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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

MONICA S. MOSHENKO
8703 Howard Drive
Williamsville, NY 14221

NO. 07-CV 0116 A (M)

Plaintiff

vs.

AMENDED COMPLAINT

STATE UNIVERSITY OF
NEW YORK (AT BUFFALO)
506 CAPEN HALL
BUFFALO, NY 14260

and

DR. ALAN RABIDEAU
214 WOODWARD AVENUE
BUFFALO, NY 14214

and

DR. JOSEPH ATKINSON
121 CHATEAU TERRACE
SNYDER, NY 14226

Defendants

COMES NOW the plaintiff by and through her attorney, RONALD D. Anton, and for an Amended Complaint against the defendants, states and alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction of the claim herein and is based upon a Civil Action arising under the Constitution and laws of the United States. Plaintiff is alleging the following violations of her rights under:

a) Title II of the Americans with Disability Act of 1990 as to plaintiff's claim against all defendants for discrimination, retaliation and hostile environment and compensatory and punitive damages for discrimination because of advocacy on behalf of the disabled and opposition to discrimination of the disabled, misrepresentations of fact and dissembling to conceal its discrimination and as to ongoing hostile environment.

Plaintiff seeking relief for hostile environment and animus retaliation for her advocacy on behalf of people with disabilities under the applicable bases of Title VII of the Civil Rights Act of 1964 and Section 504 The Rehabilitation Act of 1973 as to discrimination, hostile environment and animus retaliation on behalf of people with disabilities.

c) Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991 [42 U.S.C. §§2000e-2000e-17] and Section 1981 of the Civil Rights Act of 1866 to claims of discrimination, defamation of character, retaliation and hostile environment.

d) Title IX of the Education Amendments of 1972 with respect to defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, as an educational institution which receives Federal funding, is obligated to follow Title IX regulations of the Education Amendments of 1972, as to exclude any person on the basis of gender from participation in or denial of the benefits of, or

subjected to sex discrimination under any education program or activity receiving federal financial assistance.

e) The Rehabilitation Act of 1973 [29 U.S.C. §701, et. seq.] and Section 504 of the Rehabilitation Act [29 U.S.C. §794] allowing suits against individuals and against all defendants as to deliberate indifference to individuals with disabilities and discrimination for retaliation against plaintiff for advocacy of the disabled, opposition to discrimination against the disabled in a hostile environment of retaliatory animus.

2. Venue herein is proper under specifically but not exclusively to 28 USC §1391(b) et al and 42 USC §2000e-5(f)(3) et al., 42 USC §2000e-16, 29 USC §701 et al and §707 et al, Section 1981 of the Civil Rights Act of 1866, Title IX of the 1972 Education Amendments 20 USC §§1681, Title II of the American with Disabilities Act of 1990, 42 USC §§ 12101 et al, Section 504 of the Rehabilitation Act 29 USC §794 and New York State Human Rights Law Article 15 §296. Defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, is a corporate resident of the State of New York, doing business therein, and defendant, DR. ALAN RABIDEAU, is a resident of the State of New York; and defendant, DR. JOSEPH ATKINSON, is a resident of the State of New York and the alleged unlawful employment practices were

committed within the State of New York in the Western District thereof.

II. PARTIES

3. Plaintiff, MONICA MOSHENKO, is a citizen of the United States and is a resident of the State of New York residing at 8703 Howard Drive, Williamsville, County of Erie, and State of New York 14221 and the alleged unlawful employment practices were committed within the State of New York.

4. Defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, is a public corporation existing under and by virtue of the laws of the State of New York. At all times pertinent hereto, defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, has been engaged within the State of New York in an industry affecting commerce and has had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. The State University of New York at Buffalo is a recipient of Federal funding, even in the Great Lake Program for which the plaintiff worked for 17 years.

5. Defendant, DR. ALAN RABIDEAU, at all times pertinent hereto has resided in the State of New York and been an agent of and employed by defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, as a member in the department of Civil, Structural and Environmental Engineering, and had office space on the same

floor, two offices away from the plaintiff at the premises maintained by the defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO.

6. That the defendant, DR. JOSEPH ATKINSON, at all times pertinent hereto, has resided in the State of New York and been an agent of and employed by defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, as a member of the department of Civil, Structural and Environmental Engineering, including duties as Director of the Great Lakes Program conducted by the defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, with full supervisory authority over plaintiff.

