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Of Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**MICHAEL TRIMBLE,**

Case No.

Plaintiff,

**COMPLAINT**

v.

**UNLAWFUL EMPLOYMENT ACTION**

**THE KROGER CO. and ELWOOD  
STAFFING SERVICES, INC.,**

Title I of the ADA, Discrimination and  
Retaliation, and supplemental state law  
claims

Defendants.

**JURY TRIAL DEMANDED**

**I. PRELIMINARY STATEMENT**

1. Plaintiff Michael Trimble (Plaintiff) brings this action to remedy violations of Plaintiff's statutory rights under Title I of the ADA, 42 U.S.C. § 12112, as well as supplementary

state claims. Plaintiff seeks equitable relief as well as compensatory damages, attorneys' fees and costs.

## **II. JURISDICTION**

2. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, federal question jurisdiction, and 28 U.S.C. § 1343, civil rights jurisdiction.

3. Plaintiff requests this Court invoke its supplemental jurisdiction pursuant to 28 U.S.C. § 1367 with respect to all causes of action based on Oregon statutory provisions or common law as the state claims arise from the same nucleus of operative facts as the federal claims.

4. All preconditions to jurisdiction pursuant to 42 U.S.C. § 2000e-5 have been satisfied.

a. On April 21, 2016, Plaintiff filed a charge of employment discrimination and retaliation concerning Defendant The Kroger Co. with the Oregon Bureau of Labor and Industries (BOLI), case number DPEMDP160421-10528, for violation of Title I of the ADA and Oregon Unlawful Employment Practice. BOLI co-filed a charge with the Equal Employment Opportunity Commission (EEOC), charge number 38D-2016-00439C.

b. Plaintiff requested a notice of suit rights from BOLI. On November 15, 2016, BOLI issued Plaintiff a right to sue letter for case number DPEMDP160421-10528 concerning The Kroger Co.

c. On February 1, 2017, the EEOC issued Plaintiff a right to sue letter for charge number 38D-2016-00439C concerning Defendant The Kroger Co.

d. On April 21, 2016, Plaintiff filed a charge of employment discrimination and retaliation concerning Defendant Elwood Staffing Services, Inc. with BOLI, case number DPEMDP160421-10527, for violation of Title VII of the Civil Rights Act of

1964 and Oregon Unlawful Employment Practice. BOLI co-filed a charge with the EEOC, charge number 38D-2016-00438C.

e. On November 15, 2016, BOLI issued Plaintiff a right to sue letter for case number DPEMDP160421-10527 concerning Defendant Elwood Staffing Services, Inc.

f. On February 1, 2017, the EEOC issued Plaintiff a right to sue letter for charge number 38D-2016-00438C concerning Defendant Elwood Staffing Services, Inc.

5. Venue is in the District of Oregon pursuant to 28 U.S.C. §1391(b) because the claim arose in this Judicial District.

### **III. PARTIES**

6. Plaintiff Michael Trimble (hereafter “Plaintiff” or “Michael Trimble”) is a citizen of the United States. At all times material, Plaintiff worked for Defendants in Multnomah County, Oregon.

7. Defendant The Kroger Co. (hereafter “Defendant Kroger”) is an Ohio corporation, registered to do business in Oregon. Defendant Kroger does regular and sustained business in Oregon, including Multnomah County, Oregon, under the names Fred Meyer and QFC. Defendant Kroger has an office in Portland, Oregon, where Plaintiff was employed.

8. Defendant Elwood Staffing Services, Inc. (hereafter “Defendant Elwood Staffing”) is an Indiana corporation, registered to do business in Oregon. Defendant Elwood does regular and sustained business in Oregon, including Multnomah County, Oregon. Defendant Elwood has an office in Portland, Oregon, where Plaintiff was employed out of. Defendant Elwood Staffing provides Defendant Kroger with employees based on Defendant Kroger’s business needs.

9. At all times relevant, Defendant Kroger’s employees and supervisors, as their conduct is alleged herein, were acting within the course and scope of their employment with Defendant Kroger.

10. At all times relevant, Defendant Elwood Staffing's employees and supervisors, as their conduct is alleged herein, were acting within the course and scope of their employment with Defendant Elwood Staffing.

