

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 06-cv-2262-JLK-MJW

RENEE ATWELL,

VIVIAN BRADLEY,

TERRY LEE,

And

YVETTE MARTINEZ HOCHBERG,

Plaintiffs,

v.

PATRICIA GABOW, in her individual capacity and
in her official capacity as Chief Executive Officer
and Medical Director of Denver Health and Hospital Authority,

And

DENVER HEALTH AND HOSPITAL AUTHORITY,
a political subdivision of the State of Colorado,

Defendants.

FIRST AMENDED COMPLAINT

[CLASS ACTION]

GENERAL ALLEGATIONS

Individual and Representative Plaintiffs Clinical Psychologist Renee Atwell,
Registered Nurse Practitioner Vivian Bradley, Registered Nurse Terry Lee, and Medical

Doctor Yvette Martinez Hochberg (collectively “Plaintiffs”) on behalf of themselves and all others similarly situated, allege, upon personal knowledge as to themselves and information and belief as to other matters, as follows:

INTRODUCTORY STATEMENT

1. Plaintiffs are a group of highly educated and exceptionally skilled professional women, with almost 100 years combined experience providing health care services. Dr. Renee Atwell is African American, a licensed clinical psychologist, and a former employee at Denver Health and Hospital Authority. Vivian Bradley is African American, a registered nurse practitioner, and a former employee at Denver Health and Hospital Authority. Terry Lee is African American, a registered nurse, and a current employee of Denver Health and Hospital Authority. Dr. Yvette Martinez Hochberg is Hispanic and Jewish, a medical doctor specializing in family medicine, and a former employee at Denver Health and Hospital Authority.

2. Plaintiffs allege Defendants illegally discriminated against Plaintiffs, and other similarly-situated non-white Denver Health and Hospital Authority employees, in the terms and/or conditions of their employment on the basis of their race, color and/or ethnic group, and/or in retaliation for complaining about the same, in violation of 42 U.S.C. §§ 1981, 1983, 1988, 2000e, *et seq.*, Colorado Revised Statutes [C.R.S.] § 24-34-402, *et seq.*, and Colorado Statutes § 25-29-107.

3. Defendant Dr. Patricia Gabow serves as the chief executive officer and medical director of Defendant Denver Health and Hospital Authority. She is being sued in both

her official capacity, as chief executive officer and medical director of Defendant Denver Health and Hospital Authority, and in her individual capacity.

4. Defendant Denver Health and Hospital Authority (hereinafter “DH”) is a political subdivision of the State of Colorado, created by Chapter 25 of the Colorado State Statutes. DH provides health care services in Denver and employs about 4,300 persons. About 70% of its patients are non-white. Almost all of DH’s managers and/or supervisors are white.

5. According to C.R.S. § 25-29-103, DH is “a body corporate and a political subdivision of the state, which shall not be an agency of the state or local government, and which shall not be subject to administrative direction or control by any department, commission, board, bureau, or agency of state or local government.”

6. DH has a board of directors appointed by the mayor of Denver. According to its published agenda, the board meets once a month for about three hours.

7. According to C.R.S. § 25-29-107(1), DH is prohibited from discriminating against an employee “in training, promotion, retention, assignment of duties, granting of rights and benefits, or any other personnel action.” However, DH employees are not allowed to appear before and present their complaints about illegal employment discrimination to the DH board.

8. Dr. Gabow operates DH as though it is a private business, with an emphasis on profitability. As DH’s chief executive officer and medical director, she develops personnel policies and practices. Dr. Gabow also selects and/or supervises those persons who are assigned to implement her personnel policies and practices.

9. Dr. Gabow sets and enforces personnel policies and practices without the type of scrutiny, accountability, over-site, or checks and balances a leader of a traditional political subdivision (such as a city or county) would obtain from duly elected officials (such as city council members).

10. Dr. Gabow has complete, ultimate, un-fettered, and un-reviewed authority over all personnel matters, including personnel policies and practices.

11. Dr. Gabow has adopted and implemented a profit-driven, personnel management system wherein she trains and encourages her managers/supervisors (almost all of whom are white) to ignore objective performance criteria and to look for the “right person in the right seat on the bus” and to “put off the bus” those persons subjective criteria suggest are not compatible. Dr. Gabow recently suggested she believes in the philosophy that “it’s not about training, it’s about DNA.” At least one E-mail sent among Dr. Gabow’s supervisory staff proudly proclaims the “right person ... right seat” approach was used as a basis for terminating an otherwise fully qualified non-white highly skilled professional health care provider.

12. Dozens of complaints alleging illegal employment discrimination have been filed by DH employees, internally with the DH EEO office, and externally with the Colorado Civil Rights Division, the United States Equal Employment Opportunity Commission, Colorado State Courts, and/or the United States District Court for the District of Colorado. Dr. Gabow is aware of these complaints, in part, by virtue of her position and micro-management work style, and because she has been named as a respondent and/or defendant in some of these complaints.

13. No action has been taken by Defendants to address complaints of illegal employment discrimination based upon race, color and/or ethnic group, and/or retaliation. Employees found to have been engaging in discriminatory conduct have not been disciplined. In-service or other training is not provided to teach employees how to comply with laws prohibiting illegal employment discrimination based upon race, color, and/or ethnic group, and/or retaliation for complaining about same.

JURISDICTION AND VENUE

14. This action is brought pursuant to 42 U.S.C. §§ 1981, 1983, 1988, 2000e, *et seq.*, C.R.S. § 24-34-402, *et seq.*, and § 25-29-107, to redress unlawful discrimination based upon race, color, and/or ethnic group, and retaliation for opposing illegal employment discrimination based upon race, color, and/or ethnic group.

15. This Court is vested with jurisdiction over Plaintiff's claims pursuant to various federal statutes, including 42 U.S.C. §§ 1981, 1983, 1988, 2000e, *et seq.*, and 28 U.S.C. §§ 1331 and 1343.

16. The unlawful employment practices alleged herein were committed within the judicial district of the United States District Court for the District of Colorado. Venue of this action is vested in this Court pursuant to various federal statutes, including 28 U.S.C. § 1391.

17. Plaintiffs also bring this action, pursuant to Colorado laws, including C.R.S. § 24-34-402, *et seq.*, and § 25-29-107. Plaintiffs request this Court exercise supplemental jurisdiction over their state law claims, pursuant to 28 § U.S.C. 1367.

PARTIES

18. Plaintiff Dr. Renee Atwell is African American, a licensed clinical psychologist, and a former employee at Denver Health and Hospital Authority. She resides within the jurisdiction of the United States District Court for the District of Colorado.

19. Plaintiff Vivian Bradley is African American, a registered nurse practitioner, and a former employee at Denver Health and Hospital Authority. She currently resides in the State of Georgia.

20. Plaintiff Terry Lee is African American, a registered nurse, and a current employee of Denver Health and Hospital Authority. She resides within the jurisdiction of the United States District Court for the District of Colorado.

21. Plaintiff Dr. Yvette Martinez Hochberg is Hispanic and Jewish, a medical doctor specializing in family medicine, and a former employee at Denver Health and Hospital Authority. She resides within the jurisdiction of the United States District Court for the District of Colorado.

22. Defendant Dr. Patricia Gabow serves as the chief executive officer and medical director of Defendant Denver Health and Hospital Authority. She is being sued in both her official capacity, as chief executive officer and medical director of Defendant Denver Health and Hospital Authority, and in her individual capacity. She resides within the jurisdiction of the United States District Court for the District of Colorado.

23. Defendant Denver Health and Hospital Authority (hereinafter "DH") is a political subdivision of the State of Colorado. DH provides health care services in Denver and

employs about 4,300 persons. DH is located within the jurisdiction of the United States District Court for the District of Colorado.

CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this Class Action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on behalf of a Class of all past and present non-white DH employees who have been or continue to be discriminated against on the basis of their race, color, and/or ethnic group in the terms and/or conditions of their employment, including, but not limited to, training, promotion, retention, assignment of duties, granting of rights and benefits, or any other personnel action.

25. Plaintiffs are members of the Class they seek to represent.

26. The members of the Class identified herein are so numerous that joinder of all Members is impracticable. The number of Class Members is currently unknown, but is certainly larger than can be addressed through joinder. Upon information and belief, the number is larger than 50 but less than 200.

27. There are questions of law and fact common to the Class, and these questions predominate over any questions affecting only individual Members. Common questions include, among others: (1) whether Defendants' policies or practices discriminate against non-white employees; (2) whether Defendants' use of the "right person ... right seat" employment policy or practice discriminates against non-white employees; (3) whether Defendants' policies or practices violate 42 U.S.C. §§ 1981, 1983, 1988, 2000e, *et seq.*, C.R.S. § 24-34-402, *et seq.*, and/or C.R.S. § 25-29-107; and (4) whether compensatory

and punitive damages, injunctive relief, and other equitable remedies for the Class are warranted.

28. The Representative Plaintiffs' claims are typical of the claims of the Class.

29. The Representative Plaintiffs will fairly and adequately represent and protect the interests of the Members of the Class. Plaintiffs have retained counsel competent and experienced in class actions and complex employment discrimination litigation.

30. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants acted and/or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiffs and the Class as a whole. The Class Members are entitled to injunctive relief to end Defendants' common, uniform, and unfair racially discriminatory personnel policies and practices.

31. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because common questions of fact and law predominate over any questions affecting only individual Members of the Class, and because a Class Action is superior to other available methods for the fair and efficient adjudication of this litigation. The Class Members have been damaged and are entitled to recovery as a result of Defendants' common, uniform, and unfair racially discriminatory personnel policies and practices. Defendants have computerized payroll and personnel data that will make calculation of damages for specific Class Members relatively simple. Plaintiffs know of no difficulty that would be encountered in the management of this litigation, which would preclude maintenance as a Class Action. The names and addresses of the Plaintiff Class Members are available from Defendant DH. To the extent required by law, notice will be provided

to the Plaintiff Class via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in Class Actions. The propriety and amount of punitive damages are issues common to the Class.

CLAIMS OF REPRESENTATIVE PLAINTIFFS

Dr. Renee Atwell:

32. All previous paragraphs are re-stated here and incorporated by reference.

33. Dr. Atwell was employed for almost a decade by DH as a clinical psychologist.

34. At all times, Dr. Atwell was fully qualified for her job, holding an earned doctorate degree and being duly licensed by the State of Colorado.

35. At all times, Dr. Atwell satisfactorily performed her job duties. She was among the most productive psychologists on the DH staff, completing the second or third largest number of billable service hours.

36. At all times material hereto, Dr. Atwell was the only African American psychologist working at DH.

37. As a clinical psychologist, Dr. Atwell's primary job responsibility was to provide confidential psychological counseling services to severely mentally ill DH patients, including those with dual diagnoses of mental illness and drug addiction. Her basic job responsibilities required she have an office for counseling sessions and working on confidential client files.

38. In or about 2003, Dr. Atwell had carpal tunnel surgeries on her arms and hands, requiring her to be off work for several weeks. This was a major and serious medical

procedure, limiting Dr. Atwell's physical ability to move her arms and hands. Her supervisors and co-workers were aware of this carpal tunnel surgery.

39. Without explanation, cause or justification therefore, and in clear violation of applicable professional standards, Dr. Atwell's personal belongings were removed from her office, her office was taken from her, and she was assigned to a cubicle. A cubicle does not provide the appropriate workspace to conduct confidential psychological counseling sessions for mentally ill patients or to work on confidential client files. All of the similarly-situated non-African American psychologists had offices, prompting Dr. Atwell to complain that this adverse employment action was based upon her race.

40. No office was provided to Dr. Atwell. She was forced to look for other private spaces within the hospital to conduct her psychological counseling sessions with mentally ill DH patients. No other similarly-situated non-African American or non-complaining psychologist at DH was forced to work without an office.

41. Then, and in clear violation of applicable psychological counseling professional standards, Dr. Atwell's work as a psychologist was assigned for supervision to a white woman holding just a high school diploma, and a white man holding just a nursing credential was allowed to evaluate her work as a psychologist.

42. Dr. Atwell complained to DH managers that denial of appropriate office space and supervision/evaluation of her work by non-psychological professionals were inconsistent with the basic guidelines required by various health care accrediting agencies, posed a threat to her continued licensure by the State of Colorado, was professionally humiliating and embarrassing, and was based upon her race because similarly-situated white

psychologists were not subjected to this type of adverse treatment concerning the terms and conditions of employment.

43. In retaliation for complaining about denial of office space, unqualified persons supervising/evaluating her work and racism, Dr. Atwell was subjected to hostile treatment by the managers to whom she complained and by the unqualified persons assigned to supervise/evaluate her work.

44. Although not even remotely qualified to supervise or evaluate the work of a psychologist, during staff meetings this white woman (with the high school diploma) and this white man (with a nursing credential) repeatedly used abusive and demeaning language toward Dr. Atwell when evaluating her work. Dr. Atwell is physically much smaller than some of the wrongdoers and she was fearful for her physical safety as well.

45. Dr. Atwell then complained to DH managers that denial of appropriate office space, supervision/evaluation of her work by non-psychological professionals, and abusive language were due to her race, color, sex, and/or physical disability.

46. No action was taken by DH to investigate or address any of Dr. Atwell's complaints.

47. In or about 2005, Dr. Atwell had surgery on her spine, requiring her to be off work for several months. This was a major and serious medical procedure, limiting Dr. Atwell's physical ability to move her torso and limbs. Her supervisors and co-workers were aware of this spinal surgery.

