

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

MICHAEL CARLSEN,

Plaintiff,

v.

CLACKAMAS FIRE DISTRICT #1, an Oregon Special District; **NICK BROWNE**, an individual; **MARK WHITAKER**, an individual,

Defendants.

Case No.

COMPLAINT

(Disability Discrimination – ORS 659A.112; Failure to Accommodate – ORS 659A.112; Failure to Engage in Interactive Process – OAR 839-006-0206(6); Whistleblower Retaliation – ORS 659A.199; Hostile Work Environment; Intentional Infliction of Emotional Distress; Wrongful Termination (Constructive Discharge) in Violation of Public Policy)

Claims Not Subject to Mandatory Arbitration

REQUEST FOR JURY TRIAL

Prayer: \$5,000,000.00, or an amount to be proven at trial.

Filing fee: \$884.00 per ORS 21.160(1)(d)

Plaintiff, Michael Carlsen, alleges:

PARTIES & VENUE

1.

Michael Carlsen (hereinafter “Plaintiff Carlsen”) is an individual who resides in Oregon.

Plaintiff Carlsen has Parkinson’s Disease, and therefore is a part of a class of protected individuals.

2.

1
2 Defendant Clackamas Fire District #1 (hereinafter “Defendant CFD1”) is a Fire District,
3 Oregon Special District, and public entity, in the County of Clackamas, Oregon.

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5 3.

6 At all times material to this Complaint, Fire Chief Nick Browne (hereinafter “Fire Chief
7 Browne” or “Defendant Browne”) worked as the Fire Chief for Defendant CFD1.

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9 4.

10 At all times material to this Complaint, Chief Financial Officer Mark Whitaker
11 (hereinafter “CFO Whitaker” or “Defendant Whitaker”) worked as the Chief Financial Officer
12 for Defendant CFD1.

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14 5.

15 This Court is the appropriate venue pursuant to ORS 14.080 because one or more of the
16 events giving rise to this action took place in Clackamas County.

17 SUMMARY OF COMPLAINT

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19 6.

20 Plaintiff Carlsen had a distinguished career as a firefighter and community advocate.
21 Prior to becoming a firefighter, he served in the US Army under the Reserve Officers’ Training
22 Corps (ROTC) program. He was hired to work for Defendant CFD1 on January 13, 2003. During
23 his long career at Defendant CFD1, Plaintiff Carlsen performed his job with passion, ingenuity,
24 empathy, and kindness. Despite being a gay man and having to navigate a field with few other
such representatives, Plaintiff Carlsen gained the respect of his peers, and rose through the ranks,
ultimately achieving the rank of Division Chief. Plaintiff Carlsen’s world changed when he was

1 diagnosed with Parkinson's Disease on January 20, 2018. Following Plaintiff Carlsen's diagnosis
2 he was subjected to discrimination and harassment by Defendants.

3 **FACTUAL BACKGROUND**

4 7.

5 Plaintiff Carlsen was hired to work for Defendant CFD1 on January 13, 2003. Following
6 a probationary period, he rose through the ranks from Fire Fighter to Battalion Chief in 2019.
7 Through the years Plaintiff Carlsen worked tirelessly to implement and promote innovative
8 programs and historic standards of excellence. He was one of the youngest Captains in the
9 history of Defendant CFD1 and played a central role in implementing Defendant CFD1's
10 Hazmat team. Plaintiff Carlsen was promoted to Division Chief for the Support Services
11 Division in November 2020.

12 8.

13 On January 20, 2018, Plaintiff Carlsen was diagnosed with Parkinson's Disease. Plaintiff
14 Carlsen shared this news with superiors at Defendant CFD1.
15

16 9.

17 Despite his diagnosis, Plaintiff Carlsen excelled at his job. He was promoted to Division
18 Chief for the Support Services Division in November 2020. In this position, Plaintiff Carlsen was
19 responsible for one of the largest budget portfolios in the district. He oversaw 15 civilian
20 employees and one uniformed employee. He managed contracts with multiple agencies,
21 including the 911 dispatch center, fleets, and logistics contracts. He served as the liaison between
22 Defendant CFD1 and multiple county agencies, including Disaster Management, Clackamas
23

1 County Consolidated Communications, the county medical examiner's office, as well as serving
2 as a member of the Fire Defense Board of Clackamas County.

3 10.

