

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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|------------------------------|---|------------------------------------|
| _____ | : | |
| ALEXANDER PANGBORN, | : | |
| Plaintiff | : | |
| | : | |
| v. | : | |
| | : | |
| CARE ALTERNATIVES OF | : | Civil Action No. 3:20-cv-30005-MGM |
| MASSACHUSETTS, LLC D/B/A | : | |
| ASCEND HOSPICE; and CARE ONE | : | |
| MANAGEMENT, LLC, | : | |
| Defendants | : | |
| _____ | : | |

DEFENDANT CARE ONE MANAGEMENT, LLC’S
MOTION TO DISMISS PLAINTIFF’S CLAIMS AGAINST IT PURSUANT TO
FED. R. CIV. P. 12(B)(6) AND 12(B)(1)

Pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(1), Defendant Care One Management, LLC (“Care One Management”) respectfully moves this Court to dismiss Plaintiff Alexander Pangborn’s (“Plaintiff”) Complaint against Care One Management.

Plaintiff has failed to allege facts sufficient to establish that Care One Management is Plaintiff’s employer for purposes of liability under Title VII of the Civil Rights Act of 1964 (“Title VII”), the Americans with Disabilities Act (“ADA”) or M.G.L. 151B § 4 (“Chapter 151B”); it is not. Accordingly, Plaintiff’s Title VII, ADA and Chapter 151B claims against Care One Management should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

Similarly, Plaintiff has failed to allege any facts to establish that Care One Management receives any federal funding for purposes of liability under the Rehabilitation Act of 1973 (“Rehabilitation Act”) and the Affordable Care Act § 1557 (“Section 1557”); it does not. As a result, this Court lacks subject matter jurisdiction over Plaintiff’s Rehabilitation Act and Section 1557 claims against Care One Management and those claims must be dismissed. Even if the Court

had subject matter jurisdiction over these claims (which it does not), Plaintiff has failed to allege any facts in support of his erroneous conclusion that Care One Management is a recipient of federal financial assistance and the claims should also be dismissed under Federal Rule of Civil Procedure 12(b)(6).

In further support of this motion, Care One Management relies on its Memorandum in Support of its Motion to Dismiss and the Affidavit of Justine Cottrell, filed contemporaneously herewith.

WHEREFORE, for the reasons set forth herein, Plaintiff's Complaint must be dismissed against Care One Management.

Respectfully Submitted,

Dated: July 15, 2020

_____/s/Cheryl B. Pinarchick_____
Cheryl B. Pinarchick (BBO# 636208)
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LOCAL RULE 7.1 CERTIFICATION

I, Cheryl B. Pinarchick, counsel for Defendant Care One Management, LLC, hereby certify that I spoke with Plaintiff's counsel, Bennett H. Klein, on July 15, 2020 in a good faith attempt to resolve or narrow the issues presented by this motion. To date, the parties have been unable to reach a resolution.

Dated: July 15, 2020

/s/ Cheryl B. Pinarchick
Cheryl B. Pinarchick

CERTIFICATE OF SERVICE

I, Cheryl B. Pinarchick, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic filing (NEF) on July 15, 2020.

/s/Cheryl B. Pinarchick
Cheryl B. Pinarchick