48. When Dr. Atwell returned to work, she continued to ask DH managers to provide her with office space so that she could properly perform the basic functions of her job, i.e., provide confidential psychological counseling services to mentally ill DH patients. She

again raised the issue of illegal discrimination being the basis for the denial of office space and other mistreatment, noting that despite her absences due to illnesses she still was among the top dollar producing psychologists at DH and deserving of at least equal treatment as accorded her non-African American psychologist counterparts.

49. After Dr. Atwell again complained about illegal employment discrimination, in or about late July 2005 or early August 2005, she was told by DH managers/supervisors that she must become CPR certified. At the time she was told this, these DH managers/supervisors knew Dr. Atwell was not physically able to do CPR because of her recent spinal surgery. DH managers/supervisors were aware of Dr. Atwell's physical limitations because she was required to inform them of her serious physical condition in order to take time off from work.

50. Providing CPR is not a function or part of Dr. Atwell's job – she works with patients' minds, not their bodies, and DH managers/supervisors were aware of this fact.

51. Dr. Atwell then filed a formal complaint with the DH EEO office, using the "DHHA Complaint Form".

52. On August 3, 2005, Defendant Dr. Patricia Gabow was notified directly and in writing that Dr. Atwell filed a complaint using the "DHHA Complaint Form" and that she was filing formal employment discrimination complaints with the Colorado Civil Rights Division (CCRD) and the U.S. Equal Employment Opportunity Commission (EEOC).

53. On August 4, 2005, Dr. Atwell then was threatened with being fired for failure to become CPR certified.

54. This CPR issue was resolved only after Dr. Atwell's attorney vigorously challenged this unfair and adverse employment decision. Without explanation, cause or justification, to keep her job Defendants still required Dr. Atwell to produce a letter from her neurosurgeon confirming she was not physically able to do CPR. This incident caused Dr. Atwell additional emotional distress and embarrassment, and caused her to incur attorney's fees and other costs.

55. Defendants then ordered an internal EEO investigation be conducted. This investigation recommended Dr. Atwell be given an office because she needed this to perform the basic functions of her job, i.e., to provide confidential psychological counseling for mentally ill patients.

56. Dr. Atwell then again requested an office to do her work. But Defendants continued to refuse to take any remedial steps.

57. Defendants then ordered an external EEO investigation be conducted. This investigation too noted plaintiff required an office to conduct her work. But Defendants again continued to refuse to take any remedial steps.

58. Although Defendants now had two investigative reports telling them to give Dr. Atwell an office, no office was provided for Dr. Atwell. Adding insult to injury, Defendants then hired non-African American, less qualified psychologists and immediately gave them offices, while Dr. Atwell was forced to continue working from a cubicle and searching for places to conduct confidential psychological counseling sessions with her patients.

59. Unfounded complaints about Dr. Atwell's quality of work as a psychologist then intensified, being lodged by the white woman holding the high school diploma and the white man holding a nursing credential. Defendants allowed and encouraged these negative evaluations of Dr. Atwell's work by unqualified persons despite the fact she continued to out-perform similarly-situated, non-African American and non-complaining psychologists.

60. No non-African American or non-complaining psychologist at DH worked without an office, was threatened with termination for not being physically able to perform a task not related to his or her job functions (i.e., being CPR certified), and/or assigned to be supervised and evaluated by unqualified non-professionals in his or her professional field.

61. As a licensed psychologist working with mentally ill and "dual diagnoses" patients, Dr. Atwell found this situation intolerable because: a) she was prevented from doing her work in a professional manner, which required an office for confidential psychological counseling sessions with mentally ill and "dual diagnoses" patients and a secure place to keep and to work on patient files; and b) supervision and evaluation of her work was being done by unqualified non-psychological co-workers in clear violation of applicable licensing, accrediting, and other professional standards.

62. The personnel actions being taken against Dr. Atwell were taken with the knowledge and consent, approval, and/or ratification of Dr. Gabow. Dr. Gabow took no steps to remedy this intolerable situation, even after she directly was notified in writing. The management system Dr. Gabow had in place encouraged and tolerated this "put the person off the bus" approach.

63. This situation caused Dr. Atwell to suffer damage to her reputation, anxiety, personal indignity, humiliation, embarrassment, and emotional distress.

64. Defendants were completely aware of the situation because Dr. Atwell filed a formal internal EEO complaint with DH (using DH's complaint form), formal employment discrimination complaints with the CCRD and the EEOC, and Defendants conducted two extensive investigations – one conducted by the DH EEO office and one conducted by a private company Defendants hired.

65. Defendants took no remedial steps to address the concerns raised by Dr. Atwell, ignoring even the recommendations of both investigations to provide Dr. Atwell with the office she needed to do her work.

