

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

QUNTELLER GOMILLER,)	
)	
Plaintiff,)	
)	
VS.)	CIVIL ACTION NO. 4:23-CV-75
)	
GREENWOOD LEFLORE)	
HOSPITAL, MARGARET)	
BUCHANAN, AND JOHN)	
DOES 1-5,)	
)	
Defendants.)	
_____)	

**MEMORANDUM IN SUPPORT OF RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

COMES NOW, Plaintiff Qunteller Gomiller (hereinafter "Plaintiff"), by counsel, pursuant to the Federal Rules of Civil Procedure and other applicable authority, and files her *Memorandum in Support of Response in Opposition to Defendants' Motion to Dismiss*. Plaintiff moves this Honorable Court to deny the motion to dismiss and requests a hearing on said motion, and as grounds, therefore, would state as follows:

I. INTRODUCTION

This is an action brought pursuant to Title VII of the Civil Rights Act of 1964. While employed with Greenwood Leflore Hospital ("GLH"), Plaintiff was subjected to discrimination and retaliatory discharge from her employment.

On April 27, 2023, Plaintiff filed her complaint, alleging claims of racial discrimination and retaliatory termination. [Doc. #1]. Individual Defendant, Margaret Buchanan, is liable for her misconduct under Title VII and/or 42 U.S.C. §1981.

As it relates to each cause of action, Plaintiff has complied with the requirement to exhaust administrative remedies prior to filing suit as well as complied with time limit required for filing claims with the Equal Employment Opportunity Commission. Defendants seek dismissal of the Title VII and 42 U.S.C. §1981 claims asserted against it in the Complaint on the basis that “hair color” is not a protected class and failure to exhaust administrative remedies.¹ Thus, Defendants contend that all claims against it should be dismissed.

As outlined above, Defendants’ motion to dismiss should be denied as Plaintiff endured discrimination during her employment with Defendants. Defendants not only discriminated against Ms. Gomiller, but also created a hostile working environment for Plaintiff because she engaged in a protected activity. Therefore, Defendants should compensate Plaintiff for injuries that were caused by Defendants’ egregious violation of Plaintiff’s civil rights.

II. LEGAL AUTHORITIES AND ARGUMENT

A. Motion to Dismiss Standard.

“[A] motion to dismiss under 12(b)(6) is viewed with disfavor and is rarely granted.” *Leal v. McHugh*, 731 F.3d 405, 410 (5th Cir. 2013) (quoting *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011)). A Plaintiff need not plead “a prima facie case of discrimination in order to survive a Rule 12(b)(6) motion to dismiss for failure to state a claim.” *Raj v. La. State Univ.*, 714 F.3d 322, 331 (5th Cir. 2013). Rather, the plaintiff need only “plead sufficient facts on all of the ultimate elements of [an employment discrimination] claims to make his case plausible.” *Chhim v. Univ. of Tex. At Austin*, 836

¹ Defendants allege that Plaintiff did not file a charge with EEOC alleging retaliation. [Doc. #4]

F.3d 467, 470 (5th Cir. 2016). “The plaintiff’s allegations ... must plausibly address ‘the ultimate question’” of a Title VII claim – “whether a defendant took the adverse employment action against a plaintiff because of his or her protected status” (or in the case of a retaliation claim, whether the defendant took a materially adverse action against the plaintiff because of her protected activity). *English v. Perdue*, 777 F.App’x 94, 99 (5th Cir. 2019) (quoting *Raj*, 714 F.3d at 331).

“[A] Rule 12(b)(6) motion tests the legal sufficiency of the complaint.” *Cook v. Brown*, 909 So. 2d at 1078. Review is limited to the face of the pleading. *Hartford Cas. Ins. Co. v. Halliburton Co.*, 826 So. 1206, 1211 (Miss. 2001). The allegations in the complaint must be accepted as true and the motion should be granted unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of his claim. *Rose v. Tullos*, 994 So.2d 734, 737 (Miss. 2008). In order for a Court to grant dismissal of a Rule 12(b)(6) motion, there must be no set of facts that would allow the plaintiff to prevail.” *J.B. Hunt Trans., Inc. v. Forrest Gen. Hosp.*, 34 So.3d 1171, 1173 (Miss. 2010).

Plaintiff’s Complaint provides the grounds for entitlement to relief – including factual allegations that when assumed to be true “raise a light to relief above the speculative level.” *Cuvillier v. Sullivan*, 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553-56 (2007)) (also cited in *Lee v. Verizon Commc’ns, Inc.*, 837 F.3d 523, 533 (5th Cir. 2016).

B. Plaintiff endured race discrimination in violation of Title VII of the Civil Rights Act of 1964 and intentional race discrimination in violation of 42 U.S.C. §1981.

