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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION,

Plaintiff,

vs.

LUSH HANDMADE COSMETICS LLC,
 f/k/a LUSH COSMETICS LLC,

Defendant.

Case No.: 5:24-cv-06859-PCP

FIRST AMENDED COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”) and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, to correct unlawful employment practices on the basis of sex, including sexual orientation and gender identity, and to provide appropriate relief to Charging Party Emma Robertson (“Robertson”) and similarly aggrieved employees who were adversely affected by such practices. As alleged with greater particularity below, Plaintiff U.S. Equal Employment Opportunity Commission (“Commission” or “EEOC”) alleges that Lush Handmade Cosmetics LLC f/k/a Lush Cosmetics LLC subjected Robertson to a hostile work environment because of her sex, including her sexual orientation, and

1 subjected other Lush employees to a hostile work environment because of sex, including sexual
 2 orientation and gender identity. Plaintiff also alleges that Lush's failure to take prompt and
 3 appropriate remedial measures led to Robertson's and a similarly aggrieved employee's constructive
 4 discharge. Plaintiff seeks injunctive relief and monetary relief for Robertson and a class of similarly
 5 aggrieved employees, including pecuniary damages and nonpecuniary compensatory damages,
 6 punitive damages, and prejudgment interest.

7 **JURISDICTION AND VENUE**

8 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343
 9 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII
 10 of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1) and (f)(3) and 2000e-6
 11 ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

12 2. The employment practices alleged to be unlawful were committed within the
 13 jurisdiction of the United States District Court for the Northern District of California.

14 **PARTIES**

15 3. Plaintiff U.S. Equal Employment Opportunity Commission is the agency of the
 16 United States of America charged with the administration, interpretation and enforcement of Title
 17 VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42
 18 U.S.C. §§ 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §
 19 1981a.

20 4. Between August 2002 and at least July 24, 2024, Lush Cosmetics LLC, a Delaware
 21 corporation, was continuously doing business in the State of California and had at least fifteen (15)
 22 employees.

23 5. Between August 2002 and at least July 24, 2024, Lush Cosmetics LLC was
 24 continuously an employer engaged in an industry affecting commerce within the meaning of
 25 Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

26 6. Between August 2002 and at least July 24, 2024, Lush Cosmetics LLC conducted a
 27 retail business selling cosmetics in the State of California.

28 7. Lush Cosmetics LLC entered into a corporate merger with Lush Handmade

1 Cosmetics Inc. and Lush Cosmetics NY LLC, effective June 30, 2024, to form a surviving entity
2 named, Lush Handmade Cosmetics Inc., an Arizona corporation.

3 8. On June 30, 2024, Lush Handmade Cosmetics Inc. filed a Statement of Conversion
4 with the State of Arizona Office of Corporation Commission, to convert its name to Lush Handmade
5 Cosmetics LLC.

6 9. On July 24, 2024, Lush Handmade Cosmetics LLC filed a Registration of Out-Of-
7 State Limited Liability Company with the California Secretary of State.

8 10. On July 24, 2024, Lush Cosmetics LLC filed a Certificate of Cancellation Limited
9 Liability Company due to dissolution with the California Secretary of State.

10 11. Since at least June 30, 2024, Lush Handmade Cosmetics LLC has continued
11 operating the retail business selling cosmetics formerly known as Lush Cosmetics LLC (collectively
12 “Defendant” or “Lush”) without interruption.

13 12. Since at least July 24, 2024, Lush Handmade Cosmetics LLC has continuously done
14 business in the state of California and has had at least fifteen (15) employees.

15 13. Since at least July 24, 2024, Lush Handmade Cosmetics LLC has continuously been
16 an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g)
17 and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

18 **ADMINISTRATIVE PROCEDURES**

19 14. More than thirty (30) days prior to the institution of this lawsuit, Charging Party
20 Emma Cate Robertson filed EEOC Charge No. 556-2022-00342 alleging that Lush violated Title
21 VII.

