

1 sufficient evidence to support a probable cause finding and establish a prima facie case of
2 discrimination in a place of public accommodation.

3 **FACTUAL BACKGROUND**

4 **I. Lynn’s Resiliency and Recovery from Addiction.**

5 Lynn is a transgender person¹ of Puerto Rican descent who has struggled with bouts of
6 addiction, homelessness, and poverty since a very young age. Growing up, Lynn faced significant
7 challenges as a result of their family’s rejection. Lynn’s struggles included addiction,
8 homelessness, and poverty.² In or around 2016, Lynn sought addiction recovery services from
9 Tapestry Health – a comprehensive community-based health services organization founded in 1973
10 in Western Massachusetts.³

11
12 It was Lynn’s involvement with Tapestry Health that not only helped them take substantive
13 steps to address their addiction head-on, but also helped Lynn achieve their goal of obtaining long-
14 term housing and supported Lynn’s effort to obtain their GED at Springfield Technical Community
15 College. Lynn’s journey to recovery and self-sufficiency is largely dependent upon the support
16 provided by Tapestry Health, including that of Tapestry Health employee, Emily Moulton (“Ms.
17 Moulton”).
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20 ¹ While Lynn was designated as female at birth, that designation does not fully or accurately capture who Lynn is. Lynn
21 does not conform to stereotypes associated with being female, including in the way Lynn dresses, acts, or experiences
22 life. Consistent with this experience of not conforming to gender stereotypes, Lynn uses the pronouns “they/them/their”
23 or “he/him/his” as part of signaling Lynn’s experience to others.

24 ² Studies have demonstrated that family rejection of LGBT children directly correlates to increased risk of developing
25 mental illness, including suicide and depression, in LGBT children as well as other risky behaviors, including drug use,
26 unprotected sex, etc. *See generally* Caitlin Ryan, *Generating a Revolution in Prevention, Wellness, and Care for LGBT*
27 *Children and Youth*, 23 Temp. Pol. & Civ. Rts. L. Rev. 331 (2014); *see also* Geoffrey S. Carastathis et al., *Rejected by*
28 *Family for Being Gay or Lesbian: Portrayals, Perceptions, and Resilience*, 64 J. Homosex. 289 (2016).

29 ³ For the past 44 years, Tapestry Health has been at the forefront of addressing urgent public health needs. (“Tapestry
30 Health Screenshots,” attached as Ex. 1.) Tapestry Health specializes in harm reduction, HIV/STI prevention, HIV
31 medical case management, and operates Syringe Access Programs in Holyoke, Northampton, North Adams and
32 Greenfield, MA. As an organization principled in commitment, compassion, community, and confidentiality, Tapestry
33 Health is highly respected and highly regarded among Western Massachusetts communities and works regularly with
34 community partners, including the Northampton Police Department, Hampshire Hope, Opioid Task Force, The YEAH
35 Network, Springfield Police Department, Cooley Dickinson Hospital, and Dial Self, to provide quality care to its
36 clients. (Ex. 1.) To learn more about Tapestry Health, please visit www.tapestryhealth.org.

1 Ms. Moulton began working for Tapestry Health in or around 2014. (“Emily Moulton’s
2 Résumé,” attached as Ex. 2.) When Ms. Moulton served as Lynn’s case manager⁴ through an
3 addiction recovery program at Tapestry Health, Ms. Moulton supported Lynn “by assisting Lynn
4 with their housing search, helping Lynn apply for housing, providing Lynn with rides to personal
5 appointments, linking Lynn to care (health care) and connecting Lynn to other community resources
6 to meet Lynn’s needs.” (“Affidavit of Emily Moulton,” (Moulton Aff.) attached as Ex. 3, ¶ 9.)
7 When Lynn expressed the need for clothing and household goods, Ms. Moulton scheduled an
8 appointment for Lynn to visit the Respondent’s Center. (Moulton Aff. ¶ 10.) Respondent admits
9 that for the last several years, Ms. Moulton “made the necessary scheduling arrangements” to bring
10 some of her other clients to the Center and regularly accompanied her clients to the Center. (Resp’t
11 Position Statement 7; Resp’t Mot. Dismiss 5). Respondent also admits that Ms. Moulton scheduled
12 an appointment for Lynn to visit the Center and that Ms. Moulton accompanied Lynn for their
13 appointment at the Center on April 28, 2016. (Resp’t Position Statement 7-8, 22-23; Resp’t Mot.
14 Dismiss 5).

