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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

JAMES REAGAN MARCROFT-CLARK,
Plaintiff,

vs.

U.S. DEPARTMENT OF VETERANS AFFAIRS
– ROSEBURG VAMC EUGENE
DOWNTOWN, a U.S. government agency;
BETH OCHS, an individual; NICHOLAS
PASZKIET, an individual; and RYAN
HECK, an individual;
Defendants.

Case No. 6:21-cv-01035

COMPLAINT

(Disability Discrimination,
Whistleblower Retaliation,
Procedural Due Process Violation,
Freedom of Speech Violation)

Demand for Jury Trial

INTRODUCTION

1.

Plaintiff James Reagan Marcroft-Clark served in the United States Marine Corps before being honorably discharged. In 2016, the U.S. Department of Veterans Affairs hired him to work with veterans who had become homeless because of disabilities through Defendant Roseburg

VAMC Eugene Downtown. Defendant VAMC described Mr. Marcroft-Clark as “warm,” “supportive, considerate, helpful and empathetic.”

Things suddenly changed, however when Mr. Marcroft-Clark reported to his supervisors that Defendant Ochs, Rent Assistance Division Director of Homes for Good, the Lane County administrator of federal housing benefits, had released his and 48 other veterans’ names, disclosing to community partners that he and other veterans had become homeless in the past because of disabilities. Defendant VAMC refused to investigate or resolve the issue, but suddenly began to remove favorable work from Mr. Marcroft-Clark, giving him less favorable work. Defendants went from describing Mr. Marcroft-Clark as “warm” and “supportive” to using language that stereotypes veterans with disabilities, such as “disruptive,” “inconsistent,” and “threatening.” Defendants Paszkiet and Heck removed work from Mr. Marcroft-Clark without following any process, instructed Mr. Marcroft-Clark to stop his attempts to correct the privacy violation, and began referring to his reports as “threats.”

In November 2019, Defendant VAMC restricted Mr. Marcroft-Clark to very limited secretarial work. In March 2020, Defendant VAMC assigned Mr. Marcroft-Clark to home, requiring him to be available at his computer for 10 hours per workday, and increasingly limiting his work. In April 2021, Mr. Marcroft-Clark’s team returned to working in person, but Mr. Marcroft-Clark continued to be restricted to his home and to be restricted from contributing to his community because of the requirement that he be available at his computer for 10 hours per day. Defendant’s retaliation and discrimination so exacerbated Mr. Marcroft-Clark’s disabilities that no reasonable person could have continued to tolerate them. Mr. Marcroft-Clark finally accepted medical separation from Defendant in June 2021.

JURISDICTION AND VENUE

2.

This matter arises under federal law, 42 U.S.C. § 12112. Supplemental jurisdiction over related state law claims is proper under 28 U.S.C. § 1367.

3.

The events underlying Plaintiff's claims took place in Lane County, Oregon, making venue proper in the District of Oregon, Eugene Division.

PARTIES

4.

Plaintiff James Reagan Marcroft-Clark is a resident of Lane County, Oregon. He is a Veteran of the United States Marine Corps with physical and mental impairments as a result of his service. Mr. Marcroft-Clark's physical and mental impairments substantially limit many of Mr. Marcroft-Clark's major life activities, including, when he experiences a triggering episode, his ability to sleep, think, regulate his emotions, respond to stressful events, digest food, and work. At all times relevant to this Complaint, Mr. Marcroft-Clark was able to perform the essential functions of his job with or without accommodation.

5.

Defendant U.S. Department of Veterans Affairs – Roseburg VAMC Eugene Downtown (Defendant VAMC) is a United States government entity, which provides health care to veterans in Lane County, Oregon. Defendant employs more than 6 employees.

6.

Upon information and belief, Defendant Beth Ochs is a resident of Lane County, Oregon. Defendant Ochs is the Rent Assistance Division Director of Homes for Good, the administrator of federal Section 8 housing in Lane County.

7.

Upon information and belief, Defendant Nicholas Paszkiet is a resident of Lane County, Oregon. At all times relevant to this complaint, Defendant Paszkiet was Defendant VAMC's Program Supervisor, and Plaintiff James Reagan Marcroft-Clark's direct supervisor.

8.

Upon information and belief, Defendant Ryan Heck is a resident of Lane County, Oregon. At all times relevant to this Complaint, Defendant Heck was an employee of Defendant VAMC, and one of Plaintiff James Reagan Marcroft-Clark's supervisors.

FACTUAL ALLEGATIONS

9.

On November 27, 2016, Defendant VAMC hired Mr. Marcroft-Clark as a social services assistant to provide services to homeless veterans in Eugene, Oregon. Mr. Marcroft-Clark had previously experienced homelessness because of disabilities related to his military service. He was excited help other military veterans with services that had helped him recover from homelessness.

