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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GABRIEL A. WATSON, AN INDIVIDUAL;

Case No.

Plaintiff,

vs.

COMPLAINT

CITY OF PORTLAND, A MUNICIPAL CORPORATION; GREGORY ESPINOSA, AN INDIVIDUAL; KEITH HATHORNE; AN INDIVIDUAL; SARA BOONE, AN INDIVIDUAL; KATINA LACKEY, AN INDIVIDUAL; RYAN GILLESPIE, AN INDIVIDUAL;

Defendants.

(Disability/Perceived Disability Discrimination - ORS 659A.112; Disability/Perceived Disability Discrimination - 42 U.S.C. § 12112; Failure to Accommodate/Engage in the Interactive Process - ORS 659A.112; Failure to Accommodate/Engage in the Interactive Process - 42 U.S.C. § 12112; Accommodation-Based Retaliation - ORS 659A.109; Accommodation-Based Retaliation - 42 U.S.C. §12112; OFLA Denial, Interference, and Retaliation - ORS 659A.183; Oregon Sick Leave Denial, Interference, and Retaliation ORS 653.641 et seq.; Common-Law Wrongful Termination Fraudulent Misrepresentation; Aiding and Abetting -- ORS 659A.030(1)(g); Breach of Contract; Tortious Interference with Business Relations; Intentional Infliction of Emotional Distress; Retaliation for Opposing Unlawful Practices; Civil assault and battery; Injured worker retaliation)

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Prayer Amount: \$1,375,000.00

Attorney's Fees

**NOT SUBJECT TO MANDATORY
ARBITRATION**

Fee Authority: ORS 21.160(1)(d)

Jury Trial Demand

INTRODUCTION

1.

This is an action for declaratory, injunctive, and monetary relief, including punitive damages and attorneys' fees and costs, to redress the unlawful employment practices to which defendants subjected and continue to subject Plaintiff, in violation of Plaintiff's statutory and civil rights.

JURISDICTION, VENUE AND PARTIES

2.

This Court has jurisdiction over Plaintiff's claims for monetary and other relief under Article VII, section 9 of the Oregon Constitution.

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3.

This Court has supplemental/concurrent jurisdiction over Plaintiff’s claims arising under United States Codes for monetary and other relief.

VENUE

4.

Venue is proper in Multnomah County under ORS 14.080(2) because defendants conduct regular, sustained business activity at various locations in and throughout Multnomah County.

PARTIES

5.

Plaintiff Gabriel Watson (“Watson” or “Plaintiff”) is currently a resident of Portland, Oregon. At all material times Plaintiff is, or was, an employee of Defendant, the City of Portland, Oregon.

6.

Defendant City of Portland (“the City” or “Portland”) is a municipal corporation, organized and existing pursuant to the laws of the state of Oregon as a political subdivision thereof. At all material times the City is, or was, Plaintiff’s employer and conducted regular and sustained business activities in Multnomah County. All, or substantially all, of the facts alleged herein occurred in Multnomah County.

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7.

At all material times, the City was vicariously liable and/or liable under the Oregon Tort Claims act, respondeat superior and vicarious/liability for the acts of its agents and employees acting within the course and scope of their employment with the City. In the alternative, individual defendants are jointly and severally liable because their conduct, acts, and omissions were not reasonably related to or in furtherance of their role with the City.

8.

Defendant Gregory Espinosa (“Espinosa”) is an individual employed by the City of Portland. He is designated the Fire Bureau’s Professional Standards Chief. At all times material Espinosa is, and was, a manager for the City of Portland Bureau of Fire and Rescue. At all times material Espinosa is, and was, a resident of Multnomah County. Espinosa is jointly and severally liable either through respondeat superior or, in the alternative, because his conduct, acts and omissions relating to the instant matter fall beyond the reasonable scope of his employment.

9.

Defendant Sara Boone, (“Boone”) is an individual employed by the City of Portland. She is, and was, at all times material, a manager for the City. At all times material Boone is, and was, a resident of Multnomah County. Defendant Boone is jointly and severally liable either through the legal theory of respondeat superior or, in the alternative, because her conduct, acts and omissions relating to the instant matter fall beyond the reasonable scope of her employment.

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10.

Defendant Keith Hathorne (“Hathorne”) is an individual employed by the City of Portland. He is, and was, a human resources employee and is jointly and severally responsible for the acts and omissions contained herein either through respondeat superior or, in the alternative, because his conduct, acts and omissions relating to the instant matter fall beyond the reasonable scope of his employment. At all times material, Hathorne is, and was, a resident of Multnomah County.

11.

Defendant Rian Gillespie (“Gillespie”) is and was employed as a manager by the City of Portland. He is, and was, a Deputy Chief of Operations and is jointly and severally responsible for the acts and omissions contained herein either through respondeat superior or, in the alternative, because his conduct, acts and omissions relating to the instant matter fall beyond the reasonable scope of his employment.

12.

Defendant Katina Lackey, (“Lackey”) is and at all material times was, the Portland Fire Bureau’s Human Resources Business Partner. On information and belief, Lackey replaced Hathorne after he was removed from the same position by the City. Lackey is jointly and severally responsible for the acts and omissions contained herein either through respondeat superior or, in the alternative, because her conduct, acts and omissions relating to the instant matter fall beyond the reasonable scope of her employment.

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13.

For reference, the foregoing defendants are referred to collectively as “Defendants” and individual defendants, where applicable, are referenced by surname.

14.

All of Plaintiff’s claims and allegations are timely made under the theory of a continuing course of conduct and ongoing violation.

15.

Plaintiff has properly filed notice of tort claims with the City of Portland in several particulars. Including notice relating to this claim, filed concurrent hereto.

16.

Plaintiff’s claims are timely under House Bill 4212 Section 7(1), Executive Order No. 20-03 (extended by Executive Order No. 21-10 and 21-15) and relating to the COVID-19 State of Emergency, adopted by reference by the Chief Justice of the Supreme Court of the State of Oregon the Honorable Martha Watters.

GENERAL ALLEGATIONS

17.

The City of Portland has an extensive history of discrimination, state and federal law violations, retaliation, and intimidation against certain employees.

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18.

Nowhere are these practices more abused than at the Bureau of Fire and Rescue, where management operate beneath the façade of “duty, honor, and integrity” to smother those who might compromise the façade or threaten the status quo.

19.

The purported ‘chain of command’ at Portland Fire is its weakest link. Specifically, the management, comprised of supervisors, Chief Officers, and Human Resources Business Partners, who rely on an echo chamber of negligence and malice to justify deploying an arsenal of unlawful employment and unfair labor practices that target, harass, intimidate, retaliate, and discriminate against individuals such as plaintiff—employees who suffer serious injuries, illnesses and are forced to request protected leave and are perceived as disabled.

20.

Defendants are well versed in generating new forms of pretext, leveraging manipulation, and relying on nominal monetary offers to avoid liability for tacit, wanton, and targeted discriminatory employment practices in violation of the law.

21.

The City hired Plaintiff on December 14th, 2006, to serve as a firefighter and paramedic at the City’s Bureau of Fire and Rescue. Plaintiff worked four, ten-hour days, a 40-hr week, during the 16-weeks comprising his initial training period.

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22.

Upon successful completion of the fire academy, Plaintiff was assigned to the operations division and worked on a repeating “24/48” schedule. A 24/48 schedule is comprised of a 24-hour duty day, followed by 48 off-duty hours.

23.

With the exception of assignments due to work related injuries or illness, Plaintiff has worked approximately 53-hours/week (“shift work”) since 2006. Plaintiff was also eligible to work overtime—which in fire department parlance were named “call shifts.” Plaintiff frequently worked call shifts for which he was paid at a rate of 1.5 times his ordinary wages. Watson earned between \$5,000 and \$20,000 per year working call shifts.

24.

Plaintiff has significantly more external firefighting and paramedic experience, formal and informal education, and experience in most fire department assignments than most firefighters or managers at the City of Portland Bureau of Fire and Rescue. But for City’s tortious conduct including efforts to generate pretext for discriminatorily denying promotions on two separate occasions, medical layoff, and constructive termination, Watson’s record as an employee with the City was, and would remain, untarnished.

25.

Before being hired by the City of Portland, Watson volunteered with Lane County Fire District No. 1, completing the District’s training academy. In 2001, the District recognized Watson as the Fire Recruit of the Year. Between

1 September of 2001 and March of 2003, Plaintiff volunteered more than 50-
2 hours/week for the Lane County Fire District #1.

3
4 26.

