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Of Attorneys for Plaintiff

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

ROBERT T. BAKER,

Plaintiff,

vs.

CITY OF POWERS, A MUNICIPALITY,

Defendant.

Case No. 20CV39643

**COMPLAINT (ORTCA
Whistleblower Retaliation ORS
659A.199; Age Discrimination ORS
659A.030; Defamation)**

ORS 21.160(1)(c)
Damages more than \$50,000.00
Filing Fee: \$594.00

**CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION**

Jury Trial Demanded

Parties

1.

At all material times, Plaintiff was and is a resident of the state of Oregon, residing in Coos County.

2.

At all material times, Defendant was and is a municipal corporation operating under the laws of the State of Oregon, within Coos County, Oregon.

Venue

3.

All events material to this Complaint occurred in Coos County, Oregon.

Factual Allegations

4.

At the time of the below described events Plaintiff was approximately 45 Years of Age.

5.

Plaintiff timely notified Defendant in writing with a Tort Claim Notice pursuant to Oregon Revised Statute 30.275 by Certified Mail Return Receipt on April 3, 2020 and Defendant signed for and acknowledge receipt of said Tort Claim Notice on April 7, 2020. Defendant has since denied all liability.

6.

Plaintiff filed a Complaint with the Bureau of Labor and Industries (BOLI) on April 6, 2020. BOLI issued Plaintiff a Right to Sue letter on August 14, 2020 with a 90-day time limit within which he must file suit. That 90-day time limit expires on November 12, 2020. Plaintiff timely filed the instant suit.

7.

On June 20, 2018, Defendant hired Plaintiff to the position of Chief of Police of Powers, subject to a one-year probationary period which would expire automatically on June 19, 2019 unless extended by a vote by the City Council. Plaintiff's probationary period did expire at the end of the one-year time period.

8.

On August 12, 2019, Plaintiff was called to a meeting with Defendant's agents Mayor Robert Kohn, City Councilman / Liaison Ben Drake and City Councilman / Liaison Jim Clauson wherein Plaintiff was told to "slow things down" in terms of enforcing the law within

1 Defendant's jurisdiction. It was Plaintiff's understanding he was being instructed to not enforce
2 the law as he was legally obligated to do. Plaintiff informed Defendant's agents that he would
3 continue to enforce the law as he was required to.

4 9.

5 At the meeting referenced in paragraph 8, Plaintiff was issued a confidential
6 disciplinary memorandum which stated that he was subject to discipline up to termination if he did
7 not comply with a seventeen (17) item list contained in said memorandum. The memorandum also
8 alleged that Plaintiff had violated ORS 162.305 which prohibits tampering with public records.

9 10.

10 On or about August 13, 2019, Plaintiff took a vacation day and addressed each item
11 in the memorandum, making changes, turning in equipment or providing written responses as
12 requested. At the end of the day of August 13, 2019, Plaintiff completed all required tasks listed
13 in the confidential disciplinary memorandum. This was reported on August 14, 2019 to
14 Defendant's agent, Mayor Robert Kohn, who later acknowledged that Plaintiff had responded to
15 all items in the memorandum in a public City Council meeting on August 19, 2019.

16 11.

17 On or about August 19, 2019, Plaintiff reported to Defendant's City Council that
18 he believed they were in violation of the public meeting laws to which they were subject. In
19 response, Defendant's Council voted contrary to Plaintiff's employment agreement to extend
20 Plaintiff's probation by 90 days to November 19, 2019. Because Plaintiff's probation had expired
21 two (2) months prior, the extension equaled 180 days. This act was in retaliation for Plaintiff's
22 reporting to Defendant that he believed they were not in compliance with the public meeting laws.

23 ///

12.

On or about August 19, 2019, Defendant's agent Mayor Robert Kohn told Plaintiff he was too young for his job and he would not have hired Plaintiff if it had been up to him.

13.

