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

JACOBA L. KEMPER,

Plaintiff,

v.

BRUCE CHEVROLET, INC.,

Defendant.

) Case No.
)
) **COMPLAINT**
) (Sex Discrimination, Hostile Work
) Environment, Sexual Harassment, Failure to
) Restore to Previous Position,
) Retaliation/Discrimination for Invoking OFLA
) Rights, Whistleblowing, Breach of Contract)
)
) Damages in the amount of \$735,000; filing fee
) per ORS §21.160(1)(c)
)
) **NOT SUBJECT TO MANDATORY**
) **ARBITRATION**
)
) **JURY TRIAL DEMANDED**
)

COMPLAINT

Plaintiff, Jacoba Kemper (hereafter “Plaintiff”), through counsel, alleges as follows:

1.

Plaintiff is a female, adult resident of Washington County, Oregon and a former employee of Bruce Chevrolet, Inc. (hereafter “Defendant”).

2.

On information and belief, Defendant is a foreign business corporation, duly registered with the State of Oregon, with a principal place of business in the City of Hillsboro, in the

1 County of Washington, State of Oregon.

2 3.

3 All facts alleged herein took place in Washington County, Oregon.

4 4.

5 At all material times, Plaintiff’s supervisors and coworkers, Jason Sontag, Kyle Olinger
6 and Ron Karcher, were authorized agents and employed by Defendant and were acting within
7 the course and scope of such agency and/or employment.

8 5.

9 Plaintiff was hired by Defendant on or about January 9, 2013 as a Service Advisor in
10 the body shop of its car dealership.

11 6.

12 When Plaintiff was offered and accepted this position, Defendant’s vacation policy was
13 as follows:

Length of Continuous Employment as of Vacation Anniversary Date		Full Vacation Benefit
One Year	One weeks average pay	40 hours
More than one year	Two weeks average pay	80 hours
Seven or more years	Three weeks average pay	120 hours

18 7.

19 Defendant eliminated Plaintiff’s forty (40) hours of vacation time – even though she
20 had been employed more than one year – and replaced it with statute-mandated sick time,
21 which could only be used for health reasons. Since sick time could only be used for limited
22 reasons, Plaintiff was deprived of forty (40) hours of vacation time.

23 8.

24 In or around 2014, another position with Defendant (a promotion) became open.
25 Plaintiff’s supervisors, and other Defendant’s employees, failed to disclose the availability of

1 the promotion to Plaintiff. She was, therefore, unable to apply or be considered for the
2 promotion, although she was qualified for it.

3 9.

4 The person who was promoted to this position was a male coworker of Plaintiff's. He
5 had no more experience or education than Plaintiff, no driver's license (a requirement for
6 employment), and a criminal record.

7 10.

8 There are no women in managerial positions employed with Defendant, except for an
9 office manager.

10 11.

11 Over the course of Plaintiff's employment, she experienced at least three separate
12 instances of sexual harassment by Defendant's employees and/or on Defendant's premises:

- 13 A. co-worker, Ron Karcher, asked Plaintiff if her breasts were real;
14 B. an employee of General Motors (the parent company of Chevrolet) attempted to
15 hold her hand while making remarks about getting to know Plaintiff while both
16 were on the job;
17 C. a sexual relationship with her supervisor, Jason Sontag; and
18 D. another co-worker touched her breast.

19 12.

20 Plaintiff felt violated, harassed and discriminated against during these instances and
21 duly reported them to her superiors and Defendant's other employees.

22 13.

23 Defendant, through its employees, failed to document these instances of sexual
24 harassment in any incident reports, did not investigate, and no action was taken against the
25 perpetrators of the sexual harassment.

1 14.

2 During Plaintiff's employment, she was repeatedly and continually singled out,
3 reprimanded, belittled, admonished and verbally mistreated for mistakes (her own or mistakes
4 of others that were attributed to her) and behaviors that were tolerated in others without
5 complaint. For example, male coworkers were frequently late for work without any complaint
6 from the management, while Plaintiff was threatened with disciplinary action when late.

7 15.

8 Defendant's employee and Plaintiff's supervisor, Jason Sontag, frequently demeaned
9 and disrespected Plaintiff in front of other employees. He explained this conduct to her saying
10 that she "deserved to be disrespected because she bark[ed] orders."

11 16.

12 In or about December 17, 2015, Plaintiff began leave under the Oregon Family Leave
13 Act (OFLA) to take care of her son who was diagnosed with cancer.

14 17.

15 Plaintiff returned to work on or about March 9, 2016, but Defendant did not restore her
16 to the same or equal position Plaintiff held before her OFLA leave.

17 18.

18 Defendant maintained the same title of Plaintiff's position but removed several of her
19 income-generating duties and accounts, which effectively reduced Plaintiff's pay.

20 19.

21 Plaintiff notified Defendant's human resources representative, Kyle Olinger, of the
22 effective reduction in pay. He failed to take corrective action to return Plaintiff's accounts and
23 duties to her and restore her to equal pay as before she left on her OFLA leave.

24 20.