#### **IV. GENERAL FACTUAL ALLEGATIONS**

11. Michael Trimble has one or more disabilities. Michael Trimble does not have arms. Michael Trimble was born in Chernobyl, Ukraine with deformed arms that were removed at birth.

12. Because Michael Trimble does not have arms, he is substantially impaired in multiple major life activities follows: personal self-care, including toileting, dressing himself, and cooking; lifting; carrying; pushing; pulling; writing; opening automatic doors; keyboarding; driving motor vehicles; and riding a bicycle.

13. Because Michael Trimble does not have arms, he uses his feet for all writing, keyboarding, lifting, and carrying activities as others use their hands. For fine-motor tasks, he uses his feet to perform what would typically be hand and arm functions. He types on a computer keyboard using his feet, although he cannot keyboard as fast as people can when using their hands.

14. Michael Trimble is limited in the major life activity of driving and transportation. Michel Trimble is unable to drive a motorized vehicle. Instead, he walks, uses public transportation, or rides a specially designed bicycle in which the handlebars extend to his shoulder and the stump of his left arm so that he can steer the bicycle. Because he does not have arms and hands, it is very difficult for him to walk, push, or carry his bicycle. He is only able to carry his bicycle over his shoulder for very short distances. He has difficulty opening doors, particularly while trying to carry a bicycle over his shoulder. Rather than walking or pushing his bicycle, he rides the bicycle until he reaches his destination.

15. On January 15, 2016, Michael Trimble applied for a position with Defendant Elwood Staffing. He went through Defendant Elwood Staffing's office skills testing. No

accommodations were offered to Michael Trimble for the office skills testing. Instead, Michael Trimble used his feet to perform all of the office skills testing that others would use their hands and arms to perform. Michael Trimble passed all of the testing using his feet to perform all of the testing tasks.

16. On January 25, 2016, Brandy Velez, a supervising employee of Defendant Elwood Staffing, told Michael Trimble that Defendant Kroger was offering Michael Trimble a position in the Human Resources Department at Defendant Kroger's Oregon offices located at 3800 SE 22nd Avenue, Portland, Oregon, to take calls from employees regarding changes in benefits, W2 forms, 1095 forms, and other non-benefits essential calls. Brandy Velez told Michael Trimble that this job would start on January 26, 2016, and would run through the end of April, 2016. Brandy Velez told Michael Trimble that Defendant Kroger was a "temp-to-hire" employer and that if Michael Trimble successfully worked 520 hours as a temporary employee for Defendant Kroger, he would be hired by Defendant Kroger.

17. On January 26, 2016, Michael Trimble started working at Defendant Kroger's Oregon offices in SE Portland. Michael Trimble went to and from work by using his specialized bicycle, cycling there from Gresham, Oregon. On Michael Trimble's first day on the job, he met Denise Whitney, a Kroger Loss Prevention/Security officer employed by Defendant Kroger. Michael Trimble told Denise Whitney about his ability to use a bicycle and limitations. Michael Trimble requested that Denise Whitney give him access to Defendant Kroger's bicycle room. Whitney said that approval had to come from a supervisor.

18. On January 26, 2016, Michael Trimble met with three of Defendant Kroger's management employees: "Rythie," Laura Brown, and "Rosie." Michael Trimble was told by Defendant Kroger that "Rythie" would be his supervisor. Those three employees told Michael Trimble that his job assignment was in the Kroger Benefits Center (KBC) with Human Resources. They told Michael that 40,000 calls were expected to come in from employees concerning the 1095 form that was being required for the employees to file tax returns. They told

Michael Trimble that although the IRS waived that requirement on January 11, 2016, he was still being brought on to take the employee calls which they anticipated would still come in.

19. Defendant Kroger controlled all aspects of Michael Trimble's work at it Oregon offices. Michael Trimble never received instructions from Defendant Elwood Staffing about how to perform work or his working hours. All instructions came from Defendant Kroger, which controlled his work hours, his working conditions, and communicated with him about his requests for accommodations.

