

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-0120-PAB-KMT

OLIVIA BALLAGE,

Plaintiff,

v.

HOPE & HOME,

Defendant.

**FILED**  
**UNITED STATES DISTRICT COURT**  
**DENVER, COLORADO**  
11/10/2021  
**JEFFREY P. COLWELL, CLERK**

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**PLAINTIFF'S OPPOSITION TO PARTIAL MOTION TO DISMISS**

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Plaintiff Olivia Ballage opposes the defendant's motion to dismiss. It is premature at this point to dismiss race and discrimination claims based off of 12 (b)(6). Discovery, depositions, and interrogatories still need to happen to get factual predicates of working conditions.

Plaintiff's experiences, along with other former Hope & Home Employees, speak to an environment that is pervasive and intolerable for women targeted by Mr. Wright and African Americans. Plaintiff is not suing on behalf of other people. The experiences of other former employees are examples of the culture at Hope & Home, that sexual harassment and racial discrimination were pervasive and permitted in an environment devoid of accountability.

Defendant did not have a Human Resources Department nor Human Resource Policies for Plaintiff to follow to voice complaints. Plaintiff was unaware of any HR Department nor HR Policies in which to make complaints. Five former Hope & Home Employees also confirm Hope & Home did not have an adequate HR Department nor HR Policies during Plaintiff's employment.

Plaintiff respectfully asks the court to not dismiss these claims.

## BACKGROUND

Plaintiff filed a pro se complaint May 13, 2021 with the guidance of the Pro Se Clinic.

Plaintiff's complaint has the following claims:

1. **Sex Discrimination:** See details in ARGUMENT section below.
2. **Disability Discrimination:** Defendant, acting by or through its agents or employees, discriminated against Plaintiff based on her disability by, among other things: (a) requiring Plaintiff to work while on medical leave; (b) demoting Plaintiff after promising Plaintiff a promotion expressly because of her medical condition; (c) pressuring Plaintiff to work while recovering from surgery. (d) failing to give Plaintiff a promised salary increase after promotion, despite requiring Plaintiff to take on additional responsibilities; (e) failing to engage in the interactive process when Plaintiff informed Defendant of disability, including demoting Plaintiff; (f) failing to provide reasonable accommodations; and (g) constructively discharging Plaintiff on July 12, 2019.
3. **Race Discrimination:** See details in ARGUMENT section below.
4. **Retaliation:** Defendant, acting by or through its agents or employees, retaliated against Plaintiff after engaging in a protected activity of requesting reasonable accommodation for Plaintiff disability by, among other things: (a) demoting Plaintiff after promising Plaintiff a promotion expressly because of her medical condition; (b) failing to give Plaintiff a promised salary increase after promotion, despite requiring Plaintiff to take on additional responsibilities; (c) failing to engage in the interactive process when Plaintiff informed Defendant of her disability; (d) disregarding Plaintiff's doctor's recommendations when demoting Plaintiff; and (e) constructively discharging Plaintiff on July 12, 2019.

## ARGUMENT

### **A. Defendant did not have a Human Resources Department nor HR Policies for Plaintiff to voice complaints.**

Defendant states that because there had been no preventative steps or proactive steps, that there is no documentation of reported harassment, that the claim does not apply. However, because of the lack of the HR department and lack of HR policies, that option wasn't available.

Plaintiff was unaware of any HR Department nor HR Policies in which to make complaints. The following former Hope & Home Employees also confirm Hope & Home did not have an adequate HR Department nor HR Policies during Plaintiff's employment:

- Jana Hanna, employed 03/2014-10/2018, states:

“Hope & Home had no Human Resources Department, no true set of policies and procedures aside from a dated employee handbook full of arbitrary rules which were never enforced. While it may seem reasonable that a report could have been made to a supervisor, the supervisor who would have fielded these reports was Jacquelyn Thurman, who, due to a special relationship with Ross, was given permission to rarely report to the office to complete her duties as Deputy Director.... The only other apparent avenue for making a report would have been to Hope & Home's board of directors... However, among Ross' favorite sayings was, 'It is my job to control the board.' I remember him making this statement repeatedly throughout my time as a member of the management team at Hope & Home....”

- Crystal Erickson, employed 08/2012-02/29/2016, states:

“Hope & Home did not have an HR department. Ross would give someone an HR title that would rotate from time to time, but no one given the title had

experience or education in HR. Ross would also tell the 'HR person' that if anyone came to them with issues they had to come to him right away, even if the issues were with him. If I had a problem all roads would eventually lead to Ross--there was no one to actually talk to. Ross would tell us the Board of Directors was a closed board and we can't talk to them."

- Wendy Neal, employed 08/05/2014 - 08/21/2019:

Due to lack of existing policies or procedures, and given her senior leadership position, Ms. Neal informed the Hope & Home Board of Directors (1) allegations of sexual harassment by employees, (2) Ms. Neal's own experience of Mr. Wright intimidating staff and manipulating the Board to eliminate an honest evaluation of his performance, and (3) reports from employees of Mr. Wright threatening former employees with negative references and threatening current employees with firing for not maintaining strict loyalty to Mr. Wright.

- Marian Percy, current Hope & Home Director of Home Supervision, and one of the Plaintiff's supervisors:

Ms. Percy explained in a foster parent support group in June 2021 that Hope & Home will engage a, "HR company so that people don't feel uncomfortable... we are moving forward with a handbook... we want our employees to feel safe... we are doing training with our staff... sexual harassment training, so that is something that I really believe that we need to do."

