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

RACHELLE MULLEN,

Plaintiff,

v.

LEGACY HEALTH, an Oregon nonprofit  
corporation, and LEGACY EMANUEL  
HOSPITAL & HEALTH CENTER, an  
Oregon nonprofit corporation,

Defendant.

No. 21CV15247

ANSWER AND AFFIRMATIVE  
DEFENSES

In response to the allegations in plaintiff Rachele Mullen’s (“plaintiff”) First Amended Complaint, Defendants Legacy Health and Legacy Emanuel Hospital & Health Center (collectively, “Legacy”) admit, deny, and allege as follows:

**I. PARTIES, JURISDICTION, AND VENUE**

1.

Legacy denies that plaintiff engaged in statutorily protected activity. Legacy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1, and therefore denies them.

2.

In response to paragraph 2, Legacy admits that it is an Oregon nonprofit corporation headquartered in Oregon, that it conducts business in Multnomah County, Oregon, that it has one or more employees in the State of Oregon, and that its current registered agent is Anne Greer, 1919 NW Lovejoy Street, Portland, Oregon 97209. The remaining allegations in

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1 paragraph 2 are legal conclusions to which no response is required. To the extent a response  
2 is required, Legacy denies the conclusory allegations in paragraph 2.

3 3.

4 In response to paragraph 3, Legacy admits that it is an Oregon nonprofit corporation  
5 headquartered in Oregon, that it conducts business in Multnomah County, Oregon, that it has  
6 one or more employees in the State of Oregon, that its current registered agent is Anne Greer,  
7 1919 NW Lovejoy Street, Portland, Oregon 97209, and that it operates a behavioral health  
8 center named Unity Center for Behavioral Health (“Unity”). The remaining allegations in  
9 paragraph 3 are legal conclusions to which no response is required. To the extent a response  
10 is required, Legacy denies the conclusory allegations in paragraph 3.

11 4.

12 Paragraph 4 states a legal conclusion to which no response is required. To the extent  
13 a response is required, Legacy denies the allegations in paragraph 4.

14 5.

15 Legacy admits that its workplace policies prohibit discrimination, harassment, and  
16 retaliation, and that upon receiving a report of discrimination, harassment, or retaliation,  
17 Legacy investigates and takes appropriate corrective action. Except as expressly admitted,  
18 Legacy denies the allegations in paragraph 5.

19 **II. FACTUAL ALLEGATIONS**

20 6.

21 Legacy admits that plaintiff was hired in or around September 2019 and that plaintiff  
22 is a current Legacy employee who works in environmental services. Except as expressly  
23 admitted, Legacy denies the allegations in paragraph 6.

24 7.

25 Legacy denies the allegations in paragraph 7.

26

1 8.

2 In response to paragraph 8, Legacy admits that in or around January 2020, there was  
3 an investigation related to alleged time theft and that plaintiff provided information in  
4 connection with the investigation. Except as expressly admitted, Legacy denies the  
5 allegations in paragraph 8.

6 9.

7 Legacy lacks knowledge or information sufficient to form a belief as to the truth of  
8 the allegations in paragraph 9, and therefore denies them.

9 10.

10 Legacy denies the allegations in paragraph 10.

11 11.

12 Legacy denies the allegations in paragraph 11.

13 12.

14 Legacy lacks knowledge or information sufficient to form a belief as to the  
15 allegations in paragraph 12 and therefore denies them.

16 13.

17 In response to paragraph 13, Legacy admits that in or around March 2020, there was  
18 an investigation related to alleged theft of company property and that plaintiff provided  
19 information in connection with the investigation. Except as expressly admitted, Legacy  
20 denies the allegations in paragraph 13.

21 14.

22 Legacy denies the allegations in paragraph 14.

23 15.

24 Legacy denies the allegations in paragraph 15.

25 16.

26 Legacy denies the allegations in paragraph 16.

1 17.

2 In response to paragraph 17, Legacy admits that plaintiff claimed that someone may  
3 have hidden one of Legacy’s supply carts. Legacy could not corroborate plaintiff’s claim.  
4 Legacy further denies that a temporarily misplaced cart made plaintiff’s job more difficult, as  
5 well as all remaining allegations in paragraph 17.

