

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 07-cv-00738-RPM

BETTY BLACKFORD,
VALERIE CALHOUN,
RICHARD MITCHELL, and
VERNON VEGGEBERG,

Plaintiffs,

v.

DEX MEDIA, INC., a Colorado corporation,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT
REGARDING CLAIMS OF CONSTRUCTIVE DISCHARGE

On March 2, 2009, the defendant filed a motion for partial summary judgment on plaintiff Calhoun, Mitchell and Veggeberg's claim of constructive discharge with a memorandum brief in support together with exhibits. The affected plaintiffs filed their response on March 30, 2009 and defendant filed a reply brief on April 14, 2009. The defendant's motion attempts to support a *per se* rule that a failure to promote will not be a sufficient basis for a claim of constructive discharge. There is no such rule of law. A constructive discharge occurs when an employee establishes by a preponderance of the evidence that a reasonable person in the same position would have deemed resignation the only reasonable alternative to working conditions made intolerable because of discrimination prohibited under Title VII of the Civil Rights Act, as amended. That reasonable person standard is determined ordinarily by a jury exercising collective judgment after making fact finding from the evidence. Summary judgment is

appropriate only when the proposed evidence is insufficient to support the necessary findings. Given that these claims are determined upon circumstantial evidence and credibility determinations, the plaintiffs in this case have shown adequate support for their contentions. Accordingly, it is

ORDERED that the defendant's motion for partial summary judgment is denied.

DATED: April 15th, 2009

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge