IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No.: 5 :25-cv-00338

JOYLEN DIAZ,	)
	)
Plaintiff,	)
	)
v.	)
	)
THE DRISCOLL FIRM, P.C.,	)
	)
	)
Defendant.	)
	)

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Pending before the Court is Defendant Driscoll Firm's ("Defendant") Motion to Dismiss pursuant to Rule 12(b)(6) ("Defendant's Motion"). (D.E. 8). Plaintiff Joylen Diaz ("Ms. Diaz"), by and through undersigned counsel, submits this memorandum of law in opposition to Defendant's Motion. For the reasons stated herein, the Court should deny Defendant's Motion.

STATEMENT OF THE CASE

Defendant fired Ms. Diaz one day after learning that she had been diagnosed with a recurrence of ovarian cancer. To add insult to injury, following her discharge, Defendant refused to pay Ms. Diaz the wages she was owed for overtime she had worked and vacation hours she had earned during her employment with Defendant. Defendant's conduct was in violation of the Americans with Disabilities Act and the North Carolina Wage and Hour Act. Defendant, however, has filed the instant Motion alleging that Ms. Diaz's Complaint has failed to state a claim for relief under these statutes. Because Ms. Diaz's Complaint sufficiently states a plausible claim for relief, the Court should deny Defendant's Motion.

STATEMENT OF FACTS

Defendant hired Ms. Diaz as a paralegal in July 2023 and later promoted her to Senior Paralegal. (D.E. at ¶ 16). Since November 2023, Ms. Diaz had requested approval for her overtime work via email exchanges with Defendant's management. *Id.* at ¶¶ 27 and 30.

On February 9, 2024, Ms. Diaz was diagnosed with a recurrence of ovarian cancer. *Id.* at ¶ 19. Due to her cancer, Ms. Diaz has difficulty completing activities of daily living such as dressing and walking and she has difficulty sitting for more than two hours and typing for long periods of time. *Id.* at ¶ 18. Nevertheless, Ms. Diaz continued working for Defendant without accommodation between February 9, 2024 and March 13, 2024. *Id.* at ¶¶ 19-20. On March 13, 2024, Ms. Diaz informed Defendant's leadership about the recurrence of her cancer. *Id.* at ¶ 20. In response to this disclosure, Defendant's leadership noted concerns about Ms. Diaz's reactions to her cancer medication. *Id.* at ¶ 22. Defendant did not offer, nor did Ms. Diaz request, any accommodations for her ovarian cancer. *Id.* at ¶¶ 24-25. Instead, Defendant abruptly fired Ms. Diaz on March 14, 2024. *Id.* at ¶ 31. Ms. Diaz has not been paid for the overtime work she performed on behalf of Defendant. *Id.* at ¶ 30.

ARGUMENT

Ms. Diaz has sufficiently plead the causes of action in her Complaint and, as a result, Defendant's Motion to Dismiss should be denied.

a. Standard of Review

To survive a Rule 12(b)(6) motion, a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face if the "plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable" and demonstrates "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (*citing Twombly*, 550 U.S. at 556-57). When ruling on a motion to dismiss, the Court should accept the factual allegations in the Complaint as true. *Iqbal*, 556 U.S. at 678. Further, the Court should liberally construe the Complaint, including all reasonable inferences therefrom in Ms. Diaz's favor. *Estate of Williams-Moore v All. One Receivables Mgmt., Inc.*, 335 F.Supp.2d 636, 646 (M.D.N.C. 2004) (citation omitted).

b. Americans with Disabilities Act Discrimination Claim

"To state a claim for wrongful discharge [under the ADA], the plaintiff must allege that (1)[s]he was a qualified individual with a disability; (2) [s]he was discharged; (3) [s]he was fulfilling [her] employer's legitimate expectations at the time of discharge; and (4) the circumstances of [her] discharge raise a reasonable inference of unlawful discrimination." *Kelly v. Town of Abingdon*, 90 F.4th 158, 169, (4th Cir. 2024). Defendant does not dispute that Ms. Diaz was discharged, but rather focuses on the remaining three prongs of this evaluation. Because Ms. Diaz's Complaint satisfies those remaining prongs, she has stated a plausible claim for wrongful discharge in violation of the ADA.

i. Ms. Diaz has alleged sufficient facts to support a conclusion that she had an impairment that substantially limited a major life activity.

Ms. Diaz's Complaint supports a conclusion that she had an impairment that substantially limited a major life activity. "Whether an impairment substantially limits a major life activity requires an individualized assessment into plaintiff's ability to perform a major life activity as compared to most people in the general population. The term 'substantially limits' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 'Substantially limits' is not meant to be a demanding standard." *Murphy v. County*

of New Hanover, No. 7:17-cv-229-FL, 2019 WL 3244112 (E.D.N.C. July 18, 2019) (citations omitted). The ADA defines the term "major life activity" as including, but not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, communicating, and working." 42 U.S.C. 12102 (2)(A).

Ms. Diaz's Complaint contains sufficient facts to allow the Court to reasonably infer that she was disabled under the ADA. In particular, Ms. Diaz alleges that she "has difficulty completing activities of daily living such as dressing and walking due to her medical condition. She also has difficulty sitting for more than two hours and typing for long periods of time which affect her ability to work." (D.E. 1 at ¶ 18). This is an equivalent level of detail as that provided by the plaintiff in the *Murphy v. County of New Hanover* decision. In that case, the Court determined that a plaintiff suffering from ADHD had alleged a disability when he plead that his ADHD limited his ability to "concentrat[e], think, interact with others, work, and sleep." *Murphy* at * 3. Defendant attempts to diminish Ms. Diaz's disability by highlighting her use of "difficulty" in the Complaint. This pedantic argument, however, runs contrary to Congress's goal, which was to "reinstate a broad scope of protection to be available under the ADA." Pub. L. No. 110-325 § 2(b)(1), cited by *Bordonaro v. Johnston County Bd. of Educ.*, 938 F.Supp.2d at 578.

This Court's decision in *Bordonaro v. Johnston County Bd. of Education*, 938 F.Supp.2d 573 (E.D.N.C. 2013) is particularly instructive to the instant Motion. In that case, this Court found that a plaintiff who alleged that glaucoma that limited her ability to see was sufficient to state a claim under the ADA. *Id.* at 578-9. Moreover, this Court found that, since it was "considering only a motion to dismiss, it does not have a record before it from which to determine whether

plaintiff's glaucoma and peripheral vision loss in fact constitute a substantial limitation on the major life activity of seeing." *Id.*

Given the allegations in the Complaint, including the document referenced therein, and the statutory intent to liberally interpret the term "disability," it is entirely plausible that Ms. Diaz had an impairment that substantially limited a major life activity at the time she was fired by Defendant. Ms. Diaz's Complaint, therefore, meets the applicable pleading standard. Further, the Court's same reasoning regarding the appropriate dispositive motion for whether a condition satisfies the definition of "disability" applies here. The Court should therefore deny Defendant's Motion and permit discovery into Ms. Diaz's disabilty.

ii. Ms. Diaz's Complaint supports an inference that her perceived disability was a motivating factor in her firing.

Mr. Diaz's Complaint supports an inference that her perceived disability was a motivating factor in her firing. "An individual meets the requirement of being regarded as having such an impairment if the individual establishes that he or she has been subjected to an action prohibited under [the statute] because of … perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity." 42 U.S.C. § 12102(3)(A).

In this case, Ms. Diaz explicitly told Defendant that she was diagnosed with a recurrence of ovarian cancer and that she was "symptomatic" but that she would keep them "posted on [her] prognosis." (D.E. 1 at ¶ 21). Ms. Diaz's Complaint went even further by stating that Defendant perceived this impairment by noting "concerns about Ms. Diaz's reactions to the medication she might be taking to treat the ovarian cancer," questioning the medication's effect on Ms. Diaz's mental health. *Id.* at ¶ 22 and D.E. 8-2. These allegations strongly suggest an inference that Defendant perceived Ms. Diaz as suffering from a disability.