25 On or about June 29, 2016, Defendant sponsored a valuable and coveted training

1 opportunity for its employees. Plaintiff was not offered, nor notified of, this training
2 opportunity. A male coworker with less education and experience than Plaintiff was offered
3 and took part in the training opportunity instead.

4 21.

5 When Plaintiff inquired with Defendant's employee, Kyle Olinger, why she was not
6 offered the training opportunity, Mr. Olinger's response was that he "felt that the training was
7 an obligation, not an opportunity," and he assumed Plaintiff would not be interested.

8 22.

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

10
11 23.

12 **FIRST CLAIM FOR RELIEF**

13 (Unlawful Discrimination Based on Sex/Gender, ORS §659A.030(1)(b))

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

15 24.

16 Oregon Revised Statutes (ORS) §659A.030(1)(b) was in full force and effect and was
17 binding on Defendant.

18 25.

19 Defendant, through its employees, discriminated against Plaintiff based on her gender
20 by failing to notify Plaintiff of available promotions, failing to offer her training opportunities,
21 failing to document any reported instances of sexual harassment and by singling her out based
22 on her sex and reprimanding her for behavior tolerated in others. Such discrimination is in
23 violation of ORS §659A.030(1)(b), and has resulted in injury and damage to Plaintiff as
24 alleged herein. It also led to her constructive discharge from the employer.

25 26.

1 As a proximate result of Defendant's knowing, willful, and intentional discrimination
2 against Plaintiff, she has sustained and continues to sustain substantial losses in earnings and
3 other employment benefits in the amount of \$75,000.

4 27.

5 As a proximate result of Defendant's knowing, willful and intentional discrimination
6 against Plaintiff, she has suffered humiliation, emotional distress, and mental pain and anguish,
7 all to her non-economic damage in the amount of \$150,000.

8
9 28.

10 **SECOND CLAIM FOR RELIEF**

11 (Hostile Work Environment - Based on Sex, ORS §659A.030(1)(b))

12 Plaintiff re-alleges paragraphs 1 through 27 above as though fully set forth herein.

13 29.

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

15 30.

16 Defendant, through its employees, subjected Plaintiff to a hostile work environment
17 based on her sex when she was singled out and repeatedly and continuously berated, demeaned
18 and verbally mistreated by her supervisors and other male coworkers. Plaintiff was also
19 subjected to sexual harassment from male coworkers who commented and touched her breasts
20 resulting in a hostile work environment. Such treatment is in violation of ORS
21 §659A.030(1)(b), and has resulted in injury and damage to Plaintiff as alleged herein.

22 31.

23 As a proximate result of Defendant's knowing, willful, and intentional hostile work
24 environment, Plaintiff has sustained and continues to sustain substantial losses in earnings and
25 other employment benefits in the amount of \$50,000.

1 32.

2 As a proximate result of Defendant's knowing, willful and intentional hostile work
3 environment, Plaintiff has suffered humiliation, emotional distress, and mental pain and
4 anguish, all to her non-economic damage in the amount of \$100,000.

5
6 33.

7 **THIRD CLAIM FOR RELIEF**

8 (Sexual Harassment, ORS §659A.030(1)(b))

9 Plaintiff re-alleges paragraphs 1 through 32 above as though fully set forth herein.

10 34.

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

12 35.

13 Defendant, through its employees, subjected Plaintiff to sexual harassment when other
14 coworkers touched and commented on her breasts. These instances of sexual harassment were
15 reported to Defendant, but never documented nor addressed by Defendant in any way. Such
16 treatment based on gender is in violation of ORS §659A.030(1)(b), and has resulted in injury
17 and damage to Plaintiff as alleged herein.

18 36.

19 As a proximate result of Defendant's knowing, willful, and intentional sexual
20 harassment of Plaintiff, she has sustained and continues to sustain substantial losses in earnings
21 and other employment benefits in the amount of \$50,000.

22 37.

23 As a proximate result of Defendant's knowing, willful and intentional sexual
24 harassment of Plaintiff, she has suffered humiliation, emotional distress, and mental and
25 physical pain and anguish, all to her non-economic damage in the amount of \$150,000.

1 38.

2 **FOURTH CLAIM FOR RELIEF**

3 (Failure to Restore to Previous Position, ORS §659A.171(1))

4 Plaintiff re-alleges paragraphs 1 through 37 above as though fully set forth herein.

5 39.

6 ORS §659A.171(1) was in full force and effect and was binding on Defendant.

7 40.

8 Defendant, through its employees, failed to restore Plaintiff to same or equal position
9 after her return from OFLA leave, as required by law. Defendant allowed Plaintiff to retain her
10 job title upon returning from leave. However, Plaintiff was not restored all her previous
11 income-generating accounts, benefits and duties of her previous position. Defendant's removal
12 of such income-generating duties, accounts and benefits from Plaintiff, resulted in a reduction
13 in pay, in violation of ORS §659A.030, and caused financial damage to Plaintiff as alleged
14 herein.

15 41.