5 Between 1999 and 2003, Watson volunteered as a rescue SCUBA diver
6 with the Lane County Sheriff's Office Water Search and Rescue Team.

7
8 27.

9 Watson has volunteered intermittently with the South Wasco County
10 Ambulance Service since on or about May 1, 2000.

11
12 28.

13 In 2003, the City of Eugene hired plaintiff to work as a structural
14 firefighter and EMT-Intermediate. Plaintiff completed training at the top of his
15 class.

16 29.

17 While undergoing fire training with the City of Eugene, Plaintiff used his
18 personal time and money to complete paramedic training at Lane County
19 Community College. Plaintiff finished in the top 10% of his paramedic class. Lane
20 County Community College awarded Plaintiff with an associate degree in Applied
21 Science in Emergency Medical Technology. Most firefighters and managers at
22 Portland Fire have no such training or education.

23
24 30.

25 The National Registry of Emergency Medical Technicians ("NREMT")
26 administers written and practical examinations required for certification as a

1 Paramedic in the State of Oregon. In the State of Oregon, “EMT-Paramedic” is
2 the highest-level of prehospital care. Watson took and passed the written and
3 practical portions of the exam on his first attempt.
4

5 31.

6 On or about August of 2006, the City of Portland offered Plaintiff a
7 position as a firefighter and paramedic with the City. Plaintiff was born and raised
8 in Portland, Oregon and working for the City of Portland was his lifetime goal.
9 Because the City would not initially recognize Plaintiff’s experience or education,
10 accepting Portland’s offer meant that Plaintiff would be forced to complete
11 another year of training, lose all seniority in Eugene, and receive an immediate
12 reduction in pay of nearly 70%. Fire department representatives promised Watson
13 that as the largest fire department in the State of Oregon, Portland Fire & Rescue
14 afforded certain career opportunities, such as a dive and technical rescue and
15 promotion that were available nowhere else.
16

17 32.

18 After completing the City of Portland’s pre-employment background
19 check and physical exams, Plaintiff was formally offered, and accepted, a position
20 within Portland Fire & Rescue.
21

22 33.

23 Plaintiff entered the Portland Fire Bureau’s 16-week training academy in
24 December of 2006.
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34.

Watson completed the entirety of Portland Fire & Rescue’s probationary training year without issue. Watson was then assigned to one of Portland’s busiest stations to complete the Fire Bureau’s Paramedic Field Training and Evaluation Program (“FTEP”). Watson was evaluated for three months by a Field Training Paramedic and Fire Bureau Officer with more than 20-years of experience. Watson received high marks on written examinations and passed all practical examinations on his first attempt. Observation reports completed by his FTEP noted Watson’s excellence as a paramedic and firefighting crews spoke highly of him.

35.

Paramedics have more medical training than other firefighters or officers. Paramedic firefighters are the highest trained medical personnel on emergency scenes. As a paramedic, Watson completed more than 48 hours each year of continuing education, bi-annual recertification with the State of Oregon Department of Health and Human Services, and he maintained certification as an Advanced Cardiac Life Support, Prehospital Traumatic Life Support, and Pediatric Advanced Life Support provider. Notwithstanding the City’s constructive termination of Watson, he has maintained his training and certifications independently at great personal financial and time cost. But for the City’s conduct, Watson would be compensated at 1.5 x his normal pay for much of this training; however, because of the City’s discriminatory conduct, Watson has not received overtime like others similarly situated.

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36.

The City of Portland Bureau of Fire and Rescue is comprised of several divisions. Watson was assigned to the Operation’s Division. The Operations Division is primarily responsible for providing fire, rescue, and emergency services to the City of Portland.

37.

Thirty fire stations comprise Portland Fire and Rescue, providing fire and other emergency services to the City of Portland. It is widely recognized by labor and management that certain stations are more favorable than others and station assignment is a widely recognized indicator of firefighter status. Although Watson was a new firefighter, he consistently received assignments to top stations as a reflection of his commitment to improvement and the strength of his service.

38.

The City of Portland dive team was comprised of 28 firefighters cross-trained as rescue divers and openings only occurred when another diver retired, was cut, or resigned from the team. Before a firefighter could even become a candidate for the dive team, she or he had to obtain Professional Association of Dive Instructors (“PADI”) Advanced and Rescue Diver certifications. Watson finished ahead of all other applicants to the dive team. Shortly after joining the dive team, Plaintiff was certified as a Master Scuba Diver, indicating certification as a Deep Diver, Search and Recovery Diver, Night Diver, Multi-Level Diver, and Nitrox diver.

39.

1 participated in the selection process for the technical rescue team and was
2 selected to join the Portland Fire and Rescue’s Technical Rescue Team in 2011.
3
4

5 43.

6 Before the City’s discriminatory acts began, Plaintiff was a member of the
7 Oregon State Fire Marshal/FEMA Urban Search and Rescue Task Force.
8

9 44.

10 Plaintiff was also assigned as an alternate Public Information Officer for
11 the Oregon State Fire Marshall’s Type II Incident Management Team.
12

13 45.

14 In December of 2012, Operations Division Chief Duane Bray, the second
15 highest ranking member of the Portland Fire Bureau wrote of Watson:
16

17 “I have known Gabriel for the past six years that he has worked at Portland
18 Fire & Rescue, during which time he has proven to be one of our most
19 highly self-motivated members. . . [and] always works to excel.

20 “Specialty positions within Portland Fire & Rescue require years of
21 training simply to be considered – Gabriel serves as a member of the Dive
22 Team and the Technical Rescue team, he is a Paramedic at one of our
23 busiest stations, and he is an Assistant Public Information Officer in our
24 Communications Group. Though our organization prides itself on being
25 comprised of highly motivated and talented individuals, within this group
26 few perform at or near the level of Mr. Watson.”

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46.

Watson was the only firefighter in the City of Portland certified as a paramedic, dive team member, spokesperson and member of the City’s technical rescue team. Watson was also trained as a Special Operations Paramedic. As a result, Watson received supplemental pay of at least 6% and was eligible for overtime for working special duty assignments.

47.

Firefighters, such as Watson, assigned to Station 1 are given task books, created by the Oregon Department of Public Safety and Standards Testing (“DPSST Task books”) to guide their training and certify their proficiency in the requisite knowledge, skills, and abilities required for each technical rescue specialty. Firefighters assigned to the technical rescue team must complete several individual task books including high-angle rope rescue, trench rescue, vehicle and machine rescue, confined space rescue, and heavy lifting and moving before receiving specialty pay. Upon completion Watson was entitled to receive an additional 6% specialty pay.

48.

Plaintiff was appointed to the City’s Urban Search and Rescue (“USAR”) team and asked to serve as a member of the State of Oregon’s Federal Emergency Management Agency Urban Search and Rescue Task Force.

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49.

The City regularly evaluates all Paramedics by submitting pre-hospital care reports to a CQI Committee. This double-blind process ensures objective evaluation of the treatment and documentation skills of each paramedic. Since joining Portland Fire, Watson consistently earns “excellent” and “outstanding” ratings on unbiased reviews, indicating his skills are among the top of all Portland firefighter paramedics when viewed objectively and without discriminatory intent.

The Decade of Disability and Employment Discrimination by Defendants

50.

In January of 2011 Plaintiff suffered the first in an unfortunate series of family losses and medical problems that forced him to need, request, and use protected leave. The City responded to Plaintiff’s request for, and use of protected leave, with the first of what would become more than a decade of illegal and discriminatory employment practices, destroying Plaintiff’s career advancement and opportunities with the Bureau, destroying Watson’s reputation as an excellent member of Portland Fire and Rescue, and reducing him in status to a point where Watson’s duty assignments were commensurate with the lowest ranking and least senior firefighters and where it became impossible for Watson to remain in the City’s employment and succeed.

51.

The Fire Bureau’s tortious conduct and discriminatory behavior culminated with Plaintiff’s being placed on “Administrative Leave” in December

1 of 2019 and “medically terminated” at the behest of then Human Resources
2 Business Partner Keith Hathorne who fraudulently misrepresented Watson’s
3 actions and repeatedly pushed to terminate Watson.
4

5 52.

6 After Plaintiff’s mother died of metastatic breast cancer in 2011, he was
7 forced to take protected leave. When he returned, without first conducting a
8 proper investigation or providing Plaintiff an opportunity to be heard, Captain
9 Charlie Keeran, acting on behalf of Chief Jim Forquer, counseled and disciplined
10 Watson. This, as with every other act against Watson, was predicated on false
11 pretense, an effective shot across the bow to discourage the use of protected leave
12 by Watson.
13

14 53.

