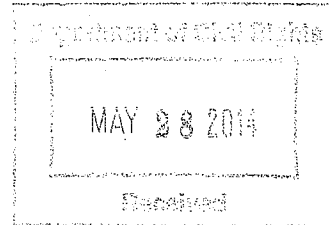


Morgan, Lewis & Bockius LLP
77 West Wacker Drive
Chicago, IL 60601
Tel: 312.324.1000
Fax: 312.324.1001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Lisa Stephanian Burton
617.341.7725
lbarton@MorganLewis.com



May 27, 2014

VIA FEDEX

Ms. Annie Weatherby-Flowers, Investigator
Madison Equal Opportunities Division
City-County Building, Room 523
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53703

Re: Natalee Cruse v. Nordic Consulting Partners, Inc., Case No. 20142065

Dear Ms. Weatherby-Flowers:

We represent Respondent Nordic Consulting Partners, Inc. ("Nordic") in connection with the above-referenced Complaint of Discrimination ("Complaint") filed by Complainant Natalee Cruse ("Ms. Cruse") with the Equal Opportunities Division ("the Division"). This letter and attached exhibits serve as Nordic's Position Statement.¹ As this Position Statement demonstrates, Complainant was never sexually harassed nor was she retaliated against in any way. After reviewing the facts, Nordic requests that the Complaint be dismissed in its entirety. Nordic expressly reserves the right to assert additional defenses and to amend or supplement the information provided in this Position Statement. Nordic also respectfully requests that the Division treat the information contained in this Position Statement, and the exhibits attached hereto, as confidential records, and that such records be withheld from public inspection.

I. INTRODUCTION

Ms. Cruse alleges sexual harassment by Nordic's President, Drew Madden, and that her subsequent termination was retaliatory. First, Ms. Cruse's sexual harassment claim fails because there is no evidence that Mr. Madden's alleged improper conduct was unwelcome. Indeed, Ms. Cruse's own conduct and words attest that she welcomed, and encouraged the very same conduct

¹ Nordic's answers to the Investigative Questionnaire are incorporated in this Position Statement.

Ms. Annie Weatherby-Flowers, Investigator
Page 2

she now claims as improper and harassing. Second, Nordic terminated Ms. Cruse's employment because of her repeated unsatisfactory performance in her role as Vice-President of Nordic's Marketing Department. Accordingly, after reviewing the facts set forth below Nordic respectfully requests that Ms. Cruse's Complaint be dismissed in its entirety.

II. FACTUAL BACKGROUND

A. Nordic Is Committed To Maintaining A Business Environment That Is Free From Discrimination And Harassment.

Founded in January 2010 and headquartered in Madison, Wisconsin, Nordic connects hospitals and healthcare providers with Epic certified consultants.²

As provided in its "Equal Employment" and "Sexual and Other Unlawful Harassment Policy" ("Policies"), Nordic is committed to maintaining a business environment that is free from all types of unlawful discrimination and harassment, including without limitation, on the basis of sex. *See* Employee Handbook at 16, attached as Exhibit ("Ex.") A; *see also* Ms. Cruse's Acknowledgement of Employee Handbook, attached as Ex. B. Nordic does not tolerate discrimination or harassment, and the Policies describe how employees may report alleged discrimination, harassment or other conduct that the Policies strictly prohibit. *Id.* Furthermore, Nordic does not tolerate retaliation of any kind and the Policies expressly state that "no adverse action or retaliation will be allowed against an employee because they reported harassment." *See* Ex. A at 16. Prior to Ms. Cruse, there has never been any employee Complaint of alleged harassment, discrimination, and/or retaliation filed against Nordic.

B. Ms. Cruse Develops A Mutual Friendship With Mr. Madden.

Ms. Cruse began working for Nordic on approximately October 4, 2012 in a dual role as Senior Consultant and Internal Account Manager. She later transitioned to a full-time position as Account Manager, and then Nordic promoted her to Director of Marketing in February of 2013. Soon after starting at Nordic, Ms. Cruse developed a friendship with Nordic's President Mr. Madden. Ms. Cruse and Mr. Madden often spent time socially together outside the office with Mr. Madden's wife and Ms. Cruse's significant other. As friends do, the two often exchanged pictures of their loved ones, including Mr. Madden's children and Ms. Cruse's family, as well as stories of their travels and plans for the future – Ms. Cruse dreamed of opening a doggy day-care. In fact, Ms. Cruse would refer to herself as Auntie Natalee with regard to Mr. Madden's young children and the two shared inside jokes, and exchanged joking banter that was at times sexual in nature. To be clear, however, their relationship was purely platonic.

² "Epic" refers to Epic Systems Corp., which makes software for mid-size and large medical groups, hospitals and integrated healthcare organizations.