4 Plaintiff Carlsen's Parkinson's Disease did not impact his performance at work. In fact,
5 his performance remained exemplary. Indeed, Plaintiff Carlsen was encouraged by former Fire
6 Chief Fred Charlton to consider competing for the soon to be vacated Clackamas Fire Chief
7 position. This was a very prestigious position and Plaintiff Carlsen was gratified to be on the
8 shortlist with five other candidates. Ultimately, he removed himself from consideration, as he
9 believed his skillset was best utilized as the Support Services Division Chief. Nick Browne was
10 selected for the Fire Chief position on May 1, 2021.

11 11.

12 Plaintiff Carlsen loved working for Defendant. As he worked to find a new normal after
13 his Parkinson's Disease diagnosis, he used his job as a means of creating structure and stability
14 in his life.

15 12.

16 On or about July 21, 2021, Plaintiff Carlsen met with Defendant Browne at a nearby
17 Starbucks where Defendant Browne first made the comment to Plaintiff Carlsen that "you're a
18 different person." During this conversation, Plaintiff Carlsen talked about his Parkinson's
19 diagnosis and directly requested accommodation when he asked Defendant Browne to notify him
20 directly if any of his work product or performance began to suffer on account of his disability.
21 Plaintiff Carlsen asked that Defendant Browne go to him first so he could correct any
22 deficiencies. Defendant Browne agreed. Notably, this never occurred, and Defendant Browne
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1 instead took the steps described below to remove duties from Plaintiff Carlsen and/or demote
2 him without ever communicating about any perceived deficiencies in Plaintiff Carlsen’s work
3 product or performance.

4 13.

5 On July 7, 2022, Plaintiff Carlsen was approached by one of his employees, Megan
6 Cardoza, who was recently returned from maternity leave. She requested that she be allowed to
7 work remotely. Plaintiff Carlsen told Ms. Cardoza that remote work was problematic for her
8 position, as she was a technician in Fleet and Logistics. The nature of the job required her on-site
9 presence most of the time. Ms. Cardoza was angered by Plaintiff Carlsen’s decision not to let her
10 work from home.

11 14.

12 Around this same time, Plaintiff Carlsen began noticing changes in the way some people
13 were treating him at work, including Defendant Browne who had become increasingly short with
14 him. Plaintiff Carlsen asked to meet with Defendant Browne on July 20, 2022, at which time he
15 brought up his concerns. Defendant Browne began by telling Plaintiff Carlsen that he was doing
16 a great job in his position as Division Chief, noting that Plaintiff Carlsen had “revolutionized
17 logistics.” Defendant Browne then pivoted by saying he was “frustrated” with Plaintiff Carlsen
18 because “something had changed” with him. Defendant Browne advised that Plaintiff Carlsen
19 was no longer the same “confident person” he was as a Captain. Plaintiff Carlsen explained that
20 Parkinson’s Disease can sometimes have that effect on a person, but that he was doing his best to
21 continue performing at a high level.
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15.

1
2 Plaintiff Carlsen was approached by Mark Whitaker, Chief Financial Officer (CFO) for
3 Defendant CFD1, who informed him that Ms. Cardoza filed a complaint against Plaintiff Carlsen
4 on August 15, 2022. At this point, Plaintiff Carlsen had not seen the actual complaint filed by
5 Ms. Cardoza. He was told that part of Ms. Cardoza’s complaint included unsubstantiated
6 allegations that Plaintiff Carlsen’s Parkinson’s Disease was impacting his work performance.

16.

7
8 Defendants conducted an internal investigation into the complaint filed by Ms. Cardoza.
9 The internal investigation was undertaken by Defendant Whitaker and Trish Nobel from Human
10 Resources. Notably, Plaintiff Carlsen asked Defendant Whitaker to include Defendant Browne
11 and CFD1 legal counsel in the investigation, but Defendant Whitaker dismissed this request.
12 Ultimately, the internal investigation concluded that Ms. Cardoza’s complaint and allegations
13 were unfounded.
14

17.

15
16 Ms. Nobel shared the findings of the investigation with Plaintiff Carlsen on August 23,
17 2022. She also shared that Defendant Whitaker told Ms. Cardoza she could not invoke Plaintiff
18 Carlsen’s Parkinson’s Disease because “that was discrimination.” Ms. Nobel shared that Ms.
19 Cardoza was now requesting a meeting with Plaintiff Carlsen so she could apologize. Ms. Nobel
20 told Plaintiff Carlsen that she hoped he could “find it in his heart to hear her out.”
21

18.

22 The next day, Defendant Whitaker provided Plaintiff Carlsen with the 5-page, single
23 spaced, typed complaint from Ms. Cardoza. In the complaint, Ms. Cardoza made multiple false
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1 accusations against Plaintiff Carlsen and discriminatory remarks about his Parkinson's Disease.