22 15. On October 2, 2023, the Commission issued to Lush an administrative determination
23 finding, *inter alia*, reasonable cause to believe Lush violated Title VII and invited Lush to join with
24 the Commission in informal methods of conciliation to endeavor to eliminate the unlawful
25 employment practices and to provide appropriate relief for Robertson and a class of similarly
26 aggrieved employees.

27 16. The Commission engaged in multiple communications with Lush to provide Lush the
28 opportunity to remedy the discriminatory practices described in the Letter of Determination.

1 17. The Commission was unable to secure from Lush a conciliation agreement acceptable
2 to the Commission.

3 18. On January 23, 2024, the Commission issued to Lush a Notice of Failure of
4 Conciliation.

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

6 **STATEMENT OF CLAIMS**

7 **A. COUNT I - Hostile Work Environment**

8 20. Since at least September 2020, Lush has engaged in unlawful employment practices
9 because of sex, including sexual orientation and gender identity in violation of Section 703(a) of
10 Title VII, 42 U.S.C. § 2000e-2(a) at its Westfield Valley Fair mall retail store, which is in Santa
11 Clara, California (“Santa Clara store”). Lush’s unlawful practices have included subjecting
12 Robertson and a class of similarly aggrieved employees to unwelcome, severe or pervasive conduct
13 because of their sex, their sexual orientation or their gender identity that created a hostile work
14 environment which adversely altered the terms and conditions of their employment.

15 21. Robertson started working as a Manager-in-Training at Lush’s Santa Clara store in or
16 about September 2020.

17 22. Robertson identifies as a pansexual, non-binary female and uses the pronouns
18 “she/her.”

19 23. Robertson reported to the Santa Clara store manager (“Store Manager”), who was the
20 highest-level manager at the store. He had the authority to hire, discharge, discipline and assign
21 work to employees at the store.

22 24. The Store Manager regularly yelled, threw things, slammed doors and openly berated
23 employees, calling them useless or the worst employee on earth, and leaving them in tears.

24 25. The Store Manager also threatened to retaliate against anyone who tried to complain
25 and warned that he would learn the identities of anyone who complained anonymously.

26 26. The Store Manager also frequently boasted that Lush would never fire him because
27 he was too valuable to management.

28 27. The Store Manager’s conduct and threats chilled employees from reporting him.

1 28. Since at least September 2020, the Store Manager has made crude and salacious
2 comments about or to his direct reports, such as telling a female employee, “someone is on their
3 period because I can smell it,” and suggesting that a male customer was a female employee’s type
4 “because he’s big,” referring to the customer’s penis.

5 29. Starting in or about October 2020 and continuing through at least July 2021, the Store
6 Manager subjected Robertson to unwanted comments based on her sex (female) and sexual
7 orientation:

8 a. The Store Manager referred to Robertson or customers as a “cunt” and
9 “bitch”¹ within earshot of her or other employees as often as weekly.

10 b. The Store Manager made comments about Robertson’s body, including
11 remarking “your breasts [are] looking big” and “you’re putting them out there” after she complained
12 he was staring at her breasts.

13 c. The Store Manager also propped his leg up on a desk, then accused Robertson
14 of looking at his “moose knuckle,” a nickname he used to referred to his penis.

15 d. The Store Manager probed Robertson about her sexual relationship with her
16 partner and told Robertson that he wanted to have sex with her, her partner, or with both of them.

17 e. The Store Manager told Robertson that she was “not gay enough” because she
18 has a male partner.

19 30. On or about July 17, 2021, Robertson filed a complaint about the Store Manager on
20 Open Door, Lush’s online portal for filing complaints.

21 31. Robertson also requested a meeting via email to Lush’s Regional Manager dated July
22 17, 2021 to discuss “serious issues.”

23 32. Robertson later sent the Regional Manager a chronology of incidents involving the
24 Store Manager spanning September 2020 through July 2021. The chronology included examples of
25 the Store Manager bullying and abusing Robertson and recorded that on or around July 11, 2021 the
26 Store Manager commented about seeing her bra through the side of her tank top, noting that this was
27 _____

28 ¹ In recognition of the extremely offensive nature of these slurs, Plaintiff will mask them as “c*nt” and “b*tch” hereafter.