10.

From 2016 through March 13, 2019, Defendant VAMC described Mr. Marcroft-Clark as "Fully Successful" in his performance reviews. In his February 17, 2017, review, Defendant wrote, "Coworkers often remark how Reagan is supportive, considerate, helpful and empathetic both in his work with Veterans and with other VA staff."

11.

In a review dated March 13, 2019, Defendant wrote, "His communication style with Veterans is warm, assertive, and task oriented.... Reagan dedicates his time to the Veteran and is willing to work long hours, often past normal business, to ensure the Veteran is cared for and the mission is complete. Reagan has an extensive knowledge about community resources and shares his

experience with Veterans to help them access the best care and available resources that they can have. ... Reagan is assessed as being Exceptional in this critical element [Direct Patient Care].” Mr. Marcroft-Clark dedicated himself not only to serving his country through the military but also to serving the United States Veterans Administration after he recovered from his disability-related homelessness.

12.

Around Spring 2019, Defendant asked Mr. Marcroft-Clark to represent it in a collaboration with other service providers to Eugene’s homeless veterans. The collaboration was called Operation: Welcome Home.

13.

Defendant Beth Ochs was one of the members of Operation: Welcome Home. Defendant Ochs and Homes for Good are governed under the federal Privacy Act of 1974, 5 U.S.C. § 552a, restricting disclosure of private information, including medical information like disabled status, of people seeking federal housing benefits. When Homes for Good provides housing to a veteran with a disability, it requires the veteran to certify that the veteran has a disability. As part of that certification, Defendant provides the disabled veteran with a notice that states, consistent with the law, “You have the right to expect confidentiality and privacy unless disclosure is required and permitted by law, or you have consented to the release of such information” (emphasis added).

14.

On May 15, 2019, Defendant Ochs disclosed to all agencies involved in Operation: Welcome Home that Mr. Marcroft-Clark was disabled and the names of 48 other veterans, identifying them as people with disabilities. Defendant Ochs disclosed this list in the context of accusing Mr. Marcroft-Clark and other VAMC service providers of failing to provide housing vouchers to eligible veterans.

15.

In addition to Mr. Marcroft-Clark's own name, Mr. Marcroft-Clark immediately recognized around half of the people named on Defendant Ochs's list as military veterans he had helped in his role with Defendant VAMC. One woman on the list was someone Mr. Marcroft-Clark tried to help with an experience of intimate partner violence, but was later found violently killed. Others could not be served under the HUD program because their disabilities were so severe that the Housing Authority had not found housing that could adequately serve them. Mr. Marcroft-Clark was devastated and cried at seeing the names of people in incredible crisis situations, whom he had tried desperately to serve, used as though they were faceless in order to make a political point regarding services Mr. Marcroft-Clark personally provided. Defendant Ochs made it clear that she had not tried to become informed, or that Homes for Good did not have adequate records, as to the desperate situations of some of the veterans on the list who were still alive.

16.

On May 17, 2019, Mr. Marcroft-Clark reported Defendant Ochs's disclosure of the disabled status of 49 veterans to his supervisor and Acting Chief of Defendant VAMC at the time, Defendant Ryan Heck, that he believed this breach violated the law.

17.

On June 6, 2019, Mr. Marcroft-Clark reported Defendant Ochs's disclosure to Director Ryan Baker and Richard Weber at the Privacy Office for VA Healthcare. Mr. Marcroft-Clark received no response from Defendant Heck, Director Baker, or VA Healthcare. Instead, suddenly Mr. Marcroft-Clark began experiencing a change in how Defendant VAMC treated him.

18.

Mr. Marcroft-Clark learned that in late May or early June 2019, Homes for Good instigated a Congressional complaint regarding the HUD-VASH program, for which Mr. Marcroft-Clark was

its point of contact. This appeared to be targeted retaliation at Mr. Marcroft-Clark based on his good faith complaint that the privacy breach violated the law.

19.

Also in June 2019, Mr. Marcroft-Clark's new supervisor, Program Director Nicholas Paszkiet spoke with Defendant Ochs, who admitted that Mr. Marcroft-Clark was reporting her for what he believed to be a legal violation and saying that he had attempted to contact her a number of times regarding the issue. She characterized Mr. Marcroft-Clark's attempts to get her to take the disclosure of his and others' disabled status seriously as "threats," stereotyping him as a frightening disabled veteran rather than attempting to correct the privacy breach. Upon information and belief, the only threat she described was Mr. Marcroft-Clark telling her that her agency could be subject to a lawsuit for her disclosure. Mr. Marcroft-Clark did not learn of the conversation between Defendants Paszkiet and Ochs until July 2021.

20.

