

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF WASHINGTON

21CV13060

Case No.:

ANNE RAVEN, an individual,
MIGUEL BAUTISTA, an
individual, and PAUL HARVEY, an
individual,

Plaintiffs,

v.

CITY OF HILLSBORO, a public
entity, DAVID DOWNEY, and
JEFF GURSKE, an individual,

Defendants.

COMPLAINT

Sex Discrimination
Race Discrimination
Age Discrimination
Disability Discrimination
Hostile Work Environment
Retaliation

**CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION**

JURY TRIAL DEMANDED

CLAIM FOR \$801,965.00(ORS
21.160(1)(b))

INTRODUCTION

The City of Hillsboro prides itself on its diversity, equity, and inclusion, stating that it is an essential part of the delivery of city services.¹ Yet in reality, the City of Hillsboro condones and perpetuates a system mired in sexism, racism, and ableism. From human resources telling a female employee that jokes about “ass play Fridays” were probably about donkeys, to a person of color being denied promotion after promotion in spite of his exemplary qualifications because the department wasn’t “mature enough” to “receive [him] in that role” and having lesser

¹ <https://www.hillsboro-oregon.gov/your-city-government/the-mayor-and-city-council>
PAGE 1 –COMPLAINT

1 qualified white males obtain those promotions without even applying, the City's actions bely its
2 stated goals.

3 **NATURE OF THE ACTION**

4 1.

5 This is an action for employment discrimination based on sex, race, age, and disability;
6 for a hostile work environment based on sex, race, age, and disability; disability discrimination;
7 and for retaliation based on good faith reporting of violations of law.

8 2.

9 Venue is proper in Washington County, Oregon pursuant to ORS 14.080(2) as the
10 alleged actions described herein were committed in Hillsboro, Oregon.

11 3.

12 Pursuant to ORS 30.275 notice was timely served.

13 **PARTIES**

14 4.

15 Plaintiff Anne Raven is an individual residing in Portland, Oregon. At all relevant times
16 she was employed by defendant City of Hillsboro, in the County of Washington, State of
17 Oregon.

18 5.

19 Plaintiff Miguel Bautista is an individual residing in Portland, Oregon. At all relevant
20 times he was employed by defendant City of Hillsboro, in the County of Washington, State of
21 Oregon.
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6.

1
2 Plaintiff Paul Harvey is an individual residing in Portland, Oregon. At all relevant times
3 he was employed by defendant City of Hillsboro, in the County of Washington, State of
4 Oregon.

7.

5
6 Defendant City of Hillsboro (“Hillsboro”) is a public entity which operates Hillsboro
7 Fire & Rescue (“Hillsboro F&R”) in Hillsboro, Oregon. Hillsboro’s principal place of business
8 is 150 E. Main Street, Hillsboro, Oregon 97123, county of Washington, State of Oregon.
9 Hillsboro F&R’s main fire station is at 240 S 1st Ave, Hillsboro, OR 97123. At all relevant
10 times, Hillsboro employed over 100 persons in the State of Oregon and is an employer within
11 the meaning of ORS 659A.001(4).

8.

12
13 Defendant David Downey is an individual living in Hillsboro, Oregon. At all relevant
14 times he was employed by Hillsboro as the Fire Chief of Hillsboro F&R.

9.

15
16 Defendant Jeff Gurske is an individual living in Hillsboro, Oregon. At all relevant times
17 he was employed by Hillsboro as the Deputy Fire Chief of Hillsboro F&R.
18

19
20 **FACTUAL ALLEGATIONS COMMON TO MULTIPLE CLAIMS**

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22 10.

23 The order of rank in a fire department is generally: Firefighter, Engineer, Lieutenant,
24 Captain, Battalion Chief, Division Chief, Deputy Chief, and Fire Chief.

11.

1
2 Generally, to move up a rank, an individual needs to take a competitive examination
3 including written and practical skills.

4
5 12.

6 Defendant Gurske has been with Hillsboro F&R for approximately 15 years.

7
8 13.

9 He began his service as a volunteer fire fighter after earning an associate degree from
10 Chemeketa Community College and working as a manager at Red Robin.

11
12 14.

13 When he began in Hillsboro, he was hired as a firefighter. He eventually earned his
14 Engineer rank.

15
16 15.

17 In 2015, he was promoted to fire training officer.

18
19 16.

20 In 2017, he was again promoted, this time to Division Chief – Training.

21
22 17.

23 In 2020, he was promoted to Deputy Fire Chief – Administration. This position oversees
24 the Logistics Division, Crisis Intervention/Chaplaincy program, and the Fire Prevention
Division.

18.

Defendant Gurske has no education aside from his associates degree. He holds only an
EMT basic license. He holds certification in areas such as fire operations, fire instruction,

1 technical rescue, maritime firefighting, emergency vehicle operation, and basic level fire officer
2 credentials.

3 19.

4 Defendant Gurske holds no formal training or certification in fire prevention, public
5 education, community risk reduction, public information, or logistical knowledge. Yet he is
6 tasked with oversight of those divisions.

7 20.

8 Defendant Gurske never sat for any examination to promote above the rank of Engineer.
9 Instead, he was promoted without going through the testing process past Lieutenant, Captain, and
10 straight into Chief positions.

11 21.

12 Defendant Downey was hired by Hillsboro to be Fire Chief at Hillsboro F&R in 2017
13 after a nationwide search. Previously, he had been Fire Chief in Albuquerque New Mexico.
14

15 22.

16 During his tenure in Albuquerque, he fostered a department that was rife with sexual
17 harassment and gender discrimination. This led to a lawsuit by a female firefighter after enduring
18 13 years of harassment, stating: “you just kind of learned as a female that you just kind of put up
19 with it you just kind of tolerate it.”

20 **ANNE RAVEN**

21 23.

22 Plaintiff Raven graduated Suma Cum Laude with a bachelor’s degree in science from
23 Philadelphia University.
24

24.

1
2 For the next ten years, Plaintiff Raven was a firefighter with the city of Philadelphia,
3 where she earned the rank of Captain.

4
5 25.

6 She was then asked to teach a program in emergency medicine for the EMT and MERT
7 program at University of Pennsylvania. She taught in the program for one year. She was also the
8 ALS coordinator and ran a paramedic school.

9
10 26.

11 Plaintiff Raven took some time off to care for her newborn daughter and was attending
12 graduate school to get her master's degree in disaster management when she was hired by
13 Hillsboro F&R in 2015.

14
15 27.

16 Plaintiff Raven has taken classes at the national fire academy and sits on numerous
17 prestigious boards and committees including the Washington County Emergency Medical
18 Services Quality Improvement Committee. This committee is attended by leaders in fire and
19 ambulance including Tualatin Valley Fire and Rescue, Forest Grove, Hillsboro, Cornelius, and
20 Banks fire departments to review case studies, charts, EKGs, CVAs, intubations, and bad
21 outcomes to try and determine system flaws that can be corrected. Plaintiff Raven has served on
22 this committee for almost 6 years.

23
24 28.

25 Plaintiff Raven has also developed and written protocols for paramedics and EMTs as
26 part of her work on the Tri-County EMS Protocol Development Committee, including her

1 independently created protocol “Managing Cardiac Arrest in Pregnant Patients,” which has been
2 adopted by Multnomah, Washington, and Clackamas Counties.

3 29.

4 In March 2020, Plaintiff Raven was asked by Assistant State Medical Director of EMS
5 and Trauma Systems to re-write the Oregon Crisis Care Guidelines at the start of the COVID
6 Pandemic with a team of seven other people, mostly physicians.

7 30.

8 Raven is a founding member of the STEMI Accelerator (ST-Elevation Myocardial
9 Infarction) Committee. This is a regional committee formed by the American Heart Association
10 that brings together leaders in the emergency medical services pre-hospital community with
11 Interventional Cardiologists and Emergency Room doctors where they review case reports of a
12 specific time-sensitive kind of ST elevation heart attack.

13 31.