2 The allegations were outrageous, false, and clearly retaliatory.

3 Aside from the multiple outright falsehoods about his performance, the commentary was
4 offensive to Plaintiff Carlsen on a professional level and as a person suffering from a serious
5 medical condition.

6 19.

7 Despite the accusations and discriminatory remarks made in the complaint, Defendant
8 Whitaker and Ms. Nobel wanted Plaintiff Carlsen to meet with Ms. Cardoza and accept her
9 apology in person so they could "bury the hatchet." Plaintiff Carlsen declined to meet with Ms.
10 Cardoza in person. As the person on the receiving end of the unsubstantiated accusations and
11 discriminatory remarks, he found himself not only offended but physically triggered by the
12 remarks.

13 20.

14 Plaintiff Carlsen asked Defendant Whitaker "Why would I put myself in a position to
15 have a dyskinesia reaction in front of her?" referring to the triggering effect Ms. Cardoza's false
16 accusations had on Plaintiff Carlsen due to his Parkinson's Disease. Plaintiff Carlsen further
17 stated to Defendant Whitaker that he believed Ms. Cardoza's actions satisfied most of the
18 "criteria for creating a hostile work environment."
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20 21.

21 In response, Defendant Whitaker became upset with Plaintiff Carlsen. He told Plaintiff
22 Carlsen that he was "disappointed" in him. He told Plaintiff Carlsen that he was "wrong," and he
23 did not see Plaintiff Carlsen's point of view. Defendant Whitaker further stated that Plaintiff
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1 Carlsen’s decision not to accept Ms. Cardoza’s apology in person was “gross misconduct
2 unbecoming of a Division Chief.” Further, Defendant Whitaker told Plaintiff Carlsen his actions
3 did not meet “the expectation of his rank and position and failed to meet expectations of the
4 Command and General staff.” Defendant Whitaker then advised that Ms. Cardoza would return
5 to Plaintiff Carlsen’s division where she would be placed in the bullpen of cubicles outside his
6 office suite. Notably, Ms. Cardoza’s entry-level “technician” position would have allowed her to
7 be redistributed to another Division at Defendant CFD1.

8 22.

9 Plaintiff Carlsen was stunned by Defendant Whitaker’s angry and accusatory statements.
10 Plaintiff Carlsen stood up and said, “That just happened,” in response to Defendant Whitaker’s
11 outrageous behavior. Plaintiff Carlsen told Defendant Whitaker that he would not meet with him
12 again unless the Fire Chief and Human Resources Chief were present. Plaintiff Carlsen
13 proceeded to leave.
14

15 23.

16 Plaintiff Carlsen worked from home the following week, due to Defendant Whitaker’s
17 behavior, in conjunction with the falsified and discriminatory complaint made by Ms. Cardoza.
18 These events were both emotionally and physically triggering for Plaintiff Carlsen.

19 24.

20 A Command and General Staff Meeting occurred on October 17, 2022. Defendant
21 Browne asked Plaintiff Carlsen to stay after the meeting so they could talk after everyone left.
22 Defendant Whitaker stayed for the meeting. Defendant Browne said, “Mikey, I feel so bad. I put
23 you in charge of way too much. And I should have never done that. It was a mistake to put a
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1 uniformed Chief in charge of logs, fleet, and facilities.” Defendant Browne then told Plaintiff
2 Carlsen that he was “doing away with” his position and he did not have another Division Chief
3 position to offer Plaintiff Carlsen. Plaintiff Carlsen asked if he was being demoted to Battalion
4 Chief with an accompanying decrease in compensation. Defendant Browne confirmed this was
5 the case. Defendant Browne told Plaintiff Carlsen that he would be assigned to Division Chief
6 Dan Mulick. Defendant Browne told Plaintiff Carlsen to report to Division Chief Mulick in the
7 morning.

8 25.

9 Plaintiff Carlsen was shocked by Defendant Browne’s decision to demote him. Plaintiff
10 Carlsen asked why Defendant Browne was not following the civil service rules related to
11 Plaintiff Carlsen’s demotion. At this point, Defendant Whitaker stated, “If we’re being real, it’s
12 because of you not doing your job and conduct unbecoming.” Defendant Browne agreed with
13 Defendant Whitaker and told Plaintiff Carlsen that he wasn’t the “same person” as he was
14 before.
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16 26.

17 Plaintiff Carlsen reminded Defendant Browne of the conversation they had initially in
18 July 2021 where he explained his condition and requested accommodation. Plaintiff Carlsen also
19 pointed out that he recently completed his annual review and no issues or concerns relating to his
20 performance were raised by anyone. Likewise, Plaintiff Carlsen recently attended a meeting with
21 the Board of Directors where his performance as Division Chief for the Support Services
22 Division was praised. These accolades were in writing and audio recorded, and directly
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1 contradicted Defendant Browne and Defendant Whitaker's allegations of performance
2 deficiencies.

