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

REGINALD DANIELS,
Plaintiff,

v.

PROVIDENCE ST. VINCENT MEDICAL
CENTER, assumed business name of
PROVIDENCE HEALTH & SERVICES -
OREGON, an Oregon domestic nonprofit
corporation;
Defendant.

Case No.:
COMPLAINT
(Race Discrimination and Age
Discrimination - disparate treatment;
wrongful termination ORS 659A.030;
Retaliation;ORS659A.199)
FILING FEE: \$594.00
ORS 21.160(1)(c)
PRAYER AMOUNT: \$700,000
CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION
JURY TRIAL REQUESTED

Plaintiff alleges:

FACTS

1.

At all times material to these claims, Plaintiff Reginald Daniels (“Plaintiff”) was an Oregon resident.

2.

At all times material hereto Defendant Providence Health & Services - Oregon (“Defendant”) was an Oregon nonprofit corporation operating hospitals and medical offices throughout Oregon, including the dba Providence St. Vincent Medical Center.

1 3.

2 Defendant employs more than 50 employees in Oregon.

3 4.

4 At all times material to his claims, Plaintiff was employed by Defendant as a Surgical
5 Technologist in the cardiovascular operating room department (“CVOR”) at Providence St.
6 Vincent Medical Center (“PSVMC”).

7 5.

8 Plaintiff is a mature 57-year-old African American man with a resonant voice.

9 6.

10 Plaintiff was hired by Defendant in 1986 as a Food Service worker. Plaintiff attended
11 college while working, training to become a Surgical Technologist.

12 7.

13 Plaintiff began working as a Surgical Technologist in Surgical Services assigned to the
14 cardiovascular operating room department (“CVOR”) in 1998.

15 8.

16 Plaintiff was a successful and committed Surgical Technologist in the CVOR, regularly
17 earning performance ratings of “exceeding expectations” or “far exceeding expectations,” lauded
18 as one of the department’s most skilled Surgical Technologists. He was relied upon in the CVOR
19 for his commitment to service excellence, and for the precision, professionalism, and skill he
20 brought to his work and his team.

21 9.

22 Throughout his tenure as a Surgical Technologist, Plaintiff was the only African
23 American permanent hire member of the surgical team working in CVOR, excluding ancillary
24 staff. At the time of his termination, Plaintiff was the oldest and most senior Surgical
25 Technologist in the CVOR. He was regularly assigned to train and precept nurses and surgical
26 technologists newly assigned to train in the scrub role.

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10.

Despite his excellence in his job, Plaintiff was criticized and disciplined more frequently and harshly than white colleagues for similar behaviors.

11.

On about December 2, 2016, Plaintiff was counseled for the “tone” he used in training Andrea Webber, a surgical technologist newly assigned to CVOR. Plaintiff noted that he had not used an appropriate tone with Ms. Webber, but that Ms. Webber, a white female married to the Manager of the Main Operating Room, did not have the skillset the team had been told she had and that it raised serious patient safety issues.

12.

Less than a week later, on about December 8, 2016, Plaintiff was assigned to work in the Main Operating Room (“MOR”), where he had not worked in ten years, and for which he had no up-to-date training. Plaintiff reasonably declined the assignment without training. Defendant issued him an inappropriate corrective action alleging he “refused” to work in the MOR and he used an unprofessional tone when training a coworker. Plaintiff went through the Dispute Resolution Process, and the discipline was closed and his clinical ladder restored December 2017.

13.

Based on his tenure of over 20 years in the same department, Plaintiff became exempt from taking call shifts in about September 2018. Plaintiff continued to take occasional call shifts to assist the team, though he was not required to do so. Less senior team members were required to take regularly scheduled call, which caused resentment against Plaintiff among some of his colleagues. These coworkers regularly hassled him about taking call despite knowing that he was no longer required to do so. On about June 13, 2019, a coworker began badgering Plaintiff about taking call, and Plaintiff used a profane word describing his exhaustion with having the settled issue raised again.

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14.

