
APPENDIX A

District Court's Order and Memorandum Opinion of June 18, 2020

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JAMES TOLLE,)
Plaintiff,)
v.) 1:20-cv-174 (LMB/JFA)
ROCKWELL COLLINS CONTROL)
TECHNOLOGIES, INC., et al.,)
Defendants.)

MEMORANDUM OPINION

Pro se plaintiff James Tolle has filed a complaint against his former employers Rockwell Collins Control Technologies, Inc., Collins Aerospace, Rockwell Collins, Inc., and United Technologies Corporation (collectively “Rockwell Collins” or “defendants”)¹ alleging religious discrimination, a hostile work environment, and failure to provide an accommodation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. Plaintiff’s claims center around Rockwell Collins’s decision to display a rainbow Gay Pride flag on its flagpoles for a 30-day period. Defendants have moved to dismiss. For the reasons that follow, defendants’ motion to dismiss will be granted and the complaint will be dismissed.

I.

Although plaintiff’s complaint and opposition contain a combined total of 217 pages, the factual allegations underlying the complaint are quite straightforward. Plaintiff, who describes himself as a practicing Catholic, worked for Rockwell Collins as a contract employee from April

¹ Defendants assert that plaintiff’s former employer was solely Rockwell Collins, Inc., which operates under the brand name Collins Aerospace, and that all other entities named as defendants are improperly identified because they did not employ plaintiff.

2016 until May 2018 when his contract ended. Compl. [Dkt. No. 1] ¶ 21, 23, 24, 74. In November 2018, plaintiff began working on another contract with Rockwell Collins at its Sterling, Virginia location, a position he remained in until October 2019, when he left his employment with defendants. Id. 25, 29.²

For the month of June 2019, in honor of Pride month, Rockwell Collins displayed the rainbow Gay Pride flag on the flagpoles at each of its locations, including the Sterling, Virginia location. Id. ¶ 30. On June 15, 2019, Tolle met with his supervisor Amine Mechiche-Alami (“Mechiche-Alami”) “to complain that [he] found the display of the Gay Pride flag at the Sterling location unwelcome and offensive because of his religious belief and practices,” “which did not allow him to participate in any activity which publicly associated him with the Gay Pride movement.” Id. ¶ 31. He further told Mechiche-Alami that flying the flag “created an unwelcome, hostile environment which interfered with his work at that location,” and that “he would prefer to be able to work offsite or at another location where this offensive object was not being displayed as an accommodation of his religious beliefs.” Id. On June 27, 2019, Tolle emailed Mechiche-Alami to complain further, stating “I will probably go home to work offsite as I still don’t feel comfortable working under a flag which I find offensive for religious reasons.” Id. ¶ 32. Tolle claims he received no response from Mechiche-Alami. Id. ¶ 33.

On July 9, 2019, after Pride month had concluded and the Gay Pride flag had been taken down, plaintiff met with an engineering manager, Eric Brewer (“Brewer”), to report his concerns about the flag. Id. ¶ 33. Plaintiff informed Brewer that if Rockwell Collins had a policy of flying the flag every year, “this would create an offensive or hostile work environment under which

² The complaint states that “[a]t all times during his work at Rockwell Collins, Tolle worked through the Bentley Global Resources’ staffing contract with the Rockwell Collins’ employment agency.” Id. ¶ 21.

Tolle could not continue to work.” Id. Tolle again asked whether he could work at a different location at which the flag would not be flown. Id. Brewer instructed plaintiff to contact Human Resources. Id.

On July 17, 2019, Tolle sent an email to Human Resources representative Julie Jones (“Jones”) to complain about the flag. Tolle informed Jones that he viewed “this flag as something which is not neutral, but something which promotes one minority’s viewpoint about pride in homosexual lifestyles and treats other minority viewpoint’s [sic] who don’t agree with them as bigots” and that he was “left with the feeling that [Rockwell Collins] . . . is not a place where a Christian who does not support Gay Pride should work.” Id. ¶ 34. Tolle asked Jones, “[i]f I say something as an employee which does not support the flying of the Gay Pride flag . . . will I face discipline or other adverse actions by management?” Id. Tolle also reiterated his request to work at a different location that did not display the flag. Id. ¶ 35.

The next day, Jones responded that “to [her] knowledge all the [Rockwell Collins] locations that have flagpoles flew the flag.” Id. ¶ 39. Jones also warned plaintiff, “[i]f you use derogatory language to refer to someone due to their . . . sexual orientation . . . that is not tolerated.” Id. ¶ 41. Plaintiff replied that Jones’s email “seemed to automatically assume that [his] opposition would be derogatory towards homosexuals,” which “underscores [his] concerns that a person who shares [his] religious convictions and opinions which do not support the Gay Pride agenda will normally be treated as a homophobe or bigot within the company.” Id. ¶ 44.

Jones also provided plaintiff a document which confirmed that Rockwell Collins displays only one other “minority flag,” namely the “Prisoner of War (POW) flag,” which “is only flown at a single location on isolated days during the year.” Id. ¶ 40. The document also stated “[t]he company leadership is fully supportive of the effort to recognize PRIDE month as we believe it

reflects many of our company's values," but plaintiff claims it "did not make any attempt to express such wholehearted support for any other minority." Id.

On July 23, 2019, plaintiff received an email from Rockwell Collins's attorney Michael Wade, which stated:

[W]hile individuals who work for . . . [Rockwell Collins] . . . are free to their own personal, political, or religious views, doctrine, membership, etc., we expect employees to take care to communicate with co-workers in a respectful, professional, and non-discriminatory or harassing manner . . . Any employee who treats another in a way that contradicts this expectation will subject him or herself to discipline, up to and including termination.

Id. ¶ 46. Wade's email went on to clarify that "the Company does not sponsor or support any particular religious or political viewpoint, practice or membership to the exclusion of others." Id. ¶ 48.

On August 1, 2019, Mechiche-Alami told Tolle to contact engineering manager Jay Dabhade concerning a possible offer to become a regular employee for Rockwell Collins. Id. ¶ 49. On August 2, 2019, Dabhade told Tolle that Rockwell Collins wanted to hire Tolle as a regular employee and that he could apply for a position once it opened. Id. On August 21, 2019, Tolle applied for a position as a regular software engineering employee. Id. ¶ 50. On August 29, 2019, a Rockwell Collins recruiter offered Tolle the job via email. Id. The proposed start date for the position was September 16, 2019. [Dkt. No. 1-3].

On September 3, 2019, plaintiff "informed Rockwell Collins that he could not accept the position due to the continuing discriminatory policies of Rockwell Collins and because he would have to abandon or alter his religious practice in order to continue working in any role at Rockwell Collins." [Dkt. No. 1] ¶ 28. Plaintiff argued that "flying an object [he] found offensive due to religious reasons over all locations of the company for 30 days every year in the future was sufficiently severe or pervasive to alter the condition of [his] employment." Id. ¶ 53.

Because of his concerns, plaintiff “left his work at Rockwell Collins in or around October 2019,” which he characterizes as a “constructive discharge.” Id. ¶ 29.

On September 28, 2019, plaintiff sent a letter to the United States Equal Employment Opportunity Commission (“EEOC”) alleging that Rockwell Collins had discriminated against him. Id. ¶ 56. On November 16, 2019, plaintiff filed a formal complaint with the EEOC, alleging that Rockwell Collins discriminated against him and other Christians, perpetuated a hostile work environment, threatened to retaliate against him, and constructively discharged him. Id. ¶ 57. On December 4, 2019, the EEOC informed plaintiff that “[b]ased upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes.” Id. ¶ 58. The letter from the EEOC also notified plaintiff that if he wished to file a lawsuit against Rockwell Collins, he must do so within 90 days. Id. ¶ 59. On January 9, 2020, Tolle filed a corrected complaint with the EEOC, which the EEOC construed as a request for reconsideration, and denied on February 13, 2020. Id. ¶¶ 60-62.

Plaintiff timely filed the instant litigation on February 19, 2020. Plaintiff’s complaint does not include clearly delineated counts; instead, it sets forth five “causes of action,” each of which includes a variety of subheadings, such as “[c]laim related to . . . [c]ause of [a]ction,” “[a]lternative [c]laim related to . . . [c]ause of [a]ction,” “2nd Claim related to . . . [c]ause of [a]ction,” and “[a]dditional [c]laims related to . . . [c]ause of [a]ction.” Many of these claims are repetitive, but it appears that plaintiff is generally alleging that Rockwell Collins created a hostile work environment and harassed him, failed to accommodate him, and engaged in religious discrimination, and that Rockwell Collins’s actions had a disparate impact on individuals “who do not support Gay Pride because of religious reasons.” Id. ¶ 154. The complaint seeks lost past

and future earnings and benefits, compensatory and punitive damages, “[a]n order requiring compliance,” costs of suit, and “[a]ppropriate interest, costs, and disbursements.” Id. at 80.

Defendants filed their motion to dismiss on May 4, 2020. Plaintiff opposes the motion, and argues that even if his existing complaint does not state a claim, the Court should allow him to amend his complaint. He has submitted a proposed amended complaint alongside his opposition. Defendants have filed a reply brief, and the motion is ripe for review. Having found that oral argument would not further the decisional process, defendants’ motion to dismiss and plaintiff’s request to file an amended complaint will be decided on the papers submitted.

II.

Under Federal Rule of Civil Procedure 12(b)(6), a complaint “must be dismissed when a plaintiff’s allegations fail to state a claim upon which relief can be granted.” Adams v. NaphCare, Inc., 244 F. Supp. 3d 546, 548 (E.D. Va. 2017). “Therefore, in order for a . . . complaint to survive dismissal for failure to state a claim, the plaintiff must allege facts sufficient to state all of the elements of [his or] her claim.” Lucas v. Henrico Cty. Sch. Bd., 822 F. Supp. 2d 589, 600 (E.D. Va. 2011). “[A] [p]laintiff[] cannot satisfy this standard with [a] complaint[] containing labels and conclusions or a formulaic recitation of the elements of a cause of action.” Id. “Instead, [a plaintiff] must allege facts sufficient to . . . stat[e] a claim that is plausible on its face.” Id. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. In evaluating a motion to dismiss under Rule 12(b)(6), “a plaintiff’s well-pleaded allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff,” id.; however, “legal conclusions pleaded as factual allegations, unwarranted inferences, unreasonable conclusions, and naked assertions devoid of further factual

enhancement are not entitled to the presumption of truth.” Wikimedia Found. v. Nat'l Sec. Agency, 857 F.3d 193, 208 (4th Cir. 2017).

“In cases where the plaintiff appears pro se, courts do not expect the pro se plaintiff to frame legal issues with the clarity and precision expected from lawyers.” Suggs v. M & T Bank, 230 F. Supp. 3d 458, 461 (E.D. Va. 2017). “Accordingly, courts construe pro se complaints liberally.” Id. “This principle of construction, however, has its limits.” Id. A court “may not be an advocate for a pro se plaintiff and must hold the complaint to certain minimal pleading standards.” Hongan Lai v. Dep’t of Justice, No. 5:13-cv-33, 2013 WL 3923506, at *3 (W.D. Va. July 29, 2013).

III.