Ms. Annie Weatherby-Flowers, Investigator
Page 3

C. Mr. Madden And Ms. Cruse Attend Nordic's Holiday Party.

On December 14, 2012 a few months after Ms. Cruse began working at Nordic, Mr. Madden and Ms. Cruse attended Nordic's holiday party. At the end of the evening the two found themselves sitting at a table with at least two other Nordic employees. While the other two Nordic employees engaged in joking banter that was at times sexual in nature, Mr. Madden made no such comments. Contrary to what Ms. Cruse alleges in her Complaint, after the party concluded, Mr. Madden and Ms. Cruse – who also stayed until the end of the evening – shared a cab back to Nordic, where Ms. Cruse drove home and Mr. Madden continued on in the same cab back to his home. Upon safely returning to their respective homes, Mr. Madden and Ms. Cruse texted one another to make sure they both got home safely. Tellingly, the first time Ms. Cruse ever made reference of this event was after her separation from the Company.

D. At The Conclusion Of A Conference In New Orleans, An Exhausted Mr. Madden Falls Asleep In Ms. Cruse's Room After She Offers To Let Him Sleep There.

In the beginning of March 2013, nearly all of Nordic's Business Development and Executive Team members went to New Orleans to attend a conference. During the conference, the male and female employees stayed in separate houses. At the conclusion of the conference, all of the employees in attendance met up at the "women's house." While everyone was socializing, Mr. Madden became tired from a grueling week of meetings and events, and wanted to find a place to rest. As such, he asked the entire group that was present whose bed he could take a quick nap on, and Ms. Cruse in front of others offered hers. Ms. Cruse's bed was one of several beds in the house that Nordic rented for all the women, including, at least three other women who were present in the house that evening. At the time Mr. Madden laid down in Ms. Cruse's room there were approximately a dozen people still in the house. Around an hour after falling asleep in the room, Mr. Madden awoke to find Ms. Cruse entering the room. Ms. Cruse then asked Mr. Madden to close his eyes while she changed, and then stated she would sleep at the foot of the bed Mr. Madden was in. Alarmed by Ms. Cruse's apparent willingness to undress in front of him, Mr. Madden immediately got up and left the room before Ms. Cruse could change. Mr. Madden then walked back to the men's house with Vivek Swaminathan, Chief Consulting Officer. Once again, Ms. Cruse made no mention of this incident until after separation.

E. Mr. Madden Takes A Photo Of Ms. Cruse While Sitting In The Back Of A Full SUV, To Preserve A Jovial Moment.

In April 2013, Mr. Madden, Ms. Cruse and Nordic CEO Mark Bakken attended a conference together in Chicago. After the conclusion of the conference, Mr. Bakken, Mr. Madden, and Ms. Cruse traveled in Mr. Bakken's SUV to Rivers Casino with approximately four other current and prospective customers. Because there were not enough seats in the SUV, Mr. Madden and Ms. Cruse chose to sit in the back of the SUV rather than take a cab. The two were positioned facing each other with their backs against the side windows and their feet towards the middle of the car. The mood in the car was

Ms. Annie Weatherby-Flowers, Investigator
Page 4

jovial with everyone singing songs, and during the ride Mr. Madden snapped a photo of Ms. Cruse sitting in the back of the SUV to capture the humorous moment. The photo was not an “upskirt photo,” but rather, was taken at a normal angle, did not show Ms. Cruse’s underwear, and if anything, revealed approximately six inches of Ms. Cruse’s legs above the knee. Just after snapping the picture and capturing the funny moment, Mr. Madden texted it to Ms. Cruse. After seeing the photo, Ms. Cruse laughed about how horrible her legs looked and asked Mr. Madden to delete the photo. Mr. Madden handed his phone to Ms. Cruse so she could personally delete the text message he had just sent as well as the original photo from his phone – which she did. That evening at the casino, Ms. Cruse never mentioned anything about the photo to Mr. Bakken, nor did she act upset in any way. Once again, Ms. Cruse made no mention of this incident to anyone at the Company until after her employment separation.

The deleted photo became an inside joke between Mr. Madden and Ms. Cruse, with both of them sending the other messages referencing the photo, even referring to it as an “upskirt photo,” despite the fact that it clearly was not. For example, within days of the alleged photo being taken, Ms. Cruse sent Mr. Madden a selfie of herself eating an onion ring and another of her smelling her own armpit while giving thumbs up. Ms. Cruse told Mr. Madden that she sent these new photos as a “replacement” for the deleted photo. Escalating the joke, Ms. Cruse next sent Mr. Madden a text picture of her dog in an aroused state with his legs open while lying on his back on her couch, and said that upskirt photos of dogs were “totally” ok.

