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10 *Attorneys for Plaintiffs and the Class*

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 DENISE FRETTER and MARIA  
14 KORSGAARD, individually and on  
15 behalf of a class of similarly situated  
16 female employees,

17 Plaintiffs,

18 -- against --

19 BOSTON SCIENTIFIC  
20 NEUROMODULATION  
21 CORPORATION AND DOES 1- 10.

22 Defendant.

23 **CLASS AND COLLECTIVE**  
24 **ACTION COMPLAINT**

25 **JURY TRIAL DEMANDED**

26 Plaintiffs Denise Fretter and Maria Korsgaard (collectively, “Plaintiffs” or  
27 “Class Representatives”), through their attorneys Sanford Heisler Kimpel, LLP,  
28 bring this nationwide class and collective action in their individual capacities and  
on behalf of female sales representatives to combat gender discrimination in  
employment. Defendant Boston Scientific Neuromodulation Corporation  
 (“BSNC,” the “Company” or “Defendant”) discriminates against its female  
employees through: (a) discriminatory policies, practices and procedures in  
assignments, account/territory distribution, promotion and advancement; (b)

1 disparate pay and promotion; and (c) differential treatment. Plaintiffs allege  
2 systematic violations of the Equal Pay Act, 29 U.S.C. § 206(d) (“EPA”) and Title  
3 VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991  
4 and the Lilly Ledbetter Fair Pay Act of 2009 (“Fair Pay Act”), Title 42 U.S.C.  
5 2000e, *et. seq.* (“Title VII”). Defendant also retaliates against women, such as Ms.  
6 Fretter and Ms. Korsgaard, who complain to Company leaders or HR about  
7 workplace discrimination. Plaintiffs sue for declaratory and injunctive relief, back  
8 pay, front pay, compensatory, nominal and punitive damages, attorneys’ fees, and  
9 costs. Plaintiffs request a jury trial.

## 10 INTRODUCTION

11 1. Defendant Boston Scientific Neuromodulation’s systematic,  
12 Company-wide discriminatory treatment of its female employees, results in  
13 substantial gender-based disparities in compensation and advancement.

14 2. As a result of BSNC’s uniform and common policies and practices,  
15 BSNC perpetuates unequal opportunities for female sales representatives.  
16 Specifically, compared to similarly qualified male sales employees performing  
17 substantially similar job duties, BSNC systematically:

- 18 a. Pays women lower base salaries;
- 19 b. Pays women less commissions;
- 20 c. Rewards women less for achieving comparable performance goals;
- 21 d. Assigns women to less profitable accounts and territories;
- 22 e. Assigns women more rigorous sales quotas; and
- 23 f. Promotes women slower and at lower rates.

24 3. BSNC fosters a culture where male members of management are free  
25 to harass and denigrate women, with impunity. Complaining to superiors about  
26 discrimination is widely known as committing “career suicide.” Female sales  
27 representatives in different regions across the country are subjected to similar  
28 forms of discriminatory treatment, ranging from blatant sexual advances to unfairly

1 taking away accounts or upping quotas – in other words, setting female sales  
2 representatives up for lower compensation, missing targets, harsher working  
3 conditions, and other barriers to achieving equal pay and promotion opportunities  
4 for equal work.

5 4. The affected employees include Plaintiff Denise Fretter, who is  
6 currently employed at BSNC as a Regional Business Manager (“RBM”) in Ohio,  
7 and Plaintiff Maria Korsgaard, who was employed at BSNC as a Territory  
8 Manager (“TM”) in Nevada.

9 5. BSNC is headquartered in Valencia, California and is a division of  
10 Boston Scientific Corporation. Boston Scientific Corporation acquired the  
11 Neuromodulation division, formerly Advanced Bionics, in June 2007. Upon  
12 information and belief, BSNC has continued to operate independently from Boston  
13 Scientific Corporation with separate management and human resources  
14 departments.

15 6. BSNC specializes in the sale of devices that are implanted in patients’  
16 spinal columns to treat chronic pain. BSNC has a national sales force of  
17 approximately 500 employees, who are responsible for selling the devices and  
18 educating patients and health care providers on the devices before and after they  
19 are implanted.

20 7. Currently, BSNC’s sales senior leadership consists of its President, a  
21 Vice President of Sales and a Director of Sales Operations. None of these  
22 positions and predecessor positions has ever been filled by a woman.

23 8. Directly beneath the senior leadership are six Area Vice Presidents  
24 (“AVPs,” formerly known as Area Sales Directors, “ASDs”) who are considered  
25 upper management. The very first female AVP was promoted in late 2013 – well  
26 after the Company became aware of the allegations at issue in this complaint.  
27 Until that point, the AVP (and ASD) positions had been exclusively male.

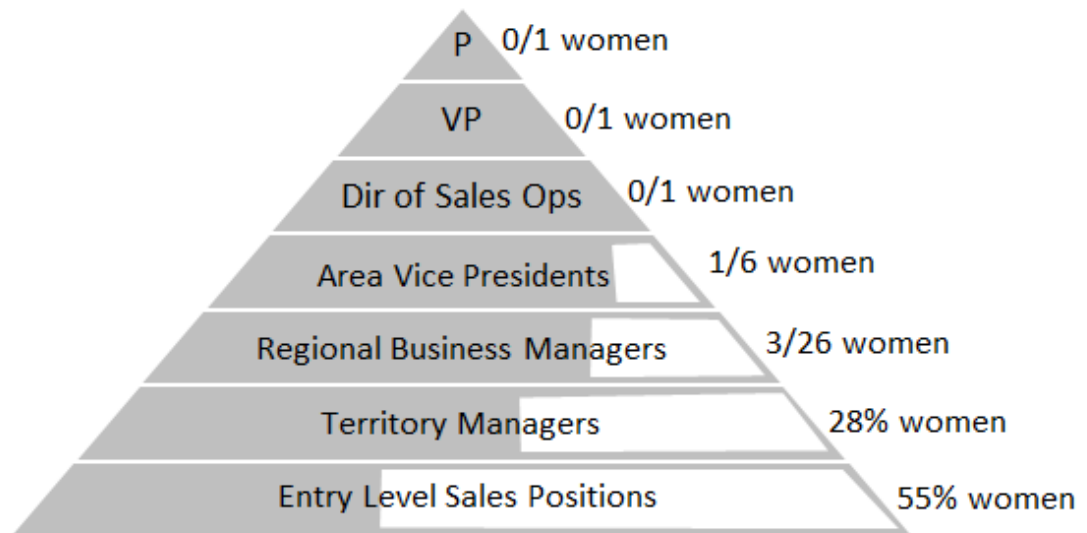
28 9. BSNC’s centralized and predominately male leadership team outlined

1 above, via common and uniform policies and practices, maintains control over  
2 nearly all aspects of sales representatives' employment, including compensation,  
3 promotions, performance evaluations, assignments, and terminations.

4 10. AVPs oversee RBMs, such as Ms. Fretter. RBMs are first-line  
5 managers and have TMs, such as Ms. Korsgaard, and Clinical Specialists ("CS"),  
6 who are entry-level employees, under them. Formerly, Account Managers were  
7 included as a level in between Territory Managers and Clinical Specialists but have  
8 since been phased out into Territory Managers.

9 11. Ms. Fretter was the first woman promoted to the RBM level, and she  
10 was the highest-ranking and sole woman in a management position until 2011.

11 12. Only three out of twenty-six RBMs (11.5%) are women. Former Vice  
12 President of U.S. Sales/National Director of Key Accounts Bobby Jenkins  
13 reinforced BSNC's male-dominated culture by referring to the RBMs as "the  
14 Boys" in emails, forgetting the few women who made it to the RBM level.



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24 13. Below RBMs are Territory Managers ("TMs"). Upon information  
25 and belief, only 28% of the TMs are women, but 55% of CSs, the level below  
26 TMs, are women. As explained below, there is no legitimate business reason that  
27 women should be concentrated at the lowest rung of the Company.  
28

1 14. Territory and quota assignment policies, compensation policies, and  
2 promotions policies are developed and implemented at the Company's  
3 headquarters in Valencia, and at all times ultimate decision-making authority for  
4 assignments, compensations, promotions rests with employees in the AVP position  
5 or higher. Employees below the AVP level have little to no authority to develop or  
6 implement BSNC policies.

7 **A. BSNC Assigns Female Sales Representatives to Lower Salaries and**  
8 **Positions than Male Sales Representatives.**

9 15. BSNC systematically pays female sales representatives a lower base  
10 salary than male sales representatives.

11 16. BSNC pays female employees lower starting salaries and lower  
12 position assignments than similarly situated male applicants. Men are more  
13 frequently offered the starting position of Territory Manager while women are  
14 more frequently offered the starting position of entry level sales Clinical Specialist,  
15 despite female employees' substantially similar job qualifications.

16 17. For example, Ms. Korsgaard applied to BSNC at the same time as one  
17 of her former male co-workers with a similar resume and similar experience, yet  
18 BSNC offered her a lower position and lower starting salary than it offered the  
19 male applicant.

20 18. Ms. Fretter's base salary as an RBM has historically been lower than  
21 similarly situated male RBMs performing substantially similar job duties, even  
22 though Ms. Fretter's performance is at least on par with her male peers.

23 19. Both Ms. Korsgaard and Ms. Fretter have experienced and observed  
24 BSNC systematically assigning women to lower positions and providing lower  
25 starting salaries than it does for similarly situated men.

26 **B. BSNC Pays Female Sales Representatives Less Commissions Than Male**  
27 **Sales Representatives.**

28 20. BSNC compensates sales employees with a base salary, commissions

1 and bonuses. Commissions and bonuses are a significant portion of total  
2 compensation.

3 21. BSNC has followed uniform, systematically documented policies for  
4 distribution of accounts (also known as “territories”) and quotas to sales  
5 representatives that have consistently disadvantaged women. These policies allow  
6 for unfettered reliance on subjective, unvalidated criteria for assigning accounts  
7 and quotas. The implementation of BSNC’s policies lead to female sales  
8 representatives ending up with lower commission rates than male sales  
9 representatives.

10 22. Each sales representative’s commissions are driven by revenue  
11 performance as well as quota performance. Revenue performance is a function of  
12 the territory assigned to the sales representative. Quota performance measures the  
13 percent to sales goal (quota) achieved by the employee in his or her territory.

14 23. Through the levers of territory assignments and quota assignments  
15 common policies, BSNC effectively determines commission rates through an  
16 entirely subjective system.

17 24. Upper management at BSNC assigns employees to a particular  
18 “territory,” which is a list of doctors rather than a prescribed geographic area. In  
19 effect, a territory is a list of accounts. BSNC does not credit employees for sales  
20 made outside of their BSNC-assigned territory, so assigning employees to smaller,  
21 less profitable territories restricts the amount of sales the employee is able to  
22 generate and thus compensation they can receive.