3 27.

4 Defendant Browne asked Plaintiff Carlsen to step out of the conference room. Plaintiff
5 Carlsen complied. Although Plaintiff Carlsen was not trying to listen, the walls were thin, and he
6 heard Defendant Browne put the Human Resources Chief on speakerphone. Plaintiff Carlsen
7 walked away from the conference room so that he would not hear the conversation. He was
8 asked to return to the conference room a short time later, at which point Defendant Browne
9 stated that Plaintiff Carlsen had given him "stuff to think about and pray over." Defendant
10 Browne further stated that he was not prepared to answer Plaintiff Carlsen's questions regarding
11 performance and indicated that he would meet with Plaintiff Carlsen the next morning to further
12 clarify his position on demotion.

13 28.

14 Plaintiff Carlsen left the meeting and briefly went to the parking lot. He saw Defendant
15 Browne sitting in his own vehicle. Defendant Browne motioned for Plaintiff Carlsen to come
16 over to his vehicle at which point Defendant Browne told Plaintiff Carlsen that his decision to
17 demote Plaintiff Carlsen was "one of the hardest things" he had ever done. Defendant Browne
18 went on to state, "This sucks. I don't like doing this. You're golden. You're an awesome guy.
19 You're a hard worker. You've never done me wrong. Let me sleep on it. Let me pray on it. And
20 we'll talk tomorrow morning at 8:00. I'll come to your office."
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29.

1
2 Plaintiff Carlsen did not know what to stay, as he was still in a state of shock. Plaintiff
3 Carlsen returned to his office to begin packing his things to leave due to his demotion. Before
4 packing, he removed his Division Chief Badge and the three crossed bulges denoting his rank
5 from his uniform to replace it with the badge and two crossed bulges denoting his demoted rank
6 of Battalion Chief. The badge is incredibly significant given that Plaintiff Carlsen swore an oath
7 to the Constitution and the policies and procedures of CFD1. Removal of the badge was
8 emotionally traumatizing for Plaintiff Carlsen, and he cried as a result.

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10 30.

11 While packing his belongings, Plaintiff Carlsen saw his fleet manager, Bill Bischoff. In
12 speaking with Mr. Bischoff, Plaintiff Carlsen learned that his demotion was previously
13 communicated to Mr. Bischoff, who was informed he would be taking over Plaintiff Carlsen's
14 duties.

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16 31.

17 Just three hours later, on the same day, Defendant Browne called Plaintiff Carlsen on the
18 phone and asked, "How are you doing, my brother?" Plaintiff Carlsen replied that he was doing
19 as well as one would expect given the situation. Defendant Browne repeated that his decision to
20 demote Plaintiff Carlsen was "the hardest thing" he'd ever done. Defendant Browne repeated
21 that he would "pray over his decision."

22
23 32.

24 Notably, Defendants never provided Plaintiff Carlsen with formal notification of the
findings from the investigation regarding Ms. Cardoza's complaint referenced in paragraph 16 or

1 the disciplinary action taken against Plaintiff Carlsen starting at paragraph 21. Defendants'
2 failure to provide formal notification contradicted Defendant CFD1's internal policy, thereby
3 depriving Plaintiff Carlsen of his due process rights prior to demotion.

4 33.

5 Plaintiff Carlsen came to work the next morning expecting to meet with Defendant
6 Browne at 8:00 a.m. as agreed. However, Defendant Browne was in meetings all morning and
7 made no attempt to contact Plaintiff Carlsen. He later texted Plaintiff Carlsen advising him he
8 would be at the office in the early afternoon. When Defendant Browne finally arrived, he told
9 Plaintiff Carlsen that it was "time to come home." Plaintiff Carlsen asked what he meant, and
10 Defendant Browne stated that his new position was at headquarters. He further stated that he had
11 to "figure out" what Plaintiff Carlsen's new job would entail.

12 34.

13 The next day, Plaintiff Carlsen reported to work at headquarters where Defendant
14 Browne gave him a few minor tasks and advised that Plaintiff Carlsen would report only to
15 Defendant Browne and would have no direct reports or budgets to oversee. Plaintiff Carlsen
16 asked about his duties with fleet, logistics, and facilities. Defendant Browne told him "not to
17 worry about it" and he "appreciated" Plaintiff Carlsen's "loyalty to the organization." Defendant
18 Browne went on to say to Plaintiff Carlsen, "I know you're a loyalist to the organization and
19 you're not going to have a problem with this." Defendant Browne went on to amend his
20 statement from the prior day, now saying that Plaintiff Carlsen would still be considered a
21 Division Chief. However, it was clear to Plaintiff Carlsen that he was being demoted as all his
22 duties and responsibilities were stripped from him.
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35.