F. Ms. Cruse And Mr. Madden Engage In Joking Banter Over Text Messages.

In mid-May 2013, Ms. Cruse asked Mr. Madden for a week off in July because she was taking a class for work, and Mr. Madden responded by making a joking reference to “modeling class,” “class on how to walk to your desk and cross your legs,” and “pole dancing class.” At the time, the “pole-dancing” reference applied to a Groupon for pole-dancing they had both seen and the “cross your leg” reference applied to a Nordic marketing video they had both seen. As such, Ms. Cruse responded to Mr. Madden’s texts by stating “[f]unny, but no. It’s a marketing class.”

Thereafter, Ms. Cruse expressed concern to Mr. Madden about an error in a Nordic press release for which she was responsible; Mr. Madden responded “[d]rink two shots of something. Wax your goat and have a great weekend.” The “goat” reference was another inside joke originally from a marketing meeting, at which Ms. Cruse discussed the possibility of getting a live goat, but expressed reservations because the goat’s long hair would have to be trimmed. Another Nordic employee joked that instead of sheering the goat, she could wax the goat. Ms. Cruse ended the conversation regarding the “goat” text by wishing Mr. Madden and his son good night.

In April 2013, Mr. Madden texted “Don’t pee on your boots! Or your boobs. #autocorrect.” Ms. Cruse responded to Mr. Madden’s message by texting, “I don’t usually pee on my ‘boobs’.”

On May 1, 2013, Mr. Madden texted Ms. Cruse a series of messages regarding the “Epic and former

Ms. Annie Weatherby-Flowers, Investigator
Page 5

Epic boys" perception of Ms. Cruse. Ms. Cruse responded by texting, "[s]ounds like smart marketing to me. :)" That same day, Ms. Cruse sent Mr. Madden a text message to "[T]hank you again for all your support and for just being you. I appreciate you m [sic] More than I can say."

In July of 2013, Ms. Cruse asked Mr. Madden if another employee could take her place at a dinner event because she claimed to not feel well. When Mr. Madden later asked Ms. Cruse how she felt, and she said it was food poisoning, Mr. Madden jokingly responded "[s]o morning sickness is completely off the table???" In response, Cruse texted "I may have forgotten to tell you: I had my period last week." This was not the first time that Ms. Cruse had made comments to Mr. Madden regarding her menstrual cycle. Likewise, Ms. Cruse often made comments to Mr. Madden regarding the status of her sex life, mentioning to him on more than one occasion that her busy schedule impacted the quality of her sex life.

Also in July of 2013, Mr. Madden jokingly asked Ms. Cruse if she ever considered dumping her boyfriend and dating another Nordic employee. Mr. Madden then made a vague reference to another employee who helped to screw in shelves at Ms. Cruse's office – an inside joke between Ms. Cruse and Mr. Madden regarding the same employee once hanging shelves in Ms. Cruse's office so high that they were almost unusable. Ms. Cruse jokingly responded that "[n]obody's gonna screw in my shelves but me" and texted Mr. Madden an image of herself flexing her arm and making a muscle.

In late August of 2013, Mr. Madden and Ms. Cruse sent each other various text messages images and then tried to guess what the other was trying to communicate. Ms. Cruse participated in these exchanges, at one point sending Mr. Madden an emoticon image of a happy face winking, and later two thumbs up with two wine glasses.

In late Summer and early Fall 2013, Mr. Madden and Ms. Cruse exchanged text messages about "Spanx." Ms. Cruse *initiated* this discussion by telling Mr. Madden that she purchased her first pair of Spanx, but that they did not fit. Thereafter, Ms. Cruse texted Madden "[t]hey look best with Spanx" in response to a question from Mr. Madden.

Ms. Cruse once again made no reference to *any* of these exchanges until after her separation from Nordic.

G. Mr. Bakken, Mr. Madden, And Ms. Cruse Attend A Conference In Denver In June 2013.³

In June 2013, Mr. Bakken, Mr. Madden, and Ms. Cruse attended a conference together in Denver. During one of the conference's social events, at which Mr. Madden and Ms. Cruse, as head of marketing, were expected to attend and network with clients, Mr. Madden noticed that Ms. Cruse was absent and went to her room to make sure she was alright. When Ms. Cruse did not answer, Mr. Madden returned to the social event. At no point during the conference was Mr.

³ Complainant alleges this conference took place in Boston, when in fact it took place in Denver.

Ms. Annie Weatherby-Flowers, Investigator
Page 6

Madden intoxicated, nor did he make any comments regarding Ms. Cruse's physical attributes. During the conference Mr. Madden did send Ms. Cruse a text message in which he made a passing reference to the joke regarding a "goat wax." *See supra* § II.F. As part of the on-going joke, the next day Ms. Cruse sent a picture of a baby goat to Mr. Madden.