6 18.

7 Legacy denies the allegations in paragraph 18.

8 19.

9 Legacy denies the allegations in paragraph 19.

10 20.

11 Legacy denies the allegations in paragraph 20.

12 21.

13 Legacy admits that plaintiff sought a transfer to Legacy Emanuel, and that Legacy  
14 granted plaintiff’s request. Legacy denies that plaintiff’s requested transfer was a demotion  
15 and denies that plaintiff sought a transfer due to discrimination, harassment, or retaliation.  
16 Except as expressly admitted, Legacy denies the allegations in paragraph 21.

17 22.

18 In response to paragraph 22, Legacy admits that plaintiff sought to be transferred  
19 back to Unity and that Legacy granted plaintiff’s request.

20 23.

21 Legacy denies the allegations in paragraph 23.

22 24.

23 Legacy denies the allegations in paragraph 24.

24 25.

25 Legacy denies the allegations in paragraph 25.

26

1 26.

2 Legacy admits that Human Resources and management met with plaintiff in July  
3 2020. Legacy denies the remaining allegations in paragraph 26.

4 27.

5 Legacy lacks knowledge or information sufficient to form a belief as to the truth of  
6 the allegations in paragraph 27, and therefore denies them.

7 28.

8 Legacy admits that management discussed plaintiff's attendance with her, and that  
9 plaintiff received progressive discipline related to her poor attendance. Legacy denies the  
10 remaining allegations in paragraph 28.

11 29.

12 Legacy lacks knowledge or information sufficient to form a belief as to the truth of  
13 the allegations in paragraph 29, and therefore denies them.

14 30.

15 Legacy admits that it sent plaintiff home early on or around August 8, 2020 because  
16 she was not scheduled to work that shift. Legacy denies that it sent plaintiff home early due  
17 to any protected conduct or activity, or for any other inappropriate reason.

18 31.

19 Legacy admits that all employees in the Environmental Services Department at Unity  
20 were provided with a non-disciplinary memorandum of understanding in August 2020.  
21 Except as expressly admitted, Legacy denies the allegations in paragraph 31.

22 32.

23 Legacy denies the allegations in paragraph 32.

24 33.

25 Legacy denies the allegations in paragraph 33.

26

1 34.  
2 Legacy denies the allegations in paragraph 34.

3 35.  
4 Legacy denies the allegations in paragraph 35.

5 36.  
6 Legacy denies the allegations in paragraph 36.

7 37.  
8 Legacy denies the allegations in paragraph 37.

9 38.  
10 Legacy denies the allegations in paragraph 38.

11 39.  
12 Legacy denies the allegations in paragraph 39.

13  
14 **III. FIRST CAUSE OF ACTION**  
15 **VIOLATION OF ORS 659A.030, *ET SEQ.***  
16 **DISPARATE TREATMENT BECAUSE OF RACE**  
**(AGAINST ALL DEFENDANTS)**

17 40.  
18 In response to paragraph 40, which re-alleges and incorporates the allegations in the  
19 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

20 41.  
21 Legacy denies the allegations in paragraph 41.

22 42.  
23 Legacy denies the allegations in paragraph 42.

24 43.  
25 Legacy denies the allegations in paragraph 43.

26

1 44.

2 Legacy denies the allegations in paragraph 44.

3 45.

4 Legacy denies the allegations in paragraph 45.

5 46.

6 Legacy denies the allegations in paragraph 46 and denies that any injunctive or  
7 declaratory relief is necessary or appropriate.

8 47.

9 Legacy denies the allegations in paragraph 47.

10 **IV. SECOND CAUSE OF ACTION**  
11 **VIOLATION OF ORS 659A.030, *ET SEQ.***  
12 **HARASSMENT BECAUSE OF RACE**  
13 **(AGAINST ALL DEFENDANTS)**

14 48.

15 In response to paragraph 48, which re-alleges and incorporates the allegations in the  
16 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

17 49.

18 Legacy denies the allegations in paragraph 49.

19 50.