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2 Defendant Browne's October 17, 2022 attempt to demote Plaintiff Carlsen in this manner
3 was highly unusual. On information and belief, the demotion, which would have come with a
4 substantial pay cut and impact on his retirement package, was ultimately turned over after the
5 Human Resources Chief informed Defendant Browne he could not do this. Thereafter, Plaintiff
6 Carlsen sensed that Defendant Browne began looking for a reason to demote him back to a
7 Battalion Chief position.

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9 36.

10 The false accusations and Defendants' hyperfocus on Plaintiff Carlsen's Parkinson's
11 Disease and work performance caused Plaintiff Carlsen to seek counseling.

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13 37.

14 On occasion, Defendant Browne came to Plaintiff Carlsen's office to revisit the issues
15 surrounding the events of October 17, 2022. These visits were emotionally, mentally, and
16 physically grueling for Plaintiff Carlsen. Defendant Browne did not seem to understand or care
17 that every time he revisited the topic, he re-traumatized Plaintiff Carlsen by bringing his
18 Parkinson's Disease to the forefront again and again. During one of these visits, Plaintiff Carlsen
19 confronted Defendant Browne, asking where he was getting his information, as it was false and
20 unverified. Defendant Browne did not reply.

21
22 38.

23 Plaintiff Carlsen started noticing in March and April 2023 that Defendant Browne was
24 not responding to his emails, texts, and phone calls. Plaintiff Carlsen found this alarming and
unexplainable. Then, on April 13, 2023, Defendant Browne brought Plaintiff Carlsen to his

1 office and informed him that he had a new position for him -- Emergency Manager. In this new
2 position, Plaintiff Carlsen would report directly to Assistant Chief Brian Stewart. Plaintiff
3 Carlsen recalled that several months earlier, during a meeting, Defendant Browne and the
4 Division Chiefs agreed that the position of Emergency Manager was unnecessary and defunded
5 the position. Notably, the position was previously held by another individual with Parkinson's
6 Disease who used to work at Defendant CFD1. To be put in this "new" position was a clear
7 communication to Plaintiff Carlsen that he was no longer wanted or needed, despite his
8 exemplary performance in the Division Chief position.

9 39.

10 Around this same time, Plaintiff Carlsen was to undergo surgery for an unrelated matter.
11 When Plaintiff Carlsen approached Assistant Chief Stewart about his new position's duties,
12 Assistant Chief Stewart replied that he would figure it out once Plaintiff Carlsen returned from
13 medical leave.
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15 40.

16 Plaintiff Carlsen was concerned that Defendants were once again trying to push him into
17 a dead-end position, with no defined duties, in an effort to put him out to pasture. Plaintiff
18 Carlsen viewed these actions against him as professionally embarrassing and traumatizing. The
19 events regularly re-aggravated his Parkinson's symptoms and made his overall Parkinson's
20 Disease worse.
21

22 41.

23 Plaintiff Carlsen went on medical leave for an unrelated surgery between April 17 and
24 May 2, 2023. Defendant Browne met with Plaintiff Carlsen on or about May 3, 2023 at a local

1 Starbucks. Defendant Browne asked Plaintiff Carlsen about his next steps. Plaintiff Carlsen
2 asked what he meant. Defendant Browne responded that he knew Parkinson’s Disease was
3 “challenging.” He further stated that he knew Plaintiff Carlsen was a PERS Tier II employee and
4 was at his 20-year mark. This appeared to be an attempt to encourage Plaintiff Carlsen to retire.

5 42.

6 During the May 3, 2023 meeting at Starbucks, Plaintiff Carlsen reminded Defendant
7 Browne that Parkinson’s Disease does not do well with stressors, as it does not allow the
8 medications to work as they should. Defendant Browne recalled that Plaintiff Carlsen previously
9 described his Parkinson diagnosis as feeling the same as standing in the center of the Rose
10 Garden arena in front of a full crowd, with all the lights off in the building except a single
11 spotlight shining directly on Plaintiff Carlsen. Plaintiff Carlsen was disturbed that Defendant
12 Browne recalled this comparison with such clarity and yet went out of his way over the last year
13 to hyperfocus his attention on Plaintiff Carlsen’s disability. Defendant Browne went on to state
14 that Plaintiff Carlsen was an “exceptional employee” and did “phenomenal work” at fleet,
15 logistics, facilities, and communications. Defendant Browne told Plaintiff Carlsen that he was a
16 “great leader” and “well-respected.” He further stated that he felt “horrible” about the way he
17 was treated by Defendant CFD1. Bizarrely, Defendant Browne told Plaintiff Carlsen that he
18 should speak with an attorney and gave him a name. He then suggested that Plaintiff Carlsen
19 speak with a colleague who medically retired a year earlier. Plaintiff Carlsen advised that he and
20 his husband were still looking at their options and noted that he had an upcoming Fit-for-Duty
21 meeting with the District Occupational Physicians.
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43.