On or about August 26, 2019, Coos County District Attorney, R. Paul Frasier, sent a letter addressed to Plaintiff to Defendant's post office box regarding the alleged violation of ORS 162.305. This post office box is the same as the Powers Police Department post office box. The letter indicated that Plaintiff's actions did not rise to the level of a crime in DA Frasier's opinion. The letter was withheld from Plaintiff by Defendant's agent City Recorder Stephanie Patterson. Plaintiff learned of the letter on October 7, 2019. Plaintiff believes the withholding of his mail to be intentional and illegal.

14.

On October 3, 2019 a memorandum was sent to the Defendant from Mayor Kohn falsely alleging a recent incident of retaliation by Plaintiff against Stephanie Patterson. No incident of retaliation took place.

15.

On or about October 10, 2019, Plaintiff reported the withholding of his mail to the Oregon State Police and United States Postal Service Postal Inspectors.

16.

On or about October 18, 2019, Plaintiff reported the withholding of his mail to Defendant's City Council via Defendant's agents, the police Liaisons, and no action was taken. Plaintiff was told to stop the investigations into the withholding of his mail. Plaintiff informed Defendant's agents that the matter was out of his hands.

17.

On or about November 21, 2019, Plaintiff was issued a second disciplinary memorandum indicating that he had not complied with the first memorandum, despite previous statements made by Defendant's agent Mayor Robert Kohn on August 19, 2019 that Plaintiff had complied with the requirements of the first memorandum.

18.

On December 3, 2019, a public meeting was held wherein Mayor Robert Kohn stated to the citizens of Powers that Plaintiff had committed several crimes. Defendant then voted to place Plaintiff on paid administrative leave until December 4, 2019, at 3:00 pm, at which time Defendant terminated Plaintiff's employment.

19.

Defendant opened investigations into Plaintiff's falsely alleged misconduct which precluded Plaintiff from being hired as a peace officer with any other police organization.

20.

On January 14, 2020 the confidential disciplinary memorandum that Plaintiff received on August 12, 2019 was distributed to the public by former Mayor Bill Holland and Mayor Robert Kohn.

21.

After Plaintiff's termination, Defendant's agent, City Recorder Stephanie Patterson, distributed the confidential disciplinary memorandum to the television station known as KVAL.

22.

City Councilman, Ben Drake, frequented a tavern and shared Plaintiff's

1 confidential employment information with Jill Moore, the Powers Tavern and Cafe owner, who
2 subsequently published that information throughout the town.

3 23.

4 A Facebook Group was created called "Woodward Bernstein". The information
5 being published by this group indicated the publisher of it had to have knowledge of private City
6 Council matters and Plaintiff's confidential employment information. The IP address was traced
7 back to a computer that is located in the Defendant City of Powers' Library / City Hall building.

8 24.

9 Mayor Robert Kohn through Stephanie Patterson told the Oregon Department of
10 Public Safety Standards and Training (hereinafter "DPSST") that Plaintiff was being investigated
11 for misconduct, which triggered a requirement for DPSST to open an investigation. This open
12 investigation meant that Plaintiff could not receive work as a peace officer until it was concluded.
13 This process took eight (8) months.

14 25.

15 The following posts were published by the Woodward Bernstein Facebook Group:

16 a) January 13, 2020: A post claiming DPSST had opened an investigation into
17 Plaintiff for misconduct and insubordination and lacking sufficient context so as to deliberately
18 place Plaintiff in a false light. "Plaintiff offering to bring recall petitions to people's homes to sign
19 to get reinstated raises some ethical questions."

20 b) January 14, 2020: A post falsely claiming the confidential disciplinary
21 memo to Plaintiff became public knowledge when Plaintiff handed out copies. At no point did
22 Plaintiff distribute the confidential memo to the public.

23 c) January 15, 2020: A post directed to Plaintiff regarding a high-speed
24
25

1 motorcycle chase into a different county and asking what proper procedure is in Oregon. A post
2 directed to Plaintiff indicating that he is the one who made the confidential memorandum public
3 and then lied about it when the City did the same. A post directed to Plaintiff regarding use of his
4 personal car as an undercover vehicle. A post directed to Plaintiff falsely claiming that Plaintiff
5 was tricking citizens into signing the recall petition saying it would bring back a full-time police
6 officer. A post directed to Plaintiff regarding use of an uncertified K-9 animal and speculating that
7 a resulting lawsuit would have bankrupted the town.

