

1 24CV47108

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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF TILLAMOOK

6
7 KYLE ADAMS and KRIS DAVIS,

8 Plaintiffs,

9 v.

10 TILLAMOOK FIRE DISTRICT and JEFF
11 MCBRAYER,

12 Defendants.

CASE NO.: 24CV47108

COMPLAINT

ORS § 659A.199 and ORS § 659A.203

Prayer: \$875,000

ORS § 21.160(1)(c)

(Claims not subject to mandatory arbitration)

DEMAND FOR JURY TRIAL

13 **INTRODUCTION**

14 1.

15 Plaintiffs Kyle Adams and Kris Davis bring this action alleging Defendant Tillamook Fire
16 District violated Plaintiffs' right to engage in protected whistleblowing activity without retaliation
17 in the terms and conditions of their employment. Plaintiffs allege that after reporting what they
18 reasonably believed to be multiple violations of law by Chief McBrayer, their direct supervisor.
19 Chief McBrayer then nearly immediately engaged in a retaliatory campaign that rendered
20 Plaintiffs unable to perform their jobs and forced them to resign in violation of ORS § 659A.199
21 and ORS § 659A.203. Plaintiffs seek economic and emotional distress damages, as well as
22 recovery of attorneys' fees pursuant to ORS § 20.107 and ORS § 659A.885.

23 **JURISDICTION & VENUE**

24 2.

25 Plaintiffs Kyle Adams and Kris Davis are, and at all material times were, residents of
26 Oregon.

1 3.

2 Defendant Tillamook Fire District (“TFD”) is a municipal corporation with its principal
3 place of business in Tillamook, Oregon. At all material times, Defendant acted through agents
4 and employees who at all material times acted within the scope of their employment or duties.
5 As a public body, the Tillamook Fire District is liable for the wrongful acts of or conduct of its
6 agents and employees pursuant to ORS § 30.260(4) and ORS § 30.265(1).

7 4.

8 Defendant Jeff McBrayer, at all material times, is a natural person, a Supervisor of
9 Plaintiffs, and a resident of Oregon.

10 5.

11 At all material times, Defendant Tillamook Fire District was Plaintiffs’ employer and
12 conducted regular and sustained business activities in Oregon and in Tillamook County.

13 6.

14 On March 15th, 2024, Plaintiffs provided Defendant timely notice of their claims pursuant
15 to the Oregon Tort Claims Act, ORS § 30.275.

16 **FACTUAL ALLEGATIONS**

17 7.

18 After serving 19 years as a devoted and hardworking volunteer, Defendant TFD hired
19 Mr. Adams as a Captain in or about March of 2023.

20 8.

21 After serving 20 years as a devoted and hardworking volunteer, Defendant TFD hired
22 Mr. Davis as a Captain in or about July of 2022.

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1 9.

2 On or about May 9th, 2023, Defendant TFD appointed Jeff McBrayer as the Interim Fire
3 Chief. On or about August 8th, 2023, Defendant TFD hired Mr. McBrayer as their full-time
4 permanent Fire Chief.

5 10.

6 At all times material, Fire Chief McBrayer, Captain Adams, and Captain Davis were
7 Tillamook Fire District's only full-time employees working for the district. At all times material,
8 Captains Adams and Davis worked under the direct supervision of Fire Chief McBrayer.

9 11.

10 When appointing Mr. McBrayer as Interim Fire Chief, Defendant did not consider Mr.
11 McBrayer's qualifications or any other candidates for the position, on the record. Shortly before
12 acting to appoint Mr. McBrayer, Defendants stated that the process for finding an Interim Chief
13 can be lengthy and that appointing someone as they did appears unfair.

14 12.

15 When hiring Mr. McBrayer as their permanent, full-time Fire Chief, the Board clarified
16 they had authority to do so if they felt the candidate was qualified. However, the Board did not
17 discuss McBrayer's qualifications for the position on the record before unanimously promoting
18 him from Interim to permanent, full-time Fire Chief.

19 13.

20 After several months of working under Chief McBrayer, Captains Adams and Davis
21 observed him repeatedly fail to perform required Chief duties and abuse his power as District
22 Chief. Given the egregious and consistent nature of Chief McBrayer's conduct, Captains Adams
23 and Davis began documenting these concerns in early December of 2023.

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26 PAGE - 3 COMPLAINT

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14.

