

2013 WL 210866 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

Destiny WHITE, Debra Tilton and Amber Gilbreath, Plaintiffs,
v.
SRC OF OREGON, LLC, Spectrum Retirement Communities,
LLC, and East Salem Assisted Living, LLC, Defendants.

No. 130100353.
January 9, 2013.

ORS 659A.199; ORS 659A.233, Wrongful Discharge
Amount of Claim: \$600,000; (ORS 21.160(1)(c))
Claim not Subject to Mandatory Arbitration
Jury Trial Demand

Complaint

[Stephen L. Brischetto](#), OSB No. 78156, [Matthew C. Ellis](#), OSB No. 075800, Phone: (503) 223-5814 (Brischetto), Phone: (503) 222-3531 (Ellis), mellis@kelrun.com (Ellis), slb@brischettolaw.com (Brischetto), Of Attorneys for Plaintiffs, Trial Attorneys: [Stephen L. Brischetto](#) and [Matthew C. Ellis](#).

Plaintiffs Allege:

1.

At all material times, Plaintiffs were Medication Aides, Residential Assistants or Caregivers employed by the Defendants at Cedar Village Assisted Living, a residential care facility, assisted living facility and health care facility in Salem, Oregon. All Plaintiffs are residents of the State of Oregon.

2.

At all material times, Defendants East Salem Assisted Living, LLC, SRC of Oregon, LLC and Spectrum Retirement Communities, LLC were Colorado limited liability companies. At all material times, East Salem Assisted Living, LLC owned Cedar Village Assisted Living. **At all material times, SRC of Oregon, LLC operated Cedar Village Assisted Living. Defendants East Salem Assisted Living, LLC and SRC of Oregon, LLC have a Registered Agent in Multnomah County, Oregon. Spectrum Retirement Communities, LLC is not registered with the Oregon Secretary of State and is not licensed to do business in Oregon.**

3.

All Defendants were Plaintiffs' Employers, as that term is defined in [ORS 659A.001\(4\)](#).

4.

On or about October 22,2010, Defendants hired Plaintiff Destiny White as a Medication Aide.

5.

On or about June 17,2011, Defendants hired Plaintiff Amber Gilbreath, formerly known as Amber Straub, as a Residential Assistant or Medication Aide.

6.

On or about March 4,2011, Defendants hired Plaintiff Debra Tilton as a Memory Care Resident Aide/ Caregiver. As of April 16,2011, her position changed to Medication Aide.

7.

At all material times since November 2011, Plaintiffs were supervised by Janet Wallingford. Ms. Wallingford is no longer employed by Defendants.

8.

During the course of their employment, each Plaintiff reported to Defendants concerns about neglect and **abuse** of residents.

9.

On or about December 2011, Plaintiff White arranged for a resident to go to the emergency room because of a skin fold rash that was bleeding. When emergency room staff informed Ms. Wallingford that they would have to report the situation to the State of Oregon because the quality of care constituted unlawful neglect or **abuse**, Ms. Wallingford instructed Plaintiff White to no longer take injured residents to the emergency room.

10.

On or about January 5,2012, Plaintiff Tilton complained in writing of two incidents where Defendants staff had treated a resident in an **abusive** manner or failed to appropriately respond to residents in need of medical attention.

11.

On or about December 2011, Plaintiff Gilbreath complained to managers that Ms. Wallingford failed to lend assistance when a resident was choking.

12.

On or about November 2011, Defendants changed its policies to no longer provide paid lunch periods. Defendants directed all staff that they should not respond to residents' needs when on unpaid lunch breaks, even when those needs were urgent.

13.

Because she was concerned that the change in policy regarding paid lunch periods had created an environment where the needs of residents were being neglected, thereby causing **abuse** or neglect, in or about December 2011, Plaintiff White prepared and posted a petition or complaint to Defendants about the change in policies regarding lunch periods. The petition or complaint proposed that the old policy be reinstated so that Defendants could provide an appropriate level of care to its residents, as they were required to do under the law, and no longer neglect the needs of its residents. Plaintiff White posted the petition or complaint on the wall and Plaintiffs Galbraith and Tilton later signed the petition or complaint. When Ms. Wallingford saw the petition or complaint, she tore it down and stated, "I guess we need new Med Aides."

14.

On or about January 10,2012, Plaintiff Tilton was suspended from employment, and on January 17,2012, Plaintiff Tilton was terminated.

15.

On or about January 11,2012 Plaintiffs White and Galbraith were suspended from employment, and on or about January 19, 2012, Plaintiffs White and Galbraith were terminated.

