay discrimination because of sex in the Equal Pay Act of 1963, in Title VII of the Civil Rights Act of 1964 and in 42 U.S.C. § 1983;

3. Award back pay to plaintiff Rotunda for the salary and benefits she was denied because of pay discrimination because of her sex;

4. Award liquidated damages to plaintiff Rotunda in an amount equal to the salary and benefits she was denied because of pay discrimination because of her sex;

5. Award back pay to plaintiff Rotunda for the salary and benefits she was denied because of her constructive termination;

6. Award front pay to plaintiff Rotunda for the salary and benefits she will be denied until she reaches parity of pay with defendant Zengerle;

7. Award liquidated damages to plaintiff in an additional amount equal to the amount of back pay awarded;

8. Award prejudgment interest to plaintiff, at such interest rate as the Court deems proper for claims under Federal law, from the date each payment included in back pay should have been received to the date judgment is entered, for every element of her back pay award,

9. Award postjudgment interest to plaintiff;

10. Award compensatory damages to plaintiff Rotunda from all defendants for the emotional distress and humiliation she suffered because of the actions of defendants;

11. Award punitive damages to plaintiff from defendant Polsby in his personal capacity and from defendant Zengerle in his personal capacity, in an amount sufficient to deter defendants Polsby and Zengerle from engaging in future actions similar to those giving rise to this lawsuit, and sufficient to deter other similar managers, administrators, and employees from doing the same;

12. Permanently enjoin the defendant University and defendant Polsby:

a. From failing to remove defendant Zengerle's August 20, 2007 reprimand of plaintiff, and any reference to the reprimand, from all official and unofficial files of defendants, except for the purpose of admitting that it was deliberately false, misleading, and

retaliatory against plaintiff Rotunda for exercising her right to complain of sexual harassment and retaliation against her;

b. From making any reference to the reprimand in any communications with others, except in the course of admitting that it was deliberately false, misleading, and retaliatory against plaintiff Rotunda for exercising her right to complain of sexual harassment and retaliation against her;

c. From failing to remove the June 26, 2007 decision and findings of the Office of Equity and Diversity Services with respect to plaintiff Rotunda, and any references to this decision or its findings, from all official and unofficial files of defendants, except for the purpose of admitting that it was deliberately false, misleading, and retaliatory against plaintiff Rotunda for exercising her right to complain of sexual harassment and retaliation against her;

d. From making any reference to the June 26, 2007 decision or findings of the Office of Equity and Diversity Services with respect to plaintiff Rotunda, in any communications with others, except in the course of admitting that it was deliberately false, misleading, and retaliatory against plaintiff Rotunda for exercising her right to complain of sexual harassment and retaliation against her;

e. From failing to provide plaintiff Rotunda with a complete copy of all of the personal files on her computer seized in connection with her constructive termination;

f. From failing to give a complete accounting of all uses defendants made of plaintiff's personal files and any copies of those files provided to third parties; and

g. From failing to give plaintiff Rotunda an excellent reference in response to any inquiry.

13. Award plaintiff reasonable attorneys' fees and the reasonable expenses of her representation; and

14. Grant such other and further relief as may be necessary or appropriate.

U. Jury Demand

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff Rotunda demands trial by jury of all questions of fact, and of all matters as to which the Seventh Amendment to the Constitution of the United States guarantees the right of trial by jury.

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By Counsel

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² Admission to the District of Columbia Bar pending. Ms. Staker is working under the supervision of a member of the District of Columbia Bar.

/s/ Adam Augustine Carter

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