1 not the first such comment.

2 33. Robertson did not report other more explicit incidents she endured because the Store
3 Manager told her he had retaliated against an employee who filed a report against him, and she
4 feared he would retaliate against her, as well.

5 34. An individual worked for Lush from September 2015 through January 2021 as a
6 Sales Associate, and later as a Seasonal Floor Lead (Floor Lead) at the Santa Clara store from May
7 2021 to August 2021. The Store Manager supervised the Floor Lead in different management
8 capacities throughout the Floor Lead's employment.

9 35. The Floor Lead identifies as gender fluid and non-binary and uses the pronouns
10 "they/them."

11 36. The Floor Lead endured unwanted touching and comments from the Store Manager
12 during both periods of their employment. For example:

13 a. The Store Manager touched the Floor Lead's buttocks approximately five
14 times.

15 b. The Store Manager also commented about the Floor Lead's body, including "I
16 could see your ass in that skirt" and "well, at least her tits are proportional" when comparing
17 Robertson's breasts to the Floor Lead's.

18 c. The Store Manager also tried to engage the Floor Lead in unwelcomed
19 discussions about "butt holes" or "assholes" and sex toys.

20 d. The Store Manager "outed" the Floor Lead's gender identity to their
21 coworkers.

22 e. And the Store Manager ranked the Floor Lead's gender identity in comparison
23 to others', such as telling the Floor Lead they were one of the more queer folks in the department
24 and more queer than Robertson.

25 f. The Floor Lead also heard the Store Manager call customers and Robertson
26 "c*nts" and "b*tches."

27 37. In or around January 2021, the Floor Lead informed Lush's Retail Compliance
28 Manager and the Regional Manager over the Santa Clara store about the Store Manager's

1 inappropriate comments about employees' gender identities and his "moose knuckle," but nothing
2 happened, so they resigned.

3 38. The Floor Lead returned to work at the Santa Clara store after being offered a
4 promotion and pay raise.

5 39. After the Store Manager's objectionable behavior continued, the Floor Lead filed an
6 Open Door complaint dated July 19, 2021. The Floor Lead reported the Store Manager's comments
7 about sex toys, described the Store Manager repeatedly discussing his and others' "a**holes" and
8 also expressed being "stunned" after the Store Manager stretched his leg on a counter while wearing
9 shorts, reached toward his crotch and asked whether anything fell out. The Floor Lead objected to
10 the ease with which the Store Manager discussed sex and sexuality and said they had learned more
11 than was appropriate about the Store Manager's body parts. The Floor Lead closed the complaint by
12 saying they felt they could no longer work under such "unfair conditions."

13 40. A transgender male former employee also filed an Open Door complaint about the
14 Store Manager on July 19, 2021. He reported that the Store Manager had mentally traumatized him
15 for several years, including sexually harassing him by speaking about the Store Manager's
16 pornography preferences, saying he wanted to have sex with a trans person and flirting in a way that
17 made the employee feel dirty.

18 41. In an email later that day, the former employee informed Lush that he was terrified
19 that the Store Manager would learn that he had filed the complaint and reported that other employees
20 had faced retaliation after raising concerns about the Store Manager.

21 42. Lush placed the Store Manager on paid administrative leave on or about July 21,
22 2021, pending its response to Robertson's and other employees' sexual harassment complaints.

23 43. On or about July 21, 2021, while on leave, the Store Manager sent Robertson a text
24 message, referring to a sex act. When Robertson objected, texting, "that was red tier sexual
25 harassment," the Store Manager responded, "girl u just said ur a dom don't get all red tier sexual
26 harassment on me."

27 44. Lush's management and Human Resources personnel failed to adequately respond to
28 Robertson's, the Floor Lead's and the former employee's complaints about the Store Manager.

