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VANITA GUPTA
Principal Deputy Assistant Attorney General
DELORA L. KENNEBREW
(GA Bar No. 414320)
Chief
Employment Litigation Section
Civil Rights Division
CLARE GELLER (NY Reg. No. 4087037)

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U.S. DISTRICT COURT
DISTRICT OF WYOMING
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STEPHAN HARRIS, CLERK
CHEYENNE

Deputy Chief
Employment Litigation Section
Civil Rights Division
ROBERT L. GALBREATH (DC Bar No. 460389)(*Pro Hac Vice pending*)
Senior Trial Attorney
PATRICIA L. STASCO (DC Bar No. 490041)(*Pro Hac Vice pending*)
Senior Trial Attorney
United States Department of Justice
Employment Litigation Section, PHB 4028
Civil Rights Division
950 Constitution Avenue, NW
Washington, DC 20530
(202) 353-9731
(202) 353-8961 (fax)
Robert.Galbreath@usdoj.gov

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING
CHEYENNE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
WYOMING MILITARY DEPARTMENT))
)
Defendant.)
_____)

Civil Action No. 16cv55-5

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, the United States of America, alleges:

1. This action is brought on behalf of the United States to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

JURISDICTION AND VENUE

2. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345. Venue is proper in this judicial district under 42 U.S.C. § 2000e(5)(f)(3) and 28 U.S.C. § 1391(b), because it is where a substantial part of the events or omissions giving rise to the cause of action have occurred.

PARTIES

3. Defendant, the Wyoming Military Department (“WMD”), is a governmental agency created pursuant to the laws of the state of Wyoming and located within this judicial district.

4. The WMD is a “person” within the meaning of 42 U.S.C. § 2000e(a) and an “employer” within the meaning of 42 U.S.C. § 2000e(b).

5. The United States Equal Employment Opportunity Commission (“EEOC”) received a timely charge (Charge No. 32K-2012-00060) filed by charging party Amanda Dykes (“Dykes”) on or about March 27, 2012, alleging that she had been discriminated against on the basis of sex when she was subjected to sexual harassment by her direct supervisor, Don Smith (“Smith”), while both were employed by the Wyoming Youth Challenge Program (“WYCP”). The WYCP is an educational program administered by the WMD. Ms. Dykes also alleged that she was constructively discharged when the WMD failed to take action regarding Smith’s behavior after she complained and Smith’s harassing behavior continued unabated. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated the charge, found

reasonable cause to believe that a Title VII violation had occurred with respect to Ms. Dykes, attempted unsuccessfully to achieve voluntary resolution of the charge through conciliation, and subsequently referred the matter to the Department of Justice.

6. All conditions precedent to the filing of suit have been performed or have occurred.

FACTS COMMON TO ALL COUNTS

7. WYCP is a youth leadership program administered by the WMD. The WYCP serves at-risk youth by providing a 22-week residential course instilling values, skills, education, and discipline using a military-type structure. The WYCP is located at Camp Guernsey, Wyoming. The WMD generally oversees the WYCP's program content and structure, and also handles all payroll and human resources matters for the WYCP. The WMD has its main headquarters in Cheyenne, Wyoming, and employs more than 500 employees.

8. Ms. Dykes was first employed at the WYCP in November 2005, as a cadre shift supervisor. In or about August 2009, Ms. Dykes was promoted to the position of commandant, the day-to-day manager of WYCP. The commandant reports to the director of WYCP.

9. Smith was hired as director of the WYCP in or about November 2009, and became Ms. Dykes' immediate supervisor.

10. Ms. Dykes was absent from work on maternity leave from approximately August through October, 2010. On her return to the WYCP, Director Smith actively sought a close personal relationship with her. At this time, Director Smith began sending Ms. Dykes emails of a highly personal nature in which he discussed his feelings for Ms. Dykes and her impact on his life. Several of these emails included attachments of poetry

and songs written for Ms. Dykes by Director Smith. In addition, Director Smith began to spend increasingly significant amounts of time in Ms. Dykes' office, discussing his personal issues and interfering with her ability to do her work, to the point where Ms. Dykes found it necessary to invent pretexts to get away from Smith in order to perform her duties. These visits and emails made Ms. Dykes increasingly uncomfortable.

11. On June 3, 2011, Director Smith spoke to Ms. Dykes and admitted that he had developed a "crush" on her over the preceding months. Ms. Dykes replied that for the future they should confine their communications to workplace matters only, keep their discussions brief and to the point, and she made it clear to him that Director Smith should not have any more written communications with her on personal matters to include notes, emails and letters of a personal nature. After his meeting with Ms. Dykes, Director Smith agreed to her requests but promptly violated his agreement with her by calling Ms. Dykes that same evening to tell her that he and his wife were divorcing. Director Smith also sent Ms. Dykes two more emails over the next few days, again discussing his crush on her.

12. The following Monday, June 6, 2011, Director Smith again approached Ms. Dykes in her office to discuss his feelings and their relationship status. Later that day, Ms. Dykes sent Director Smith an email indicating her belief that he had violated their agreement by writing to her over the weekend and visiting her office that morning. She stated that she was uncomfortable being in a room with him and that going forward they would need to leave the door open and have a third party present any time he wished to have a conversation with her. Director Smith agreed to these conditions. Ms. Dykes also stated that if Director Smith violated these conditions, she would alert human resources.

Ms. Dykes blind-copied her email to Lori Cole (“Cole”), a WMD human resources employee, and later called Ms. Cole to discuss the situation.

13. On June 7, 2011, Director Smith wrote a memorandum to his personnel file detailing the development of his feelings for Ms. Dykes, the events of the previous day, the ground rules which Ms. Dykes established for their contact, and Director Smith’s promise to adhere to them going forward. Director Smith gave a copy of this memorandum to Ms. Dykes, who in turn forwarded it to Ms. Cole.

14. Ms. Cole followed up via an email to Ms. Dykes on June 8, 2011, asking how Ms. Dykes was doing. Ms. Dykes responded that she was still feeling uncomfortable, that Director Smith had twice told her he loved her, and that she did not know how to react. She also asked Ms. Cole to inform Tammy Connor (“Connor”), the WMD human resources employee who oversaw the WYCP, of the harassment.

15. On June 9, 2011, Director Smith entered Ms. Dykes’ office stating he needed to speak with her yet again. Director Smith then read her a letter explaining his feelings for her. Afterward, Ms. Dykes again wrote to Ms. Cole, updating her on Director Smith’s actions and stating that she felt Director Smith was making her very uncomfortable. Ms. Dykes again requested instructions on how she should proceed with the situation.

16. The WMD is subject to a state-wide anti-discrimination policy issued by the governor’s office. According to the policy, a complainant may report discrimination or harassment to any supervisor in her chain of command, the human resources manager for the unit in which she is employed, or other designated contacts. Any supervisor receiving a report or suspecting harassment or discrimination “must immediately” report the conduct to

the member(s) of management designated to receive such reports and “should” contact an attorney general’s office personnel section attorney upon receipt of such complaint.

17. Neither Ms. Cole nor Ms. Connor took any steps regarding Ms. Dykes’ complaint, such as informing appropriate management personnel or conducting a follow-up investigation.

18. On June 10, 2011, the then-current class at WYCP graduated, and Ms. Dykes saw almost nothing of Director Smith until approximately the middle of August 2011, when Ms. Dykes began to spend more time in her office again.

19. At this time, Director Smith returned to his practice of visiting Ms. Dykes for long periods and discussing his emotions and feelings, particularly how he was going to get on without his wife. Dykes again became very uncomfortable with her direct supervisor’s insistence on discussing his personal affairs with her, his subordinate.

20. Having heard nothing from human resources, on or about August 29, 2011, Ms. Dykes contacted Colonel Shelly Campbell (“Campbell”), Director Smith’s direct supervisor at the WMD. Ms. Dykes’ email requested to arrange an appointment to “talk about concerns I have with the director.” The next day, Ms. Dykes met with Colonel Campbell and related the harassment she endured by Director Smith. Colonel Campbell met separately with Director Smith and told him generally to “keep things professional” with Ms. Dykes. Apart from a single follow-up voicemail message to Ms. Dykes, Colonel Campbell took no further action regarding the matter.

21. After the meeting with Colonel Campbell, Ms. Dykes continued to feel uncomfortable with and threatened by Director Smith, who, immediately after meeting

Colonel Campbell, became hostile toward Ms. Dykes, giving her short responses, pouting, and showing other signs of anger.

22. Within a few days, however, Director Smith resumed visiting her office again and discussing his feelings toward her and asking about their relationship now that Director Smith's wife had left him. When Ms. Dykes reminded Director Smith of their agreement to have only a work relationship, he became openly mocking. Director Smith's continued and increasingly aggressive attentions, together with the lack of any meaningful response from WMD management regarding Ms. Dykes' complaints, placed a growing strain on her.

23. On or about September 21, 2011, Ms. Dykes met with Director Smith in order to prepare a personnel redeployment scheme for a staff management meeting later that day. Although Director Smith supported Ms. Dykes' proposals in private, during the management meeting he suddenly turned on her and roundly disparaged the same ideas in front of the staff. The unexpected public humiliation and fear that Smith was now becoming vindictive because of her constant rejections of his unwanted expressions of affection caused Ms. Dykes to suffer a panic attack.

24. On or about September 22, 2011, because of Director Smith's ongoing harassment, the WMD's lack of action, her feelings of helplessness, and her belief that the situation would not improve, Ms. Dykes resigned from the WMD.

25. On or about September 23, 2011, Ms. Dykes sought treatment for an attack of shingles that she believes was induced by the stress Director Smith caused her.

26. Ms. Dykes suffered emotional distress as a result of the sexual harassment and constructive discharge that she faced.

27. Ms. Dykes also suffered monetary loss as a result of the sexual harassment and constructive discharge.

COUNT I

Title VII, 42 U.S.C. § 2000e-2(a)

Hostile Work Environment Sexual Harassment

28. Plaintiff realleges and incorporates herein by reference paragraphs 1-27.

29. Ms. Dykes made it known that the harassment by her supervisor, set forth in paragraphs 10-23, was unwelcome. The harassing conduct set forth in paragraphs 10-23 adversely affected the terms and conditions of Ms. Dykes' employment. Ms. Dykes did find, and a reasonable person would have found, the conduct set forth in paragraphs 10-23 offensive.

