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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 GLORIA RICHARDS, DEPREESHA SMITH,
7 individually and on behalf of all others similarly
8 situated

8 Plaintiffs,

9 vs.

10 OREGON HEALTH AND SCIENCE
11 UNIVERSITY,

12 Defendant

CASE NO.:

CLASS ACTION COMPLAINT
(Race discrimination – ORS 659A.030)

ORS 21.135(1), (2)(a)
(Claims not subject to mandatory arbitration)

Jury Trial Requested

13 **INTRODUCTION**

14 1.

15 Plaintiffs Gloria Richards and Depreesha Smith bring this class action complaint on
16 behalf of themselves, and all others similarly situated alleging that Defendant Oregon Health
17 and Science University violated anti-discrimination laws by disproportionately disciplining people
18 of color over their white counterparts. Plaintiffs, individually and on behalf of all others similarly
19 situated, complain as follows.

20 **JURISDICTION & VENUE**

21 2.

22 Plaintiff Gloria Richards is a Black woman, and at all material times, was a resident of
23 the State of Oregon.

24 3.

25 Plaintiff Depreesha Smith is a Black woman, and at all material times, was a resident of
26 the State of Oregon.

1 4.

2 Defendant, Oregon Health and Science University (OHSU) is a public teaching and
3 educational hospital, which primarily operates in Multnomah County, Oregon.

4 5.

5 At all material times, Defendant OHSU was Plaintiffs' and similarly situated employees'
6 employer.

7 **FACTUAL ALLEGATIONS**

8 6.

9 Plaintiffs Richards and Smith have worked for OHSU for over 24 years collectively.
10 Despite their years of dedicated service, OHSU undervalued and overdisciplined Plaintiffs and
11 other Black employees and employees of color.

12 7.

13 Plaintiffs bring this action on behalf of themselves and other employees of OHSU who
14 are members of the AFSCME or ONA bargaining units and identify as Black or a person of color
15 who have been subjected to discipline by OHSU at any time between September 10, 2019 to
16 the present.

17 8.

18 In 2013, OHSU created a "Diversity Action Plan," ostensibly to increase and support
19 racial diversity at OHSU, based in part on results from a 2010 survey of the OHSU community
20 that found minority employees and students felt that the OHSU climate did not foster diversity.
21 The plan purported to "increase recruitment," strengthen retention," "improve the Climate of
22 Inclusion," "build community partnerships," and create a "benchmark for excellence."

23 9.

24 Since this "Diversity Action Plan" was created, employees and students, particularly
25 Black employees and students, still experience race discrimination and harassment at OHSU,
26

1 and OHSU has not established equitable practices, despite years of notice, and millions of
2 dollars spent to purportedly address these issues.

3 10.

4 Likewise, in 2018, OHSU began designing a Discipline and Remediation Guideline, to
5 address inconsistencies in OHSU's discipline and accountability, which as described below,
6 disproportionately negatively impacts employees of color. To date, however, those guidelines
7 have not been implemented or consistently used.

8 **OHSU Disproportionately Disciplines Racial Minorities**
9 **Based on Common Policies, Practices, and Procedures**

10 11.

11 As of 2020, employees of OHSU who identify as racial minorities make up approximately
12 23.5% of its workforce. Yet, employees of color made up approximately 32.7% of OHSU's
13 involuntary terminations in 2019 and 31.1% of involuntary terminations in 2020. OHSU admits
14 that these numbers are "painful." On information and belief, OHSU's other forms of discipline,
15 such as written warnings, are also disproportionately given to employees who are people of
16 color. OHSU's discipline is an employment practice that has a disparate impact on employees
17 of color at OHSU

18 12.

19 Employees of color are also overrepresented in OHSU's voluntary separations (which
20 are often the product of discipline) and underrepresented in its hiring relative to the community it
21 serves.

22 13.

23 OHSU's discipline policies and practice disproportionally affect plaintiffs and members of
24 the class. They are central to this case and common to the class. Throughout the relevant
25 period, OHSU has employed discipline policies that are centralized through its Human
26 Resources (HR) department. OHSU's HR department is involved in all levels and forms of

1 discipline, from verbal warnings to terminations, and was responsible for ensuring equitable and
2 fair results. But OHSU's HR has failed to accomplish this.

3 14.

4 OHSU's centralized discipline policies and practices constitute a system-wide pattern or
5 practice of discrimination against employees of color. As an example of disparate treatment, in
6 or about 2019 OHSU terminated a Hispanic employee for an alleged commission of a hostile act
7 that violated OHSU's Policy and Code. The employee was represented by AFSCME, which
8 grieved the termination. At the grievance, AFSCME presented "unrebutted evidence" that at
9 least six other employees had engaged in "words and actions that were more egregious" than
10 the Hispanic employee. Yet, all six of those employees had only received a Final Written
11 Warning. The arbitrator found in favor of the employee and overturned the termination based
12 largely on the evidence of disparate treatment.

13 15.