After the conclusion of the conference, Ms. Cruse wistfully texted Mr. Madden: "I always wish you and I had more time, but I'm very happy we get to spend weeks like this together." Soon thereafter, Ms. Cruse also sent Mr. Madden a list of "pros" from working at Nordic, including, but not limited to the opportunity to "work with [Mr. Madden]," "peers [Ms. Cruse] respect[ed]," "leaders [Ms. Cruse] admire[d]," "open communication," and a "sense of teamwork/family." *See Pro/Con List*, attached as Ex. C. Notably, Ms. Cruse did not list any "cons" to working at Nordic. *Id.*

H. Ms. Cruse Is Promoted to Vice-President Of Marketing

On July 11, 2013, Nordic promoted Ms. Cruse to Vice-President of Marketing. That day, Ms. Cruse stopped by Mr. Madden's office to sign her offer letter, which included her salary and benefits information. Mr. Madden printed out two copies of the letter, one of which jokingly referenced their joke about the SUV picture. *See supra* § II.E. While Mr. Madden jokingly showed Ms. Cruse this copy of the letter, he asked her to sign the copy that did not have the joke printed on it. *See Signed Offer Letter*, attached as Ex. D.

I. Mr. Madden Makes Alleged Comments Regarding Ms. Cruse's Bra Color During A Meeting With Her ("Bra Incident").

Sometime in mid-Summer 2013, Mr. Madden and Ms. Cruse met in his office for their weekly marketing meeting. At the close of the meeting, Mr. Madden commented to Ms. Cruse that a nude bra should be worn with a white shirt – at the time she was wearing a noticeable white bra with a white shirt. In response to Mr. Madden's comments, Ms. Cruse laughed and said, "wow...I guess you know more about this stuff than I do." Ms. Cruse made no mention of this incident at the time but a few months later she told Peggy Bakken, Marketing Director, with whom she shared an office. *See infra* § II.L. Around this same time, Ms. Cruse texted Mr. Madden "I am immensely proud to work with you."

J. Ms. Cruse's Live-In Boyfriend Begins Working At Nordic.

On July 15, 2013, Ms. Cruse's live-in boyfriend Brian Matsuura began working at Nordic as Director of Employee Relations. Ms. Cruse encouraged Mr. Matsuura to apply for the position and referred him to Nordic.⁴ Mr. Matsuura was encouraged to apply, in part because of Ms.

⁴ Mr. Matsuura is still employed by Nordic.

Ms. Annie Weatherby-Flowers, Investigator
Page 7

Cruse's positive experience at Nordic.

K. Ms. Cruse Struggles To Meet Performance Expectations.

Soon after Ms. Cruse's promotion to Vice-President Marketing, it became increasingly obvious to those working with her, and even to Ms. Cruse personally, that she was struggling to meet the performance expectations of her new position. On August 12, 2013 in an apparent moment of self-evaluation, Ms. Cruse texted Mr. Madden:

- I'm drowning – having a really hard time keeping up with all that's coming at marketing and it's about to get worse with KE going back to school. I'm concerned that I've become a bottleneck for folks...[W]hether I like it or not, I need some help now. I really appreciate your offer to talk tonight but if it's okay, I'll hold off till Weds – I want to be able to come to you with a summary of what's not getting done, what's needed, etc. That, and I have several things I need to knock out yet before tomorrow. Thank you, though. I really do appreciate [Mr. Madden's offer to discuss concerns regarding the marketing department].

Ms. Cruse's self-acknowledged performance deficiencies did not improve and included her: continually missing deadlines for key initiatives; failing to send out correspondence to Nordic's clients on Nordic's behalf; failing to notify clients that Nordic was hosting an event at an upcoming conference; failing to pursue recommended meetings with marketing industry leaders; and missing critical registration deadlines for an upcoming College of Healthcare Information Management Executives ("CHIME") conference. Consequently, on September 20, 2013, Mr. Madden met with Ms. Cruse to discuss her performance deficiencies and the need to improve. Likewise, around this same time, Mr. Bakken also had a conversation with Ms. Cruse wherein they discussed some of his on-going issues and concerns with the marketing department which Ms. Cruse headed. At the time, Ms. Cruse had expressed interest in starting a doggy daycare. Wanting to offer his support of this new venture, Mr. Bakken suggested that Ms. Cruse would make a good CEO of a much smaller start-up company.

L. Ms. Cruse Tells Ms. Bakken About The Alleged Bra Incident.

On September 25, 2013, Mr. Madden and Ms. Cruse went to Echo Tap across the street from Nordic to have their regular weekly meeting. After the meeting, Ms. Cruse spoke to Peggy Bakken, Marketing Director and wife of Mr. Bakken, with whom she shared an office. For the first time, Ms. Cruse commented to someone at Nordic about the alleged Bra Incident that happened approximately two months prior. *See supra* § II.I. Ms. Bakken then told Ms. Cruse that she had to notify Mr. Bakken of Ms. Cruse's comments regarding Mr. Madden's conduct during the alleged Bra Incident. *Id.* During this conversation, Ms. Cruse did not make any complaints or express *any* other concerns regarding Mr. Madden's interactions with her. That *same evening*, immediately after speaking with Ms. Bakken, Ms. Cruse texted Mr. Madden:

Ms. Annie Weatherby-Flowers, Investigator
Page 8

- I'm glad we talked too. I meant to tell you that one year ago today you, Mark and I had lunch together at Echo... I know how much you've supported and promoted me – it's one of the things I love most about you – your kindness and generosity and genuine compassion for people.