III. PROCEDURAL REQUIREMENTS

7) In the month of March, 2006, plaintiff filed charges of discrimination and retaliation, satisfying the requirements of Title VII of the Civil Rights Act of 1964 including but not limited to 42 USC §2000e-5(b) and (e), 42 USC §2000e-16 and in the month of September 2006 plaintiff filed amendment as a continuing action with additional discrimination charges of disability and retaliation, further satisfying the requirements of Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, Title II the Americans with Disabilities Act of 1990, 42 USC §§12101 et seq and USC §§12203, Section 504 of the Rehabilitation Act, Title IX of the Education Amendments of 1972, 20 USC §§1681, and NYS Human Rights Law,

Article 15 #296 with the Equal Employment Opportunity Commission. These charges were filed within one hundred eighty (180) days after the alleged unlawful employment practice occurred. On or about December 1, 2006, less than ninety (90) days prior to the filing of this Complaint, the Equal Employment Opportunity Commission issued to plaintiff a Notice of Right to Sue with respect to such charge of sexual discrimination and retaliation only, which was received by plaintiff on December 4, 2006. Plaintiff had filed a request in writing to amend the original charge which was emailed and faxed to EEOC on September 28, 2006. The request to amend the original complaint to include disability under Title II Americans with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1964 and was based on additional grounds which were cited in letter.

VI. CLAIM FOR RELIEF

8. Since June 6, 1989 plaintiff was hired and employed at the Great Lakes Program, by defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, to work as sole Administrative Assistant/Senior Support Staff person for the Director of the Great Lakes Program located in the County of Erie and State of New York. Plaintiff worked for three different supervisors of the Great Lakes Program over the course of employment: Dr. R. Warren Flint, Associate Director (June 1989- October 1990). Dr. Flint was

fired from his position after an internal audit and investigation revealed "double dipping" from numerous accounts (Research, State and UBF) which was discovered and reported by plaintiff to Dr. Ralph Rumer, Director of the Great Lakes Program and administration at State University of New York at Buffalo; Dr. Joseph V. DePinto, was a candidate from Clarkson University and was hired by the search committee to be the new Director effective January 1991; Dr. DePinto insulated plaintiff from discriminatory activity by defendant Alan Rabideau. Dr. DePinto left the University at Buffalo in June 2000 to take a consulting position in the private sector and defendant, Dr. Joseph F. Atkinson, a professor in the Department of Civil, Structural and Environmental Engineering was appointed internally for an initial two-year period as Director on April 26, 2000 but was on sabbatical in Israel through August 2000. Plaintiff was the sole staff person in charge of running the Great Lakes Program while Dr. DePinto was on sabbatical from 1998-99 and while defendant Joseph Atkinson was on sabbatical in 2000. Plaintiff had performed increasingly more duties with experience including advocating for the Program itself and position in 207 Jarvis Hall and 202 Jarvis Hall for 17 years and was paid by the Research Foundation and SUNY (which are basically indistinguishable as the same employer as noted in 2007 decision in New York Eastern District Court which held that

that the Research Foundation and SUNY are so intertwined, that they are not to be held as distinct employers (Jin Zhao v. SUNY, Research Foundation of SUNY and Dr. Olcay Batuman)

9. During the course of her employment during 2005 and 2006, plaintiff was continually harassed and discriminated against by the defendant, ALAN RABIDEAU, as a form of discrimination on the basis of plaintiff's sex, and advocacy on behalf of the disabled; and was subjected to ridicule by publicly identifying her as an aggressive female prominent in the University community by virtue of activities on behalf of the infirm and disabled, and exercising excessive power as a female; and plaintiff was bullied, intimidated, belittled and ridiculed by defendant's derogatory comments and remarks in a hostile environment, and suffered defamation of character and ongoing retaliation.