On June 18, 2019, Plaintiff was ordered to break scrub and immediately accompany his manager, CVOR Department Manager Angela Fish to Human Resources to discuss an “incident” that had occurred the previous week. He asked and was told that he did not need any representation at the meeting. They met with HR representative Shawn Ferguson and Plaintiff was told that the meeting was just part of a “discovery process” regarding his use of profanity, asked him what happened. At the close of the meeting, Plaintiff returned to work.

15.

On the morning of June 27, 2019, when Plaintiff reported to work after a vacation, he was informed that he had a meeting with HR at 8:30a.m. with CVOR Department Manager Fish and HR Representative Ferguson. Plaintiff brought a witness, Charge Nurse Sarah Moore, but was told by HR Representative that he could not have a witness. At the meeting, Defendant issued Plaintiff a verbal written warning for having used “profanity in a raised voice to another caregiver.” Plaintiff objected to the corrective action as being inaccurate, not following progressive discipline protocol, and being disproportionate, as many people had used profanity in the CVOR. He pointed out that the coworker around whom he said a profane word was clearly comfortable conversing with him, as she had initiated three separate contacts with him, one shortly after the “incident.”

16.

Plaintiff formally stated his belief that the excessive discipline outside of the usual disciplinary process was harassment and discrimination based on his race. He was told that he had been disciplined sometime before, so this was “continuing discipline.” Plaintiff did not sign the document and returned to work.

17.

Later the same day, Plaintiff was again ordered to go to HR immediately. He was met by Mr. Ferguson and Director of Surgical Services Karin Muilman. Plaintiff stated that being called

1 into HR twice in one day when nothing was going on felt like intimidation and harassment.
2 Plaintiff asked Director Muilman to confirm that other staff used profanity, which she did but
3 told him he was not in fact being written up for profanity. When he asked what was going on
4 then, Ms. Muilman stated that it was not her place to comment and Mr. Ferguson just told him
5 “reflect on things.”

6 18.

7 Plaintiff initiated the dispute resolution process to rebut the discipline on July 5, 2019. In
8 the dispute resolution process, Plaintiff detailed his concerns that he was being discriminated
9 against and harassed on the basis of his race and requested that the corrective action be removed
10 from his personnel file. Defendant informed Plaintiff that there would be an internal investigation
11 of his complaint of discrimination.

12 19.

13 On about October 1, 2019, Plaintiff was working with coworker Andrea Webber. During
14 a surgical procedure in the CVOR, Ms. Webber secured and opened sterile supplies which had
15 not been requested. Plaintiff informed her that it was not necessary and was wasteful. He then
16 observed her mixing a surgical product in a way contrary to their recent professional in-service
17 training. He informed Ms. Webber of this and she became upset, although economical use of
18 surgical supplies is a requirement of the surgical technologist position and a factor in personnel
19 evaluations. Plaintiff did not use a raised voice or yell at Ms. Webber regarding her waste of
20 valuable surgical supplies.

21 20.

22 After the conclusion of the surgery, Ms. Webber confronted Plaintiff in the main core of
23 the CVOR, demanding to meet with him immediately. They went into a CVOR operating room
24 together, and she yelled at him that he should not have pointed out her errors in front of others.
25 She later complained to Defendant that Plaintiff had “bullied” her and that he raised his voice at

26 ///

1 her during surgery. Plaintiff clearly denied having done so, and reported that Ms. Webber had
2 subsequently yelled at him.

3 21.

4 Defendant placed Plaintiff on administrative leave because of Ms. Webber's complaint,
5 although the advice he gave her about customary practice in the CVOR during the surgical
6 procedure was accurate and not disrespectful. Defendant did not take any disciplinary action
7 against Ms. Webber for her unprofessional actions against Plaintiff.

8 22.

9 The "internal investigation" of Plaintiff's complaint of race discrimination was closed on
10 or about October 24, 2019, with no effective action on the part of Defendant. Defendant
11 predictably informed Plaintiff that no evidence was found of racial discrimination.