1 45. Lush's Retail Compliance Manager interviewed some Santa Clara store employees,
2 including the Store Manager, but did not interview employees named in Robertson's chronology
3 who had witnessed or experienced harassment.

4 46. Lush concluded that the Store Manager had not sexually harassed anyone and had not
5 violated any of its policies.

6 47. Lush has had actual notice of its Store Manager's offensive and unwelcome conduct
7 since at least January 2021, but has failed to take prompt or effective corrective action to stop his
8 harassment.

9 48. Lush is vicariously liable for its Store Manager's offensive and unwelcome conduct.

10 **B. COUNT II - Constructive Discharge**

11 49. After Lush failed to discipline the Store Manager, Robertson applied to transfer to
12 another Lush store in late July 2021, but was not selected.

13 50. In or around September 2021, the Store Manager physically isolated and verbally
14 berated Robertson.

15 51. Robertson started a leave of absence beginning on or around November 17, 2021 and
16 never returned to work for Lush.

17 52. Robertson resigned via email dated December 23, 2021, and a letter, citing Lush's
18 poor HR system, the "horrible treatment" she endured and the Store Manager as the reasons for her
19 resignation.

20 53. The Floor Lead resigned their employment in or around August 2021 to avoid further
21 harassment after Lush had not disciplined the Store Manager for his sexually inappropriate behavior.

22 54. The effect of the unlawful employment practices identified in Paragraphs 20-53,
23 above, has been to deprive Robertson, the Floor Lead and other similarly aggrieved employees of
24 equal employment opportunities because of their sex, sexual orientation or gender identity.

25 55. The effect of the unlawful employment practices identified in Paragraphs 20-53,
26 above, were so intolerable that a reasonable person in Robertson's and the Floor Lead's
27 circumstances would have felt compelled to resign their employment.

28 56. The unlawful employment practices complained of in Paragraphs 20-53, above, were

1 intentional.

2 57. The unlawful employment practices complained of in Paragraphs 20-53, above, were
3 done with malice or with reckless indifference to the federally protected rights of Robertson, the
4 Floor Lead and other similarly aggrieved employees.

5 **PRAYER FOR RELIEF**

6 Wherefore, the Commission respectfully requests that this Court:

7 A. Grant a permanent injunction enjoining Lush, its officers, successors, assigns, and all
8 persons in active concert or participation with it, from engaging in any employment practices which
9 discriminate based on sex, sexual orientation and/or gender identity.

10 B. Order Lush to institute and carry out policies, practices, and programs which provide
11 equal employment opportunities for all workers and that eradicate the effects of its past and present
12 unlawful employment practices due to sex, sexual orientation and/or gender identity.

13 C. Order Lush to make Robertson, the Floor Lead and similarly aggrieved employees
14 whole by providing back pay with prejudgment interest and a tax component award, in amounts to
15 be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful
16 employment practices, including but not limited to reinstatement or front pay in lieu thereof.

17 D. Order Lush to make Robertson, the Floor Lead and similarly aggrieved employees
18 whole by providing compensation for past and future pecuniary losses resulting from the unlawful
19 employment practices described in Paragraphs 20-53, above, including past and future out-of-pocket
20 expenses, in amounts to be determined at trial.

21 E. Order Lush to make Robertson, the Floor Lead and similarly aggrieved employees
22 whole by providing compensation for past and future non-pecuniary losses resulting from the
23 unlawful practices complained of in Paragraphs 20-53, above, including emotional pain, suffering,
24 inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses, in amounts
25 to be determined at trial.

26 F. Order Lush to pay Robertson, the Floor Lead and similarly aggrieved employees
27 punitive damages for the malicious and reckless conduct described in Paragraphs 20-53, above, in
28 amounts to be determined at trial.

1 G. Grant such further relief as the Court deems necessary and proper in the public
2 interest.

3 H. Award the Commission its costs of this action.

4 **JURY TRIAL DEMAND**

5 The Commission requests a jury trial on all questions of fact raised by its Complaint.
6 Dated: December 4, 2024

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