Later that same evening, Ms. Cruse apologized for no longer being able to attend a concert with Mr. Madden and his wife because of a prior dinner meeting commitment, but thanked him for the offer and expressed how much she "would love to be able to go."

M. Mr. Bakken Meets With Ms. Cruse To Discuss Her Conversation With Ms. Bakken

After learning of the Bra Incident, Ms. Bakken informed Mr. Bakken about her conversation with Ms. Cruse. Thereafter, Mr. Bakken proactively reached out to Ms. Cruse and arranged to meet her. On September 27, 2013, the two met at an area coffee shop to discuss what Mr. Bakken had learned as well as any concerns Ms. Cruse might have. Mr. Bakken arranged to meet Ms. Cruse out of the office in the hope that she would feel more comfortable. During the meeting, Mr. Bakken assured Ms. Cruse that as CEO it was his job to make sure Nordic has a culture and work environment where individuals could feel safe. Ms. Cruse then informed Mr. Bakken that Mr. Madden had made comments regarding her bra color during a meeting in his office. Ms. Cruse did not complain or express *any* other concerns regarding Mr. Madden's alleged conduct. In response, Mr. Bakken assured Ms. Cruse that he was taking the matter seriously and would take any necessary steps to ensure it did not happen again. Contrary to Ms. Cruse's allegations, Mr. Bakken never mentioned the existence of situations in which he observed Mr. Madden acting inappropriately with other women. Throughout the discussion, Ms. Cruse repeatedly insisted that Mr. Bakken not take any action because the whole situation was not a big deal. Also during the conversation, Mr. Bakken and Ms. Cruse discussed how Ms. Cruse saw herself in her new role as Vice-President. Ms. Cruse candidly acknowledged that she was not accomplishing as much as she had hoped, and expressed concern about going way over the marketing budget for the new sales collateral and Nordic website. Mr. Bakken let her know that he was available to support Ms. Cruse. After meeting with Ms. Cruse, Mr. Bakken decided to take prompt remedial action in an effort to eliminate the risk of a similar incident happening in the future.

N. Mr. Bakken Notifies Mr. Madden Of Ms. Cruse's Alleged Statements And Mr. Madden Reaches Out To Apologize To Her.

On October 21, 2013, when they were both traveling together for work, Mr. Bakken spoke to Mr. Madden about the alleged Bra Incident. Mr. Madden candidly admitted to having a conversation with Ms. Cruse wherein they discussed the correct color bra to wear with a white shirt. Mr. Bakken explained to Mr. Madden that his behavior was not appropriate in the workplace and that it should not happen again. Mr. Madden was apologetic and discussed with Mr. Bakken a desire to apologize to Ms. Cruse personally.

Ms. Annie Weatherby-Flowers, Investigator
Page 9

Thereafter, Mr. Madden reached out to Ms. Cruse to see if she was willing to meet with him. The two met and had a conversation during which Mr. Madden apologized for his comment and to the extent she was offended in any way. In response, Ms. Cruse "swore on Hudson's [her oldest dog's] life" that she was not offended, and insisted that her comments regarding Mr. Madden's conduct during the alleged Bra Incident had been blown out of proportion by Ms. Bakken. Consistent with her apparent lack of concern regarding the alleged Bra Incident, after the meeting Ms. Cruse texted Mr. Madden the following:

- Hi. Just wanted to say thanks for making time to talk today. I wish we'd had more time but did really want to say at least those few things before any more time passed. I'm sorry for this situation we're in and all the awful thoughts that've crossed your mind in the last couple weeks. I want to repair things. Though it's contrary to how things look from your vantage point right now, I care deeply about you and about Nordic, and my goal has always been to help both be as successful as possible. Hope your trip goes well and that we can chat more later this week.

During the time period after Ms. Cruse commented to Ms. Bakken about Mr. Madden's behavior, Ms. Cruse and Mr. Madden continued to exchange collegial text messages, with Ms. Cruse expressing how much she "miss[ed] [their] chats. :-)" and how it was "[-;-) [n]ice chatting today. Thanks." At no point during her tenure, did Mr. Madden ever threaten Ms. Cruse or say that he "wasn't going to protect her any longer." Rather, Mr. Madden expressed to Ms. Cruse that he had stood up for her and supported her in the past, to her benefit.

