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April 27, 2020

VIA EMAIL JOSEPH.KOPYTO@MONTGOMERYCOUNTYMD.GOV

Joseph Kopyto, Investigator
Montgomery County Office of Human Rights
21 Maryland Avenue, Suite 330
Rockville, MD 20850

**Re: Wolanyo E. Bansah v. Sam's East, Inc.
Complaint No. 531-2020-00159**

Dear Mr. Kopyto:

This letter and the attached documentation constitute Sam's East, Inc.'s ("Sam's") initial Statement of Position¹ in response to the Charge of Discrimination filed by Ms. Wolyano Bansah, who is a current Sam's Associate². Ms. Bansah alleges that she was discriminated and retaliated against on the basis of disability. Ms. Bansah claims she was denied a reasonable accommodation of being excused from working in the freezer. She also claims she was placed on leave of absence in retaliation for having requested the accommodation. Sam's denies these allegations as they are entirely meritless.

¹ The information and accompanying documentation contained herein, and that which may be submitted hereafter, is strictly confidential and not to be used for any purpose other than the resolution of the current Charge and it may not be disclosed publicly. See 42 U.S.C. §§ 2000e-5(b); 2000e-8(e); 29 C.F.R. §§ 1601.22, 1601.26; and 56 Fed. Reg. 10847. To the extent Charging Party is in receipt of this information or accompanying documentation, Charging Party is advised that this information is strictly confidential and should not be disclosed publicly or to any individual unless they have a privileged relationship with that individual. Information and accompanying documentation contained herein designated confidential and/or containing sensitive medical information, confidential commercial or financial information, or trade secret information may not be disclosed to Charging Party.

² This response is based upon our understanding of the facts and the information reviewed thus far. Although there has not been an opportunity for formal discovery or a complete formal investigation, this response is submitted for the purpose of aiding the agency in its investigation and facilitating the informal resolution of these matters. This response, while believed to be accurate, does not constitute an affidavit or binding statement of Sam's legal position, nor is it intended to be used as evidence of any kind in any administrative or court proceeding in connection with Charging Party's allegations. Because additional facts likely would be uncovered through discovery or following a full investigation, Sam's in no way waives its right to present new or additional information at a later date, for substance or clarification. Moreover, by responding to this Charge, Sam's does not waive, and hereby preserves, any and all substantive and procedural defenses that may exist to the Charge and Charging Party's allegations. Sam's requests that any efforts to contact its current or former managers be directed through its counsel.

Ms. Bansah's discrimination claim fails because she has in fact been provided with a reasonable alternative accommodation. Her retaliation claim fails because Ms. Bansah was placed on leave only because she was not able to perform an essential function of her position, working in the freezer. During her reassignment leave, Ms. Bansah submitted a request for a dress code exemption as an alternative accommodation. This request has been granted, and Ms. Bansah has returned to her position where she remains currently employed. For these reasons, and as explained in greater detail below, Ms. Bansah's claims fail. Sam's respectfully requests that the Montgomery County Office of Human Rights dismiss her Charge in its entirety and enter a "no cause" finding.

I. FACTUAL BACKGROUND

A. Sam's Relevant Policies and Procedures

Sam's Club is an equal opportunity employer that does not discriminate or retaliate against its Associates. To that end, Sam's Club adheres to a Discrimination and Harassment Prevention Policy. (See Exhibit 1.) This Policy strictly prohibits discrimination, harassment, or retaliation by or directed at any Associate, job applicant, customer, member, supplier, and agent of Sam's Club. The Policy also instructs Associates to report any conduct that may violate this Policy to a salaried member of Management, or to utilize Sam's Club's Ethics Helpline. *Id.* Indeed, Associates are trained to immediately report any concern regarding possible violations of this policy to any salaried member of management or confidentially and/or anonymously to the Global Ethics Office, 1-800-WMETHIC (1-800-963-8442). *Id.*

Sam's Club provides Associates who have a disability with reasonable accommodations to enable them to perform the essential functions of their positions. Sam's Accommodation Policy provides that employees may be eligible for leave as an accommodation or transfer to another open position. (See Exhibit 2). The Policy outlines the accommodation process, including requests for reconsideration. The Policy instructs Associates to immediately report any concern regarding possible violations of this policy to any salaried member of management or confidentially and/or anonymously to the Global Ethics Office, 1-800-WMETHIC (1-800-963-8442).