10. During the years 2005 and 2006, plaintiff was subjected to sexual harassment and discrimination based upon her gender and discrimination based upon her advocacy on behalf of the disabled, which harassment and discrimination were imposed as a term or condition of employment by the defendants, and each of them. That the harassment, animus retaliation and hostile environment constituted thereby, consisted of the following:

a) The defendant, DR. ALAN RABIDEAU, voiced his resentment of plaintiff's involvement and the extent of her decision making

in the Great Lakes Program while functioning under the subordinate title of Administrative Assistant, despite the fact that plaintiff had performed these administrative duties in whole or in part for the previous seventeen (17) years; in commenting that the plaintiff had a fanciful and glorified opinion of herself because she ran seminars and asserted powers beyond the scope of her duties at STATE UNIVERSITY OF NEW YORK AT BUFFALO, which activities including her advocacy on behalf of those with disabilities were tolerated by all her prior supervisors, and regarded by them as helpful during the time she had performed same; in asserting that plaintiff had too much power as a woman on the staff and in the community where she was known as a public and university advocate for the rights of persons with disabilities; in acquiring public accolades and prominence in the field to an extent excessive for a female subordinate.

b) In creating a hostile work environment by treating plaintiff with disdain and excessive assertiveness; belittling and minimizing her abilities despite her demonstrable qualifications and performance; in falsely accusing her of abusive discretion regarding incidents more than ten (10) years old, although plaintiff had not been confronted with said incidents at the time of their alleged occurrence; in demeaning,

effacing and slandering her employment ability in the presence of co-workers and otherwise creating a hostile work environment.

c) That the defendant, DR. JOSEPH ATKINSON, created a hostile, intimidating and offensive working environment, whose purpose and effect was to interfere unreasonably with plaintiff's work performance by asking plaintiff if there were other persons in her history with whom she could not "get along" in the past; although she had operated the program satisfactorily and had received satisfactory evaluations throughout all her years of service with the program under three different supervisors, that defendant, DR. JOSEPH ATKINSON, intentionally created anxiety and consternation by suggesting to plaintiff that funding through the Research Foundation for the Great Lakes Program was going to be cut by the Provost (even though her position was a state position on a state line) when in fact he had reliable or certain knowledge that funding would be forthcoming; that defendant, despite the fact that plaintiff was employed by the State of New York, and thereby funded on a state line . The annual funding of the Great Lakes Program of \$11,000 was used for expenses related to running the office (phone, copying, supplies, travel, printing, etc.) as recommended and allocated by Provost Tripathi through the Research Foundation of the State of New York. Plaintiff had reminded defendant, Joseph Atkinson on several occasions in

January 2006 and February 2006 in writing and verbally that the plaintiff's annual appraisal needed to be done before personnel reappointment forms could be processed in March 2006.

d) DR. JOSEPH ATKINSON, further sought to learn ministerial operations of plaintiff's job, such as those involving the website; which were formerly done by plaintiff; evidencing a formed intent to retaliate against plaintiff by terminating her position because of plaintiff's participation in protected activities under the statute.

e) That the defendant STATE UNIVERSITY OF NEW YORK AT BUFFALO, delayed processing plaintiff's written request in July 2006 for Presidential leave in the year 2006 and failed to respond to multiple e-mails or communicate with plaintiff, all of which constituted retaliation and creation of a hostile work environment for plaintiff.

11. Employees of the opposite sex were not subjected to the harassment described in paragraphs 9 and 10, and plaintiff was subjected to such harassment substantially on the basis of her sex and her prominent advocacy for the rights of persons with disabilities in a hostile campus environment for the same. The defendant, State University of New York at Buffalo demonstrated ongoing retaliatory animus to the plaintiff victim, and bias in favor of and to protect the male engineering staff because

plaintiff is a woman, a clear violation of Title IX of the Educational Amendments of 1972 and Title VII of the Civil Rights Act. SUNY's indifference to plaintiff's harassment resulted in both diminished employment opportunities and ongoing hostile environment.

12. Plaintiff did not encourage, welcome or consent to the harassment described in paragraphs 9 and 10.

13. The harassment described in paragraphs 9 and 10 had a substantial detrimental effect on plaintiff's employment and physical, emotional and psychological well-being.

14. Plaintiff gave defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, notice of the harassment by defendant, DR. ALAN RABIDEAU, described in paragraphs 9 and 10 by contacting multiple members of the administration of defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO in the years 2005 and 2006, and specifically but not exclusively, complained to and sought redress from defendant, DR. JOSEPH ATKINSON, the direct supervisor over plaintiff, about the sexual harassment, gender and disability-advocacy-based harassment and retaliation by his male engineering colleague defendant, DR. ALAN RABIDEAU.

15. That the defendants, STATE UNIVERSITY OF NEW YORK AT BUFFALO and DR. JOSEPH ATKINSON, through STATE UNIVERSITY OF NEW YORK AT BUFFALO's office of Affirmative Action and other

agencies, failed to investigate plaintiff's complaint or assert any discipline, effect, control, or cessation of said discriminatory conduct by defendant, DR. ALAN RABIDEAU, subsequent to plaintiff's pleas for rectification and remediation of the discriminatory action.