66. In November 2005, Dr. Atwell informed Defendants and her patients she was resigning her position. Because of professional patient care standards in the field of psychology, Dr. Atwell gave 30 days notice of her resignation. She resigned her job effective December 31, 2005.

67. Because of Defendants' illegal discriminatory conduct, Dr. Atwell suffered injuries, damages and other losses, including, but not limited to, damage to her reputation, anxiety, personal indignity, humiliation, embarrassment, emotional distress, and lost wages and benefits when she was constructively discharged from her job in December 2005.

Registered Nurse Practitioner Vivian Bradley:

68. All previous paragraphs are re-stated here and incorporated by reference.

69. RNP Bradley was employed by DH as a practice manager from on or about January 14, 2002 until July 24, 2006.

70. RNP Bradley was the only African American practice manager working at a DH clinic.

71. As are all RNPs, RNP Bradley is a highly skilled health care practitioner, on a higher footing than a physician's assistant, and able to prescribe medications for patients. As the "pecking order" goes in the medical profession, the RNP is one step down from the physician and one step above a physician's assistant. The physician assistant is one or two steps above a registered nurse or RN, depending upon the jurisdiction in which they work.

72. At all times, RNP Bradley was fully qualified for her job, holding an earned master's degree and being duly licensed by the State of Colorado.

73. At all times, RNP Bradley satisfactorily performed her job duties. She had the highest nurse visits among DH community health clinics. She also developed the Newborn Baby Group Visits that brought more revenue than other clinics for billable visits.

74. A less qualified white woman, holding only a RN degree, was assigned to supervise RNP Bradley's work. Similarly-situated white RNP's did not have their work supervised by a person holding only a RN credential.

75. RNP Bradley worked in a DH clinic located in a poor non-white neighborhood. DH provided inadequate resources to properly operate this clinic. After RNP Bradley questioned the resource allocation, her RN supervisor told RNP Bradley she would be fired if she could not improve the clinic's management.

76. RNP Bradley then took a vacation, traveling by car. Her car broke down as she was returning to Denver. RNP Bradley immediately contacted DH, explained the car situation, and noted her return would be delayed because of necessary car repairs.

77. Upon her return to DH, RNP Bradley found her personal belongings had been removed from her office. She then was told she was fired for having abandoned her job.

78. No similarly-situated white RNP has been fired for job abandonment in connection with a delayed return due to a car problem or any other similar reason.

79. Because of DH's illegal discriminatory conduct, RNP Bradley suffered injuries, damages and other losses, including, but not limited to, damage to her reputation, anxiety, personal indignity, humiliation, embarrassment, emotional distress, and lost wages and benefits.

Registered Nurse Terry Lee:

80. All previous paragraphs are re-stated here and incorporated by reference.

81. RN Lee started working for DH as a nurse on or about June 30, 1997. She currently works for DH as a registered nurse.

82. At all times, RN Lee has been fully qualified for her job, holding an earned RN degree and being duly licensed by the State of Colorado.

83. At all times material hereto, RN Lee satisfactorily performed her job duties.

84. All of RN Lee's supervisors are non-African American.

85. In or about February 2006, RN Lee's daughter became ill, went to DH for medical care, and authorized RN Lee to review her medical records and look in on her.

86. At DH and many other health care facilities across the country, it is routine for staff members to follow the care of their children or other close relatives when they come to the medical facility for medical care.

87. RN Lee was disciplined for allegedly breaching patient confidentiality when she reviewed her daughter's medical records.

88. No other similarly-situated DH employee has been disciplined for reviewing their child's medical records.

89. RN Lee complained to her managers/supervisors that she was being treated differently, more harshly, than her similarly-situated white co-workers.

90. In or about June 2006, within a couple of weeks or so of RN Lee complaining to DH managers/supervisors about racial discrimination, she was effectively demoted because she was stripped of her job duties, which included serving as a charge nurse and lead trainer.

91. RN Lee's former job duties then were advertised as a new job opening.

92. RN Lee applied for the job.

93. In or about September 2006, a less qualified white person was hired.

94. Prior to lodging a complaint of employment discrimination based upon race, RN Lee frequently was allowed to attend conferences and other training opportunities crucial for career advancement.

95. After RN Lee complained of racial discrimination, RN Lee's requests to attend conferences and to receive training have been denied.

96. Furthermore, since RN Lee's complaint of racial discrimination, she has been assigned less attractive job duties and now is supervised by a person less qualified than she.

97. Because of DH's illegal discriminatory conduct, RN Lee suffered injuries, damages and other losses, including, but not limited to, damage to her reputation, anxiety, personal indignity, humiliation, embarrassment, emotional distress, and lost wages and benefits.

