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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BROCK BRYANT,

Plaintiff,

v.

COLUMBIA RIVER FIRE & RESCUE, a
municipal corporation; MIKE GREISEN,
individually and in his official capacity;
DAVID COOMBS, individually and in his
official capacity; and JOSH MARKS,
individually and in his official capacity,

Defendants.

Case No. 3:18-cv-00217-SI

AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

(42 U.S.C. § 1983; State
Whistleblowing; Statutory
Discrimination/Retaliation;
Discrimination; Wrongful
Discharge; Intentional Infliction of
Emotional Distress; Reckless
Infliction of Emotional Distress)

Plaintiff alleges:

I.

JURISDICTION AND VENUE

1. Plaintiff brings this action pursuant to the authority of 42 U.S.C. § 1983 for
deprivation of constitutional rights secured to Plaintiff under the First and Fourteenth

Amendments of the United States Constitution. Plaintiff also brings supplemental state claims under Oregon’s state whistleblowing law; ORS chapter 659A for discrimination/retaliation due to race, and/or retaliation for reporting illegal activity; and for common law wrongful discharge and/or intentional infliction of emotional distress and/or reckless infliction of emotional distress. This court has jurisdiction over the federal claim pursuant to 28 U.S.C. § 1331. This court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

2. The acts and omissions complained herein were committed in the District of Oregon.

II.

PARTIES

3. Plaintiff is a resident and citizen of the State of Oregon.

4. Defendant Columbia River Fire & Rescue (“CRFR”) is an Oregon municipal corporation. At all material times Defendant CRFR acted through agents and employees who at all material times acted within the course and scope of their authority for said Defendant pursuant to its actual or *de facto* policies, practices, customs or usages, and under color of state law.

Defendant Mike Greisen (“Greisen”) upon information and belief is a resident and citizen of the State of Oregon; and at all material times acted under color of state law as the Fire Chief of Defendant CRFR. Defendant David Coombs (“Coombs”) upon information and belief is a resident and citizen of the State of Oregon; and at all material times acted under color of state law as the EMS Division Chief of Defendant CRFR. Defendant Josh Marks (“Marks”) upon information and belief is a resident and citizen of the State of Oregon; and at all material times acted under color of state law as the Training Division Chief of Defendant CRFR.

III.

STATEMENT OF CLAIMS

CLAIM ONE

(42 U.S.C. § 1983 - Free Speech)

5. Plaintiff realleges paragraphs 1 through 4.

6. Plaintiff was employed by Defendant CRFR as a probationary firefighter from July 2016 until he was terminated by Defendant Coombs on or about May 1, 2017. As a result of a union grievance, on or about July 18, 2017, Plaintiff returned to work and was reinstated to his former position, with his probation extended to September 15, 2017. Defendant CRFR placed Plaintiff on paid administrative leave on September 14, 2017. He was terminated by Defendant Greisen on or about September 22, 2017.

7. Prior to his first termination, Plaintiff exercised his right of free speech under the First Amendment of the United States Constitution by reporting and/or complaining about what he believed in good faith to be conduct that was unlawful discrimination, and/or retaliation, and/or harassment contrary to generally accepted firefighting rules, regulations and standards.

8. Prior to his second termination, Plaintiff exercised his right of free speech under the First Amendment of the United States Constitution by reporting and/or complaining about retaliation for reporting and/or complaining about racial harassment, and/or by reporting and/or complaining about unlawful discrimination while participating in an internal “investigation,” and/or by participating in preparing and filing a grievance through his union, St. Helens Professional Firefighters IAFF Local 3215, regarding what he believed in good faith to be

conduct that was unlawful discrimination, and/or retaliation, and/or harassment contrary to

generally accepted firefighting rules, regulations and standards.