17 II. Lynn’s Treatment at the Center.

18 Respondent admits Lynn presented their identification to Springfield Rescue Mission
19 employee, Lenore Brooks (“Ms. Brooks”), as part of their check-in process and that Lynn’s
20 identification said female. (Resp’t Position Statement 8, 12, 16, 18, 22; Resp’t Mot. Dismiss 5-6.)
21 Respondent also admits that Ms. Brooks saw Lynn and Ms. Moulton shopping in the men’s clothing
22 section. (Resp’t Position Statement 8, 12, 24; Resp’t Mot. Dismiss 6.) When Ms. Brooks saw Lynn
23 and Ms. Moulton shopping in the men’s section, Ms. Brooks loudly announced that only men were
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26 ⁴ In the Complaint, Ms. Moulton is identified as a social worker. Although the job duties of case managers and social
27 workers overlap, case management “is a collaborative process of assessment, planning, facilitation, care coordination,
28 evaluation, and advocacy for options and services to meet an individual’s and family’s comprehensive health needs
through communication and available resources to promote quality, cost-effective outcomes.” See Case Management
Society of America, What is a Case Manager?,
<http://www.cmsa.org/Home/CMSA/WhatisaCaseManager/tabid/224/Default.aspx>.

1 allowed in the men’s section and only women were allowed in the women’s section. (Compl., ¶ 29;
2 Moulton Aff. ¶ 19; “Ms. Moulton’s Contemporaneous Statement,” attached as Ex. 4.) “Lynn was
3 shocked and embarrassed by Ms. Brook’s announcement,” (Compl., ¶ 30), which was only
4 exacerbated by the presence of other people in the Center. (Compl., ¶ 25; Moulton Aff. ¶ 16; Resp’t
5 Position Statement 22.)
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7 After Ms. Brook’s announcement, Ms. Moulton cordially asked Ms. Brooks to step outside
8 the Center and into the hallway to chat.⁵ (Moulton Aff. ¶ 20; Ex. 4.) Using a calm tone, Ms.
9 Moulton informed Ms. Brooks that Lynn prefers to be referred to by their name and does not wear
10 women’s clothing. (Compl., ¶ 31; Moulton Aff. ¶ 21; Ex. 4.) In response, Ms. Brooks told Ms.
11 Moulton that the Center goes by what is on Lynn’s identification and asked Ms. Moulton what sex
12 was on Lynn’s identification. (Compl., ¶ 32; Moulton Aff. ¶ 22; Ex. 4.) Ms. Moulton replied that
13 what is on Lynn’s identification does not matter and explained that Lynn does not necessarily
14 identify as a woman. (Moulton Aff. ¶ 23; Ex. 4.) At that point, Ms. Brooks became agitated and
15 told Ms. Moulton that what sex is on Lynn’s identification did in fact matter as the Center gets less
16 men’s clothes than women’s clothes. (Ex. 4.) Ms. Brooks then said Lynn could only shop in the
17 women’s section because Lynn’s identification indicated that they were female. (Ex. 4.) Ms.
18 Moulton stated that she felt Ms. Brooks’ position constituted discrimination. (Ex. 4.) Ms. Moulton
19 then went back into the Center to speak with Lynn about their options. (Ex. 4.) During the
20 discussion between Ms. Moulton and Ms. Brooks, Ms. Brooks continually referred to Lynn using
21 female pronouns despite being made aware by Ms. Moulton that Lynn does not identify as a woman
22 and prefers to be referred to by their name.⁶ (Moulton Aff. ¶ 23.)
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26 ⁵ Contrary to Respondent’s suggestion, the Complainant did not purposefully leave this fact out of the complaint to
27 deceive the Commission. In Complainant’s view, the location of where the conversation between Ms. Moulton and Ms.
28 Brooks took place was irrelevant.