23 25. BSNC directs and permits assignment and reassignment of accounts  
24 without safeguards to ensure that the assignments and reassignments are fair and  
25 even-handed.

26 26. Employees whom BSNC assigns to more lucrative territories are  
27 assigned to “commission tiers” with higher “commission” rates than employees  
28 BSNC assigns to territories with lower overall revenue potential.

1           27. Upper management assigns a sales goal (or quota) to that employee  
2 for the territory. Assigning lower quotas to an employee makes it easier for that  
3 employee to meet or exceed quotas; the inverse is also true.

4           28. RBMs, TMs, Clinical Specialists and Account Managers are each  
5 subject to different commission tiers that are a product of their sales revenue.

6           29. For example, in 2012, TMs assigned territories generating \$800,000 in  
7 sales revenue (commission tier “Atlas”) were able to earn a commission of 6.5%  
8 upon meeting their sales quota. In contrast, TMs assigned territories generating  
9 \$200,000 in sales revenue (commission tier “Emerging”) were only able to earn a  
10 commission of 3% upon meeting their sales quota. Furthermore, TMs assigned to  
11 territories in the initial “Atlas” commission tier were able to earn a commission  
12 rate of 3.75% without coming close to meeting their quota.

13           30. In other words, a woman who exceeded 100% of her sales quota may  
14 nonetheless have been assigned to a lower commission rate than a man who  
15 approached but does not meet 100% of his sales quota.

16           31. As a result of the unvalidated and subjective criteria by which  
17 accounts and quotas are assigned, male employees are rewarded more generously  
18 than women for achieving comparable performance results and demonstrating  
19 comparable productivity.

20           32. BSNC’s uniform company-wide policies and practices for assigning  
21 accounts and determining quotas are not based on predetermined, objective criteria  
22 for measuring sales representatives’ merit or productivity. The resulting  
23 commissions compensation system is therefore not a bona fide merit or production  
24 system. The compensation and account distribution systems are not adequately  
25 communicated to employees and are not consistently and even-handedly applied.  
26 Upon information and belief, BSNC had never assigned a female employee to the  
27 highest commission tier prior to 2013.

28           33. Upon information and belief, the Company continues to discriminate

1 against female employees with respect to territory and quota assignments and  
2 female sales representatives continue to commission at lower rates than their male  
3 comparators. In other words, BSNC upper management continues to maintain a  
4 system of gender-stratified commission compensation.

5 34. Through its policies and practices of assigning female sales  
6 representatives to less profitable territories, to higher quotas and to lower  
7 commission tiers, BSNC caused gender-based disparities in compensation.

8 35. Additionally, defendants intentionally discriminated in implementing  
9 these policies.

10 **C. BSNC Assigns Female Sales Representatives to Less Profitable**  
11 **Territories than Male Sales Representatives.**

12 36. BSNC upper management assigns female sales representatives,  
13 regardless of their performance or qualifications, to less profitable territories (or  
14 accounts or doctor lists as described above). In addition, BSNC will reassign  
15 lucrative territories from female representatives to male representatives.

16 37. For example, in 2010, BSNC hired a man and assured him that he  
17 could take over a profitable portion of Ms. Korsgaard's territory. BSNC then took  
18 that portion of Ms. Korsgaard's territory from her and gave it to the man.

19 38. In so doing, BSNC discriminatorily decreased Ms. Korsgaard's  
20 compensation.

21 39. Both Ms. Korsgaard and Ms. Fretter experienced and observed BSNC  
22 systematically assigning women to less profitable territories.

23 **D. BSNC Assigns Lower Quotas to Male Sales Representatives than**  
24 **Female Sales Representatives.**

25 39. BSNC's upper management also regularly assigns lower quotas to  
26 male sales representatives than to female sales representatives. As a result, male  
27 employees are more likely to meet their quotas and commission at higher rates.

28 40. For example, when BSNC assigned part of Ms. Korsgaard's territories



1 to a male TM in 2012, the Company assigned him a much lower quota than it  
2 assigned Ms. Korsgaard when she covered the same territory. Meanwhile, BSNC  
3 expected Ms. Korsgaard to meet a quota that far exceeded previous sales in the  
4 territory.

5 41. In so doing, BSNC discriminatorily decreased Ms. Korsgaard's  
6 compensation.

7 42. Both Ms. Korsgaard and Ms. Fretter have experienced and observed  
8 BSNC systematically assigning women to more rigorous quotas than those  
9 assigned to similarly situated men performing substantially similar job duties.

10 **E. BSNC Rewards Women Less When It Comes to Other Measures of**  
11 **Incentive Compensation**

12 43. Male sales representatives receive more compensation in the forms of  
13 raises, quarterly bonuses, commissions bonuses and stock options as a result of  
14 BSNC's uniform, documented, and unvalidated procedures for determining these  
15 forms of compensation. BSNC relies on subjective criteria as well as tainted  
16 variables, such as, but not limited to, revenue performance to determine such  
17 compensation, resulting in systematic gender-based disparities.

18 44. Both Ms. Korsgaard and Ms. Fretter have experienced and observed  
19 BSNC systematically rewarding women less than it has rewarded men for  
20 performing substantially the same job and achieving comparable productivity.

21 45. BSNC systematically awards smaller raises to women than it does to  
22 men.

23 46. For example, BSNC denies female TMs pay raises it grants to male  
24 TMs performing substantially the same job duties.

25 47. Additionally, prior to March 2014, BSNC did not complete  
26 performance evaluations for its employees, hindering their ability to challenge the  
27 Company's decisions.

28 48. Furthermore, BSNC upper management denies female employees

1 other forms of compensation.

2 49. BSNC employees are eligible for quarterly bonuses. Specifically,  
3 RBMs can earn quarterly and annual bonuses for reaching or exceeding their  
4 quotas. Both TMs and RBMs can also earn additional bonuses based on  
5 improvements in sales margin management and sales compliance.

6 50. BSNC employees are eligible for commission bonuses, which are  
7 referred to as “MBOs” (“Management by Objective”). The MBOs change every  
8 year and are discriminatorily suppressed for women as a result of BSNC upper  
9 management’s discrimination in assigning territories. For example, in FY2014, the  
10 MBO metric was profit margin. Consequently, sales representatives assigned to  
11 high revenue generating territories (disproportionately male) have more leeway to  
12 spend and stimulate profit and Sales Representatives assigned to low revenue  
13 generating territories (disproportionately female) have to spend less in order to  
14 obtain the target profit margin.

15 51. BSNC also awards RBMs quarterly stock options, which allow them  
16 to buy shares in the Company’s stock. BSNC upper management decides who  
17 receives bonuses and stock options and denies bonuses and stock options to female  
18 employees or gives lower bonuses and stock options to female employees than  
19 male employees. For example, in 2011, Ms. Fretter surpassed her quota  
20 expectations and performed better than her male colleagues performing  
21 substantially the same work, but BSNC awarded her fewer bonuses and stock  
22 options.

23 52. BSNC’s compensation system for commissions bonuses, stock  
24 options and raises are not bona fide merit or production systems because they are  
25 unvalidated, do not have consistently applied, objective criteria for measuring  
26 merit or productivity, and are not adequately communicated to employees.

27 53. In sum, BSNC’s compensation and account distribution systems on  
28 the whole are not merit or production based, but rather are governed by tainted,

1 unfair, and discriminatory criteria. Specifically, they are not validated, do not have  
2 predetermined criteria for measuring merit or productivity, they are not adequately  
3 communicated to employees, and they are not consistently and/or even-handedly  
4 applied.

5 54. BSNC's compensation and account distribution system are not  
6 justified by business necessity because they do not compensate sales  
7 representatives based on actual measure of performance.

8 55. By using the tainted variables as a criterion for compensation and  
9 promotion, BSNC further perpetuate the gender-based compensation disparities  
10 and create a cumulative advantage for male sales representatives based on  
11 systematically documented and unvalidated criteria that has an adverse impact on  
12 female sales representatives.

13 **F. BSNC Denied Women Equal Opportunities for Promotion and**  
14 **Advancement.**

15 56. BSNC caused gender-based disparities in promotions by using  
16 uniform, unvalidated and unfair procedures and common policies for selecting  
17 employees for promotions.

18 57. BSNC's promotions system is not based on objective measures of  
19 merit and productivity but based on forced rankings or primarily subjective criteria  
20 set by the Company. Thus, promotions decisions were driven by subjective  
21 evaluations made by a small number of senior managers without safeguards to  
22 ensure that the process and the criteria were fair and reliable. Upon information  
23 and belief, this system is companywide and uniform.

24 58. Furthermore, BSNC allows deviations from formal evaluation and  
25 promotions processes that have an adverse impact on female sales representatives'  
26 promotions. Upper management routinely promotes employees within a "tap-on-  
27 the-shoulder" policy in which upper management does not post job openings and  
28 awards promotions on personal relationships rather than qualifications.

1           59. As a result of its uniform, systematically documented but unvalidated  
2 policies and procedures for promotions, BSNC tends not to promote women  
3 beyond entry-level management in sales and BSNC promotes male employees  
4 faster than female employees. Until the fall of 2013, no woman held a position in  
5 upper management at the AVP level or higher.

6           60. For example, in 2012, the Company promoted four male RBMs to  
7 AVP without posting the position or informing female RBMs they could apply.

8           61. While Ms. Fretter was qualified for the position, BSNC promoted the  
9 male applicants instead, even though she had more experience at BSNC than two  
10 of the men and comparable experience as the other two. One male applicant did  
11 not meet the position's qualifications of having a college degree.

12           62. Similarly, when BSNC interviewed Ms. Korsgaard for a posted RBM  
13 position in March 2012, she later learned that her "interview" happened after  
14 BSNC had already held final interviews for the position at BSNC headquarters.  
15 BSNC upper management instead hired a male co-worker who was ranked 82nd in  
16 the nation for sales performance, while Ms. Korsgaard was ranked 6th.

17           63. BSNC also denies other promotional and developmental opportunities  
18 to women. An example is the selection process for the Presidents' Club Award.  
19 Each year, the Company gives out the prestigious President's Club Award to the  
20 top performing RBMs and TMs. The winners of this award receive both the  
21 Company-wide recognition and the opportunity to go on an exclusive President's  
22 Club retreat. This experience makes future promotions more likely and otherwise  
23 provides important development and networking opportunities.

24           64. In 2010, although Ms. Fretter was qualified for the annual President's  
25 Club Award, BSNC upper management denied her the Award, and instead gave it  
26 to a male employee who had numerous compliance violations and whose tenure  
27 and sales growth were less than Ms. Fretter's. Upon information and belief, BSNC  
28 management tampered with the President's Club scoring matrix in 2010 in order to

1 ensure that Ms. Fretter was not selected. Despite exemplary performance, Ms.  
2 Fretter did not receive President's Club until 2013, after the Company's upper  
3 management became aware of the prospect of a gender discrimination class action  
4 against them.