The instant situation is far different than the one set out in the *Okyere v. John Bean Technologies Corporation* case relied upon by Defendant. *Okyere v. John Bean Technologies Corp.*, 2020 WL 7625237 (E.D.N.C. 2020). In that case, plaintiff merely told his employer that "he had been released to work with light duty restrictions" and that he "inquired about disability benefits." Id. at *9. Judge Flanagan specifically noted that the plaintiff did not allege "anything regarding defendant's perception to engage in major life activities." *Id*. Contrast that situation with Ms. Diaz's Complaint which contains the allegation that Defendant explicitly expressed concerns about her anticipated mental health issues. These allegations provide ample support for the contention that Defendant perceived her as having a disability under the ADA. Accordingly, Defendant's Motion to Dismiss should be denied.

iii. Ms. Diaz has alleged sufficient facts to support a plausible conclusion that she was a qualified individual under the ADA.

Ms. Diaz has alleged sufficient facts to support a plausible conclusion that she was a qualified individual under the ADA. "The term 'qualified individual' means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). The Middle District of North Carolina's 2011 decision, *Blackburn v. Trustees of Guilford Technical Community College*, 822 F.Supp.2d 539 (M.D.N.C. 2011), is particularly relevant to this inquiry. In that case, the court rejected the same argument leveled by Defendant, namely that the case should be dismissed because plaintiff did not allege "the essential functions of her job" and finding that whether a plaintiff "would have satisfied the essential functions of her job ultimately requires a detailed factual inquiry, which ordinarily would be decided on a factual record." *Id.* at 551-2.

Ms. Diaz's Complaint specifically states that she had worked for Defendant without accommodation for nearly one month after being diagnosed with a recurrence of ovarian cancer.

(D.E. 1 at ¶¶ 19-20). Given that Ms. Diaz is entitled to all inferences be found in her favor, the Court should find that her Complaint states that she was able to perform the essential functions of her employment without accommodation. Defendant's Motion should therefore be denied.

iv. Ms. Diaz has alleged sufficient facts to support a plausible contention that she was meeting legitimate expectations at the time of her discharge.

Ms. Diaz has alleged sufficient facts to support a plausible contention that she was meeting legitimate expectations at the time of her discharge. Ms. Diaz had been serving as a paralegal for Defendant for nearly eight months at the time she was fired. During this time, she was promoted and had worked extensive overtime and been assigned a "substantial workload." (D.E. 1 at ¶¶ 16, 28). These allegations are sufficient to show that she was meeting legitimate expectations at the time of her discharge. Defendant's Motion should therefore be denied.

v. Ms. Diaz has alleged facts sufficient to raise a reasonable inference of discrimination by Defendant.

Ms. Diaz has alleged facts sufficient to raise a reasonable inference of discrimination by Defendant in violation of the ADA. "[A] plaintiff may demonstrate causation by temporal proximity, or by the existence of facts that suggest that the adverse action occurred because of the protected activity." *Barbour v. Garland*, 105 F4th 579, 593 (4th Cir. 2024). Once again, this Court's *Bordonaro* decision is directly on point to the instant circumstance. In that case, this Court found that the plaintiff's complaint raised a reasonable inference of discrimination when it alleged that "she requested reasonable accommodation … and plaintiff was terminated within weeks of … her requests for accommodation." *Bordonaro*, 938 at 581, *contrast Graves v. Bank of America, N.A.*, 54 F.Supp.3d 434 (M.D.N.C. 2014) (holding that a seven-month gap between the protected activity and discharge was too significant to infer discriminatory intent). Ms. Diaz was fired a day after the disclosure of her cancer diagnosis to the Defendant. The Complaint states that she was meeting her legitimate work expectations. This close temporal proximity is more than sufficient

to reasonably infer a discriminatory intent to Defendant's actions. The Court should therefore deny Defendant's Motion.

vi. Ms. Diaz is not alleging a claim for failure to accommodate.