1
2 Because of Defendants' actions, Plaintiff Carlsen experienced increased Parkinson's
3 symptoms, including dyskinesia episodes. Defendants' actions, undertaken primarily by
4 Defendant Browne and Defendant Whitaker, where they attempted to demote Plaintiff Carlsen,
5 changed his position and job duties, questioned his performance, and repeatedly humiliated him
6 as they spotlighted his Parkinson's Disease, caused Plaintiff Carlsen's symptoms to re-aggravate
7 and worsen. But for Defendants' actions, Plaintiff Carlsen's Parkinson's Disease symptoms
8 would not have been aggravated to the same level and would not have progressed as rapidly.
9 This is relevant because during the Fit-for-Duty meeting with the District Occupational
10 Physicians, Plaintiff Carlsen was deemed medically unfit for duty.

44.

12
13 It was at this point that Plaintiff Carlsen decided he had to apply for Oregon PERS
14 Medical Disability retirement. He initiated the application on June 1, 2023, and was ultimately
15 approved on August 15, 2023.

45.

17 Defendant Browne contacted Plaintiff Carlsen again while he was on medical leave. This
18 contact occurred over the phone on June 2, 2023. Defendant Browne called Plaintiff Carlsen to
19 "check in." He asked Plaintiff Carlsen if not working was helping to relieve his stress. Plaintiff
20 Carlsen responded "yes." Defendant Browne went on to say he was "glad" Plaintiff Carlsen was
21 removed from fleet, logistics, facilities, and communications. He then told Plaintiff Carlsen that
22 he "must feel the same." Plaintiff Carlsen responded that working as Division Chief in fleet,
23 logistics, facilities, and communications was among the "most rewarding work of my career."
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1 Plaintiff Carlsen further advised that the stressors he experienced at work were related to the
2 “other things” that happened to him. Defendant Browne responded that he was “really sorry” if
3 he contributed to Plaintiff Carlsen’s situation. Plaintiff Carlsen found Defendant Browne’s
4 statement to be entirely disingenuous as he was the ultimate authority involved in the actions
5 against Plaintiff Carlsen.

6 46.

7 On September 1, 2023, Plaintiff Carlsen submitted a formal letter of resignation to
8 Defendant Browne, effective October 1, 2023. For all the reasons stated in this Complaint,
9 Plaintiff Carlsen considered his resignation a constructive discharge.

10 47.

11 Plaintiff Carlsen was pushed out of the job he loved by Defendants, forced into an
12 institutionally recognized dead-end position by Defendants, thrust into the spotlight because of
13 his disability by Defendants, forced to re-litigate the merits of his attempted demotions by
14 Defendants, falsely accused of performance issues by Defendants, and humiliated, targeted and
15 retaliated against by Defendants. Defendants’ actions caused Plaintiff Carlsen’s condition to
16 progress at a faster pace and worsen. The almost relentless attention to his Parkinson’s Disease
17 from Defendants, culminating in fabricated reasons for demoting him and moving him to
18 positions with almost no responsibility, was a daily reminder of his diagnosis and the fact that
19 now, Defendants viewed him differently. Defendants made it physically, emotionally, and
20 mentally impossible for Plaintiff Carlsen to continue his job such that he was constructively
21 discharged.
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48.

Even following his application for medical disability retirement in June 2023, Defendant Browne continued to text Plaintiff Carlsen apologizing for the way Defendants treated him.

49.

Despite having his responsibilities and duties as Division Chief taken away from him in October 2022, Defendants continued to include Plaintiff Carlsen on Defendant CFD1's website, identifying him as a current Division Chief. Defendant CFD1 did not remove Plaintiff Carlsen from its website until after receiving a Tort Claim Notice from Plaintiff Carlsen's legal counsel. Plaintiff Carlsen endured incredible hardship and humiliation already from Defendants. The ongoing inclusion of him on Defendant CFD1's website in his old position caused further harm to Plaintiff Carlsen and is emblematic of the ongoing dishonesty, discrimination, and retaliation present at Defendant CFD1 in general.