Dr. Yvette Martinez Hochberg:

98. All previous paragraphs are re-stated here and incorporated by reference.

99. Dr. Martinez Hochberg was employed by DH as a medical doctor, specializing in family medicine, from on or about January 12, 2003 until June 2, 2006.

100. At all times, Dr. Martinez Hochberg was fully qualified for her job, holding an earned medical doctor degree and being duly licensed by the State of Colorado.

101. At all times, Dr. Martinez Hochberg satisfactorily performed her job duties.

102. All of Dr. Martinez Hochberg's supervisors were white.

103. One of Dr. Martinez Hochberg's supervisors made unwelcome comments about Dr. Martinez Hochberg's racial and ethnic background, making her feel very uncomfortable. Dr. Martinez Hochberg made it known she was offended by such comments.

104. After this incident, Dr. Martinez Hochberg was stripped of her job responsibilities as team leader at a DH clinic, and told she would be fired if she did not accept a transfer to another DH clinic.

105. Dr. Martinez Hochberg essentially was demoted when she was transferred. Her working conditions also were less favorable because the transfer forced her to travel daily a long distance to the other side of the Denver metro area.

106. Dr. Martinez Hochberg experienced a hostile reception at this second DH clinic. She had been “black-balled” by DH supervisors prior to her arrival, resulting in other clinic staff indicating an unwillingness to work with her. Dr. Martinez Hochberg also was forced to do the “team leader” work (such as co-signing charts, re-filling prescriptions) of the team leader at the second clinic, while this team leader enjoyed the opportunity to attend classes and meetings, crucially important opportunities for professional advancement not offered to Dr. Martinez Hochberg.

107. Dr. Martinez Hochberg found this situation intolerable because she was prevented from doing her work in a professional manner, which required full cooperation from other clinic staff and access to the latest medical practice information needed to remain current and competent as a physician. She resigned her position.

108. No similarly-situated white or non-complaining medical doctor had been forced to transfer or be fired, and then “black balled” prior to arriving at the transfer place so that the transfer would fail, or denied training or other career development opportunities.

109. Because of DH’s illegal discriminatory conduct, Dr. Martinez Hochberg suffered injuries, damages and other losses, including, but not limited to, damage to her reputation, anxiety, personal indignity, humiliation, embarrassment, emotional distress, and lost wages and benefits when she was constructively discharged from her job in June 2006.

GENERAL POLICIES OR PRACTICES OF DISCRIMINATION

110. The abridgments of employment opportunities suffered by the Representative Plaintiffs are part of a general policy or practice of illegal employment discrimination on the basis of race, color, and/or ethnic group that has existed at DH throughout the relevant time. These are not isolated examples of employment practices or individual decisions. On the contrary, these incidents are representative of Defendants' systematic discrimination against non-white employees and in favor of white employees, as the dozens of other employment discrimination complaints filed against Defendants show.

111. Defendants are pursuing policies or practices, on a continuing basis, that are denying and/or restricting qualified non-white employees' job opportunities.

112. Such discriminatory policies or practices include, but are not limited to:

- a) exchanging objective and measurable job performance criteria for subjective, arbitrary and unvalidated criteria;
- b) fostering an environment wherein white managers/supervisors openly engage in discriminatory and/or retaliatory conduct against non-white employees deemed not "the right person in the right seat on the bus";
- c) making adverse employment decisions based on race, color, and/or ethnic group rather than on job performance; and
- d) terminating or constructively discharging non-white employees because they complain about illegal employment discrimination.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1981 AGAINST BOTH DEFENDANTS)

113. Plaintiffs incorporate paragraphs 1 through 112 as alleged above.

114. This claim is brought on behalf of all Plaintiffs and the Class they represent.

115. Plaintiffs are members of a protected class because of their race, color and/or ethnic group.

116. Plaintiffs were treated less favorably than their similarly-situated white co-workers in the terms and conditions of their employment because of their race, color and/or ethnic group, and/or in retaliation for complaining about illegal employment discrimination based upon race, color and/or ethnic group.

117. Defendants maintain an intentionally discriminatory system with respect to the terms and conditions of employment for non-white employees, including, but not limited to, training, promotion, retention, assignment of duties, and granting of rights and benefits.

118. Defendants actions against Plaintiffs is an unlawful employment practice prohibited by 42 U.S.C. § 1981.

119. The foregoing conduct constitutes illegal intentional discrimination prohibited by 42 U.S.C. § 1981.

120. As a direct, foreseeable, and proximate result of Defendants' unlawful actions complained of herein, Plaintiffs suffered injuries and damages in the form of lost wages and benefits, damage to their reputations, emotional distress, and other losses and damages. These injuries and damages continue into the present and will continue into the foreseeable future.