15 Because there was no basis for discipline, Watson contested it showing the
16 records were skewed and reflected numbers averaged as if he was working (when
17 on protected leave), this was discrimination based on Watson’s use of protected
18 leave. Forquer visited Watson to ‘privately’ warn him about “not just taking
19 counseling and discipline.” This was retaliation for Watson’s opposing the City’s
20 discriminatory conduct.
21

22 54.

23 In August of 2012, Watson’s back was injured on the job when an obese
24 patient unexpectedly collapsed onto Watson and Watson was forced to catch the
25 patient to prevent further injury to the patient’s already dislocated knee. While
26 Watson was on disability leave, Gregory Espinosa, Watson’s Captain and

1 supervisor at the time, informed Watson that he was being investigated for
2 discipline. While still on leave, Watson was forced to attend an exhausting
3 investigative interview. The investigation and the discipline were unfounded
4 against Watson but revealed shortcomings in Espinosa's and the City's record
5 keeping and training processes. When Watson returned from disability leave,
6 Espinosa pulled Watson aside and privately pressured him to resign his position at
7 Station 1—citing Watson's injury.

8
9 55.

10 This was the first of several knowingly false accusations that Chief
11 Espinosa, who is responsible for the Bureau's professional standards, has leveled
12 against Watson in the years since. Espinosa's allegations were issued with the
13 intent they be accepted as true, and in fact, were often simply accepted as true,
14 without corroboration, by the City. As a result, Watson suffered incredible
15 consequences and harm. Specifically, but not limited to Espinosa's denial of
16 discriminatory intent, repeated false accusations against Watson, atypical focus on
17 disciplining or investigating Watson, extreme scrutiny of Watson, and denial of
18 Watson's efforts to return to Station 1—all well outside the chain-of-command, or
19 City Policy, Statutory, Common Law, and Federal Law.

20
21 56.

22 Espinosa warned Watson about his injuries and expressed frustration that
23 Watson had not received discipline for Espinosa's false allegations. He threatened
24 to remove Watson as a member of the technical rescue team. Espinosa warned
25 Watson against injuries saying, "don't force me to do something about this."
26 Plaintiff understood this to mean that if Watson didn't resign from his position on

1 the technical rescue team, that Espinosa would have him removed. Espinosa
2 agreed with Plaintiff's understanding when asked.
3

4 57.

5 In 2012 and the year that followed, Espinosa refused to sign-off on
6 Watson's completion of training necessary to receive premium pay as a technical
7 rescue team member. Although Watson completed these tasks on highly
8 publicized high-profile rescues, Espinosa abused his discretion and managerial
9 power and refused to certify Watson's completion of technical rescue task
10 books—again, making knowingly false representations to Watson and others, that
11 Watson had delayed training—or that funding wasn't available. Espinosa intended
12 for Watson to accept his statements as true, and so too did others. This caused
13 Watson harm. Watson never received 6% premium pay to which he was entitled
14 and his position was unsecure. When Watson inquired, Espinosa informed
15 Watson that he must complete a formal Urban Search and Rescue course, but that
16 funds were unavailable. This assertion was not true. Watson then offered to pay
17 for the classes on his own and found classes in College Station, Texas that were
18 available in the next month. Espinosa told Watson this was not allowed. Another
19 fraudulent misrepresentation of the truth.
20

21 58.

22 In July of 2013, without cause, an investigation, or conferring with other
23 officers or personnel at Station 1, outside the auspices of Watson's employment
24 contract with the City or City Policy, and skirting Watson's managers, including
25 Plaintiff's immediate officers, Espinosa terminated Watson's position at Station 1.
26 An act designed specifically to intimidate and retaliate against Watson. This

1 immediately tarnished Watson’s reputation. As a direct and proximate result,
2 Watson was stripped of his membership on the technical rescue team, the Urban
3 Search and Rescue team, his ability to respond on dive emergencies, and kept
4 from receiving specialty pay or working overtime assignments as a member of the
5 technical rescue team. Moreover, Watson faced professional and personal
6 embarrassment, loss of reputation, and his status with the City was immediately
7 reduced. Watson’s reputation and career were permanently stalled as a direct,
8 foreseeable, and proximate of Espinosa’s conduct—who, when asked why Watson
9 was transferred, told others that the highly motivated Watson had not completed
10 training. A knowing lie. This was so upsetting to Watson that then Division Chief
11 John Nohr, sent Watson home because he was emotionally upset.

12
13 59.

14 Plaintiff thereafter was transferred to one of the least desirable, least busy
15 stations in the Bureau. Isolated from the specialty positions he had worked his
16 entire career to earn, as well as other members of the technical rescue team who
17 had become Watson’s work ‘family,’ After Plaintiff asked for an explanation and
18 complained of the City’s illegal practices, the City subjected Plaintiff to additional
19 investigations, accusing Plaintiff of misuse of leave and accusing him of attending
20 a social gathering while Plaintiff was on sick leave. After plaintiff provided
21 evidence that he used sick leave to be with his grandfather who died the same
22 week, the City “counseled” Watson because the wrong type of leave was entered
23 on Plaintiff’s behalf. The City’s “counseling,” from Chief Jim Forquer who had
24 earlier warned Watson to “stay off his radar,” was well understood by Plaintiff,
25 and others, as retribution for and to discourage Watson’s use of protected sick or
26 bereavement leave and retaliation for complaining of the same.

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60.

Between 2013 and 2018 Plaintiff suffered other work-related back injuries and was forced to use workers’ compensation and other protected leave. Because Plaintiff used protected leave, the City continued subjecting him to a series of investigations intended to harass, intimidate, and discourage Plaintiff from using protected leave. An unlawful employment act.

61.

In or about 2015, Plaintiff was diagnosed with dermatofibrosarcoma protuberans, a rare and often lethal form of skin cancer. The City’s self-insured disability insurance does not follow the same rules as the State of Oregon Workers Compensation system and Watson’s cancer was not considered work-related, Watson was forced to use his protected personal sick and other accrued leave. When that accrued leave ran out, the City failed to provide for or respond to requests for FMLA or OFLA and Watson was forced to take an unpaid leave of absence.

62.

Watson suffered a pulmonary embolism the following year, another potentially life-threatening illness. The City denied Watson’s workers’ compensation claim. Watson was required to repay approximately \$14,000 of ‘disability benefits’ to the City of Portland through payroll deductions— something that City disability manager Samuel Hutchison, in sworn testimony to City Counsel, swore would never happen to a fire employee. Watson was not allowed to work for six months. The City, despite Watson’s requests, and City

1 Policy and contractual duties to offer Watson a light-duty position, refused to
2 make reasonable accommodation, including refusal to offer Watson a light-duty
3 position that would have allowed him to return to work. The City again failed in
4 its duty to provide or process Watson's FMLA or OFLA requests and Watson
5 again lost medical benefits and was forced to take unpaid leave and lost benefits.
6

7 63.

8 Watson's injuries represented a high cost to the City of Portland and the
9 City's discriminatory conduct, investigations, withholding of rights and legally
10 mandated leave, and punitive measures were designed to avoid the City's costs
11 and forced them entirely onto Watson. Watson was unable to make mortgage
12 payments, went into personal debt, and his health insurance was cancelled.
13

14 64.

15 Fearful that the City would take efforts to smear his reputation, and aware
16 after being told by managers, that the City was targeting Watson because of his
17 complex medical history, Plaintiff requested a copy of his personnel records that
18 confirmed, despite the City's repeated efforts, that his personnel record was free
19 of discipline.
20

21 65.

22 Gregory Espinosa was not done. He continued in his discriminatory and
23 fraudulent assault of Watson's firefighting career with the City of Portland.
24 Continuing to subject Watson to fruitless and knowingly false allegations, and
25 after Watson's recurring efforts to defend himself, Espinosa began ordering others
26 to do the same. One such person was Captain Lee Etten, who Espinosa ordered to

1 issue Watson unwarranted discipline. Etten tried to follow Espinosa’s order, but
2 when Watson pointed out the falsity, discriminatory nature, and baselessness of
3 the proposed counseling, Etten chose to do the right thing. Etten would later
4 apologize to Watson and report to Watson that as a new Captain he felt he had no
5 choice but to follow Espinosa’s unlawful orders. The next morning, Espinosa
6 confronted Watson in the parking lot outside of Station 9, saying: “I don’t know
7 how you got out of that—but I’ll find out.” Again reminding Watson that he was a
8 target of Espinosa’s discriminatory, extreme and atypical scrutiny, and fraudulent
9 aggression toward Plaintiff. Watson was not within Espinosa’s chain of command.
10

11 66.