⁶ Respondent’s continued practice of using female pronouns to refer to Lynn throughout its briefs reflects the same bias
upon which it based its exclusion of Lynn from freely shopping at the Center. Moreover, Respondent’s statement that it
is inconsistent to plead a discrimination claim based on Lynn’s assigned sex (female) when Lynn does not identify as a

1 Upon returning to the Center, Ms. Moulton informed Lynn that they were not allowed to
2 shop in the men’s clothing section and could only shop in the women’s clothing section. (Compl., ¶
3 33; Moulton Aff. ¶ 24; Ex. 4.) When Lynn responded by telling Ms. Moulton they did not wear
4 women’s clothing, Ms. Moulton asked Lynn if they needed any other items from the Center. (Ex.
5 4.) As Lynn and Ms. Moulton spoke, Ms. Brooks stated in front of other staff and clients in the
6 Center, “Emily, you need to just let this go, you need to just let it go.” (Ex. 4.) Ms. Moulton told
7 Ms. Brooks that she was letting Lynn know their options, at which point, Lynn, feeling
8 uncomfortable, told Ms. Moulton they no longer wanted anything from the Center. (Ex. 4.) Lynn
9 and Ms. Moulton then returned the bag Lynn was using to shop at the Center to the counter where
10 Ms. Brooks was located. (Ex. 4.) Ms. Brooks asked what Lynn would be taking, to which Lynn
11 responded, “I don’t want any of it.” (Ex. 4.) Lynn and Ms. Moulton then exited the Center. (Ex.
12 4.)
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15 Ms. Moulton was so upset by how Lynn was treated at the Center that upon returning to her
16 car after the exiting the Center, Ms. Moulton began to cry. (Moulton Aff. ¶ 27.) That same day,
17 Ms. Moulton wrote a statement about what transpired at the Center and submitted that statement to
18 her supervisor at Tapestry Health, Nellie Maldonado (“Ms. Maldonado”). (Moulton Aff. ¶ 28.) Ms.
19 Moulton’s contemporaneous statement is attached hereto as Ex. 4. After learning of Lynn’s
20 treatment at the Center, Ms. Maldonado made repeated attempts to meet with the Respondent to
21 mediate a resolution. (“Nellie Maldonado Emails,” attached as Ex. 5.) However, due to scheduling
22 conflicts, the meeting never took place. (Ex. 5.)
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24 Prior to Lynn’s visit to the Center, Ms. Moulton was unaware of any Center policy, practice,
25 or rule that only permitted men access to the men’s clothing at the Center. (Moulton Aff. ¶ 34.) In
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28 woman, further demonstrates bias against Lynn on the basis of sex. Respondent’s statement reflects gender
stereotyping (a person assigned sex female must only live as a woman) and transgender bias (a person cannot transition
from their assigned sex to a different one), and straight up sex discrimination.

1 the past, some of Ms. Moulton’s clients who were women, White, and not transgender accessed the
2 men’s clothing section at the Center. (Compl., ¶ 36; Moulton Aff. ¶ 35.) Some of Ms. Moulton’s
3 clients who were women, White, and not transgender tried on jackets, pants, and other items from
4 the men’s clothing section at the Center. (Compl., ¶ 37; Moulton Aff. ¶ 36.) In the past, Ms.
5 Moulton also observed the hostile and disparate treatment of two Latina women speaking Spanish
6 in the Center and was so perturbed by what she witnessed that she sought the advice from a
7 Tapestry Health co-worker about how to advocate for people of Spanish speaking descent.
8 (Moulton Aff. ¶¶ 37-39.) The Center’s differential treatment of Lynn compared to Ms. Moulton’s
9 White non-transgender clients and the hostility displayed toward people of Spanish speaking
10 descent is evidence that in addition to Lynn’s sex and gender identity, Lynn was denied access to
11 the men’s clothing at the Center because of Lynn’s race and color.
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14 **DISCUSSION**