16.

Ms. Wallingford made false statements to the State of Oregon regarding Plaintiffs work performance and the reasons for the termination. The State of Oregon investigated the allegations and found no misconduct by any Plaintiff. Ms. Wallingford was terminated by Defendants soon after the investigation concluded.

FIRST CLAIM FOR RELIEF

(Violations of [ORS 659A.199](#))

(All Plaintiffs against all Defendants)

17.

Plaintiffs reallege paragraphs 1 through 16 as though fully set forth herein.

18.

The Complaints of Tilton and Galbraith referenced in paragraphs 10 and 11, and their act of signing White's petition or complaint, referenced in paragraphs 12 and 13, constitutes reports of information that Plaintiffs Tilton and Galbraith believed, in good faith, was evidence of **abuse** or neglect in violation state or federal law, rule or regulation. These laws, rules or regulations include, but are in by no means limited to, those generally proscribing **abuse** and neglect of **elderly**, vulnerable or disabled persons in residential care facilities, assisted living facilities and health care facilities, including those laws, rules or regulations contained in ORS Chapter 410, including [ORS 410.020 - ORS 410.070 et seq.](#), ORS Chapter 441, including [ORS 441.630\(a\)-\(b\) et seq.](#); ORS Chapter 443, including [ORS 443.455 et seq.](#), [ORS 124.050 to 124.095](#), [OAR 411-020-0002](#) through [OAR 411-020-0020 et seq.](#), as well as common law assault, common law negligence and various criminal laws relating to reckless endangerment, assault and criminal mistreatment.

19.

Plaintiff White's petition or complaint, as referenced in paragraphs 12 and 13, likewise constituted a complaint of **abuse** and neglect because Ms. White's petition or complaint advocated for change in a policy to prevent ongoing and imminent **abuse** or neglect, including an ongoing failure to provide basic care or services, as required under the law. This petition or complaint was a report of information that Plaintiff White believed, in good faith, was evidence of **abuse** or neglect in violation state or federal law, rule or regulation. These laws, rules or regulations include, but are in no means limited to, those generally proscribing **abuse** and neglect of **elderly**, vulnerable or disabled persons in residential care facilities, assisted living facilities and health care facilities, including those laws, rules or regulations contained in ORS Chapter 410, including [ORS 410.020 - ORS 410.070 et seq.](#), ORS Chapter 441, including [ORS 441.630\(a\)-\(b\) et seq.](#); ORS Chapter 443, including [ORS 443.455 et seq.](#), [ORS 124.050 to 124.095](#), [OAR 411-020-0002](#) through [OAR 411-020-0020 et seq.](#), as well as common law assault, common law negligence and various criminal laws relating to reckless endangerment, assault and criminal mistreatment.

20.

Because of Tilton and Galbraith's complaints referenced in paragraphs 10,11 and 18, and for being associated with Plaintiff White's petition or complaint referenced in paragraphs 12, 13 and 19, Defendants terminated Plaintiff Tilton and Galbraith, in violation of [ORS 659A.199](#).

21.

Because of Plaintiff White's petition or complaint, referenced in paragraphs 12, 13 and 19, and for being associated with Tilton's and Galbraith's complaints referenced in paragraphs 10, 11 and 18, Defendants terminated Plaintiff White, in violation of [ORS 659A.199](#).

22.

Because of Defendants' violations of [ORS 659A.199](#), Defendants are liable to Plaintiffs for damages.

23.

As a direct and proximate result of Defendants' actions, Plaintiffs have suffered loss of wages, loss of employment and employment benefits, emotional distress, mental anguish, injury to her personal and professional reputation and loss of self-esteem and dignity. As compensation, each Plaintiff should be awarded damages against Defendants in an amount to be determined at trial, but in no event less than \$200,000.

24.

Plaintiffs have hired legal counsel to bring these claims and are entitled to the costs incurred and attorney fees pursuant to [ORS 659A.885](#) and [ORS 20.107](#).

25.

Plaintiffs intend to amend this complaint pursuant to [ORS 31.725](#) to allow for punitive damages.

SECOND CLAIM FOR RELIEF

(Violations of [ORS 659A.233](#))

(All Plaintiffs against all Defendants)

26.

Plaintiffs reallege paragraphs 1 through 16 and 18 through 19 as though fully set forth herein.

27.

Because of Tilton and Galbraith's complaints referenced in paragraphs 10,11 and 18, and for being associated with Plaintiff White's petition or complaint referenced in paragraphs 12,13 and 19, Defendants terminated Plaintiff Tilton and Galbraith, in violation of [ORS 659A.233](#).