20. After starting work at Defendant Kroger's headquarters, Michael Trimble requested two accommodations from Defendant Kroger. First, Michael Trimble asked Defendant Kroger to lower his work table or desk to accommodate his disability. Michael Trimble requested this after he saw that every desk in his work area at Defendant Kroger's headquarters was capable of being adjusted in height based on the person using the desk. Michael Trimble also has to work in a slumped-over position in his chair because he has to keyboard with his feet and so he needed the desk adjusted to the height of his waist. That request was initially granted by Defendant Kroger's Human Resources department. Second, during the first week Michael Trimble was in training, he requested that Defendant Kroger provide him with a second computer monitor so that he was on an equal footing with handling calls with other employees in the department. Michael Trimble needed the accommodation of a second monitor because the volume of calls he was receiving was very high and his ability to keyboard with his feet is slower than other people keyboard with their hands and he had several applications to use. Defendant Kroger initially denied Michael Trimble's second monitor request, but after making a compelling case as to how a second monitor would accommodate him, Defendant Kroger provided him with a second monitor at his original work station in the Human Resources Department.

21. On February 12, 2016, Michael Trimble was told by Rythie that the call volume for non-benefits calls was less than anticipated. He told Michael Trimble that Defendant Kroger is a for-profit corporation and Defendant Kroger would not continue to pay Michael Trimble if

the call volume did not pick up. Rythie did not reference Defendant Elwood Staffing in this conversation about continued employment.

22. On February 17, 2016, Rythie told Michael Trimble that he had terminated two employees who were brought on to work at Kroger from Defendant Elwood Staffing before Michael Trimble got there due to their failure to comply with strict attendance policy agreement that Defendant Kroger had with Defendant Elwood Staffing. Later that day, Rythie told Michael Trimble that February 19, 2016, would be his last day in the Human Resources Department. However, Rythie told Michael Trimble that there would not be a break in his employment with Kroger because he was transferring Michael Trimble to Kroger Customer Connect Department (KCC) the following week.

23. On February 17, 2016, Rythie told Michael Trimble that he had spoken to Defendant Elwood Staffing before Michael Trimble started working in the Human Resources Department and Defendant Elwood Staffing told Rythie that Michael Trimble did not need any accommodations. Rythie told Michael Trimble that because Rythie is a nice and caring person, Rythie was able to accommodate Michael Trimble in the Human Resources Department. However, Rythie said that other companies would have shown Michael Trimble “the door” if he had requested accommodations from them. Michael Trimble felt very uncomfortable and humiliated by Rythie’s statements.

24. On February 17, 2016, after Michael Trimble’s meeting with Rythie, he called Brandy Velez at Defendant Elwood Staffing and told Brandy Velez that Rythie said that Defendant Kroger was going to transfer him to its KCC Department. Brandy Velez said she was shocked to hear that Michael Trimble was being transferred to KCC because Defendant Kroger had not informed Defendant Elwood Staffing about this. Brandy Velez later told Michael Trimble that Rythie facilitated Michael Trimble being transferred to Defendant Kroger’s KCC Department without involvement by Defendant Elwood Staffing, saying “it was all his doing.”

25. On February 27, 2016, Michael Trimble told Brandy Velez that Rythie wanted him to work a split shift in Defendant Kroger's KCC Department. Michael Trimble explained to Brandy Velez the transportation challenges he faced in biking to work from Gresham, and that working a split shift was very difficult for him as it typically took him more time than most people to go to and from work. Michael Trimble told Brandy Velez that he would not accept a split shift. Brandy Velez later called Michael Trimble and told him that she had spoken to Defendant Kroger and was able to get Defendant Kroger to agree to give him a continuous shift, rather than a split shift. Brandy Velez told Michael Trimble that the work hours Defendant Kroger had agreed to for him in the KCC Department were Monday through Friday, 12:30 p.m. to 9:00 p.m.

26. From February 22 through 26, 2016, Michael Trimble was off work for a week without pay as he waited for his training to start on with KCC.

27. On February 29, 2016, Michael Trimble began working again at Defendant Kroger's headquarters in its KCC Department as a Customer Service Representative. He was responsible for receiving communication from customers, responding to their inquiries, and entering data into the customer relations center database. On March 3, 2016, Defendant Kroger rated Michael Trimble's performance as 100% on the halfway-point evaluation in KCC.

28. In March 2013, during Michael Trimble's second week of training at Defendant Kroger for its KCC Department, he asked his trainer, Kelly, and Dan Pickle, his supervisor in KCC, for a second monitor as an accommodation for his disability. They both flatly denied his request. Michael Trimble informed Mr. Pickle that he had been allowed to have two monitors when he worked in Defendant Kroger's Human Resources Department, even though the call volume was at least the same or higher in KCC than in Human Resources, Mr. Pickle told Michael Trimble that he did not need an additional monitor nor would he receive one.