Also in June 2019, Mr. Marcroft-Clark met with his department and the Supportive Services for Veteran Families (SSVF) program and again reported he believed it was a violation of law for Defendant Ochs to publicly release to community partners his disabled status. After the meeting, upon information and belief, the SSVF director refused to attend further meetings with Mr. Marcroft-Clark because of his reports of this privacy violation.

21.

Because of the release of his personal medical information at Operation: Welcome Home, Mr. Marcroft-Clark did not feel he could continue to attend the meetings related to that project and recused himself. He continued to attend the monthly planning meetings between Defendant and Homes for Good, however, until June 2019. At that time, Defendant Paszkiet instructed Mr. Marcroft-Clark not to return, accusing him of being "disruptive." Supervisor Paszkiet gave no example of "disruption." This restriction appeared to be specifically targeted at Mr. Marcroft-

Clark's ongoing reports regarding the mismanagement, abuses, and violation of law, rule, or regulation in the disclosure of the disabled status of Defendant's veterans. Disheartened that he was being characterized as the problem, Mr. Marcroft-Clark agreed that if his attempts to protect veteran privacy were taken as "disruptive," he would not return to the meetings.

22.

After that, Defendant Paszkiet changed Mr. Marcroft-Clark's workload as follows:

- a) From June through July 2019, he assigned Mr. Marcroft-Clark a higher, less-favorable caseload than other assistants;
- b) From June through July 2019, he assigned Mr. Marcroft-Clark's team an expectation of fulfilled HUD-VASH vouchers that was approximately 1.5 times higher than than program guidelines set as a top expectation for a team of his team's size, significantly increasing Mr. Marcroft-Clark's workload;
- c) On October 24, 2019, Defendant Paszkiet removed the Veteran By-Name list, which Mr. Marcroft-Clark had been facilitating for 2 years, without consulting him;
- d) On November 1, 2019, rather than accommodating Mr. Marcroft-Clark, Defendant Paszkiet removed additional duties and described Mr. Marcroft-Clark as "inconsistent." Defendant VAMC had never described Mr. Marcroft-Clark this way before the public disclosure of his disabled status and Mr. Marcroft-Clark's reports he believed that disclosure was illegal;
- e) Around November 5, 2019, Defendant Paszkiet told Mr. Marcroft-Clark that if he had any questions regarding veteran data, they needed to only go through Defendant Paszkiet, restricting Mr. Marcroft-Clark from asking his colleagues questions in order to maintain databases he was assigned to maintain;

- f) Around November 6, 2019, Defendant Paszkiet removed almost all of Mr. Marcroft-Clark's administrative duties without warning, and without engaging in an interactive process, or notifying the union.

23.

In late October through early November 2019, Mr. Marcroft-Clark began to have panic attacks daily because of the retaliation and discrimination he was experiencing. He was worried about driving while he was experiencing these severe symptoms of his disabilities. He spoke with Defendant Ryan Heck, Acting Chief of Defendant VAMC at the time, requesting reasonable accommodation for the impact his symptoms related to the privacy violation were having on his life and ability to work. Mr. Marcroft-Clark asked Defendant Heck to help him laterally move into something that would remove him from the environment that triggered his disabilities. Defendant Heck assured Mr. Marcroft-Clark that he would "look into this," but delayed responding or providing Mr. Marcroft-Clark with solutions.

24.

On November 7, 2019, Defendant Heck emailed Mr. Marcroft-Clark, prohibiting him from talking to coworkers about the privacy violations he had experienced and the severe mismanagement and retaliation he was subjected to after he reported.

25.

Also on November 7, 2019, Defendant Heck instructed a person Mr. Marcroft-Clark was scheduled to meet with to meet with someone else, saying Mr. Marcroft-Clark would no longer be in that department soon.

26.

In March 2020, Defendant VAMC restricted Mr. Marcroft-Clark to his home, increasingly limiting his duties, but requiring him to be available at a computer for 10 hours per day. Because his work required him to be at the computer for the entire day, this also prevented Mr. Marcroft-

Clark from pursuing other activities that could have helped with his mental health and contributed to his community.

27.

On May 4, 2020, Mr. Marcroft-Clark filed claims regarding the above conduct with the U.S. Department of Veterans Affairs Office of Resolution Management.

28.

On May 21, 2020, The Department of Veterans Affairs, Office of Resource Management notified Mr. Marcroft-Clark that it accepted certain of his claims as alleged in this Complaint. More than 180 days has passed since that acceptance.

29.

On May 27, 2020, Mr. Marcroft-Clark filed claims with the Oregon Bureau of Labor and Industries.

30.

On February 26, 2021, Defendant threatened to terminate Mr. Marcroft-Clark, issuing him a “Proposed Removal” notice and calling it “discipline” and a “penalty” for his “Medical Inability to Perform.”

31.

