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

**QUNTELLER GOMILLER,**

**Plaintiff,**

**VS.** **CIVIL ACTION NO. 4:23-cv-00075-DMB-JMV**

**GREENWOOD LEFLORE HOSPITAL, MARGARET BUCHANAN, AND JOHN DOES 1-5,**

**Defendants.**

# DEFENDANTS' REBUTTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

## I. INTRODUCTION

In opposition to defendants' Motion to Dismiss, plaintiff apparently concedes that hair color is not a protected class under either Title VII or Section 1981. She also apparently concedes that defendant, Margaret Buchanan, cannot be sued individually under Title VII.

Plaintiff argues, however, that "others" with unnatural hair color were allowed to work at the hospital. She further argues in conclusory fashion that she engaged in protected activity and that the EEOC charge encompasses a retaliation claims. These arguments, however, are misplaced as discussed further below.

## II. ARGUMENT AND AUTHORITIES

### A. Hair Color Is Not a Protected Class

While plaintiff apparently concedes that hair color is not a protected class as the Fifth Circuit held in *Willingham v. Macon Tel Publ'g Co.,* 507 F.2d 1084, 1091 (5th Cir. 1975), she argues that others were allowed to wear "shades of blonde, orange, grey, and purple" and

states that plaintiff identified such individuals in her EEO charge. First, plaintiff's Complaint makes no claim of disparate treatment. Second, plaintiff's reference to her discrimination charge claiming the charge referenced that others were allowed to have extreme hair color is misplaced.

Reading the charge plaintiff filed with the EEOC shows that while she did allege in her charge that others were allowed to wear extreme hair color, she claims that the comparators are African American. It states, "There are several ***Black*** employees who have been allowed to wear extreme hair colors . . . ." Just as her Complaint does not allege disparate treatment, the charge also does not assert disparate treatment based on race as it does not identify any comparator outside of her protected class who were treated more favorably. Her charge simply encompassed a race discrimination claim based on her hair color which is clearly not a protected class.

**B. Plaintiff's EEO Charge Does Not Encompass a Retaliation Claim**

Plaintiff asserts in conclusory fashion that she engaged in "protected activity" and also asserts that her charge encompassed a retaliation claim. First, there is no allegation of protected activity in plaintiff's Complaint. Nor is there any allegation of protected activity in her discrimination charge. Plaintiff is correct when she cites *Jenkins v. Blue Cross Mut. Hosp. Ins.*, 538 F.2d 164 (7th Circuit 1976) for the proposition that one should look to the facts alleged in the charge rather than what box the charging party checked. She is incorrect, however, in stating that the factual allegations in her charge "fairly raised questions of retaliatory discharge." Such is simply not the case. The substance of plaintiff's charge is fairly brief:

> I was hired on September 30, 2021, as a Medical Lab Assistant. On September 15, 2022, I was discharged. I was informed that I was discharged for violation of company policy as it relates to extreme hair color. I believe that I have been discrimination against in violation of Title VII of the Civil Rights Act of 1964 as amended based on my race (Black). There are several Black employees who have been allowed to wear extreme hair colors in shades of blonde, orange, grey/purple and they are still employed. I was allowed to wear my strawberry red hair color for approximately three months before the HR Director terminated my employment.

Nowhere in the body of this charge does she alleged any protected activity or that she suffered retaliation. It is a plain and simple race discrimination claim. As such, plaintiff did not exhaust her administrative remedies when it comes to her retaliation claim.

While not particularly relevant, plaintiff incorrectly states that Buchanan was her supervisor. Buchanan, as the Human Resource Director, would have supervisory authority over employees within her department. Buchanan would not, however, have supervisory over plaintiff since, as a medical lab assistant, she would not be a part of Buchanan's department. It is also irrelevant that ***her supervisor*** apparently did not enforce hospital policy in allowing plaintiff to report to work for allegedly three months with her extreme hair color. While her supervisor may have overlooked hospital policy, Buchanan was not required to follow suit.

**C. Plaintiff Should Not Be Allowed to Amend Her Complaint**

At the end of her opposition, plaintiff requests leave to amend her complaint. While leave should be freely granted when justice requires as stated in Fed.R.Civ.P. 15(a), district courts have discretion to manage their dockets. *Schiller v. Physicians Res. Group, Inc.,* 342 F.3d 563, 566 (5th Cir. 2003). "Decisions concerning motions to amend are entrusted to the sound discretion of the district court." *Jones v. Robinson Prop. Grp., L.P.,* 427 F.3d 987, 994 (5th Cir. 2005) (internal quotation marks and citation omitted).

The Fifth Circuit has held that a district court does not abuse its discretion when a plaintiff seeks leave to amend in an opposition pleading and fails to apprise the district court of the facts that would be pleaded in the amended complaint to cure any deficiencies. *Mandujano v. City of Pharr, Tex.*, 786 F.App'x 434, 437 (5th Cir. 2019) ("Mandujano next argues that the district court should have granted his request for leave to amend included at the end of his response to the City's motion to dismiss …. The district court did not abuse its discretion in denying the motion. As the district court explained, leave may be denied, where, as here, the movant insisted his complaint sufficed to state a claim and 'fail[ed] to apprise the district court of the facts that he would plead in an amended complaint, if necessary, to cure any deficiencies." As noted by the Fifth Circuit leave may be denied where a plaintiff insisted the complaint sufficed to state a claim and then failed to apprise the court of the facts he would plead in an amended complaint to cure any deficiencies. *Id. See also Law v. Ocwen Loan Servicing, L.L.C.,* 587 F.App'x 790, 796 (holding that a "bare request in an opposition to a motion to dismiss – without any indication of the particular grounds on which the amendment is sought – does snot constitute a motion within the contemplation of Rule 15(a).")

## III. CONCLUSION

As stated, plaintiff has conceded that hair color is not a protected class, and she has not identified any individual outside of her protected class who was treated differently from her. Furthermore, her discrimination charge did not encompass a retaliation claim. Finally, plaintiff clearly argues that her complaint sufficed to state a claim. Thus, a request to amend at the end of an opposition brief that does not articulate how any allegations would cure the deficiencies should be denied.

Respectfully submitted,

*/s/ Susan Fahey Desmond*

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