29. On a Thursday in early March 2016, Michael Trimble received a Skype message from Denise Whitney in Defendant's Loss Prevention/Security Department about his bicycle.

Michael Trimble contacted Denise Whitney, who told Michael Trimble that she wanted him to stop bringing his bicycle through the front doors of the building and to only bring his bicycle inside the building from the back door. This would require Michael Trimble to manually open the back door, to go through a smoking section, and to carry the bicycle up and down a flight of stairs, which is impossible for him as he does not have arms. Michael Trimble asked Denise Whitney for an accommodation of not being required to go through the back door and carry the bicycle up and down the steps because he does not have arms. Denise Whitney said, "No, that's what we decided," and did not offer any alternatives. Denise Whitney told Michael Trimble she would meet with him the next day, Friday, concerning his request about not having to carry his bicycle up the back steps. She did not request that he use a bicycle rack near the parking lot. Denise Whitney also told Michael Trimble that she had been keeping track of his biking, but did not specify what she was referring to. Denise Whitney then told Michael Trimble that he was biking too fast through the pavilion, which is also known as the commons or courtyard area, an open-air walkway and grassy area between two Kroger offices building on its campus. Michael Trimble told Denise Whitney that he would slow his biking down and discussed his obvious physical limitations. During that Skype meeting, Denise Whitney did not direct Michael Trimble to walk his bicycle. There was not an interactive meeting that complied with Defendant Kroger and Defendant Elwood's obligations under the ADA, but instead was a series of directives by Denise Whitney to Michael Trimble.

30. On March 11, 2016, Michael Trimble received the second highest score in Defendant Kroger's KCC Department on its KCC "final exam." His score was 98%.

31. On March 15, 2016, Defendant Kroger posted the results of Michael Trimble's KCC statistics. Both Kelly and Dan Pickle told Michael Trimble that his statistics were nothing short of amazing. His statistics showed an Actual Call Waiting (ACW) of zero (0) seconds. ACW is time spent between taking calls and finishing the notations/documentation. The less ACW an employee has, the more productive the employee is.

32. On March 17, 2016, Mr. Pickle commended Michael Trimble on his great ACW statistics in a group-wide email.

33. Michael Trimble received a call from Brandy Velez at Defendant Elwood Staffing. Brandy Velez said that she wanted to talk to Michael Trimble about a complaint made by Denise Whitney in Defendant Kroger's Loss Prevention about Michael Trimble cycling to and from work. Brandy Velez said that Denise Whitney wanted Michael Trimble to carry his bicycle up the back stairs of the headquarters. Brandy Velez said that the back stairs were out by the smoking section. Michael Trimble said that requiring him to carry his bicycle up a flight of stairs was not feasible for him because he does not have arms. Michael Trimble told Brandy Velez that he did not think that Defendant Kroger's directions were reasonable. Michael Trimble told Brandy Velez that he was "invoking the ADA." Michael Trimble told Brandy Velez that he needed an accommodation of not being required to carry his bicycle up the back stairs. Brandy Velez said that she would get in touch with Denise Whitney about Michael Trimble's request for accommodations and then would report back on what happened.

34. Michael Trimble later received a second call from Brandy Velez at Defendant Elwood Staffing. Brandy Velez informed Michael Trimble that she had spoken to Denise Whitney and that Respondent Kroger was waiving the requirement that he take the bike up the back stairs. Brandy Velez then said that Denise Whitney and Defendant Kroger wanted him to stop biking through the pavilion completely and to walk his bike through the pavilion instead. The pavilion is an outdoor, landscaped area on the campus. Michael Trimble explained to Brandy Velez that he could not walk the bicycle across the pavilion because he does not have arms. Brandy Velez asked, "Can't you just push your bike?" Michael Trimble replied, "How can I push my bike? I don't have any arms?" Michael Trimble asked Brandy Velez for the accommodation of not being required to walk his bicycle across the pavilion. Michael Trimble told Brandy Velez that he had seen other employees biking through the pavilion. Brandy Velez told Michael Trimble that his request for accommodations was denied.

35. On or about March 23, 2016, Michael Trimble received a third call from Brandy Velez. Brandy Velez said that “Julie” in Defendant Kroger’s Human Resources Department witnessed him biking through the pavilion and wanted him to walk his bicycle instead. Michael Trimble again explained to Brandy Velez that he could not walk his bicycle because he lacked arms.

36. On March 23, 2016, Michael Trimble tried to follow Defendant Kroger’s instructions as told to him by Brandy Velez. Michael Trimble stopped at the edge of the pavilion and tried to carry his bicycle over his shoulder. Because of the distance he had to cross to get to the building where he worked, this was very painful for him. Michael Trimble had to get back on the bicycle and ride it to the door of the building, then carry it over his shoulder when he got inside.

37. On March 23, 2016, Mr. Pickle praised Michael Trimble for having outstanding metrics. His individual day statistics were getting very close in line with the stated goals.

38. On March 24, 2016, when Michael Trimble went to work, he again tried to carry his bicycle over his shoulder, but ended up having to ride it across the pavilion. On March 24, 2016, Michael Trimble received two performance audits from Defendant Kroger. Both audits were glowing in praise of his performance.

39. On March 25, 2016, at 10:27 a.m., Michael Trimble called Brandy Velez at Defendant Elwood Staffing to ask her if she would request Defendant Kroger to give him a partial day off for April 14, 2016, so he could attend a medical appointment for his upper torso, which had become painful. Brandy Velez said that she was glad that Michael Trimble called because she was going to call him anyway. Brandy Velez told Michael Trimble that she had been in contact with “Julie” at Defendant Kroger. Brandy Velez told Michael Trimble that Defendant Kroger had ended his assignment with Defendant Kroger because Michael Trimble continued to ride his bike through the pavilion after being asked not to do so. Michael Trimble again explained that he could not walk or push his bicycle because he does not have arms. Michael

Trimble pleaded with Brandy Velez for his job back as his metrics were fantastic. Brandy Velez said she would talk to Julie, but said that Julie had made up her mind and was adamant that Defendant Kroger did not want Michael Trimble to work on campus anymore.

40. On March 25, 2016, at 10:42 a.m., Michael Trimble called Mr. Pickle, his supervisor at Defendant Kroger, to tell him that Julie had fired him. Michael Trimble asked Mr. Pickle if there was anything he could do to help. Mr. Pickle told Michael Trimble that he just found out that Michael Trimble had been fired and was just as shocked as Michael Trimble was. Mr. Pickle said Julie was in a meeting, but that he would give her Michael Trimble's phone number if she wanted to contact Michael Trimble.

41. On March 25, 2016, at 11:23 a.m., Michael Trimble received a hostile call from Tina Addy at Defendant Elwood Staffing. Tina said that she was relaying a message from Julie at Defendant Kroger. Tina Addy said, "Julie told me to tell you once again that her decision is final." Tina Addy emphatically said "You are 'never' to call or make contact with any employee at Kroger." Tina Addy then continued speaking to Michael Trimble in an aggressive tone. Tina Addy said, "Julie fired you because you did not follow directions about your bicycle. " Michael Trimble said, "Tina, I could not walk or push my bike." Tina Addy then emphatically said, "This is not about your bike. This is about 'you' not listening after repeated warnings from Kroger. You even had one warning coming directly from Julie." Michael Trimble said that, "Not once did I ever see, meet with, or talk to Julie." Tina Addy said, "If you can't follow a simple direction such as not biking through the pavilion, how can Kroger expect you to follow more specific directions on taking calls in the future? They do not want you as an employee!" Michael Trimble replied to Tina Addy, "I don't understand this. My stats with KCC were beyond exemplary, if not record setting. I can't handle the bike like they want me to." Tina Addy did not provide any other instances of Michael Trimble not following directions given by Defendant Kroger beyond references to his bicycle.

42. On March 25, 2016, at 12:30 p.m., Michael Trimble called Defendant Elwood Staffing and Tina Addy answered. Michael Trimble asked Tina Addy if he was still employed with Defendant Elwood Staffing. Tina Addy replied, "Yes." Michael Trimble asked Tina Addy if it was Defendant Kroger, not Defendant Elwood Staffing, who ended his assignment. Tina Addy replied, "Kroger ended your assignment." Michael Trimble again told Tina Addy how great his KCC stats were. Tina Addy agreed with Michael Trimble about the stats and said, "Your performance was never brought up or raised as an issue by Kroger. It was all over that bike."