14 Raven is on a subcommittee for the Washington County Consolidated Communications
15 Agency (WCCCA) QI Committee, which re-wrote and updated all the pre-arrival instructions for
16 the Washington County 911 system. In 2017, she created a newborn CPR 911 dispatch pre-
17 arrival instruction card and is considered an expert in women, children, and infant care in
18 emergency medical systems.

19 32.

20 Plaintiff Raven is also working on three studies, two of which are in conjunction with the
21 Department of Defense. She taught the entire Hillsboro Police Force hemorrhage control
22 techniques as well as some other techniques from tactical casualty combat care. She is also in
23
24

1 charge of the entire CPR program for the City of Hillsboro, all city employees including all
2 lifeguards, etc. She oversees instructors, schedules and arranges the classes for all city
3 employees, and two years ago she expanded it to include, Stop the Bleed, as well as Naloxone
4 (Narcan) and Epinephrine administration.

5 33.

6 When a position came open on the Multnomah County Contract Compliance and Rate
7 Regulation Committee two and a half years ago, Plaintiff Raven was asked to apply for the
8 position, and was subsequently appointed and sworn in by the Multnomah County Board of
9 Commissioners.

10 34.

11 Despite all her experience, education, and qualifications, she has not once been promoted
12 by Hillsboro F&R. Instead, she has had to watch as less qualified white men get promoted above
13 her because it is their “turn.” Defendant Gurske is one of those men.

14 35.

15 In 2019, after his appointment to a chief position, Defendant Gurske instituted a morning
16 “coffee clutch.” The point of these informal morning meetings was for the employees to sit
17 around and talk to Defendant Gurske about whatever was on their minds.

18 36.

19 Unfortunately, Defendant Gurske has used these morning meetings to perpetrate a culture
20 of sexism at Hillsboro F&R, including telling highly inappropriate personal stories to the group
21 at large, and waylaying Plaintiff Raven to tell her stories one-on-one.
22
23
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37.

1
2 For example, Defendant Gurske has spoken about his wife's genitalia and has made
3 inappropriately sexual and racist comments about his adopted children.

4
5 38.

6 He told Plaintiff Raven about filming amateur pornographic movies at community
7 college with his roommate and the "girl next door" and asked her what her "kink" was.

8
9 39.

10 At one point, Plaintiff Raven switched shifts - from working Monday through Thursday,
11 to Tuesday through Friday. When her subordinate learned about her return to working Fridays,
12 she stated that it was too bad because they could not have "ass play Fridays" anymore as they
13 had been doing with Defendant Gurske.

14
15 40.

16 When Plaintiff Raven reported this comment to SueLing Gandee, the human resources
17 (HR) Risk Manager for Hillsboro F&R, Ms. Gandee responded, "how do you know they weren't
18 talking about donkeys."

19
20 41.

21 In fact, Ms. Gandee, who has been the Hillsboro HR partner for Hillsboro F&R for many
22 years, dismissed many of Plaintiff Raven's complaints when they were raised in late 2020. She
23 brushed them off because Plaintiff Raven "never brought it up before" and asked why she
24 "should believe [her] now".

42.

1
2 During the summer of 2020, Defendant Gurske decided to form and head a “Diversity
3 and Equity Committee.” Plaintiff Raven, who has 20 years in the fire service, asked to be on the
4 committee. Defendant Gurske told her no, and instead invited the receptionist, whose previous
5 jobs included yoga instructor and bartender to be one of the two females on the committee.

6
7 43.

8 This committee has one minority member and has only one female firefighter and the
9 female receptionist. The two co-chairs are Defendant Gurske and the receptionist.

10
11 44.

12 There had been many complaints about the safety of the clothing issued to female
13 firefighters, namely that they are issued the same clothes and gear as the men, which is baggy on
14 them and get caught on objects and are generally unsafe due to their ill-fit.

15
16 45.

17 During one committee meeting, Defendant Gurske decided that they would issue new
18 workout clothing to women. When the female firefighter asked if she could pick out the clothing,
19 he told her no. When asked if she could have input on what types of clothing, she was again
20 turned down. Defendant Gurske reasoned that the men did not have a say in their workout gear,
21 even though it was selected by men. Instead, Defendant Gurske decided he would be the one to
22 choose the clothing.

23
24 46.

It was also brought to the attention of Defendant Gurske that Hillsboro F&R did not have
a pregnancy policy. He brought this up at the committee meeting and again the female firefighter

1 asked if she could help write the policy since she was the only female firefighter on the
2 committee. Defendant Gurske told her no, and instead appointed one of the men on the
3 committee to write the pregnancy policy.

4 47.

5 In late 2019, early 2020, Plaintiff Raven was involved in an investigation into sexual
6 harassment by another fire chief.

7 48.

8 About eight months prior, Plaintiff Raven reported to her union representative who told
9 her to report to Defendant Gurske.

10 49.

11 Plaintiff Raven went to Defendant Gurske and reported. In response, Defendant Gurske
12 told Plaintiff Raven that he had called HR, and, according to him, HR told him the sexual
13 harassment was not a reportable offense.

14 50.

15 Months later, when the harassment continued, Plaintiff went to Defendant Downey who
16 then reported to human resources. That triggered an internal investigation, which led to demotion
17 of the perpetrator.
18

19 51.

20 As HR began the investigation, Defendant Gurske tried to revise his role in the matter by
21 making a big show of “just now” learning of a comment made by the perpetrator to another
22 female employee that he “only wanted to see her lips moving if it was on his zipper.”
23
24

52.

1
2 The female employee had reported this comment almost a year prior, but Defendant
3 Gurske had not reported it to HR. Defendant Gurske explained to Plaintiff Raven that he was
4 telling her this now to make sure that they were “all on the same page.”

53.

6 Finally, in January or early February 2020, when the investigation was wrapped up,
7 Defendant Downey brought the three female employees into a conference room and let them
8 know the perpetrator was not going to be fired, just demoted.

54.

9
10 One of the employees became distraught that she would still have to work with the
11 perpetrator and ran out of the room and left the premises in the middle of her shift.
12

55.

13
14 After Defendant Downey ended the meeting, he went to the parking lot and Plaintiff
15 Raven followed him. She asked him if he thought she should just move on from Hillsboro F&R
16 and if she still had any future there. He answered, “I am aware that sometimes you get treated
17 like shit,” and he said that maybe she should, “move on and look for something else.” He stated
18 that it would “never be easy for [her] there.”

56.

19
20 While prior to her reports of sexual harassment Plaintiff experienced discrimination
21 based on her sex, after the internal investigation, she was subjected to continued and escalating
22 retaliation.
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57.

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2 During a discussion with Defendant Gurske on August 13, 2020, Defendant Gurske
3 stated that he can't help it if "people don't like [her]." He would frequently remind Plaintiff
4 Raven that she was not well liked by people at Hillsboro F&R, going so far as to tell her "your
5 reputation here is shit." When asked why, he said it was because Plaintiff Raven did not "know
6 how to play the game."

7
8 58.

9 Plaintiff Raven applied for the Fire Division Chief – Training position in late
10 summer/early fall 2020. As discussed herein, Plaintiff Raven was more than qualified for this
11 position, one that had previously been held by Defendant Gurske despite his lack of
12 qualifications.

13
14 59.

15 On September 24, Plaintiff Raven, Defendant Gurske, and another male firefighter were
16 in the office and there was a discussion between Plaintiff Raven and the male firefighter. When
17 the male firefighter left, Defendant Gurske turned to Plaintiff Raven and said, "that was a little
18 rough." She asked what he meant by that and he told her she was being "aggressive," to which
19 she responded, "I disagree, I think I was being assertive."

20
21 60.

22 She went on to tell him that she felt he often judged her differently than he judged any of
23 the men in the department. She told him she was often labeled with derogatory terms while the
24 men spoke in much less professional manner than she did, but nobody ever corrected or
reprimanded them.

61.

1
2 Defendant Gurske asked for examples, so Plaintiff Raven reached over to her desk and
3 pulled out her nameplate. A male fire chief had replaced her name with a nickname that meant
4 she was “crazy.” Defendant Gurske told her it was just a joke.