On March 4, 2021, Mr. Marcroft-Clark responded to the discipline through his attorney, “Mr. Marcroft-Clark has been able to perform the essential functions of his job with or without accommodation, but the discrimination and retaliation he has experienced has severely exacerbated his symptoms and required heightened accommodations. We believe this termination is a tangible employment action related to his reports of discrimination and the VA's failure to accommodate.” Defendant did not respond other than to acknowledge this language was added to Mr. Marcroft-Clark’s file.

32.

In April 2021, Defendant brought Mr. Marcroft-Clark's team back to in-person work after lifting some COVID-19 restrictions. Mr. Marcroft-Clark asked to return to in-person work. Defendant continued to restrict Mr. Marcroft-Clark to home, however, requiring him to be available at his computer for 10 hours per day without giving him work or the ability to contribute to the community.

33.

On May 25, 2021, the Oregon Bureau of Labor and Industries issued Plaintiff a 90-day right to sue letter.

34.

On June 9, 2021, after more than a year of being restricted to his home, forced to sit in front of his computer, restricted from contributing productively to his community, while seeing his colleagues return to the office, Mr. Marcroft-Clark felt he had no choice but to allow Defendant to remove him from his position. He wrote to Defendant, "I feel that I have no choice but to consider medical retirement. The main reason for this is the current situation of total isolation that the VA has put me in, requiring me to be in my home and present at my temporary work station 10 hours a day, 4 days a week. This is severely exacerbating my conditions, both mental and physical."

35.

On June 17, 2021, Defendant gave Mr. Marcroft-Clark paperwork saying it removed the previous "discipline" from his file and was issuing a new "penalty" removing him from his position.

36.

Defendants' actions and inactions have caused Plaintiff harms in an amount to be determined by a jury at trial, including medical expenses, wage loss, daily panic attacks, severe emotional

distress including humiliation, pain, sleeplessness, degradation, embarrassment at having his personal information released and the institution to which he devoted his adult life turn against him, as well as other traumas, compensation for which is to be determined by a jury at trial.

**FIRST CLAIM FOR RELIEF – 42 U.S.C. § 12112, 29 U.S.C. § 791 ET SEQ.
DISABILITY DISCRIMINATION – FAILURE TO ACCOMMODATE
(AGAINST DEFENDANT VAMC)**

37.

Plaintiff repeats and realleges paragraphs 1-36 as though fully set forth.

38.

Defendant violated the Americans with Disabilities Act and Rehabilitation Act of 1973, 42 U.S.C. § 12112 and 29 U.S.C. § 791, *et seq.*, in failing to accommodate Plaintiff in one or more of the following ways:

- a) In failing to engage in an interactive process in May 2019 to protect Mr. Marcroft-Clark from the disclosure of his identity as disabled or mitigate the effects of the disclosure;
- b) In reassigning Mr. Marcroft-Clark less favorable duties after he reported personal information that identified him as disabled had been released;
- c) In assigning Mr. Marcroft-Clark an increased workload after he reported personal information that identified him as disabled had been released;
- d) In removing the Veteran-By-Name list from Mr. Marcroft-Clark's duties rather than accommodating his disabilities;
- e) In removing administrative duties from Mr. Marcroft-Clark rather than accommodating him;
- f) In instructing Mr. Marcroft-Clark not to discuss his concerns related to his and other veterans' disabled status, rather than accommodating him;
- g) In ignoring Mr. Marcroft-Clark's request to make a lateral move as an accommodation;

- h) In restricting Mr. Marcroft-Clark to home and requiring him to be available at his computer for 10 hours a day with no work, rather than accommodating him; and
- i) In making Mr. Marcroft-Clark's position so unbearable that no reasonable person could tolerate it, forcing him to agree to medical separation.

39.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

40.

Plaintiff is entitled to reasonable attorney fees and costs under 42 U.S.C. § 12205 and 29 U.S.C. § 794a.

**SECOND CLAIM FOR RELIEF – ORS 659A.112
DISABILITY DISCRIMINATION – FAILURE TO ACCOMMODATE
(AGAINST DEFENDANT VAMC)**

41.

Plaintiff repeats and realleges paragraphs 1-40 as though fully set forth.

42.