12 On another occasion, Plaintiff participated in the promotional examination
13 for the position of Fire Inspector. Promotion to fire inspector would allow plaintiff
14 to work in a non-operations position, allowing him to recover from injuries and
15 illnesses without incurring time losses, taking protected leave or losing benefits of
16 employment; moreover, promotion would have resulted in a 15% increase in
17 Plaintiff’s pay. Watson placed sixth on the ranked list of candidates and ahead of
18 several others.
19

20 67.

21 When Watson was due for promotion to Fire Inspector, without specifying
22 a reason, the City denied the promotion. The denial letter, from Fire Chief Sara
23 Boone did not contain a reason for passing Watson over.
24

25 68.
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71.

After Watson shared his concerns and pointed out he had no discipline to warrant being passed over, Keith Hathorne took several weeks and then wrote Watson to tell him that the City issued discipline retroactively and now Watson’s disciplinary record substantiated the City’s actions. As a Human Resources Business Partner, Hathorne had a duty to prevent such illegal actions—not coordinate and perpetrate them. Furthermore, as this was a act of generating pretext, Hathorne had a duty to spontaneously investigate. He did not.

72.

On more than one occasion Plaintiff provided notice, in writing, that he would need to use protected leave. Watson understood his requests were appropriate use of leave. Watson’s requests were ignored or shuffled from person to person within the City who did nothing. Instead, the City disciplined Plaintiff for use of protected leave, again caused his insurance and employment benefits to be cancelled, and further perpetuated the hostile work environment in an effort to force Watson from the Bureau.

73.

In the fall of 2018, Watson injured his arm away from work. He was forced to again take protected leave. When asked by his Captain, Erika Nelson, a female, how he was doing, Watson shared that he was doing well, but that he had a cough and due to his prior pulmonary embolism, his doctors advised him to monitor for signs of pneumonia. Pneumonia is a “presumptive” condition, which means that a rebuttable presumption demands that it be treated as work-related. Watson never filed a pneumonia claim. In violation of HIPPA, and Watson’s confidences,

1 Nelson, a Fire Bureau Captain, shared Watson’s protected health information in
2 order to support her efforts, due to Watson’s perceived disability, to have him
3 removed from the Station she managed. Watson complained to Hathorne of
4 this—Nelson was not investigated, counseled, or disciplined for violating Federal
5 HIPPA law. Another instance of the discriminatory practices that have become all
6 too common at Portland Fire. Another instance of Hathorne failing in his duty to
7 prevent discrimination and in fact discriminating against Watson.
8

9 74.

10 Chief Gregory Espinosa, who was not a superior officer of Watson’s and
11 thus not in Watson’s chain-of-command, but who has since 2011 targeted Watson
12 for his actual and perceived disabilities, wrote an email to Plaintiff demanding
13 Watson provide evidence that he was not suffering from pneumonia. Watson
14 informed Espinosa that the only dispositive proof would require Watson to
15 undergo medical treatment including an invasive chest examination and chest x-
16 rays. Moreover, Bureau policy only allowed the Chief of the Bureau, not Espinosa
17 to issue such a request. And then only with cause. But Espinosa refused to allow
18 Watson to return to work.
19

20 75.

21 After being forced by the City to undergo medical procedures at his
22 personal expense, Watson’s doctor drafted a letter that cleared Watson to return
23 to work and Watson returned to work. The following day Watson was informed
24 that he was being investigated for insubordination—and was investigated for
25 insubordination. After Espinosa refused to allow Watson to return to work for an
26 additional two weeks, Watson’s doctors drafted a letter in accordance with

1 Espinosa's vague and illegal requirements. Watson was finally allowed to return to
2 work. Watson filed a grievance but the City has stalled Watson's grievance for
3 more than three years and has never paid Watson for the time loss suffered as a
4 result of Espinosa's illegal and discriminatory conduct. Again, the City did not
5 provide Watson the opportunity to use OFLA or FMLA.
6

7 76.

8 Espinosa and Hathorne scheduled an investigative interview on Watson's
9 birthday May 2nd. When Watson shared this additional work commitment with his
10 wife, she told him that she was planning a surprise for him and asked if he could
11 reschedule. Watson shared this with Espinosa. Espinosa refused to reschedule the
12 interview and provided no reason for the refusal.
13

14 77.

15 The urgent interview was clearly designed to intimidate and harm Watson.
16 Hathorne again made several promises to Watson, to provide information to
17 support the allegations, but never followed through. At the conclusion of the
18 interview, Watson asked to speak with Hathorne privately and Hathorne promised
19 Watson the interview was confidential and would not be shared with Espinosa.
20

21 78.

22 Believing Hathorne's assurances, Watson again reported to Hathorne that
23 he has been discriminated against—and was being discriminated against because
24 of his perceived disabilities. As a HR Business Partner, Hathorne had a duty to
25 investigate Watson's allegations—and, notwithstanding the investigatory process,
26 he was not to share Watson's report with Espinosa. Instead, Hathorne, with

1 complete disregard for promises made to Watson, immediately reported Watson's
2 complaint to Espinosa. Hathorne told Watson there was no basis for his complaint
3 and conducted no investigation. Thereafter Hathorne began taking direct
4 retaliatory action against Watson that included wrongfully terminating Watson's
5 employment.

6
7 79.

8 Watson was forced to engage Union Representation and share his
9 concerns. The Union has grieved the City's conduct. The City has denied every
10 grievance. Many have languished with the City for several years.

11
12 80.

13 On or about December 13th of 2019, Watson experienced a sudden onset
14 of diminished level of consciousness while working at Portland Fire and Rescue
15 Station 18. Watson was transported to Emanuel Hospital where Doctors
16 performed a series of tests, ruling out a number of causes, including illegal or other
17 drugs. Doctors ordered that Watson rest for 7-10 days before returning to work.

18
19 81.

20 On or about December 16th, two days after the event at work, Watson
21 visited his personal physician at Kaiser Permanente, the doctor reviewed the
22 emergency records from Emanuel Hospital and cleared Watson to return to work.
23 Watson informed the City that he was cleared to return to work.

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25 82.

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86.

On April 14th, 2020, Hathorne sent Watson an email indicating “I understand Chief Ponce delivered the medical layoff notice to you today...” But the layoff took place April 11th and had been in the works for several weeks, if not longer. Watson was never given advanced notice of the City’s intent to lay him off notwithstanding Watson’s clearances to return to work that had been provided to the City by Watson, several months earlier.

87.

The City’s notice referenced two Human Resources Administrative Rules: First, HRAR 7.06, Layoff and Recall; and second, HRAR 7.09 Medical Layoff.

88.

Under the Rules the City relied on, Medical Layoff is only to be used when “ORS 659A injured workers reinstatement rights, ADA and or FMLA/OFLA rights have been exhausted.” The same policy provides “[t]he City *shall* give an employee advanced written notice of the intention to place the employee on Medical Layoff.” While Hathorne’s statements concerning Watson’s failure to cooperate were false, even if *arguendo* they were true—they did not warrant medical layoff. The decision to lay Watson off was purely hostile, substantively flawed, and with wanton disregard for mandatory procedures contained in the City’s own Rules.

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89.

Watson was never given advance notice of the City’s intent to terminate his employment—although the City had intended on using the medical layoff for several weeks before delivering the first notice to Watson, several days after it went into effect.

90.

Watson was never offered OFLA, FMLA, Injured Worker Reinstatement Rights, or any indication that the City believed he was not cooperating in the City’s IME investigation. In fact, contrary to Hathorne’s misrepresentations of the truth, Watson had attended a City IME evaluation with Dr. Corey where he spent several hours taking a battery of tests and completing interviews. Watson also signed and submitted numerous releases to provide the City with his pertinent medical records.

91.

City of Portland Human Resources Administrative Rule 7.06 relates to Layoff and Recall of City employees such as Watson. The policy defines Layoff as “the separation of an employee in the classified service due to the elimination of a position, lack of funds, or curtailment of work.” None of these conditions has, did, or does exist in regards to Watson. Yet the City exploited this policy as cover against their tacit discrimination, fraud, retaliation, intimidation, and hostile intent.

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92.

HRAR 7.06 further provides that “All layoffs must be in compliance with this Administrative Rule and labor contract provisions.”

