FILED
DEPT 18
IN OPEN COURT

JAN - 7 2021

PIERCE COUNTY, Clerk
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THE HONORABLE STANLEY J. RUMBAUGH
Trial Set: Tuesday, December 8, 2020
Time: 9:00 a.m.

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. COLMAR, INC., et al. Defendants.	NO. 19-2-12542-5 COURTS DECISION FOLLOWING BENCH TRIAL WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO CR 52 (a) AND ORDER

The Court conducted the trial of this case on December 8, 2020 utilizing Zoom Technology. The trial was to determine the extent of damages and injunctive relief to be awarded to Plaintiff State of Washington and Ms. Sarai Alhasawi. Ms. Alhasawi had been the object of discriminatory conduct while employed by Defendant Colmar, Inc.

The State's Motion for Summary Judgment on the issue of Defendant's violation of the Washington Law Against Discrimination (WLAD) at RCW 49.60 et seq and the State's Healthy Starts Act (HSA) at RCW 43.10 et seq. was heard on December 4, 2020 and the Court issued a December 8, 2020 order granting the State's motion. The Order Granting Plaintiff's Motion for Summary Judgment resulted in a determination that Defendants were liable for violating the WLAD and the HSA, reserving the issue of remedies for trial.

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The Court did not make specific Findings of Fact or Conclusions of Law in the summary judgment order. Those are not required by Court Rule 56, as appellate review is conducted on the entire record considered by the court when issues are decided on summary disposition. Under that scope of review, specific Findings of Fact and Conclusions of Law are rendered superfluous.

In all proceedings in this case, The State of Washington (State) was represented by ROBERT W. FERGUSON, Attorney General, and Assistant Attorneys General ASHLEY MCDOWELL and CHALIA STALLINGS-ALA'ILIMA; TERRY ROBINSON appeared on behalf of Defendants, and the trial judge was the Honorable Stanley J. Rumbaugh. The Court, having heard testimony, examined and weighed evidence, and heard arguments, and in all premises being fully advised, hereby makes the following:

I. FINDINGS OF FACT

The Court heard testimony from Sarai Alhasawi, Russell Okert, and Collin Heacox. The Court considered Exhibits 1 – 23, 29, 32 – 33.

The following facts have been proved:

1) Colmar, Inc. and DB Delivery, Inc., owned by Collin and Marsha Heacox (collectively, Defendants), are related, for-profit corporations based in DuPont and Fife, Washington, that provide package delivery services to the FedEx Corporation. [Exhibits 2, 5, 25, 26.]
2) Each company has consistently employed at least fifteen employees for the past three years, including throughout January 2018. [Exhibits 4, 22, 25, 26.]
3) The companies interchange employees. [Exhibits 16, 22, 25, 26.]
4) Mr. Heacox has delegated day-to-day management of both companies to Denise Brown. Mr. Heacox is Ms. Brown's direct supervisor. Ms. Brown's responsibilities include payroll, scheduling, supervising, and training, and at all relevant time periods,

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Ms. Brown has had authority to hire, fire, and discipline employees. [Exhibits 3, 5, 25, 26.]

5) Defendants provide "runners" to ride with injured drivers on light duty and assist drivers in completing routes by lifting and carrying packages. [Exhibits 5, 25, 26.]

6) Defendants sometimes have provided "runners" as an accommodation to injured employees. These "runners" have provided assistance for time periods ranging from several days to several months. In the past four years, Defendants provided runners to Ms. Brown, Russell Okert, Solialofi Tali, and Eric Lopez. [Exhibits 5, 16, 17, 25.]

7) Defendants do not provide runners for employees with pregnancy-related lifting limitations. [Exhibits 1, 25, 26, Testimony of Alhasawi]

8) Sarai Alhasawi worked for Defendants from November 9, 2016 to January 24, 2018. Ms. Brown was Ms. Alhasawi's manager. [Exhibits 7, 8, 14, 15, 22, 25, 26.]

9) In December of 2017 Ms. Alhasawi left her employment without permission of Defendant, to travel to India. The record is somewhat unclear as to what action was taken related to this absence. What is established in the record it that upon Ms. Alhasawi's return from India, she had resumed her employment and was working for Defendant's, on at least a part time basis, in January of 2018. [Testimony of Alhasawi, Exhibit 8]

10) Defendants hired April Steele on November 1, 2017. Defendants assigned Ms. Steele to Ms. Alhasawi's route. Ms. Steele continues to drive Ms. Alhasawi's route. [Exhibits 4, 5, 16, 21, 22, 25, 26.]

11) On January 24, 2018, Ms. Alhasawi worked with Mr. Tali. On that day, Ms. Brown contacted Ms. Alhasawi via text message, to assign Ms. Alhasawi to cover Mr. Okert's route on January 25, 2018, because he had been injured on the job. [Exhibits 1, 5, 16.]