Defendant violated ORS 659A.112 in failing to accommodate Plaintiff in one or more of the following ways:

- a) In failing to engage in an interactive process in May 2019 to protect Mr. Marcroft-Clark from the disclosure of his identity as disabled or mitigate the effects of the disclosure;
- b) In reassigning Mr. Marcroft-Clark less favorable duties after he reported personal information that identified him as disabled had been released;

- c) In assigning Mr. Marcroft-Clark an increased workload after he reported personal information that identified him as disabled had been released;
- d) In removing the Veteran-By-Name list from Mr. Marcroft-Clark's duties rather than accommodating his disabilities;
- e) In removing administrative duties from Mr. Marcroft-Clark rather than accommodating his disabilities;
- f) In instructing Mr. Marcroft-Clark not to discuss his concerns privacy related to his and other veterans' disabled status rather than accommodating him;
- g) In ignoring Mr. Marcroft-Clark's request to make a lateral move as an accommodation;
- h) In restricting Mr. Marcroft-Clark to home and requiring him to be available at his computer for 10 hours a day with no work, rather than accommodating him; and
- i) In making Mr. Marcroft-Clark's position so unbearable that no reasonable person could tolerate it, forcing him to agree to medical separation.

43.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

44.

Plaintiff is entitled to prevailing party costs and reasonable attorney fees and costs under ORS 659A.885.

**THIRD CLAIM FOR RELIEF – 42 U.S.C. § 12112, 29 U.S.C. § 791 ET SEQ.
DISABILITY DISCRIMINATION – HOSTILE WORK ENVIRONMENT
(AGAINST DEFENDANT VAMC)**

45.

Plaintiff repeats and realleges paragraphs 1-44 as though fully set forth.

46.

Defendant violated the Americans with Disabilities Act and Rehabilitation Act of 1973, 42 U.S.C. § 12112 and 29 U.S.C. § 791, *et seq.*, in creating an environment of severe or pervasive, unwanted offensive verbal or physical conduct targeted at Plaintiff based on his disability in one or more of the following:

- a) In refusing to protect Mr. Marcroft-Clark and other disabled veterans from the disclosure of personal information related to their status as disabled or mitigate the effects of the disclosure, instead denying any responsibility for the disclosure;
- b) In reassigning Mr. Marcroft-Clark less favorable duties after he reported personal information that identified him as disabled had been released;
- c) In assigning Mr. Marcroft-Clark an increased workload after he reported personal information that identified him as disabled had been released;
- d) In removing the Veteran-By-Name list from Mr. Marcroft-Clark's duties rather than accommodating his disabilities;
- e) In removing administrative duties from Mr. Marcroft-Clark rather than accommodating him;
- f) In instructing Mr. Marcroft-Clark not to discuss his concerns privacy related to his and other veterans' disabled status rather than accommodating him;
- g) In ignoring Mr. Marcroft-Clark's request to make a lateral move as an accommodation;
- h) In using derogatory descriptors for Mr. Marcroft-Clark based in stereotypes related his disabilities, including that he was a "threat," "disruptive," and "inconsistent."

- i) In restricting Mr. Marcroft-Clark to home and requiring him to be available at his computer for 10 hours a day with no work or ability to contribute to his community, rather than accommodating him; and
- j) In making Mr. Marcroft-Clark's position so unbearable that no reasonable person could tolerate it, forcing him to agree to medical separation.

47.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

48.

Plaintiff is entitled to reasonable attorney fees and costs under 42 U.S.C. § 12205 and 29 U.S.C. § 794a.

**FOURTH CLAIM FOR RELIEF – ORS 659A.112
DISABILITY DISCRIMINATION – HOSTILE WORK ENVIRONMENT
(AGAINST DEFENDANT VAMC)**

49.

Plaintiff repeats and realleges paragraphs 1-48 as though fully set forth.

50.

Defendant violated ORS 659A.112 in creating an environment of severe or pervasive, unwanted offensive verbal or physical conduct targeted at Plaintiff based on his disability in one or more of the following:

- a) In refusing to protect Mr. Marcroft-Clark and other disabled veterans from the disclosure of personal information related to their status as disabled or mitigate the effects of the disclosure, instead denying any responsibility for the disclosure;

- b) In reassigning Mr. Marcroft-Clark less favorable duties after he reported personal information that identified him as disabled had been released;
- c) In assigning Mr. Marcroft-Clark an increased workload after he reported personal information that identified him as disabled had been released;
- d) In removing the Veteran-By-Name list from Mr. Marcroft-Clark's duties rather than accommodating his disabilities;
- e) In removing administrative duties from Mr. Marcroft-Clark rather than accommodating him;
- f) In instructing Mr. Marcroft-Clark not to discuss his concerns privacy related to his and other veterans' disabled status rather than accommodating him;
- g) In ignoring Mr. Marcroft-Clark's request to make a lateral move as an accommodation;
- h) In using derogatory descriptors for Mr. Marcroft-Clark based in stereotypes related his disabilities, including that he was a "threat," "disruptive," and "inconsistent."
- i) In restricting Mr. Marcroft-Clark to home and requiring him to be available at his computer for 10 hours a day with no work or ability to contribute to his community, rather than accommodating him; and
- j) In making Mr. Marcroft-Clark's position so unbearable that no reasonable person could tolerate it, forcing him to agree to medical separation.