16. That during the years 2005 and 2006 and prior thereto, the plaintiff had engaged in efforts and advocacy on behalf of individuals with disabilities and autism; and was fairly prominent in behalf of the disabled and autistic community. The plaintiff has been a well known advocate especially for children and adults with autism. In 2002 plaintiff volunteered as Co-Chair and organized the Inaugural Walk for Autism which over 3,300 attended in Buffalo, New York. Plaintiff was again Co-Chair for Second Walk for Autism in 2003 in Buffalo, New York which was sponsored by a number of local and national businesses and the community. Since June 2004 she has been host of DisAbility News & Views Radio, conducting interviews with prominent people in the disability arena. That in October 2005 at the request of Ezra Zubrow, male faculty member at the State University of New York at Buffalo and President of the local union chapter, United University Professions, Inc., the collective bargaining agent of the plaintiff and defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, United University Professional Committee, the plaintiff assumed Chairmanship of a

new ad hoc committee of the UUP Buffalo chapter on behalf of people with disabilities.

17. That in her capacity as Chairman of the ad hoc committee, plaintiff openly advocated on behalf of the disabled in connection with disability accommodations and physical facilities at defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO which were not in compliance with laws and regulations previously enacted for the sake of the disabled; consulted with parents of numerous students who were legally wronged by the defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, and suggested to these parents to consult with legal assistance where defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, was found to be in violation of the ADA for failing to provide individuals with disabilities an accessible campus by three students with disabilities in 2000; In June 2006 as Chair of the Disability Committee of UUP-Buffalo, plaintiff requested a copy of the "Rehab Plan" a result from the lawsuit Denemeade et al. v SUNYAB filed in 2000; Plaintiff's request was repeatedly ignored by defendant, State University of New York at Buffalo and plaintiff suffered further retaliation and hostile environment by defendant, State University of New York at Buffalo. Plaintiff was contacted for an interview on September 19, 2006 by Hei Hei Chan, a female student who worked for the State University of New York at Buffalo student newspaper, The

Spectrum, regarding whether progress has or hasn't been made on the campus for accommodations for the people with disabilities including students, staff, and faculty.

17a. Plaintiff's advocacy on behalf of people with disabilities was also published in the State University of New York at Buffalo student newspaper, The Spectrum in 2006 where plaintiff publicly stated, "UB does not foster a culture of full inclusion. Moshenko notes that there are not only architectural barriers but also an inadequacy within the UB faculty and community to empathize with the disabled." Several individuals and parents of students with disabilities were also contacted along with Randy Borst, Director of Disability Services at State University of New York at Buffalo who stated, "The UB community has an outmoded way of thinking towards disabilities." and in the future hopes UB can become more updated and "universally accessible." The article was published on Wednesday, September 27, 2006, "UB struggles to accommodate the disabled" by Tom Halleck and Hei Hei Chan, News Editor and Staff Writer.

<http://spectrum.buffalo.edu/article.php?id=28435>

where the tenor of the article highlighted the failure of the defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, to comply with ADA accommodations required by law for people with disabilities. This article was widely circulated among students, faculty and administrators at the State University of New York

at Buffalo and throughout the SUNY system as well as published on the internet which engendered remarks by various faculty members hostile to plaintiff's participation on behalf of individuals with disabilities, if applied against defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO. Three days after the article was published by The Spectrum, plaintiff was contacted by defendant, State University of New York at Buffalo stating that plaintiff's request from July 2006 for Presidential Sick Leave remained in the President's Office and it had not yet been approved. Plaintiff's sick days were used and therefore salary would end and the paycheck received on October 4, 2006 included two-days pay. Further because plaintiff would be out of "pay status" health insurance coverage would be terminated on October 18, 2006. The cost to maintain the Empire Plan was \$467.39 per two week period. Plaintiff was shocked to receive this information and reached out to several members of the union to help.