A. Hostile work environment and harassment

A Title VII claim of a hostile work environment based on religious discrimination requires a plaintiff to allege that harassment was “(1) unwelcome, (2) because of religion, (3) sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere, and (4) imputable to the employer.” E.E.O.C. v. Sunbelt Rentals, Inc., 521 F.3d 306, 313 (4th Cir. 2008). “[T]o clear the high threshold of actionable harm, the conduct in question must (1) be ‘severe or pervasive enough to create an objectively hostile or abusive work environment,’ and (2) be subjectively perceived by the victim to be abusive.” E.E.O.C. v. R&R Ventures, 244 F.3d 334, 339 (4th Cir. 2001) (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993)). In evaluating whether a workplace is a hostile environment, courts must look to “all the circumstances,” including “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” Id. at 339. The “standards for

judging hostility are sufficiently demanding to ensure that Title VII does not become a ‘general civility code.’” Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) (quoting Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80 (1998)). “[C]omplaints premised on nothing more than . . . callous behavior by [one’s] superiors . . . or a routine difference of opinion and personality conflict with [one’s] supervisor . . . are not actionable under Title VII.” Sunbelt Rentals, Inc., 521 F.3d at 315–16 (internal quotation marks and citations omitted). Plaintiff argues that he has met these pleading requirements, while defendants respond that the conditions alleged were not sufficiently severe or pervasive to constitute a hostile work environment. Defendants have the better argument.³

Even if accepted as true, the factual allegations in the complaint do not come close to stating a claim for a hostile work environment based on religion, which the Supreme Court has described as a workplace that is “permeated with discriminatory intimidation, ridicule and insult.” Harris, 510 U.S. at 21 (internal quotation marks and citations omitted). The sole basis for plaintiff’s claim is that defendants flew a Gay Pride flag on their flagpole for 30 days and warned plaintiff that he could not harass others or use derogatory language to refer to someone due to their sexual orientation. This conduct was not frequent, severe, or physically threatening or humiliating, nor did it unreasonably interfere with plaintiff’s work performance. As defendants point out, “Rockwell Collins did not ask [p]laintiff to engage in a homosexual relationship or to condone homosexual relationships. Rockwell Collins did not ask [p]laintiff to change or modify his beliefs or require him to participate in any activities supporting the Gay Pride movement. Rockwell Collins did not ask [p]laintiff to wear a Gay Pride t-shirt, display a Gay Pride flag at

³ Although defendants do not raise this argument, plaintiff’s claim would also fail for the independent reason that he has not alleged that any harassment he faced was “because of religion,” which is the second element of a hostile work environment claim.

his desk, or attend activities related to Gay Pride month. Plaintiff was not even required to look at the flag: he merely had to pass by it in the parking lot before he entered the building for work" and refrain from harassing others based on their sexual orientation. [Dkt. No. 10] at 3. Such conduct falls woefully short of being "severe or pervasive enough to create an objectively hostile or abusive work environment." Harris, 510 U.S. at 21.⁴ Indeed, defendants' instruction that plaintiff must not harass others based on their sexual orientation was probably prudent, particularly given the Supreme Court's recent holding that employers are liable under Title VII for discrimination based on sexual orientation. See Bostock v. Clayton Cty., Georgia, No. 17-1618, 2020 WL 3146686, at *3 (U.S. June 15, 2020).

A review of cases in which the Fourth Circuit has found that a hostile work environment could exist illustrates just how far plaintiff's complaint falls short of meeting the required standard. For example, the Fourth Circuit has permitted a hostile work environment claim to proceed where the plaintiff, a Muslim, was repeatedly called "Taliban" and "towel head," told that if he were caught praying at work, "that would be the end of him," and faced extreme, daily harassment such as defacing his property. Sunbelt Rentals, Inc., 521 F. 3d at 316-319. In another case, the Fourth Circuit held that a reasonable jury could find a hostile work environment where the African American plaintiff was constantly subjected to "racial comments . . . includ[ing] the use of such words as N******, Black B*tch, and being called a monkey on an almost daily basis," and the plaintiff's supervisor regularly "vilif[ied] anyone of African descent" and gave the plaintiff a picture of a monkey with the notation "so you'll never forget who you are." Spriggs v.

⁴ This is not to suggest that an employer could not be liable for a hostile work environment for posting a flag or another item associated with hatred or animus based on race, color, religion, sex, or national origin; however, there is no indication that the Gay Pride flag is associated with such animus.

Diamond Auto Glass, 242 F.3d 179, 182, 189 (4th Cir. 2001).⁵ Even if plaintiff had adequately alleged that his treatment at Rockwell Collins were “based on religion,” which he has not, his experiences are a far cry from these examples of severe, pervasive harassment, and are much more akin to the sorts of “isolated incidents” and “routine difference[s] of opinion . . . with [one’s] supervisor” that the Fourth Circuit has held are inadequate to constitute a hostile work environment. Sunbelt Rentals, Inc., 521 F.3d at 315–16 (internal quotation marks and citations omitted). The facts in this action are also similar to those in Kaohi v. John E. Potter, Postmaster General, Appeal No. 01A60231, Agency No. 1F-968-0008-05 (March 23, 2006), in which the EEOC, which is the agency charged with enforcing Title VII, found that the placement of a Gay Pride Festival parking pass in an employee’s locker was insufficiently severe or pervasive to constitute actionable harassment. As defendants point out, the alleged harassment in this action is even more attenuated than that at issue in Kaohi, because the Gay Pride flag at Rockwell Collins was not specifically directed at plaintiff.

At bottom, “[w]orkplaces are not always harmonious locales, and even incidents that would objectively give rise to bruised or wounded feelings will not on that account satisfy the severe or pervasive standard. Some rolling with the punches is a fact of workplace life.” Sunbelt Rentals, Inc., 521 F.3d at 315. Although plaintiff may have found defendants’ actions subjectively upsetting, the objective prong of the hostile work environment test is “designed to disfavor claims based on an individual’s hypersensitivity.” EEOC v. Fairbrook Med. Clinic, P.A., 609 F.3d 320, 328 (4th Cir. 2010). Because plaintiff’s complaint does not allege treatment that objectively rises to the level of a hostile work environment, this claim must be dismissed.

⁵ That these cases were decided at the summary judgment stage does not alter the Court’s analysis; these cases are simply cited to as examples of the sorts of factual patterns that may rise to the level of a hostile work environment.

B. Failure to accommodate

Under Title VII, “an employer must make reasonable accommodation for the religious observances of its employees, short of incurring an undue hardship.” U.S. Equal Employment Opportunity Comm’n v. Consol Energy, Inc., 860 F.3d 131, 141 (4th Cir. 2017) (internal quotation marks and citations omitted). To state a claim for failure to accommodate, a plaintiff “must plead facts sufficient to state, not to prove conclusively, all elements of a religious accommodation claim: ‘(1) he . . . has a bona fide religious belief that conflicts with an employment requirement; (2) he . . . informed the employer of this belief; [and] (3) he . . . was disciplined for failure to comply with the conflicting employment requirement.’ Johnson v. United Parcel Serv., Inc., No. 14-cv-4003, 2015 WL 4040419, at *9 (D. Md. June 30, 2015) (quoting Chalmers v. Tulon Co. of Richmond, 1010 F.3d 1012, 1019 (4th Cir. 1996)). Defendants persuasively argue that plaintiff’s failure to accommodate claim fails both the first and third prongs of this test.

First, plaintiff has not adequately alleged that he was subjected to any kind of employment requirement, let alone one which conflicted with his religious beliefs. As defendants point out, “[m]erely expecting Plaintiff to attend work in the same location that a Gay Pride flag is generally displayed for one month does not amount to asking him to adhere to a conflicting ‘employment requirement.’ Rockwell Collins simply expected Plaintiff to come to work each day.” [Dkt. No. 6] at 11. Second, even if requiring plaintiff to attend work while the flag was flying constituted a conflicting employment requirement, the complaint is devoid of allegations that plaintiff was disciplined for failing to comply with that requirement. In fact, far from disciplining him, Rockwell Collins rewarded plaintiff by offering him a permanent position with the company days after he complained about the flag. That plaintiff voluntarily declined to

accept that position does not support a claim that Rockwell Collins's actions were in any way disciplinary. Accordingly, plaintiff's failure to accommodate claim must also be dismissed.

C. Religious discrimination

"Title VII authorizes two causes of action against employers: disparate treatment (intentional discrimination) and disparate impact." Abdus-Shahid v. Mayor & City Council of Baltimore, 674 F. App'x 267, 274 (4th Cir. 2017) (internal citation omitted). "Although they are similar in their objectives, each cause of action has different elements." Id. "A disparate treatment claim requires proof of discriminatory motive, although [that impermissible motive] can in some situations be inferred from the mere fact of differences in treatment." Id. (internal quotation marks and citation omitted). "A disparate impact claim, in contrast, does not require proof of discriminatory motive Instead, disparate impact claims involve employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity." Id. (internal quotation marks and citation omitted). Although it is not entirely clear from the complaint, plaintiff appears to be asserting claims for religious discrimination under both theories. Both claims fail.

1. Disparate impact

As an initial matter, some courts have held that disparate impact claims are not available in religious discrimination cases, holding that "[c]ourts recognize only 'two theories in asserting religious discrimination claims,' which are 'denominated as the 'disparate treatment' and 'failure to accommodate' theories.'" Brennan v. Deluxe Corp., 361 F. Supp. 3d 494, 505 (D. Md. 2019) (quoting Chalmers, 101 F.3d at 1017). Even if a disparate impact claim could theoretically be available to plaintiff, his claim fails on the merits because he does not sufficiently allege "that

“one group of people, for reasons of religion . . . was impacted more than another” by defendant’s practices. Kinnett v. Key W + Sotera Def. Sols., No. 5:18-cv-110, 2019 WL 4023192, at *6 (W.D. Va. July 19, 2019), report and recommendation adopted, No. 5:18-cv-110, 2019 WL 4018347 (W.D. Va. Aug. 26, 2019), aff’d, 798 F. App’x 765 (4th Cir. 2020).

2. Disparate treatment

A claim of disparate treatment may be established either by direct evidence or through the burden shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Where, as here, a plaintiff has not alleged direct evidence of discrimination, the elements of a prima facie⁶ case of disparate treatment under Title VII are “(1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside the protected class.” Coleman v. Maryland Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff’d sub nom. Coleman v. Court of Appeals of Maryland, 566 U.S. 30 (2012). Defendants persuasively argue that plaintiff cannot satisfy the third element.

Plaintiff has not adequately alleged that he suffered an adverse employment action. “An adverse action is one that constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” Hoyle v. Freightliner, LLC, 650 F.3d 321, 337 (4th Cir. 2011). Although plaintiff resigned from his contract position and turned down Rockwell Collins’s offer of a full-time position, “an employee’s voluntary resignation does not, as a matter

⁶ Although plaintiff correctly points out that he need not satisfy a prima facie case at this stage in the proceedings, “courts may look to the requirements of a prima facie case as a guide in assessing the plausibility of plaintiff’s claim for relief.” Craft v. Fairfax County, No. 1:16-cv-86, 2016 WL 1643433, at *4 (E.D. Va. Apr. 26, 2016).

of law, constitute an adverse employment action.” High v. R & R Transportation, Inc., 242 F. Supp. 3d 433, 446 (M.D.N.C. 2017) (citing Honor v. Booz-Allen & Hamilton, Inc., 383 F.3d 180, 186 (4th Cir. 2004)).

Plaintiff attempts to portray his resignation and declination of Rockwell Collins’s job offer as a “constructive discharge.” This argument is meritless. Constructive discharge occurs “[w]here an employer deliberately makes an employee’s working conditions intolerable and thereby forces him to quit his job.” Holsey v. Armour & Co., 743 F.2d 199, 209 (4th Cir. 1984). A constructive discharge claim requires meeting a high standard -- “‘something more’ than the showing required for a hostile work environment claim.”⁷ Evans v. Int’l Paper Co., 936 F.3d 183, 193 (4th Cir. 2019) (internal citation omitted). Specifically, a plaintiff “must allege facts demonstrating that he resigned and ‘that he was discriminated against by his employer to the point where a reasonable person in his position would have felt compelled to resign.’” Ofoche v. Apogee Med. Grp., Virginia, P.C., No. 19-1157, 2020 WL 2554238, at *2 (4th Cir. May 20, 2020) (quoting Green v. Brennan, 136 S. Ct. 1769, 1777 (2016)).

“Intolerability is not established by showing merely that a reasonable person, confronted with the same choices as the employee, would have viewed resignation as the wisest or best decision, or even that the employee subjectively felt compelled to resign Instead, intolerability is assessed by the objective standard of whether a ‘reasonable person’ in the employee’s position would have felt compelled to resign, that is, whether he would have had no choice but to resign.” Evans, 936 F.3d at 193 (emphasis in original) (internal quotation marks and citations omitted). When the complained-of issue “is isolated or infrequent, it is less

⁷ As described above, the Court has already concluded that plaintiff has not satisfied the more lenient requirements of a hostile work environment claim.

likely to establish the requisite intolerability.” Id. “[D]ifficult or unpleasant” or “[e]ven truly awful working conditions” may be insufficient to satisfy the intolerability requirement. Hill v. Verizon Maryland, Inc., No. 07-cv-3123, 2009 WL 2060088, at *12-13 (D. Md. July 13, 2009).

Plaintiff has not met, and indeed cannot meet, the requirements of a constructive discharge claim. Even if plaintiff had plausibly alleged that Rockwell Collins’s actions were deliberate, which he has not, his factual allegations do not meet the intolerability requirement. Plaintiff’s working conditions during the month of June 2019 did not meaningfully depart from the conditions under which he had previously been working; the sole difference that arose during that 30-day period was that plaintiff walked by the Gay Pride flag on his way into work, communicated with his supervisor and others about his discomfort with what the flag represents, and was advised of the company’s policy prohibiting discrimination based on sexual orientation. These conditions were “isolated and infrequent,” Evans, 936 F.3d at 193, and would have had virtually no impact on a reasonable person’s working life. The Fourth Circuit has consistently rejected constructive discharge claims based on working conditions much more intolerable than those at issue here, including cases where the plaintiff was yelled at in front of customers, lost supervisory responsibilities, was unfairly criticized, and had to endure his “supervisor display[ing] a poster that may have been offensive to African Americans.” Id. (collecting cases).