51.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

52.

Plaintiff is entitled to prevailing party costs and reasonable attorney fees and costs under ORS 659A.885.

**FIFTH CLAIM FOR RELIEF – 42 U.S.C. § 12112, 29 U.S.C. § 791 ET SEQ.
DISABILITY DISCRIMINATION – DISPARATE TREATMENT
(AGAINST DEFENDANT VAMC)**

53.

Plaintiff repeats and realleges paragraphs 1-52 as though fully set forth.

54.

Defendant violated the Americans with Disabilities Act and Rehabilitation Act of 1973, 42 U.S.C. § 12112 and 29 U.S.C. § 791, *et seq.*, in treating Plaintiff differently in the terms or conditions of his employment after the public disclosure of his status as disabled:

- a) In refusing to protect Mr. Marcroft-Clark and other disabled veterans from the disclosure of personal information related to their status as disabled or mitigate the effects of the disclosure, instead denying any responsibility for the disclosure;
- b) In reassigning Mr. Marcroft-Clark less favorable duties after he reported personal information that identified him as disabled had been released;
- c) In assigning Mr. Marcroft-Clark an increased workload after he reported personal information that identified him as disabled had been released;
- d) In removing the Veteran-By-Name list from Mr. Marcroft-Clark's duties he reported personal information that identified him as disabled had been released;
- e) In removing administrative duties from Mr. Marcroft-Clark he reported personal information that identified him as disabled had been released;
- f) In instructing Mr. Marcroft-Clark not to discuss his concerns privacy related to his and other veterans' disabled status he reported personal information that identified him as disabled had been released;

- g) In restricting Mr. Marcroft-Clark to home and requiring him to be available at his computer for 10 hours a day with no work, he reported personal information that identified him as disabled had been released; and
- h) In making Mr. Marcroft-Clark's position so unbearable that no reasonable person could tolerate it, forcing him to agree to medical separation.

55.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

56.

Plaintiff is entitled to reasonable attorney fees and costs under 42 U.S.C. § 12205 and 29 U.S.C. § 794a.

**SIXTH CLAIM FOR RELIEF – ORS 659A.112
DISABILITY DISCRIMINATION – DISPARATE TREATMENT
(AGAINST DEFENDANT VAMC)**

57.

Plaintiff repeats and realleges paragraphs 1-56 as though fully set forth.

58.

Defendant violated ORS 659A.112 in treating Plaintiff differently in the terms or conditions of his employment after the public disclosure of his status as disabled:

- a) In refusing to protect Mr. Marcroft-Clark and other disabled veterans from the disclosure of personal information related to their status as disabled or mitigate the effects of the disclosure, instead denying any responsibility for the disclosure;
- b) In reassigning Mr. Marcroft-Clark less favorable duties after he reported personal information that identified him as disabled had been released;

- c) In assigning Mr. Marcroft-Clark an increased workload after he reported personal information that identified him as disabled had been released;
- d) In removing the Veteran-By-Name list from Mr. Marcroft-Clark's duties he reported personal information that identified him as disabled had been released;
- e) In removing administrative duties from Mr. Marcroft-Clark he reported personal information that identified him as disabled had been released;
- f) In instructing Mr. Marcroft-Clark not to discuss his concerns privacy related to his and other veterans' disabled status he reported personal information that identified him as disabled had been released;
- g) In restricting Mr. Marcroft-Clark to home and requiring him to be available at his computer for 10 hours a day with no work, he reported personal information that identified him as disabled had been released; and
- h) In making Mr. Marcroft-Clark's position so unbearable that no reasonable person could tolerate it, forcing him to agree to medical separation.

59.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

60.

Plaintiff is entitled to prevailing party costs and reasonable attorney fees and costs under ORS 659A.885.

**SEVENTH CLAIM FOR RELIEF – 42 U.S.C. § 12112, 29 U.S.C. § 791 ET SEQ.
DISABILITY DISCRIMINATION – CONSTRUCTIVE DISCHARGE
(AGAINST DEFENDANT VAMC)**

61.

Plaintiff repeats and realleges paragraphs 1-60 as though fully set forth.

62.

Defendant violated the Americans with Disabilities Act and Rehabilitation Act of 1973, 42 U.S.C. § 12112 and 29 U.S.C. § 791, *et seq.*, in making Mr. Marcroft-Clark's position so unbearable, by retaliating and discriminating against him based on his disabilities, that no reasonable person could tolerate it, forcing him to agree to medical separation.

63.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

64.

Plaintiff is entitled to reasonable attorney fees and costs under 42 U.S.C. § 12205 and 29 U.S.C. § 794a.

**EIGHTH CLAIM FOR RELIEF – ORS 659A.112
DISABILITY DISCRIMINATION – CONSTRUCTIVE DISCHARGE
(AGAINST DEFENDANT VAMC)**

65.