O. Ms. Cruse Transitions To Eric Sampson As Her Manager, And Ms. Cruse Talks Of Resigning.

Around this same time, Ms. Cruse was transitioned from Mr. Madden as supervisor to Eric Sampson, Chief Operations Officer, as part of the remedial action taken after Ms. Cruse told Ms. Bakken about the Bra Incident. Mr. Sampson was selected as Ms. Cruse's new Manager because of his background in marketing. During Ms. Cruse's first meeting with Mr. Sampson she proactively informed him that the alleged Bra Incident was not an issue for her and was blown out of proportion.

As part of his transition to Ms. Cruse's supervisor, on November 13, 2013, Mr. Sampson met with Ms. Cruse to get a sense of what was on the marketing department's plate. Mr. Sampson also offered to support Ms. Cruse in prioritizing what tasks needed to be done, because it was increasingly apparent to the management team that many of the department's critical tasks were not being completed. Within days of their meeting, Ms. Cruse stopped by Mr. Sampson's office and shared that she was considering resigning. Mr. Sampson responded by encouraging her to stay and to resolve the performance issues she was having within the marketing department. Mr. Bakken also heard that Ms. Cruse was contemplating resigning and he too reached out to Ms. Cruse to discuss. Based on their conversation Mr. Bakken felt that Ms. Cruse felt overwhelmed

Ms. Annie Weatherby-Flowers, Investigator
Page 10

and unable to meet performance expectations so he reiterated to Ms. Cruse that she had support from the entire management team.

P. Ms. Cruse Meets Again With Mr. Bakken In Early November, 2013.

In early November, 2013, Mr. Bakken met again with Ms. Cruse to check-in with her. Mr. Bakken notified Ms. Cruse that Mr. Madden was taking her alleged concerns regarding the Bra Incident very seriously and genuinely felt badly about the situation. At the same time, the issues and lack of progress within Nordic's Marketing Department were becoming increasingly more apparent, and therefore, Mr. Bakken also spoke with Ms. Cruse about his concerns, including her lack of responsiveness and failure to complete tasks in a timely manner. While Mr. Bakken offered his assistance in resolving the identified issues and concerns, Ms. Cruse inexplicably rejected Mr. Bakken's offer.

Q. Ms. Cruse Is Absent Allegedly With Mononucleosis For Approximately Three Weeks.

Beginning on January 14, 2014, Ms. Cruse was absent from work for approximately three weeks allegedly due to mononucleosis ("mono"). While Ms. Cruse never supplied the company with any medical documentation of her diagnosis, Mr. Matsuura told Nordic executives that Ms. Cruse had visited a doctor and had been diagnosed with mono.

R. Ms. Cruse Fails To Rectify Her Performance Deficiencies And Is Terminated As A Result.

Prior to and during her extended absence, Mr. Bakken, Mr. Sampson and other members of Nordic's Executive Team were increasingly made aware of deficiencies in Ms. Cruse's performance, both from external and internal clients. Nordic's Marketing Department was in danger of failing because of Ms. Cruse's mismanagement and non-responsiveness, and as a result, Nordic Executives made the decision to terminate Ms. Cruse's employment. Therefore, on February 3, 2014, Mr. Bakken and Mr. Sampson met with Ms. Cruse in Mr. Sampson's office to discuss her separation. At the meeting, Mr. Bakken and Mr. Sampson notified Ms. Cruse that her employment was ending because of unsatisfactory performance, including, but not limited to the following:

- Failure to respond to emails from Mr. Swaminathan regarding KLAS scores – similar to a Consumer Reports for healthcare IT products and critical to Nordic's business and planning – for nearly a month;
- Failure to respond for approximately sixty (60) days to Nick Daar, Senior Consultant regarding his request to sponsor a Chicago area user group meeting for Nordic's customers. When questioned about her failure to respond in a timely manner to Mr. Swaminathan, Ms. Cruse acknowledged that she would have fired herself for such

Ms. Annie Weatherby-Flowers, Investigator
Page 11

conduct;

- Mismanagement of the relationship between Shine, a boutique marketing firm, and Nordic by arranging for the execution of a contract that locked Nordic into hundreds of thousands of dollars of potentially unnecessary expenditures;
- Failure to draft marketing documents for Shine within a reasonable time frame and up to the level of quality expected;
- Failure to send out nominations for the HISTalk's HISSies awards despite assurances to Mr. Swaminathan that she would handle;
- Failure to demonstrate progress on Nordic's new website;
- Failure to attend Nordic's annual leadership meeting, despite being in town;
- Failure to attend scheduled meeting with Adam Dial, Vice-President of Client Relations, during regular business hours, and instead attended Humane Society meeting;
- Failure to complete a deal for Nordic's new billboard at the airport; and
- Mismanagement of selection and purchase of new backpacks for consultants.