15 Respondent contends that the Commission should dismiss this case for lack of probable
16 cause because Lynn has not set forth a prima facie case of discrimination by a preponderance of
17 evidence. (Resp’t Position Statement 10.) However, the standard to find probable cause is not
18 based on a prima facie showing; rather, probable cause should be found when there is “sufficient
19 evidence upon which a fact-finder could form a reasonable belief that it is more probable than not
20 that the respondent committed an unlawful practice.” 804 CMR § 1.15(7)(a) (2017). The facts set
21 forth by Lynn in this case as well as the exhibits attached hereto easily satisfy the probable cause
22 standard. And, while not legally required at this stage of the proceedings, the facts also support
23 Lynn’s demonstration of a prima facie case of discrimination in a place of public accommodation.
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1 **I. The Evidence Supporting Lynn’s Claims of Discrimination is Superior to the Evidence**
2 **Proffered by the Respondent.**

3 The evidence presented by Lynn in this case proves that Ms. Brooks acted with intentional
4 discriminatory animus resulting in the deprivation of Lynn’s fundamental civil rights.⁷ In the
5 instant case, it is undisputed that the events underlying Lynn’s treatment at the Center took place on
6 the morning of April 28, 2016. That morning, Ms. Brooks told Ms. Moulton that men are only
7 allowed in the men’s clothing section, and that Lynn could not access the men’s clothing section at
8 the Center because of the female sex listed on Lynn’s identification. (Moulton Aff. ¶¶ 19, 22; Ex.
9 4.) Ms. Moulton was so upset by this experience that after leaving the Center, that same day, Ms.
10 Moulton wrote a statement about what occurred at the Center and submitted that statement to her
11 then supervisor, Ms. Maldonado. (Moulton Aff. ¶¶ 27-28.)

13 Statements taken from parties or witnesses at the time of the incident are “unique in that
14 they provide an immediate impression of the facts.” *Savoy v. Richard A. Carrier Trucking*, 176
15 F.R.D. 10, 14 (D. Mass. 1997). Such statements, which are often referred to as contemporaneous
16 statements, have greater evidentiary value than statements recorded months or even years after the
17 challenged conduct occurred. *See DeGiacomo v. Morrison*, 2003 U.S. Dist. LEXIS 21803, at *8-*9
18 (D.N.H. 2003) (“A deposition years after the accident is not the substantial equivalent of a
19 contemporaneous statement since, among other things, memories fade . . .”).

21 Ms. Moulton’s contemporaneous statement attached hereto as Ex. 4 provides an immediate
22 impression of the facts that occurred on April 28, 2016 and is superior to Respondent’s self-serving
23 affidavit signed by Ms. Brooks almost a year after the events underlying Lynn’s treatment at the
24 Center took place. (“Affidavit of Lenore Masciotra Brooks” signed on March 17, 2017, attached as
25 Ex. 2 in Resp’t Position Statement.)

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28 ⁷ The Massachusetts Public Accommodation Law recognizes and declares “the right to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, resort or amusement” to be a civil right. Mass. Gen. Laws ch. 272, § 98 (2017).