28.

Because of Plaintiff White's petition or complaint, referenced in paragraphs 12,13 and 19, and for being associated with Tilton's and Galbraith's complaints referenced in paragraphs 10,11 and 18, Defendants terminated Plaintiff White, in violation of [ORS 659A.233](#).

29.

Because of Defendants' violations of [ORS 659A.233](#), Defendants are liable to Plaintiffs for damages.

30.

As a direct and proximate result of Defendants' actions, Plaintiffs have suffered loss of wages and benefits, lost future wages and benefits and lost prejudgment interest in amount to be determined at trial, but in no event less than \$50,000.

31.

Plaintiffs have hired legal counsel to bring these claims and are entitled to the costs incurred and attorney fees pursuant to [ORS 659A.885](#) and [ORS 20.107](#).

32.

Plaintiffs intend to amend this complaint pursuant to [ORS 31.725](#) to allow for punitive damages.

THIRD CLAIM FOR RELIEF

Wrongful Discharge

(All Plaintiffs against all Defendants)

33.

Plaintiffs reallege paragraphs 1 through 16 as though fully set forth herein.

34.

Oregon has a substantial public policy of ensuring that “older citizens of this state are entitled to enjoy their later years in health, honor and dignity, and citizens with disabilities are entitled to live lives of maximum freedom and independence.” [ORS 410.010\(1\)](#). To further this policy, Oregon regulates facilities, such as those operated by Defendants, to ensure that older citizens and citizens with disabilities are safe for older citizens and citizens with disabilities.

35.

Plaintiffs' petitions and complaints, and Plaintiff White's act of taking an injured resident to the emergency room, as referenced in paragraphs 9-13, were done in good faith to further the public policy of the State of Oregon referenced in paragraph 35, to advocate for the rights of Defendants' residents and to ensure that Defendants operated its Cedar Village facility consistent with the law.

36.

Defendants terminated each Plaintiff because of their activities referenced in paragraphs 9-13, and for being associated with each other Plaintiff's activities for their activities referenced in paragraphs 9-13, thereby thwarting the public policy of the State of Oregon. Because of Defendants wrongful termination of Plaintiffs, Defendants are liable to Plaintiffs for damages.

37.

As a direct and proximate result of Defendants' actions, Plaintiffs have suffered loss of wages, loss of employment and employment benefits, emotional distress, mental anguish, injury to her personal and professional reputation and loss of self-esteem and dignity. As compensation, each Plaintiff should be awarded damages against Defendants in an amount to be determined at trial, but in no event less than \$200,000.

38.

Plaintiffs have hired legal counsel to bring these claims and are entitled to the costs incurred and attorney fees pursuant to [ORS 20.107](#).

39.

Plaintiffs intend to amend this complaint pursuant to [ORS 31.725](#) to allow for punitive damages.

WHEREFORE, Plaintiff prays for a jury trial and for a general judgment against Defendants as follows:

1. On each Plaintiffs' First Claim for Relief against Defendants, compensatory damages in an amount to be determined at trial but in no event less than \$200,000, plus attorneys fees, costs and disbursements;

2. On each Plaintiffs' Second Claim for Relief against Defendants, lost wages and benefits, lost future wages and benefits and prejudgment interest to be determined at trial but in no event less than \$50,000, plus attorneys fees, costs and disbursements;
3. On each Plaintiffs' Third Claim for Relief against Defendants, compensatory damages in an amount to be determined at trial but in no event less than \$200,000, plus attorneys fees, costs and disbursements;
4. On all of Plaintiff's Claims for Relief:
 - a. An Order declaring that Defendants' discriminatory practices, policies, and/or procedures alleged herein violate [ORS 659A.199](#), [ORS 659A.233](#) and the public policy of the State or Oregon
 - b. An Order enjoining Defendants from engaging in the kinds of wrongful practices complained about herein;
 - c. An Order that requiring Defendants to attend and pay for an annual education training, jointly approved or put on by the Oregon Bureau of Labor and Industries and the Oregon Department of Human Services that focuses on the impacts of discrimination and retaliation in the civil rights context, the obligations of mandatory reporters and **elder** / patient **abuse**.
 - d. For prejudgment and post-judgment interest at the legal rate; and
 - e. For such other and further relief as the Court may deem appropriate in the circumstances.

Dated this 9th day of January, 2013.

Plaintiffs demand trial by jury.

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