14 In its disciplinary investigations, OHSU treats white employees more favorably and with
15 more leniency than employees of color. In 2020, OHSU terminated a Hispanic employee for
16 alleged inappropriate workplace behavior, such as bullying and inappropriate language in the
17 workplace, much of which was unsubstantiated, citing examples as far back as 2013. In
18 contrast, when Black employees submitted a complaint against a white management employee
19 in 2020 alleging a history of bullying and harassment, OHSU took eight months to complete an
20 investigation. Despite substantiated complaints against the white employee from 2018, OHSU
21 declined to take action against the white employee because the prior complaints were a "long
22 time ago."
23

24 16.

25 OHSU has a culture of hostility and discrimination towards racial minorities, with a lack
26 of consistent or meaningful standards, monitoring, investigations, or training that allows racial

1 bias to infect its discipline procedures and outcomes.

2 17.

3 OHSU also does not have meaningful means or practices of responding to complaints of
4 discrimination from its employees. OHSU fails to adequately take seriously, address,
5 investigate, or remediate complaints from employees, including when they are raised in
6 response to disciplinary actions.

7 18.

8 OHSU consistently made public-facing statements that it would not tolerate
9 discrimination against its employees, but its actions were to the contrary. Through its Diversity
10 Action Plan, and numerous internal complaints of inequitable discipline, OHSU was on notice of
11 the need to ensure its discipline practices were equitable, but it did not implement policies,
12 procedures, or allocate resources to accomplish that.

13 19.

14 In or about April 2021, after identifying a pattern and specific incidences of disparate
15 discipline against racial minorities, AFSCME, which represents many of the employees in the
16 proposed Class, met with OHSU's President and General Counsel. AFSCME provided notice of
17 this ongoing discrimination. AFSCME also provided a suggested list of immediate actions for
18 OHSU to take, including, for example, conducting an audit of disciplinary files, providing
19 comprehensive training for all employees conducted by a third party, creating a Board to review
20 cases of alleged disproportionate discipline, and terminating or disciplining managers and
21 supervisors who have history of harassment and discrimination. On information and belief,
22 OHSU did not take any of the recommended actions proposed by AFSCME relating to its
23 pattern and practice of disproportionate discipline against employees of color.
24

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1 20.

2 Employees of color, including Plaintiffs, are adversely impacted by OHSU's discipline
3 policies and procedures.

4 **Plaintiffs Were Subjected to Discrimination**
5 **on the Basis of their Race Through OHSU's Discipline**

6 21.

7 Plaintiff Richards worked for OHSU beginning in August of 1999, until OHSU terminated
8 her on March 25, 2020. Plaintiff is a member of AFSME Council No. 75 and Local 328, which
9 grieved her termination.

10 22.

11 Richards worked as a Patient Access Service Resource specialist at OHSU at the time
12 of her termination. Richards engaged in conduct that was attempting to assist a fellow
13 employee, but OHSU found to be dishonest. To the extent Richards made any
14 misrepresentations, they were minor and immaterial to her job, and caused no harm to OHSU.
15 She self-reported that conduct, then took full responsibility for her behavior. Nevertheless,
16 OHSU terminated her for that conduct despite never having issued any other serious discipline
17 to Richards throughout her 21-year employment

18 23.

19 Her grievance went to arbitration and on September 23, 2021 the arbitrator sustained
20 the grievance in material part, ordering her reinstated with backpay, finding that OHSU did not
21 have just cause for her termination. Since October 7, 2021 she has been reinstated and is
22 working at OHSU.

23 24.

24 In contrast, a white employee wrongly signed a timecard on behalf of another employee
25 - without that employee's consent, which resulted in that employee not receiving overtime.
26

1 OHSU found that the employee had violated a policy by signing on this person's behalf, but
2 because they had purportedly not acted with the intent to forge or falsify the document, they
3 received no discipline at all.

4 25.

5 Plaintiff Smith has worked for OHSU since 2018, and since 2019 as a Medical Assistant.
6 Plaintiff is a member of AFSCME Council No. 75 and Local 328.

7 26.

8 In January 2020, Smith received a verbal warning for attendance. As a result of the
9 verbal warning, Smith was not permitted to transfer to a different job at OHSU, where she would
10 have earned a higher hourly rate and diversified her experience. In addition, she did not receive
11 a bonus because of the warning. On information and belief, some of Smith's white counterparts
12 had similar attendance records, but did not receive verbal warnings.

13 27.

14 On June 23, 2020, Smith received a written warning for attendance. At the time, OHSU
15 claimed she had 3.5 "occurrences". Smith confirmed to OHSU that the vast majority of the
16 times in which she had been tardy or absent arose from school closures and related childcare.
17 Months prior, in March 2020, OHSU and AFSCME agreed that "employees absent or tardy due
18 to circumstances beyond their control, such as school closures, public transportation shut
19 downs, or delayed tram operations will not be issued occurrences or disciplinary action for these
20 limited incidents." OHSU failed to adhere to the agreement or take into account the reasons
21 why Smith was late, including Covid-related school closures. However, Smith's white co-worker
22 had four "occurrences" during a similar 90-day time period, yet OHSU did not discipline her.

