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

CYNTHIA AMBER PETTIT,

Plaintiff,

v.

ELECTRO SCIENTIFIC  
INDUSTRIES, INC.,

Defendant.

) Case No.  
)  
) **COMPLAINT**  
) (Unlawful Discrimination Based On Sexual  
) Orientation, Hostile Work Environment Based  
) on Sexual Orientation, Whistleblowing,  
) Failure to Pay Wages upon Termination,  
) Wrongful Discharge)  
)  
) Damages in the amount of \$555,581.91; filing  
) fee per ORS §21.160(1)(c)  
)  
) **NOT SUBJECT TO MANDATORY**  
) **ARBITRATION**  
)  
) **JURY TRIAL DEMANDED**  
)

**COMPLAINT**

Plaintiff, Cynthia Amber Pettit (hereafter “Plaintiff”), through counsel, alleges as follows:

1.

Plaintiff is a female, adult resident of Klamath County, Oregon, and a former employee of Electro Scientific Industries, Inc. (hereafter “Defendant”).

2.

On information and belief, Defendant is a domestic business corporation, registered

1 with the State of Oregon, with a principal place of business in the County of Washington, State  
2 of Oregon.

3 3.

4 All facts alleged herein took place in Klamath County, Oregon.

5 4.

6 At all material times, Plaintiff's supervisors and coworkers, Allen Burns, Nacho  
7 Hernandez, Raquel Moss and Ray Moss, were authorized agents and employed by Defendant  
8 and were acting within the course and scope of such agency and/or employment.

9 5.

10 Plaintiff was hired by Defendant on or about March 5, 2015, as a Machinist.

11 6.

12 At all material times, Nacho Hernandez was Plaintiff's immediate supervisor, and Allen  
13 Burns was the plant manager.

14 7.

15 At all material times, Ray Moss and Raquel Moss were Plaintiff's coworkers and were  
16 married to each other.

17 8.

18 Plaintiff identifies as a lesbian.

19 9.

20 Throughout Plaintiff's employment with Defendant, Plaintiff felt regularly taunted by  
21 coworkers regarding her sexual orientation. Plaintiff's coworkers made jokes about lesbians  
22 and speculated regarding her sexual orientation.

23 10.

24 Plaintiff's managers and supervisors were aware of the behavior in paragraph nine but  
25 took no corrective action.

1 11.

2 In or around January of 2017, Plaintiff relayed a work-related message to Ms. Moss on  
3 Defendant's premises and during work hours. Ms. Moss began to yell at, spit at, and intimidate  
4 Plaintiff by "getting in her face" and calling her a "bitch." The incident was witnessed by  
5 Plaintiff's coworkers and supervisor, Mr. Hernandez.

6 12.

7 Plaintiff felt violated, harassed and humiliated during the above incident and duly  
8 reported it to the plant manager, Mr. Burns. Defendant did not discipline Ms. Moss for these  
9 actions.

10 13.

11 In or around January of 2017, Plaintiff's coworker, Mr. Moss, Ms. Moss's husband,  
12 approached Plaintiff in an intimidating manner as she was arriving to work. Mr. Moss raised  
13 his voice at Plaintiff and threatened her not to talk to his wife, Ms. Moss. Plaintiff reported this  
14 incident to the plant manager, Mr. Burns. Defendant did not discipline Mr. Moss for these  
15 actions.

16 14.

17 In or around February 2017, Defendant disciplined Plaintiff for allegedly calling Ms.  
18 Moss a "bitch." Plaintiff has never called Ms. Moss a "bitch."

19 15.

20 On or around March 27, 2017, Plaintiff encountered Mr. Moss in the hallway of  
21 Defendant's premises. Mr. Moss was carrying a box in his left hand. Plaintiff stopped and  
22 moved to the side to allow Mr. Moss to pass by her. Mr. Moss did not move but stood in the  
23 hallway blocking Plaintiff from leaving the office.

24 16.