18. That the defendants, and each of them, had been provided ongoing information regarding harassment, discrimination, retaliation and hostile environment as plaintiff had notified her Union representative of the UUP-Buffalo Chapter of defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, concerning harassment by defendant Alan Rabideau in the work place in November 8, 2005; Plaintiff was represented by a

union representative officer for Professionals and NYSUT attorney, Tara Singer; who notified the HR Services, Employee Relations, and Senator John Sheffer, former Executive Director of UB's Institute for Local Governance and Regional Growth), defendants including Joseph F. Atkinson and Scott Weber, Chair of the Department of Civil Structural and Environmental Engineering, Alan Rabideau did respond to the complaint of sexual harassment/discrimination with a verbal acknowledgement and written apology to plaintiff on November 18, 2005;

18a. Again on February 7, 2006, Alan Rabideau harassed plaintiff in the workplace. Plaintiff provided a two-page typed letter on February 8, 2006 with specific details and pleaded for help and intervention regarding the sexual harassment and discrimination by defendant Alan Rabideau. The typed letter was personally hand delivered in an envelope to her immediate supervisor, defendant Joseph Atkinson, Scott Weber, Chairman of Dept of Civil, Structural and Environmental Engineering, Igor Jankovic, Christina Tsai and James Jensen (all professors in the Environmental Engineering Department). There was no response from any of the faculty regarding the letter, not even an acknowledgement, nor did anyone take any corrective action in this regard after being informed verbally and in writing, which gave the defendant, Alan Rabideau a clear message that sexual harassment, retaliation and discrimination would be allowed to

go on against plaintiff. Plaintiff was instructed by her union representative and NYSUT attorney, Tara Singer Bloomberg on February 14, 2006 that there were two options available to her: file a complaint of sexual harassment with Office of Equity, Diversity and Affirmative Action at the State University of New York at Buffalo (she filed report with staff on March 1, 2006) or to have mediation conducted by Employee Relations (with or without union representative). Plaintiff's union representative suggested mediation to Employee Relations but mediation was not arranged then.

18b. On February 16, 2006 plaintiff learned that Ezra Zubrow, President of UUP has spoken with Scott Weber requesting mediation. Joseph Atkinson and Ezra Zubrow met to discuss the plaintiff's issues of discrimination. Scott Weber also had a private meeting with Joseph Atkinson after 5PM to discuss plaintiff's issues discrimination. Plaintiff was excluded from participating in meeting. Plaintiff asked defendant Joseph Atkinson what was the outcome of this meeting and he replied "that they came to a resolution to the problem." Plaintiff asked what the resolution was and was told by Joseph Atkinson "that it was confidential and if plaintiff wanted to know the answer to ask Scott Weber directly." Joseph Atkinson stated "that he didn't want to breach any confidentiality with Scott Weber."

18c. On February 17, 2006 the plaintiff emailed Dr. Mark Karwan, DEAN, School of Engineering and Applied Sciences, about the ongoing acts of sexual harassment and discrimination by Alan Rabideau. Plaintiff emailed copy of two-page letter with Dean Karwan who immediately responded back to plaintiff asking what he could do. Dr. Karwan asked plaintiff if he could review this information with Scott Weber, Chairman of the Dept of Civil Engineering and whether plaintiff's relationship with Scott Weber was satisfactory. Dr. Karwan's position as Dean would be ending as a search for new Dean was underway and ultimately his role would not be as effective with current faculty involved.

18 d. Plaintiff also had contact with defendant, State University of New York at Buffalo administrator's such as: Ezra Zubrow, President, UUP-Buffalo Chapter and Professor in Anthropology (also on the board of Environment Society Institute or ESI, a SUNY research center under Provost Tripathi, headed by defendant Alan Rabideau). Jennifer Bowen, Esq. and Jeff Reed, HR Services, Employee Relations; Ed Herman, union representative for academics, who notified the HR Services Employee Relations department and defendants as well as Scott Weber, Chair of the Department of Civil Structural and Environmental Engineering, and other staff in the department such as Igor Jankovic, Christina Tsai (both non-tenured) and James Jensen.

18 e. Under advisement of her union representative and NYSUT attorney, plaintiff met with Sharon Nolan Weiss and Keisha Lanier, at the Office of Equity Diversity and Affirmative Action, State University of New York at Buffalo on Wednesday, March 1 2006, concerning her complaints about gender discrimination. Plaintiff was asked to verbally provide information regarding conduct and harassment by male engineering staff, defendant Alan Rabideau. For nearly two-hours plaintiff spoke with staff who took notes regarding sexual harassment, discrimination and hostile work environment. Plaintiff shared her concerns for the lack of reasonable care to prevent and promptly correct harassment by her immediate supervisor, defendant Joseph Atkinson and by Scott Weber, Chairman of the Department of Civil Structural and Environmental Engineering. Scott Weber previously had been a professor in the Environmental Engineering Department for many years and friends with both defendant's Alan Rabideau and Joseph Atkinson.