Tellingly, during this meeting Ms. Cruse made no mention of any of the incidents she now claims as intolerable. After her separation, Ms. Cruse sent Ms. Bakken a message in which she stated

- Hi Peggy. I talked to Mark. While I was surprised to hear what they'd decided, I want you to know I'm okay. And that I certainly don't blame you in any way. This is for the best – not for the reasons they've cited, but in the end it's the right outcome. And in a little bit of time, everything will be alright – for me, for the marketing team, for Nordic. Don't forget how wonderful I think you are! :-)

See Message from Mr. Cruse to Ms. Bakken, attached as Ex. E.

III. RESPONSE TO COMPLAINT ALLEGATIONS

A. **Ms. Cruse's Allegations Of Harassment Fail Because There Is No Evidence That Any Of The Alleged Conduct Was Unwelcome.**

To establish an actionable claim for sexual harassment, Ms. Cruse must prove that: (1) she was subjected to *unwelcome* harassment; (2) the harassment was based on her sex; (3) the alleged harassment was so severe or pervasive that it created a hostile or abusive working environment; and (4) there is a basis for employer liability. See Mad. Gen. Ord. § 39.03(8)(K); see also *Atanus v. Perry*, 520 F.3d 662, 676 (7th Cir. 2008). Sexual conduct becomes unlawful only when it is *unwelcome*. *Id.*

While Ms. Cruse alleges that she was subjected to sexual harassment based on Mr. Madden's

Ms. Annie Weatherby-Flowers, Investigator
Page 12

alleged conduct *see* Complaint 1-3, she cannot possibly sustain a claim because as a threshold matter, Ms. Cruse welcomed, actively participated in and even incited Mr. Madden's alleged conduct.⁵ As detailed herein, Ms. Cruse not only texted Mr. Madden multiple inappropriate photographs (*supra* § II.E), she made repeated comments to him about her menstrual cycle, quality of her sex life, and other sexually tinged topics. *Id.* § II.F. Far from taking offense to Mr. Madden's text messages and other correspondence that was at times sexual in nature, Ms. Cruse eagerly responded to Mr. Madden, continually praising him and thanking him for his support and friendship. *Id.* § II.G.

For nearly a year, Ms. Cruse failed to complain or even object to Mr. Madden's alleged behavior towards her. *See supra* § II. When Ms. Cruse did say something to Ms. Bakken on September 25, 2013, she only mentioned *one* incident that happened multiple months prior – the Bra Incident. *Id.* § II.L. Thereafter, it was Ms. Bakken (her subordinate) that brought Mr. Madden's alleged inappropriate conduct to the attention of Mr. Bakken. *Id.* Once the comment became known, Ms. Cruse continued to insist that she did not want to lodge a formal complaint and that the situation was blown out of proportion. Ultimately, Ms. Cruse had multiple opportunities in which to raise an objection to Mr. Madden's alleged behavior, but she did not. Rather, Ms. Cruse continued to insist that the alleged Bra Incident was blown out of proportion, and that she was not offended in the least – going so far as to swear on her oldest dog's life that she was not upset. *Id.* § II.N.

At the same time, Ms. Cruse continued to praise Mr. Madden in text messages and engage in friendly banter with him. *Supra* § II.N. In sum, whether viewed individually or cumulatively, Ms. Cruse's allegations concerning Mr. Madden's conduct are insufficient to establish that the alleged conduct was *unwelcomed*.

B. Ms. Cruse's Retaliation Claim Is Without Merit.

Ms. Cruse alleges that she was subjected to unlawful retaliation on three separate occasions:

- First, she alleges that Mr. Madden retaliated against her by threatening her during a meeting in mid-October 2013. *See* Complaint 4.
- Second, she alleges that, during a meeting in early November, Mr. Bakken blamed her for the fact that Mr. Madden was “a wreck”; told her that she needed to “fix the situation with Madden...TODAY”; and conveyed to her for the first time that he had concerns about Nordic's marketing department. *Id.*

⁵ In Wisconsin a Complaint of Discrimination is timely so long as it is filed within 300 days of the alleged discriminatory act. Ms. Cruse failed to meet this deadline with respect to events predating July 18, 2013, and therefore, her sexual harassment claim fails to the extent it relies on allegations prior to that date.

Ms. Annie Weatherby-Flowers, Investigator
Page 13

- Third, she alleges that, on February 3, 2014 she was terminated in retaliation for “oppos[ing] sexual discrimination and sexual harassment in the workplace.” *Id.*

To establish a prima facie case of retaliation, a complainant must show that: (1) she engaged in statutorily protected activity; (2) she suffered an adverse employment action; and (3) there was a causal connection between the two. *See Boumedhi v. Plastag Holdings, LLC*, 489 F.3d 781, 792 (7th Cir. 2007); *Hare v. Potter*, 220 F.App’x 120, 127 (3d Cir. 2007) (citing *Burlington N. & Santa Fed Ry. Co. v. White*, 548 U.S. 53 (2006)); *see also* Mad. Gen. Ord. § 39.03(9). If the complainant establishes a prima facie case of retaliation, the burden shifts to the respondent to advance a legitimate, non-retaliatory reason for its actions. *Id.* If the respondent articulates a legitimate, non-retaliatory reason, the burden shifts back to the plaintiff to prove that the non-retaliatory reason is merely a pretext for retaliation. *Id.* Because Cruse cannot satisfy all of these elements with respect to any of the three incidents of retaliation alleged in her Complaint, her claim should be dismissed.