30. The sexual harassment policy of the WMD, including the dissemination, training and implementation of it, was ineffectual.

31. Ms. Dykes made several complaints about the sexually harassing conduct that she faced on the job to officials in the WMD's Human Resources Department and to Colonel Campbell, a commanding officer in the WMD.

32. The investigation of Ms. Dykes' sexual harassment complaints and the response of the WMD to the complaints were inadequate. Among other things, despite Ms. Dykes' complaints against Director Smith, human resources officials made no effort to investigate these complaints or to stop the harassment. Despite Ms. Dykes' complaints to both human resources officials and to Colonel Campbell, Ms. Dykes was subjected to constant contact with Director Smith and to continual harassment during the remainder of her employment with the WYCP, with Director Smith in a supervisory position.

33. The WMD has discriminated against Dykes on the basis of her sex, female, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), among other ways, by:

- (a) subjecting Dykes to harassment based on her sex while she was employed at the WYCP which created an intimidating, hostile or offensive work environment, and which adversely affected the terms, conditions, and privileges of her employment with the WMD;
- (b) failing or refusing to take reasonable, appropriate action to prevent or correct promptly the sexual harassment, even after Dykes made several complaints to human resources and senior management at the WMD; and/or
- (c) negligently failing after actual or constructive knowledge of the sexual harassment to take prompt and adequate action to stop it.

COUNT II

Title VII, 42 U.S.C. § 2000e-3(a)

Constructive Discharge

34. Plaintiff realleges and incorporates herein by reference paragraphs 1-33.

35. The WMD subjected Dykes to intolerable working conditions when, among other things, it failed to take any meaningful action in response to Dykes' complaints about Smith's sexual harassment of her, thereby allowing for Smith to intensify his illegal behavior while giving Dykes no hope or expectation that it would cease. Smith continued to harass Dykes to the point where she could no longer tolerate the stress it caused her and felt she had no option other than to resign.

36. For the foregoing reasons, Defendant has discriminated against Dykes, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), by making Dykes' working

conditions so intolerable that she felt forced to resign from her employment position. Defendant subjected Dykes to intolerable working conditions that would have induced a reasonable person to quit.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

- (a) enjoin WMD from causing, creating, or condoning a sexually hostile work environment;
- (b) order WMD to institute policies, practices, and procedures to ensure a non-discriminatory workplace, including, but not limited to: (1) taking proper steps to investigate complaints of sexual harassment; (2) disciplining employees found responsible for sexual harassment; (3) distributing its anti-harassment policy to all employees; and (4) providing mandatory sexual harassment training for all supervisors and employees;
- (c) award appropriate monetary relief, including prejudgment interest, to Ms. Dykes to make her whole for the losses she has suffered as a result of the discrimination against her as alleged in this Complaint;
- (d) award compensatory damages to Ms. Dykes to fully compensate her for the injuries caused by the WMD's discriminatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a; and
- (e) award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

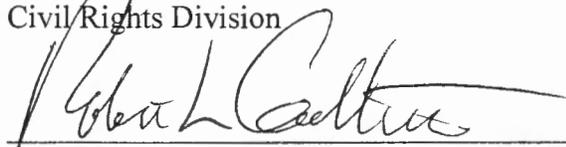
JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

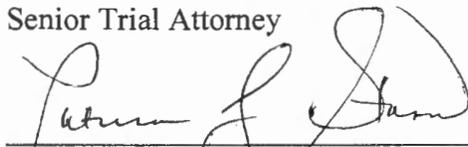
VANITA GUPTA
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ROBERT L. GALBREATH (DC Bar No. 460389)(*Pro Hac Vice pending*)
Senior Trial Attorney



PATRICIA L. STASCO (DC Bar No. 490041)(*Pro Hac Vice pending*)
United States Department of Justice
Employment Litigation Section, PHB 4028
Civil Rights Division
950 Constitution Avenue, NW
Washington, DC 20530
(202) 353-9731
(202) 514-1005 (fax)
Robert.Galbreath@usdoj.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 United States of America

(b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Robert L. Galbreath, Esq.
 United States Department of Justice, Civil Rights Division, ELS
 PHB4028
 950 Constitution Avenue, N.W., Washington DC 20530
 (202) 353-9731

DEFENDANTS
 Wyoming Military Department

County of Residence of First Listed Defendant Laramie
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
 Van Snow, Esq.
 Office of the Wyoming Attorney General
 Tort Litigation Division
 123 State Capitol
 Cheyenne, WY 82002

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 USC 2000e et seq

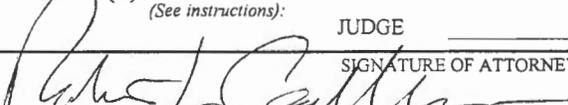
Brief description of cause:
 Employment discrimination based on sex and constructive discharge

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 03/22/2016 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____