18f. Plaintiff was told that this information would be fully investigated and to forward any/all email messages that pertained to the harassment to their office. Plaintiff complied immediately to their requests and also provided names of other females (staff and students) who had been sexually harassed and/or witnessed sexual harassment and discriminated against by Alan Rabideau against others. The plaintiff learned from the

union representative that Alan Rabideau and Scott Weber "were furious" when they found out that she had gone to file a complaint of harassment with UB's Office of Equity, Diversity, and Affirmative Action.

18g. Just five days after meeting with the staff at the Office of Equity, Diversity, and Affirmative Action at the State University of New York at Buffalo, the plaintiff was told by defendant, Joseph F. Atkinson, that he had bad news regarding her employment after he met in the morning with Provost Tripathi on March 6., 2006 that plaintiff's full time appointment was not being renewed despite receiving a satisfactory appraisal of her work there and that the position would become part-time. Plaintiff was not offered the part time position and has repeatedly been overlooked and ignored for numerous jobs she has applied for at the State University of New York at Buffalo and treated as persona non grata.

18h. There were multiple e-mails throughout the years 2005-06 to various officers and representatives of the defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, and to the defendants, ALAN RABIDEAU and JOSEPH ATKINSON as well as Ezra Zubrow, President, UUP-Buffalo Chapter and Professor in Anthropology (also on the board of Environment Society Institute, another research center, under Provost Tripathi, headed by defendant Alan Rabideau). Jennifer Bowen, Esq. and

Jeff Reed, HR Services, Employee Relations Department; Ed Herman, union representative for academics who notified the HR Services, Employee Relations, and defendants as well as Scott Weber, Chair of the Department of Civil Structural and Environmental Engineering, and other staff in the department such as Igor Jankovic, Christina Tsai (both non-tenured) and James Jensen.

19. Plaintiff emailed Elizabeth Cadle, Director of the Buffalo Field Office of the EEOC on September 28, 2006 at 12:34 AM regarding Subject: case 525-2006-00345, stating the following:

"Dear Ms. Cadle:

It has recently come to my attention that there is an error in one of the statements on the EEOC Form 5 which needs to be corrected. I also want to add disability as an additional basis for discrimination and retaliation to my complaint. More information and details will be forthcoming in the next two weeks. Please do not close my case until I have had the opportunity to complete the amendment to my complaint. Thank you."

Plaintiff faxed letter to the EEOC on September 28, 2006 to Investigator Charlene McKinnon, with cc: Elizabeth Cadle alleging discrimination and retaliatory actions against plaintiff by defendants, based upon her advocacy on behalf of

people with disabilities. Plaintiff was not alleging different actions of defendant, State University of New York at Buffalo, only different grounds for disability and retaliation.

EEOC failed to amend the original charge as requested by plaintiff, but instead on October 11, 2006 the EEOC mailed a new form 5 which was marked with a new charge number 525-2007-00042 resulting in the EEOC closing the file on existing charges on December 1, 2006 without properly processing as an amendment.

20. That upon information and belief, defendant, DR. ALAN RABIDEAU, specifically told the defendant, DR. JOSEPH ATKINSON, and other faculty members that he disapproved of plaintiff's advocacy on behalf of the disabled (autism) and resentment over her receiving accolades and numerous awards for such work (awards included City of Buffalo Ambassador Award, Parade/Buffalo Bills Community Quarterback Award, NYS Developmental Disability Planning Council, Exceptional Parent Magazine, National Alliance for Autism Research, NYS Partners in Policymaking, along with interviews on TV and radio programs, and numerous articles featuring Ms. Moshenko and her son Alex with autism in The Washington Post and The Buffalo News)

21. That plaintiff filed a request to amend the original charge on September 28, 2006 to EEOC in connection with discriminatory action against plaintiff by defendant, STATE

UNIVERSITY OF NEW YORK AT BUFFALO, based upon her advocacy on behalf of people with disabilities and animus retaliation.

22. That all of the aforesaid acts of DR. JOSEPH ATKINSON and other employees of defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, created a hostile, intimidating, retaliatory animus and work environment whose purpose and effect was to interfere unreasonably with plaintiff's work performance which violated her civil and human rights and that connection plaintiff repeats and realleges the allegations of paragraph 10, above, with the same force and effect as if herein fully set forth and repeated; herein applicable and attributable to plaintiff's activities on behalf of the disabled.