1 Respondent relies on Ms. Brooks' affidavit in an attempt to trivialize a serious and harmful
2 act of discrimination. (Resp't Position Statement 6.) Respondent would have this Commission
3 believe that the events transpiring at the Center on April 28, 2016 were a "misunderstanding" that
4 was corrected by Ms. Brooks giving total permission for Lynn to shop for men's clothes. However,
5 Respondent's rendition of events is nonsensical.
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7 First, Respondent alleges Ms. Moulton and Lynn were disoriented while looking for items in
8 the men's clothing section, and Ms. Brooks attempted to redirect Ms. Moulton and Lynn to the
9 women's section because of the sex listed on Lynn's identification. However, Respondent
10 repeatedly admits that Ms. Moulton had been to the Center with some of her clients. (Resp't
11 Position Statement 7; Resp't Mot. Dismiss 5.) Thus, it is highly unlikely that someone like Ms.
12 Moulton, who was helping Lynn shop in the Center, would suddenly become confused in the Center
13 after having been in the Center on a number of occasions since 2014. Second, Respondent attempts
14 to justify Ms. Brooks's obstruction of Lynn accessing the men's clothing and questioning Ms.
15 Moulton about Lynn's sex by relying on the Massachusetts Attorney Generals Office's guidance for
16 *places of public accommodations*. Not only does Respondent misapply this guidance, but
17 Respondent's use of guidance is contradictory to its assertion that it is not a place of public
18 accommodation. Finally, Respondent's attempt to portray Ms. Moulton and Lynn leaving the
19 Center without taking anything as "odd behavior" is another red flag in Respondent's story. Indeed,
20 it would only be odd for Ms. Moulton and Lynn to leave the Center without any clothing if it were
21 truly believable that Ms. Brooks told "Ms. Moulton and the Complainant that the Complainant
22 could take any clothing the Complainant wanted (men's or women's)." (Resp't Position Statement
23 13.) Ms. Moulton and Lynn left the Center without taking anything from the Center because Ms.
24 Brooks prevented Lynn from shopping in the men's clothing section, which are the only clothes
25 Lynn wears. Lynn did not obtain any other items from the Center because of Ms. Brooks'
26 continued hostility toward Lynn and Ms. Moulton.
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1 **II. Lynn Has Set Forth Sufficient Evidence for the Commission to Find Probable Cause.**

2 A. Denying Lynn access to the men’s clothing at the Center because of the sex listed on
3 Lynn’s identification constitutes direct evidence of sex and gender identity
4 discrimination.

5 Direct evidence “if believed, results in an inescapable, or at least highly probable, inference
6 that a forbidden bias was present” in the challenged conduct. *Wynn & Wynn, P.C. v. Mass. Comm’n*
7 *Against Discrimination*, 431 Mass. 655, 667, 729 N.E.2d 1068 (2000) (quoting *Johansen v. NCR*
8 *Comten, Inc.*, 30 Mass. App. Ct. 294, 300 (1991)) (questioned by *Gannon v. Boston*, 476 Mass. 786,
9 795 n.7 (2017)). Direct evidence can consist of statements of discriminatory intent. *Chief Justice*
10 *for Admin. & Mgmt. of the Trial Court v. Mass. Comm’n Against Discrimination*, 439 Mass. 729,
11 732 n.11 (2003).

13 Ms. Brook’s statements that men are only allowed in the men’s clothing section, and that
14 Lynn could not access the men’s clothing section at the Center because of the female sex listed on
15 Lynn’s identification, constitute direct evidence of sex and gender identity discrimination. These
16 comments reflect that the Center’s rule of access to clothing rests on the patron’s sex or that the
17 patron’s sex is a critical factor for access to clothing at the Center. Another way of viewing this
18 claim is that but for Lynn’s designated sex at birth (female), Lynn would not have been denied
19 access to the men’s clothing at the Center. Evidence of discrimination on the basis of sex is also
20 evidence of discrimination based on gender identity.⁸ These statements alone support probable
21 cause.
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25 ⁸ “Since 2001, MCAD has held that discrimination against transgender individuals could constitute sex and disability
26 discrimination. *MCAD and Jackie Ravesi v. Naz Fitness Group*, 37 Mass. Discrimination Law Rptr. 1 (2015) (finding
27 employer liable for sex discrimination and gender-based disparate treatment of a transgender employee); *Millett v.*
28 *Lutco*, 23 Mass. Discrimination Law Rptr. 231 (2001) (discrimination against a transgender individual constitutes
illegal sex discrimination); *Jette v. Honey Farms Mini Market*, 23 Mass. Discrimination Law Rptr. 229 (2001)
(transgender individuals with an underlying diagnosis of gender dysphoria may have a claim for disability
discrimination under Mass. Gen. Laws ch. 151B).” Mass. Comm’n Against Discrimination, “Gender Identity
Guidance” (December 5, 2016), available at <http://www.mass.gov/mcad/docs/gender-identity-guidance-12-05-16.pdf>.