8 d) January 21, 2020: A post listing outside agencies that were allegedly
9 investigating Plaintiff: DPSST, Department of Human Services (DHS), Oregon Governmental
10 Ethics Commission (OGEC), Oregon Health Authority (OHA). A post from Tristina Vincent
11 falsely accusing Plaintiff of pedophilia for “stalking a 15-year-old girl”. The girl in question was
12 Tristina’s daughter who was arrested by Plaintiff at one point. A post from the former police chief
13 falsely accusing Plaintiff of witness intimidation for allegedly going to a complainant’s house and
14 the complaint then being withdrawn.
15

16 e) January 23, 2020: A post stating: “Why would Plaintiff ask for names and
17 addresses of people who put in complaints against him?”

18 f) February 4, 2020: Jeremy Drake, City Councilman Ben Drake’s son, falsely
19 accused Plaintiff on Facebook of breaking the window out of his car.

20 g) February 9, 2020: A post falsely asserting that DPSST only investigates
21 when public officials commit crimes and indicating that Plaintiff was under investigation by
22 DPSST.

23 h) February 12, 2020: Plaintiff attended a public City Council meeting called
24 “Coffee with the Mayor”. Mayor Kohn became angry and told Plaintiff he had to leave. This
25

1 occurred in front of the public. Mayor Kohn then posted on Facebook to clarify his position on
2 what happened. He falsely accused Plaintiff of illegal recording. City Recorder Stephanie
3 Patterson commented on the post, agreeing with Mayor Kohn.

4 i) February 14, 2020: A post calling out anyone who helped Plaintiff gain
5 information as being against the best interests of the City and falsely claiming that Plaintiff had
6 sued his former employer.

7 j) February 21, 2020: The World Newspaper published an article saying
8 Plaintiff was fired for unspecified reasons in a 4-2 vote by City Council.

9 * * * * *

10 **FIRST CLAIM FOR RELIEF**

11 (Whistle Blower Discrimination -- ORS 659A.199)

12 26.

13 Plaintiff re-alleges and incorporates by reference paragraphs 1-3 and 7-18.

14 27.

15 Plaintiff was subjected to a practice of discrimination based on his reporting to
16 superiors that Plaintiff believed the superiors' actions were illegal and based on Plaintiff's own
17 resistance to such illegal acts/instructions and refusal to go along with such illegal
18 acts/instructions.

19 28.

20 Defendant violated ORS 659A.199 by maintaining a separate set of terms,
21 conditions and privileges of employment due to Plaintiff's protected whistle blowing activity. Such
22 disparate terms, conditions, and privileges of employment include employment discipline as well
23 as the discharge of Plaintiff on the basis of his whistle blowing activity.
24
25

29.

Defendant willfully and / or consciously disregarded their obligation under ORS 659A.199.

30.

As a direct and proximate result of Defendants' actions, Plaintiff has suffered economic damages in the approximate amount of \$150,000 including loss of earnings, including back pay and future earnings, loss of benefits, loss of job opportunities and other employment benefits which continue to accrue in an exact amount to be determined at the time of trial, together with interest and the amount necessary to offset the income tax consequences of the award pursuant to ORS 659A.885(1).

31.

As a direct and proximate result of Defendants' actions, Plaintiff has suffered non-economic damages including emotional distress, anguish, humiliation, fear, and anxiety, and requests an award of non-economic compensatory damages in an amount of \$500,000.

32.

Plaintiff also seeks reasonable attorney's fees pursuant to ORS 659A.885(1) & (2).

SECOND CLAIM FOR RELIEF

(Age Discrimination – ORS 659A.030)

33.

Plaintiff re-alleges and incorporates by reference paragraphs 1-4, 7-12 and 18.

34.

Defendant discriminated against Plaintiff in the terms, conditions, and privileges of employment by maintaining a different set of terms, conditions, and privileges of employment

1 based on Plaintiff's age.

2 35.

3 Defendant willfully and / or consciously disregarded their obligation under ORS
4 659A.030.

5 36.