20 Legacy denies the allegations in paragraph 50.

21 51.

22 Legacy denies the allegations in paragraph 51.

23 52.

24 Legacy denies the allegations in paragraph 52.

25 53.

26 Legacy denies the allegations in paragraph 53.

27 54.

1 Legacy denies the allegations in paragraph 54.

2 55.

3 Legacy denies the allegations in paragraph 55 and denies that any injunctive or  
4 declaratory relief is necessary or appropriate.

5 56.

6 Legacy denies the allegations in paragraph 56.

7 **V. THIRD CAUSE OF ACTION**  
8 **VIOLATION OF ORS 659A.030, *ET SEQ.***  
9 **DISPARATE TREATMENT BECAUSE OF NATIONAL ORIGIN**  
10 **(AGAINST ALL DEFENDANTS)**

10 57.

11 In response to paragraph 57, which re-alleges and incorporates the allegations in the  
12 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

13 58.

14 Legacy denies the allegations in paragraph 58.

15 59.

16 Legacy denies the allegations in paragraph 59.

17 60.

18 Legacy denies the allegations in paragraph 60.

19 61.

20 Legacy denies the allegations in paragraph 61.

21 62.

22 Legacy denies the allegations in paragraph 62.

23 63.

24 Legacy denies the allegations in paragraph 63 and denies that any injunctive or  
25 declaratory relief is necessary or appropriate.

26



1 64.

2 Legacy denies the allegations in paragraph 64.

3 **VI. FOURTH CAUSE OF ACTION**  
4 **VIOLATION OF ORS 659A.030, *ET SEQ.***  
5 **HARASSMENT BECAUSE OF NATIONAL ORIGIN**  
6 **(AGAINST ALL DEFENDANTS)**

6 65.

7 In response to paragraph 65, which re-alleges and incorporates the allegations in the  
8 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

9 66.

10 Legacy denies the allegations in paragraph 66.

11 67.

12 Legacy denies the allegations in paragraph 67.

13 68.

14 Legacy denies the allegations in paragraph 68.

15 69.

16 Legacy denies the allegations in paragraph 69.

17 70.

18 Legacy denies the allegations in paragraph 70.

19 71.

20 Legacy denies the allegations in paragraph 71.

21 72.

22 Legacy denies the allegations in paragraph 72 and denies that any injunctive or  
23 declaratory relief is necessary or appropriate.

24 73.

25 Legacy denies the allegations in paragraph 73.

26

1 **VII. FIFTH CAUSE OF ACTION**  
2 **VIOLATION OF ORS 659A.030, *ET SEQ.***  
3 **DISPARATE TREATMENT BECAUSE OF SEX**  
4 **(AGAINST ALL DEFENDANTS)**

4 74.

5 In response to paragraph 74, which re-alleges and incorporates the allegations in the  
6 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

7 75.

8 Legacy denies the allegations in paragraph 75.

9 76.

10 Legacy denies the allegations in paragraph 76.

11 77.

12 Legacy denies the allegations in paragraph 77.

13 78.

14 Legacy denies the allegations in paragraph 78.

15 79.

16 Legacy denies the allegations in paragraph 79.

17 80.

18 Legacy denies the allegations in paragraph 80 and denies that any injunctive or  
19 declaratory relief is necessary or appropriate.

20 81.

21 Legacy denies the allegations in paragraph 81.  
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1 **VIII. SIXTH CAUSE OF ACTION**  
2 **VIOLATION OF ORS 659A.030, ET SEQ.**  
3 **HARASSMENT BECAUSE OF SEX**  
4 **(AGAINST ALL DEFENDANTS)**

5 82.

6 In response to paragraph 82, which re-alleges and incorporates the allegations in the  
7 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

8 83.

9 Legacy denies the allegations in paragraph 83.

10 84.

11 Legacy denies the allegations in paragraph 84.

12 85.

13 Legacy denies the allegations in paragraph 85.

14 86.

15 Legacy denies the allegations in paragraph 86.

16 87.

17 Legacy denies the allegations in paragraph 87.

18 88.

19 Legacy denies the allegations in paragraph 88.

20 89.