First, Ms. Cruse’s allegation that Mr. Madden threatened her after she allegedly complained about sexual harassment is a blatant mischaracterization of events. Soon after Mr. Bakken notified Mr. Madden of Ms. Cruse’s alleged concern regarding his bra color comment, Mr. Madden arranged to speak with Ms. Cruse to apologize. Shortly thereafter, when the two spoke, Mr. Madden did in fact apologize to Ms. Cruse, and Ms. Cruse swore on her oldest dog’s life that she was not offended by the Bra Incident and that her concerns had been blown out of proportion. *Supra* § II.N. Ms. Cruse’s own text messages to Mr. Madden are consistent with this version of events. While in subsequent meetings Mr. Madden expressed that he had stood up for Ms. Cruse and supported her in the past, to her benefit, there is zero evidence that he threatened Ms. Cruse or said he “wasn’t going to protect her any longer.” Not surprisingly then, during the time period after Ms. Cruse allegedly complained about Mr. Madden’s behavior, Ms. Cruse and Mr. Madden continued to exchange collegial text messages in which Ms. Cruse expressed how much she enjoyed speaking with Mr. Madden. *Id.* Ultimately, Ms. Cruse’s attempt to twist any conversations with Mr. Madden into something that can be construed as retaliation is completely unfounded. There is *no* credible evidence—just Ms. Cruse’s allegations—that she was threatened or subjected to any adverse action during *any* meeting with Mr. Madden, let alone one that allegedly took place in mid-October 2013. Accordingly, Ms. Cruse cannot establish the requisite elements needed to sustain her retaliation claim based on the alleged mid-October 2013 meeting with Mr. Madden.

Second, Ms. Cruse’s allegation regarding Mr. Bakken’s alleged statements during a meeting in early November 2013 fails because there is no credible evidence that Ms. Cruse was subjected to any adverse action during the alleged meeting with Mr. Bakken. Contrary to Ms. Cruse’s assertion, Mr. Bakken never told Ms. Cruse to “fix” any situation with Mr. Madden. Rather, Mr. Bakken notified Ms. Cruse that Mr. Madden was taking this matter very seriously and genuinely felt badly about it. *See supra* § II.P. Also, Mr. Bakken reached out to Ms. Cruse because the issues and lack of progress within Nordic’s Marketing Department were becoming increasingly

Ms. Annie Weatherby-Flowers, Investigator
Page 14

more apparent, and therefore, could not be ignored. While Mr. Bakken offered his assistance in resolving the identified issues and concerns, Ms. Cruse inexplicably rejected Mr. Bakken's offer of assistance. *Id.* Accordingly, like her allegations above, Ms. Cruse cannot establish the second or third elements needed to sustain her retaliation claim based on the November 2013 meeting with Mr. Bakken.

Finally, Ms. Cruse's claim of retaliatory termination fails, because even assuming Ms. Cruse could establish a prima facie case of retaliatory termination, she cannot demonstrate that Nordic's legitimate, non-discriminatory business reason for her separation – unsatisfactory performance – was pretextual. *See also Fuentes v. Perskie*, 32 F.3d 759, 763-65 (3d Cir. 1994) (discussing difficult burden associated with demonstrating pretext). Contrary to her assertion, Ms. Cruse's employment was not terminated for allegedly "oppos[ing] sex discrimination and sexual harassment in the workplace"; Ms. Cruse's employment terminated because of her repeated failure to meet performance expectations. *See supra* § II.R. This conclusion is supported by the fact that Ms. Cruse's performance deficiencies *predate* any alleged complaint that she made regarding Mr. Madden's alleged conduct (*supra* II.K), and that even after she complained about the alleged Bra Incident, Mr. Bakken, Mr. Madden, and Mr. Sampson continued to offer their assistance and guidance in helping Ms. Cruse to improve her performance. *Supra* § II.M-P. Ultimately, Ms. Cruse can advance nothing but her subjective belief that the stated and documented reasons for her termination were pretextual. Accordingly, Ms. Cruse cannot possibly establish the elements needed to sustain a retaliation claim based on her termination.

IV. CONCLUSION

Because there is no basis in fact for Ms. Cruse's claims of sexual harassment or retaliation, Nordic respectfully requests that Ms. Cruse's Complaint of Discrimination be dismissed in its entirety.

Please do not hesitate to contact me should you have any questions.

Respectfully,



Lisa Stephanian Burton

Attachments

cc: Katherine E. Kenny
Michael R. Fox