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1 **CLASS ACTION ALLEGATIONS**

2 28.

3 Pursuant to ORCP 32, Plaintiffs bring this case as a class action as defined below.

4 29.

5 Plaintiffs seek to represent two classes. The first class consists of former OHSU
6 employees who were members of the AFSCME or ONA bargaining units, who identify as Black
7 or as a person of color, and who were terminated from employment anytime between
8 September 10, 2019, and the present (Discharge Class). The second class consists of OHSU
9 employees who are members of the AFSCME or ONA bargaining units, who identify as Black or
10 as a person of color, and who received formal disciplinary measures short of discharge anytime
11 between September 10, 2019, and the present (Discipline Class).

12 30.

13 Numerosity. The Class is so numerous that joinder of all members is impracticable.
14 Based on information and belief, the Discharge Class consists of some 100-200 people, and the
15 Discipline Class consists of over 1,000 people.

16 31.

17 Commonality. There are questions of law and fact common to Plaintiffs and the Class.
18 These questions of law and fact include, but are not limited to, the following:

- 19 A. Whether OHSU's discipline policies, practices, and procedures violate Oregon law by
20 discriminating against Black employees and employees of color through disparate
21 treatment;
- 22 B. Whether OHSU's discipline policies, practices, and procedures violate Oregon law by
23 discriminating against Black and employees of color through disparate impact;
- 24 C. Whether members of the classes are entitled to equitable remedies, such as
25 backpay and reinstatement;
- 26

- 1 D. Whether members of the Discipline Class are entitled to injunctive relief;
2 E. Whether members of the classes are entitled to compensatory damages; and
3 F. Whether members of the classes are entitled to attorney fees.

4 32.

5 Typicality. Plaintiffs' claims are typical of the claims of the Class Plaintiffs' claims, like
6 those of the Class, arise out of the same course of conduct by Defendants and are based on the
7 same legal theories. Plaintiffs are members of the Class they seek to represent.

8 33.

9 Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs
10 have retained competent and capable attorneys with experience in employment discrimination
11 cases and class action litigation. Plaintiffs and their counsel are committed to prosecuting this
12 action vigorously on behalf of the Class and have the financial resources to do so. Neither
13 Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the
14 proposed Class. Plaintiffs are committed to having OHSU revise its policy and practices to
15 ensure fair evaluations and discipline and a workplace free of discrimination.

16 34.

17 Superiority. A class action is the superior method for the fair and efficient adjudication of
18 this controversy.

19
20 **FIRST CLAIM FOR RELIEF**
(Race Discrimination Disparate Treatment – ORS 659A.030(1)(b))

21 35.

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

24 36.

25 Defendant's disproportionate and discriminatory discipline constitutes disparate
26 treatment discrimination based on race in violation of ORS 659A.030(1)(b).

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37.

Plaintiff Richards and members of the Discharge class are entitled to backpay in amounts to be proved at trial and reinstatement. Plaintiff Smith and members of the Discipline class are entitled to injunctive relief and attorney fees and costs. ORS 20.107 and ORS 659A.885.

38.

As required by ORCP 32H, plaintiffs gave notice of the causes of action and demanded correction of the wrongs at the time of filing of this Complaint. Unless OHSU complies with the requirements of ORCP 32I, plaintiffs will amend their Complaint to seek monetary damages.

**SECOND CLAIM FOR RELIEF
(Race Discrimination Disparate Impact – ORS 659A.030(1)(b))**

39.

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

40.

Defendant’s disproportionate and discriminatory discipline practices create disparate impact discrimination based on race in violation of ORS 659A.030(1)(b).

41.

Plaintiff Richards and members of the Discharge class are entitled to backpay in amounts to be proved at trial and reinstatement. Plaintiff Smith and members of the Discipline class are entitled to injunctive relief and attorney fees and costs. ORS 20.107 and ORS 659A.885.

42.

As required by ORCP 32H, plaintiffs gave notice of the causes of action and demanded correction of the wrongs at the time of filing of this Complaint. Unless OHSU complies with the requirements of ORCP 32I, plaintiffs will amend their Complaint to seek monetary damages.

1 WHEREFORE, Plaintiffs prays for judgment from Defendant as follows:

- 2 (a) Certification of the class, and designation of Plaintiffs as representative and
3 Plaintiffs' of record as class counsel;
- 4 (b) For the Discipline Class: Equitable relief prohibiting OHSU from engaging in
5 conduct violating the rights of Plaintiffs and Class Members; requiring OHSU to
6 develop, adopt, and apply written policies, to be approved by the Court, which
7 will ensure OHSU's compliance with anti-discrimination laws
- 8 (c) For the Discharge Class: backpay and reinstatement.
- 9 (c) Reasonable attorney fees and costs in an amount to be decided by the Court
10 after trial;
- 11 (d) Pre and post judgment interest in accordance with law; and
- 12 (e) Any other equitable relief this Court may determine to be fair and just.
- 13

14 DATED: December 13, 2021

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