DAMAGES ALLEGATIONS

50.

As a result of the unlawful and/or tortious actions alleged herein, Plaintiff Carlsen has and will continue to suffer economic damages. Plaintiff Carlsen is entitled to recover from Defendants such current, future, and ongoing lost wages and benefits of employment and other economic losses, including medical expenses, in such amount as may be established at trial. Solely for the purpose of ORCP 18B, Plaintiff Carlsen estimates and alleges his economic damages as \$1,500,000.00.

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51.

As a further result of Defendants' actions alleged herein, Plaintiff Carlsen has suffered and continues to suffer noneconomic damages, including physical, emotional, and mental harm, and is entitled to recover from Defendants an amount found to be appropriate by a jury based on the evidence presented at trial or \$200, whichever is greater. Solely for the purposes of ORCP 18B, Plaintiff Carlsen estimates and alleges his noneconomic damages as \$3,500,000.00.

52.

Defendants' acts were done intentionally and with discriminatory motive and with malice or ill will or with knowledge that Defendants' actions violated state law or with reckless disregard or callous indifference to the risk that their actions violated state law. Plaintiff Carlsen intends to move the court to permit an amendment to this Complaint to assert a claim for an assessment of punitive damages in an amount to be found appropriate by a jury, to punish Defendants and to deter Defendants and others from similar conduct in the future. Plaintiff Carlsen reserves the right to amend the Complaint to include punitive damages pursuant to ORS 31.725 and ORS 31.730.

53.

Plaintiff Carlsen is entitled to a declaration that Defendants acted in violation of the statutes set forth in Plaintiff Carlsen's complaint and to such injunctive relief as the court finds appropriate to cause Defendants to stop these violations of law and disregard of the rights of persons protected by state law.

54.

Plaintiff Carlsen is entitled to recover his reasonable attorneys' and expert witness fees

1 and costs incurred herein pursuant to ORS 659A.885 and/or ORS 20.107.

2 **FIRST CLAIM FOR RELIEF**

3 **Disability Discrimination**

4 **COUNT ONE**

5 **Disability Discrimination - ORS 659A.112**

6 **(Against All Defendants)**

7 55.

8 Plaintiff Carlsen re-alleges and incorporates by reference the facts and allegations set
9 forth in the paragraphs above.

10 56.

11 ORS 659A.112(1) makes it “an unlawful employment practice for any employer to refuse
12 to hire, employ or promote, to bar or discharge from employment or to discriminate in
13 compensation or in terms, conditions or privileges of employment on the basis of disability.”

14 57.

15 Given Plaintiff Carlsen’s Parkinson’s Disease diagnosis, he has a disability as defined by
16 ORS 659A.104.

17 58.

18 Defendant violated ORS 659A.112 by, without limitation, subjecting Plaintiff Carlsen to
19 adverse employment actions, including demotions, job changes, changes to his compensation
20 package, and constructive discharge, based on Plaintiff Carlsen’s disability.
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COUNT TWO

Failure to Accommodate – ORS 659A.112

(Against All Defendants)

59.

Plaintiff Carlsen re-alleges and incorporates by reference the facts and allegations set forth in the paragraphs above.

60.

Plaintiff Carlsen requested reasonable accommodations from the employer, including but not limited to direct notice if his performance or work product suffered or decreased in any way due to his Parkinson's Disease.

61.

Defendants failed and refused to provide reasonable accommodations required to permit Plaintiff Carlsen to perform the essential functions of employment in violation of ORS 659A.112.

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COUNT THREE

Failure to Engage in a Good Faith Interactive Process – OAR 839-006-0206(6)

(Against All Defendants)

62.

Plaintiff Carlsen re-alleges and incorporates by reference the facts and allegations set forth in the paragraphs above.

63.

Defendants failed and refused to engage in a good faith interactive process with Plaintiff Carlsen regarding his requests for reasonable accommodation as alleged herein in violation of ORS 659A.112 and OAR 839-006-0206(6).

SECOND CLAIM FOR RELIEF

Whistleblower Retaliation - ORS 659A.199

(Against All Defendants)

64.

Plaintiff Carlsen re-alleges and incorporates by reference the facts and allegations set forth in the paragraphs above.

65.

It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.

66.

Plaintiff Carlsen reported his concerns about disparate treatment to Defendants and/or notified Defendant Whitaker about his hostile work environment concerns. Plaintiff Carlsen further requested involvement of Defendant CFD1's legal counsel during an internal investigation due to his concerns about the potential handling of the investigation. Plaintiff Carlsen believed Defendants' actions were violations of state or federal law, rule, or regulation.

67.