12 23.

13 There is no indication that Defendant's investigation thoroughly reviewed Mr. Daniels's
14 claims that his race and age were factors in the disciplinary actions taken against him.

15 24.

16 On October 25, 2019, the dispute resolution process closed with a denial of the Plaintiff's
17 claims of discrimination and a refusal to remove the related corrective action from his file.

18 25.

19 On October 29, 2019, Defendant informed Plaintiff that his employment was being
20 terminated effective November 1, 2019.

21
22 **FIRST CLAIM FOR RELIEF**

23 (Discrimination because of race – disparate treatment; ORS 659A.030(a))

24 26.

25 Plaintiff re-alleges paragraphs 1-25 above.

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27.

Plaintiff was subjected to micromanagement and criticism not directed at his white colleagues, which resulted in his receiving repeated disparate disciplinary action, having his clinical ladder taken away from him for a year, and blocking his application for a lateral transfer to a better paying position in the Cath Lab when he had already been encouraged to apply by the Lab Manager, told by the internal recruiter that he was a great fit, and had begun the process of researching the required certification and time to train. Within a day or two of informing his Department Manager Fish that he had applied, he got an email stating that he would not be eligible for the job.

28.

Plaintiff regarded patient safety with the utmost seriousness and emphasized the need to follow procedure. He and was acknowledged for his skill, care and his appropriate use of surgical materials. Being forced to work with a white coworker without the skill to adequately protect patient safety and being disciplined for protecting patient safety was extremely stressful

29.

Other workers in the CVOR had regularly used profanity or raised voices without consequence.

30.

However on the occasion when Plaintiff used profanity in the CVOR and allegedly was harsh in correcting a coworker’s surgical set up procedure he was singled out for disciplinary action based in fact on the basis on his race and age.

31.

Defendant’s actions in disciplining Plaintiff ostensibly for tone of voice and using a swear word, portraying him as a stereotypical “angry Black man” despite his stellar work, were discriminatory based on his race.

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32.

Defendant's actions during his employment were intentional and in deliberate disregard of the civil rights of Plaintiff and were done with improper and discriminatory motive.

33.

Because of Defendant's actions in submitting Plaintiff to disparate discipline, blocking his transfer to another department, and depriving him of his clinical ladder for a year, Plaintiff is entitled to recover lost wages in the amount to be determined at trial, which amount is alleged to be \$50,000. 659A.885

34.

As a result of Defendant's discriminatory actions during his employment Plaintiff has suffered anxiety, insecurity, stress, depression, impacting his relationship family and friends and other emotional distress noneconomic damage for which he is entitled to recover compensatory damages pursuant to ORS 659A.885 as determined by the jury, which amount is alleged to be \$200,000.

35.

Plaintiff is entitled to recover attorney fees, costs, and disbursements incurred to enforce his rights pursuant to ORS 659A.885(1).

SECOND CLAIM FOR RELIEF

(Discrimination because of race – termination; ORS 659A.030(a))

36.

Plaintiff re-alleges paragraphs 1-25 and 28.

37.

Plaintiff complained of discriminatory discipline in a meeting with HR in June 2019, and through a dispute resolution process beginning July 2019. He was informed via letter dated October 24, 2019, that he would not be retaliated against for his complaint of racial

1 discrimination. On or about that same date, he was told that no evidence of racial discrimination
2 had been found. The dispute resolution process formally closed with his dispute denied on
3 October 25, 2019.

4 38.

5 Plaintiff was notified that his employment was being terminated on October 29, 2019,
6 ostensibly for “bullying” and embarrassing an inexperienced coworker when he gave her
7 appropriate instructions in surgical set up.

8 39.

9 Plaintiff was devastated to be terminated. He had worked since he was 15 years old. He
10 was stunned and shocked and unprepared to seek new employment or even apply for
11 unemployment. But he immediately began trying to mitigate his damages. He was offered a job
12 with Providence Alaska which he was seriously considering when the supervising surgeon
13 contacted him and let him know that Providence had blocked his opportunity to work by listing
14 him as not rehirable.