16 As a proximate result of Defendant's knowing, willful, and intentional failure to restore
17 Plaintiff to her previous position, she has sustained and continues to sustain substantial losses
18 in earnings and other employment benefits in the amount of \$25,000.

19 42.

20 **FIFTH CLAIM FOR RELIEF**

21 (Retaliation/Discrimination for Invoking OFLA Rights, ORS §659A.183(2))

22 Plaintiff re-alleges paragraphs 1 through 41 above as though fully set forth herein.

23 43.

24 ORS §659A.183(2) was in full force and effect and was binding on Defendant.
25

1 44.

2 Defendant, through its employees, retaliated and discriminated against Plaintiff for
3 invoking protected OFLA- leave rights by eliminating income-generating accounts, duties and
4 benefits of her former position upon her return, thereby reducing her pay. This practice is in
5 violation of ORS §659A.183(2), and has resulted in damage to Plaintiff as alleged herein.

6 45.

7 As a proximate result of Defendant's knowing, willful, and intentional
8 discrimination/retaliation against Plaintiff, she has sustained and continues to sustain
9 substantial losses in earnings and other employment benefits in the amount of \$50,000.

10
11 46.

12 **SIXTH CLAIM FOR RELIEF**

13 (Whistleblowing, ORS §659A.199(1))

14 Plaintiff re-alleges paragraphs 1 through 45 above as though fully set forth herein.

15 47.

16 ORS §659A.199(1) was in full force and effect and was binding on Defendant.

17 48.

18 Defendant, through its employees, discriminated and retaliated against Plaintiff for
19 reporting in good faith sex/gender discrimination, sexual harassment and retaliation against her
20 for invoking OFLA rights. Plaintiff was denied promotions, training opportunities and had her
21 income-generating accounts/duties reduced in violation of ORS §659A.199(1), which has
22 resulted in injury and damage to Plaintiff as alleged herein.

23 49.

24 As a proximate result of Defendant's knowing, willful, and intentional retaliation
25 against Plaintiff, she has sustained and continues to sustain substantial losses in earnings and

1 other employment benefits in the amount of \$25,000.

2 50.

3 As a proximate result of Defendant's knowing, willful and intentional retaliation
4 against Plaintiff, she has suffered humiliation, emotional distress, and mental pain and anguish,
5 all to her non-economic damage in the amount of \$50,000.

6
7 51.

8 **SEVENTH CLAIM FOR RELIEF**

9 (Breach of Contract)

10 Plaintiff re-alleges paragraphs 1 through 50 above as though fully set forth herein.

11 52.

12 When Plaintiff agreed to and began her employment, Defendant's vacation policy was
13 that all employees employed by Defendant for more than one year (but less than seven) were
14 entitled to eighty (80) hours of vacation benefit.

15 53.

16 Defendant breached this contract when it eliminated forty (40) hours of vacation benefit
17 replacing it with mandatory forty (40) hours of sick time. This change meant that Plaintiff
18 could no longer use eighty (80) hours for vacation purposes, as she was promised when hired.
19 Plaintiff was forced to use forty (40) hours for vacation purposes and forty (40) hours on
20 statute-mandated, health purposes. Thereby, Plaintiff was denied forty (40) hours of vacation
21 that was promised and due to her.

22 54.

23 As a proximate result of Defendant's knowing, willful, and intentional breach of
24 Plaintiff's employment contract, Plaintiff sustained substantial losses in earnings and other
25 employment benefits in the amount of \$10,000.

1
2 55.

3 **EIGHTH CLAIM FOR RELIEF**

4 (Payment of Wages on Termination, ORS §652.140)

5 Plaintiff re-alleges paragraphs 1 through 54 above as though fully set forth herein.

6 56.

7 The amounts owed in paragraph 54 were due on Plaintiff's final paycheck. Those
8 amounts were then not paid pursuant to ORS §652.140, and Plaintiff is thus entitled to a
9 penalty wage of 8 hours per day for the maximum 30 days, plus attorney's fees pursuant to
10 ORS §652.200, as well pre-judgment interest at nine percent per annum pursuant to ORS
11 §82.010.

12
13 57.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial on all issues.

16
17 58.

18 **PRAYER FOR RELIEF**

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

- 20 a) Economic damages in the amount to be determined by the trier of fact to fairly
21 compensate Plaintiff in accordance with Oregon law, and not to exceed
22 \$285,000;
- 23 b) Non-economic damages in the amount to be determined by the trier of fact to
24 fairly compensate Plaintiff in accordance with Oregon law, and not to exceed
25 \$450,000;

- 1 c) Penalty wage to be determined based upon the records possessed by Defendant;
2 d) Reasonable attorney's fees for counts 1 through 6 pursuant to ORS §659A.885;
3 e) Costs and disbursements incurred herein; and
4 f) Other relief as the Court deems just and equitable.

5
6 Dated: August 7, 2017

Respectfully submitted,

7
8 **STEVENS & LEGAL, LLC**

9 /s/ Michael O. Stevens

10 Michael O. Stevens, OSB No. 095198
11 Attorney for Plaintiff

12 Trial Attorney:

13 Michael O. Stevens, OSB No. 095198
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