HRAR also requires that “[p]rior to completing a Bureau Notice of Layoff, the Bureau Director *must* consider:

- 1. Transferring employees to vacancies within the bureau;
- 2. Eliminating vacant positions within the bureau;
- 3. Transferring employees within the bureau into positions held by temporary employees.”

HRAR 7.09 requires that “to initiate a layoff, the bureau must complete a Bureau Layoff Notice of Layoff form with supporting information and justification...30 days prior to the target effective date of the pending layoff.”

93.

The same policy also requires that “[a]fter the layoff request is approved, the bureau initiating the layoff will provide written notice to the impacted employee and to the applicable union...as far in advance of the effective date of the layoff as possible...[and] [a]t that time, the employee will be given an Election of Options form notifying the employee of their bumping...or layoff options.”

94.

The City completely ignored the policy, the rights of Watson, and the requirements of notice—opting instead for retaliation and escalation of the already hostile work environment.

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95.

On April 24, 2020, Plaintiff, through counsel, sent a letter to Fire Chief Sara Boone, complaining of the City’s many unlawful employment practices targeting Plaintiff. Specifically, the letter references:

- 1. Violation of Articles 4, 12, 13, 15 and 26 of the Collective Bargaining Agreement in several particulars.
- 2. Violation of HRAR 7.09 in six particulars.

96.

Plaintiff also requested information relating to the determination that he was ‘unfit for duty’ because it was clearly pretext for the City’s discriminatory, hostile, intimidating, and retaliatory acts against Watson. The City did not provide the requested information.

97.

For a period of several months, Watson was neither offered nor received disability benefits, pay, or other benefits of employment, including FMLA, OFLA, or the opportunity to use protected leave. The City did not provide Watson with COBRA benefits or properly inform him of his right to use them. The Union filed a grievance on Plaintiff’s behalf. The Grievance is among five that the City has unreasonably delayed so that they could use the fraudulently entered records as pretext for progressive discipline. Some of Watson’s grievances have been pending for more than four years.

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98.

After Watson reported the unlawful employment actions, the City again retaliated and expanded its hostile efforts to coerce Watson’s resignation. The City never investigated.

99.

On information and belief, Hathorne was removed from his position within the Fire Bureau. The City’s new HR Business Partner, Katina Lackey, has perpetuated the City’s discriminatory, hostile, intimidating, and retaliatory conduct against Plaintiff.

100.

Plaintiff has requested, and been promised, pertinent information in tort claim notices, and through other representatives. But the City has never provided this information. A further violation of ‘just cause’ and ‘due process’ rights of the plaintiff.

101.

The City’s redeployment policy states that “Bureaus ***are required to interview all qualified impacted employees and give them *priority consideration* when filling vacancies.” Watson’s credentials, which include undergraduate and doctoral level degrees, make Watson eligible for most positions offered by the City of Portland. Although Watson was eligible, and City policy mandated he be informed of and allowed to participate in the City’s redeployment program, he was never told of or offered such an opportunity.

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102.

The redeployment policy allows candidates such as Plaintiff to receive interviews for vacancies before those positions go out to general recruitment. Watson received no notice.

103.

After the City's doctor reviewed Watson's records and informed the City that Watson was capable of returning to full-duty as a firefighter, the City was forced to redact their termination of Watson, and returned him to paid administrative leave. The City never intended to allow Watson to return to work, and in fact, has not allowed Watson to return to work or if Watson is allowed to return to work, the City intends to perpetuate more than 10-years of increasingly hostile employment practices, intimidation, retaliation, and discrimination.

104.

For nearly two years, the City has prohibited Watson from been able to participate in Bureau activities, be present on City property or at Fire Stations.

105.

Nonetheless, Watson has continued to maintain his certifications, remained a paramedic in good standing with the State of Oregon, and completed all mandatory training available to him. The City has not allowed him to work

1 overtime, receive notice of promotional opportunities, or apply for certain
2 promotions.

3
4 106.

5 In the fall of 2020, Plaintiff demanded that he be able to take, took, and
6 pass the written portion of the Fire Lieutenant's examination. As a result, he was
7 allowed to attend the practical portion of the examination. Watson's notice to
8 attend, however, advised him to wear the wrong uniform. And on administrative
9 leave, Watson was not afforded the resources, opportunities to train and prepare,
10 that were afforded to others not facing such discrimination or hostile work
11 environment. Watson has also applied to the role of lead spokesperson on several
12 occasions; despite having better credentials than other candidates, his applications
13 have been summarily dismissed.

14
15 107.

16 Although Watson performed well on the practical examination, he has
17 received no notice, for nearly one year, of how he placed. Watson later learned
18 that the City went out of its way to ensure Watson would score low on the
19 subjective, practical, portion of the examination. Plaintiff's disability, use of
20 protected leave, and the City's hostile intent toward Watson were substantial
21 factors in the City's decision to skew Plaintiff's scores and thereby deny him the
22 promotion. On information and belief, others selected have not suffered Watson's
23 disabilities, and have not had to use or request protected leave like Watson.

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108.

Watson has provided dedicated public service for more than eighteen years. In response, as a result of Watson’s disability and/or perceived disability/ use of protected leave, the City has gone out of its way to create a false appearance of incompetence, insubordination to eliminate and humiliate Mr. Watson based on discriminatory intent and retaliatory motives. Moreover, the City has subjected Plaintiff to fraudulent discipline, imposed false and unwarranted discipline on several occasions, placed Plaintiff on administrative leave, laid off Plaintiff, and constructively terminated his position as a firefighter.

109.

In an effort to avoid liability for their tortious conduct, the City contacted Watson to “inform him” he was eligible for the City’s “targeted severance” program. The City offered to pay Watson one-year’s salary and benefits, but demanded that Watson agree to waive any claims against the City in exchange. Watson refused.

110.

Mr. Watson’s experience has been extremely painful emotionally and professionally. Mr. Watson continues to suffer and experience physical and psychological symptoms from the discriminatory and retaliatory layoff, the discriminatory misapplication and subversion of the City’s redeployment process, and the City’s ongoing discriminatory conduct, including artificially altering and skewing his scores on promotional exams to lieutenant, fire inspector and spokesperson.

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111.

Watson has been forced to undergo a series of unannounced visits by Bureau personnel to his home. On at least one occasion, Fire Bureau Operations Chief Ryan Gillespie stalked Watson in his neighborhood where he was with his wife and walking dogs. He demanded that Watson step close to his vehicle, provided a sealed written notice, but then refused to answer any of Watson’s questions.

112.

Throughout his employment with the City of Portland, the City never provided Plaintiff any meaningful feedback. At no time, after his initial year of employment and paramedic training, with the exception of paramedic reports, was Plaintiff provided any meaningful feedback. At no time did Plaintiff receive a formal performance review. City policy promises employees performance reviews at least annually. The City failed to perform that promise.

113.

In early 2021, the City required that Watson attend an investigative interview more than 14-months after being placed on administrative leave. The interview lasted more than 3 hours (despite Watson being told to expect it would last only 2 hours). Watson has requested a transcript of the interview, and other information, but the City either ignored or refused the request.

114.

To further coerce and force Watson to accept the City’s severance scheme, Watson received notice that he was also being investigated for “abuse of

1 [protected] leave” and informed that discipline, up to and including termination,
2 could result if he returns to work for the City.

3
4 115.

5 In a further effort to eliminate Watson, encourage Watson to accept the
6 City’s targeted severance program, and avoid clear liability, the City hastily
7 promulgated a spontaneous rule that made it a violation of City Policy subjecting
8 Watson to discipline, were he to work an outside job or similar while he is on paid
9 administrative leave. Watson, who has sought to mitigate the harm caused by the
10 City’s conduct, had been working on occasion and was forced to alter his schedule
11 as a result of the City’s arbitrary, capricious, and discriminatory policy that
12 targeted Watson specifically.

13
14 116.

15 While Plaintiff was on administrative leave, the City disciplined Watson
16 for use of protected leave, a protected activity. The City did not provide Watson
17 due process or follow the just cause requirements contained in City policy, the
18 Collective bargaining agreement. The City threatened Watson with termination if
19 he discussed the matter with others.

20
21 117.

22 The City also refused to allow Watson to return to work after being cleared
23 by doctors in 2018 of pneumonia. Although Watson did not have pneumonia and
24 had not reported to the City that he did, the City perceived that Watson had
25 pneumonia and forced him to prove that he did not. When Watson attempted to
26 return to work he was disciplined for ‘insubordination’ notwithstanding the

1 illegality, discriminatory intent, and hostile nature of Chief Espinosa’s order that
2 Watson establish he does not have pneumonia.

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4
5 118.

6 The City’s conduct has caused Watson numerous harms that can only be
7 mitigated by the relief sought. Watson’s disability, employment, statutory,
8 contract, FMLA and other rights have been eviscerated by the City who, on
9 information and belief, will only continue to promulgate the same should plaintiff
10 return to work as a firefighter/paramedic with the City. All efforts by Watson to
11 use administrative or other methods for addressing Defendants’ misconduct have
12 been thwarted by the City’s delays or issuance of additional, unjustified discipline,
13 investigations, discrimination, hostilities, retaliation and termination of Watson’s
14 employment under false pretense.

15
16
17 **FIRST CLAIM FOR RELIEF**

18 Disability/Perceived Disability Discrimination – ORS 659A.112 *et seq.*
19 (Against All Defendants)

20 119.

21 Plaintiff realleges and incorporates each of the paragraphs above as though
22 fully set forth herein.

23
24 120.

25 At all times, Plaintiff was “disabled” as that term is defined in ORS
26 659A.104.

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121.

Alternatively, at all material times, Defendants perceived Plaintiff to be disabled.

122.

In perpetrating the actions described above, Defendants, acting through their agents and employees, subjected Plaintiff to disability discrimination in violation of ORS 659A.112 *et seq.*, by creating a hostile work environment through intimidation, coercion, retaliation, denied promotions, and by terminating Plaintiff's employment and/or ending Plaintiff's assignment because of Plaintiff's actual or perceived disability.

123.

In perpetrating the above actions, Defendants violated ORS 659A.112 *et seq.*, causing Plaintiff to suffer damages.

124.

Plaintiff requests an award of damages as alleged in the preceding paragraphs inclusive, *supra*.

125.

Plaintiff also seeks reasonable attorneys' fees and costs in an amount to be proven at trial pursuant to ORS 659A.885(1) and/or ORS 20.107.

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131.

Plaintiff requests an award of damages as alleged in the foregoing paragraphs inclusive, *supra*.

132.

Plaintiff also seeks reasonable attorneys' fees, expert fees, and costs in an amount to be proven at trial pursuant to 42 U.S.C. §12205.

THIRD CLAIM FOR RELIEF

Failure to Accommodate/Engage in the Interactive Process
- ORS 659A.112 *et seq.*
(Against All Defendants)

133.

Plaintiff restates and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

134.

Despite knowledge of Plaintiff's disability, the symptoms of Plaintiff's disability, and Plaintiff's need for accommodation related to his disability, Defendants unlawfully refused to engage in a meaningful interactive process with Plaintiff.

135.

Plaintiff then also unlawfully failed to accommodate Plaintiff by refusing promotions, allowing light duty, reassignment, and refusing requests for leave.

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136.

In perpetrating the actions described above, Defendants violated ORS 559A.112 *et seq.*, causing Plaintiff to suffer damages.

137.

Plaintiff requests an award of damages, equitable relief, costs, and attorneys' fees as alleged in the foregoing paragraphs inclusive, *supra*.

138.

Plaintiff also seeks reasonable attorneys' fees and costs in an amount to be proven at trial pursuant to ORS 659A.885(1) and/or ORS 20.107.

FOURTH CLAIM FOR RELIEF

Failure to Accommodate/Engage in the Interactive Process
- 42 U.S.C. § 12112 *et seq.*
(Against All Defendants)

139.

Plaintiff restates and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

140.

Despite knowledge of Plaintiff's disability, the symptoms of Plaintiff's disability, and Plaintiff's need for an accommodation related to his disability, Defendants unlawfully refused to engage in a meaningful interactive process with Plaintiff.

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141.

Defendants then also unlawfully failed to accommodate Plaintiff by refusing Plaintiff's requests for reconsideration, light duty, and accommodation, and punishing Plaintiff for use of leave.

142.

In perpetrating the actions described in the above paragraphs, Defendants violated the ADA, 42 U.S.C. §12112, causing Plaintiff to suffer damages.

143.

Plaintiff requests an award of damages, equitable relief, costs, and attorneys' fees as alleged in the foregoing paragraphs inclusive, *supra*.

144.

Plaintiff also seeks reasonable attorneys' fees, expert fees, and costs in an amount to be proven at trial pursuant to 42 U.S.C. § 12205.

FIFTH CLAIM FOR RELIEF

Accommodation-Based Retaliation – ORS 659A.109
(Against All Defendants)

145.

Plaintiff restates and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

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146.

Plaintiff engaged in protected activity under ORS 659A.109 when Plaintiff requested accommodations in his communications with Defendants, as alleged in detail above.

147.

Defendants, acting through agents and employees, retaliated against Plaintiff, because Plaintiff requested accommodations, by terminating Plaintiff's employment and/or ending Plaintiff's assignment.

148.

In perpetrating the actions described above, Defendants violated ORS 659A.109, causing Plaintiff to suffer damages.

149.

Plaintiff also seeks reasonable attorneys' fees and costs in an amount to be proven at trial pursuant to ORS 659.885(1) and/or ORS 20.107.

SIXTH CLAIM FOR RELIEF

Accommodation-Based Retaliation – 42 U.S.C. §12112 *et seq.*
(Against All Defendants)

150.

Plaintiff restates and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

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151.

Plaintiff engaged in protected activity under the ADA when Plaintiff requested accommodations in his communications with Defendants, as alleged in detail above.

152.

Defendants, acting through agents and employees, retaliated against Plaintiff, because Plaintiff requested accommodations, by terminating Plaintiff's employment and/or ending Plaintiff's assignment.

153.

In perpetrating the actions described above, Defendants violated the ADA, 42 U.S.C. § 12112 causing Plaintiff to suffer damages.

154.

Plaintiff requests an award of damages, equitable relief, costs, and attorneys' fees as alleged in each of the foregoing paragraphs inclusive, *supra*.

155.

Plaintiff also seeks reasonable attorneys' fees and costs in an amount to be proven at trial pursuant to 42 U.S.C. §12205.

SEVENTH CLAIM FOR RELIEF

OFLA Denial, Interference, and Retaliation – ORS 659A.183
(Against All Defendants)

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156.

Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

157.

At all material times, Plaintiff was disabled or perceived disabled, as set forth above. Plaintiff worked an average of 53 hours per week during his employment with the City of Portland. Plaintiff was eligible for OFLA leave from Defendants beginning no later than April 22, 2020, or earlier.

158.

Defendants were “covered employers” under ORS 659A.153 and were thus required to provide OFLA leave to eligible employees, such as Plaintiff. That is true because Defendants were employers for the purposes of OFLA pursuant to 29 CFR §825.106(b)(1), which applies here pursuant to ORS 659A.186.

159.

The City of Portland unlawfully denied/interfered with Plaintiff OFLA leave to which he was entitled beginning on or before April 22nd, 2020.

160.

In perpetrating the above actions, the City of Portland violated ORS 659A.183 *et seq.*, causing Plaintiff to suffer damages.

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161.

Plaintiff requests an award of damages, equitable relief, costs, and attorneys' fees as alleged in the foregoing paragraphs inclusive, *supra*.

162.

Plaintiff also seeks reasonable attorneys' fees and costs in an amount to be proven at trial pursuant to ORS 659A.885(1) and/or ORS 20.107.

EIGHTH CLAIM FOR RELIEF

Oregon Sick Leave Denial, Interference, and Retaliation
ORS 653.641 *et seq.*
(Against All Defendants)

163.

Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

164.

At all material times, Plaintiff was eligible for paid, protected leave under the Oregon Sick Time Leave Act, ORS 653.601 *et seq.*

165.

At all material times, Defendants were covered employers subject to Oregon's Sick Leave Act, pursuant to ORS 653.606, and were required to afford Plaintiff Paid Sick Leave.

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166.

Defendants violated ORS 653.641(2)-(3) when they: (1) failed to award Plaintiff accrued or front-loaded paid sick time; (2) unlawfully denied Plaintiff's request for paid sick time, (3) unlawfully terminated Plaintiff/ended Plaintiff's assignment in retaliation for Plaintiff requesting and/or taking leave that qualified as sick leave under Oregon's Sick Leave Time Leave Act, causing Plaintiff to suffer damages.

167.

Plaintiff requests equitable relief, an award of damages, and costs as alleged in each of the foregoing paragraphs inclusive, *supra*. Plaintiff also seeks reasonable attorneys' fees and costs in an amount to be proven at trial pursuant to ORS 659A.885(1) and/or ORS 20.107.