121. The unlawful actions taken by Defendants as alleged herein were taken in malicious, willful, wanton and reckless disregard of Plaintiffs' rights as guaranteed by 42 U.S.C. § 1981.

122. Defendants did the acts alleged with malice or reckless indifference to Plaintiffs' protected rights. Thus, Plaintiffs are entitled to recover punitive damages in an amount to be determined according to proof.

123. Plaintiffs request relief as hereinafter provided.

SECOND CLAIM FOR RELIEF

(42 U.S.C. 1983 AGAINST BOTH DEFENDANTS)

124. Plaintiffs incorporate paragraphs 1 through 123 as alleged above.

125. This claim is brought on behalf of all Plaintiffs and the Class they represent.

126. Dr. Gabow is the policy-making official for DH.

127. Dr. Gabow was personally involved in the conduct about which Plaintiffs complain. Dr. Gabow developed and implemented the official personnel policies and practices that resulted in systematic discrimination against non-white employees on the basis of their race, color and/or ethnic group, and/or in retaliation for complaining about illegal discrimination. Dr. Gabow approved, condoned, and/or ratified the illegal discriminatory conduct of DH managers/supervisors, and/or purposely ignored their illegal discriminatory conduct.

128. Defendants were aware of the illegal conduct about which Plaintiffs complain. They had an opportunity to prevent the harm from occurring. Defendants took no reasonable remedial steps to address Plaintiffs' complaints of illegal employment discrimination.

129. Defendants' failure to act caused Plaintiffs to suffer harm.

130. Despite the dozens of employment discrimination complaints filed against Defendants and of which Defendants were aware, Defendants failed to train managers/supervisors to properly handle recurring situations, specifically in how not to violate laws prohibiting employment discrimination based upon race, color, and/or ethnic group, and/or retaliating against employees for complaining about illegal discrimination.

131. Defendants knew training was needed to avoid likely illegal employment discrimination, in part, because of their extensive experience litigating employment discrimination complaints before administrative and judicial dispute resolution forums.

132. Defendants were deliberately indifferent to their need to train managers/supervisors not to engage in illegal employment discrimination.

133. Defendants' failure to train caused Plaintiffs to suffer harm.

134. Defendants' acts and omissions were carried out pursuant to the policies and practices of the Defendants. In adopting, authorizing, and ratifying those policies and practices, Defendants have been and continue to be deliberately indifferent to the risk of violating the federal and state statutory rights of the Plaintiffs and Members of the Plaintiff Class.

135. Alternatively and in combination, Defendants' deliberately indifferent failure to ensure adequate training of their employees has caused and threatens to continue causing, violations of the Plaintiffs' federal and state statutory rights.

136. Alternatively and in combination, Defendants' deliberately indifferent failure to ensure adequate monitoring and supervision of their employees' conduct has caused, and

threatens to continue causing, violations of the Plaintiffs' federal and state statutory rights.

137. Defendants were acting under the color of law.

138. Defendants' conduct constitutes illegal intentional discrimination and deprived Plaintiffs of their rights secured by 42 U.S.C. §§ 1981, 1983, 1988, and 2000e, *et seq.*

139. Plaintiffs request relief as hereinafter provided.

THIRD CLAIM FOR RELIEF

(42 U.S.C. 2000e, *et seq.* – TITLE VII AGAINST DH)

140. Plaintiffs incorporate paragraphs 1 through 139 as alleged above.

141. This claim is brought on behalf of all Plaintiffs and the Class they represent.

142. DH maintains a system that is intentionally discriminatory, subjective, and arbitrary with respect to the terms and conditions of employment for non-white employees, including, but not limited to, training, promotion, retention, assignment of duties, and granting of rights and benefits. The system results in disparate treatment and also has an adverse disparate impact on non-white employees. This system is not and cannot be justified by business necessity, but even if it could be so justified, less discriminatory alternatives exist that could equally serve any alleged necessity.

143. DH's discriminatory policies or practices described above have denied non-white employees equal employment opportunities, including, but not limited to, training, promotion, retention, assignment of duties, and granting of rights and benefits, resulting in the loss of past and future wages and other job benefits, and other losses and damages.

144. DH's conduct deprived Plaintiffs of their rights secured by 42 U.S.C. §§ 2000e, *et seq.* (Title VII) and 1988.

145. The foregoing conduct constitutes illegal intentional discrimination prohibited by Title VII.

146. Upon her request, the EEOC issued a "right to sue letter" with respect to the EEOC charge filed by Plaintiff Dr. Renee Atwell. The other three Plaintiffs are awaiting their letters.