5 **G. BSNC Fosters a Work Environment that is Hostile to Female**  
6 **Employees.**

7 65. BSNC management also fosters a "good old boys' club" atmosphere  
8 that is hostile to the success and advancement of female employees, regardless of  
9 their qualifications or merits. Upper management fuels a culture of heavy drinking  
10 and late night parties, especially at its national sales meetings.

11 66. For example, at a national sales meeting in San Diego, California, the  
12 Company invited managers to a dinner and wine tasting. Many of the male  
13 employees in upper management became so intoxicated that they yelled  
14 obscenities at the event staff and passed out on couches during the event.

15 67. BSNC President Michael Onuscheck and Vice President of Sales  
16 Allen Meacham, among other leaders, were present and witnessed this behavior  
17 but took no action to prevent it.

18 68. Male managers also subject women to verbal and physical sexual  
19 harassment. For example, RBM Jim Leavitt ("RBM Leavitt") stuck his hands  
20 down Ms. Fretter's pants and made taunting remarks about her underwear. One  
21 woman, Jennifer Geraci, was told during her business review that she needed to  
22 stop being perceived as just "one of the chicks" and was asked whether she  
23 planned on having a family.

24 69. Both Ms. Korsgaard and Ms. Fretter have experienced and observed  
25 BSNC systematically subjecting women to sexist and hostile behavior.

26 **H. BSNC Discourages Women From Complaining and Retaliates Against**  
27 **Those Who Do.**

28 70. Women at BSNC are told that complaining of discrimination at BSNC

1 is “career suicide.” BSNC is thus allowed to continue discriminating, safe in the  
2 knowledge that women are unlikely to complain.

3 71. When women do raise complaints, despite BSNC’ discouragement,  
4 BSNC retaliates against them.

5 72. For example, when Ms. Fretter raised allegations of gender  
6 discrimination in 2012, BSNC further decreased her territory and diminished her  
7 ability to make sales.

8 73. Despite knowledge of gender discrimination complaints, BSNC did  
9 not act and did not protect complainants against retaliation. BSNC effectively  
10 condoned discrimination.

11 **JURISDICTION AND VENUE**

12 74. This Court has subject matter jurisdiction over this suit pursuant to 28  
13 U.S.C. § 1331.

14 75. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and  
15 42 U.S.C. § 2000e-5(f) because unlawful employment practices occurred in  
16 California and BSNC is headquartered in Valencia in Los Angeles County.

17 76. Plaintiffs and Defendants entered into a tolling agreement to toll the  
18 individual and class claims of Plaintiffs on December 10, 2012. The parties’  
19 tolling agreement provided that Plaintiffs’ claims would be tolled until either party  
20 gave notice terminating the tolling agreement. Plaintiffs’ counsel notified BSNC  
21 on November 15, 2013, that they were terminating the agreement.

22 77. Plaintiffs timely filed individual and class charges of discrimination  
23 with the California Department of Fair Employment and Housing (“DFEH”) and  
24 the U.S. Equal Employment Opportunity Commission (“EEOC”) on November 22,  
25 2013.

26 78. The EEOC issued right to sue letters on December 18, 2014.

27 **PARTIES**

28 79. From September 2004 to the present, **Plaintiff Denise Fretter** was a

1 female “employee” at BSNC, as defined by Title VII. From September 2004 to the  
2 present, Ms. Fretter lived and worked in Ohio.

3 80. From April 2008 to June 2012, **Plaintiff Maria Korsgaard** was a  
4 female “employee” at BSNC, as defined by Title VII. From April 2008 to June  
5 2012, Ms. Korsgaard lived in Nevada and worked in Nevada and Utah.

6 81. Plaintiffs Fretter and Korsgaard each signed a Consent to Join the  
7 Equal Pay Act collective action. Their Consents to Join are attached as Exhibit A.

8 82. At all times relevant to this action, **Defendant Boston Scientific**  
9 **Neuromodulation Corporation** is and has been headquartered in Valencia,  
10 California and has its principal place of business there. Boston Scientific  
11 Neuromodulation is a division of parent Company Boston Scientific Corporation.

## 12 **FACTUAL ALLEGATIONS**

### 13 **A. Denise Fretter**

14 83. As an RBM, Ms. Fretter is responsible for developing and  
15 implementing plans to generate and increase sales of BSNC’ medical devices. She  
16 is assigned between fifteen and twenty-one direct reports at any given time, all of  
17 whom are TMs and Clinical Specialists.

18 84. Ms. Fretter began her employment with BSNC in September 2004.

19 85. In January 2007, Ms. Fretter became the first woman promoted to  
20 RBM. Since her promotion to RBM, Ms. Fretter has reported directly to AVPs  
21 Michael McIntyre, Blake Carver, and Michael Cronin (“AVP Cronin”).

22 86. Ms. Fretter consistently ranks among the top ten RBMs nationwide in  
23 sales performance. Upon information and belief, she has ranked among the top ten  
24 sales employees for the majority of her time at the Company but has repeatedly  
25 been denied President’s Club honors.

26 87. In 2009 and 2011, she increased her sales by more than 20%, far  
27 above the Company average. In 2010, she grew her sales by more than 40% from  
28 the previous years. In 2012, her sales for two particular products were among the

1 highest in the nation.

2 88. Ms. Fretter was the top-performing RBM in the nation in 2013. As a  
3 result of her outstanding performance, Ms. Fretter won U.S. Region of the Year,  
4 RBM of the year, received the President's Club Award, and was nominated to the  
5 Regional Business Manager Council for 2014, a leadership position bestowed on  
6 ten or eleven of the highest-performing and tenured RBMs.

7 89. Ms. Fretter's exemplary sales performance continued in 2014.  
8 Despite the addition of a large, unprofitable territory to her region, Ms. Fretter  
9 exceeded all of her sales quotas and was once again nominated for the Regional  
10 Business Manager Council. However, Ms. Fretter did not win President's Club in  
11 2014, a fact that can be attributed to the underperforming territory that the  
12 Company saddled her with.

13 90. Despite her skills and qualifications, BSNC upper management has  
14 paid Ms. Fretter less than similarly situated male employees, assigned her to less  
15 profitable territories, denied her monetary awards, denied her promotional  
16 opportunities, subjected her to sexual harassment and a hostile work environment,  
17 and retaliated against her.

18 **i. BSNC Paid Ms. Fretter Less Than Similarly Situated Male**  
19 **Employees.**

20 91. Despite her exemplary performance, BSNC has paid Ms. Fretter less  
21 than similarly situated men performing substantially the same work by giving her a  
22 lower base salary and making it more difficult for her to receive higher  
23 commission.

24 92. Ms. Fretter's base salary as an RBM is lower than similarly situated  
25 male RBMs performing substantially the same work.

26 93. Additionally, as a result of its territory assignment policy, BSNC paid  
27 a similarly situated male RBM approximately \$17,000 more commission in 2011,  
28 even though Ms. Fretter started at BSNC about the same time he did, her



1 performance was superior, and they performed substantially the same work.

2 94. BSNC also denied Ms. Fretter monetary awards. While Ms. Fretter  
3 surpassed her quota expectations and performed better than her male colleagues in  
4 2011, BSNC awarded her a smaller bonus and stock payout than comparably  
5 situated male employees.

6 **ii. BSNC Assigned Ms. Fretter to Less Profitable Territories.**

7 95. BSNC repeatedly has eliminated profitable portions of Ms. Fretter's  
8 territory.

9 96. For example, in 2011, BSNC upper management transferred the entire  
10 state of Michigan, which was highly profitable, from Ms. Fretter to a less-tenured  
11 male RBM, Jeff Klunke.

12 97. As detailed further below, BSNC upper management removed several  
13 revenue-generating doctors from Ms. Fretter's territory in 2012, despite increasing  
14 her sales quota by 30% each year.

15 98. Furthermore, in 2013, BSNC upper management divided a former  
16 RBM's region by saddling Ms. Fretter with the large, unprofitable Detroit  
17 territories and delegating the remaining, more profitable sections of the region to a  
18 white male RBM.

19 99. As a result of this unwanted addition, Ms. Fretter's did not win  
20 President's Club for 2014, though she almost certainly would have had the Detroit  
21 territories not been taken into account. Meanwhile, the white male RBM who  
22 received the profitable portions of the region won President's Club and RBM of  
23 the year in 2014, even though he had less than one year of RBM experience.

24 100. Despite the obstacles that BSNC presents by assigning her to less  
25 profitable territories and setting her to a very high quota, Ms. Fretter remains  
26 extremely successful and is currently one of the Company's top five revenue  
27 producers in the country.

28

1           **iii. BSNC Denied Ms. Fretter a Promotion and Other**  
2           **Advancement Opportunities in Favor of Less-Qualified Male**  
3           **Employees.**

4           101. In the spring of 2012, BSNC promoted four male RBMs to AVP  
5 without posting the position or informing Ms. Fretter or other female RBMs they  
6 could apply.

7           102. BSNC promoted the male employees even though Ms. Fretter was at  
8 least as qualified. She had at least as much experience at BSNC than all of them  
9 and more experience than two of them. Additionally, Ms. Fretter has a college  
10 degree, one of the requirements for the AVP position, while at least one of the men  
11 promoted does not.

12           103. BSNC also promoted the male employees even though Ms. Fretter  
13 had regularly informed her managers that she was interested in higher management  
14 positions within the Company and was interested in taking on additional  
15 responsibilities.

16           104. BSNC denied Ms. Fretter the President's Club Award in February  
17 2010, and instead awarded it to a male employee who had numerous compliance  
18 violations, which should have disqualified him from the contest. Ms. Fretter  
19 should have received the award, given that she had increased her annual sales by  
20 more than 50% and she ranked in the top four sales representatives for her sales  
21 performance in the nation.

22           105. BSNC also denied Ms. Fretter the President's Club Award in  
23 February 2011, instead awarding it to less qualified male employees Mr. Galbraith  
24 and Mr. Klunke.

25           106. AVP Carver and AVP Cronin also excluded Ms. Fretter from  
26 membership in BSNC's RBM Council, granting this promotional opportunity to her  
27 lower-performing and less-tenured male colleagues. Members of this board are  
28 asked to meet three to four times a year with upper management to discuss

1 important sales topics and prepare for national conferences. BSNC upper  
2 management selects certain RBMs for membership in the RBM Council based not  
3 on performance, but social connections established through the Company's boys'  
4 club network. Ms. Fretter was not asked to serve on this council until 2014, after  
5 the Company's upper management became aware of the legal proceedings against  
6 them.