NINTH CLAIM FOR RELIEF
Common-Law Wrongful Termination
(Against All Defendants)

168.

Plaintiff restates and incorporates each of the foregoing paragraphs as if fully set forth herein.

169.

At all material times, the public policy of Oregon prohibited an employer from retaliating against an employee who requested or took leave that qualified as

1 protected OFLA leave or protected leave under Oregon's Sick Time Leaves Act.
2 In addition, at all material times, the public policy of Oregon prohibited an
3 employer from retaliating against an employee who requested or took leave that
4 the employee reasonably believed qualified as protected leave under OFLA or
5 Oregon's Sick Time Leave Act.

6
7 170.

8 This public policy is embodied in the common law, statutes, and
9 regulations of the State of Oregon, including, but not limited to the following:
10 ORS 659A.183 *et seq.*, ORS 653.641 *et seq.* and *Yeager v. Providence Health Sys.*
11 *Oregon*, 195 Or. App. 134 (2004).

12
13 171.

14 Defendants violated these public policies by terminating Plaintiff and/or
15 ending his assignment because Plaintiff requested/took leave that qualified as
16 protected under OFLA and/or Oregon's Sick Time Leave Act, and/or because
17 Plaintiff requested/took leave that he reasonably believed qualified as protected
18 leave under OFLA and/or Oregon's Sick Leave Act.

19
20 172.

21 Defendants' discipline, intimidation, hostility toward, and discharge of
22 Plaintiff was in retaliation for Plaintiff's pursuit and exercise of his rights related
23 to his employment, which are of important public interest.

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173.

In the alternative, Defendants constructively terminated Plaintiff's employment by using several illegal, unlawful, retaliatory, and hostile actions to force Plaintiff to resign because the conditions would not allow Plaintiff to succeed and would force Plaintiff to suffer.

174.

Plaintiff requests an award of damages and costs, as alleged in each of the foregoing paragraphs inclusive, *supra*.

TENTH CLAIM FOR RELIEF

Fraudulent Misrepresentation

(Against Defendants Espinosa, Hathorne and the City of Portland)

175.

Plaintiff incorporates by reference the allegations set forth in each of the foregoing paragraphs.

176.

Espinosa, Hathorne, and the City of Portland knowingly made false representations to plaintiff, including but not limited to: representing they would provide a basis for investigations; that the City could not afford to provide training; that the City would hold Watson's discrimination complaint and/or request for investigation confidential.

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177.

Defendant’s representations were material factors upon which Plaintiff reasonably relied in determining how to proceed amidst increasing hostility, retaliation, discrimination, promulgated by the City.

178.

Defendants have made material omissions that, had Plaintiff known, plaintiff would have proceeded differently. Specifically: (1) that the City did not have discriminatory or hostile intent, (2) that statements would be shared with accused in relation to a discrimination investigation, (3) that he would be given an equal opportunity to promote, (4) that the City had followed policy when laying plaintiff off from employment, (5) and that Watson was medically terminated because he could not be determined fit for duty.

179.

Defendants know Plaintiff would rely on their representations and omissions and refrain from making additional complaints, seeking additional benefits, seeking redress for discrimination, or requesting information.

180.

Defendants intended for plaintiff to rely on their representations and omissions in determining how to respond to the City’s tortious conduct.

189.

Plaintiff had no reason to know that Defendants’ representations were false and that they had omitted material facts; if Plaintiff had known that

1 Defendants would not live up to the promises they made, he would have sought
2 further redress, acted against Defendants' conduct sooner, and sought other
3 redress.

4 190.

5 As a direct and proximate result of Defendants' actions as alleged herein,
6 Plaintiff has suffered economic losses in the form of lost overtime, lost wages, lost
7 specialty pay, lost retirement benefits, future lost wages and benefits, and out-of-
8 pocket expenses, in an amount to be proven at trial but not less than \$300,000
9 plus prejudgment interest thereon at the statutory rate of 9%.

10
11 191.

12 Plaintiff is entitled to a separate award of compensation to offset the tax
13 penalties associated with incurring lost wage payments in a lump sum amount
14 and/or for receiving reimbursement for lost wages in one tax year.

15
16 192.

17 As a direct and proximate result of Defendants' actions as alleged herein,
18 Plaintiff has suffered non-economic harm in the form of emotional and mental
19 distress, degradation, embarrassment, and humiliation.

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21 193.

22 The actions of Defendants as such herein were intentional, willful, and
23 with reckless disregard to Plaintiff's rights. Such conduct exceeds the bounds of
24 social toleration and is of the type that punitive damages deter. Plaintiff, therefore,
25 reserves the right to amend this Complaint to seek punitive damages.

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194.

The City is an employer subject to ORS §659A.030

195.

Under ORS 659A.030(a)-(b), it is unlawful employment practice, “for an employer...to discriminate against such an individual in compensation or in terms, conditions or privileges of employment.”

196.

The City further discriminated against Plaintiff by treating him differently than similarly situated employees.

ELEVENTH CLAIM FOR RELIEF

Aiding and Abetting -- ORS 659A.030(1)(g)
(Against Defendants Espinosa, Hathorne, Boone, and Gillespie)

197.

Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs as if fully set forth herein.

198.

Aiding and abetting Defendants, in violation of 659A.030(1)(g), engaged in deliberate actions designed to aid and abet the City of Portland’s discrimination against Plaintiff because of his disability in violation of ORS 659A.112.

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199.

Mr. Watson is entitled to a declaration that Defendants aided and abetted in the City of Portland's efforts to engage in unlawful disability discrimination.

200.

As a direct, foreseeable, and proximate result of the foregoing actions, as alleged herein, Mr. Watson has suffered non-economic harm in the form of embarrassment, anxiety, humiliation, anger, emotional distress, inconvenience, damage to his professional reputation, and loss of enjoyment of life, and is entitled to an award of compensatory damages, plus prejudgment interest in an amount that the jury determines to be reasonable under the circumstances.

201.

Chief Espinosa's actions as alleged herein were intentional, willful, and with reckless disregard to Mr. Watson's statutory rights to be free from discrimination. Accordingly, Mr. Watson intends to seek to amend his complaint to add a claim for punitive damages against individual Defendants.

202.

Plaintiff is entitled to his reasonable attorney's fees and costs incurred including expert witness fees pursuant to ORS 659A.885 and ORS 20.107.

203.

Plaintiff has timely provided tort claims notice to the City of Portland.

1 **TWELFTH CLAIM FOR RELIEF**

2 Breach of Contract
3 (Against All Defendants)

4 204.

5 Plaintiff incorporates by reference the allegations set forth in each of the
6 preceding paragraphs as if fully set forth herein.

7
8 205.

9 The City of Portland promulgates policies, including Human Resources
10 Administrative Rules that create duties for employer and employees. Although the
11 City and Firefighting Union have a separate contract, the City's policies create a
12 separate and binding contract, enforceable here.

13 206.

14 On several occasions, the City breached the foregoing contract, with
15 specific instances including, but not limited to:

- 16 1. Failing to provide notice that Plaintiff was being considered for layoff
17 2. Failing to provide notice that Plaintiff was going to be laid off
18 3. Failing to allow Plaintiff OFLA before laying him off
19 4. Failing to provide information relating to use of protected leave and
20 other layoff notices as required under numerous HRAR's
21 5. Engaging in discriminatory, hostile, and unlawful employment
22 practices, prohibited under HRAR's and other applicable rules,
23 contained herein,
24 6. Refusing to provide due process before making an adverse employment
25 action affecting Plaintiff's rights to public employment,
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207.

In perpetrating the actions described above, defendants violated ORS' causing Plaintiff to suffer damages.

208.

The City has refused to resolve matters as prescribed by contract and as a result, Plaintiff's non-litigation remedies have been purposefully thwarted by the City of Portland. Plaintiff has no other remedies at law.

THIRTEENTH CLAIM FOR RELIEF
Tortious Interference with Business Relations
(Against All Defendants)

209.

Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs as if fully set forth herein.

COUNT ONE

210.

In the alternative, Defendants Hathorne, Boone, Espinosa, Gillespie, and Lackey interfered with Plaintiff's employment while acting outside the course and scope of his employment with the City.

211.

Defendants' interferences with Plaintiff's relationship with the City of Portland were the form of making false statements about Plaintiff to one or more

1 of the City's management employees, including Human Resources manager
2 Cathy Bless, statements to the effect that Plaintiff was refusing to cooperate and
3 had violated policy. Said interferences were accomplished by Defendants through
4 improper means and/or with improper purposes. Specifically, Defendants
5 targeted Plaintiff because of his on-the-job and off-the-job injuries and illnesses.
6 Defendants wanted the City to terminate Plaintiff's employment and to replace
7 him with an employee who was healthy and/or perceived healthy, and or would
8 not be limited to light duty work.