Ms. Diaz is not alleging a claim for failure to accommodate. Defendant's Motion should therefore be denied as moot.

c. Americans with Disabilities Act Retaliation

Ms. Diaz has voluntarily dismissed her claims for Retaliation in violation of the ADA without prejudice. (D.E. 23). Accordingly, since those claims have now been dismissed without prejudice, Defendant's Motion to Dismiss based on that claim should be denied as moot.

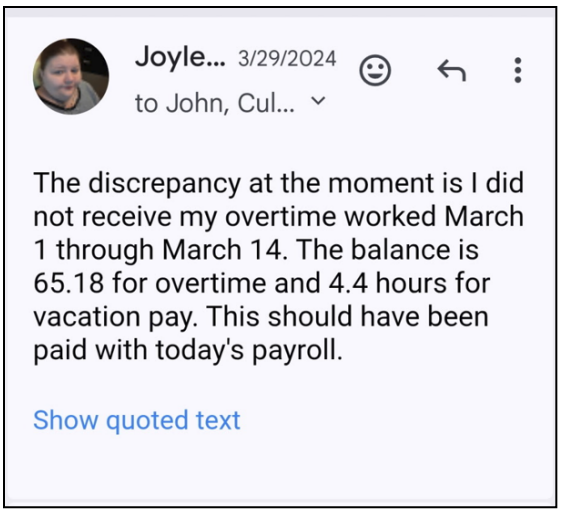
d. Family and Medical Leave Act

Ms. Diaz has voluntarily dismissed her claims against Defendant under the Family Medical Leave Act without prejudice. (D.E. 23). Accordingly, since those claims have now been dismissed without prejudice, Defendant's Motion to Dismiss based on that claim should be denied as moot.

e. North Carolina Wage and Hour Act

Ms. Diaz's Complaint contains sufficient allegations to state a plausible claim for relief under the North Carolina Wage and Hour Act. N.C. Gen. Stat. § 95-25.1 *et seq*. On or about March 29, 2024, Ms. Diaz emailed Defendant's leadership specifically identifying a discrepancy in the wages that she had been paid following her unlawful discharge of employment. In particular, she wrote that "I did not receive my overtime worked March 1 through March 14. The balance is 65.18 for overtime and 4.4 hours for vacation pay. This should have been paid with today's payroll."[1]

[1] Because the email dated March 29th is integral and explicitly relied on in the Complaint, (D.E. 1 at ¶ 27), the Court may properly consider it under Rule 12(b)(6). *See Am. Chiropractic v. Trigon Healthcare*, 367 F.3d 212, 234 (4th Cir. 2004). To the extent the Court disagrees, Ms. Diaz requests leave to amend the Complaint to add the details included in the March 29th email.



These figures total to $2,467.75 in overtime wages and $111.06 in vacation hours. The Complaint alleges that Defendant failed to pay these wages in violation of the Wage and Hour Act. Ms. Diaz's Complaint, therefore, states a plausible claim for relief with sufficient detail. The Court should deny Defendant's Motion.

CONCLUSION

The Court should deny Defendant's Motion to Dismiss as Ms. Diaz's Complaint contains sufficient facts to allege that she was discharged because of her disability and that Defendant owes her wages in violation of the North Carolina Wage and Hour Act.

Respectfully submitted, this the 22nd day of September, 2025.

BY: /s/ JOSEPH D. BUDD

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing document contains 2,698 words in compliance with Local Rule 7.2(f).

This the 22nd day of September, 2025.

BY: /s/ JOSEPH D. BUDD
JOSEPH D. BUDD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document has been electronically filed with the Clerk of Court using the CM/ECF system, which system will automatically generate and send a Notice of Electronic Filings to the undersigned filing user and registered users of record in the matter, as follows:

Harrison M. Gates
hgates@morningstarlawgroup.com
Attorney for Defendant

This the 22nd day of September, 2025.

BY: /s/ JOSEPH D. BUDD
JOSEPH D. BUDD