21 Legacy denies the allegations in paragraph 89 and denies that any injunctive or  
22 declaratory relief is necessary or appropriate.

23 90.

24 Legacy denies the allegations in paragraph 90.  
25  
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1 **IX. SEVENTH CAUSE OF ACTION**  
2 **VIOLATION OF ORS 659A.030, ET SEQ.**  
3 **RETALIATION**  
4 **(AGAINST ALL DEFENDANTS)**

4 91.

5 In response to paragraph 91, which re-alleges and incorporates the allegations in the  
6 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

7 92.

8 Paragraph 92 is a recitation of law to which no response is required.

9 93.

10 Legacy denies the allegations in paragraph 93.

11 94.

12 Legacy denies the allegations in paragraph 94.

13 95.

14 Legacy denies the allegations in paragraph 95.

15 96.

16 Legacy denies the allegations in paragraph 96.

17 97.

18 Legacy denies the allegations in paragraph 97.

19 98.

20 Legacy denies the allegations in paragraph 98 and denies that any injunctive or  
21 declaratory relief is necessary or appropriate.

22 99.

23 Legacy denies the allegations in paragraph 99.  
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1 **X. EIGHTH CAUSE OF ACTION**  
2 **VIOLATION OF ORS 659A.030(1)(G)**  
3 **AID, ABET, COERCE, COMPEL, AND INCITE**  
4 **(AGAINST DEFENDANT LEGACY HEALTH)**

4 100.

5 In response to paragraph 100, which re-alleges and incorporates the allegations in the  
6 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

7 101.

8 Legacy denies the allegations in paragraph 101.

9 102.

10 Legacy denies the allegations in paragraph 102.

11 103.

12 Legacy denies the allegations in paragraph 103.

13 104.

14 Legacy denies the allegations in paragraph 104.

15 105.

16 Legacy denies the allegations in paragraph 105 and denies that any injunctive or  
17 declaratory relief is necessary or appropriate.

18 106.

19 Legacy denies the allegations in paragraph 106.

20 **XI. NINTH CAUSE OF ACTION**  
21 **VIOLATION OF ORS 659A.030(1)(G)**  
22 **AID, ABET, COERCE, COMPEL, AND INCITE**  
23 **(AGAINST DEFENDANT LEGACY EMANUEL HOSPITAL & HEALTH CENTER)**

23 107.

24 In response to paragraph 107, which re-alleges and incorporates the allegations in the  
25 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

26

1 108.

2 Legacy denies the allegations in paragraph 108.

3 109.

4 Legacy denies the allegations in paragraph 109.

5 110.

6 Legacy denies the allegations in paragraph 110.

7 111.

8 Legacy denies the allegations in paragraph 111.

9 112.

10 Legacy denies the allegations in paragraph 112 and denies that any injunctive or  
11 declaratory relief is necessary or appropriate.

12 113.

13 Legacy denies the allegations in paragraph 113.

14 **XII. TENTH CAUSE OF ACTION**  
15 **VIOLATION OF ORS 659A.199**  
16 **RETALIATION**  
17 **(AGAINST ALL DEFENDANTS)**

17 114.

18 In response to paragraph 114, which re-alleges and incorporates the allegations in the  
19 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

20 115.

21 Paragraph 115 is a recitation of law to which no response is required.

22 116.

23 Legacy denies the allegations in paragraph 116.

24 117.

25 Legacy denies the allegations in paragraph 117.

26

1 118.

2 Legacy denies the allegations in paragraph 118.

3 119.

4 Legacy denies the allegations in paragraph 119.

5 120.

6 Legacy denies the allegations in paragraph 120.

7 121.

8 Legacy denies the allegations in paragraph 121.

9 **XIII. ELEVENTH CAUSE OF ACTION**  
10 **VIOLATION OF ORS 659A.355**  
11 **RETALIATION**  
12 **(AGAINST ALL DEFENDANTS)**

12 122.

13 In response to paragraph 122, which re-alleges and incorporates the allegations in the  
14 Complaint, Legacy admits, denies, and re-alleges its responses as stated above.

15 123.