Ms. Bansah received training on these policies and many others via Sam's Club's Computer Based Learning Modules ("CBLs") and orientation program. (See Exhibit 3). As explained below, Sam's Club followed its policies and did not discriminate or retaliate against Ms. Bansah in any manner.

B. Ms. Bansah's Employment with Sam's

Sam's hired Ms. Wolyano Bansah on March 15, 2017 as an Overnight Merchandiser at its Club (#6653) located in Gaithersburg, Maryland. In May 25, 2019, the Club changed the scheduling and job title for the position, and Ms. Bansah transferred to working afternoons as a Merchandising Associate; her job duties did not change.

In summer 2019, an Assistant Store Manager directed Ms. Bansah to work in the freezer as part of a regular job assignment for her position. Ms. Bansah responded she was not able to do so for medical

reasons. The Club directed Ms. Bansah to the Accommodation Services Center ("ASC") to address her request for accommodation.

On July 15, 2019, Ms. Bansah contacted the ASC to request an accommodation of "no extreme temperatures." She provided medical documentation from her physician stating she experiences chronic seizures and is not able to work in the cooler or freezer due to cold temperatures. On July 22, 2019, the ASC determined, based on the medical certification provided, that Ms. Bansah was not able to perform an essential function of the position.

The position description states a Merchandiser must be able to "work in areas requiring exposure to varying temperatures, extreme heat or cold, and/or wet, damp, or drafty conditions." (See Exhibit 4). Merchandisers regularly are assigned to work various areas throughout the Club, from dry goods to coolers to freezers. Six to eight Merchandisers work a given shift, and Assistant Store Managers and Team Leads work together to assign them to areas of the Club most in need of attention, which often means all Merchandisers are working in the freezer or cooler at once because it is most in need of attention.

The ASC offered Ms. Bansah the alternative accommodation of reassignment. However, since no suitable positions were available at the time, Ms. Bansah was placed on reassignment leave. Ms. Bansah remained on reassignment leave from July 23, 2019 through October 14, 2019, and the leave ultimately was extended through February 2020.

Ms. Bansah requested reconsideration of her accommodation request in early 2020. On February 21, 2020, ASC determined that Ms. Bansah should be allowed a dress code exception of wearing a jacket in and around the freezer/cooler as an exception to the Work Place Standards Dress Code Policy. ASC advised Ms. Bansah to contact the facility to return to work with this accommodation.

Ms. Bansah's request was granted and she returned to work on February 28, 2020. She is currently being accommodated with the dress code exception of wearing a jacket. This accommodation has been satisfactory to Ms. Bansah.

II. SAM'S DID NOT DISCRIMINATE OR RETALIATE AGAINST MS. BANSAH

Ms. Bansah has offered no evidence to suggest that Sam's has discriminated against her on the basis of disability or that Sam's retaliated against her, as alleged in the Charge. The undisputed facts, as set forth above, demonstrate that Ms. Bansah's allegations are baseless, and therefore, this Charge should be dismissed.

Ms. Bansah's disability discrimination claim is meritless. Ms. Bansah initially requested to be relieved of working in the freezer, but since this type of work is an essential function of the Merchandiser position, Sam's was not able to grant Ms. Bansah's request. Ms. Bansah was unable to perform an essential function of the position of Merchandiser, specifically stocking items in the freezer, in addition to other areas of the Club. Because Ms. Bansah was not able to perform this essential function, she was not

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a qualified individual for purposes of a disability discrimination claim. Ms. Bansah was placed on reassignment leave as an accommodation because no suitable alternative positions existed. These facts do not support a claim of disability discrimination.

Ms. Bansah's retaliation claim is also without merit. There are no facts to support the allegation that placing her on leave was done in retaliation for her requesting an accommodation. Sam's placed Ms. Bansah on reassignment leave due to no suitable alternative positions being available at the time Ms. Bansah requested an accommodation. Moreover, Sam's has actively engaged in the interactive process with Ms. Bansah. When Ms. Bansah requested reconsideration of reassignment leave in early 2020, Sam's granted a dress code exception so that she could wear a jacket in and around the freezer/cooler. Ms. Bansah is currently being accommodated with this exception to her satisfaction. Consequently, the retaliation claim is entirely meritless.

III. CONCLUSION

As demonstrated above, Sam's did not subject Ms. Bansah to disability discrimination nor did it retaliate against her. Accordingly, Sam's respectfully requests that this Charge be denied in its entirety with a "no cause" finding.

Sincerely,

LITTLER MENDELSON, P.C.



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