A reasonable person confronted with the same choices as plaintiff would not have resigned his contract position or declined Rockwell Collins’s permanent job offer, but would rather have continued working undeterred, and simply ignored the flag if he found it offensive. “Unless conditions are beyond ‘ordinary’ discrimination, a complaining employee is expected to remain on the job while seeking redress.” Id. (internal quotation marks and citation omitted). The

conditions plaintiff describes do not go “beyond ‘ordinary’ discrimination”; in fact, they do not constitute discrimination at all.⁸

Defendants have drawn a useful comparison with the Ninth Circuit’s decision in Peterson v. Hewlett-Packard Co., 358 F.3d 599 (9th Cir. 2004). In Peterson, the plaintiff was a self-described “devout Christian” “who believes that homosexual activities violate the commandments contained in the Bible and that he has a duty ‘to expose evil when confronted with sin.’” Id. at 601. A conflict arose between Peterson and his employer when the company began displaying “diversity posters” in its office as one component of its workplace diversity campaign, which included posters of employees with the captions “Black,” “Blonde,” “Old,” “Gay,” or “Hispanic.” Id. In response, Peterson posted in his work cubicle Biblical verses condemning homosexuality. These verses were visible to other employees and violated his employer’s anti-harassment policy. Peterson’s managers engaged in extensive discussions with him about their diversity campaign and why his actions violated their policy. Peterson was eventually terminated for insubordination after he refused to remove the posted scriptures, and he sued alleging religious discrimination under Title VII. The Ninth Circuit rejected Peterson’s claim, observing that “[a]ll that [Peterson’s] managers did was explain [the company’s] diversity program to [him] and ask him to treat his co-workers with respect. They simply requested that he . . . not violate the company’s harassment policy,” which does not constitute religious discrimination. Id. at 604. The Ninth Circuit further concluded that although the defendant’s

⁸ Plaintiff further contends that “[r]equiring [him] to [a]lter or [a]bandon his [r]eligious [p]ractices” and “[d]efendants’ [r]esponse [to his complaints] which [c]ontained [t]hreats of [r]etaliation” constitute adverse actions. [Dkt. No. 9] at 6-7. This argument fails because neither of those actions “constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” Hoyle, 650 F.3d at 337.

diversity campaign “devoted special attention to combating prejudice against homosexuality, . . . such an emphasis is in no manner unlawful. To the contrary, [the defendant’s] efforts to eradicate discrimination against homosexuals in its workplace were entirely consistent with the goals and objectives of our civil rights statutes generally.” Id. at 603.

Rockwell Collins’s decision to fly the Gay Pride flag during the month of June is similarly consistent with the goals and objectives of our civil rights statutes. When plaintiff challenged that decision, Rockwell Collins, like the employer in Peterson, simply explained the company’s diversity initiative and “expressed the expectation that [p]laintiff, like every other employee, come to work each day and treat co-workers in a non-discriminatory manner.” [Dkt. No. 10] at 1. Rockwell Collins did not ask plaintiff to endorse homosexuality or to abandon his religious beliefs, and explicitly confirmed that it did not support one viewpoint over another and that all employees were entitled to their own beliefs. Indeed, Rockwell Collins was much more generous to plaintiff than the employer in Peterson; instead of firing plaintiff, Rockwell Collins offered him a better job. For all these reasons, plaintiff has not stated a claim for religious discrimination.⁹

⁹ Although the complaint suggests that plaintiff was concerned about possible retaliation during his tenure at Rockwell Collins, the complaint does not set forth a separate cause of action alleging retaliation. Even if plaintiff were alleging such a claim, it would fail on the merits. “To state a claim of retaliation under Title VII, a plaintiff must allege (1) that [he] engaged in protected activity, (2) that the employer took a materially adverse action against h[im] and (3) there is a causal connection between the protected activity and the adverse action.” Phillips v. Univ. of Maryland Baltimore Cty., No. 19-cv-570, 2020 WL 1820080, at *11 (D. Md. Apr. 10, 2020) (internal quotation marks and citation omitted). There is no indication in the complaint that Rockwell Collins took a materially adverse action against plaintiff, nor that there was any causal relationship between plaintiff’s complaints about religious discrimination and any action that plaintiff characterizes as adverse. In fact, as discussed above, far from retaliating against plaintiff, Rockwell Collins offered him a job as a regular employee, even after plaintiff lodged his discrimination complaints with his supervisor.

D. Plaintiff's request to amend his complaint

Plaintiff has asked that if the Court finds his complaint to be inadequate, it allow him to amend his complaint to include more detail, and has filed a proposed amended complaint alongside his opposition to the motion to dismiss. Plaintiff proposes to correct a few typos; add a statement that plaintiff had never seen Rockwell Collins fly another "minority flag"; add arguments as to why plaintiff believes the email he received from Rockwell Collins's attorney was biased; and include a statement that because the flagpole was in a "prominent location," Tolle was required to see it when he walked into work and left the building. See [Dkt. No. 9-1]. These amendments do nothing to cure the issues described above; accordingly, plaintiff's request to amend his complaint will be denied, and his complaint will be dismissed with prejudice.

IV.

For the foregoing reasons, defendants' motion to dismiss will be granted, plaintiff's complaint will be dismissed, and plaintiff's request to amend his complaint will be denied by an order that will be issued alongside this Memorandum Opinion.

Entered this 18 day of June, 2020.

Alexandria, Virginia


/s/
Leonie M. Brinkema
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JAMES TOLLE,)
Plaintiff,)
v.) 1:20-cv-174 (LMB/JFA)
ROCKWELL COLLINS CONTROL)
TECHNOLOGIES, INC., et al.,)
Defendants.)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, defendants' Motion to Dismiss [Dkt. No. 5] is GRANTED, plaintiff's request to amend the complaint is DENIED, and it is hereby

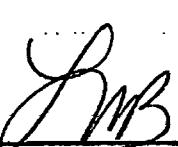
ORDERED that plaintiff's complaint [Dkt. No. 1] be and is DISMISSED WITH PREJUDICE.

To appeal this decision, plaintiff must file a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives plaintiff's right to appeal this decision.

The Clerk is directed to enter judgment in favor of defendant[s] under Fed. R. Civ. P. 58; forward copies of this Order and accompanying Memorandum Opinion to counsel of record and plaintiff, pro se; and close this civil action.

Entered this 18th day of June, 2020.

Alexandria, Virginia


/s/ Leonie M. Brinkema
United States District Judge

APPENDIX B
U. S. Court of Appeals for the Fourth Circuit
Unpublished Opinion and Judgment of May 10, 2021

Appendix B

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-1768

JAMES TOLLE,

Plaintiff - Appellant,

v.

ROCKWELL COLLINS CONTROL TECHNOLOGIES, INC., d/b/a Rockwell Collins, Inc., d/b/a United Technologies Corporation; COLLINS AEROSPACE, d/b/a Rockwell Collins, Inc., d/b/a United Technologies Corporation, d/b/a Rockwell Collins Control Technologies, Inc.; ROCKWELL COLLINS, INC., d/b/a United Technologies Corporation; UNITED TECHNOLOGIES CORPORATION,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:20-cv-00174-LMB-JFA)

Submitted: April 21, 2021

Decided: May 10, 2021

Before KEENAN and THACKER, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

James Tolle, Appellant Pro Se. Julie Davis Loring, SEYFARTH SHAW, LLP, Atlanta, Georgia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Tolle appeals the district court's order granting Defendants' Federal Rule of Civil Procedure 12(b)(6) motion, dismissing his civil action, and denying his request for leave to amend his complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Tolle v. Rockwell Collins*, No. 1:20-cv-00174-LMB-JFA (E.D. Va. June 18, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: May 10, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1768
(1:20-cv-00174-LMB-JFA)

JAMES TOLLE

Plaintiff - Appellant

v.

ROCKWELL COLLINS CONTROL TECHNOLOGIES, INC., d/b/a Rockwell Collins, Inc., d/b/a United Technologies Corporation; COLLINS AEROSPACE, d/b/a Rockwell Collins, Inc., d/b/a United Technologies Corporation, d/b/a Rockwell Collins Control Technologies, Inc.; ROCKWELL COLLINS, INC., d/b/a United Technologies Corporation; UNITED TECHNOLOGIES CORPORATION

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

----- /s/ PATRICIA S. CONNOR, CLERK -----

APPENDIX C

Excerpts from Plaintiff's Complaint of February 19, 2020

Appendix C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FILED

AA

2021/01/12 10:12

JAMES TOLLE,

Civil Action No. 1:20-cv-174

Plaintiff,

COMPLAINT

v.

ROCKWELL COLLINS CONTROL TECHNOLOGIES, INC., COLLINS AEROSPACE /d/b/a Rockwell Collins Control Technologies, Inc., ROCKWELL COLLINS CONTROL TECHNOLOGIES, INC. d/b/a Rockwell Collins, Inc., ROCKWELL COLLINS, INC., COLLINS AEROSPACE d/b/a Rockwell Collins, Inc., ROCKWELL COLLINS CONTROL TECHNOLOGIES, INC. /d/b/a United Technologies Corporation, ROCKWELL COLLINS, INC. /d/b/a United Technologies Corporation, COLLINS AEROSPACE /d/b/a United Technologies Corporation, and UNITED TECHNOLOGIES CORPORATION

Defendants.

Plaintiff James Tolle (hereinafter "Tolle" or "Plaintiff"), *pro se* for his Complaint against Defendants Rockwell Collins Control Technologies, Inc., Collins Aerospace /d/b/a Rockwell Collins Control Technologies, Inc., Rockwell Collins Control Technologies, Inc. /d/b/a Rockwell Collins, Inc., Rockwell Collins, Inc., Collins Aerospace /d/b/a Rockwell Collins, Inc., Rockwell Collins Control Technologies, Inc. /d/b/a United Technologies Corporation, Rockwell Collins, Inc. /d/b/a United Technologies Corporation, Collins Aerospace /d/b/a United Technologies Corporation, and United Technologies Corporation (hereinafter "Rockwell Collins" or "Defendants" individually and together), alleges as follows:

NATURE OF CLAIMS

1. This is an action for damages brought pursuant to the Civil Rights Act of 1964, as amended, (hereinafter, the "Civil Rights Act"), 42 U.S.C. §§ 2000e *et seq.*
2. Defendants Rockwell Collins unlawfully discriminated against Tolle and/or subjected him to an unfair and hostile work environment by forcing Tolle to endure offensive

conduct or object which was serious and pervasive enough for a reasonable person to find it to be intimidating, hostile or an interference to work based on his religious beliefs and practices.

3. Defendants Rockwell Collins unlawfully discriminated against Tolle by forcing Tolle to endure unwelcome and offensive conduct or object based on Tolle's religious beliefs as a condition of continued employment and this led to Tolle's constructive discharge from the company.

4. Defendants Rockwell Collins unlawfully discriminated against Tolle based on religion because Rockwell Collins failed to offer Tolle any accommodation of his religious practices following Tolle's complaints about the offensive conduct or object, refusing to offer Tolle any reasonable accommodation which would allow him to continue working without being exposed to a religiously offensive object while there was no undue hardship for the company.

5. Defendants Rockwell Collins unlawfully discriminated against Tolle and/or subjected him to an unfair and hostile work environment by causing Tolle to believe that Tolle had to alter or abandon his religious practice in order to continue working at the company and this led to Tolle's constructive discharge from the company.

6. Defendants Rockwell Collins unlawfully discriminated against Tolle and/or subjected him to an unfair and hostile work environment during hiring by causing Tolle to believe that Tolle had to alter or abandon his religious practice in order to continue working at the company and this led to Tolle not being able to accept Rockwell Collins' offer of employment.

7. Defendants Rockwell Collins unlawfully discriminated against Tolle based on religion by using an employment practice not essential to the business which is unwelcoming to Christians and has a disparate impact on Christians who work at or apply to the company.

8. Defendants Rockwell Collins willfully and repeatedly violated the Civil Rights

regular employee by Rockwell Collins.

27. In or around August 2018, Tolle applied for a position at Rockwell Collins for the RCCT in Sterling, Virginia.

28. On or around September 3, 2019, Tolle informed Rockwell Collins that he could not accept the position due to the continuing discriminatory policies of Rockwell Collins and because he would have to abandon or alter his religious practice in order to continue working in any role at Rockwell Collins.

29. Due to the discriminatory policies and practices of Rockwell Collins, Tolle could not continue working at Rockwell Collins and left his work at Rockwell Collins in or around October 2019 after a constructive discharge.