62.

5
6 She then pointed out that he used derogatory nicknames to indicate that she is “loud and
7 abrasive.” Defendant Gurske got defensive and stated that nobody liked her, that she had trouble
8 making friends in the department, and that she would never be promoted if she kept going the
9 way she had been. He stated that she needed to “win over the guys” or she would never get
10 ahead.

63.

11
12 Defendant Gurske told Plaintiff Raven she was not the “right kind of woman” for
13 Hillsboro F&R. He told her that she would “never promote without him in [her] corner.”
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64.

15
16 Defendant Gurske was in charge of the selection of the Division Chief – Training
17 position for which Plaintiff Raven was an applicant.

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19 Defendant Gurske repeatedly brought up the promotion process, and whenever Plaintiff
20 Raven would complain, he would remind her that she was up for a promotion he was in charge
21 of selecting.
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66.

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2 For example, around September 24, 2020, Plaintiffs Raven and Harvey were testing the
3 new fire recruits. Plaintiff Raven observed Defendant Gurske and another firefighter trying to fit
4 an SCBA mask made for a man onto the female recruit, and it would not work because it was too
5 large, and due to the physical differences between men's and women's faces. When Plaintiff
6 mentioned this to Defendant Gurske, he told her she was "walking on thin ice if [she] kept
7 bringing up the female thing."

8
9 67.

10 That same day, the male recruit failed his written test. As Defendant Gurske was leaving,
11 Plaintiff Raven stated, "it looks like [male candidate] is going to fail." Defendant Gurske looked
12 at her and said, "is he failing badly enough that it should hurt his whole career over it?" She
13 asked what he meant, stating that "he's failing, what other kind of failing is there?" Defendant
14 Gurske stated that "it depends" and when Plaintiff Raven stated she didn't understand, he told
15 her to let him know how it went, and to "think hard about it."

16
17 68.

18 At the end of her shift, Plaintiff Raven texted Defendant Gurske and let him know that
19 the male candidate failed. Defendant Gurske replied that he would look at the test in the
20 morning. It was a test that Defendant Gurske had received and approved prior to it being given to
21 the recruit.

22
23 69.

24 Within the next few days, Defendant Gurske changed the grade so the male recruit
passed.

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1
2 On October 2, 2020, one of the two female recruits, who had passed her written exam
3 with flying colors, failed her practical exam with one small error. Otherwise, she had done a very
4 good job with the rest of the practical. Defendant Gurske decided the female recruit would be
5 terminated based on her failure.

6
71.

7 By October 6, 2020, Plaintiff Raven was still very upset over the unfair treatment of the
8 female recruit, and the cheating engaged in by Defendant Gurske on behalf of the male recruit.
9 During a zoom call with multiple people, Plaintiff Raven challenged Defendant Gurske's
10 decision to change the test score for the male recruit.

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72.

On October 7, Defendant Gurske formally disciplined Plaintiff Raven with a written
reprimand alleging issues regarding her "attitude" and her "professionalism" in how she spoke to
him.

73.

After being given the formal discipline, Plaintiff went to Ms. Gandee to challenge the
accusations, and ended up disclosing everything that had been occurring over the last few
months. She explained about the sexism, the retaliation, and the toxic work environment for the
women in Hillsboro F&R.

74.

As of the date of filing this complaint, over 5 months after the complaints were lodged,
Hillsboro has not reached out to Plaintiff Raven, and has not interviewed any of her witnesses.

75.

1
2 Around November 3, 2020, Plaintiff Raven grieved the discipline through her union, but
3 it was upheld by Defendant Downey on November 11, 2020.

4
5 76.

6 On November 5, Plaintiff Raven had her interview for the Division Chief – Training
7 position. During the interview, attended by an HR representative, Defendant Downey, and
8 others, Defendant Gurske asked her questions related to her discipline.

9
10 77.

11 Plaintiff Raven appealed Defendant Downey’s grievance decision to the City Manager
12 Robbie Hammond. Plaintiff Raven begged to be able to meet with Mr. Hammond but was told
13 by Ms. Gandee that he was too busy. Plaintiff Raven asked her union if she could speak with Mr.
14 Hammond but did not get a response.

15
16 78.

17 Mr. Hammond upheld her discipline. As a result, Plaintiff was told to attend an HR
18 training about how to be more professional in the workplace.

19
20 79.

21 The training given by HR is entitled “Leadership Strategies for Women.” Within that
22 training, a section entitled “Getting Better Feedback as a Female” includes a set of hypotheticals
23 with guidelines on the “appropriate” way for a woman to respond.

24
25 80.

26 In the first hypothetical, a woman is complaining about her one-on-one with her
27 manager- “And when I asked for more challenging assignments, my manager said I should slow

1 down or I might get a reputation for being overly ambitious.” In response, the training advises:
2 “Emily can make her ambition a bit less threatening if she frames it as wanting to do the best
3 possible job for the company or her clients.”

4 81.

5 The training goes on to offer some communication strategies. “Here are a few things to
6 consider to make sure your nonverbal communication fits the image you want to portray. First,
7 think about how you physically approach a conversation. It's important not to startle people. Men
8 react more calmly when you move towards them from the side since they can find immediate
9 face-to-face contact aggressive.”

10 82.

11 The training next discusses what it calls “The Double Bind: Being Assertive and
12 Likeable” stating that “Women face a conundrum, either speak up and be perceived as competent
13 but less likable or shrink and be perceived as likable but less competent.” In response, it
14 suggests:
15

16 “Here’s some signaling strategies she can use prior to asserting strong ideas. First, give a
17 warning that you're about to speak in a way that might go against traditional gender
18 norms. You might say something like ‘My grandmother would be furious if she heard me
19 say this, but,’ and then go in and say whatever strongly worded message you have. By
20 giving people a warning, it softens the blow and reduces the likelihood you'll catch them
21 off-guard. If you know you're going to say something unpopular, start by acknowledging
22 that upfront.”

23 83.

24 In response to this training, Plaintiff Raven was forced to write a paper expounding on
what she “learned.”

84.

1
2 On November 10, 2020, Plaintiff Raven learned she was not selected for the Division
3 Chief – Training position purportedly because she was “not qualified.”

4
5 85.

6 At the time of filing this complaint, the position of Division Chief – Training has been
7 offered to another white male.

8
9 86.

10 In addition, the entire incoming recruit class of firefighters is all males, and all female
11 firefighters have been moved into one shift.

12
13 87.

14 Plaintiff Raven has an autoimmune disorder and was considered high risk during the
15 COVID pandemic. On March 16, 2020, Plaintiff Raven requested to work from home and
16 provided a doctor’s note. Plaintiff Raven was never contacted by HR.

17
18 88.

19 Plaintiff Raven and others were allowed to work from home due to COVID until mid-
20 July 2020. At that time, Defendant Gurske told her she needed to either come back to the office,
21 use her sick time, or take FMLA leave. Plaintiff Raven reminded him of her disability and high-
22 risk status. Defendant Gurske told her she had no choice if she wanted to keep her job. There was
23 no discussion about accommodations.
24

89.

1
2 On August 11, 2020, Plaintiff Raven returned to the station. No one in the station was
3 wearing masks. She approached Defendant Gurske who said he could not make them put on
4 masks, and if she was that scared of getting sick, she needed to quit.

5
6 90.

7 Plaintiff went to Ms. Gandee to report about her medical condition and discussions with
8 Defendant Gurske. Ms. Gandee sent Plaintiff to another human resources professional, and then
9 another. Finally, she was put in touch with Eric Nelson. She told Mr. Nelson that she was scared
10 to move forward with anything because she was being threatened with termination for making too
11 many complaints. Mr. Nelson told Plaintiff Raven that he could not help her with her
12 accommodation request unless he had access to her medical records.

13
14 91.