Plaintiff repeats and realleges paragraphs 1-64 as though fully set forth.

66.

Defendant violated ORS 659A.112 in making Mr. Marcroft- Clark's position so unbearable, by retaliating and discriminating against him based on his disabilities, that no reasonable person could tolerate it, forcing him to agree to medical separation.

67.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

68.

Plaintiff is entitled to prevailing party costs and reasonable attorney fees and costs under ORS 659A.885.

**NINTH CLAIM FOR RELIEF – ORS 659A.199
WHISTLEBLOWER RETALIATION
(AGAINST DEFENDANT VAMC)**

69.

Plaintiff repeats and realleges paragraphs 1-68 as though fully set forth.

70.

Defendants violated ORS 659A.199 by retaliating against Plaintiffs for good faith reports of a violation of law, rule, or regulation in one or more of the following ways:

- a) In refusing to protect Plaintiff and other disabled veterans from the disclosure of personal information protected by law, related to their status as disabled, or to mitigate the effects of the disclosure, instead denying any responsibility for the disclosure;
- b) In reassigning Mr. Marcroft-Clark less favorable duties;
- c) In assigning Mr. Marcroft-Clark an increased workload;
- d) In removing the Veteran-By-Name list from Mr. Marcroft-Clark's duties;
- e) In removing administrative duties from Mr. Marcroft-Clark;
- f) In instructing Mr. Marcroft-Clark not to discuss his concerns privacy related to his and other veterans' disabled status;

- g) In restricting Mr. Marcroft-Clark to home and requiring him to be available at his computer for 10 hours a day with no work or way to serve his community; and
- h) In making Mr. Marcroft-Clark's position so unbearable that no reasonable person could tolerate it, forcing him to agree to medical separation.

71.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

72.

Plaintiff is entitled to prevailing party fees and reasonable attorney fees and costs under ORS 659A.885.

**TENTH CLAIM FOR RELIEF – ORS 659A.203
PUBLIC EMPLOYER WHISTLEBLOWER RETALIATION
(AGAINST DEFENDANT VAMC)**

73.

Plaintiff repeats and realleges paragraphs 1-72 as though fully set forth.

74.

Defendant is a public employer.

75.

Defendants violated ORS 659A.203 for disclosing a violation of federal, state or local law, rule or regulation, mismanagement, or abuse of authority, in one or more of the following ways:

- a) In refusing to protect Plaintiff and other disabled veterans from the disclosure of personal information protected by law, related to their status as disabled, or to mitigate the effects of the disclosure, instead denying any responsibility for the disclosure;

- b) In reassigning Mr. Marcroft-Clark less favorable duties;
- c) In assigning Mr. Marcroft-Clark an increased workload;
- d) In removing the Veteran-By-Name list from Mr. Marcroft-Clark's duties;
- e) In removing administrative duties from Mr. Marcroft-Clark;
- f) In instructing Mr. Marcroft-Clark not to discuss his concerns privacy related to his and other veterans' disabled status;
- g) In restricting Mr. Marcroft-Clark to home and requiring him to be available at his computer for 10 hours a day with no work or way to serve his community; and
- h) In making Mr. Marcroft-Clark's position so unbearable that no reasonable person could tolerate it, forcing him to agree to medical separation.

76.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

77.

Plaintiff is entitled to prevailing party costs and reasonable attorney fees and costs under ORS 659A.885.

**ELEVENTH CLAIM FOR RELIEF – 42 U.S.C. § 1983 (*BEVINS*)
FIFTH AMENDMENT PROCEDURAL DUE PROCESS VIOLATION
(AGAINST DEFENDANTS PASZKIET AND HECK)**

78.

Plaintiff repeats and realleges paragraphs 1-77 as though fully set forth.

79.

Defendants Paszkiet and Heck are federal employees of Defendant VAMC and at all relevant times were acting individually and jointly in the course and scope of their federal employment.

80.

At all times, Plaintiff had a protected interest in his reputation, wages, duties, and other benefits associated with his employment for Defendant VAMC.

81.

Defendants Paszkiet and Heck deprived Plaintiff of his right to procedural due process secured by the Fifth Amendment to the United States Constitution in that they removed tasks and duties from Plaintiff, ultimately restricting him to work from home, requiring him to be available at a computer for 10 hours per day having removed his duties, without following any interactive process under disability law or regulations required for removing the duties of an employee of Defendant VAMC ultimately leading to Mr. Marcroft-Clark being forced to agree to medical retirement from Defendant VAMC.

82.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

83.

Plaintiff is entitled to reasonable attorney fees and costs under 42 U.S.C. § 1988.