9. Thereafter, Defendants retaliated against Plaintiff by one or more of the following means on account of Plaintiff's exercise of his free speech rights:

- (a) subjecting him to a hostile and/or retaliatory work environment before and after his first termination;
- (b) subjecting him to disparate and retaliatory training after his reinstatement;
- (c) subjecting him to disparate and retaliatory testing regarding his probationary status after his reinstatement;
- (d) being subjected to a more onerous and difficult training schedule and/or timing of testing after his reinstatement;
- (e) being set up to fail;
- (f) placing him on paid administrative leave on or about September 14, 2017;
- (g) retaliating against him after his reinstatement on or about July 18, 2017 by creating a hostile and/or retaliatory work environment, and/or by intimidating him, publicly embarrassing and/or humiliating him, demeaning him, and/or subjecting him to disparate and/or unwarranted criticism in an attempt to cause him to fail and/or quit;
- (h) terminating his employment on or about May 1, 2017; and/or
- (i) terminating his employment on or about September 22, 2017.

10. The hostile and/or retaliatory work environment included, but was not limited to:

- (a) inconvenient and/or more burdensome and difficult scheduling and/or testing;

- (b) scheduling Plaintiff at one of the busiest locations, which minimized his training time, instead of a slower location;
- (c) being instructed to act in an unsafe manner while on fire call;
- (d) given the “run-a-round” when asking for DORs, back pay, pay stubs, certifications or other work related needs;
- (e) being humiliated in part by being given a black helmet when he had earned a yellow helmet;
- (f) being ostracized and/or treated as persona non grata;
- (g) being treated in a degrading and/or demeaning manner; and/or
- (h) being treated as if management was trying to force him to fail and/or force him to quit.

11. As a result of said retaliation and/or termination(s), Plaintiff has suffered and will continue to suffer economic loss in an amount to be proven at trial, which amount is alleged to be \$300,000, including owed back pay for the period from the May termination to his reinstatement.

12. As a further result of said retaliation and/or termination(s), Plaintiff has suffered and will continue to suffer emotional distress and injury to reputation all to his damage in the sum of \$800,000.

13. Said acts were wanton and wilful and Defendants Greisen, Coombs and Marks should each be assessed punitive damages in an amount to be set by a jury, which amount is alleged to be \$80,000 each.

14. Plaintiff is entitled to his reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988.

CLAIM TWO

(Whistleblowing - ORS 659A.203)

15. Plaintiff realleges paragraphs 1 through 12.

16. Plaintiff made several complaints about harassment, discriminatory conduct and/or retaliation in the workplace by co-workers and managements condoning and/or participating in such conduct. By doing so, Plaintiff reported what he reasonably believed to be Defendants' mismanagement and/or abuse of authority regarding improprieties in the performance of their duties and/or employees' duties and/or a violation(s) of federal and/or state law, rule or regulation.

17. In addition to Plaintiff's internal reports of what he in good faith believed was mismanagement and/or an abuse of authority resulting in unfair treatment of himself, and others, Plaintiff participated in preparing and filing a grievance to his union, St. Helens Professional Firefighters IAFF Local 3215, regarding the improprieties at work.

18. Defendants engaged in the retaliatory conduct alleged in paragraphs 9 and 10 in retaliation for Plaintiff engaging in the whistleblowing activity alleged in paragraphs 16 and 17.

19. Plaintiff served a timely tort claims notice on or about October 9, 2017, and timely commenced this action.

20. Plaintiff is entitled to an award of his reasonable attorneys' and expert witness fees pursuant to ORS 659A.885 and ORS 20.107.

CLAIM THREE

(Reporting Violation of State or Federal Law - ORS 659A.199)

21. Plaintiff realleges paragraphs 1 through 12, 16, 17, 19 and 20.

22. By making the complaints, reports and grievances alleged in paragraphs 16 and 17, Plaintiff in good faith reported information that he believed was evidence of a violation of a state or federal law, rule or regulation.

23. Defendants retaliated against Plaintiff as alleged in paragraphs 9 and 10 for reporting the violations of state and/or federal law, rule or regulation.

CLAIM FOUR

(Race Discrimination/Retaliation - ORS 659A.030)

24. Plaintiff realleges paragraphs 1 through 12, 19 and 20.

25. Plaintiff is a white male.

26. Prior to his first termination and during the period he was reinstated, Plaintiff was subjected to a racially hostile work environment, which was condoned by Defendants Greisen, Coombs and/or Marks. Plaintiff informed Defendant CRFR about the racial harassment prior to his first termination, and Defendants through a union grievance and/or during an “investigation” conducted on behalf of Defendant CRFR during his period of reinstatement.