15 On December 3rd or 4th, 2020, Plaintiff Raven contacted Ms. Gandee to let her know that
16 the situation at work was escalating. She reported that she was in fear for her job, she was having
17 additional duties assigned to her that had never been her responsibility before and was tasked
18 with unrealistic deadlines. She felt she was purposefully being set up to fail. She also reported
19 that she had been begging for time off due to the incredible amount of stress she was under but
20 that nobody would allow her to take time off.

21
22 92.

23 Plaintiff Raven also reported that Ms. Gandee was not doing anything to protect her and
24 that she was not doing anything to investigate Plaintiff Raven's claims, including failing to speak
with any witnesses.

93.

As of the date of filing this Complaint, on information and belief Ms. Gandee has still not conducted any investigation, has not interviewed witnesses, and has not circled back with Plaintiff Raven regarding her complaints.

94.

On January 16, 2021 Plaintiff Raven was told by her supervisor Chief Greg Espinosa, that she “should not be talking to HR ever.” He stated that HR is not who she should go to, and that her reporting had created a “dumpster fire” and made it “hard” for those to whom she reported.

95.

On January 19, 2021 Plaintiff Raven served tort claim notice on Hillsboro and Hillsboro F&R.

96.

On March 25, 2021, Plaintiff Raven was brought into an “expectation” meeting with Chief Espinosa because of her “attitude.” Plaintiff Raven was accused of being dishonest, of being unprofessional, and unable to do the job she had done since she started at Hillsboro F&R. As a result, she has been taken off her committees, boards, and anything that is considered “extra” outside of her position.

97.

Chief Espinosa stated, “it could be a fun place to work if [she] would just let it be a fun place to work,” and that, “there’s been damage done here and [she] needs to repair the damage.”

98.

This “coaching” session, coupled with her prior discipline, lays the groundwork for termination under the collective bargaining agreement.

MIGUEL BAUTISTA

99.

Plaintiff Bautista is a 35-year-old Hispanic male who has worked in fire and safety departments since 2005.

100.

He is the first ever non-white deputy fire marshal, and one of only eight non-white individuals employed by Hillsboro F&R.

101.

Plaintiff Bautista has served as a Deputy Fire Marshal with Hillsboro F&R since October 2016.

102.

Plaintiff Bautista graduated with an associate degree in Fire Protection Technology in 2010. He went on to earn a bachelors in Fire Service Administration in 2011, a master’s in safety, Security & Emergency Management in 2014, and a PhD in Public Safety with a Specialization in Emergency Management in 2020.

103.

He has earned more than 25 accreditations and licenses in his 16 years in this industry including graduating from Texas A & M Fire Service Chief Executive Fire Officer program in 2014, and earning certifications showing mastery in his field such as Fire Officer 4, Fire

1 Instructor 3, Fire Inspector 3. He also holds an Oregon Fire & Life Safety Level 4: Fire Marshal
2 Competency Recognition certificate, the only one currently in Hillsboro F&R.

3 104.

4 This past year saw Plaintiff Bautista meeting major milestones in his professional
5 development. He earned an IAAI Certified Fire Investigator certification, becoming one of the
6 first people to earn this accreditation at Hillsboro F&R. He also earned a Fire Marshal
7 designation from the Center of Public Safety Excellence, one of only five in Oregon (the only at
8 Hillsboro F&R) and 190 nationwide. Finally, he earned his PhD in Public Safety with
9 Specialization in Emergency Management in March 2020. His dissertation focused on health
10 hazards during emergency responses and safety behaviors among firefighters in order to inform
11 the development of safety programs to reduce rates of injury and death among U.S. firefighters.
12

13 105.

14 Plaintiff Bautista's primary work duties with Hillsboro F&R include fire inspections and
15 fire investigations. He has been assigned numerous additional projects due to his competency
16 and knowledge, including supporting the Building department with pre-application meetings and
17 plan reviews, serving as the liaison for code compliance for the international airshow, leading the
18 agency's LatinX community outreach program, supporting and maintaining the youth fire setter
19 program within the City of Hillsboro, serving as a Spanish resource for neighboring fire
20 agencies, and an assignment with the Hillsboro airport fire code compliance program.
21

22 106.

23 During the COVID-19 pandemic, he served as the lead liaison for Hillsboro F&R
24 coordinating with Hillsboro Police and Planning Departments working in collaboration with

1 regional hospitals to establish testing sites and emergency department overflow projects to
2 ensure fire and life safety requirements were met and assisted with emergency management of
3 these sites.

4 107.

5 He also represents Hillsboro Fire & Rescue on the International Association of Arson
6 Investigators (IAAI) – Oregon Chapter Executive Board as a Director. His experience and
7 expertise in airport fire code compliance also earned him a position on the National Fire
8 Protection Association Airport Maintenance Operations Committee, becoming one of few
9 members representing enforcement agencies on a national level.

10 108.

11 In addition to all of this work in the field of fire prevention, he has also taken time to
12 teach the future leaders of his field as an adjunct instructor for Eastern Oregon University's Fire
13 Services Administration program since 2014, and serves as a volunteer at Empact Northwest, a
14 not-for-profit search and rescue team as a Disaster Medical Technician since 2015, deploying to
15 disasters stateside and internationally.

16 109.

17 Despite his outstanding education, experience, accolades, licensures, and volunteer work,
18 Plaintiff Bautista has been repeatedly denied promotion by Hillsboro and Hillsboro F&R because
19 of his race/national origin and his reporting of illegal behavior by Hillsboro F&R.

20 110.

21 In 2018, Plaintiff Bautista noticed that he and other fire fighters were not being paid
22 appropriately for on-the-job trainings. Plaintiff Bautista brought this to the attention of his
23
24

1 superiors at Hillsboro F&R and was “coached” and “counseled” for the reporting, the first step in
2 the discipline process under the collective bargaining agreement. He was threatened with further
3 discipline if he continued to press the issue.

4 111.

5 Eventually, in October 2018, Plaintiff Bautista filed an anonymous complaint to the
6 Oregon Bureau of Labor and Industry (BOLI), Wage and Hour division.

7 112.

8 BOLI sent notice to Hillsboro, who in turn began re-evaluating their payment processes
9 and realized they had been in error.

10 113.

11 Defendant Gurske took it upon himself to “ferret out” who had made the anonymous
12 complaint to BOLI. He filed a freedom of information act request for the complaint.

13 114.

14 When Hillsboro learned of Defendant Gurske’s request, they instructed him not to open
15 any emails or attachments from BOLI in response, and to forward anything he got to HR.

16 115.

17 On December 3, 2018, BOLI inadvertently replied to Defendant Gurske with Plaintiff
18 Bautista’s unsigned and unfiled civil rights intake form against Hillsboro F&R.

19 116.

20 Instead of following directions, Defendant Gurske reviewed the email and sent a copy to
21 HR, noting that Plaintiff Bautista was planning on filing a civil rights complaint.
22
23
24

117.

At this time, Plaintiff Bautista had no knowledge of the disclosure.

118.

Defendant Gurkse then disclosed to others within Hillsboro F&R Plaintiff Bautista's accusations in his civil rights intake form.

119.

Within a few weeks, Plaintiff Bautista began to experience retaliation for his complaints.

120.

On January 28, 2019, he was asked to vacate an elected position as IAAI Portland District Vice Chair by his supervisor. When he refused, the supervisor went to the chair of Portland district of IAAI to ask that his position be made temporary.

121.

On February 4, 2019 Plaintiff Bautista was informed that he was being removed as a mentor from a mentoring program run by the City of Hillsboro where he was chosen months prior as a rising Latino leader within the city. According to the board member, he was being removed because during a discussion with one of the deputy chiefs, the deputy chief told them they could find "someone better" and made other comments that reflected poorly on Plaintiff Bautista's character.

122.

On February 11, 2019, human resources reached out to Plaintiff Bautista to ask about his BOLI discrimination claim. When Plaintiff Bautista asked how they knew he had made the

1 anonymous claim when no complaint had been officially filed, they informed him that BOLI sent
2 a copy to HR, leaving out Defendant Gurske's role in the disclosure.