Discriminatory Conduct of Rockwell Collins

30. In or around June 2019, Rockwell Collins executed its policy to display a symbol of the Gay Pride movement on its flag pole over all or almost all of its locations for 30 days, which included the Sterling location of Rockwell Collins where Tolle had worked continuously from on or around February, 2018, to on or around May, 2018, and again from on or around November, 2018, to on or around October, 2019. Tolle, who had worked for approximately 20 years with the aerospace and defense industries, had never seen the Gay Pride flag flown in this manner at any other company in the past. Tolle had never seen the Gay Pride flag flown at Rockwell Collins locations before, including at the two locations where he had worked in Warrenton or in Sterling.

31. On or around June 15, 2019, Tolle met with his supervisor Amine Mechiche-Alami to complain that Tolle found the display of the Gay Pride flag at the Sterling location unwelcome and offensive because of his religious belief and practices. Tolle told Mechiche-Alami words to the effect that the display of this offensive object over the work location for 30

days was so pervasive and offensive due to his religious reasons that it created an unwelcome, hostile environment which interfered with his work at that location. He told Mechiche-Alami that continuing to work at a location that flew a Gay Pride flag was contrary to his religious practice, which did not allow him to participate in any activity which publicly associated him with the Gay Pride movement. Tolle told Mechiche-Alami that he would prefer to be able to work offsite or at another location where this offensive object was not being displayed as an accommodation of his religious beliefs during this meeting.

32. On or around June 27, 2019, Tolle followed up his discussion with an e-mail to Mechiche-Alami that stated: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons." Tolle sent this e-mail to underscore how unwelcome the display of the offensive object was and how it was interfering with his work at the site.

33. Tolle received no indication of action by Mechiche-Alami to address his complaints in or around June 2019 and received no response to his request for accommodation from Mechiche-Alami. On or around July 9, 2019, Tolle met with an RTTC engineering manager, Eric Brewer, to report that Tolle found the flying of the Gay Pride flag offensive due to religious reasons and that if it was the policy for Rockwell Collins to fly this every year, this would create an offensive or hostile work environment under which Tolle could not continue to work. Tolle also asked Brewer if it would be possible to find out if the Gay Pride flag which was offensive to Tolle due to religious beliefs and practice would be flown at every location in the company or if it would be possible to find a location where he could work as an accommodation of his religious beliefs and practices. Brewer told Tolle he would look into the matter and on or around July 9, 2019, Brewer sent Tolle an e-mail contact for the Human Resources representative who may be able to answer Tolle's questions.

34. On or around July 17, 2019, Tolle forwarded his complaint of the unfair and hostile work place caused by the display of the Gay Pride flag to the Human Resources representative Julie Jones (hereinafter, the “Human Resources representative”). Tolle’s e-mail on or around July 17, 2019 stated his concerns about the unfair and hostile work place which the Rockwell Collins’ discriminatory practices caused as follows:

- a) “I view this flag as something which is not neutral, but something which promotes one minority’s viewpoint about pride in homosexual lifestyles and treats other minority viewpoint’s [sic.] who don’t agree with them as bigots.”
- b) “For the almost 3 years I have worked with Rockwell Collins, I have never seen another minority flag flown over the company except this one [Gay Pride flag].”
- c) “...as someone who has religious convictions which do not make me proud of Homosexuality or support the Gay Pride agenda, I was very disappointed to see...[Rockwell Collins]...promoting this flag and signaling that people with religious convictions like mine need not apply.”
- d) “The concerns I have about applying for a job with...[Rockwell Collins]...is whether the public display of the Gay Pride flag by the company means that...[Rockwell Collins]...is not welcoming to people who do not share the agenda that the flag undeniably represents.”
- e) “If I am employed by...[Rockwell Collins]...will I be required to support the flying of the Gay Pride flag every year and support the agenda it represents?”
- f) “If I say something as an employee which does not support the flying of the Gay Pride flag...will I face discipline or other adverse actions by management?”
- g) “Without any more information, I am left with the feeling that...[Rockwell Collins]...is not a place where a Christian who does not support Gay Pride should work.”

35. Tolle’s e-mail on or around July 17, 2019, also repeated his request for an

accommodation of his religious beliefs and practices by finding another location where he could work without being exposed to the offensive object: “If the company is committed to flying the Gay Pride flag every year, are there locations within the company which will not have to work under this flag?”

36. Tolle’s e-mail on or around July 17, 2019, makes it clear to Rockwell Collins management representatives that the display of the object which he finds offensive due to religious reasons is not only unwelcome to him, but he also raises the question that the company policy appears to create a preference which is not welcoming of anyone who finds the display of that object offensive for religious reasons: “The concerns I have about applying for a job with... [Rockwell Collins]...is whether the public display of the Gay Pride flag by the company means that...[Rockwell Collins]...is not welcoming to people who do not share the agenda that the flag undeniably represents.”

37. Tolle’s e-mail on or around July 17, 2019, also indicates that the unwelcome and hostile work environment caused by the display of the Gay Pride flag was creating an environment where a person with Tolle’s religious beliefs could not continue to work: “...I am left with the feeling that...[Rockwell Collins]...is not a place where a Christian who does not support Gay Pride should work.”

38. Tolle’s e-mail on or around July 17, 2019, demonstrates Tolle’s effort to take advantage of Rockwell Collins’ Human Resources channels to obtain preventive or corrective action to redress the harassing behavior, or to obtain a reasonable accommodation of his religious beliefs and practices which were impacted by Rockwell Collins’ discriminatory behavior or the offensive conduct or object.

39. On or around July 18, 2019, the Human Resources representative for Rockwell Collins sent Tolle an e-mail response to his complaint and questions. The Human Resources

response confirmed that all locations flew the Gay Pride flag: “I can tell you at legacy... [Rockwell Collins], to my knowledge all the locations that have flagpoles flew the flag.” The Human Resources response could not confirm whether it would be done 30 days of every year, but the Human Resources response did not offer Tolle any accommodation based on his religious belief or practice at another location as Tolle had requested or any other reasonable accommodation.

40. On or around July 18, 2019, the Human Resources representative gave Tolle a copy of the United Technologies Corporation “Rainbow Flag FAQ’s” document (hereinafter “UTC FAQ document”). This document included the following:

- a) The UTC FAQ document stated that the flag “reaffirms [Rockwell Collins]... commitment to attracting and engaging talented people....”
- b) The UTC FAQ document appeared to be promulgated in or around 2018, stating “This year, we are proud to celebrate and recognize the beginning of PRIDE month by displaying the flag during the first week and will evaluate whether that timeline is the right timeline for the next year before June 2019.”
- c) Not all locations of UTC or Rockwell Collins were designated to fly the Gay Pride flag in or around 2018: “The flag will fly at P&W and Collins HQ for the first week in June, and for the entire month of June at UTC HQ in Farmington, CT.”
- d) The actions of Rockwell Collins to fly the Gay Pride flag at all locations and for 30 days starting in or around 2019 was a marked departure from past practices and even from those in or around 2018 according to the UTC FAQ document.
- e) According to the UTC FAQ document, the only other minority flag flown was the Prisoner of War (POW) flag, which is only flown at a single location on isolated days during the year. According to the UTC FAQ document, no other minority was permitted to fly a flag at that

time.

f) The UTC FAQ document made it clear that it was company policy to favor the Gay Pride movement by stating: “The company leadership is fully supportive of the effort to recognize PRIDE month as we believe it reflects many of our company’s values....” Noteworthy is that the document did not make any attempt to express such wholehearted support for any other minority.

41. The Rockwell Collins’ Human Resources response on or around July 18, 2019, responded to his question about potential retaliation based on his religious objection to the Gay Pride flag with the threat that Tolle’s language could be considered bigoted and justify retaliation: “If you use derogatory language to refer to someone due to their...sexual orientation...that is not tolerated.”

42. The Rockwell Collins Human Resources response on or around July 18, 2019, contained no offer of accommodation of Tolle’s religious belief or practice and made no claim that an accommodation of Tolle’s religious belief or practice would create an undue hardship for Rockwell Collins.

43. The Rockwell Collins Human Resources response on or around July 18, 2019, contained no language demonstrating that Rockwell Collins had exercised or would exercise reasonable care to prevent and promptly correct any of the harassing behavior.

44. On or around July 18, 2019, Tolle responded to the Human Resources representative by e-mail, including his continuing concerns about the unfair and hostile work place caused by the Rockwell Collins actions and policies regarding display of the Gay Pride flag. Specifically, Tolle’s e-mail response stated:

a) “The other concern I have is in how the response I received to my concerns about retaliation have really only underscored my concerns....The response I received to my question

about whether I would face any such adverse treatment if I voiced my opposition to the Gay Pride movement seemed to automatically assume that my opposition would be derogatory towards homosexuals. This first response underscores my concerns that a person who shares my religious convictions and opinions which do not support the Gay Pride agenda will normally be treated as a homophobe or bigot within the company.”

b) “For these reasons, I am still concerned that...[Rockwell Collins]...is a workplace which will not welcome people with my religious beliefs....Without any further information, I will continue to consider...[Rockwell Collins]...as a place where Christians are not as welcome as others....”

45. On or around July 23, 2019, the Rockwell Collins legal Counsel’s office responded to Tolle’s complaints and questions through an e-mail from Rockwell Collins’ Attorney Michael Wade (hereinafter, “Wade’s e-mail”). Wade’s e-mail response did not address the details of Tolle’s complaint of an unfair and hostile work place based on religious discrimination and Wade’s e-mail did not offer Tolle any accommodation for his religious belief or practice as Tolle had requested. It is noteworthy that Wade’s e-mail made no claim that an accommodation of Tolle’s religious belief or practice would create an undue hardship for Rockwell Collins.

46. Wade’s e-mail did respond to Tolle’s concern that Rockwell Collins’ response to Tolle’s complaints were threatening retaliation by repeating the similarly threatening language: “Thus, while individuals who work for...[Rockwell Collins]...are free to their own personal, political, or religious views, doctrine, membership, etc., we expect employees to take care to communicate with co-workers in a respectful, professional, and non-discriminatory or harassing manner....Any employee who treats another in a way that contradicts this expectation will subject him or herself to discipline, up to and including termination.”

47. Rockwell Collins' Attorney Wade's e-mail on or around July 23, 2019, contained no language demonstrating that Rockwell Collins had exercised or would exercise reasonable care to prevent and promptly correct any of the harassing behavior. Wade's e-mail did indicate that Rockwell Collins would not be willing to exercise any reasonable care to prevent or correct any harassment caused by the flying of the Gay Pride flag in the future by expressing the company's past commitment to this action with the following statement: "We were recently proud to support employees who are members of the LGBTQ+ community during Pride Month".

48. Wade's e-mail included language which reflected a bias in Rockwell Collins policies which was markedly in favor of Gay Pride while unwilling to show public support for any other minority point of view, adding the following statement after Wade's glowing comments about the LGBTQ+ community: "...the Company does not sponsor or support any particular religious or political viewpoint, practice or membership to the exclusion of others".

49. On or around August 1, 2019, Mechiche-Alami told Tolle to contact engineering manager Jay Dabhade concerning an offer to become a regular employee for Rockwell Collins. Dabhade told Tolle on or around August 2, 2019, that Rockwell Collins wanted Tolle to join the RCCT team as a regular employee and by an e-mail on or around August 2, 2019, Dabhade told Tolle that he could apply for a position after Dabhade opened a software engineering requisition.

50. On or around August 21, 2019, Tolle was able to apply to the Rockwell Collins online job announcement for the software engineering position with RCCT as a regular employee. On or around August 29, 2019, the Rockwell Collins recruiter sent Tolle an offer letter by e-mail.

51. The offer letter on or around August 29, 2019, contained no information which would address Tolle's complaints of an unfair and hostile work environment caused by Rockwell Collins actions and policies regarding the display of an object which Tolle found offensive based

on his religious belief or practice. Specifically, the offer letter contained no offer to address Tolle's complaints or to offer Tolle any accommodation of his religious belief or practices, nor did it claim that an accommodation of Tolle's religious belief or practice would create an undue hardship on Rockwell Collins. Furthermore, the offer letter on or around August 29, 2019, contained no language to indicate that Rockwell Collins had exercised or would be willing to exercise reasonable care to prevent and promptly correct any harassing behavior caused by their actions or offensive conduct or object.

52. On or around September 3, 2019, Tolle informed Rockwell Collins that he "cannot continue" working at Rockwell Collins and told Rockwell Collins management that he had to turn down the offer of employment for the following reasons:

- a) "For a whole month of the current year, Collins Aerospace management chose to fly a flag over our location which, to me, is an offensive object which represents a social movement that has been known for retaliatory and discriminatory practices against Christians who hold my religious convictions. With the many examples of this over the past years, I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."
- b) "Additionally, my religious practices do not allow me to work under a Gay Pride flag and for me to continue working as an employee at Collins, it would require me to change my religious practices and to endure the display of an offensive object as a condition of my employment."
- c) "I raised my concerns with management and HR representatives, requesting both clarification of the policy and accommodation of my religious practices. Unfortunately, the responses I received from HR and the legal counsel failed to offer any accommodation of my religious practices, at any location in the company."

d) Tolle also raised his concerns about threats in response to the raising of his concern about retaliation: "Unfortunately, the responses I received from HR and the legal counsel...even contributed to some of my concerns."