43. Michael Trimble did not receive any more work assignments from either Defendant Elwood Staffing or Defendant Kroger.

### **FIRST CLAIM FOR RELIEF**

#### **(Title I of the Americans with Disabilities Act – Discrimination)**

44. Plaintiff re-alleges all relevant paragraphs as though fully set forth herein.

45. At all times material, Defendants were employers for the purpose of, and subject to, the Americans with Disabilities Act (ADA).

46. Plaintiff has an impairment which substantially limits one or more major life activities, has a history and/or record of such impairment, and/or was regarded by Defendants as having such impairment.

47. After Plaintiff disclosed Plaintiff's disability to Defendants, Defendants began to discriminate against Plaintiff as alleged above. Said discrimination was based on Defendants' failure to reasonably accommodate Plaintiff, disparate treatment, retaliation, and a hostile work environment.

48. Defendants failed to engage in the interactive process with Plaintiff.

49. Plaintiff requested reasonable accommodations from Defendants.

50. At all relevant times, Plaintiff was able to perform the essential functions of Plaintiff's position, with or without reasonable accommodation.

51. Defendants' conduct violated 42 U.S.C. § 12112.

52. As a result, Plaintiff suffered damage and is entitled to the damages and other relief set forth below.

53. Plaintiff is entitled to equitable relief, including, but not limited to, a declaration that Defendants violated Plaintiff's statutory rights, reinstatement, and an injunction prohibiting further discrimination and retaliation.

54. Plaintiff is entitled to an award for past lost wages and benefits and future lost earnings, benefits, and lost earning capacity, and other compensatory damages for past and future pecuniary losses. Plaintiff should be awarded economic damages in an amount determined fair by a jury.

55. Plaintiff is entitled to non-economic damages sufficient to compensate Plaintiff for emotional distress and other non-pecuniary losses in an amount to be proved at trial. Plaintiff should be awarded non-economic damages in an amount determined fair by a jury.

56. Defendants' acts were willful and malicious and done with reckless indifference to Plaintiff's protected rights. Defendants should be assessed punitive damages in an amount as fixed by a jury to punish Defendants and to deter such conduct in the future.

57. The court should enter an order declaring that Defendants violated the ADA.

58. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of pre-judgment interest at the legal rate from the date the damage occurred until the date of judgment.

59. Pursuant to 42 U.S.C. §§ 1988 and 2000e-5, Plaintiff is entitled to an award of attorneys' fees, expert witness fees and costs incurred herein.

60. Plaintiff is entitled to post-judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

## **SECOND CLAIM FOR RELIEF**

### **(Title I of the Americans with Disabilities Act – Retaliation)**

61. Plaintiff re-alleges all relevant paragraphs as though fully set forth herein.

62. Defendants retaliated against Plaintiff for pursuing Plaintiff's rights in accordance with the ADA. Such actions by Defendants are in violation of the Americans with Disabilities Act.

63. As a result, Plaintiff suffered damages and is entitled to the damages and other relief set forth below.

64. Plaintiff is entitled to equitable relief, including, but not limited to, a declaration that Defendants violated Plaintiff's statutory rights, reinstatement, and an injunction prohibiting further discrimination and retaliation.

65. Plaintiff is entitled to an award for past lost wages and benefits and future lost earnings, benefits, and lost earning capacity, and other compensatory damages for past and future pecuniary losses. Plaintiff should be awarded economic damages in an amount determined fair by a jury.

66. Plaintiff is entitled to non-economic damages sufficient to compensate Plaintiff for emotional distress and other non-pecuniary losses in an amount to be proved at trial. Plaintiff should be awarded non-economic damages in an amount determined fair by a jury.

67. Defendants' acts were willful and malicious and done with reckless indifference to Plaintiff's protected rights. Defendant should be assessed punitive damages in an amount as fixed by a jury to punish defendant and to deter such conduct in the future.

68. The court should enter an order declaring that Defendants violated the ADA.

69. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of pre-judgment interest at the legal rate from the date the damage occurred until the date of judgment.

70. Pursuant to 42 U.S.C. §§ 1988 and 2000e-5, Plaintiff is entitled to an award of attorney's fees, expert witness fees and costs incurred herein.