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12) On January 24, 2018, Ms. Alhasawi asked Defendants for a runner to assist her in delivering what she described as "heavy-ass boxes". This assistance was requested specifically due to her pregnancy. [Exhibits 1, 5, 25.]

13) Ms. Brown refused to provide Ms. Alhasawi with a runner. Ms. Alhasawi expressed her willingness and ability to deliver less-heavy boxes and to provide certification from her physician. [Exhibits 1, 25.]

14) On January 24, 2018, Defendants terminated Ms. Alhasawi's employment because of her pregnancy-related inability to lift heavy objects. [Exhibits 1, 25.]

15) Ms. Alhasawi called Mr. Heacox, but he did not respond. Ms. Alhasawi also called manager Andrew Charette, the manager of the Fife terminal, but he referred her back to Ms. Brown and Mr. Heacox. [Exhibits 5, 25, 26.]

16) Ms. Alhasawi did not refuse to work for Defendants, only requesting a heavy lifting accommodation. [Exhibits 1, 25.]

17) Defendants have offered no proof that Ms. Alhasawi was unable to carry the packages on Mr. Okert's January 25, 2018 route. Defendants have offered no proof that another driver could not deliver heavy packages for Ms. Alhasawi. Defendants have offered no proof that Ms. Alhasawi could not perform the job other than heavy lifting.

18) On January 26, 2018, Ms. Brown contacted Ms. Alhasawi via text message to ask her to return her badge and uniforms. [Exhibit 1.]

19) Exhibit 1 is an accurate record of the January 24 – 26, 2018, text message exchange between Ms. Brown and Ms. Alhasawi.

20) Defendants did not contact or offer employment to Ms. Alhasawi at any point after January 26, 2018. [Exhibits 5, 25, 26.]

21) Defendants provided Mr. Okert with a runner after his injury on January 24, 2018. [Exhibit 16.]

22) Because of her termination, Ms. Alhasawi and her family had financial struggles. To

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avoid eviction, Ms. Alhasawi moved to Spokane where she stayed with family and friends for several months. She spent $470.36 to rent moving vehicles. [Exhibits 12, 14.]

23) Since being terminated by Defendants, Ms. Alhasawi was unable to secure new employment until May 21, 2018, despite adequate efforts to apply for and find employment. [Exhibits 9 – 11, 14.]

24) While in Spokane, both Ms. Alhasawi and her husband secured employment following her discharge by Defendants. She spent $470.36 to rent moving vehicles. [Exhibits 12, 14.]

25) The position Ms. Alhasawi started in Spokane on May 21, 2018 was time limited, as her employer was only funded for that particular job to September 2018. Ms. Alhasawi worked until she gave birth on September 11, 2018, two days before her temporary position ended. [Exhibits 11, 14.]

26) Ms. Alhasawi's recovery from the September 11, 2018, baby delivery would have allowed her to return to work for Defendants on October 2, 2018. The record does not reveal any substantial effort Ms. Alhasawi made to locate employment after October 2, 2018.

27) Ms. Alhasawi paid $133 to store her belongings after leaving her Tacoma apartment. [Exhibit 13.]

28) Defendants knew Ms. Alhasawi's housing was based on her employment with them. [Exhibits 6, 25.]

29) Defendants knew that Ms. Alhasawi was her family's sole income-earner at the time she was employed with them. [Exhibit 1.]

30) Ms. Alhasawi and her family had relatives in Saudi Arabia, on her husband's side of the family. Ms. Alhasawi and her family chose to move to Saudi Arabia in or around December of 2018. Prior to this move, Ms. Alhasawi was aware that Saudi law would

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impede her ability to become employed upon her arrival in the Kingdom of Saudi Arabia. [Testimony of Ms. Alhasawi]

31) While awaiting entry into Saudi Arabia, Ms. Alhasawi had to stay in Bahrain for months without her husband. Ms. Alhasawi's husband and children were permitted prompt entry to the Kingdom. For two months, Ms. Alhasawi was separated from her children while she waited in Bahrain. Ms. Alhasawi was aware she would be required to wait in Bahrain before being allowed entry into the Kingdom of Saudi Arabia.

32) Ms. Alhasawi still cannot work while she waits to receive work authorization in Saudi Arabia.

33) Ms. Alhasawi experienced stress and anxiety about possible miscarriage during the January 24, 2018 text exchange with Ms. Brown — should she be obliged to continue heavy lifting. Defendants knew Ms. Alhasawi was concerned about danger to her pregnancy if she lifted heavy packages. [Exhibit 1.]

34) When Defendants terminated her, Ms. Alhasawi was concerned with her ability to support her family given that she was her family's sole income earner in January 2018. She was emotionally upset that she lost her employment because she was pregnant and had some physical limitation as a result of that pregnancy. She has lost sleep and cried. [Testimony of Ms. Alhasawi]

35) Ms. Alhasawi asked for housing and financial support from her family members and in-laws.