In December of 2023 and January of 2024 alone, Captains Adams and Davis observed that Chief McBrayer:

- (a) made false reports to the media and public;
- (b) jeopardized the Fire District's insurance rating by failing to complete necessary paperwork;
- (c) failed to timely submit reports to the National Fire Incident Reporting System (NFIRS);
- (d) told Fire District Officers he would submit fraudulent paperwork to the State of Oregon to get reimbursement for damaged and lost equipment that was neither damaged nor lost;
- (e) asked Captains Adams and Davis to make Fire District property appear broken so the public might believe equipment was failing and support a levy;
- (f) was chronically tardy and absent from work;
- (g) caused the Fire District to be understaffed due to neglecting his duties;
- (h) failed to pay bills timely, and;
- (i) consistently abused Tillamook Fire District property through personal use, incurring additional costs to the District and taxpayers.

15.

Paragraph 14 is not an exhaustive list Chief McBrayer's conduct observed and documented by Captains Adams and Davis.

16.

Plaintiffs reasonably believed that, through Chief McBrayer's conduct, the Tillamook Fire District violated state law and District policy, engaged in mismanagement, gross waste of funds and abuse of authority, and took actions posing substantial and specific danger to public health.

1 17.

2 On or about January 22, 2024, Captains Davis and Adams approached Chief McBrayer
3 in an attempt to discuss their concerns. Chief McBrayer was dismissive and did not respond to
4 their efforts.

5 18.

6 Captains Davis's and Adams's conversation with Chief McBrayer appeared fruitless, so
7 they approached the Assistant Fire Chief on or about January 25, 2024 to report, in good faith,
8 conduct by Chief McBrayer they believed was both illegal and mismanagement, including Chief
9 McBrayer's unavailability, mismanagement of the levy process, and the Chief's apparent lack of
10 performance of essential Chief duties. The Assistant Fire Chief suggested that Captains Davis
11 and Adams report McBrayer's violations to the Tillamook Fire District's Board of Directors.

12 19.

13 On or about January 27th, 2024, Captain Adams met with Board Chair Brian Cameron,
14 the Assistant Fire Chief, and the Tillamook Fire District Officer group and reported Chief
15 McBrayer's violations in good faith.

16 20.

17 On or about January 30th, 2024, two Tillamook Fire District Board Members met with
18 Chief McBrayer and informed him of Captains Adams' and Davis's reports. On information and
19 belief, Chief McBrayer was told that Captains Adams and Davis were the individual who raised
20 these concerns. Chief McBrayer's conduct was not corrected or redressed.

21 21.

22 On or about January 30th, 2024, Chief McBrayer sent an "active 911" alert to District
23 volunteers with false information about Captains Davis and Adams. Chief McBrayer scheduled a
24 "cool down" meeting with volunteers in which he openly threatened Captains Adams's and
25

1 Davis's jobs in front of the volunteers and told volunteers that they were being investigated by
2 the police.

3 22.

4 After Chief McBrayer's meeting with District Board members the Chief ceased
5 communications with Captains Adams and Davis, rendering them unable to perform their jobs.

6 23.

7 Prior to Captains Adams's and Davis's reporting Chief McBrayer's violations, the Chief
8 sought their input on proposed changes to their schedule before making them. On or about
9 February 13th, 2024, Chief McBrayer changed Captains Adams's and Davis's work schedule,
10 including making material changes to the duty officer rotation, without their input. Chief
11 McBrayer made these changes knowing they would have a material adverse effect on Captains
12 Adams's and Davis's ability to perform their jobs.

13 24.

14 After Captains Adams and Davis reported Chief McBrayer's violations, Chief McBrayer
15 changed job expectations, including changing when Captain Adams would need to have his
16 EMR certification from the next available training to within 60 days.

17 25.

18 Chief McBrayer's retaliatory measures were so severe that Plaintiffs were unable to
19 perform their job duties and had no choice but to resign. On February 13th, 2024, Captains
20 Adams and Davis worked their last days for Defendant TFD.

21 26.

22 Both Plaintiffs were devastated to lose their employment with Tillamook Fire District.
23 They were deeply committed and passionate about the work, and they felt humiliated and
24 stressed with their treatment by Chief McBrayer within the small community of Tillamook.

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1 **FIRST CLAIM FOR RELIEF**
2 **(Whistleblower Retaliation – ORS § 659A.199)**
3 **(against Defendant TFD)**

4 27.

5 Plaintiffs incorporate the allegations contained in the above paragraphs of this Complaint
6 as if fully set forth herein.

7 28.