Title VII prohibits discrimination on the basis of race. To establish a prima facie case of discrimination requires the plaintiff to show: “(1) [s]he is a member of a protected class,

(2) [s]he was qualified for the position at issue, (3) [s]he was the subject of an adverse employment action, and (4) [s]he was treated less favorably because of her membership in that protected class than were other similarly situated employees who were not members of the protected class, under nearly identical circumstances.” *Lee v. Kansas City S. Ry. Co.*, 574 F.3d 253, 259 (5th Cir. 2009). During Plaintiff’s employment with Defendants, (1) several employees were permitted to wear extreme hair colors with no disciplinary action taken and (2) Defendant Buchanan used tactics to intimidate Plaintiff.

Plaintiff was qualified for her position and has been a productive employee since her hire date. However, Plaintiff was subjected to adverse employment actions. Defendants argue that Plaintiff’s hair color is not a protected class under either Title VII or 42 U.S.C. §1981. It is true that the Fifth Circuit has held, that a policy that distinguishes on any ground such as hair color, “is related more closely to the employer’s choice of how to run his business than to equality of employment opportunity.” *Willingham v. Macon Tel Publ’g Co.*, 507 F.2d 1084, 1091 (5th Cir. 1975). However, Defendants are in no way similar to the circumstances mentioned in *Willingham*. Specifically, Defendants lack the ability to claim that Plaintiff’s hair color is a matter of ‘how to run its’ business’ because Plaintiff’s Charge of Discrimination directly references instances where her co-workers were permitted to wear shades of blonde, orange, grey, and purple. As such, Defendants’ motion to dismiss should be denied.

C. Buchanan cannot be held liable individually under Title VII.

D. Plaintiff’s Retaliatory Discharge Claims were filed with the EEOC and are Viable Claims.

Employment discrimination plaintiffs must exhaust their administrative remedies before pursuing claims in federal court. *Taylor v. Books a Million, Inc.*, 296 F.3d 376, 379

(5th Cir. 2002). Exhaustion under Title VII requires filing a timely charge of discrimination with the EEOC and receipt of a “right to sue” letter. 42 U.S.C. §2000e-5(e) and (f); see also Taylor, 296, F.3d at 37. Courts are to “construe employment discrimination charges with the ‘tumor most liberality,’ bearing in mind that such charges are generally prepared by laymen untutored in the rules of pleading.” *Price v. Sw. Bell Tel. Co.*, 687 F.2d 74, 78 (5th Cir. 1982); *See also Preston v. Tex. Dep’t of Family and Protective Servs.*, 222 F.App’x 353, 356 (5th Cir. 2007).

To determine whether an allegation in a complaint falls within the scope of a charge filed with the EEOC, a court must “engage in fact-intensive analysis of the statement given by the plaintiff in the administrative charge, and look slightly beyond its four corners, to its substance rather than its label.” *Pacheco v. Mineta*, 448 F.3d 783, 789 (5th Cir. 2006). Therefore, even though Plaintiff only stated “race” in the “Discrimination based on” section of the Charge of Discrimination, the substance of the allegations in her factual statement and supplement information could reasonably result in an investigation for retaliatory discharge.² Plaintiff specifically stated within her “the particulars are” section that she was terminated in retaliation for her hair color, despite other employees’ having worn extreme hair colors.³ Plaintiff further explained that her supervisor, Buchanan, allowed her to wear her red hair color for **three months** before terminating her employment.

“The facts alleged in the body of the EEOC charge, rather than merely the boxes that are marked on the charge, are the major determinants of the scope of the charge.” *Jenkins v. Blue Cross Mut. Hosp. Ins.*, 538 F.2d 164, 168 (7th Cir. 1976) (en banc). Even though charging party only wrote “Race,” the factual allegations in the charge also fairly raised

² See Exhibit A, Charge of Discrimination

³ See Exhibit A, Charge of Discrimination

questions of retaliatory discharge. The mere absence of word in the “discrimination based on” section on plaintiff’s EEOC charge is not necessarily dispositive of the issue.

III. CONCLUSION

Defendants’ motion to dismiss should be denied as Plaintiff endured discrimination during her employment with GLH, and was retaliatory discharged as a result. Further, Plaintiff has fully satisfied the pre-suit requirements under Title VII of the Civil Rights Act of 1964 to exhaust administrative remedies. Defendant not only discriminated against Plaintiff, but also created a hostile working environment for Plaintiff because she engaged in the protected activity of voicing and filing a complaint.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Honorable Court will deny Defendants’ motion to dismiss. Additionally, Plaintiff requests leave to amend her complaint. Plaintiff also prays for all other general relief this Court deems to be fair and just.

Respectfully submitted, this the 17th day of July, 2023.

QUNTELLER GOMILLER, Plaintiff

By: s/ Carlos E. Moore
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this date served via the electronic filing system and/or mailed via U.S. Mail, postage pre-paid, a true and correct copy of the above and foregoing to the following:

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THIS, the 17th day of July, 2023.

s/ Carlos E. Moore
CARLOS E. MOORE, ESQ.