53. Tolle's e-mail on or around September 3, 2019, demonstrates that the past harassing behavior at Rockwell Collins and prospect of continuing harassing behavior by flying an object Tolle found offensive due to religious reasons over all locations of the company for 30 days every year in the future was sufficiently severe or pervasive to alter the condition of Tolle's employment. Tolle made it clear in his e-mail on or around September 3, 2019, that the abusive working environment due to this harassment had become so intolerable at the time or that the prospect of harassment in the future had become so intolerable that Tolle believed his resignation was his only option for getting relief from the harassment and Tolle's only fitting response.

54. On or around September 17, 2019, Tolle gave notice to his Rockwell Collins' project lead and Mr. Amine Mechiche-Alami, his supervisor, that his last day of work at Rockwell Collins would be October 4, 2019.

55. On or around October 4, 2019, Tolle stopped working at Rockwell Collins because of a constructive discharge caused by the following:

- a) Unwelcome conduct and/or display of offensive object which was severe and/or pervasive enough to create a work environment that a reasonable person would consider intimidating and/or hostile and/or interfered with Tolle's work based on his religious belief and practice.
- b) Discriminatory, unfair and/or hostile work place and/or hiring practices which caused Tolle to believe that Tolle had to abandon or alter his religious belief or practice in order to continue working at the company.
- c) Discrimination against Tolle based on religion because Rockwell Collins failed to

offer Tolle any accommodation of his religious belief or practice which prevented him from continuing to work at the company.

d) Threats of retaliation in response to Tolle's complaints about being threatened with retaliation after complaining about an intimidating or hostile work place due to discrimination based on his religious belief or practice.

56. On or around September 28, 2019, Tolle sent a letter by certified U. S. Mail to the U. S. Equal Employment Opportunity Commission (hereinafter "EEOC"), which reported the discriminatory policy and actions against him by Rockwell Collins, doing business as Collins Aerospace, located at 22640 Davis Drive, Sterling, VA 20164, as follows:

57. On or around November 16, 2019, Tolle filed a complaint of formal charges (EEOC Form 5) by certified U. S. Mail with the EEOC, which reported discriminatory policies and actions by Rockwell Collins against Tolle as follows:

a) "[Rockwell Collins]...management forced me to endure offensive conduct or object which was serious and pervasive enough for a reasonable person to find it to be intimidating, hostile or an interference to work for me due to my religious beliefs and practices."

b) "[Rockwell Collins]...management's response to my complaints about the offensive conduct or object included threats of retaliation against me which were unnecessary, inappropriate and violated my rights under the law."

c) "[Rockwell Collins]...management's actions caused me to believe that I had to abandon or adjust my religious beliefs or practice in order to continue working at the company and this led to my constructive discharge from the company."

d) "[Rockwell Collins]...management's discriminatory actions against Christians who do not support the Gay Pride flag or its movement due to religious reasons creates an environment which is unwelcoming to Christians and has a disparate impact on Christians who work at or

apply to the company.”

58. On or around December 4, 2019, the EEOC sent Tolle a response to Tolle's charges which stated: “Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.”

59. On or around December 4, 2019, the EEOC letter notification to Tolle stated “*This information relates to filing suit in Federal...court....In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice.*” (See Exhibit A.)

60. On or around January 9, 2020, Tolle corrected his complaint to clarify his status as a statutory employee and provided the amended complaint to the EEOC.

61. On or around February 11, 2020, the EEOC informed Tolle that his amended complaint would be used to request reconsideration of Tolle's complaint by the EEOC. (See Exhibit B.)

62. On or around February 13, 2020, the EEOC informed Tolle that they had reviewed his amended complaint and had decided not to change its finding of December, 2019.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

63. Tolle re-alleges and incorporates the above allegations of this complaint as if set forth fully herein.

64. The Civil Rights Act under 42 U.S.C. § 2000e-2(a)(1) prohibits discrimination against any individual with respect to his conditions or privileges of employment, because of

to fly the Gay Pride flag for a whole month over all of its locations without any accommodation of those with religious objections was a marked departure from its past actions while Tolle was employed there and is quite different than what is found in the rest of the aerospace industry. This is substantiated by the facts, including but not limited to the following:

- a) The UTC FAQ document on the company policy of flying the Gay Pride flag indicated that this was a new and marked departure from past practices even for UTC and Rockwell Collins;
- b) Tolle, who had worked for approximately 20 years with the aerospace and defense industries, had never seen the Gay Pride flag flown in this manner at any other company in the past;
- c) Tolle had never seen the Gay Pride flag flown at Rockwell Collins locations before, including at the two locations where he had worked in Warrenton or in Sterling.

69. Upon information and belief, Rockwell Collins flying of the Gay Pride flag, an object which Tolle found offensive due to religious reasons, for 30 days in or around June, 2019, at all locations of the company was sufficiently severe and pervasive enough to create a work environment which a reasonable person would consider intimidating, hostile or abusive. This is substantiated by the facts, including but not limited to the following:

- a) Tolle told his supervisor Mechiche-Alami that he found the Gay Pride flag offensive, including in his e-mail on or around June 27, 2019: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons";
- b) The UTC FAQ document on the company policy of flying the Gay Pride flag indicated that this was a new and marked departure from past practices even for UTC and Rockwell Collins;
- c) Tolle had never seen the Gay Pride flag flown at Rockwell Collins locations before,

including at the two locations where he had worked in Warrenton or in Sterling.

d) Tolle's communication with management on or around June 27, 2019, showed that he found the work environment which displayed this offensive symbol as intimidating, hostile or abusive and interfering with his work: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons."

e) Tolle's e-mail on or around September 3, 2019, stated that Tolle believed that the offensive conduct or object displayed by Rockwell Collins created a hostile workplace: "...I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."

70. Upon information and belief, Rockwell Collins' communications with Tolle failed to indicate that the company would be willing to exercise any reasonable care to prevent or promptly correct any harassing action in the future or rule out the possibility that the company would continue the actions or flying of the object which Tolle found offensive due to religious reasons in the future so that there was no reason for Tolle to believe that the harassing environment would end. Upon information and belief, the flying of the Gay Pride flag as a symbol of the company's support of the Gay Pride movement for many days in 2019 and the likelihood that the company policy which promoted this conduct or action will not change for any year in the future created an action by the company which was severe and pervasive to create a work environment that a reasonable person would consider intimidating, hostile or abusive. This is substantiated by the facts, including but not limited to the following:

- a) None of Tolle's managers told him that the display of the offensive conduct or object would be corrected or not repeated in the future;
- b) None of Rockwell Collins' responses to Tolle's complaints about the flying of the

Gay Pride flag said that this action would be corrected or not repeated in the future;

c) The statement by Rockwell Collins' Attorney Wade showed no regret or interest in making any corrections to the company's actions and expressed pride in the past action so that it was probable that Rockwell Collins would continue the actions or flying of the object which Tolle found offensive due to religious reasons in the future.: "We were recently proud to support employees who are members of the LGBTQ+ community during Pride Month".

d) Tolle's e-mail communications with Rockwell Collins on or around September 3, 2019, showed that the Rockwell Collins responses did not offer any prospect of change in the company's actions or policy in the future: "Unfortunately, the responses I received from HR and the legal counsel failed to offer any accommodation of my religious practices, at any location in the company."

e) Tolle's e-mail communications with Rockwell Collins on or around September 3, 2019, showed that he believed that the continuing actions and policies at Rockwell Collins created an intimidating, hostile or abusive work environment based on his religious belief or practice: "...I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."

71. Upon information and belief, the Rockwell Collins display of the Gay Pride flag was expanded in a radical way in 2019 which was considerably more severe and pervasive, so that every location of Rockwell Collins displayed the object which Tolle found offensive due to religious beliefs. Upon information and belief, by taking the radical step to increase the number of days that the Gay Pride flag would be displayed and the number of locations such that the flag would be displayed at every location of the company, the conduct or action of the company became so severe and pervasive to create a work environment that a reasonable person would

consider intimidating, hostile or abusive. This is substantiated by the facts, including but not limited to the following:

- a) The UTC FAQ document on the company policy of flying the Gay Pride flag indicated that this was a new and marked departure from past practices even for UTC and Rockwell Collins;
- b) The Human Resources response on or around July 18, 2019, confirmed that the Gay Pride flag was being flown at every Rockwell Collins location: "I can tell you at legacy... [Rockwell Collins], to my knowledge all the locations that have flagpoles flew the flag."
- c) The display of this object at every location made it impossible for someone who found the object intimidating or offensive to continue to work at Rockwell Collins without being exposed to the object.
- d) Tolle's communication with management on or around June 27, 2019, showed that he found the work environment which displayed this offensive symbol as intimidating, hostile or abusive and interfering with his work: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons."
- e) Tolle's e-mail communications with Rockwell Collins on or around September 3, 2019, which followed Rockwell Collins' responses to his complaints showed that he believed that the continuing actions and policies at Rockwell Collins created an intimidating, hostile or abusive work environment based on his religious belief or practice: "...I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."

72. Upon information and belief, Tolle's communications with Rockwell Collins management made it clear that the display of the Gay Pride flag was conduct which he found unwelcome in the work place. Tolle told management that he supported policies which were

neutral to homosexuals in the work place. Upon information and belief, Tolle made it clear that the preference of the company to display the Gay Pride flag was not a neutral policy and made the work place unwelcoming to persons like Tolle who found this object offensive due to their religious beliefs. This is substantiated by the facts, including but not limited to the following:

- a) Tolle reported to his supervisor Mechiche-Alami and Brewer that he found the flying of the Gay Pride flag unwelcome based on his religious belief and practice;
- b) Tolle's e-mail to his supervisor on or around June 27, 2019, showed that the actions by Rockwell Collins was unwelcome and interfering with his work: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons."
- c) Tolle's complaints to his supervisors and in his subsequent e-mail on or around July 17, 2019, stated that he found Rockwell Collins' actions biased and non-neutral: "I view this flag as something which is not neutral, but something which promotes one minority's viewpoint about pride in homosexual lifestyles and treats other minority viewpoint's [sic.] who don't agree with them as bigots."

73. Upon information and belief, Tolle's communication with Rockwell Collins management and their representatives made it clear that he did not support the Gay Pride flag or the Gay Pride movement due to his religious beliefs and practice. Upon information and belief, although Tolle made it known to the company that Tolle could support their equal opportunity policies which are neutral to sexual orientation in the work place, Tolle complained to management that the severe and pervasive nature of displaying the non-neutral symbol of the Gay Pride flag was offensive based on Tolle's religious beliefs and practice and such conduct created an intimidating and/or hostile work environment where it would be difficult for Tolle to continue to work. This is substantiated by the facts, including but not limited to the following:

- a) Tolle reported to his supervisor Mechiche-Alami and Brewer that he found the flying of the Gay Pride flag unwelcome based on his religious belief and practice;
- b) Tolle's e-mail to his supervisor on or around June 27, 2019, showed that the actions by Rockwell Collins was unwelcome and interfering with his work: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons."
- c) Tolle's complaints to his supervisors and in his subsequent e-mail on or around July 17, 2019, stated that he found Rockwell Collins' actions biased and non-neutral: "I view this flag as something which is not neutral, but something which promotes one minority's viewpoint about pride in homosexual lifestyles and treats other minority viewpoint's [sic.] who don't agree with them as bigots."
- d) Tolle's e-mail on or around September 3, 2019 reported to Rockwell Collins management that he could not work at Rockwell Collins due to the continuing policy and actions of Rockwell Collins which Tolle found biased, non-neutral and offensive due to religious reasons: "For a whole month of the current year, Collins Aerospace management chose to fly a flag over our location which, to me, is an offensive object which represents a social movement that has been known for retaliatory and discriminatory practices against Christians who hold my religious convictions. With the many examples of this over the past years, I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."