36) Because of Defendants' wrongful termination, Ms. Alhasawi has suffered general damages including emotional distress, loss of enjoyment of life, personal indignity and embarrassment, and economic based anxiety.

37) Much of Ms. Alhasawi's anxiety and emotional distress that persisted following the time she was employed in September of 2018 were the consequence of personal choices she made and decisional outcomes that were not proximately caused by the

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wrongful conduct of Defendants. Until obtaining employment in May of 2018, much of Ms. Alhasawi's mental distress was proximately caused by the wrongful termination by defendants.

38) Ms. Alhasawi wanted to remain living in Washington and planned to buy a home here.

39) Defendants do not have a written policy concerning accommodations requests by employees.

40) Defendants do not have a written pregnancy-specific accommodation policy.

41) Defendant do not inform, nor do they ensure others inform, employees of their rights under the WLAD or HSA.

II. CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action pursuant to RCW 43.10.005 (6) and RCW 49.60.350.
2. Providing a limit on lifting seventeen pounds or more is a statutorily mandated pregnancy accommodation under RCW 43.10.005(1)(c)-(d).
3. Defendants denied Ms. Alhasawi's request for a statutorily mandated pregnancy accommodation, in violation of RCW 43.10.005(2)(a).
4. Defendants terminated Ms. Alhasawi due to her request for a pregnancy accommodation, in violation of RCW 43.10.005(2)(b).
5. Defendants denied employment opportunities to Ms. Alhasawi based on her request for a pregnancy accommodation, in violation of RCW 43.10.005(2)(c).
6. Defendants discriminated against Ms. Alhasawi in the terms and conditions of her employment based on her pregnancy status, in violation of RCW 49.60.030(1)(a) and RCW 49.60.180(3).
7. Defendants discriminated against Ms. Alhasawi by discharging her because of her pregnancy status, in violation of RCW 49.60.030(1)(a) and RCW 49.60.180(2).

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8. Ms. Alhasawi would not have been terminated without the discriminatory animus visited on her by Defendants.
9. Ms. Alhasawi has incurred emotional and economic damages as a proximate result of Defendants' discriminatory conduct.
10. Ms. Alhasawi lost wages between January 25, 2018 and May 21, 2018 in the sum of $16,069.00. She will be awarded that sum in back pay pursuant to RCW 43.10.005.
11. Defendants should pay Ms. Alhasawi $25,000.00 in compensatory damages, also pursuant to RCW 43.10.005.
12. The Court will grant the State's claim for injunctive relief and require Defendant Colmar, Inc. to develop a plan for training all employees, including supervisory personnel, on the requirements of the WLAD and Healthy Starts Act. Further, the Defendants shall develop written informational materials related to WLAD and HSA requirements to be included in an employee handbook. Notice of rights material shall be included in the employee's handbook and shall be prominently displayed in the workplace. These materials shall be developed by Defendants within 30 days of the entry of this order and will be provided to the State within that 30-day period. The State shall have 30 days to review the material for adequacy and, should the State deem the material deficient in some way, confer with counsel for Defendant to resolve the deficiencies. At the end of this 30-day period the agreed material shall be submitted to the Court for review. In the event of a failure of agreement, both parties will file proposed material with the court for review and determination of adequacy.
13. Damages in this case shall be joint and several among the individual and corporate defendants. See Brown v. Scott Paper Worldwide Co. 143 Wn.2d 349 (2001).
14. The State is entitled to recover its attorney's fees and costs incurred in connection with this action.

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III. ORDER

1. Defendants shall pay Sarai Alhasawi $25,000.00 in general damages for emotional distress and $16,069.00 for back wages lost, along with $470.36 in moving expenses and $133.00 in storage costs. Total money judgement for Plaintiff is therefore $41,672.36.

2. The State shall submit a proposed Judgment for the monetary damages due to Ms. Alhasawi within seven days of entry of this Order. The Court will issue a Judgment for Ms. Alhasawi without oral argument.

3. Defendants shall pay the Washington State Attorney General's Office its reasonable costs and attorneys' fees in connection with this action. The State's fee declaration, cost bill, and any briefing regarding the amount of the award is due thirty (30) days after entry of this Order. Any opposition shall be submitted no later than twenty-one (21) days from the date the State's briefing is served on Defendant; and any reply thereto shall be due seven (7) days after Defendant's response is served on the State. The Court will determine the award of costs and attorneys' fees without oral argument unless it notifies the parties otherwise.

4. The Court will issue a separate Judgment for the State's costs and attorneys' fees once the Court sets an amount of the award. The State shall submit a form of judgment on attorney fees in Microsoft Word format with its initial materials, emailed to Mr. Matson with a copy to Mr. Robinson.

IT IS SO ORDERED.

DATED this 7 day of January, 2021.

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