7 107. Ms. Fretter and other female employees are hindered in advocating for  
8 higher pay and promotional opportunities due to BSNC's failure to complete  
9 performance reviews for their employees. BSNC continues to promote employees  
10 through its "tap-on-the-shoulder" policy that values exclusionary male social  
11 networks over merit.

12 **iv. BSNC Subjected Ms. Fretter to Sexual Harassment and a**  
13 **Hostile Work Environment.**

14 108. BSNC fosters a boys' club atmosphere that is hostile to women and  
15 encourages male employees to act with impunity.

16 109. Ms. Fretter suffered sexual harassment from a superior. For example,  
17 RBM Leavitt shoved his hands down Ms. Fretter's pants and made taunting and  
18 humiliating remarks about her underwear.

19 110. Leavitt also publicly harassed her at a national sales meeting, telling  
20 her "Your ass looks great in the dress."

21 111. At that same national sales meeting, the Company invited its  
22 managers to a wine tasting event in which many of the male leaders became so  
23 intoxicated that they yelled obscenities at the event staff and passed out during the  
24 event. Other members of BSNC upper management, including President  
25 Onuscheck and VP of Sales Meacham, witnessed this behavior but failed to take  
26 any action in response.

27 112. BSNC subjects women to stricter scrutiny than it does men based on  
28 gender stereotypes. BSNC fails to reprimand male employees for their

1 inappropriate behavior, even though it reprimands female employees who become  
2 intoxicated at Company events, cautioning them against being “inappropriate.”

3 113. BSNC tolerates grossly inappropriate behavior from its male  
4 employees. For example, RBM Leavitt routinely made unwanted and  
5 inappropriate comments in the workplace, about, for example, sex toys, sexual  
6 positions, and his sexual activities.

7 **v. BSNC Retaliated Against Ms. Fretter.**

8 114. After Ms. Fretter hired counsel and threatened to institute class-wide  
9 litigation against the Company for gender discrimination, BSNC took action to  
10 further decrease her compensation.

11 115. For example, in 2012, BSNC upper management contacted Ms.  
12 Fretter’s client without her knowledge or involvement and directed him to  
13 postpone scheduled medical procedures until after the New Year. This caused Ms.  
14 Fretter to lose approximately \$300,000 in revenue for 2012 and lowered her bonus  
15 by at least \$10,000.

16 116. VP Jenkins and AVP Cronin then stripped a significant number of  
17 doctors from Ms. Fretter’s territory, instead assigning them to a lower-performing  
18 male employee.

19 117. Male employees in upper management, including AVP Cronin, also  
20 began excluding Ms. Fretter from important communications. In October 2012,  
21 for example, AVP Cronin emailed a male Territory Manager, one of Ms. Fretter’s  
22 subordinates, about promising clients in Ms. Fretter’s territory. AVP Cronin failed  
23 to include Ms. Fretter in the communication. AVP Cronin includes all male  
24 employees in communications regarding potential clients in their territories.

25 118. Around the same time, Ms. Fretter also walked in on AVP Cronin  
26 telling a male subordinate on her team that Ms. Fretter would not be allowed to  
27 promote female Account Manager Karin Sill to Territory Manager. Not only did  
28 AVP Cronin discuss confidential employee information to a male subordinate, but

1 it was also information that he had not yet disclosed to Ms. Fretter. It was  
2 Companywide policy to promote applicable AMs to TMs in order to do away with  
3 the AM position.

4 119. Additionally, after Ms. Fretter informed AVP Cronin that he was  
5 involved in a serious miscommunication that threatened BSNC's relationship with  
6 a long-standing client, AVP Cronin referred to Ms. Fretter as "overly emotional."

7 120. In December 2013, BSNC upper management divided up a former  
8 RBM's region by assigning Ms. Fretter the Detroit market and delegating the  
9 remainder of Michigan and the Chicago territory to a recently promoted male  
10 RBM, Matt Zubeil. While the Chicago and surrounding Michigan territory was  
11 lucrative, Detroit was a failing market with severely depressed sales numbers. Ms.  
12 Fretter was never consulted about this decision or given the option to take on the  
13 Michigan or Chicago territories. When she informed AVP Cronin that she did not  
14 want the Detroit territories and expressed concerns about the impact this new  
15 addition could have on her region's performance, AVP Cronin assured her that the  
16 market would not require much rebuilding.

17 121. It soon became obvious that in fact the Detroit territories were  
18 seriously challenged, with the market running approximately \$2.5 million below  
19 quota for the year. Although Ms. Fretter's original sales team achieved 102% of  
20 its sales goals and brought in \$23 million – one of the highest revenues in the  
21 country, the Detroit territory dragged the entire region's numbers down to only  
22 98.5% of quota. Meanwhile, RBM Zubeil replaced Ms. Fretter as the top-  
23 performing RBM in the country, while Ms. Fretter has dropped to twelfth in the  
24 rankings.

25 122. Though Ms. Fretter successfully petitioned to have her compensation  
26 plan adjusted to account for Detroit's effect on her region, VP of Sales Allen  
27 Meacham told Ms. Fretter that the Company was unwilling to discount the impact  
28 of the Detroit region when calculating the standing for the 2014 President's Club

1 award. As a result, Ms. Fretter did not win President's Club for 2014.

2 123. Ms. Fretter experienced and continues to experience emotional  
3 distress and other forms of pain and suffering.

4 **B. Maria Korsgaard**

5 124. Ms. Korsgaard is a former employee of BSNC. At the time of her  
6 separation in June 2012, she was a TM assigned to BSNC's Nevada Territory.

7 125. Ms. Korsgaard began her employment with BSNC in April 2008 as a  
8 Clinical Sales Representative. In the fall of 2008, BSNC promoted to her to an  
9 Account Manager position. In early 2010, BSNC promoted Ms. Korsgaard to  
10 Territory Manager. She reported to RBM Galbraith until he was promoted to AVP  
11 in March 2012, at which time she began reporting to RBM Josh Leder.

12 126. Ms. Korsgaard demonstrated exceptional performance as a Territory  
13 Manager. She earned the President's Club Award in 2011, and in February 2012,  
14 she finished sixth in the nation among all Territory Managers for her sales  
15 performance.

16 127. Despite her skills and qualifications, BSNC upper management paid  
17 Ms. Korsgaard less than similarly situated male employees performing  
18 substantially the same work, reassigned her profitable territory to a less-qualified  
19 male employee, set her quotas higher than her male counterparts, denied her a  
20 promotion in favor of a less-qualified male, and subjected her to a hostile work  
21 environment. As a result of BSNC's discriminatory treatment, Ms. Korsgaard was  
22 left with no choice but to resign on June 1, 2012 due to denial of "pay, promotion,  
23 and professional opportunities as a result of [her] gender."

24 **i. BSNC Paid Ms. Korsgaard Less than Similarly Situated**  
25 **Male Employees Performing substantially the Same Work.**

26 128. When Ms. Korsgaard applied to work at BSNC, the Company offered  
27 her a lower starting salary and a lower position than a similarly situated male  
28 applicant who applied for the same job opening, even though the two had nearly

1 identical experiences and qualifications. They both worked at Novartis for the  
2 same number of years and left their employment there at the same time.  
3 Additionally, the BSNC employee who interviewed Ms. Korsgaard explicitly told  
4 her she was “overqualified” for the entry level position BSNC offered her.

5 129. While BSNC offered Ms. Korsgaard a starting base salary of \$40,000,  
6 BSNC offered the male candidate a starting base salary of \$55,000, plus a \$20,000  
7 bonus.

8 130. When BSNC promoted Ms. Korsgaard to Territory Manager in  
9 January 2010, BSNC continued to pay her a lower base salary than similarly  
10 situated male Territory Managers. While BSNC paid male TMs including new  
11 hires salaries of up to \$85,000, BSNC paid Ms. Korsgaard only \$65,000.

12 131. BSNC also prevented her from commissioning for the first quarter of  
13 2010, even though BSNC allowed her male counterparts to commission  
14 immediately upon promotion.

15 **ii. BSNC Hired a Less-Qualified Male Employee to Take Over**  
16 **Ms. Korsgaard’s Territory.**

17 132. Ms. Korsgaard’s territory consisted of both Utah and Las Vegas,  
18 Nevada, though Utah comprised the vast majority of her business and clientele. In  
19 the summer of 2010, RBM Galbraith approached Ms. Korsgaard and suggested  
20 that she hire someone to help her with Utah. RBM Galbraith then sent her the  
21 names of three candidates he wanted her to consider.

22 133. Ms. Korsgaard identified the most qualified candidate and  
23 recommended that RBM Galbraith and his manager, AVP Hap Peterson (“AVP  
24 Peterson”), hire that individual. However, management rejected her  
25 recommendation and instead hired Rex Doman, who was unqualified for the  
26 position. Mr. Doman received his college degree in a field unrelated to sales or  
27 medicine and he had no sales experience.

28 134. Upon starting work, Mr. Doman told Ms. Korsgaard that RBM

1 Galbraith had promised him Ms. Korsgaard's Utah territory during the interview.

2 135. Although Mr. Doman was lower in the sales hierarchy than Ms.  
3 Korsgaard, he disregarded Ms. Korsgaard's instructions and disrespected her in  
4 front of clients, telling them that she was performing poorly. He regularly ignored  
5 Ms. Korsgaard's explicit instructions and failed to communicate with her, instead  
6 communicating directly with RBM Galbraith.

7 136. Despite Ms. Korsgaard's numerous complaints to RBM Galbraith  
8 about Mr. Doman's unprofessional behavior, insubordination, and attempts to  
9 sabotage Ms. Korsgaard's relationships with clients, RBM Galbraith and AVP  
10 Peterson refused to discipline Mr. Doman or grant Ms. Korsgaard permission to do  
11 so.

12 137. In 2012, the Company promoted Mr. Doman to Territory Manager.  
13 At that time, the Company assigned him the Utah Territory – taking away from  
14 Ms. Korsgaard, the more senior TM, the most lucrative part of her business and  
15 clientele.

16 138. Unlike when Ms. Korsgaard was promoted, BSNC allowed Mr.  
17 Doman to begin commissioning immediately.

18 139. BSNC assigned Mr. Doman a quota that was over \$100,000 less than  
19 Ms. Korsgaard's quota had been the prior year, despite the fact that Utah had  
20 comprised the vast majority of Ms. Korsgaard's business and clientele. In contrast,  
21 Ms. Korsgaard's quota stayed essentially the same and she was expected to meet  
22 the same quota even though she was left with only the Las Vegas territory.

23 140. Ms. Korsgaard was unable to meet the quota with her Las Vegas  
24 territory. After she ended up leaving the Company, they did not hire another  
25 person to take over her Las Vegas territory, demonstrating that there was not  
26 enough business in that territory to support a sales representative.