74. Upon information and belief, Tolle has a long-held view based on his Catholic religion that does not support the promotion of Gay Pride or the homosexual lifestyle. Upon information and belief, Tolle's activities in his Church and outside of work based on these beliefs reflect a sincere religious belief which leads him to view the actions of Rockwell Collins as

promotion of something which is offensive to Tolle's religious beliefs and practices. This is substantiated by the facts, including but not limited to the following:

- a) Tolle is a practicing Catholic who regularly participates in services at the Holy Trinity parish in Gainesville, Virginia;
- b) Tolle indicated to his supervisor Mechiche-Alami and Brewer that he found the flying of the Gay Pride flag offensive based on his religious belief and practice;
- c) Tolle's e-mail to his supervisor on or around June 27, 2019, showed that the actions by Rockwell Collins was offensive based on his religious belief or practice: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons."
- d) Tolle's e-mail on or around July 17, 2019, shows he does not support the promotion of Gay Pride based on his religious belief or practice: "...as someone who has religious convictions which do not make me proud of Homosexuality or support the Gay Pride agenda...."

75. Upon information and belief, there is considerable evidence from history that the Gay Pride movement is not a non-violent movement committed to peace and that the Gay Pride flag is not a symbol of peace.⁵ Upon information and belief, in recent years, there are ample

5 Famous examples of discrimination by the Gay pride community against persons in the work place who do not support the Gay pride movement include Jaelene Hinkle (<https://www.washingtontimes.com/news/2019/jul/10/jaelene-hinkles-world-cup-snub-sparks-debate/>), Patricia Jannuzzi (<https://www.mycentraljersey.com/story/news/local/somerset-county/2015/04/10/patricia-jannuzzi-gets-job-back-immaculata-high-school/25587809/>); Fr. Mark Morris (<https://www.intoleranceagainstchristians.eu/index.php?id=12&case=2512>); Brendan Eich (<https://www.reuters.com/article/us-mozilla-ceo-resignation/mozilla-ceo-resigns-opposition-to-gay-marriage-drew-fre-idUSBRE321Y320140403>); and Adolfo Martinez (<https://desmoinesregister.com/story/news/crime-and-courts/2019/12/19/lgbtq-flag-burning-iowa-man-sentenced-church-banner-fire/2697139001/>). According to Chuck Fimandri, chief counsel to the Freedom of Conscience Defense Fund, many Christians who oppose the Gay pride movement have been targeted in the workplace: "They have a mortgage to pay and kids to feed, so they give in and shut up," Fimandri said. "Others quit and try to get another job. Or they get fired and end up on social services. There are thousands and thousands of them across the country. They have said something or donated to something or declined to say

examples of how the Gay Pride movement has led to retaliation and discrimination against people who hold Tolle's religious convictions and the Gay Pride flag has become a symbol of the movement and this discriminatory behavior towards Christians to many people.⁶ For these reasons, Tolle views the display of the Gay Pride flag by Rockwell Collins management as offensive to Tolle's religious beliefs, but also is a symbol which represents a movement that is discriminatory and hateful to Christians like Tolle. Upon information and belief, even if Rockwell Collins management does not explicitly approve of the discriminatory practices of the Gay Pride movement against Christians, the display of the symbol of this movement concerned Tolle greatly because it serves to give tacit approval to all of the discrimination and abuse of Christians who do not support Gay Pride due to religious convictions. In addition to the examples and evidence provided in the footnotes, this is further substantiated by the facts, including but not limited to the following:

- a) Tolle's e-mail complaint on or around July 17, 2019, stated his concerns about the discriminatory agenda which the Gay Pride flag represents: "The concerns I have about applying for a job with...[Rockwell Collins]...is whether the public display of the Gay Pride flag by the company means that...[Rockwell Collins]...is not welcoming to people who do not share the agenda that the flag undeniably represents."
- b) Tolle's e-mail on or around September 3, 2019 shows that the Gay Pride flag was a symbol which contributed to a intimidating or hostile workplace: "For a whole month of the

something positive about same-sex 'marriage' and have become pariahs in their places of employment." (quoted in the National Catholic Register, "It's Not a Gay Old Time for Those Who Support Traditional Marriage", April 7, 2015)

6 Gilbert Baker's own comments about the creation of the Gay pride flag was about power and a revolution, which shows the intent from the very beginning was not to create an symbol of peace and inclusion: "As a community, both local and international, gay people were in the midst of an upheaval, a battle for equal rights, a shift in status where we were now demanding power, taking it. This was our new revolution: a tribal, individualistic, and collective vision. It deserved a new symbol." (excerpts from Gilbert Baker's memoir at <https://gilbertbaker.com/rainbow-flag-origin-story/>)

current year, Collins Aerospace management chose to fly a flag over our location which, to me, is an offensive object which represents a social movement that has been known for retaliatory and discriminatory practices against Christians who hold my religious convictions. With the many examples of this over the past years, I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me.”

76. Upon information and belief, it is noteworthy that when Tolle raised Tolle's concerns about the symbol of discrimination that the Gay Pride flag represented and that Tolle viewed it as a sign that Catholics are not welcome at Rockwell Collins, Rockwell Collins management made no attempt to condemn or disavow the use of the Gay Pride flag to promote discrimination against Christians or to create an unwelcome environment for Christians which Tolle noted as one of his concerns in his complaints. This is substantiated by the facts, including but not limited to the following:

- a) Tolle's e-mail on or around July 17, 2019, stated that the Gay Pride flag is a non-neutral symbol promoting unequal treatment: “I view this flag as something which is not neutral, but something which promotes one minority's viewpoint about pride in homosexual lifestyles and treats other minority viewpoint's [sic.] who don't agree with them as bigots.”
- b) Tolle's e-mail complaint on or around July 17, 2019, stated his concerns about the discriminatory agenda which the Gay Pride flag represents: “The concerns I have about applying for a job with...[Rockwell Collins]...is whether the public display of the Gay Pride flag by the company means that...[Rockwell Collins]...is not welcoming to people who do not share the agenda that the flag undeniably represents.”
- c) Although Wade's e-mail states that Rockwell Collins' support of Gay Pride are intended to demonstrate a desire to create “a welcoming, safe and respectful environment for all

to 42 U.S.C. § 1981a(a)(1).

84. Tolle requests award of attorney's fees pursuant to 42 U.S.C. § 2000e-5(k).

AS AND FOR A SECOND CAUSE OF ACTION

85. Tolle re-alleges and incorporates the above allegations of this complaint as if set forth fully herein.

86. The Civil Rights Act under 42 U.S.C. § 2000e-2(a)(1) prohibits discrimination against any individual with respect to his conditions or privileges of employment, because of such individual's religion.

87. According to the Equal Employment Opportunity Commission's website at <https://www.eeoc.gov/laws/type/harassment.cfm>, harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, which is unwelcome conduct that is based on religion where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive. Offensive conduct may include offensive objects and interference with work performance.⁷

88. This Second Cause of Action relates to unwelcome conduct or object and/or interference of work performance that is based on religion where "1) enduring the offensive conduct becomes a condition of continued employment".

89. Upon information and belief, the Rockwell Collins introduction of a radical policy to fly the Gay Pride flag for a whole month over all of its locations without any accommodation of those with religious objections was a marked departure from its past actions while Tolle was employed there and is quite different than what is found in the rest of the aerospace industry.

⁷ See footnote 1.

This is substantiated by the facts, including but not limited to the following:

- a) The UTC FAQ document on the company policy of flying the Gay Pride flag indicated that this was a new and marked departure from past practices even for UTC and Rockwell Collins;
- b) Tolle, who had worked for approximately 20 years with the aerospace and defense industries, had never seen the Gay Pride flag flown in this manner at any other company in the past;
- c) Tolle had never seen the Gay Pride flag flown at Rockwell Collins locations before, including at the two locations where he had worked in Warrenton or in Sterling.

90. Upon information and belief, Rockwell Collins flying of the Gay Pride flag, an object which Tolle found unwelcome and offensive due to religious reasons, for 30 days in or around June, 2019, at all locations of the company was sufficiently severe and pervasive enough to create a work environment which a reasonable person would consider intimidating, hostile or abusive. This is substantiated by the facts, including but not limited to the following:

- a) Tolle reported to his supervisor Mechiche-Alami and Brewer that he found the flying of the Gay Pride flag unwelcome based on his religious belief and practice;
- b) Tolle told his supervisor Mechiche-Alami that he found the Gay Pride flag offensive, including in his e-mail on or around June 27, 2019: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons";
- c) The UTC FAQ document on the company policy of flying the Gay Pride flag indicated that this was a new policy;
- d) The company had not flown the Gay Pride flag at any of the locations where Tolle worked for the past 3 years: "For the almost 3 years I have worked with Rockwell Collins, I have never seen another minority flag flown over the company except this one [instance]....";

e) Tolle's communication with management on or around June 27, 2019, showed that he found the work environment which displayed this offensive symbol as intimidating, hostile or abusive and interfering with his work: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons."

f) Tolle's e-mail communications with Rockwell Collins on or around September 3, 2019, which followed Rockwell Collins' responses to his complaints showed that he believed that the continuing actions and policies at Rockwell Collins created an intimidating, hostile or abusive work environment based on his religious belief or practice: "...I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."

91. Upon information and belief, Rockwell Collins' communications with Tolle failed to indicate that the company would be willing to exercise any reasonable care to prevent or promptly correct any harassing action in the future or rule out the possibility that the company would continue the actions or flying of the object which Tolle found offensive due to religious reasons in the future so that there was no reason for Tolle to believe that the harassing environment would end. Upon information and belief, the flying of the Gay Pride flag as a symbol of the company's support of the Gay Pride movement for many days in 2019 and the likelihood that the company policy which promoted this conduct or action will not change for any year in the future created an action by the company which was severe and pervasive to create a work environment that a reasonable person would consider intimidating, hostile or abusive. This is substantiated by the facts, including but not limited to the following:

- a) None of Tolle's managers told him that this would be corrected or not repeated in the future;
- b) None of Rockwell Collins' responses to Tolle's complaints about the flying of the

Gay.Pride.flag said that this action would be corrected or not repeated in the future;

c) The statement by Rockwell Collins' Attorney Wade showed no regret or interest in making any corrections to the company's actions and expressed pride in the past action so that it was probable that Rockwell Collins would continue the actions or flying of the object which Tolle found offensive due to religious reasons in the future.: "We were recently proud to support employees who are members of the LGBTQ+ community during Pride Month";

d) Tolle's e-mail communications with Rockwell Collins on or around September 3, 2019, showed that the Rockwell Collins responses did not offer any prospect of change in the company's actions or policy in the future: "Unfortunately, the responses I received from HR and the legal counsel failed to offer any accommodation of my religious practices, at any location in the company";

e) Tolle's e-mail communications with Rockwell Collins on or around September 3, 2019, showed that he believed that the continuing actions and policies at Rockwell Collins created an intimidating, hostile or abusive work environment based on his religious belief or practice: "I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."

92. Upon information and belief, Tolle's communications with Rockwell Collins management made it clear that the display of the Gay Pride flag was conduct which he found unwelcome in the work place. Tolle told management that he supported policies which were neutral to homosexuals in the work place. Upon information and belief, Tolle made it clear that the preference of the company to display the Gay Pride flag was not a neutral policy and made the work place unwelcoming to persons like Tolle who found this object offensive due to their religious beliefs. This is substantiated by the facts, including but not limited to the following:

- a) Tolle reported to his supervisor Mechiche-Alami and Brewer that he found the flying of the Gay Pride flag unwelcome based on his religious belief and practice;
- b) Tolle's e-mail to his supervisor on or around June 27, 2019, showed that the actions by Rockwell Collins was unwelcome and interfering with his work: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons";
- c) Tolle's complaints to his supervisors and in his subsequent e-mail on or around July 17, 2019, stated that he found Rockwell Collins' actions biased and non-neutral: "I view this flag as something which is not neutral, but something which promotes one minority's viewpoint about pride in homosexual lifestyles and treats other minority viewpoint's [sic.] who don't agree with them as bigots."

93. Upon information and belief, Tolle's communication with Rockwell Collins management and their representatives made it clear that he did not support the Gay Pride flag or the Gay Pride movement due to his religious beliefs and practice. Upon information and belief, although Tolle made it known to the company that Tolle could support their equal opportunity policies which are neutral to sexual orientation in the work place, Tolle complained to management that the severe and pervasive nature of displaying the non-neutral symbol of the Gay Pride flag was offensive based on Tolle's religious beliefs and practice and such conduct created an intimidating and/or hostile work environment where it would be difficult for Tolle to continue to work. This is substantiated by the facts, including but not limited to the following:

- a) Tolle reported to his supervisor Mechiche-Alami and Brewer that he found the flying of the Gay Pride flag unwelcome based on his religious belief and practice;
- b) Tolle's e-mail to his supervisor on or around June 27, 2019, showed that the actions by Rockwell Collins was unwelcome and interfering with his work: "...I will probably go home

b) On or around June 27, 2019, Tolle met with Rockwell Collins Engineering Manager Brewer, when Tolle complained to Brewer about the Gay Pride flag which was offensive to Tolle due to religious beliefs and asked Brewer if it would be possible to find a location where he could work as an accommodation of his religious beliefs and practices.

c) Tolle's e-mail on or around July 17, 2019, also repeated Tolle's request for an accommodation of his religious beliefs and practices by finding another location where he could work without being exposed to the offensive object: "If the company is committed to flying the Gay Pride flag every year, are there locations within the company which will not have to work under this flag?"