23. That under Title VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act and New York State Human Rights Law, Article 15, the defendants, and each of them, exercised and demonstrated retaliatory animus by claiming and communicating to plaintiff pre textual business reasons for its actions toward plaintiff in severing her from employment and claimed a change of direction in changing plaintiff's position from a full to part-time status because of a change of direction in program. Plaintiff was not offered a part time position and was told by defendant Joseph

Atkinson that he would not be renewing her appointment despite years of unblemished service and excellent appraisals.

Plaintiff's long time employment, career and future ended once she reported sexual harassment, discrimination to her employer in November 2005 and again in February 2006. That the reasons advanced were pretextual (or) in whole or in part and a misrepresentation of facts of the situation in defendants' attempts to justify its actions, all of which constitute dissembling to conceal defendant's discrimination and retaliatory animus on the basis of gender and plaintiff's advocacy on behalf of the disabled.

24. That the defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, further dissembled and exercised retaliatory animus before the New York State Workers Compensation Board in controverting plaintiff's claim for compensation based upon her emotional and physical injury as her medical doctor placed Ms. Moshenko on full medical leave on June 21, 2006 due to repeated acts of harassment, retaliation and hostile work environment resulting from discriminatory acts by the defendant, in that the defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, denied knowledge of complaints of discrimination in writing on December 13, 2006 and at a hearing on December 14, 2006 before the New York State Workers' Compensation Board by claiming on "no known

grievances filed by Ms. Moshenko of any sort for harassment." The defendant has known about claims of sexual harassment and discrimination since plaintiff first reported these verbally and in writing November 2005.

25. That the defendants, and each of them, created and contributed to an ongoing hostile environment at plaintiff's place of employment which constituted more than deliberate indifference to the accessibility needs of disabled persons on campus. That plaintiff had inquired of the defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, concerning compliance under the settlement reached in the case of Denmeade, et al v. State University of New York at Buffalo. The lawsuit had programmed remediation of the conditions. That the failure of defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, to remediate said conditions over a period of approximately three years and failure to cooperate with plaintiff in seeking to facilitate remediation on behalf of the disabled contributed to hostile environment, discrimination, retaliatory acts above. Background regarding the topic of disabilities in The Spectrum: A lawsuit was filed in U.S. District Court, Western District by DENMEADE, MILILLO, and BOWMAN v. SUNYAB in May 2000. This civil action was brought by three students with physical disabilities at the UNIVERSITY AT BUFFALO, State University of New York ("SUNYAB") for declaratory and injunctive relief and damages, under Title

II of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq, §§12131-34, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. This case arises out of defendant UNIVERSITY AT BUFFALO, State University of New York's failure to provide persons with disabilities including physical, legally required access to facilities, services, activities, and programs owned, operated, controlled and/or maintained by the State University of New York, a governmental and public entity.

26. That the foregoing conduct on the part of defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, created an ongoing hostile environment against the disabled in violation of Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act and Title VII of the Civil Rights Act of 1964 in that defendant was aware of the hostile environment discriminating against disabled persons by its failure to honor the terms of the lawsuit Denmeade, Milillo and Bowman v. SUNYAB U.S.C. Western District under the settlement discovered above as attempted to be inquired into and forced and remediated by plaintiff on behalf of the disabled.

27. Subsequent to the filing of plaintiff's Complaint with the Equal Employment Opportunity Commission in 2006 and before the decision of said Commission was rendered, plaintiff was subjected to retaliatory and adverse employment actions by the

defendants because of her Complaints filed with the Equal Employment Opportunity Commission based on her sex, and advocacy on behalf of the disabled in the following manners:

a) Plaintiff applied and qualified for positions for which the defendant, State University of New York at Buffalo was accepting applications, and despite her qualifications, plaintiff was rejected. After rejecting plaintiff's application, the positions remained open and defendants continued to accept applicants who possessed plaintiff's qualifications or less.

b) The defendants denied plaintiff training and advancement otherwise available to her, excluded her from usual departmental meetings, and failed to respond to lawful, reasonable requests for information under FOIL.

c) Snubbed and slighted plaintiff by giving silent and exclusionary treatment to her as far as departmental activities which involved necessary information essential to performance of plaintiff's duties and activities.