In *Roebuck v. Washington*, the court determined that the plaintiff must promptly file an internal complaint if a reasonable complaint procedure exists. Hope & Home did not have an HR Department and lacked policies and procedures to protect employees. No available channels were provided by Hope & Home to make complaints. Therefore, dismissing the claim due to the lack of reporting is premature and does not apply.

**B. Defendant's conduct of a sexual nature against Plaintiff and other employees unreasonably interfered with Plaintiff's job performance by creating a hostile work environment.**

Defendant, Mr. Wright, fixated on Plaintiff's breasts during conversations on multiple occasions which created discomfort and distracted the Plaintiff from her ability to do her job. Plaintiff observed Mr. Wright fixating on the butt and/or breasts of other employees: Caitlyn Miehle, Kayla McArthur, Kathryn Kell, Jennifer Swan, Jessica Engle, and Sylvia Archulta. During staff meetings, Mr. Wright's eyes would look around the room staring at women's chests. Defendant focused on severe cases of sexual harassment in their motion to dismiss. However, in Taylor v Jones, the duration of unwelcome sexual harassment should also be considered.

Shortly before Plaintiff's constructive discharge, Plaintiff was warned of Defendant's sexual advances by Jennifer Swan. Plaintiff had been promoted to a position where Plaintiff would be working more closely with Mr. Wright. Ms. Swan called Plaintiff into her office. Ms. Swan told Plaintiff she was leaving Hope & Home and wanted to warn Plaintiff since Plaintiff would be working more closely with Mr. Wright. Ms. Swan shared that Mr. Wright had made sexual advances towards Ms. Swan and Mr. Wright asked for a romantic relationship. Ms. Swan reported this behavior to Ms. Thurman and was not believed nor supported by Ms. Thurman.

Prior to the above conversation with Ms. Swan, Plaintiff observed a sexual advance made by Mr. Wright towards Deputy Director Jacqueline Thurman. Ms. Thurman enjoyed a relaxed schedule, almost never report to the office, and was incredibly difficult to get ahold of by phone or email. This implied a quid pro quo relationship.

All of this culminated in the constructive discharge of Plaintiff: witnessing Mr. Wright objectifying Plaintiff and other employees' bodies, hearing the sexual harassment experiences of Ms. Swan, Plaintiff stepping into a new role where she would be working more closely with

Mr. Wright and the fear of a quid pro quo expectation created an environment that interfered with Plaintiff's job performance and she could no longer work at Hope & Home.

In Meritor, the Supreme Court agreed with the EEOC's 1980 Guidelines, which defined sexual harassment as "[u]nwelcome sexual advances ... and other ... conduct of a sexual nature" having the "purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." In the examples provided by Defendant in their motion to dismiss seems to suggest that only explicit and severe actions constitute sexual harassment while ignoring the subjectively hostile, intimidating or offensive work environment.<sup>1</sup>

In Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002), the Court differentiated hostile work environments from "discrete acts" that require filing a claim within 180 or 300 days of the incident. The Court noted in Morgan, "hostile work environment claims are different in kind from discrete acts. Their very nature involves repeated conduct." Id. at 115. For this reason, the Court held, hostile work environment claims constitute a single unlawful employment *practice*, and as long as one act occurs within the actionable period, all the acts contributing to the hostile environment may be considered for determining liability<sup>2</sup>.

Therefore, ALL of Mr. Wright's acts contributing to the hostile environment may be considered.

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<sup>1</sup> <https://www.kmblegal.com/resources/sexual-harassment>

<sup>2</sup> <https://www.kmblegal.com/resources/sexual-harassment>

**C. Defendant, acting by or through its agents or employees, discriminated against Plaintiff and similarly-situated African-American employees based on race creating a hostile work environment.**

Plaintiff asked Defendant to work from home while on maternity leave. Mr. Wright told Supervisor Jana Hanna they needed to let Plaintiff work from home otherwise Plaintiff would “play that card” in reference to Plaintiff’s race. Taylor v. Jones - pervasive environment of prejudice included degrading slurs and jokes. Comments like “token” were considered degrading and contributed to a racially charged environment.

Plaintiff experienced discriminatory treatment unique to Plaintiff and white employees did not experience similar treatment. Plaintiff was promised promotion followed by a demotion, and then a promotion without a pay raise despite being asked to take on more responsibilities. Plaintiff’s files were scrutinized extra. Sylvia Archuletta stated that she was asked to audit Plaintiff’s files more often than other home supervisors. Supervisor, Jana Hana would ask Plaintiff to rewrite Home Supervision reports, yet supervisor Jess Engle would tell Ms. Ballage her reports were fine.

Plaintiff was also aware that Defendant failed to hire a qualified candidate of color over a less-qualified candidate. Defendant demanded that Hope & Home terminate a person of color because he wore his hair in dreadlocks, despite his excellent performance. Defendant terminated the employee who refused to fire that person of color. Rogers v. Equal Employment Opportunity Commission: A hostile environment is an actionable claim.

Calcote vs. Texas Education Foundation - harassment by talking down, writing deficiency reports with no actual basis and generally frustrating the person because of race - racial harassment can form the basis of a claim when the harassing creates an environment charged with discrimination.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests this Court not dismiss Plaintiff's first and second claims.

DATED this 10th day of November, 2021

Respectfully submitted,

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