97. Upon information and belief, no response to Tolle's complaints or questions by Rockwell Collins included an offer of a reasonable accommodation of Tolle's religious belief or practice and Rockwell Collins never offered Tolle a reasonable accommodation which would correct the harassing action or prevent Tolle from being subjected to the intimidating or hostile work environment caused by the display of an object which Tolle found offensive due to his religious belief or practice. This is substantiated by the facts, including but not limited to the following:

- a) No offer of a reasonable accommodation was made by Tolle's supervisor Mechiche-Alami;
- b) No offer of a reasonable accommodation was made during Tolle's complaints to Brewer;
- c) No offer of a reasonable accommodation was made by the Human Resources representative in her e-mail response on or around July 18, 2019 or any other communication by her;
- d) No offer of a reasonable accommodation was made within Wade's e-mail response on

-- or around July 23, 2019 or any other communication by Wade;

e) No other offer of a reasonable accommodation was communicated to Tolle by Rockwell Collins at any time after Tolle's complaint to Rockwell Collins.

98. Upon information and belief, the display of the Gay Pride flag by Rockwell Collins at all locations in the future would force Tolle to endure unwelcome conduct or object which Tolle found offensive due to religious belief or practice as a condition of continued employment. This was substantiated by the facts, including but not limited to the following:

a) Tolle indicated to his supervisor Mechiche-Alami and Brewer that he found the flying of the Gay Pride flag offensive based on his religious belief and practice;

b) Tolle's e-mail to his supervisor on or around June 27, 2019, showed that the actions by Rockwell Collins was offensive based on his religious belief or practice: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons";

c) Tolle's e-mail on or around September 3, 2019, stated: "For a whole month of the current year, Collins Aerospace management chose to fly a flag over our location which, to me, is an offensive object....";

d) None of the Rockwell Collins responses to Tolle's complaints indicated that the Rockwell Collins policies and actions concerning the flying of the Gay Pride flag would change and it was reasonable for Tolle to believe that he would be subjected to the display of the object which he found offensive due to his religious belief or practice in the future if he continued to work at Rockwell Collins.

99. Upon information and belief, Tolle never received any offer of accommodation of Tolle's religious belief or practice from Rockwell Collins and without any offer of a reasonable accommodation of Tolle's religious belief or practice by Rockwell Collins, Tolle would be forced

his religious belief or practice in the future if he continued to work at Rockwell Collins.

100. Upon information and belief, Tolle believed that Rockwell Collins' display of unwelcome conduct or object which was offensive to Tolle based on religion required Tolle to endure offensive conduct as a condition of continued employment. This is substantiated by the facts, including by the statement in Tolle's e-mail on or around September 3, 2019: "it would require me to change my religious practices and to endure the display of an offensive object as a condition of my employment."

101. Upon information and belief, Tolle took advantage of several opportunities provided by Rockwell Collins to prevent or correct Rockwell Collins' conduct or object which Tolle found offensive due to religious reasons. This is substantiated by the facts, including but not limited to the following:

a) Tolle first took advantage of reporting his complaint to the supervisors in his operational chain of command, including Mechiche-Alami, and also Engineering Manager Brewer. Tolle told Mechiche-Alami that the Rockwell Collins conduct or object was so offensive to Tolle based on religious reasons that it interfered with his ability to work at the location where it was displayed, stating: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons." Tolle told Brewer that Tolle found the flying of the Gay Pride flag offensive due to religious reasons and that if it was the policy for Rockwell Collins to fly this every year, this would create an offensive or hostile work environment under which Tolle could not continue to work.

b) Tolle also took advantage of the Rockwell Collins' Human Resource complaint process to report his complaints of the harassing nature of Rockwell Collins' actions by sending multiple e-mails to Rockwell Collins Human Resource representatives in or around July, 2019, attempting to pursue preventive or corrective options, including the following:

his religious beliefs, by failing to offer Tolle any accommodation for Tolle's religious belief or practice, and thus causing Tolle to endure offensive conduct or object as a condition of continued employment, Rockwell Collins discriminated against Tolle and/or subjected Tolle to a hostile work environment in violation of the Civil Rights Act based on an unlawful employment practice under 42 U.S.C. § 2000e-2(m).

106. Upon information and belief, the end of Tolle's work at Rockwell Collins was a constructive discharge, which is substantiated by the facts, including:

- a) The past harassing behavior at Rockwell Collins and prospect of continuing harassing behavior by flying an object Tolle found offensive due to religious reasons over all locations of the company for 30 days every year in the future was sufficiently severe or pervasive to alter the condition of Tolle's employment;
- b) Tolle tried to take advantage of the preventive or corrective opportunities offered by Rockwell Collins including reporting his complaint to his supervisors and also reporting his complaint separately to the Human Resources representative;
- c) Rockwell Collins did not exercise reasonable care to prevent or promptly address any of the harassing behavior;
- d) Based on Rockwell Collins' responses to his complaints, Tolle believed that the abusive working environment due to the harassment had become so intolerable or that the prospect of harassment in the future had become so intolerable that Tolle's resignation was his only option for getting relief from the harassment and Tolle's only fitting response.

2nd Claim related to Second Cause of Action

107. By discriminating against Tolle and/or subjecting Tolle to a hostile work environment in violation of the Civil Rights Act, Rockwell Collins' actions led to a constructive discharge of Tolle.

against any individual with respect to his conditions or privileges of employment, because of such individual's religion.

115. According to 29 CFR § 1605.2(b)(1), the “[Civil Rights Act] Section 701(j) makes it an unlawful employment practice under [Civil Rights Act] section 703(a)(1) for an employer to fail to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.”

116. Upon information and belief, Tolle's long held religious conviction made him observe the practice of not working under or being associated with the Gay Pride flag or being associated in any other way with the movement that the flag represented. Tolle made this clear to Rockwell Collins management on several occasions after the Gay Pride flag was flown in or around June, 2019. This is substantiated by the facts, including but not limited to the following:

- a) During his meetings with supervisor Mechiche-Alami and Brewer, Tolle told them that his religious practice did not allow him to be associated with the Gay Pride flag and that he would not be able to work under the flag due to his religious belief and practice;
- b) Tolle's e-mail to Mechiche-Alami on or around June 27, 2019, repeated his religious objection to working where the Gay Pride flag was being flown: “...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons”;
- c) Tolle's e-mail on or around September 3, 2019, stated: “Additionally, my religious practices do not allow me to work under a Gay Pride flag....”

117. Upon information and belief, in or around June 2019, Tolle met with his Rockwell Collins supervisor Mechiche-Alami and discussed the possibility of Rockwell Collins making an accommodation which would let Tolle work at a site where the Gay Pride flag was not displayed.

Tolle told Mechiche-Alami that he would prefer to be able to work offsite or at another location where this offensive object was not being displayed as an accommodation of his religious belief during this meeting

118. Upon information and belief, on or around June 27, 2019, Tolle met with Rockwell Collins Engineering Manager Brewer and discussed working at another location as an accommodation. Tolle asked Brewer at this time if it would be possible to find a location where he could work as an accommodation of his religious belief and practice.

119. Upon information and belief, Tolle's e-mail on or around July 17, 2019, also repeated Tolle's request for an accommodation of his religious belief and practices by finding another location where he could work without being exposed to the offensive object: "If the company is committed to flying the Gay Pride flag every year, are there locations within the company which will not have to work under this flag?"

120. Upon information and belief, no response to Tolle's complaints or questions by Rockwell Collins included an offer of a reasonable accommodation of Tolle's religious belief or practices. This is substantiated by the facts, including but not limited to the following:

- a) No offer of a reasonable accommodation was made by Tolle's supervisor Mechiche-Alami;
- b) No offer of a reasonable accommodation as made during Tolle's complaints to Brewer;
- c) No offer of a reasonable accommodation was made by the Human Resources representative in her e-mail response on or around July 18, 2019 or any other communication by her;
- d) No offer of a reasonable accommodation was made within Wade's e-mail response on or around July 23, 2019 or any other communication by Rockwell Collins Attorney Wade;

e) No other offer of a reasonable accommodation was communicated to Tolle by Rockwell Collins at any time after Tolle's complaint to Rockwell Collins.

121. Upon information and belief, Tolle believed that he had received no offer of reasonable accommodation of his religious belief or practices on or around September 3, 2019, when he notified Rockwell Collins management that he could not work at Rockwell Collins due to the display of the Gay Pride flag and turned down the employment offer given to him by Rockwell Collins. This is substantiated by the facts, including but not limited to the following:

a) On or around September 3, 2019, Tolle informed Rockwell Collins that he "cannot continue" working at Rockwell Collins and told the Rockwell Collins management that he had to turn down the offer of employment for reasons including " my religious practices do not allow me to work under a Gay Pride flag";

b) Tolle's communications on or around September 3, 2019, stated: "I raised my concerns with management and HR representatives, requesting both clarification of the policy and accommodation of my religious practices. Unfortunately, the responses I received from HR and the legal counsel failed to offer any accommodation of my religious practices, at any location in the company."

122. Rockwell Collins management responses to Tolle's request for accommodation also contained no demonstration that accommodating Tolle's religious practices would result in undue hardship on the conduct of Rockwell Collins' business. This is substantiated by the facts, including but not limited to the following:

a) No demonstration that any accommodation of Tolle's religious practices would result in undue hardship on the conduct of Rockwell Collins' business was provided by supervisor Mechiche-Alami or Brewer at any time after Tolle met with them about his complaint;

b) No demonstration that any accommodation of Tolle's religious practices would result

Additional Claims related to Third Cause of Action

127. As a direct and proximate cause of the aforementioned actions of Rockwell Collins, Tolle has suffered injuries and damages, including but not limited to, loss of past and future earnings, loss of past and future benefits, damage to professional reputation, and undue pain and suffering to Tolle and his family.

128. Such violations of the Civil Rights Act by Rockwell Collins were intentional and were reckless, callous and/or indifferent to Tolle's federally protected rights and for these reasons, Tolle requests an award of compensatory and/or punitive damages pursuant to 42 U.S.C. § 1981a(a)(1).

129. Tolle requests award of attorney's fees pursuant to 42 U.S.C. § 2000e-5(k).

AS AND FOR A FOURTH CAUSE OF ACTION

130. Tolle re-alleges and incorporates the above allegations of this complaint as if set forth fully herein.

131. The Civil Rights Act under 42 U.S.C. § 2000e-2(a)(1) prohibits discrimination against any individual with respect to his conditions or privileges of employment, because of such individual's religion.

132. The EEOC Compliance Manual states: "Religious harassment in violation of Title VII occurs when employees are...required or coerced to abandon, alter or adopt a religious practice as a condition of employment...."⁸

133. Upon information and belief, Tolle communicated to Rockwell Collins management that continuing to work at a location that flew a Gay Pride flag was contrary to his religious practice. This is substantiated by the facts, including but not limited to the following:

a) In or around June 2019, Tolle met with Rockwell Collins supervisor Mechiche-Alami

⁸ See EEOC Compliance Manual on religious discrimination at <https://www.eeoc.gov/policy/docs/religion.html>

and told him that continuing to work at a location that flew a Gay Pride flag was contrary to his religious practice, which did not allow him to participate in any activity which publicly associated him with the Gay Pride movement. No accommodation was provided to Tolle after his complaint to Mechiche-Alami.

b) Tolle's e-mail to his supervisor Mechiche-Alami on or around June 27, 2019, showed that Tolle could not work in view of the offensive conduct or object due to his religious practice: "...I will probably go home to work offsite as I still don't feel comfortable working under a flag which I find offensive for religious reasons."

c) Upon information and belief, Tolle met with Rockwell Collins Engineer Manager Brewer and said he found the flying of the Gay Pride flag offensive due to religious reasons and that if it was the policy for Rockwell Collins to fly this every year, this would create an offensive or hostile work environment under which Tolle could not continue to work.

134. Upon information and belief, Tolle sent complaints to Rockwell Collins Human Resources representatives, but Tolle received no response from Rockwell Collins which would indicate that Tolle was not required to alter, abandon or adopt a religious practice in order to continue working at Rockwell Collins. This is substantiated by the facts, including but not limited to the following:

a) Tolle's e-mail to Rockwell Collins Human Resources representative on or around July 18, 2019, made it clear that his complaint about the Gay Pride flag was due to discrimination based on his religious belief and practice, stating: "This [Rockwell Collins]...response underscores my concerns that a person who shares my religious convictions and opinions which do not support the Gay Pride agenda will normally be treated as a homophobe or bigot within the company" and "For these reasons, I am still concerned that...[Rockwell Collins]...is a workplace which will not welcome people with my religious beliefs....Without any further information, I

Collins, Tolle has suffered injuries and damages, including but not limited to, constructive discharge, loss of past and future earnings, loss of past and future benefits, damage to professional reputation, and undue pain and suffering to Tolle and his family.