d) Defendants removed plaintiff from desirable assignments under the guise of policy change and the application of programs funds in a different manner and direction; and abolished her position to create a part-time position, which defendant then refused to offer to plaintiff, despite her eminent qualifications and experience, for the "new position".

e) Defendants failed to consider plaintiff for any other job openings in defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO's, organization, and failed to employ plaintiff in other occupations for which she was qualified by experience of 17 years in the same position at the Great Lakes Program at SUNY-Buffalo and training, despite the fact that plaintiff's performance evaluations did not reflect any unfavorable performance in the past.

f) Defendants failed to provide plaintiff with sufficient information to perform her job; by depriving her of support access to necessary knowledge.

g) By excluding her from group meetings on and off campus to which she formerly had access, participated in and was involved.

h) Defendants withheld available advancement opportunities from plaintiff despite her qualifications and known experience of 17 years in the area at the University at Buffalo, for which plaintiff submitted applications.

i) By giving co-workers the false impression she was a trouble maker and unqualified to perform her duties, despite the fact she had previously and consistently received favorable evaluations and ratings, as well as letters of recognition from

numerous people including President Greiner and President Sample.

28. That plaintiff is a victim of the foregoing employment and civil rights discrimination under the Acts and entitled to protection against retaliatory action by the defendant employer, State University of New York at Buffalo, under §704(a) of Title VII of the Civil Rights Act, 42USC §2000e-3(a) and 42USC §2000e-16 et al and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101 et seq, USC §§ 12131-34, et seq, 28CFR Part 35 and Section 504 of the Rehabilitation Act of 1973 29 U.S.C. §701, et al, USC §794, 34CFR Part 104, 45 CFR Part 84, 28 CFR §§42.501 et. seq. which prohibits employment discrimination and Title IX of the Education Amendments of 1972, 20USC §§1681 and New York State Human Rights Law Article 15, Sec 296 1 (a)(d)(e), 4, 6, 7, 10 (a) (b) because she opposed and charged defendants with discrimination as an unlawful employment practice proscribed under said Titles both by the EEOC complaint and by seeking redress from defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO's, administrators, including but not limited to, its Office of Equity Affirmative Action.

29. That plaintiff suffered adverse actions and retaliatory animus employment actions by having her position abolished, non-renewing her appointment after 17 years of full

time employment, replaced by a part-time, ostensibly little-modified position which was not even offered to plaintiff.

30. That defendants' retaliatory animus employment activities aforesaid was motivated by, and was a direct result of plaintiff's participation in a protected activity, and in retaliation therefore; and has constituted defendants' ongoing discriminatory action against plaintiff.

WHEREFORE, plaintiff respectfully prays that this Court:

a) Issue a declaratory judgment that the acts, policies, practices, and procedures of defendants complained of herein violated and continue to violate the rights of plaintiff under Title VII of the Civil Rights Act of 1964, as amended, 42 USC §§2000e et seq. S701, S707; §1681 of Title IX of the Education Amendments of 1972, 20 USC §§1681; Title II of the Americans with Disabilities Act of 1990 42 USC §12101 et al; Section 504 of the Rehabilitation Act of 1973, 29 USC §794 and New York State Human Rights Law, Article 15, §296 Human Rights Law.

b) Order defendant, STATE UNIVERSITY OF NEW YORK AT BUFFALO, to make plaintiff whole by reinstating her into her former position, or the equivalent of such position on a permanent state appointment, and by providing appropriate back pay and reimbursement for lost pension and other benefits and expenses in an amount to be shown at trial;

c) Grant compensatory damages for the retaliatory conduct by the defendants, and each of them;

d) Grant plaintiff punitive damages for the retaliatory activities of defendants, and each of them;

e) Grant to plaintiff her attorney's fees, costs, and disbursements; and

f) Grant such further and additional relief as may to the Court seem proper.

DATED: August 24, 2007

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MONICA S. MOSHENKO,

Plaintiff

vs

STATE UNIVERSITY OF NEW YORK
AT BUFFALO, DR. ALAN RABIDEAU,
and DR. JOSEPH ATKINSON,

07-CV-0116A(M)

Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2007, I electronically filed the foregoing Amended Complaint, with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following EM/ECF participants on this case:

1. Kim S. Murphy, Esq.
Kim.Murphy@oaq.state.ny.us

DATED: Niagara Falls, NY
August 24, 2007

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