27 141. BSNC's decision to strip the Utah territory from Ms. Korsgaard  
28 decreased her compensation significantly. When Ms. Korsgaard managed the Utah



1 territory in 2011, she received quarterly commission checks ranging from \$36,000  
2 to \$42,000. However, in the first quarter of 2012, her first quarter without the Utah  
3 territory, her commission checks totaled approximately \$5,000 or less.

4 **iii. BSNC Denied Ms. Korsgaard a Promotion and Other**  
5 **Advancement Opportunities in Favor of Less-Qualified**  
6 **Male Employees.**

7 142. In 2012, Ms. Korsgaard told RBM Galbraith that she wanted to be  
8 considered for the recently posted RBM position. RBM Galbraith told Ms.  
9 Korsgaard that he did not know the criteria for the position and was “surprised” to  
10 learn she was interested, even though she had repeatedly told him she wanted to  
11 advance.

12 143. BSNC then scheduled an “initial interview” with Ms. Korsgaard.  
13 However, Ms. Korsgaard later learned that her “initial interview” took place after  
14 BSNC had already conducted final interviews in Valencia, California with two  
15 lower-performing male Territory Managers.

16 144. BSNC did not give Ms. Korsgaard a final interview, even though she  
17 ranked 6th in the nation in 2011, the year before, in sales performance. BSNC  
18 instead promoted one of the male candidates it had interviewed earlier, who was  
19 less well qualified and who ranked 82nd in the nation (compared to Ms.  
20 Korsgaard’s 6th place ranking).

21 **iv. BSNC Constructively Discharged Ms. Korsgaard.**

22 145. Despite this discriminatory treatment, Ms. Korsgaard did not believe  
23 she could complain of discrimination, as she was warned by her manager that “to  
24 complain is career suicide” and would otherwise do no good and may harm her  
25 career in the insular medical device community for a longer term.

26 146. In the face of such intolerable and discriminatory conditions and with  
27 no hope of improvement or change, Ms. Korsgaard was forced to leave the  
28 Company in June 2012.

1 147. As a result of BSNC's discrimination, Ms. Korsgaard experienced  
2 emotional distress and other forms of pain and suffering.

### 3 CLASS ACTION ALLEGATIONS

#### 4 **A. General Facts Relevant To Class Claims And Class Definition**

5 148. Class Representatives Fretter and Korsgaard seek to maintain claims  
6 on behalf of themselves and on behalf of a class of current, former, and future  
7 female sales employees in a sales representative role, at the Regional Business  
8 Manager level or below, including, without limitation, Territory Manager, Clinical  
9 Specialist, and Account Manager, who worked at any time in Defendant's sales  
10 organization in the United States during the applicable liability period to the date  
11 of judgment.

12 149. The **Title VII Class** consists of all female sales employees as  
13 described above, who are, have been, or will be employed by Defendant in the  
14 United States at any time during the applicable liability period, including until the  
15 date of judgment in this case. Upon information and belief, there are over 200  
16 such employees in the proposed class.

17 150. The Class Representatives seek to represent all of the female sales  
18 employees described above. The systemic gender discrimination described in this  
19 Complaint has been, and is, continuing in nature.

20 151. BSNC's uniform company-wide common policies and practices have  
21 subjected female employees to continuing unlawful disparate treatment and have  
22 had a continuing, unlawful disparate impact on them and their employment  
23 opportunities. Such gender discrimination includes (a) assigning female  
24 employees to smaller and less profitable territories; (b) assigning higher quotas to  
25 female employees in order to make it more difficult for them to reach commission;  
26 (c) paying female employees less than their male counterparts; (d) placing women  
27 into lower positions than similarly situated male applicants; (e) creation of a hostile  
28 work environment; (f) failing to prevent, respond to, adequately investigate and/or

1 appropriately resolve instances of gender discrimination in the workplace; and (g)  
2 otherwise subjecting female employees to disparate treatment with respect to the  
3 terms and conditions of their employment through, but not limited to, exposure to  
4 gender-based (pay and promotion) discrimination, sexual harassment and a hostile  
5 work environment with no avenues for recourse. This gender discrimination also  
6 involves retaliation against female employees who have complained of wage  
7 disparity, gender discrimination and sexual harassment through internal reporting  
8 channels, the filing of EEOC complaints, and hiring counsel, including by  
9 assigning them less profitable territories, giving them to unreasonable or higher  
10 quotas, subjecting them to increased scrutiny or otherwise altering their terms and  
11 conditions of employment.

12 152. The discriminatory nature of BSNC's policies and practice is  
13 exacerbated by the fact that men greatly outnumber women in the upper  
14 management positions at BSNC, as detailed above

15 153. BSNC's compensation, development, promotion, advancement,  
16 award, training and performance evaluation policies, practices and procedures  
17 incorporate the following discriminatory practices: (a) refusing or failing to  
18 establish and/or follow policies, practices, procedures or criteria that reduce or  
19 eliminate disparate impact and/or intentional biases or stereotypes and (b) refusing  
20 or failing to provide clear and equally opportune standards for promotions and  
21 awards.

22 154. BSNC, in effect, bars female employees from better and higher-  
23 paying positions that have traditionally been held by male employees. The  
24 systemic means of accomplishing such gender-based stratification include, but are  
25 not limited to, BSNC's assignment, development, promotion, advancement,  
26 training, compensation and performance evaluation policies, practices and  
27 procedures.

28 155. These policies, practices and procedures all suffer from a lack of:

1 transparency; adequate quality standards and controls; sufficient implementation  
2 metrics; and opportunities for redress or challenge. As a result, employees are  
3 assigned, evaluated, compensated, developed and promoted within a system that is  
4 insufficiently designed, articulated, explained or implemented to consistently,  
5 reliably or fairly manage, develop or reward employees.

6 156. Where HR complaints and compliance policies exist, they lack  
7 meaningful quality controls, standards, implementation metrics and means of  
8 redress, such that upper management and HR may ignore, disregard, minimize,  
9 cover up, mishandle or otherwise fail to respond properly to evidence of  
10 discrimination in the workplace. There is no meaningful separation between  
11 complaint reporting channels and the managers who create discriminatory or  
12 hostile working conditions for women, such that complaints do not remain  
13 confidential and victims of discrimination often face retaliation or are dissuaded  
14 from raising concerns altogether.

15 157. BSNC tolerates and cultivates a hostile environment in which  
16 employees are routinely and openly devalued and where retaliation for voicing  
17 complaints of gender discrimination is the norm. Amid and as a result of this  
18 environment, female employees who question these norms or raise concerns are  
19 routinely pushed out of the Company.

20 158. Further, BSNC demonstrates a reckless disregard—a deliberate  
21 indifference—to discrimination against its female employees by overlooking or  
22 otherwise dismissing even blatant evidence of gender discrimination.

23 159. BSNC's territory/account assignment, quota assignment, sales  
24 compensation, promotion, training, evaluation, awards, termination, and complaint  
25 policies, practices and procedures have a disparate impact on the Class  
26 Representatives and the Class they seek to represent. Such policies, practices and  
27 procedures are not valid, job-related or justified by business necessity.

28 160. Additionally, it is BSNC standard operating procedure to intentionally

1 discriminate against female sales employees.

2 161. Discrimination in compensation occurs as a pattern or practice in  
3 BSNC as a result of common policies directing the use of flawed criteria by  
4 managers. Compensation is driven by personal familiarity, subjective decision-  
5 making, and interaction between male executives and subordinates rather than by  
6 merit and reliable measures of productivity and production.

7 162. Moreover, discrimination in selection, promotion and advancement  
8 occurs as a pattern or practice in BSNC. Assignment, selection, promotion and  
9 advancement opportunities are driven by personal familiarity, subjective decision-  
10 making, pre-selection and interaction between male executives and subordinates  
11 rather than by merit and fair application and interview process.

12 163. These polices, practices and procedures all suffer from a lack of  
13 transparency, adequate quality standards and controls, sufficient implementation  
14 metrics, upper management/HR review and opportunities for redress or challenge.  
15 As a result, employees are assigned, evaluated, compensated, developed and  
16 promoted within a system that is insufficiently designed, articulated, explained or  
17 implemented to consistently, reliably or fairly manage or reward employees.

18 164. BSNC's subjective decision-making is centralized and the product of  
19 common policies.

20 165. As a result, male employees have advanced and continue to advance  
21 more rapidly to better and higher-paying jobs than female employees.

22 166. BSNC's policies, practices and procedures have an adverse impact on  
23 and have resulted in routine adverse disparate treatment of female employees  
24 seeking selection for, or advancement to, better and higher-paying positions. The  
25 higher the level of the job classification, the lower the percentage of female  
26 employees holding it.

27 167. As a result, male managers have a disproportionate say in the  
28 assignment, development, evaluation and compensation of female employees.

1 Female employees are routinely undervalued and their work product minimized  
2 and disregarded, resulting in significant implications not only for their  
3 advancement opportunities but also for their compensation.

4 168. Because BSNC's personnel management systems do not provide  
5 sufficient oversight or safety measures to protect against intentional and overt  
6 discrimination or the disparate impact of its uniform policies and procedures,  
7 female employees suffering from discrimination are without recourse. In addition,  
8 the absence of a check on discrimination extends to retaliatory actions, leaving  
9 victims of discrimination doubly vulnerable. Therefore, BSNC fosters and  
10 sometimes even condones discrimination.

11 169. BSNC has failed to impose adequate discipline for employees who  
12 violate its anti-discrimination policies and equal employment opportunity laws and  
13 has failed to create adequate incentives for its managerial and supervisory  
14 personnel to comply with such policies and laws.

15 170. The employment policies, practices and procedures to which the Class  
16 Representatives and the Class members are subjected are set at the highest levels  
17 and apply universally to all Class members. These employment policies, practices  
18 and procedures are not unique or limited to any district; rather, they apply to all  
19 districts and, thus, affect Class Representatives Fretter and Korsgaard and Class  
20 members in the same or similar ways regardless of the district in which they work.

21 171. Because of BSNC's systemic pattern and practice of gender  
22 discrimination, the Class Representatives and Class they seek to represent have  
23 been adversely affected and have experienced harm, including the loss of  
24 compensation, wages, back pay, and employment benefits as well as physical and  
25 emotional pain and suffering.

26 172. The Class Representatives and the Class have no plain, adequate or  
27 complete remedy at law to redress the wrongs alleged herein, and this suit is their  
28 only means of securing adequate relief. The Class Representatives and the Class

1 are now suffering, and will continue to suffer, irreparable injury from BSNC's  
2 ongoing, unlawful policies, practices and procedures as set forth herein unless  
3 those policies, practices and procedures are enjoined by this Court.

4 **B. Efficiency Of Class Prosecution Of Common Claims**

5 173. Certification of a class of female employees is the most efficient and  
6 economical means of resolving the questions of law and fact that are common to  
7 the claims of the Class Representative and the proposed Class.