3 123.

4 Over the next few months, Plaintiff Bautista applied for the open City Manager position
5 with Hillsboro – a position now held by Mr. Hammond. In July 2019, during the Celebrate
6 Hillsboro event, Plaintiff Bautista received a call from Katie Jensen in HR to inform him that he
7 was not selected to move forward in the process.

8 124.

9 During that call, Ms. Jensen expressed surprise that he was interested in city leadership,
10 and he informed her he would be interested in applying for an Assistant Manager position with
11 the City of Hillsboro. She offered to set up a meeting where they could discuss potential methods
12 to prepare for those opportunities and said she would send a meeting invitation. This was never
13 followed up. Plaintiff Bautista asked her again in person a few weeks later about the meeting and
14 she again said she would “compare calendars” and never followed up.
15

16 125.

17 On Tuesday, November 12, 2019, Plaintiff Bautista emailed Defendant Downey
18 regarding his secondary employment with Company A as a Fire Investigator. The effective hire
19 date was November 18, and Plaintiff Bautista outlined his job duties and his mitigation of any
20 potential conflicts of interest. Defendant Downey did not object to this employment.

21 126.

22 In fact, it is very common for fire fighters to have a second job, and many of Plaintiff
23 Bautista's colleagues hold a second position.
24

127.

1
2 Plaintiff Bautista continued to be interested in career advancement. He applied to external
3 positions as well as internal positions. Defendants Gurske and Downey, Mr. Hammond, and
4 others within Hillsboro and Hillsboro F&R have actively worked to stop his advancement.

128.

5
6 In the summer of 2020, the positions of Deputy Fire Chief of Operations and
7 Administration became available. Plaintiff Bautista applied for both positions, for which he was
8 well qualified.

129.

9
10 On July 14, 2020, Plaintiff Bautista requested a letter of recommendation for an external
11 position from Defendant Downey. He did not receive a response. He followed up with an email
12 on August 5.

130.

14
15 On August 6, 2020, Defendant Downey responded to Plaintiff Bautista's request, stating
16 he would not write a letter of recommendation due to a "potential conflict of interest" with the
17 upcoming internal Division Chief processes. Plaintiff Bautista responded, reminding Defendant
18 Downey that the request was for external positions only, and would not be used for internal
19 processes. He received no reply and no letter of recommendation.

131.

20
21 After applying for the two Deputy Chief vacancies and not hearing anything for weeks
22 after they closed, Plaintiff Bautista emailed Ms. Jensen in HR on August 3 to inquire about his
23 application status. He received no response.
24

132.

1
2 It was not until the August 6 response from Defendant Downey where he learned that
3 Defendant Downey was hiring manager for the Deputy Chief position, and he informed Plaintiff
4 Bautista that he was not selected to proceed in the process.

133.

5
6 Plaintiff Bautista responded thanking him for the information and requesting a meeting to
7 get feedback and discuss any future opportunities and his professional development. He never
8 received any response to his feedback request.

134.

9
10 Plaintiff Bautista soon learned that Defendant Gurske applied for the Deputy Chief of
11 Operations position, which he did not get. He did not apply for the Deputy Chief of
12 Administration position.

135.

13
14
15 However, as a consolation prize, Defendant Downey selected Defendant Gurske to be the
16 new Deputy Chief of Administration. As discussed herein, Defendant Gurske does not have
17 nearly the education, certifications, licensing, or experience that the other well-qualified
18 candidates possessed.

136.

19
20 Defendant Gurske was yet another in a long line of white males to be promoted above
21 minority and female candidates who are better qualified by Hillsboro and Hillsboro F&R.
22
23
24

137.

1
2 On September 17, 2020, Defendant Gurske held a one-on-one meeting with Plaintiff
3 Bautista. In that meeting, they discussed the Fire Division Chief openings for Training and
4 Prevention and the processes for selection and what he would like to see in his new supervisor.

138.

5
6 Plaintiff Bautista expressed his vision for the positions and confirmed he would be
7 applying. Defendant Gurske stated he was going to fill both openings internally.

139.

8
9 He then went on to ask if Plaintiff Bautista received a call from HR to apologize for his
10 treatment in the Deputy Fire Chief hiring process. Plaintiff Bautista stated that no one ever called
11 him about the process or issued any apology. Defendant Gurske stated that as the hiring manager
12 he was “apologizing on behalf of the City.” Plaintiff Bautista informed Defendant Gurske that
13 although he appreciated the gesture, the apology was not his to make as he was not the hiring
14 manager, he was a candidate. Plaintiff Bautista went on to state that as an internal applicant and
15 good employee, he would have appreciated an update and some feedback for future
16 development.
17

140.

18
19 Plaintiff Bautista applied for the vacancies as Fire Division Chief for Training and for
20 Prevention.

141.

21
22 All internal applicants for the Fire Division Chief for Training were not selected to move
23 forward in the process. The position was then posted externally.
24

142.

1
2 Plaintiff Baustista applied through the external application process. He was again not
3 selected for advancement for the position. It has since been offered to another white male.

143.

4
5 At the same time, around October/ November of 2020, Plaintiff Bautista was in the
6 application and interview process for the Fire Division Chief for Prevention position.

144.

7
8 A few days before the selection for the position was made, on November 16, 2020
9 Plaintiff Bautista was notified that there were two anonymous complaints called into a hotline for
10 alleged ethics violations.

145.

11
12 Two days later, Plaintiff Bautista was notified he was not selected for the position. He
13 was the only candidate of color. Instead, an older white man was chosen who had less
14 qualifications, education, and position-specific credentials than Plaintiff Bautista.

146.

15
16 On December 7, 2020, Plaintiff Bautista had a meeting with Defendant Gurske for
17 feedback on the Division Chief selection process.

147.

18
19 During this meeting, Defendant Gurske stated that for the Training Chief position,
20 Plaintiff Bautista was the most qualified candidate, communicated well in the interview, and
21 provided personal experiences that impressed the panel.
22
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24

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148.

He then stated that ultimately, it was decided that his transition into the position would be “too much to overcome” and “not be well received” by the rest of the department. When Plaintiff Bautista asked what that meant, Defendant Gurske stated that he did not like to use the term, but the department was not “mature enough” to receive him in that role.

149.

Plaintiff Bautista pointed out that he was not being given an opportunity to succeed and that with that attitude, he would never be able to advance within Hillsboro F&R. Defendant Gurske responded that he understood and that is why it was a difficult discussion.

150.

Plaintiff Bautista, through his union, was also fighting the anonymous ethical complaints against him. The first complaint was that the person believed Plaintiff Bautista was doing work for his second job, for Company A, during his paid hours for Hillsboro F&R because the person saw him talking on his cell phone during company time a few months prior. He was also accused of using the copier for his other position, because he was printing items in Spanish.

151.

Plaintiff Bautista is part of the LatinX (Latino) Outreach program in Hillsboro and is also part of the COVID response team for Hillsboro F&R. The accusation of printer use had to do with creating information about COVID and making it readily available in Spanish for the Latino community within the City of Hillsboro. Because his job includes driving around the city visiting businesses, Plaintiff Bautista is able to distribute that information.

152.

1
2 During the investigation into the allegation that Plaintiff Bautista worked for Company A
3 during paid time with Hillsboro F&R, Plaintiff Bautista provided records of his time, phone
4 records, and attended investigatory meetings with Lori Watson, who was hired by Hillsboro to
5 do an investigation, and Suzanne Linneen, the head of finance who is in charge of the
6 investigation instead of someone from human resources.

153.

7
8 Because of the proprietary nature of his work for Company A, Plaintiff Bautista was not
9 allowed by Company A to disclose certain billing information in writing. Plaintiff Bautista
10 relayed what he could and gave Ms. Linneen and Ms. Watson the contact information for his
11 supervisor at Company A and the human resources department who were ready and willing to
12 clear up any discrepancies over the phone.

154.

13
14 Instead of simply picking up the phone to clear up the matter, both Ms. Linneen and Ms.
15 Watson continued to demand written confirmation that Plaintiff Bautista was unable to produce
16 without violating his job restrictions with Company A.