6 As a direct and proximate result of Defendants' actions, Plaintiff has suffered
7 economic damages in the approximate amount of \$150,000 including loss of earnings, including
8 back pay and future earnings, loss of benefits, loss of job opportunities and other employment
9 benefits which continue to accrue in an exact amount to be determined at the time of trial, together
10 with interest and the amount necessary to offset the income tax consequences of the award pursuant
11 to ORS 659A.885(1).

12 37.

13 As a direct and proximate result of Defendants' actions, Plaintiff has suffered non-
14 economic damages including emotional distress, anguish, humiliation, fear, and anxiety, and
15 requests an award of non-economic compensatory damages in an amount of \$500,000.
16

17 38.

18 Plaintiff also seeks reasonable attorney's fees pursuant to ORS 659A.885(1) and/or
19 ORS 20.107.

20 **THIRD CLAIM FOR RELIEF**

21 (Common Law Defamation Per Se)

22 39.

23 Plaintiff re-alleges and incorporates by reference paragraphs 1-3, 7, 13-14 and 18-
24 25.

1 40.

2 Defendant made statements of a defamatory nature tending to injure Plaintiff in his
3 profession.

4 41.

5 The statements made by Defendant were known to be false at the time of
6 publication and were related to Plaintiff's fitness to perform his official job duties. Because these
7 statements were accusations of misconduct in the performance of Plaintiff's profession, they are
8 by definition defamation per se.

9 42.

10 Defendant made these statements publicly at City Council meetings in the town
11 where Plaintiff served as Police Chief.

12 43.

13 Defendant knew their statements were of a false or reckless nature as County
14 District Attorney R. Paul Frasier had already issued an opinion stating no crime had been
15 committed, as alleged in paragraph 13 above.

16 44.

17 Defendant willfully and or consciously disregarded their obligation under the
18 common law claim of Defamation.

19 45.

20 As a direct and proximate result of Defendants' actions, Plaintiff has suffered
21 economic damages in the approximate amount of \$150,000 including loss of earnings, including
22 back pay and future earnings, loss of benefits, loss of job opportunities and other employment
23 benefits which continue to accrue with an exact amount to be determined at the time of trial,
24
25

1 together with interest and the amount necessary to offset the income tax consequences of the award
2 as special damages under common law.

3 46.

4 As a direct and proximate result of Defendants' actions, Plaintiff has suffered non-
5 economic damages including emotional distress, anguish, humiliation, fear, and anxiety, and
6 requests an award of non-economic compensatory damages in an amount not exceeding \$500,000.

7 **FOURTH CLAIM FOR RELIEF**

8 (Common Law Disclosure of Private Facts)

9 47.

10 Plaintiff re-alleges and incorporates by reference paragraphs 1-3, 7, 13-14 and 18-
11 25.

12 48.

13 Defendant disclosed private facts about Plaintiff's employment, including the
14 confidential evaluation and memorandum regarding Plaintiff's performance as the Chief of Police
15 for the City of Powers, in violation of their duty.

16 49.

17 The facts were disclosed publicly in a City Council meeting to the population of
18 the City of Powers.

19 50.

20 The facts were disclosed in breach of a duty of confidentiality owed to Plaintiff by
21 Defendant pursuant to ORS 192.355 and 192.345. As such these facts were private facts by their
22 nature. Given they were private facts they are the type of facts protected by the Common Law
23 claim of Disclosure of Private Facts. Plaintiff breached their duty of confidentiality knowingly as
24
25

1 they were aware it was a violation of ORS 192.355 and 192.345 to make such public statements.

2 51.

3 The form of the publicity was of a highly objectionable kind as the disclosures were
4 made in City Council meetings in the town where Plaintiff served as Police Chief. This public
5 disclosure of facts intended to be private represents a form of publication that is highly
6 objectionable to a reasonable person.

7 52.

8 Defendant made the statements knowing they were false or with reckless disregard
9 for their truth or falsity.

10 53.

11 Defendant willfully and or consciously disregarded their obligation under the
12 common law claim of Public Disclosure of Private Facts.

13 54.