8 174. The claims of Class Representatives Fretter and Korsgaard require  
9 resolution of the common questions concerning whether BSNC has engaged in a  
10 systemic pattern and/or practice of gender discrimination against female employees  
11 and/or whether its facially neutral policies have an adverse effect on the Class.  
12 Class Representatives Fretter and Korsgaard seek remedies to eliminate the  
13 adverse effects of such discrimination in their own lives, careers and working  
14 conditions, in the lives, careers and working conditions of the Class members, and  
15 to prevent BSNC's continued gender discrimination.

16 175. Class Representatives Fretter and Korsgaard have standing to seek  
17 such relief because of the adverse effects that such discrimination has had on them  
18 individually and on female sales employees generally. BSNC caused Plaintiffs'  
19 injuries through its discriminatory practices, policies and procedures, as well as its  
20 disparate treatment of employees who are female. These injuries are redressable  
21 through systemic relief, such as injunction, and other appropriate class-wide and  
22 individual remedies sought in this action.

23 176. In order to gain such relief for themselves, as well as for the Class  
24 members, Class Representatives will first establish the existence of systemic  
25 gender discrimination at BSNC as the premise for the relief they seek individually.

26 177. Without class certification, the same evidence and issues would be  
27 subject to re-litigation in a multitude of individual lawsuits with an attendant risk  
28 of inconsistent adjudications and conflicting obligations. Certification of the

1 proposed class of female sales representatives is the most efficient and judicious  
2 means of presenting the evidence and arguments necessary to resolve such  
3 questions for the Class Representatives, the proposed Class, and the Defendant.

4 **C. Numerosity And Impracticability Of Joinder**

5 178. The Class that Ms. Fretter and Ms. Korsgaard seek to represent is too  
6 numerous to make joinder practicable. Upon information and belief, the proposed  
7 Class consists of at least 200 current and former employees during the liability  
8 period. Defendant's pattern or practice of gender discrimination and disparate  
9 impact gender discrimination also makes joinder impracticable by discouraging  
10 females from applying for or pursuing promotional, training, or transfer  
11 opportunities, thereby making it impractical and inefficient to identify many  
12 members of the class prior to determination of the merits of Defendant's class-  
13 wide liability.

14 **D. Common Questions Of Law And Fact**

15 179. The prosecution of the claims of the Class Representatives will  
16 require the adjudication of numerous questions of law and fact common to their  
17 claims and those of the Class they seek to represent.

18 180. The common questions of law include, *inter alia*: (a) whether BSNC  
19 has engaged in unlawful, systemic gender discrimination in its compensation,  
20 promotion, assignment, advancement and discipline policies, practices and  
21 procedures, and in the general terms and conditions of work and employment; (b)  
22 whether the failure to institute adequate standards, quality controls, implementation  
23 metrics, or oversight in assignment, development, compensation, promotion,  
24 training, evaluation, personnel management, termination, maternity, awards and  
25 complaint policies, practices and procedures violates Title VII and/or other  
26 statutes; (c) whether the lack of transparency and of opportunities for redress in  
27 those systems violates Title VII and/or other statutes; (d) whether the failure of  
28 upper management and HR to prevent, investigate or properly respond to evidence



1 and complaints of discrimination in the workplace violates Title VII and other  
2 statutes; (e) whether BSNC is liable for a continuing systemic violation of Title VII,  
3 and other statutes; (f) a determination of the proper standards for proving a pattern  
4 or practice of discrimination by BSNC against its female sales employees under  
5 the disparate treatment theory of liability; and (g) a determination of the proper  
6 standard for proving that facially neutral employment practices at BSNC had a  
7 disparate impact on the Class.

8         181. The common questions of fact include: whether BSNC has, through  
9 its policies, practices and procedures: (a) used a system of assignment that lacks  
10 meaningful or appropriate standards, implementation metrics, quality controls,  
11 transparency and opportunities for redress; (b) through the use of that system of  
12 assignment placed female employees in job titles or classifications lower than  
13 similarly situated male employees; (c) systemically, intentionally or knowingly  
14 placed female employees in job titles or classifications lower than similarly  
15 situated male employees; (d) used a sales compensation plan that lacks meaningful  
16 or appropriate standards, implementation metrics, quality controls, transparency  
17 and opportunities for redress; (e) through the use of that sales compensation plan  
18 compensated female employees less than similarly situated male employees in  
19 salary and/or other perks; (f) systemically, intentionally or knowingly assigned  
20 female employees to less profitable territories or offered lower compensation tiers  
21 than similarly situated male employees; (g) systematically, intentionally or  
22 knowingly failed to develop or provide opportunities for development to female  
23 employees in a commensurate manner to their similarly situated male counterparts;  
24 (h) used a promotion system that lacks meaningful or appropriate standards,  
25 implementation metrics, quality controls, transparency and opportunities for  
26 redress; (i) through the use of that promotion system precluded or delayed the  
27 promotion of female employees into higher jobs traditionally held by male  
28 employees; (j) systematically, intentionally or knowingly precluded or delayed the

1 selection and promotion of female employees into higher level jobs traditionally  
2 held by male employees; (k) used a system for performance evaluations that lacks  
3 meaningful or appropriate standards, implementation metrics, quality controls,  
4 transparency or opportunities for redress, and which was often not used at all; (l)  
5 fostered a corporate atmosphere that tolerates sexual harassment and otherwise  
6 inappropriate verbal and physical behavior towards female employees; (m) used  
7 HR systems that lack meaningful or appropriate standards, implementation metrics,  
8 quality controls, transparency, or opportunities for redress; (n) relying upon and  
9 using these systems, minimized, ignored or covered-up evidence of gender  
10 discrimination and harassment in the workplace and/or otherwise mishandled the  
11 investigation of and response to complaints of discrimination and harassment  
12 brought to the attention of senior management or the Human Resources  
13 department; (o) systematically, intentionally, knowingly or deliberately sowed an  
14 indifference to evidence of discrimination in the workplace or otherwise  
15 minimized, ignored, mishandled or covered up evidence of or complaints of gender  
16 discrimination (p) retaliated against those who have complained of gender-based  
17 discrimination through techniques including but not limited to disadvantageous  
18 territory reassignment, interference with managerial responsibilities, unwarranted  
19 disciplinary measures, and increased scrutiny; and (q) otherwise discriminated  
20 against women in the Company.

21 **E. Typicality Of Claims And Relief Sought**

22 182. The claims of the Class Representatives are typical of the claims of  
23 the Class. The relief sought by Class Representatives for gender discrimination  
24 complained of herein is also typical of the relief that is sought on behalf of the  
25 Class.

26 183. Like the members of the Class, the Class Representatives are female  
27 employees who worked at BSNC during the liability period.

28 184. Discrimination in assignment, promotion, development, selection,

1 training, evaluations and HR oversight affects the compensation, advancement and  
2 overall treatment of the Class Representatives and all Class members in the same  
3 or similar ways.

4 185. BSNC has failed to create adequate incentives for its executives and  
5 managers to comply with its own policies and equal employment opportunity laws  
6 regarding each of the employment policies, practices and procedures referenced in  
7 this Complaint, and has failed to discipline adequately its executives, managers and  
8 other employees when they violate Company policy or discrimination laws. These  
9 failures have affected the Class Representatives and the Class members in the same  
10 or similar ways.

11 186. BSNC has further failed to respond adequately or appropriately to  
12 evidence of discrimination and complaints or concerns raised about the same.  
13 These failures have affected the Class Representatives and the Class members in  
14 the same or similar ways.

15 187. The relief necessary to remedy the claims of the Class Representatives  
16 is exactly the same as that necessary to remedy the claims of the Class members in  
17 this case. Class Representatives Fretter and Korsgaard seek the following relief for  
18 their individual claims and for those of the members of the proposed Class: (a) a  
19 declaratory judgment that BSNC has engaged in systemic gender discrimination  
20 against the Class by (1) paying female employees less than their male counterparts,  
21 (2) denying female employees promotion into better and higher-paying positions  
22 and (3) otherwise failing to prevent, investigate or respond to evidence of  
23 discrimination in the workplace; (b) a permanent injunction against such  
24 continuing discriminatory conduct; (c) injunctive relief that effectuates a  
25 restructuring of BSNC's promotion, training, performance evaluation,  
26 compensation and discipline policies, practices, and procedures—so that women at  
27 BSNC will be able to compete fairly in the future for promotions, transfers and  
28 assignments to better and higher-paying classifications with terms and conditions

1 of employment traditionally enjoyed by male employees, and so that they may if  
2 necessary raise concerns about discrimination without fear of retaliation; (d) back  
3 pay, front pay and other equitable remedies necessary to make the employees  
4 whole from the Defendant's discrimination; (e) punitive and nominal damages to  
5 prevent and deter BSNC from engaging in similar discriminatory practices in the  
6 future; (f) compensatory damages; and (g) pre-and post-judgement interest; and (h)  
7 attorneys' fees, costs and expenses.

8 **F. Adequacy Of Representation**

9 188. The Class Representatives' interests are co-extensive with those of the  
10 Class they seek to represent in this case. The Class Representatives seek to remedy  
11 BSNC's discriminatory employment policies, practices and procedures so that  
12 female employees will no longer be prevented from advancing into higher-paying  
13 and higher ranked positions at BSNC.

14 189. Class Representatives Fretter and Korsgaard are willing and able to  
15 represent the Class fairly and vigorously as they pursue their claims in this action.

16 190. Class Representatives Fretter and Korsgaard have retained counsel  
17 who are qualified, experienced and able to conduct this litigation and to meet the  
18 time and fiscal demands required to litigate an employment discrimination class  
19 action of this size and complexity. The combined interests, experience and  
20 resources of counsel to litigate competently the individual and class claims at issue  
21 in this case satisfy the adequacy of representation requirement of Federal Rule of  
22 Civil Procedure 23(a)(4).

23 **G. Requirements Of Rule 23(b)(2)**

24 191. BSNC has acted on grounds generally applicable to the Class  
25 Representatives and the Class by adopting and following systemic policies,  
26 practices and procedures that are discriminatory. Gender discrimination is BSNC's  
27 standard operating procedure rather than a sporadic occurrence.

28 192. BSNC has refused to act on grounds generally applicable to the Class

1 by, inter alia: (a) failing to pay and promote female employees on par with  
2 similarly situated male employees; (b) assigning female employees to job titles and  
3 classifications lower than appropriate for their actual job duties and  
4 responsibilities; (c) denying female employees promotion and advancement  
5 opportunities in favor of male employees; (d) failing to prevent, respond to,  
6 adequately investigate and appropriately resolve claims of gender discrimination;  
7 and (e) refusing to adopt and apply selection, promotion, training, performance  
8 evaluation, compensation, Human Resources, corporate leadership policies,  
9 practices and procedures that do not have a disparate impact on, or otherwise  
10 systemically discriminate against, female employees.