9 212.

10 Defendants' intentional actions caused interference and damage to
11 Plaintiff's employment opportunities within the City.

12 213.

13
14 Plaintiff requests an award of damages, equitable relief, and costs as
15 alleged herein inclusive, *supra*.

16
17 **COUNT TWO**

18
19 214.

20 Watson was forced to mitigate the losses caused by Defendants' acts and
21 omissions as set forth herein.

22 215.

23 Specifically, Plaintiff was forced to pursue other employment and/or self-
24 employment opportunities to bridge the losses incurred by being unable to
25 promote, participate in promotional exams, work overtime, receive benefits,
26

1 receive retirement, FMLA/OFLA, use sick leave, and work in special
2 assignments.

3
4 216.

5 Defendants were aware of Plaintiff's actual and prospective economic
6 relations with third parties.

7 217.

8
9 The City, by and through Chief Sara Boone, promulgated a memorandum,
10 outside the collective bargaining agreement that specifically prohibited the actions
11 taken by Plaintiff to mitigate the losses created by Defendants conduct as alleged
12 herein.

13 218.

14 The rule was widely understood as set forth to apply specifically and only
15 to Plaintiff.

16
17
18 219.

19 As a result, Plaintiff was unable to mitigate damages caused by Defendants
20 and his third-party relationships and economic prospects were destroyed.

21 220.

22
23 In perpetrating the actions described above, Defendants violated ORS'
24 causing Plaintiff to suffer damages.
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221.

Plaintiff is entitled to his reasonable attorney’s fees and costs incurred including expert witness fees pursuant to ORS 659A.885 and ORS 20.107.

FOURTEENTH CLAIM FOR RELIEF
Intentional Infliction of Emotional Distress
(Against All Defendants)

222.

Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs as if fully set forth herein.

223.

Defendants’ acts and omissions were intentional and reckless.

224.

Defendants’ acts were extreme and outrageous.

225.

In perpetrating the acts above, Defendants caused Plaintiff to suffer severe emotional distress.

FIFTEENTH CLAIM FOR RELIEF
ORS 659A
Retaliation for Opposing Unlawful Practices
(Against All Defendants)

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226.

Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs as if fully set forth herein.

227.

Under ORS 659A it is an unlawful employment practice for an employer to discriminate against or discharge an employee because the employee has complained of discrimination.

228.

Plaintiff engaged in protected activity by reporting to HRAR Business Partner Keith Hathorne and others that he was experiencing discriminatory treatment and retaliation based upon his perceived disability.

229.

Rather than investigate or remedy Defendants' discriminatory hostile work environment after Plaintiff complained, Defendants intensified their unlawful treatment and harassment of Watson to a level that was so intolerable that any reasonable employee under the circumstances would have been prompted to quit. These actions included, but were not limited to: issuing Watson unfounded discipline; making false entries in Watson's employment record; making retroactive entries in Watson's employment record; lying about Watson's participation in investigations; using perceived disability as a means for termination; failing to provide protected leave; punishing Watson for use of protected leave; ignoring Watson's due process rights and conducting sham investigations; refusing to investigate further discrimination; delaying

1 investigations outside of just cause; refusing to provide context or information;
2 misrepresenting facts to Watson, coercing Watson to accepted 'targeted
3 severance'; promulgating rules designed specifically to harm Watson;
4 continuously encouraging supervisors to target and observe Watson.
5

6 230.

7 Defendants further continued their retaliation against plaintiff by
8 subjecting him to a higher level of scrutiny than it subjected to other terminated
9 employees, other employees, and for raising complaints of unlawful conduct, filing
10 tort claim notices, and working with counsel.
11

12 231.

13 Defendants are responsible for damages resulting from the retaliatory
14 hostile work environment to which it subjected Watson following his complaints
15 and its constructive termination of his employment in violation of ORS'.
16

17 232.

18 As a direct result of Defendants' conduct, Watson suffered and will
19 continue to suffer economic damages, including past and future lost wages, lost
20 opportunities, lost retirement, lost overtime, lost salary increases, lost
21 promotions, lost benefits and other out-of-pocket expenses, plus interest, in
22 amount to be proven at trial.
23

24 233.

25 As a direct and proximate result of Defendants' conduct, Plaintiff has
26 suffered severe emotional distress, anxiety, humiliation, damage to his reputation,

1 and embarrassment for which he seeks non-economic damages in an amount to be
2 proven at trial.

3
4 234.

5 Plaintiff is entitled to his reasonable attorney fees and costs incurred,
6 including witness fees, pursuant to ORS 659A.885 and ORS 20.107.

7
8 235.

9 Defendants' alleged actions were malicious, intentional, willful and with
10 reckless disregard to Mr. Watson's statutory, contractual, and common law rights.
11 Such conduct exceeds the bounds of social toleration and shows a reckless and
12 conscious indifference to a highly unreasonable risk of harm and is of the type that
13 punitive damages deter. Mr. Watson reserves the right to and anticipates
14 amending this Complaint pursuant to ORS 31.725 to assert claims for punitive
15 damages.

16
17 236.

18 Plaintiff's ability to fully evaluate the extent and nature of Defendants'
19 tortious conduct is limited by the City's ongoing refusal to provide, and
20 obstruction of, relevant information and discovery. Plaintiff therefore reserves the
21 right, and anticipates, amending this Complaint, to reflect information currently
22 withheld by Defendants' and that is expected to substantiate additional claims,
23 and/or additional claims against additional defendants.

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26 **SIXTEENTH CLAIM FOR RELIEF**

Civil Assault/Battery

- 64 -

(Against Defendant Espinosa)

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237.

Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs as if fully set forth herein.

238.

Espinosa required that Watson undergo medical procedures involving x-ray radiation. Espinosa's requirement that Watson undergo this procedure was arbitrary, capricious and intentional.

239.

Espinosa ignored Watson's clearances to return to work and knew that Watson, who had already been diagnosed with cancer, was fearful of the effects of radiation, something he was told to avoid if possible.

240.

Even after Watson reported this apprehension, Espinosa forced Watson to undergo medical procedures.

241.

In perpetrating the acts above, Espinosa forced a series of unwanted physical contacts upon Watson. As a result, Watson suffered damages including radiation, time loss from work, discipline for 'insubordination,' and severe emotional distress.

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EIGHTEENTH CLAIM FOR RELIEF

Injured Worker Retaliation – ORS 659A.040 *et seq.*
(Against City of Portland)

242.

Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs as if fully set forth herein.

243.

Plaintiff engaged in protected activity under ORS 659A.040 when he utilized the procedures of Oregon’s workers’ compensation system, as alleged in detail above, by reporting his injury, filing for workers’ compensation, and seeking leave to recover.

244.

The City, acting through its agents and/or employees, terminated Plaintiff and subjected him to hostile, discriminatory, retaliatory, and other unlawful employment practices because Plaintiff invoked his rights under Oregon and the City’s self-insured, workers’ compensation program.

245.

In perpetrating the acts above, the City violated ORS 659A.040, causing Plaintiff to suffer damages.

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246.

Plaintiff requests an award of damages, costs, and attorneys' fees as alleged in the foregoing paragraphs, inclusive, *supra*.

WHEREFORE, Plaintiff prays for judgment against Defendants' as follows:

1.
 - (a) A declaration that Defendants are liable to Plaintiff for each of the reasons set forth in Plaintiff's First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth, and Twelfth, Thirteenth, and Fourteenth and Fifteenth claims for relief.
 - (b) A declaration that Espinosa and Hathorne are liable to Plaintiff for aiding and abetting as set forth in Plaintiff's Thirteenth Claim for relief.
 - (c) A declaration that Espinosa is liable to Plaintiff for civil assault and battery.
2. All appropriate injunctive relief.
3. An award of economic damages in the amount to be determined at trial but at least \$515,000;
4. An award of noneconomic damages in an amount of \$750,000; and
5. An award of Plaintiff's attorney fees, expert fees and costs incurred herein.
6. Any further or alternative relief in favor of Plaintiff that the court deems appropriate.


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JURY TRIAL DEMAND

Plaintiff demands a jury trial.

DATED this November 21st, 2021.

WATSON LAW OFFICE PC

By: 

Gabriel A. Watson, OSB #190401
Gabriel@WatsonLawPC.com
Of Attorneys for Defendants