Defendants discriminated against Plaintiff Carlsen in the terms and conditions of his employment because of Plaintiff Carlsen's efforts in holding Defendants accountable.

68.

Defendants' conduct as alleged herein is in violation of ORS 659A.199.

THIRD CLAIM FOR RELIEF

Hostile Work Environment

(Against all Defendants)

69.

Plaintiff Carlsen re-alleges and incorporates by reference the facts and allegations set forth in the paragraphs above.

70.

Defendants subjected Plaintiff Carlsen to a hostile work environment based on his disability status. Defendants engaged in a pattern and practice of unwelcome harassment and discrimination against Plaintiff Carlsen due to his disability. The harassment was pervasive, severe, offensive, and outrageous.

71.

Defendant CFD1 is liable for the actions and behavior of its agents and employees at CFD1, including Defendant Browne and Defendant Whitaker.

72.

Defendants' actions had the purpose and effect of creating an intimidating, hostile, and offensive working environment based on Plaintiff Carlsen's disability, and had the effect and purpose of unreasonably interfering with Plaintiff Carlsen's work and well-being.

FOURTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

(Against All Defendants)

73.

Plaintiff Carlsen re-alleges and incorporates by reference the facts and allegations set forth in the paragraphs above.

74.

Defendants acted as alleged herein with the intent to cause Plaintiff Carlsen severe mental or emotional distress.

75.

Defendants knew or should have known that their acts, as alleged herein, were substantially certain to result in Plaintiff Carlsen's severe mental or emotional distress.

76.

Plaintiff Carlsen was particularly vulnerable to Defendants' conduct due to his medical disability.

77.

The employer's conduct directed toward Plaintiff Carlsen exceeded any limit of socially

1 tolerable conduct.

2 78.

3 The acts as alleged herein caused Plaintiff Carlsen to suffer severe mental and emotional
4 harm and distress.

5 79.

6 Defendants are vicariously liable for the acts of its employees and agents.

7
8
9 **FIFTH CLAIM FOR RELIEF**

10 **Wrongful Termination (Constructive Discharge) in Violation of Public Policy**

11 **(Against All Defendants)**

12 80.

13 Plaintiff Carlsen re-alleges and incorporates by reference the facts and allegations set
14 forth in the paragraphs above.

15 81.

16 At all material times, the public policy of Oregon prohibited an employer from retaliating
17 against an employee due to their perceived or actual disability. This public policy is embodied in
18 the common law, statutes, and regulations of the State of Oregon and the United States.

19 82.

20 Defendants, including through its agents and/or employees, violated the above public
21 policies by discriminating and retaliating against Plaintiff Carlsen for his perceived or actual
22

1 disability. Defendants' constructive discharge of Plaintiff Carlsen was unlawful and in violation
2 of the public policy of the State of Oregon.

3 83.

4 Defendants' constructive discharge of Plaintiff Carlsen due to his perceived or actual
5 disability was discriminatory and clearly in violation of his rights, which are of important public
6 interest.

7 **PRAYER FOR RELIEF**

8 Based on the foregoing, Plaintiff Carlsen requests the following Judgement against and
9 relief from Defendants:

10 (a) Economic damages, including lost wages, benefits, and penalty wages, not to exceed
11 \$1,500,000.00, or an amount to be proven at trial;

12 (b) Non-economic damages not to exceed \$3,500,000.00, or an amount to be proven at
13 trial;

14 (c) Reasonable costs and attorney fees, including as authorized by ORS 659A.885 and
15 ORS 20.107;

16 (d) Equitable relief including an injunction enjoining Defendants from engaging in any
17 employment practice which discriminates on the bases as alleged in this Complaint;

18 (e) Pre-judgment and post-judgment interest as appropriate and allowed by law;

19 (f) On subsequent motion, punitive damages, which Plaintiff hereby expressly places
20 Defendants on notice of Plaintiff's intention to so move, if appropriate;

21 (g) On all claims, as applicable, amounts necessary to offset the income tax consequences
22
23
24

1 of receiving a lump sum payment, rather than receiving payment of wages and receipt
2 of benefits over the applicable time frame; and

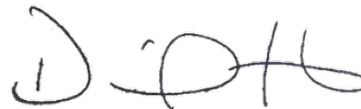
3 (h) All such other relief as this Court may deem proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff Carlsen demands a jury trial on all claims and issues to the extent allowable
6 under the law.

7
8
9 Respectfully Submitted,

10
11 DATED: April 5, 2024.

12 

13

CRISPIN HANNON LLC
14 /s/ David M. Hannon
Of Attorneys for Plaintiff
OSB No. 045666