11 193. BSNC's policies, practices and procedures of assignment,  
12 development, promotion, advancement, compensation, awards and performance  
13 evaluations have resulted in gender discrimination and stratification. BSNC's  
14 systemic discrimination and refusal to act on grounds that are not discriminatory  
15 have made appropriate the requested final injunctive and declaratory relief with  
16 respect to the Class as a whole.

17 194. Injunctive, declaratory and affirmative relief are the predominant  
18 forms of relief sought in this case. Entitlement to declaratory and injunctive relief  
19 flows directly and automatically from proof of systemic gender discrimination by  
20 BSNC.

21 195. In turn, entitlement to declaratory and injunctive relief forms the  
22 factual and legal predicate for recovery by the Class Representatives and Class  
23 members of monetary and nonmonetary remedies for individual losses caused by  
24 the systemic discrimination, as well as their recovery of nominal and punitive  
25 damages.

26 **H. Requirements Of Rule 23(b)(3)**

27 196. The common issues of fact and law affecting the claims of the Class  
28 Representatives and proposed class members, including, but not limited to, the

1 common issues previously identified herein, predominate over any issues affecting  
2 only individual claims. These common issues include whether BSNC has engaged  
3 in gender discrimination against female employees by (a) assigning female  
4 employees to lower job titles and classifications than their male counterparts; (b)  
5 paying female employees less than their male counterparts by denying them  
6 commission and assigning them less profitable territories; (c) denying female  
7 employees promotion and advancement opportunities in favor of male employees;  
8 and (d) failing to prevent, respond to, investigate adequately or respond  
9 appropriately to instances of gender discrimination.

10 197. A class action is superior to other available means for the fair and  
11 efficient adjudication of the claims of the Class Representatives and members of  
12 the proposed class.

13 198. The cost of proving BSNC's pattern and practice of discrimination  
14 makes it impracticable for the Class Representatives and members of the proposed  
15 Class to prosecute their claims individually.

16 199. By virtue of the pattern and practice of discrimination at BSNC, the  
17 Class Representatives and Class members are eligible for monetary remedies for  
18 losses caused by the systemic discrimination, including back pay, front pay,  
19 compensatory damages, and other nominal and punitive damages.

20 **COLLECTIVE ACTION ALLEGATIONS**  
21 **UNDER THE EQUAL PAY ACT**

22 200. Plaintiffs Fretter and Korsgaard incorporate by reference the  
23 allegations from the previous paragraphs of this Complaint alleging class-based  
24 common policies and practices resulting in unequal pay earned by female sales  
25 employees.

26 201. Plaintiffs bring collective claims under the Equal Pay Act ("EPA")  
27 pursuant to Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §  
28 216(b), on behalf of all members of the EPA Class. The **EPA Class** consists of all

1 current, former, and future female sales employees in a sales representative role, at  
2 the Regional Business Manager level or below, including, without limitation,  
3 Territory Manager, Clinical Specialist, and Account Manager, who worked at any  
4 time in Defendant's sales organization in the United States during the applicable  
5 liability period.

6 202. Plaintiffs Fretter and Korsgaard seek to represent all of the female  
7 sales employees described above. The systemic gender discrimination described in  
8 this Complaint has been, and is, continuing in nature.

9 203. The EPA class includes female sales employees in the roles described  
10 above, who (a) were not compensated equally to males who had substantially  
11 similar job classifications, job functions, job families, job codes, job titles, job  
12 descriptions, and/or job duties based on Defendant's common employment policies  
13 and centralized decision-making; (b) were not compensated equally to males who  
14 performed substantially similar work; or (c) who were denied assignment,  
15 placement, promotion, and/or advancement opportunities that would have resulted  
16 in greater compensation in favor of lesser qualified male employees based on  
17 Defendant's common employment policies and centralized decision-making.

18 204. Questions of law and fact common to the Plaintiffs and the EPA Class  
19 include but are not limited to the following: (a) whether Defendant unlawfully  
20 failed and continues to fail to compensate female employees at a level  
21 commensurate with similarly situated male employees; (b) whether Defendant  
22 unlawfully assigned and continues to assign female employees into positions  
23 graded at a lower pay and compensation scale to similarly qualified males; (c)  
24 whether Defendant's policy and practice of failing to compensate female  
25 employees on a par with comparable male employees as a result of (a) and (b)  
26 violates applicable provisions of the EPA; and (d) whether Defendant's failure to  
27 compensate female employees on a par with comparable male employees as a  
28 result of (a) and (b) was willful within the meaning of the EPA.

1           205. Counts for violations of the EPA may be brought and maintained as  
2 an “opt-in” collective action pursuant to 29 U.S.C. § 216(b), because the claims of  
3 the Plaintiffs are similar to the claims of the EPA Class.

4           206. Plaintiffs Fretter, Korsgaard, and the members of the EPA Class (a)  
5 are similarly situated; (b) have substantially similar job classifications, functions,  
6 titles and/or duties; and (c) are subject to Defendant’s common policy and practice  
7 of gender discrimination in (i) failing to compensate female employees on par with  
8 male employees who perform substantially equal work and/or hold equivalent  
9 levels and positions; (ii) failing to provide female employees with job  
10 classifications, grades and titles commensurate with male employees who perform  
11 substantially equal work and/or have similar duties and responsibilities; (iii) hiring  
12 and assigning female employees into lower-level positions than male employees  
13 who perform substantially equal work and/or have similar or lesser experience and  
14 qualifications; and (iv) failing to provide female employees equal pay by denying  
15 opportunities for promotion and advancement to them comparable to those  
16 afforded to male employees who perform substantially equal work.

17                           **NATURE OF NOTICE TO THE PROPOSED CLASSES**

18           207. Upon conditional certification of the EPA collective action, the Court  
19 should authorize notice to members of the proposed EPA Class so that each  
20 potential class member can decide whether to opt in to the EPA collective action.

21           208. Plaintiffs do not have the contact information of all members of the  
22 proposed EPA Class and therefore have no way to apprise them of the opportunity  
23 to join this collective action, absent court-authorized notice.

24           209. Upon certification under Rule 23 of the Title VII class action, the  
25 Court should authorize notice to members of the proposed Title VII Class to  
26 provide each class member with an opportunity to opt out of the Title VII Class.

27

28

**COUNT I**



1 **VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
2 **(“TITLE VII”),**

3 **42 U.S.C. § 2000e, et seq.**

4 **Pay Discrimination**

5 **(On Behalf of Plaintiffs Fretter, Korsgaard and All Class Members)**

6 210. Class Representatives Fretter and Korsgaard re-allege and incorporate  
7 by reference each and every allegation in each and every aforementioned  
8 paragraph as if fully set forth herein.

9 211. This Count is brought on behalf of Class Representatives Fretter and  
10 Korsgaard and all members of the Class.

11 212. Defendant has discriminated against Class Representatives Fretter and  
12 Korsgaard and members of the Class in violation of Title VII of the Civil Rights  
13 Act, 42 U.S.C. § 2000e, et seq., as amended by the Civil Rights Act of 1991 (“Title  
14 VII”), by subjecting them to different treatment on the basis of their gender. The  
15 members of the Class have been disparately impacted and disparately treated as a  
16 result of Defendant’s wrongful conduct and its policies, practices and procedures.

17 213. Defendant has discriminated against Class Representatives Fretter and  
18 Korsgaard and members of the Class by subjecting them to unequal pay, territory  
19 and quota assignments, and rankings that affect pay, in violation of Title VII.

20 214. Defendant has failed to prevent, respond to, adequately investigate,  
21 and/or appropriately resolve instances of gender discrimination in the work place.

22 215. Defendant’s conduct has been intentional, deliberate, willful,  
23 malicious, reckless and conducted in callous disregard of the rights Class  
24 Representatives Fretter and Korsgaard and members of the proposed class,  
25 entitling the Class Representatives and the members of the Class to punitive  
26 damages.

27 216. Defendant has intentionally discriminated against the Class  
28 Representatives and the Class and/or its policies, practices, and/or procedures have

1 produced a disparate impact on the Class Representatives and the Class with  
2 respect to pay and other terms and conditions of their employment.

3 217. As a result of Defendant's conduct alleged in this complaint, Class  
4 Representatives Fretter and Korsgaard and the Class have suffered and continue to  
5 suffer harm, including but not limited to lost earnings, lost benefits and other  
6 financial loss, as well as humiliation, embarrassment, emotional and physical  
7 distress and mental anguish.

8 218. By reason of the continuous nature of Defendant's discriminatory  
9 conduct, which persisted throughout the employment of the Class Representatives  
10 and the members of the class, the Class Representatives and the members of the  
11 class are entitled to application of the continuing violations doctrine to all  
12 violations alleged herein.

13 219. By reason of Defendant's discrimination, Class Representatives  
14 Fretter and Korsgaard and the Class are entitled to all legal and equitable remedies  
15 available for violations of Title VII, including an award of compensatory and  
16 punitive damages.

17 220. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

18 **COUNT II**

19 **VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

20 **("TITLE VII"),**

21 **42 U.S.C. § 2000e, et seq.**

22 **Promotion Discrimination**

23 **(On Behalf of Plaintiffs Fretter, Korsgaard and All Collective Action**

24 **Members)**

25 221. Class Representatives Fretter and Korsgaard and all members of the  
26 Class re-allege and incorporate by reference each and every allegation in each and  
27 every aforementioned paragraph as if fully set forth herein.

28 222. This Count is brought on behalf of Class Representatives Fretter and

1 Korsgaard and the Class.

2           223. Defendant has discriminated against Class Representatives Fretter and  
3 Korsgaard and the Class in violation of Title VII by subjecting them to different  
4 treatment on the basis of their gender. The members of the Class have been  
5 disparately impacted and disparately treated as a result of Defendant's wrongful  
6 conduct and BSNC's policies, practices and procedures.

7           224. Defendant has discriminated against Class Representatives the Class  
8 by treating them differently from and less preferably than similarly situated male  
9 employees, and by subjecting them to discriminatory denials of promotions,  
10 discriminatory denials of developmental opportunities and discriminatory territory  
11 and quota assignments that affect promotions in violation of Title VII.

12           225. Defendant's policies, practices, and/or procedures have produced a  
13 disparate impact on the Plaintiffs and the members of the class with respect to the  
14 terms and conditions of their employment.

15           226. Defendant's conduct has been intentional, deliberate, willful,  
16 malicious, reckless and conducted in callous disregard of the rights of the Class  
17 Representatives and the members of the proposed class, entitling Class  
18 Representatives and the members of the Class to punitive damages.

19           227. As a result of Defendant's conduct alleged in this complaint, the Class  
20 Representatives and the Class have suffered and continue to suffer harm, including  
21 but not limited to lost earnings, lost benefits, and other financial loss, as well as  
22 humiliation, embarrassment, emotional and physical distress and mental anguish.

23           228. By reason of the continuous nature of Defendant's discriminatory  
24 conduct, persistent throughout the employment of Class Representatives and the  
25 class members, Plaintiffs and the class members are entitled to application of the  
26 continuing violation doctrine to all of the violations alleged herein.

27           229. By reason of Defendant's discrimination, Class Representatives  
28 Fretter and Korsgaard and the Class are entitled to all legal and equitable remedies

1 available for violations of Title VII, including an award of punitive damages.

2 230. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

3 **COUNT III**

4 **VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938, AS**

5 **AMENDED BY THE EQUAL PAY ACT OF 1963**

6 **("EQUAL PAY ACT"),**

7 **29 U.S.C. §206(d)**

8 **(On Behalf of On Behalf of Plaintiffs Fretter, Korsgaard and All Class**  
9 **Members)**

10 231. Plaintiffs re-allege and incorporate by reference each and every  
11 allegation in each and every aforementioned paragraph as if fully set forth herein.

12 232. This Count is brought on behalf of the Plaintiffs and all EPA  
13 Collective Action Class, including all EPA Collective Action Plaintiffs who "opt  
14 in" to this action.

15 233. Defendant has discriminated against the Plaintiffs and the EPA Class  
16 in violation of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 206, *et seq.*, as  
17 amended by the Equal Pay Act of 1963 ("EPA"), by providing them with lower  
18 pay than similarly-situated male colleagues on the basis of their gender, female,  
19 even though Plaintiffs and members of the EPA collective performed similar job  
20 duties requiring the same skill, effort, and responsibility of male counterparts, and  
21 are or were performed under similar working conditions.

22 234. Defendants so discriminated against Plaintiffs and all EPA collective  
23 by subjecting them to discriminatory pay policies, including discriminatory  
24 territory assignments and quotas, denials of bonuses and other compensation  
25 incentives, discriminatory denial of promotions, and other forms of discrimination  
26 in violation of the Equal Pay Act.

27 235. The differential in pay between males and female employees was not  
28 due to seniority, merit, quantity or quality of production, but was due to gender.

1 236. Defendants caused, attempted to cause, contributed to, or caused the  
2 continuation of wage rate discrimination based on gender, in violation of the EPA.

3 237. The foregoing conduct constitutes a willful violation of the EPA  
4 within the meaning of 29 U.S.C § 255(a). Because Defendants have willfully  
5 violated the EPA, a three-year statute of limitations applies to such violations,  
6 pursuant to 29 U.S.C. § 255.

7 238. As a result of Defendant's conduct alleged in this complaint, Plaintiffs  
8 and all EPA Collective Action Plaintiffs have suffered and continue to suffer harm,  
9 including but not limited to lost earnings, lost benefits, and other financial loss, as  
10 well as humiliation, embarrassment, emotional and physical distress, and mental  
11 anguish.

12 239. By reason of Defendant's discrimination, Plaintiffs and all EPA  
13 Collective Action Plaintiffs are entitled to all legal and equitable remedies  
14 available for violations of the EPA, including liquidated damages, for all willful  
15 violations, prejudgment interest, attorneys' fees, costs, and other compensation  
16 pursuant to 29 U.S.C. § 216(b).

17 240. Attorneys' fees should be awarded under 29 U.S.C. §216(b).

18 **COUNT IV**

19 **VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,**

20 **42 U.S.C. § 2000e-5(f), et seq.**

21 **Retaliation**

22 **(On Behalf of Plaintiff Fretter)**

23 241. Plaintiff Fretter re-alleges and incorporates by reference each and  
24 every allegation contained in the previous paragraphs of this Complaint as though  
25 fully set forth herein.

26 242. Plaintiff Fretter engaged in protected activities by, but not limited to,  
27 complaining about gender discrimination including, but not limited to, pay  
28 disparities, denial of opportunities for professional advancement, favorable

1 treatment towards male employees and vocalizing the need for litigation.

2 243. Defendant engaged in adverse employment actions against Plaintiff  
3 for engaging in protected activities. Such adverse employment actions have been  
4 in the form of subjecting her to unfavorable terms and conditions of employment,  
5 including *inter alia*, denials of promotions, disciplinary actions and subjection to a  
6 hostile working environment. The adverse employment actions have materially  
7 and adversely affected Plaintiff's overall terms and conditions of employment.

8 244. A reasonable employee would find BSNC's retaliatory acts materially  
9 adverse and such acts would dissuade a reasonable person from making or  
10 supporting a charge of discrimination.

11 245. Defendant's retaliatory acts against Plaintiff Fretter were a direct and  
12 proximate result of her protected activities.

13 246. Defendant's conduct has been intentional, deliberate, willful,  
14 malicious, reckless and conducted in callous disregard of the rights of Plaintiff  
15 Fretter, entitling her to punitive damages.

16 247. As a result of Defendant's conduct alleged in this complaint, Plaintiff  
17 Fretter has suffered and continue to suffer harm, including but not limited to lost  
18 earnings, lost benefits and other financial loss, as well as humiliation,  
19 embarrassment, emotional and physical distress and mental anguish.

20 248. By reason of Defendant's discrimination, Plaintiff Fretter is entitled to  
21 all legal and equitable remedies available, including an award of punitive damages.

22 249. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

23 **COUNT V**

24 **VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,**

25 **42 U.S.C. § 2000(e) *et. seq.***

26 **Constructive Discharge**

27 **(On Behalf of Plaintiff Korsgaard)**

28 250. Plaintiff Korsgaard re-alleges and incorporates by reference each and

1 every allegation contained in each and every aforementioned paragraph as though  
2 fully set forth herein.

3 251. BSNC has discriminated against Plaintiff by permitting the creation of  
4 a discriminatory work environment in violation of Title VII.

5 252. The discriminatory work environment was so intolerable that Plaintiff  
6 had no choice but to resign her employment in June 2012.

7 253. BSNC's conduct has been intentional, deliberate, willful, malicious,  
8 reckless, and conducted in callous disregard of the rights of Plaintiff Korsgaard.

9 254. As a result of Defendant's conduct alleged in this complaint, Plaintiff  
10 Korsgaard has suffered and continues to suffer harm, including but not limited to  
11 lost earnings, lost benefits, and other financial loss, as well as humiliation,  
12 embarrassment, emotional and physical distress and mental anguish.

13 255. By reason of Defendant's discrimination, Class Representative  
14 Korsgaard is entitled to all legal and equitable remedies available for violations of  
15 Title VII, including an award of punitive damages.

16 256. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves and all those similarly  
19 situated, pray that this Court:

20 A. Grant certification of this case as a class action maintainable under  
21 Federal Rules of Civil Procedure Rule 23 (a), (b)(2) and (b)(3), on behalf of the  
22 proposed Plaintiff Class; designation of the proposed Class Representatives as  
23 representative of this Class; and designation of Plaintiffs' counsel of record as  
24 Class Counsel;

25 B. Designate this action as a collective action on behalf of the proposed  
26 EPA Collective Action Plaintiffs and (i) promptly issue notice pursuant to 20  
27 U.S.C. § 216(b) to all similarly situated members of the EPA Collective Action  
28 Opt-In Class, which (a) apprises them of the pendency of this action and (b)

1 permits them to assert timely EPA claims in this action by filing individual  
2 Consent to Join forms pursuant to 29 U.S.C. § 216(b); and  
3 (ii) toll the statute of limitations on the claims of all members of the EPA  
4 Collective Action Opt-In Class from the date the original complaint was filed until  
5 the Class members are provided with reasonable notice of the pendency of this  
6 action and a fair opportunity to exercise their right to opt-in as Plaintiffs;

7 C. Declare and adjudge that the corporate Defendant's employment  
8 policies, practices and/or procedures challenged herein are illegal and in violation  
9 of the rights of Class Representatives and Class members;

10 D. A permanent injunction against BSNC and its partners, officers,  
11 owners, agents, successors, employees and/or representatives, and any and all  
12 persons acting in concert with them, from engaging in any further unlawful  
13 practices, policies, customs, usages and gender discrimination as set forth herein;

14 E. Order Defendant to initiate and implement programs that will: (i)  
15 provide equal employment opportunities for female employees; (ii) remedy the  
16 effects of the Defendant's past and present unlawful employment policies,  
17 practices and/or procedures; and (iii) eliminate the continuing effects of the  
18 discriminatory and retaliatory practices described above;

19 F. Order Defendant to initiate and implement systems of assigning,  
20 training, transferring, compensating and promoting female employees in a non-  
21 discriminatory manner;

22 G. Order Defendant to establish a task force on equality and fairness to  
23 determine the effectiveness of the programs described in D through E above, which  
24 would provide for: (i) monitoring, reporting, and retaining of jurisdiction to ensure  
25 equal employment opportunity; (ii) the assurance that injunctive relief is properly  
26 implemented; and (iii) a quarterly report setting forth information relevant to the  
27 determination of the effectiveness of the programs described in D through E above;

28 H. Order Defendant to adjust the wage rates and benefits for the Class



1 Representatives and the Class members to the level that they would be enjoying  
2 but for the Defendant's discriminatory policies, practices and/or procedures;

3 I. Order Defendant to place or restore the Class Representatives and the  
4 Class members into those jobs they would now be occupying but for Defendant's  
5 discriminatory policies, practices and/or procedures; and/or

6 J. Order that this Court retain jurisdiction of this action until such time  
7 as the Court is satisfied that the Defendant has remedied the practices complained  
8 of herein and are determined to be in full compliance with the law;

9 K. Award nominal, compensatory and punitive damages to the Class  
10 Representatives and the Class members, in excess of fifty million dollars;

11 L. Award litigation costs and expenses, including, but not limited to,  
12 reasonable attorneys' fees, to the Class Representatives and Class members;

13 M. Award back pay, front pay, lost benefits, preferential rights to jobs,  
14 and other damages for lost compensation and job benefits with pre-judgment and  
15 post-judgment interest suffered by the Class Representatives and the Class  
16 members to be determined at trial;

17 N. Order Defendant to make whole the Class Representatives and Class  
18 members by providing them with appropriate lost earnings and benefits, and other  
19 affirmative relief;

20 O. Award any other appropriate equitable relief to the Class  
21 Representatives and Class members; and/or

22 P. Award any additional and further relief as this Court may deem just  
23 and proper.

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**JURY DEMAND**

Plaintiffs Fretter and Korsgaard demand a trial by jury on all issues triable of right by jury.

Dated: March 18, 2015

SANFORD HEISLER KIMPEL, LLP

By:   
\_\_\_\_\_  
Felicia Medina  
Xinying Valerian  
Attorneys for Plaintiffs and the Class