27. Defendants discriminated against Plaintiff because of his race, and/or retaliated against Plaintiff for reporting and/or complaining about racial harassment in one or more of the ways alleged in paragraphs 9 and 10.

CLAIM FIVE

(Race Discrimination - 42 U.S.C. § 1981)

28. Plaintiff realleges paragraphs 1 through 12, 25 and 26.

29. Defendants were aware of Plaintiff’s race, and/or color of his skin during his

employment.

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AMENDED COMPLAINT AND DEMAND FOR JURY DEMAND

Page 7

30. Defendants subjected Plaintiff to racial discrimination and/or retaliation for resisting and/or opposing that racial discrimination in one or more the particulars alleged in paragraphs 9 and 10 above.

31. Plaintiff is entitled to an award of his reasonable attorneys' and expert witness fees pursuant to 42 U.S.C. § 1988.

CLAIM SIX

(Aiding and Abetting - Defendants Greisen, Coombs and Marks)

32. Plaintiff realleges paragraphs 1 through 12, 18, 19, 23, 27, 29 and 30.

33. Defendant Greisen, Defendant Coombs and Defendant Marks aided, abetted, incited, compelled and/or coerced the discrimination alleged above, and this court should order all appropriate injunctive and equitable relief, in addition to any jury award of economic damages and/or emotional distress damages.

CLAIM SEVEN

(Wrongful Discharge)

34. Plaintiff realleges paragraphs 1 through 12, 16, 17, 18, 19, 22 and 26.

35. A substantial factor in Plaintiff's termination was his whistleblowing as alleged above in paragraphs 16 through 18; his good faith reporting of illegal activity as alleged in paragraph 22; and/or his opposition to Defendant CRFR condoning racial discrimination, harassment and/or retaliation.

CLAIM EIGHT

(Intentional Infliction of Emotional Distress)

36. Plaintiff realleges paragraphs 1 through 12.

37. During Plaintiff's employment, Defendants engaged in conduct, as alleged in paragraphs 9, 10, 18, 23, 27, 30, 33 and 35 that was (a) intended to inflict severe emotional distress on Plaintiff, and/or (b) committed with knowledge that they were substantially certain would result in severe emotional distress to Plaintiff.

38. Defendants' conduct was an extraordinary transgression of socially tolerable behavior.

39. Defendants' conduct caused Plaintiff to suffer severe emotional distress.

CLAIM NINE

(Reckless Infliction of Severe Emotional Distress)

40. Plaintiff realleges paragraphs 1 through 12 and 37 through 39.

41. Defendants acted in deliberate disregard that their conduct would cause Plaintiff to suffer several emotional distress.

IV.

DEMAND FOR JURY TRIAL

42. Plaintiff demands a jury trial.

WHEREFORE, Plaintiff prays for judgment as alleged in the claims stated above.

DATED this 4th day of December, 2018.

BUSSE & HUNT

s/ Scott N. Hunt
SCOTT N. HUNT, OSB #923433
shunt@busseandhunt.com
Of Attorneys for Plaintiff Brock Bryant

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing the **Amended Complaint and Demand for Jury Trial** on:

Brett Mersereau
brett@brettmersereau.com
The Law Office of Brett Mersereau
2100 NE Broadway, #119
Portland, OR 97232

Of Attorneys for Defendants

by **mailing** a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

by **e-mail transmission** to said attorney at each attorney's last known e-mail address on the date set forth below;

by causing a copy thereof to be **hand-delivered** to said attorneys at each attorney's last known address on the date set forth below;

by sending a copy thereof via **overnight courier** in a sealed, prepaid envelope, addressed to each attorney's last known address on the date set forth below; or

by **e-mail** transmission through the CM/ECF Filer to attorney at each attorney's last known e-mail address on file with the Court on the date set forth below.

DATED this 4th day of December, 2018.

s/ Scott N. Hunt
SCOTT N. HUNT, OSB #92343
Of Attorneys for Plaintiff Brock Bryant