8 As alleged above, Plaintiffs reported information to the Chief and the Board that they
9 believed to be evidence of a violation of laws, rules, or regulations.

10 29.

11 Defendant retaliated against Plaintiffs regarding the terms, conditions, and privileges of
12 their employment in violation of ORS § 659A.199. This retaliation includes, but is not limited to,
13 the fact that on the same day Chief McBrayer became aware of Plaintiffs' good faith reports of
14 his unlawful behavior to the Fire District Board, he adversely changed the Plaintiffs' schedules,
15 revised deadlines for required certifications, and ceased daily communications necessary to
16 perform essential job duties.

17 30.

18 Defendant's actions caused Plaintiffs to suffer economic damages and emotional
19 distress increasing every month throughout trial. Plaintiff Kyle Adams suffered economic
20 damages of \$25,000, and emotional distress damages of \$400,000. Plaintiff Kris Davis suffered
21 economic damages of \$50,000 and emotional distress damages of \$400,000.

22 31.

23 Pursuant to ORS § 20.107 and ORS § 659A.885, Plaintiff is entitled to economic
24 damages including back pay and future lost wages, reasonable attorney fees, and costs.

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SECOND CLAIM FOR RELIEF
(Public Whistleblower Retaliation – ORS § 659A.203)
(against Defendant TFD)

32.

Plaintiffs incorporate the allegations contained in the above paragraphs of this Complaint as if fully set forth herein.

33.

As alleged above, Plaintiffs disclosed information to the Chief and the Board that they reasonably believed to be evidence of a violation of laws, rules, or regulations, that they believed was mismanagement, gross waste of funds, or abuse of authority, and that the Chief had taken actions they believed could create a substantial danger to public health.

34.

Defendant took action against Plaintiffs because of their disclosure in violation of ORS § 659A.203. This retaliation includes, but is not limited to, on the same day Captains Adams and Davis reported Chief McBrayer's mismanagement, abuse of authority, and subsequent risk to public safety to the Fire District Board, Chief McBrayer threatened to terminate Captains Adams and Davis.

35.

Defendant's actions caused Plaintiffs to suffer economic damages and emotional distress increasing every month throughout trial. Plaintiff Kyle Adams suffered economic damages of \$25,000, and emotional distress damages of \$400,000. Plaintiff Kris Davis suffered economic damages of \$50,000 and emotional distress damages of \$400,000.

36.

Pursuant to ORS § 20.107 and ORS § 659A.885, Plaintiffs are entitled to economic damages including back pay and future lost wages, reasonable attorney fees, and costs.

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1 **THIRD CLAIM FOR RELIEF**
2 **(Aiding or Abetting – ORS § 659A.030(1)(g))**
3 **(against Defendant McBrayer)**

4 37.

5 Plaintiffs incorporate the allegations contained in the above paragraphs of this Complaint
6 as if fully set forth herein.

7 38.

8 In violation of ORS § 659A.030(1)(g), Defendant McBrayer aided, abetted, incited,
9 compelled or coerced the doing of forbidden acts under ORS Chapter 659A. Among other
10 things, Defendant McBrayer retaliated against Plaintiffs as described above. In perpetrating the
11 actions described above, Defendant violated ORS § 659A.030(1)(g) by committing acts that
12 aided or abetted acts forbidden by ORS § 659A.

13 39.

14 Defendant McBrayer's actions caused Plaintiffs to suffer economic damages and
15 emotional distress increasing every month throughout trial. Plaintiff Kyle Adams suffered
16 economic damages of \$25,000, and emotional distress damages of \$400,000. Plaintiff Kris
17 Davis suffered economic damages of \$50,000 and emotional distress damages of \$400,000.

18 40.

19 Pursuant to ORS § 20.107 and ORS § 659A.885, Plaintiffs are entitled to economic
20 damages including back pay and future lost wages, reasonable attorney fees, and costs.

21 **PRAYER**

22 WHEREFORE, Plaintiffs pray for judgment from Defendants as follows:

23 (a) Actual damages including economic losses and emotional harm caused by
24 Defendants' illegal conduct, in amounts to be decided by the jury;

25 (b) Plaintiff reserves the right to seek punitive damages pursuant to ORS §§ 31.725
26 and 31.730;

1 (c) Reasonable attorney fees and costs in an amount to be decided by the Court
2 after trial;

3 (d) Pre- and post-judgment interest in accordance with law; and

4 (e) Any other equitable relief this Court may determine to be fair and just.

5 Dated: September 30, 2024

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