15 40.

16 There were other jobs for which Plaintiff was qualified and applied but was dropped at
17 the last minutes after effectively being told that he was hired, evidently because Defendant was
18 blocking him.

19 41.

20 Defendant's actions in subjecting him to disparate discipline, micromanaging his work,
21 perpetually criticizing him for actions tolerated in white colleagues, terminating him from his
22 employment and effectively blocking his reemployment opportunities were intentional and in
23 deliberate disregard of the civil rights of Plaintiff and were done with improper and
24 discriminatory motive.

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42.

Plaintiff applied himself to the job search and was able to effectively mitigate within approximately one month. As a result of Defendant's discriminatory act in terminating his employment, Plaintiff is entitled to recover lost wages in the amount to be determined at trial, which amount is alleged to be \$10,000 plus the value of lost medical and retirement benefits.

43.

As a result of Defendant's purposeful actions, Plaintiff has suffered and continues to suffer anxiety, insecurity, loss of sleep, depression, worry for his family, loss of appetite, sense of failure as a provider for his family and other emotional distress noneconomic damages for which he is entitled to recover compensatory damages pursuant to ORS 659A.885, as determined by the jury, which amount is alleged to be \$400,000.

THIRD CLAIM FOR RELIEF

(Prohibited retaliation by employer; ORS 659A.199)

44.

Plaintiff realleges paragraphs 1-22 and 24-28.

45.

When Plaintiff brought concerns of patient safety based on the insufficient skillset of a white female coworker, he was repeatedly assigned to work with her and accused of bullying when he would give appropriate instructions.

46.

Plaintiff complained of discriminatory discipline in a meeting with HR in June 2019, and through a dispute resolution process beginning July 2019. He was informed via letter dated October 24, 2019, that he would not be retaliated against for his complaint of racial discrimination. On or about that same date, he was told that no evidence of racial discrimination

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1 had been found. The dispute resolution process formally closed with his dispute denied on
2 October 25, 2019.

3 47.

4 Plaintiff was notified by a very general letter dated October 30, 2019, that his employment was
5 being terminated as of November 1, 2019, ostensibly “due to behavior and conduct that does not
6 consistently meet the Standard of Behavior, Core Values and Code of Conduct of Providence,”
7 behavior including complaining of risks to patient safety and complaining of racial
8 discrimination.

9 48.

10 The timing of the Plaintiff’s termination five days after the closure of the dispute
11 resolution and his “investigation” into his discrimination complaint tie his allegations of
12 discrimination to his firing.

13 49.

14 Defendant's actions were intentional and in deliberate disregard of the civil rights of
15 Plaintiff and were done with improper and discriminatory motive.

16 50.

17 Plaintiff applied himself to the job search and was able to effectively mitigate within
18 approximately one month. As a result of Defendant's discriminatory act in terminating his
19 employment, Plaintiff is entitled to recover lost wages in the amount to be determined at trial,
20 which amount is alleged to be \$10,000 plus the value of lost medical and retirement benefits.

21 51.

22 As a result of Defendant's purposeful actions, Plaintiff has suffered and continues to
23 suffer anxiety, insecurity, loss of sleep, depression, worry for his family, loss of appetite, sense
24 of failure as a provider for his family and other emotional distress noneconomic damages for
25 which he is entitled to recover compensatory damages pursuant to ORS 659A.885, as determined
26 by the jury, which amount is alleged to be \$400,000.

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52.

Plaintiff is entitled to recover attorney fees, costs, and disbursements incurred to enforce his rights pursuant to ORS 659A.885(1).

WHEREFORE, Plaintiff prays for the relief requested in each of his claims alleged above and demands a jury trial on those claims to which he is entitled and requests such other relief that the Court deems just and equitable.

DATED this 24th day of September, 2021.

s/ Sue-Del McCulloch
Sue-Del McCulloch, OSB # 950942
sdmcculloch@sdmlaw.net
Attorney for Plaintiff