14 As a direct and proximate result of Defendants' actions, Plaintiff has suffered
15 economic damages in the approximate amount of \$150,000 including loss of earnings, including
16 back pay and future earnings, loss of benefits, loss of job opportunities and other employment
17 benefits which continue to accrue with an exact amount to be determined at the time of trial,
18 together with interest and the amount necessary to offset the income tax consequences of the award
19 as special damages under common law.
20

21 55.

22 As a direct and proximate result of Defendants' actions, Plaintiff has suffered non-
23 economic damages including emotional distress, anguish, humiliation, fear, and anxiety, and
24 requests an award of non-economic compensatory damages in an amount not exceeding \$500,000.
25

FIFTH CLAIM FOR RELIEF

(Common Law False Light)

56.

Plaintiff re-alleges and incorporates by reference paragraphs 1-3, 7, 13-14 and 18-25.

57.

Defendant gave publicity to matters regarding Plaintiff's employment, including the confidential evaluation and memorandum regarding Plaintiff's performance as the Chief of Police for the City of Powers, in violation of their duty. As a result, Defendant placed Plaintiff in a false light in the public eye.

58.

The form of the false light into which Plaintiff was placed is highly offensive to a reasonable person as it impugned his fitness to perform his official duties.

59.

Defendant made the statements knowing they were false or with reckless disregard for their truth or falsity and the false light into which Plaintiff was placed.

60.

Defendant willfully and or consciously disregarded their obligation under the common law claim of False Light.

61.

As a direct and proximate result of Defendants' actions, Plaintiff has suffered economic damages in the approximate amount of \$150,000 including loss of earnings, including back pay and future earnings, loss of benefits, loss of job opportunities and other employment

benefits which continue to accrue in an exact amount to be determined at the time of trial, together with interest and the amount necessary to offset the income tax consequences of the award as special damages under common law.

62.

As a direct and proximate result of Defendants' actions, Plaintiff has suffered non-economic damages including emotional distress, anguish, humiliation, fear, and anxiety, and requests an award of non-economic compensatory damages in an amount not exceeding \$500,000.

* * * * *

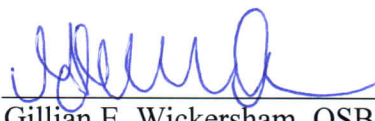
WHEREFORE, Plaintiff asks the Court to grant relief as follows:

- a) Judgment on Plaintiff's First Claim for Relief: \$150,000 for back pay economic damages with an exact amount to be proven at trial;
- b) Reinstatement or lost wages in an amount to be proven at trial;
- c) Compensatory non-economic damages in an amount not to exceed \$500,000;
- d) Reasonable attorney fees;
- e) Such other relief as the Court may deem just and equitable.
- f) Judgment on Plaintiff's Second Claim for Relief: \$150,000 for back pay economic damages with an exact amount to be proven at trial;
- g) Reinstatement or lost wages in an amount to be proven at trial;
- h) Compensatory non-economic damages in an amount not to exceed \$500,000;
- i) Reasonable attorney fees and disbursements;
- j) Such other relief as the Court may deem just and equitable.
- k) Judgment on Plaintiff's Third Claim for Relief: \$150,000 for lost employment

- opportunities (economic damages) with an exact amount to be proven at trial;
- l) Compensatory non-economic damages in an amount not to exceed \$500,000;
- m) Such other relief as the Court may deem just and equitable.
- n) Judgment on Plaintiff's Fourth Claim for Relief: \$150,000 for lost employment opportunities (economic damages) with an exact amount to be proven at trial;
- o) Compensatory non-economic damages in the amount not to exceed \$500,000;
- p) Such other relief as the Court may deem just and equitable.
- q) Judgment on Plaintiff's Fifth Claim for Relief: \$150,000 for lost employment opportunities (economic damages) with an exact amount to be proven at trial;
- r) Compensatory non-economic damages in an amount not to exceed \$500,000;
- s) Such other relief as the Court may deem just and equitable.

Dated this 10 day of November 2020.

RANDY C. RUBIN
ATTORNEY AT LAW, P.C.

By: 
Gillian E. Wickersham, OSB #194779
Of Attorneys for Plaintiff