1 In an attempt to show Respondent did not discriminate against Lynn on the basis of sex,
2 Respondent points to the number of males and females it served in the 2016 calendar year – 1,686
3 males and females. (Resp’t Position Statement 14.) However, these statistics simply demonstrate
4 how many males and females accessed the Center but says nothing about whether they were
5 deprived equal use and enjoyment of the Center. It likewise does nothing to disprove the Center’s
6 discriminatory treatment of Lynn as a transgender person of color. The Massachusetts Public
7 Accommodation Law requires “equal access to the advantages and privileges of services and
8 service providers[,]” and is not just restricted to a person’s entrance into a physical structure.
9 *Currier v. Nat’l Bd. of Med. Examiners*, 462 Mass. 1, 19 (2012).

11 Additionally, Respondent’s belief that Ms. Brooks would not discriminate against Lynn
12 because they are both of the same protected class (i.e. female sex), (Resp’t Position Statement 14),
13 is a notion that has been repeatedly and expressly rejected by the United States Supreme Court. *See*
14 *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 78-79 (1998) (in holding Title VII prohibits
15 same-sex sexual harassment, the Court examined its own precedent and reasoned, in part, that “it
16 would be unwise to presume as a matter of law that human beings of one definable group will not
17 discriminate against other members of that group.”); *see also Cabi v. Boston Children’s Hosp.*, 161
18 F. Supp. 3d 136, 154 n.3 (D. Mass. 2016) (finding the fact that plaintiffs and employer shared a
19 gender (male) or ethnicity (Turkish) did not bar their legal claims). Furthermore, unless Ms. Brooks
20 is a transgender person of Puerto Rican descent, Lynn and Ms. Brooks are not of the same protected
21 class and should not be lumped together, especially when there is additional evidence to support
22 that Lynn’s restricted use of the Center was also due to their race and color.⁹

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28 ⁹ Discrimination suffered by plaintiffs with multiple and overlapping identities is “not addressed by legal doctrines based solely on a single identity or status.” *Westmoreland v. Prince George’s County*, 876 F. Supp. 2d 594, 604 (D. Md. 2012) (quoting Dianne Avery et al., *Employment Discrimination Law* 47 (8th ed. 2010)).

1 B. The Respondent’s hostile and differential treatment of Lynn compared to White non-
2 transgender Center patrons establishes additional evidence of gender identity
3 discrimination as well as circumstantial evidence of race and color discrimination.

4 Discriminatory motive can be inferred from the differences in the treatment of two groups.
5 *See Smith Coll. v. Mass. Comm’n. Against Discrimination*, 376 Mass. 221, 228 (1978). A
6 complainant may prove differential treatment by showing they were treated differently from another
7 person, known as a comparator, who is not a member of their protected class but is otherwise
8 similarly situated.¹⁰ *See Trs. of Health & Hosps. of Boston, Inc. v. Mass. Comm’n Against*
9 *Discrimination*, 449 Mass. 675, 682(2007); *see also Mass. Comm’n Against Discrimination &*
10 *Marcus Eddings v. Capitol Coffee House*, 2013 Mass. Comm. Discrim. LEXIS 12, at *14-*15
11 (2013) (“Complainant is a member of a protected class by virtue of his race. He alleges that while
12 his colleagues, who are not African American, were not required to pay up-front at Respondent
13 coffee shop when they placed their orders, he was nevertheless required to do so. Thus Complainant
14 has demonstrated that he was ‘treated differently from others not in his protected class’ at a
15 restaurant, a place of public accommodation.”).