155.

17
18 On March 22, 2021 Hillsboro Fire Fighters Association, IAFF Local 2210 filed a
19 grievance against Hillsboro for violations of the CBA because of the “harassment and
20 intimidation” of Plaintiff Bautista throughout the investigatory process. The union called for an
21 immediate end to the investigation and payment for all the time Plaintiff Bautista has had to
22 spend responding to their unreasonable demands.
23
24

156.

1
2 Plaintiff Bautista is not alone in working a second job. Many of his colleagues at
3 Hillsboro F&R work a second job. Plaintiff Bautista was the only one anonymously accused of
4 ethical violations when it is well known in the department that the white members constantly do
5 work for their second jobs during paid time.

157.

6
7 For example, one individual who has a side business selling used cars will bring the cars
8 to the fire station for cleaning using the fire station's cleaning supplies and conducts sales calls
9 while on shift. Others include taking consultation calls during work hours and taking sales and
10 client calls while on shift. All of this is well known by the fire chiefs and no complaints or
11 reprimands are made by Hillsboro F&R.

158.

12
13 Indeed, ethical violations are commonplace in Hillsboro F&R, including employees being
14 at bars, doctor appointments, or travelling out of state while putting down work time on their
15 timesheets. Defendant Gurske and others in management positions are well aware of these
16 violations and yet no complaints are made and no reprimands are issued.

159.

17
18
19 Defendants also allow multiple employees to engage in ethically questionable second
20 jobs, including allowing employees to work for software companies that sell products to the City
21 of Hillsboro, work for companies that sell fire equipment and gear to Hillsboro F&R, work for
22 companies that provide services and tech for Hillsboro F&R, and own and operate companies
23 that provide fire and rescue training to major companies within the Hillsboro F&R response area.
24

160.

1
2 Yet it was only when Plaintiff Bautista was one of two finalists for an internal promotion
3 that the anonymous complaints were made.

4 161.

5 Since the beginning of the pandemic, Plaintiff Bautista was actively working as part of
6 the COVID task force for Hillsboro F&R as the liaison to the City of Hillsboro. On January 4,
7 2021, Plaintiff Bautista attended a meeting with Hillsboro, OHSU, and other members of the task
8 force to discuss OHSU's vaccination plans for first responders.

9 162.

10 On January 21, 2021, Plaintiff Bautista received an email from his Division Chief
11 essentially removing him from any active role in the COVID task force.

12
13 "This email is to inform you of what your roles and responsibilities are regarding the
14 COVID-19 vaccination and testing sites. Your responsibilities include the issuance of
15 Public Safety Permits, site inspections, and addressing periodic issues that arise at these
16 sites. Anything outside of this scope is not permitted unless authorized by me or Chief
17 Downey."

18 163.

19 Plaintiff Bautista was supposed to oversee one of the testing sites the next day but was
20 ordered by his Division Chief to hand off the testing site to another employee.

21 164.

22 On January 26, 2021, Plaintiff Bautista was approached by his Division Chief who
23 wanted to discuss the email. He explained that he was ordered by Defendant Downey to send
24 that email in response to work Plaintiff Bautista had been doing with Washington County Public
Health's planned vaccination clinic with the goal of vaccinating the BIPOC community.

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165.

The Division Chief expressed that he felt bad over the weekend after sending that email and “cutting [him] down” at the end of his work week. Plaintiff Bautista told him he understood he was being directed to reign him in and put him in his place. This has been management’s approach with Plaintiff Bautista for years. The Division Chief acknowledged that conduct and said he is hoping to change the pattern, but he has supervisors he has to report to as well.

166.

On February 3, 2021, Plaintiff Bautista received an email from Ms. Jensen that he was again not selected to move forward for the Fire Division Chief -Training position.

167.

Both Jeremy Menear and Mark Johnson received interviews for the Fire Division Chief - Training position. Both are white males. Mr. Menear has less experience, education, and lacks Oregon DPSST qualifications, which are required in the job description. He also is deficient in the necessary certifications. Plaintiff Bautista meets all these criteria.

168.

Prior to Mr. Menear’s interview for the position, Defendant Gurske sent an email to inform Mr. Menear that he was expediting certifications with DPSST in order for Mr. Menear to meet the minimum qualifications for the position.

169.

Mr. Menear also was asking other fire officers to get him into the requisite fire officer certification courses, asking to even gain admittance into the State’s fire academy because he needed the certifications for the promotion.

170.

As of the date of filing this complaint, the position of Fire Division Chief – Training has been offered to yet another white male.

PAUL HARVEY

171.

Plaintiff Harvey is a 57-year-old male and has been working with Hillsboro F&R for over two decades as a firefighter/paramedic.

172.

Since the 1990s, Plaintiff Harvey has worked in industrial safety, private ambulance, and firefighting positions. He is a licensed paramedic with over 25 years' experience.

173.

Plaintiff Harvey was hired by the City of Hillsboro on May 1st, 2000. After he completed probation he was assigned as a firefighter trainer for the next two recruit groups and proctored multiple new hires and paramedics in EMS over his two-decade career.

174.

Plaintiff Harvey received his Firefighter 1 & 2 certifications July 2001.

175.

After his recruit training assignment Plaintiff Harvey was assigned to the Rescue 10 Station where he served as the sole Paramedic at the department's busiest station.

176.

Plaintiff Harvey attended and completed the Metro Fire Officer Academy in November 2002.

177.

1
2 Plaintiff Harvey became one of the three original PEER Fitness Trainers in the
3 department on September 1st, 2003 and has been an active member of the EMS and Safety
4 Committee multiple times throughout his career with Hillsboro F&R.

178.

5
6 Plaintiff Harvey has received several lifesaving awards, as well as the Chief's Coin of
7 Excellence Award in 2005 and again in 2009.

179.

8
9 During his tenure at Hillsboro F&R, Plaintiff Harvey earned well over 25 certifications
10 including On Scene Incident Commander, Task Force Leader, Hazardous Materials Technician,
11 Incident Safety Officer, Rescue Systems 1 Instructor, Structural Collapse Instructor.

180.

12
13 Despite his exemplary service and career with Hillsboro F&R, over the last few years
14 Plaintiff Harvey has been targeted for retaliation and discrimination based on his age and
15 disabilities – disabilities that all stemmed from 20+ years of physically demanding work at
16 Hillsboro F&R.
17

181.

18
19 Plaintiff Harvey has also been targeted for speaking up and blowing the whistle on illegal
20 behavior by others within Hillsboro F&R.

182.

21
22 In January 2018, Plaintiff Harvey injured his back and hip while helping a man in the line
23 of duty.
24

183.

1
2 In March of 2018, the injury was accepted by Hillsboro for workers' compensation
3 purposes and in April, Plaintiff Harvey underwent his first surgery.

184.

4
5 On May 1, 2018, Plaintiff Harvey returned to light duty.

185.

6
7 On June 7, 2018, Plaintiff Harvey injured his lower back while responding to a house
8 fire. He again filed for workers' compensation claim.

186.

9
10 After his report of his back injury, Defendant Gurske and human resources began to
11 question Plaintiff Harvey's injury.

187.

12
13 Throughout the summer of 2018, Plaintiff Harvey suffered severe back pain, with
14 multiple doctors' appointments and procedures. He attended multiple doctors' appointments and
15 physical therapy with the intent of avoiding surgery.

188.

16
17 On July 10, 2018, Plaintiff Harvey asked to be released to light duty work to assist
18 training new recruits, despite his significant pain and limited ability to walk.

189.

19
20 He asked Defendant Gurske what he should do if he was in too much pain to report in.
21 Defendant Gurske told him that he should not call in sick while on workers' compensation, that
22 it "wouldn't look good."
23

190.

1
2 After several more months of treatment, Plaintiff Harvey was not improving. He reached
3 out to Hillsboro HR for help scheduling surgery and was told the workers' compensation insurer
4 would approve or deny any treatment. When he contacted the workers' compensation insurer,
5 they told him the decision was Hillsboro's.