148. **Such violations of the Civil Rights Act by Rockwell Collins were intentional and were reckless, callous and/or indifferent to Tolle's federally protected rights and for these reasons, Tolle requests an award of compensatory and/or punitive damages pursuant to 42 U.S.C. § 1981a(a)(1).**

149. Tolle requests award of attorney's fees pursuant to 42 U.S.C. § 2000e-5(k).

AS AND FOR A FIFTH CAUSE OF ACTION

150. Tolle re-alleges and incorporates the above allegations of this complaint as if set forth fully herein.

151. The Civil Rights Act under 42 U.S.C. § 2000e-2(k) states: "An unlawful employment practice based on disparate impact is established under this subchapter [of the Civil Rights Act] only if (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of...religion...and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity...."

152. A fifth cause of action due to violation of the Civil Rights Act brought to light after the actions of Collins management in this matter is the disparate treatment that the company targets toward Christian minorities when compared to the homosexual minority of employees represented by the Gay Pride flag and movement. Upon information and belief, the flying of the Gay Pride flag by Rockwell Collins reflects a deep seated bias in favor of the Gay Pride movement and homosexual employees or others who support Gay Pride. This is substantiated by

the facts, including but not limited to the following:

- a) According to the UTC FAQ document, the only other minority flag flown was the Prisoner of War (POW) flag, which is only flown at a single location on isolated days during the year, and no other minority was permitted to fly a flag at that time;
- b) The UTC FAQ document made it clear that it was company policy to favor the Gay Pride movement by stating: “The company leadership is fully supportive of the effort to recognize PRIDE month as we believe it reflects many of our company’s values....” Noteworthy is that the document did not make any attempt to express such wholehearted support for any other minority;
- c) Rockwell Collins’ Attorney Wade’s e-mail on or around July 23, 2019, expressed clear favor towards the minority represented by the Gay Pride flag: “We were recently proud to support employees who are members of the LGBTQ+ community during Pride Month”;
- d) Wade’s e-mail language also reflected a bias in Rockwell Collins policies which was markedly in favor of Gay Pride while unwilling to show public support for any other minority point of view, adding the following statement after Wade’s glowing comments about the LGBTQ+ community: “...the Company does not sponsor or support any particular religious or political viewpoint, practice or membership to the exclusion of others”.

153. Upon information and belief, this bias influences the work environment at Rockwell Collins and the hiring practices used by Rockwell Collins to recruit and hire new employees. Upon information and belief, the bias exhibited by Rockwell Collins in favor of Gay Pride and homosexual employees specifically influences Rockwell Collins’ treatment of Christian employees and candidates who do not support Gay Pride due to religious reasons. The following is an example of the facts which shows that Rockwell Collins management’s default belief is that Christians are bigots:

c) The Rockwell Collins' Human Resources response on or around July 18, 2019, shows that Rockwell Collins management is biased against Christians who may share Tolle's objection to the campaign: "If you use derogatory language to refer to someone due to their...sexual orientation...that is not tolerated."

d) Tolle's e-mail on or around September 3, 2019 reported to Rockwell Collins management that he could not work at Rockwell Collins due to the continuing policy and actions of Rockwell Collins which were biased in favor of Gay Pride minorities and biased against Christians who do not support Gay Pride: "For a whole month of the current year, Collins Aerospace management chose to fly a flag over our location which, to me, is an offensive object which represents a social movement that has been known for retaliatory and discriminatory practices against Christians who hold my religious convictions. With the many examples of this over the past years, I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."

155. Upon information and belief, the flying of the Gay Pride flag by Rockwell Collins over all of its locations gives rise to a work environment that a reasonable person would consider intimidating, hostile or abusive for a person who does not support Gay Pride or sees the Gay Pride flag as offensive due to religious reasons. Specifically, the flying of the Gay Pride flag by Rockwell Collins over all of its locations gives rise to a work environment that a reasonable person would consider intimidating, hostile or abusive to Christian employees. This is substantiated by the facts, including but not limited to the following:

a) Tolle's e-mail complaint on or around July 17, 2019, stated: "...as someone who has religious convictions which do not make me proud of Homosexuality or support the Gay Pride agenda, I was very disappointed to see...[Rockwell Collins]...promoting this flag and signaling

that people with religious convictions like mine need not apply" and "The concerns I have about applying for a job with...[Rockwell Collins]...is whether the public display of the Gay Pride flag by the company means that...[Rockwell Collins]...is not welcoming to people who do not share the agenda that the flag undeniably represents";

b) Tolle's complaints to his supervisors and in his subsequent e-mail on or around July 17, 2019, stated that he found Rockwell Collins' actions biased and non-neutral: "I view this flag as something which is not neutral, but something which promotes one minority's viewpoint about pride in homosexual lifestyles and treats other minority viewpoint's [sic.] who don't agree with them as bigots;

c) Tolle's response to Rockwell Collins Human Resources representative on or around July 18, 2019 stated: "This...underscores my concerns that a person who shares my religious convictions and opinions which do not support the Gay Pride agenda will normally be treated as a homophobe or bigot within the company;" and "For these reasons, I am still concerned that... [Rockwell Collins]...is a workplace which will not welcome people with my religious beliefs....Without any further information, I will continue to consider...[Rockwell Collins]...as a place where Christians are not as welcome as others....";

d) Tolle's e-mail on or around September 3, 2019, noted the hostile work environment created by the Gay Pride flag: "For a whole month of the current year, Collins Aerospace management chose to fly a flag over our location which, to me, is an offensive object which represents a social movement that has been known for retaliatory and discriminatory practices against Christians who hold my religious convictions. With the many examples of this over the past years, I believe that flying the Gay Pride flag over the company will be enough so that a reasonable person would consider such a pervasive action to create an intimidating or hostile workplace for persons like me."

156. Upon information and belief, the flying of the Gay Pride flag reflects the bias of Rockwell Collins policies and actions against minority Christian employees and indicates a broader bias in the Rockwell Collins workplace which gives rise to a disparate impact to Christian employees who do not support the Gay Pride movement. Upon information and belief, Tolle was not the only person working at Rockwell Collins who found the work environment to be intimidating, hostile or abusive due to religious reasons based on Rockwell Collins offensive conduct or object. Upon information and belief, the intimidating, hostile or abusive work environment caused by the Rockwell Collins bias against Christian minorities and/or Rockwell Collins' flying of the Gay Pride flag contributed to other employee departure. Upon information and belief at least one other employee at Rockwell Collins RCCT told Tolle that he was leaving and thought that the flying of the Gay Pride flag showed a radical change in the culture away from Christian values at the company compared to prior years, saying: "the company is not like it used to be" or words to that effect. Upon information and belief the effect, of the Rockwell Collins actions and flying of the Gay Pride flag which contributed to an intimidating, hostile or abusive work environment and represented a culture which was biased against Christian employees who do not support Gay Pride is evidence of the disparate impact which the Rockwell Collins conduct or policies has on employees who share Tolle's religious belief or practice.

157. For these reasons, the current Rockwell Collins policies and practices are unwelcoming to Christians and give rise to a culture and work environment that a reasonable person would consider intimidating, hostile or abusive and would have a disparate impact on Christians like Tolle. Upon information and belief, the hostile workplace will also have a disparate impact on candidates who are Christian during the hiring process. In Tolle's case, the hostile work environment caused by the display of the object which Tolle found offensive due to religious reasons led Tolle to believe that he could not continue working at Rockwell Collins and

APPENDIX D

Excerpts from the Record in the Lower Courts

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

JAMES TOLLE,

Plaintiff,

v.

ROCKWELL COLLINS CONTROL
TECHNOLOGIES, INC., et al.,

Defendants.

Civil Action 1:20-cv-00174-LMB-JFA

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

Plaintiff's Response Brief, Opposition, and Arguments to Defendants' Motion to Dismiss makes clear that, rather than being subjected to religious discrimination or denied an accommodation, Plaintiff is attempting to impose his religious views upon Defendants and his co-workers at Rockwell Collins by demanding that the Company cease flying the Gay Pride flag. In 2019, Rockwell Collins, as part of its desire to attract, retain, and celebrate a diverse workforce, chose to fly the Gay Pride flag during Pride month in support of the Company's LGBTQ employees and their community. Rockwell Collins, however, did not ask Plaintiff to adhere to any policy or practice where he was actively required to participate, engage, endorse or do anything at all related to the flag or the Gay Pride movement. Nor was Plaintiff asked or required to change or modify his religious beliefs. To the contrary, Rockwell Collins specifically confirmed to Plaintiff that it did not support any particular viewpoint or preference over another, and expressly stated that all employees are entitled to their own beliefs. Rockwell Collins only expressed the expectation that Plaintiff, like every other employee, come to work each day and treat co-workers in a non-discriminatory manner.

thereby attempting to increase tolerance of diversity and eradicate discrimination against LGBTQ individuals in the workplace, is entirely consistent with the goals and objectives of civil rights statutes generally. *See Peterson v. Hewlett-Packard*, 358 F.3d 599, 603 (9th Cir. 2004).¹ While flying the Gay Pride flag during June 2019 may have devoted particular attention to supporting diversity as it relates to LGBTQ employees, “such an emphasis is in no manner unlawful.” *Id.* at 601, 603 (finding employer’s diversity initiative that supported gay employees, but did not permit religious or political messages from other employees to be included as part of the initiative, to be lawful and nondiscriminatory to Christian employee who believed “homosexual activities violate the commandments contained in the Bible”).

Like the plaintiff in *Peterson*, Plaintiff made abundantly clear to Rockwell Collins that he believes homosexuality is a sin. Like the employer in *Peterson*, Rockwell Collins did not ask Plaintiff to engage in a homosexual relationship or to condone homosexual relationships. Rockwell Collins did not ask Plaintiff to change or modify his beliefs or require him to participate in any activities supporting the Gay Pride movement. Rockwell Collins did not ask Plaintiff to wear a Gay Pride t-shirt, display a Gay Pride flag at his desk, or attend activities related to Gay Pride month. Plaintiff was not even required to look at the flag: he merely had to pass by it in the parking lot before he entered the building for work.

In short, Rockwell Collins did not ask Plaintiff to do a single thing related to Gay Pride. Nor did Rockwell Collins discipline Plaintiff for expressing views about homosexuality being a

¹ Notably, the *Peterson* court also found that an employee’s requested accommodation that an employer cease a program designed to encourage diversity and discourage discrimination in the workplace is not a reasonable accommodation as it constitutes an undue burden on the employer. *Id.* at 607-608. Similarly, any request by Plaintiff that Rockwell Collins remove the Gay Pride flag at the location where he works would constitute an undue burden and is not a reasonable accommodation.

sin. Like the employer in *Peterson*, Rockwell Collins could have terminated Plaintiff's employment when he expressed his anti-gay views and intention to express those views to his co-workers. *Id.* (granting summary judgment in favor of employer who terminated plaintiff for continually displaying Bible scripture intended to hurt and demean his homosexual co-workers); *Flanagan v. City of Richmond*, 692 F. App'x 490, 491 (9th Cir. 2017) (upholding termination of employee expressing religion-based anti-gay views at work by holding that employer's "interest in maintaining a discrimination- and harassment-free work environment outweighed any... interest [plaintiff] had in expressing her religious views."). The fact that the Company could have terminated Plaintiff, but chose simply to deny his request to remove the flag and ask that he treat his co-workers with respect, underscores that Plaintiff cannot pursue a claim for religious discrimination and harassment.² Moreover, if, as Plaintiff seems to assert, employers are required to conform to the individual moral code of each employee who seeks to impose their personal and individual views on the rest of the workforce, the result is a slippery slope with absurd results not required by the law. *Peterson*, 358 F.3d at *607 (stating Title VII does not "require an employer to accommodate an employee's desire to impose his religious beliefs upon his co-workers.") (citing *Chalmers v. Tulon Co. of Richmond*, 101 F. 3d 1012, 1017 (4th Cir. 1996)). Indeed, it is axiomatic that employers are not required to engage in the wholesale accommodation of an individual employee's own personal views. Even if that employee's beliefs are sincerely held, such a requirement logically would allow any employee to impose their own beliefs and morals, no matter what they are, upon the employer and other employees.

² Moreover, the Company offered Plaintiff a full-time position even after he complained about the flag and sought to undermine the Company's diversity goals.