17 Here, Lynn’s former case manager, Ms. Moulton, who regularly brought some of her clients
18 to the Center since 2014, was unaware of any Center policy, practice or rule prior to Lynn’s visit to
19 the Center that only permitted men access to the men’s clothing at the Center. (Moulton Aff. ¶ 34.)
20 In the past, some of Ms. Moulton’s clients who were women, White, and not transgender accessed
21 the men’s clothing section at the Center and tried on jackets, pants, and other items from the men’s
22 clothing section. (Compl., ¶¶ 36-37; Moulton Aff. ¶¶ 35-36.) Additionally, in the past, Ms.
23 Moulton also observed the hostile treatment of two Latina women speaking Spanish in the Center
24 and noticed they were only permitted to take 2 bottles of shampoo from the Center, but one of Ms.
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27 _____
28 ¹⁰ “[A]lthough providing a similarly situated comparator is usually the most probative means of proving that an adverse action was taken for discriminatory reasons, it is not absolutely necessary.” *Trs. of Health & Hosps. of Boston, Inc.*, 449 Mass. at 683.

1 Moulton’s White women clients was permitted to take several bottles of shampoo. (Moulton Aff.
2 ¶¶ 37-38.) The differential treatment of Lynn compared to other patrons of the Center who were
3 White, non-transgender and women proves that Lynn was treated differently from others not in their
4 protected class because of their gender identity, race, and color. This differential treatment and the
5 hostility displayed toward people of Spanish-speaking descent supports a probable cause finding.
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7 Respondent, once again, attempts to show it did not discriminate against Lynn on the basis
8 of race or color by pointing to the number of Hispanics who received services at the Center (635)
9 compared to the number of White people who received services at the Center (243). (Resp’t
10 Position Statement 15.) As stated *supra* p.10, these statistics do not illustrate whether Hispanic
11 patrons were deprived full use and enjoyment of the Center. The statistics likewise do nothing to
12 disprove the Center’s discriminatory treatment of Lynn as a transgender person of color.
13

14 **III. The Evidence Presented by Lynn Establishes a Prima Facie Case of Discrimination in a**
15 **Place of Public Accommodation.**

16 To prove a prima facie case of discrimination, a complainant must be a member of a
17 protected class under G. L. c. 272, § 98 and denied access to or restricted in the use or enjoyment of
18 a place of public accommodation. *See Soltys v. Wellesley Country Club*, 2002 Mass. Super. LEXIS
19 550, at *20 (Mass. Super. Ct. 2002). The initial burden of establishing a prima facie case is not
20 meant to be onerous; rather, the burden is “easily made” by simply producing evidence that the
21 challenged conduct was “more likely than not” based upon impermissible factors. *Trs. of Health &*
22 *Hosps. of Boston, Inc.*, 449 Mass. at 683 (citing *Sullivan v. Liberty Mut. Ins. Co.*, 444 Mass. 34, 40,
23 quoting *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978)). Lynn easily meets this burden.
24

25 First, Respondent does not, and could not, contest that Lynn is a member of several
26 protected classes based on their sex, gender identity, race, and color. *See, e.g., Mariana-Colon v.*
27 *Dep’t of Homeland Sec.*, 511 F.3d 216, 222 (1st Cir. 2007) (finding a black Puerto Rican male
28

1 DATED: May 12, 2017

Respectfully submitted,

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Lynn M. Rivera
By Lynn's attorney,

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1 **CERTIFICATE OF SERVICE**

2 I, Allison Wright, hereby certify that a true copy of the above document was served upon
3 each party, the attorney of record for each party, and on the Commission by First Class Mail and by
4 Electronic Mail on May 12, 2017 at the following addresses:

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