147. Plaintiffs request relief as hereinafter provided.

FOURTH CLAIM FOR RELIEF

(Colorado §§ 24-34-402 and 25-29-107 AGAINST DH)

148. Plaintiffs incorporate paragraphs 1 through 147 as alleged above.

149. This claim is brought on behalf of all Plaintiffs and the Class they represent.

150. DH has maintained an intentionally discriminatory system with respect to the terms and conditions of employment, including, but not limited to, training, promotion, retention, assignment of duties, and granting of rights and benefits, resulting in the loss of past and future wages and other job benefits, and other losses and damages.

151. The foregoing conduct constitutes illegal intentional discrimination prohibited by Colorado §§ 24-34-402 and 25-29-107.

152. Plaintiffs request relief as hereinafter provided.

ALLEGATIONS REGARDING RELIEF

153. Plaintiffs, and the Class they seek to represent, have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiffs, and the Class they seek to represent, are now suffering and will continue to suffer irreparable injury from Defendants' discriminatory acts and omissions.

154. Defendants' actions have caused and continue to cause Plaintiffs and all Class Members substantial losses in earnings, work experience, and other employment benefits.

155. In addition, named Plaintiffs and the Class suffer and continue to suffer humiliation, embarrassment, and anguish, all to their damage in an amount according to proof.

156. Defendants performed the acts herein alleged with malice or reckless indifference. Thus, Plaintiffs and Class members are entitled to recover punitive damages in an amount according to proof.

RELIEF REQUESTED

WHEREFORE, Plaintiffs on behalf of themselves and all Members of the proposed Class respectfully request this honorable Court advances their case on the docket, orders a speedy trial, and causes this case in every way expedited, and, upon hearing, enter judgment for them on their Complaint against Defendants, jointly and severally, and provide the following relief:

- A. Certification of the case as a Class Action on behalf of the proposed Class;
- B. Designation of Representative Plaintiffs Dr. Renee Atwell, RPN Vivian Bradley, RN Terry Lee, and Dr. Yvette Martinez Hochberg as Representatives of the Class;

C. Designation of Representative Plaintiffs' counsel of record as Class counsel;

D. A declaratory judgment that the practices complained of herein are unlawful and violate 42 U.S.C. §§ 1981, 1983, 1988, 2000e, *et seq.*, Colorado Statutes § 24-34-402, *et seq.*, and Colorado Statutes § 25-29-107;

E. A preliminary and permanent injunction against Defendants, their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs, and usages set forth herein, and creation of a monitoring and reporting system to insure that injunctive and other relief are fully implemented;

F. An order that Defendants institute and carry out policies, practices, and programs that provide equal employment opportunities for all non-white employees, and that Defendants eradicate the effects of their past and present unlawful employment practices;

G. An order that Defendants pay, jointly and severally, all damages Plaintiffs sustained as a result of Defendants' illegal conduct, including, but not limited to, damages for emotional distress, humiliation, embarrassment, and mental anguish, back pay and benefits, compensatory, liquidated, exemplary and punitive damages, plus pre- and post-judgment interest and other statutory penalties;

H. An order reinstating Plaintiffs and Class members to those jobs they would have held but for Defendants' illegal policies and practices, or in lieu of reinstatements, an order for front pay and benefits;

I. Order Defendants to purge each Plaintiff's personnel file of all written disciplinary actions and other materials resulting from Defendants' unlawful actions;

J. Costs of action incurred herein, including reasonable attorneys' fees and expert fees, to the extent available under federal and state laws;

K. Retain jurisdiction over this action to assure full compliance with the Orders of the Court; and

L. Such other and further legal and equitable relief as this Court deems just and reasonable under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated this 13th day of February 2007.

/s/Anne T. Sulton
Anne T. Sulton

Anne T. Sulton, Ph.D., J.D.
Sulton Law Offices
Post Office Box 2763
Olympia, WA 98507
Telephone: (609) 468-6029
E-Mail: annesulton@comcast.net

Gregory A. Hall, J.D.
Law Office of Gregory A. Hall
Post Office Box 20922
Denver, CO 80220-8992
Telephone: (303) 320-0584
Fax: (303) 370-6992
E-Mail: Gregory@FederalLaw.com

Plaintiffs' Attorneys

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on February 13, 2007 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Attorney Brent Johnson: E-mail bjohnson@fwlaw.com

/s/ Anne T. Sulton
Anne T. Sulton
Attorney for Plaintiffs
P.O. Box 2763
Olympia, WA 98507
Phone: 609-468-6029
Fax: n/a
Email: annesulton@comcast.net