191.

6
7 Plaintiff Harvey had a meeting with HR and a representative from the union on
8 November 20, 2018. During the meeting, Plaintiff Harvey advised that he was looking into
9 alternatives to surgery, which included stem cell injections, but that surgery would probably be
10 necessary according to his doctors. The surgery would cost him \$9,000.00 which he was willing
11 to pay. Hillsboro responded that they would allow him to get the stem cell treatment and surgery
12 if he dropped his workers' compensation claim. He refused.

192.

13
14
15 On January 30, 2019, Plaintiff Harvey retained a workers' compensation attorney.

193.

16
17 On February 1, 2019, Hillsboro denied Plaintiff Harvey's back injury claim. He appealed.

194.

18
19 Eventually Plaintiff Harvey could not stand the pain anymore. He took personal time off
20 and used his private insurance to receive the surgery on April 11, 2019.

195.

21
22 As a result, Plaintiff Harvey used approximately 500 hours of sick and vacation time for
23 the surgery and recovery.

196.

1
2 On May 21, 2019, Plaintiff Harvey won his first appeal of the workers' compensation
3 denial. The City objected and appealed the ruling.

4 197.

5 In the meantime, Plaintiff Harvey spoke with Ms. Gandee and requested that the 500
6 hours of sick and vacation time he had used for his surgery and recovery be credited back to his
7 account. Ms. Gandee responded that she would look into it.

8 198.

9 On June 2 and 5, 2019, Plaintiff Harvey spoke with Defendant Gurske, who kept assuring
10 him that Ms. Gandee was working on it and that he would have the credit back to his account
11 shortly.

12 199.

13 On June 22, 2019, Ms. Gandee informed Plaintiff Harvey that the City was within its
14 rights to withhold the 500 hours during the appeal and refused to pay any ongoing medical
15 expenses.
16

17 200.

18 On January 15, 2021, the City's appeal was denied, and the on-the-job injury determined
19 to be compensable under workers' compensation law. As of the date of filing this complaint,
20 Plaintiff Harvey still has not had his 500 hours credited back.

21 201.

22 By June 10, 2019 Plaintiff Harvey had run out of sick and vacation time and asked his
23 surgeon to release him back to light duty early. He was assigned to work with Plaintiff Raven in
24

1 the training department, assisting with recruit training, continuing education, drills, and various
2 other duties.

3 202.

4 All was going well until the summer of 2020. A new group of four recruits was to be
5 hired and trained by Hillsboro F&R. Defendant Gurske took the lead and made the hires via
6 Zoom.

7 203.

8 Plaintiffs Harvey and Raven both voiced serious concerns about Defendant Gurske's
9 ability to evaluate new recruits without meeting them in person. He responded that he knew how
10 to hire and what to look for.

11 204.

12 On July 20, 2020 Plaintiff Harvey was tasked with calling references on one of the
13 candidates. All three references stated this candidate was extremely stubborn and difficult.
14 Plaintiff Harvey relayed this information to Defendant Gurske, who stated, "our trainers can
15 correct any behavior." Plaintiff Harvey disagreed, but the candidate was hired over his
16 objections.
17

18 205.

19 As soon as the candidates arrived for their two-week training, it was clear that there were
20 serious problems with each candidate. From the start the trainers voiced concerns about the
21 candidates being out of shape, not having the correct experience, and being argumentative.
22
23
24

206.

1
2 On or around September 25, 2020, Defendant Gurske voided the failing grade of the male
3 candidate to pass a test he had failed but the female recruit had passed.

207.

4
5 Plaintiff Harvey graded the test with the same answer key as he had done for all tests
6 prior.

208.

7
8 All the other trainers had come up with the same score – the male recruit had failed.

209.

9
10 Plaintiff Harvey also failed both the male and a female recruit on a practical EMS skills
11 station, once again using a previous score sheet that had been used for multiple recruits. It
12 showed a “critical fail”.

210.

13
14 Defendant Gurske accused Plaintiff Harvey of incompetence and passed the male recruit
15 despite his failing grade.

211.

16
17 As outlined above, on October 7, 2020, Plaintiff Raven reported the falsified grades to
18 Ms. Gandee in human resources.

212.

19
20 During this time, Plaintiff Harvey approached Defendant Gurske to ask about moving to
21 a Deputy Fire Marshall (DFM) I position. Plaintiff Harvey explained that his brother was very ill
22 and the ability to have a permanent position with an increase in pay would be beneficial.
23
24

213.

1
2 Defendant Gurske told Plaintiff Harvey that all he had to do was apply and he would
3 make it happen.

214.

4
5 Several months prior, another firefighter returned from leave and was placed in a DFM I
6 position. Plaintiff Harvey was more than qualified for the position.

215.

7
8 A few weeks later, Plaintiff Harvey formally asked Defendant Gurske for the transfer.
9 Defendant Gurske stated that he had spoken with Defendant Downey and they would “make it
10 happen.”

216.

11
12 After this interaction, an internal job opening for the DFM I position was posted. Plaintiff
13 Harvey applied and sent the application to Defendant Gurske personally. Defendant Gurske
14 acknowledged the application.
15

217.

16
17 On October 10, 2020, Plaintiff Harvey was asked to attend an HR interview. In that
18 interview, he confirmed Plaintiff Raven’s reports about Defendant Gurske’s grade changes, and
19 also made his own complaints to HR about the hiring process, differing treatment for recruits
20 based on their sex, using friends of the recruits as references and trainers, having close
21 relationships interfere with scoring tests, lack of respect from the training crews for both him and
22 Plaintiff Raven, the hostile office dynamics, using untrained crews as trainers, and the problems
23 with the training chief candidate process.
24

218.

1
2 Defendant Gurske continued to change grades for recruits based on his preference, in
3 contravention of safety and training standards.

4
5 219.

6 On December 1 and 2, 2020 the recruits had another critical exam. Defendant Gurske was
7 informed that one of the recruits did not pass and would be asked to leave the program as a final
8 strike.

9
10 220.

11 Instead of putting the safety of the public and other firefighters on the line first,
12 Defendant Gurske called Plaintiff Harvey and asked him to find a way to pass the recruit. When
13 he did not, on December 3, Defendant Gurske came into work and changed the test scores so the
14 recruit passed.

15
16 221.

17 On December 4, Defendant Gurske removed Plaintiff Harvey from any interactions or
18 training of recruits. Defendant Gurske told Defendant Downey that Plaintiff Harvey had graded
19 papers incorrectly. Because of Defendant Gurske's accusations of incompetence, Plaintiff
20 Harvey was removed from the training position under Plaintiff Raven. He had been in that
21 position for a year and a half with all positive reviews.

22
23 222.

24 On December 15, 2020, Plaintiff Harvey had surgery on his dominant hand, removing
and replacing two of his knuckles.

223.

1 The DFM I position closed on December 22. Upon information and belief, Plaintiff
2 Harvey was the only applicant.
3

224.

4 While recovering from surgery, Plaintiff Harvey asked about the DFM I position since he
5 currently was unassigned. Hillsboro responded, “we are reviewing the applicants.”
6

225.

7 On January 14, 2021, Plaintiff Harvey reached out again to Defendant Gurske and
8 inquired about the status of the DFM I position. Defendant Gurske told Plaintiff Harvey that the
9 department was not going to hire a DFM I, and instead had an “emergent need” for a DFM II
10 position.
11

226.

12 Typically, a DFM I serves for 1 year while taking courses and gaining practical
13 experience. They are then promoted to a DFM II. The individuals in the DFM I position have
14 been there for over a year and are still not qualified to be promoted to DFM II.
15
16

227.

17 Plaintiff Harvey was overly qualified for entry into the DFM I position and could have
18 easily been trained to be a DFM II in a matter of months.
19

228.

20 As of the date of filing this complaint, it has been three months since the stated about
21 “emergent need” and there has been no job posted, internally or externally, for a DFM II and no
22 one has been hired as a DFM II.
23
24

229.