25 As Mr. Moss refused to move, Plaintiff, scared and intimidated, tried to pass by him on

1 his left side. As Plaintiff moved towards Mr. Moss, he leaned towards her, slammed his left  
2 shoulder into her chest and said “Watch where you’re going!”

3 17.

4 Plaintiff felt scared and intimidated. She duly reported the above incident to the plant  
5 manager, Mr. Burns. Mr. Burns informed her that Mr. Moss had also reported a different  
6 version of the incident to him and that he would forward both reports to Human Resources.

7 18.

8 Defendant, through its employees, failed to investigate any of the above incidents, and  
9 no action was taken against the perpetrators before Plaintiff’s employment was terminated.

10 19.

11 Defendant, through its agents, terminated Plaintiff’s employment on or about March 30,  
12 2017. The reason given was “not getting along with a coworker.”

13 20.

14 During Plaintiff’s employment with Defendant, she was called into work for several  
15 Saturday shifts. When she reported for work, she was told not to clock in. Plaintiff was  
16 promised by Defendant’s agents that she would be paid four hours for each of these Saturday  
17 shifts. Defendant did not pay Plaintiff for those hours worked.

18 21.

19 As a proximate result of Defendant’s actions, Plaintiff has sustained and continues to  
20 sustain substantial losses in earnings and other economic damages in an amount not to exceed  
21 \$200,000.

22 22.

23 As a proximate result of Defendant’s actions, Plaintiff has suffered humiliation,  
24 emotional distress, and mental pain and anguish, all to her non-economic damage in an amount  
25 not to exceed \$350,000.

1 23.

2 Plaintiff reserves the right to amend this complaint pursuant to ORS §31.725.

3  
4 **FIRST CLAIM FOR RELIEF**

5 (Unlawful Discrimination Based on Sexual Orientation, ORS §659A.030(1)(a))

6 24.

7 Plaintiff re-alleges paragraphs 1-23 above as though fully set forth herein.

8 25.

9 Oregon Revised Statutes (ORS) §659A.030(1)(a) was in full force and effect and was  
10 binding on Defendant.

11 26.

12 Defendant, through its employees, discriminated against Plaintiff based on her sexual  
13 orientation by terminating Plaintiff's employment without investigation into incidents with her  
14 coworkers. Defendant, through its agents, targeted, falsely accused and disciplined Plaintiff for  
15 those incidents. Such discrimination is in violation of ORS §659A.030(1)(a), and has resulted  
16 in injury and damage to Plaintiff as alleged herein.

17 27.

18 As a proximate result of Defendant's knowing, willful, and intentional discrimination  
19 against Plaintiff, she has sustained and continues to sustain substantial losses in earnings and  
20 other employment benefits.

21 28.

22 As a proximate result of Defendant's knowing, willful and intentional discrimination  
23 against Plaintiff, she has suffered humiliation, emotional distress, and mental pain and anguish,  
24 all to her non-economic damage.

1 **SECOND CLAIM FOR RELIEF**

2 (Hostile Work Environment - Based on Sexual Orientation, ORS §659A.030(1)(b))

3 29.

4 Plaintiff re-alleges paragraphs 1 through 28 above as though fully set forth herein.

5 30.

6 ORS §659A.030(1)(b) was in full force and effect and was binding on Defendant.

7 31.

8 Defendant, through its employees, subjected Plaintiff to a hostile work environment  
9 based on her sexual orientation when it willfully ignored lesbian jokes and other taunts from  
10 coworkers directed toward Plaintiff. Defendant failed to investigate and address the illegal  
11 behavior to which the Mosses subjected Plaintiff. Defendant’s lack of action, effectively,  
12 affirmed her coworkers’ illegal behavior and fostered a hostile work environment for Plaintiff.  
13 Such treatment is in violation of ORS §659A.030(1)(b), and has resulted in injury and damage  
14 to Plaintiff as alleged herein.

15 32.

16 As a proximate result of Defendant’s knowing, willful, and intentional hostile work  
17 environment, Plaintiff has sustained and continues to sustain substantial losses in earnings and  
18 other employment benefits.