71. Plaintiff is entitled to post-judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

**THIRD CLAIM FOR RELIEF**

**(ORS 659A.103 et seq. – Oregon Rehabilitation Act)**

72. Plaintiff re-alleges all relevant paragraphs as though fully set forth herein.

73. Plaintiff is a “disabled person” as defined at ORS 659A.104(1).

74. Defendants are an “employer” as defined at ORS 659A.106.

75. After Plaintiff disclosed Plaintiff’s disability and need for accommodations to Defendants, they began to discriminate against Plaintiff as alleged above. Said discrimination was based on Defendants’ failure to reasonably accommodate Plaintiff, disparate treatment, retaliation, and a hostile work environment.

76. Defendants failed to engage in the interactive process with Plaintiff.

77. Plaintiff could perform the essential functions of Plaintiff’s job with Defendants with or without the reasonable accommodations of allowing Plaintiff to continue to work.

78. Defendants’ refusal to provide reasonable accommodations for Plaintiff’s known disability constitutes discrimination against Plaintiff due to Plaintiff’s disability pursuant to ORS 659A.103 et seq.

79. As a result, Plaintiff suffered damage and is entitled to the damages and other relief set forth below.

80. Plaintiff is entitled to equitable relief, including, but not limited to, a declaration that Defendants violated Plaintiff’s statutory rights, reinstatement, and an injunction prohibiting further discrimination and retaliation.

81. Plaintiff is entitled to an award for past lost wages and benefits and future lost earnings, benefits, and lost earning capacity, and other compensatory damages for past and future pecuniary losses. Plaintiff should be awarded economic damages in an amount determined fair by a jury.

82. Plaintiff is entitled to non-economic damages sufficient to compensate Plaintiff for emotional distress and other non-pecuniary losses in an amount to be proved at trial. Plaintiff should be awarded non-economic damages in an amount determined fair by a jury.

83. Defendants' acts were willful and malicious and done with reckless indifference to Plaintiff's protected rights. Defendants should be assessed punitive damages in an amount as fixed by a jury to punish defendant and to deter such conduct in the future.

84. The court should enter an order declaring that Defendants violated the Oregon Rehabilitation Act.

85. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of pre-judgment interest at the legal rate from the date the damage occurred until the date of judgment.

86. Pursuant to ORS Chapter 659A and ORS 20.107, Plaintiff is entitled to recover Plaintiff's reasonable attorney fees and costs, including expert witness fees.

87. Plaintiff is entitled to post-judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

#### **FOURTH CLAIM FOR RELIEF**

##### **(ORS Chapter 659A.199 – Whistleblower)**

88. Plaintiff re-alleges all relevant paragraphs as though fully set forth herein.

89. Plaintiff reported to Defendants conduct that Plaintiff believed was evidence of a violation of state or federal law, rule, or regulation.

90. Defendants discriminated and retaliated against Plaintiff because of the report made by Plaintiff. Defendants' actions violated ORS 659A.199, are an unlawful employment practice, and caused Plaintiff economic and noneconomic damages.

91. As a result, Plaintiff suffered damage and is entitled to the damages and other relief set forth below.

92. Plaintiff is entitled to equitable relief, including, but not limited to, a declaration that Defendants violated Plaintiff's statutory rights, reinstatement, and an injunction prohibiting further discrimination and retaliation.

93. Plaintiff is entitled to an award for past lost wages and benefits and future lost earnings, benefits, and lost earning capacity, and other compensatory damages for past and future pecuniary losses. Plaintiff should be awarded economic damages in an amount determined fair by a jury.

94. Plaintiff is entitled to non-economic damages sufficient to compensate Plaintiff for emotional distress and other non-pecuniary losses in an amount to be proved at trial. Plaintiff should be awarded non-economic damages in an amount determined fair by a jury.

95. Defendants' acts were willful and malicious and done with reckless indifference to Plaintiff's protected rights. Defendants should be assessed punitive damages in an amount as fixed by a jury to punish defendant and to deter such conduct in the future.

96. Plaintiff is entitled to a declaration that the conduct of the Defendants violated ORS 659A.199.

97. Plaintiff is entitled to equitable relief, including, but not limited to, reinstatement to employment with Defendants, as well as an award of back pay and lost benefits. If appropriate, Plaintiff should be reinstated and awarded past economic damages in an amount determined fair by a jury.