16 Paragraph 123 is a recitation of law to which no response is required.

17 124.

18 Legacy denies the allegations in paragraph 124.

19 125.

20 Legacy denies the allegations in paragraph 125.

21 126.

22 Legacy denies the allegations in paragraph 126.

23 127.

24 Legacy denies the allegations in paragraph 127.

25 128.

26 Legacy denies the allegations in paragraph 128.

1 129.

2 Legacy denies the allegations in paragraph 129.

3 **XIV. OTHER CAUSES OF ACTION**

4 130.

5 The reservation in paragraph 130 requires no response. To the extent a response is  
6 necessary, Legacy denies the reservation in paragraph 130.

7 **XV. JURY TRIAL REQUESTED**

8 131.

9 The request for jury trial in paragraph 131 requires no response. To the extent a  
10 response is necessary, Legacy denies that plaintiff is entitled to a jury trial.

11 132.

12 Except as expressly admitted, Legacy denies all of the allegations in plaintiff's  
13 Complaint and the whole thereof.

14 **AFFIRMATIVE DEFENSES**

15 Without assuming plaintiff's burden of proof on any issue, Legacy alleges the  
16 following affirmative defenses:

17 133.

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(Failure to State a Claim)**

20 Plaintiff fails to state a claim upon which relief can be granted.

21 134.

22 **SECOND AFFIRMATIVE DEFENSE**

23 **(Statute of Limitations)**

24 Plaintiff's claims are barred, in whole or in part, by the applicable statutes of  
25 limitation.

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135.

**THIRD AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

Without conceding that plaintiff has suffered any damages, plaintiff has failed, in whole or in part, to mitigate her damages.

136.

**FOURTH AFFIRMATIVE DEFENSE**

**(Legitimate, Non-Discriminatory, Non-Retaliatory Reasons)**

Every action taken regarding plaintiff or her employment was taken for legitimate, non-discriminatory, and non-retaliatory reasons.

137.

**FIFTH AFFIRMATIVE DEFENSE**

**(Good Faith Efforts; Not Willful)**

Any alleged damages, including punitive damages, are inappropriate or barred because Legacy made good faith efforts to comply with applicable law. Any alleged statutory violations were not willful.

138.

**SIXTH AFFIRMATIVE DEFENSE**

**(Preventative Measures; Failure to Report)**

Legacy exercised reasonable care to prevent illegal discrimination and retaliation in the workplace. Plaintiff unreasonably failed to take advantage of corrective opportunities provided by Legacy. Without admitting that plaintiff reported concerns, Legacy took prompt and appropriate remedial action in response to plaintiff's concerns as soon as plaintiff reported them.

1 139.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 **(Failure to Exhaust Administrative Remedies)**

4 Plaintiff failed to utilize and exhaust available administrative remedies.

5  
6 WHEREFORE, Legacy prays for judgment as follows:

- 7 1. Dismissing plaintiff's lawsuit;
- 8 2. Awarding Legacy its costs, disbursements, and attorneys' fees incurred in
- 9 defending this action; and
- 10 3. For such other relief as the Court deems just and equitable.

11  
12 DATED: May 28, 2021.

13 STOEL RIVES LLP

14  
15 /s/ Caroline J. Sundbaum  
16 BRENDA K. BAUMGART, OSB No. 992160  
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23 Attorneys for Defendants  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document titled **ANSWER AND AFFIRMATIVE DEFENSES** on the following named person(s) on the date indicated below by

- mailing with postage prepaid.  email (courtesy copy only).
- hand delivery.  email pursuant to agreement among parties/counsel dated \_\_\_\_\_, consenting to service via email.
- facsimile transmission.  email, for which a confirmation of receipt of the email and the attachment by the following named person(s) has been received by the undersigned via the method of \_\_\_\_\_.
- overnight delivery.  eService via Odyssey File & Serve.

If by mail or overnight delivery, a true copy of the above referenced document(s) was served upon said person(s) or party(ies), contained in a sealed envelope or package, addressed to said person(s) or party(ies) at their last-known address(es) indicated below.

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DATED: May 28, 2021.

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