19 33.

20 As a proximate result of Defendant’s knowing, willful and intentional hostile work  
21 environment, Plaintiff has suffered humiliation, emotional distress, and mental pain and  
22 anguish, all to her non-economic damage.

23 **THIRD CLAIM FOR RELIEF**

24 (Whistleblower Retaliation, ORS §659A.199)

1 34.

2 Plaintiff re-alleges paragraphs 1 through 33 above as though fully set forth herein.

3 35.

4 ORS §659A.199 was in full force and effect and was binding on Defendant.

5 36.

6 Defendant, through its employees, retaliated against Plaintiff by terminating her  
7 employment for resisting and repeatedly reporting the Mosses' illegal behavior. This type of  
8 retaliation by Defendant is in violation of ORS §659A.199, and has resulted in injury and  
9 damage to Plaintiff as alleged herein.

10 37.

11 As a proximate result of Defendant's knowing, willful, and intentional retaliation  
12 against Plaintiff, she has sustained and continues to sustain substantial losses in earnings and  
13 other employment benefits.

14 38.

15 As a proximate result of Defendant's knowing, willful and intentional retaliation  
16 against Plaintiff, she has suffered humiliation, emotional distress, and mental pain and anguish,  
17 all to her non-economic damage.

18  
19 **FOURTH CLAIM FOR RELIEF**

20 (Failure to Pay Wages on Termination, ORS §652.140)

21 39.

22 Plaintiff re-alleges paragraphs 1 through 38 above as though fully set forth herein.

23 40.

24 ORS §652.140 was in full force and effect and was binding on Defendant.

25 41.

1 The amounts owed in paragraph 20 were due on Plaintiff's final paycheck. Those amounts  
2 were then not paid pursuant to ORS §652.140 upon separation of Plaintiff from employment  
3 with Defendant.

4 42.

5 Plaintiff is thus entitled to a penalty wage of 8 hours per day for the maximum 30 days,  
6 plus attorney's fees pursuant to ORS §652.200, as well as pre-judgment interest at nine percent  
7 per annum pursuant to ORS §82.010. At \$23.26 per hour (Plaintiff's average wage over the last  
8 30 days), the total penalty wage owed under ORS §652.150 is \$5,581.91, plus the back wages  
9 of an undetermined amount.

10  
11 **FIFTH CLAIM FOR RELIEF**

12 (Wrongful Discharge)

13 43.

14 Plaintiff re-alleges paragraphs 1 through 40 above as though fully set forth herein.

15 44.

16 Defendant terminated Plaintiff's employment based on her alleged inability to get along  
17 with coworkers. However, Defendant failed to investigate the incidents of illegal behavior of  
18 Plaintiff's coworkers toward her. Defendant targeted Plaintiff, singling her out, disciplining her  
19 and terminating her employment

20 45.

21 As a proximate result of Defendant's discrimination, Plaintiff has sustained losses in  
22 earnings and other employment benefits.

23 46.

24 As a proximate result of Defendant's discrimination, Plaintiff has suffered emotional  
25 distress and other non-economic damages.



1  
2 47.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a jury trial on all issues.  
5

6 48.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 9 a) Economic damages in the amount to be determined by the trier of fact, not to  
10 exceed \$200,000;
- 11 b) Non-economic damages in the amount to be determined by the trier of fact, not  
12 to exceed \$350,000;
- 13 c) Penalty wage of \$5,581.91;
- 14 d) Reasonable attorney's fees for counts 1 through 6 pursuant to ORS §659A.885;
- 15 e) Costs and disbursements incurred herein; and
- 16 f) Other relief as the Court deems just and equitable.  
17

18 Dated: December 21, 2017

Respectfully submitted,

19  
20 **STEVENS & LEGAL, LLC**

21 /s/ Michael O. Stevens  
22 Michael O. Stevens, OSB No. 095198  
23 Attorney for Plaintiff

24 Trial Attorney:  
25 Michael O. Stevens, OSB No. 095198

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