98. If reinstatement is not appropriate, then Plaintiff is entitled to an award for past lost wages and benefits and future lost earnings, benefits, and lost earning capacity, and other compensatory damages for future pecuniary losses. Plaintiff should be awarded economic damages in an amount determined fair by a jury.

99. Plaintiff is entitled to non-economic damages sufficient to compensate Plaintiff for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other

non-pecuniary losses in an amount to be proved at trial. Plaintiff should be awarded non-economic damages in an amount determined fair by a jury.

100. Defendants' acts were willful and malicious and done with reckless indifference to Plaintiff's protected rights. Defendants should be assessed punitive damages in an amount as fixed by a jury to punish Defendants and to deter such conduct in the future.

101. The court should enter an order declaring that Defendants violated ORS 659A.199.

102. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of pre-judgment interest at the legal rate from the date the damage occurred until the date of judgment.

103. Pursuant to ORS Chapter 659A and ORS 20.107, the Plaintiff is entitled to recover his reasonable attorney fees and costs, including expert witness fees.

104. Plaintiff is entitled to post-judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Wrongful Termination)**

105. Plaintiff re-alleges all relevant paragraphs as though fully set forth herein.

106. Defendants' conduct, as alleged, was in retaliation for Plaintiff assertion of Plaintiff's state and federally protected rights to work in an environment free from discrimination, harassment, and otherwise hostile work environments, and as such constitutes a wrongful discharge under state common law.

107. Plaintiff's remedies under state and federal statutory law do not constitute a complete remedy for the damage Defendants have inflicted.

108. As a result, Plaintiff suffered damage and is entitled to the damages and other relief set forth below.

109. Plaintiff is entitled to equitable relief, including, but not limited to, a declaration that Defendants violated Plaintiff's statutory rights, reinstatement, and an injunction prohibiting further discrimination and retaliation.

110. Plaintiff is entitled to an award for past lost wages and benefits and future lost earnings, benefits, and lost earning capacity, and other compensatory damages for past and future pecuniary losses. Plaintiff should be awarded economic damages in an amount determined fair by a jury.

111. Plaintiff is entitled to non-economic damages sufficient to compensate Plaintiff for emotional distress and other non-pecuniary losses in an amount to be proved at trial. Plaintiff should be awarded non-economic damages in an amount determined fair by a jury.

112. Defendants' acts were willful and malicious and done with reckless indifference to Plaintiff's protected rights. Defendants should be assessed punitive damages in an amount as fixed by a jury to punish defendant and to deter such conduct in the future.

113. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of pre-judgment interest at the legal rate from the date the damage occurred until the date of judgment.

114. Pursuant to ORS 20.107, Plaintiff is entitled to an award of attorneys' fees and expert witness fees.

115. Plaintiff is entitled to post-judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

#### **SIXTH CLAIM FOR RELIEF**

##### **(Intentional Infliction of Emotional Distress – Defendant Kroger)**

116. Plaintiff re-alleges all relevant paragraphs as though fully set forth herein.

117. Defendant Kroger intended to cause, or knew or should have known that its conduct would have caused Plaintiff severe emotional distress.

118. Defendant Kroger's conduct did in fact cause Plaintiff severe emotional distress.

119. Defendant Kroger's conduct was outrageous and was extraordinarily beyond the bounds of socially tolerable behavior.

120. Pursuant to ORS 20.107, Plaintiff is entitled to recover Plaintiff's reasonable attorneys' fees and costs, including expert witness fees.

121. Plaintiff is entitled to post-judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

### **PRAYER FOR RELIEF**

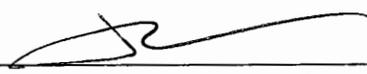
Plaintiff prays for the following judgment against Defendants, jointly and severally, as follows:

1. A sum which will fully compensate Plaintiff for Plaintiff's non-economic damages in a sum that is just as determined by a jury;
2. A sum which will fully compensate Plaintiff for Plaintiff's economic damages in a sum that is just as determined by a jury;
3. Equitable relief, including but not limited to, reinstatement if Plaintiff so chooses;
4. Liquidated damages;
5. Plaintiff's costs and disbursements incurred herein;
6. Plaintiff's attorney fees; and
7. For such other and further relief as the Court may deem just and equitable.

**Plaintiff demands a trial by Jury.**

Dated: February 10, 2017

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