**TWELFTH CLAIM FOR RELIEF – 42 U.S.C. § 1983
FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS VIOLATION
(AGAINST DEFENDANT OCHS)**

84.

Plaintiff repeats and realleges paragraphs 1-83 as though fully set forth.

85.

Defendant Ochs is an employee of Homes for Good, the Lane County Housing Authority, which is a county entity. At all relevant times Defendant Ochs was acting individually and jointly with the other Defendants in the course and scope of her employment with Homes for Good.

86.

At all times, Plaintiff had a protected interest in his reputation, wages, duties, and other benefits associated with his employment for Defendant VAMC.

87.

Defendant Ochs deprived Plaintiff of his right to procedural due process secured by the Fifth and Fourteenth Amendments to the United States Constitution by disclosing his identity as disabled without following protocols for private medical information, by initiating a Congressional inquiry into work that Mr. Marcroft-Clark was substantially involved in to retaliate against him for opposing her privacy breach, and by interfering with his employment in that she encouraged Defendant Paszkiet to remove tasks from Plaintiff, calling his reports of legal violations “threats,” spreading rumors that stereotyped Plaintiff based on his status as a disabled veteran.

88.

Defendant’s actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

89.

Plaintiff is entitled to reasonable attorney fees and costs under 42 U.S.C. § 1988.

**TWELFTH CLAIM FOR RELIEF – 42 U.S.C. § 1983
FIRST AMENDMENT FREE SPEECH VIOLATION
(AGAINST DEFENDANT OCHS)**

90.

Plaintiff repeats and realleges paragraphs 1-89 as though fully set forth.

91.

Defendant Ochs is an employee of Homes for Good, the Lane County Housing Authority, which is a county entity. At all relevant times Defendant Ochs was acting individually and jointly with the other Defendants in the course and scope of her employment with Homes for Good.

92.

Plaintiff spoke about matters of public concern when he complained about Defendant Ochs's release of his and other veterans' disabled status. Plaintiff acted as an individual regarding his own medical privacy, and he spoke in contravention of his supervisor's instructions and regarding broad concerns over systemic abuses related to Homes for Good's evaluations of housing vouchers when he reported Defendant Ochs's disclosure of his status as disabled, including making reports to the other Defendants, Lane County, the U.S. Department of Health and Human Services, the U.S. Department of Housing and Urban Development, and the Bureau of Labor and Industries.

93.

Defendant Ochs deprived Plaintiff of his right to free speech secured by the First Amendment to the United States Constitution by interfering with his employment in that she encouraged Defendant Paszkiet to remove tasks from Plaintiff, calling his reports of legal violations "threats," spreading rumors that stereotyped Plaintiff based on his status as a disabled veteran.

94.

Defendant's actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to

his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

95.

Plaintiff is entitled to reasonable attorney fees and costs under 42 U.S.C. § 1988.

**THIRTEENTH CLAIM FOR RELIEF – ORS 659A.030
AIDER AND ABETTOR
(AGAINST DEFENDANTS PASZKIET, HECK, AND OCHS)**

96.

Plaintiff repeats and realleges paragraphs 1-95 as though fully set forth.

97.

Defendants Paszkiet, Heck, and Ochs violated ORS 659A.030 by aiding, abetting, inciting, compelling, or coercing Defendant VAMC to discriminate and retaliate against Plaintiff as described above by removing favorable duties from Plaintiff, while assigning him unfavorable duties; describing him as “disruptive” and “inconsistent” and his reports of legal violations “threats,” which stereotyped him based on his status as a disabled veteran; and ultimately in forcing him out of his position.

98.

Defendant’s actions caused Plaintiff medical expenses, wage loss, and other harms, and more drastically betrayal, stress, anxiety, shame, humiliation, degradation, sleeplessness, disruption to his normal routines and exacerbation of his physical and mental impairments. Compensation for each of these harms should be determined by a jury at trial.

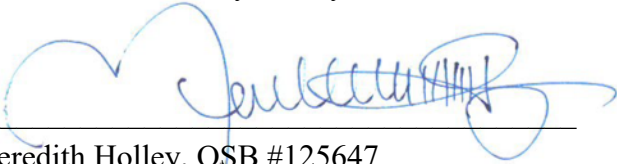
99.

Plaintiff is entitled to reasonable attorney fees and costs under 42 U.S.C. § 1988.

WHEREFORE, Plaintiff James Reagan Marcroft-Clark prays for judgment against Defendants as follows:

- a. Economic damages in the form of expenses and lost income in an amount to be determined at trial;
- b. Fair and reasonable compensatory damages to be determined at the time of trial;
- c. Reasonable attorney fees and costs incurred herein;
- d. Pre- and post-judgment interest on any judgment; and
- e. Other relief as deemed just and equitable by the Court.

DATED this 12th day of July, 2021.



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