1
2 On January 15, 2021, Plaintiff Harvey won his workers' compensation appeal. Hillsboro
3 still refused to refund his time.

230.

4
5 On January 26, 2021 Plaintiff Harvey served timely tort claim notice on Hillsboro.

231.

6
7 On February 3, 2021, Hillsboro petitioned to overturn the workers' compensation appeal
8 decision.

232.

9
10 In March 2021, Plaintiff Harvey requested to go out on medical leave. He asked again for
11 a portion of the time he was supposed to be credited, 300 hours of paid leave, in order to
12 continue to be paid his salary.

233.

13
14 Hillsboro refused to credit the time, and instead offered to publicly ask his fellow
15 employees to donate their earned vacation time. Plaintiff Harvey refused this request.
16

17 **DAMAGES**

234.

18
19 Plaintiff Raven is entitled to economic damages incurred as a result of Defendants'
20 actions as alleged herein in an amount to be determined at trial. To date, such economic
21 damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount of
22 \$4,547.00.
23

235.

1
2 Plaintiff Bautista is entitled to economic damages incurred as a result of Defendants'
3 actions as alleged herein in an amount to be determined at trial. To date, such economic
4 damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount of
5 \$40,754.

236.

6
7 Plaintiff Harvey is entitled to economic damages incurred as a result of Defendants'
8 actions as alleged herein in an amount to be determined at trial. To date, such economic
9 damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount of
10 \$6,664.00.

237.

11
12 As a further result of defendants' action alleged herein, Plaintiffs have suffered and
13 continue to suffer noneconomic damages, including physical, emotional, and mental harm, for
14 which they are entitled to recover in an amount found to be appropriate by a jury based on the
15 evidence presented at trial. Solely for purposes of ORCP 18B, the Plaintiffs estimate and allege
16 such damages in the amount of \$250,000 each.

238.

17
18 Plaintiffs also seeks reasonable attorneys' fees, reasonable expert and witness fees, and
19 other costs of the action to be paid by defendants pursuant to ORS 659A.885, ORS 20.107.

239.

20
21 Plaintiffs hereby reserve the right to amend this complaint pursuant to ORS 31.725.
22
23
24

1 **FIRST CLAIM FOR RELIEF**
2 **(Sex Discrimination – ORS 659A.030 et seq)**
3 **(Plaintiff Raven Against All Defendants)**

4 240.

5 Plaintiff incorporates and realleges paragraphs 1 through 98, 234, and 237 through 239
6 by reference as though set forth fully herein.

7 241.

8 It is the public policy of the State of Oregon that practices of unlawful discrimination
9 against any of its inhabitants because of sex are a matter of state concern and that this
10 discrimination not only threatens the rights and privileges of its inhabitants but menaces the
11 institutions and foundation of a free democratic state.

12 242.

13 It is an unlawful employment practice for any employer to refuse to hire, employ or
14 promote, to bar or discharge from employment or to discriminate in compensation or in terms,
15 conditions, or privileges of employment on the basis of an individual's sex.

16 243.

17 Defendant Hillsboro discriminated against Plaintiff Raven in the terms and conditions of
18 her employment as alleged herein in substantial motivating part due to plaintiff's sex.

19 244.

20 Defendant Hillsboro's conduct as described herein is in violation of ORS
21 659A.030(1)(a).

245.

1
2 Defendants Gurske and Downey also engaged in conduct that was discriminatory and aided,
3 abetted, and incited the discriminatory conduct in violation of ORS 659A.030(1)(g).

4 **SECOND CLAIM FOR RELIEF**
5 **(Discrimination based on Race – ORS 659A.030 et seq)**
6 **(Plaintiff Bautista Against All Defendants)**

246.

7 Plaintiff incorporates paragraphs 1 through 22, 99 through 170, 235, and 237 through 239
8 by reference as though set forth fully herein.

247.

9
10 It is an unlawful employment practice for any employer to refuse to hire, employ or
11 promote, to bar or discharge from employment or to discriminate in compensation or in terms,
12 conditions, or privileges of employment on the basis of an individual's race or national origin.
13

248.

14
15 Defendant Hillsboro discriminated against Plaintiff Bautista in the terms and conditions
16 of his employment as alleged herein in substantial motivating part due to plaintiff's race and/or
17 national origin.

249.

18
19 Defendant Hillsboro's conduct as described herein is in violation of ORS
20 659A.030(1)(b).

250.

21
22 Defendants Gurske and Downey also engaged in conduct that was discriminatory and
23 aided, abetted, and incited the discriminatory conduct in violation of ORS 659A.030(1)(g).
24

1 **THIRD CLAIM FOR RELIEF**
2 **(Age Discrimination – ORS 659A.030 et seq)**
3 **(Plaintiff Harvey Against All Defendants)**

4 251.

5 Plaintiff incorporates paragraphs 1 through 22, 171 through 233, and 236 through 239 by
6 reference as though set forth fully herein.

7 252.

8 It is the public policy of the State of Oregon that the available workforce should be
9 utilized to the fullest extent possible. To this end, the abilities of an individual, and not any
10 arbitrary standards that discriminate against an individual solely because of age, should be the
11 measure of the individual's fitness and qualification for employment.

12 253.

13 It is an unlawful employment practice for any employer to refuse to hire, employ or
14 promote, to bar or discharge from employment or to discriminate in compensation or in terms,
15 conditions, or privileges of employment on the basis of an individual's age.

16 254.

17 Defendant Hillsboro discriminated against Plaintiff Harvey in the terms and conditions of
18 his employment as alleged herein in substantial motivating part due to plaintiff's age.

19 255.

20 Defendant Hillsboro's conduct as described herein is in violation of ORS
21 659A.030(1)(b).

256.

1 Defendants Gurske and Downey also engaged in conduct that was discriminatory and aided,
2 abetted, and incited the discriminatory conduct in violation of ORS 659A.030(1)(g).
3

4 **FOURTH CLAIM FOR RELIEF**
5 **(Disability Discrimination – ORS 659A.112)**
6 **(Plaintiffs Raven and Harvey Against All Defendants)**

7 257.

8 Plaintiffs incorporate and reallege paragraphs 1 through 98, 171 through 234, and 236
9 through 239 by reference as though set forth fully herein.

10 258.

11 Plaintiffs had at all material times a physical impairment that substantially limited one or
12 more major life activities or were regarded as or perceived as having such physical impairments.

13 259.

14 Plaintiffs are protected by statute as individuals with a disability due to their actual
15 disability, because of their record of disability, and because defendants regarded them as
16 disabled.

17 260.

18 Defendants discriminated against Plaintiffs in the terms and conditions of their
19 employment based on their disability.
20

21 261.

22 Defendants discriminated against Plaintiffs by taking adverse employment action against
23 them and/or failing to engage in the interactive process and/or failing to make a reasonable
24 accommodation in violation of this statute as alleged herein.

1 **FIFTH CLAIM FOR RELIEF**
2 **(Hostile Work Environment – ORS 659A.030 *et seq*)**
3 **(All Plaintiffs Against All Defendants)**

4 262.

5 Plaintiffs incorporate and reallege paragraphs 1 through 239 by reference as though set
6 forth fully herein.

7 263.

8 As alleged herein, defendant Hillsboro subjected Plaintiffs to a work environment that
9 was objectively and subjectively hostile because of Plaintiffs' sex, race, age, and/or disability as
10 alleged herein. The conduct against Plaintiffs was pervasive, severe, and altered the terms and
11 conditions of their employment.

12 264.

13 Defendant's conduct had the purpose and effect of creating an intimidating, hostile and
14 offensive work environment during Plaintiffs' employment, which adversely effected Plaintiffs'
15 employment.

16 265.

17 Defendant treated Plaintiffs adversely with respect to compensation or other terms,
18 conditions, or privileges of employment. Plaintiffs' sex, race, age, disability and/or their
19 complaints were a substantial factor in the adverse treatment.
20

21 266.

22 Defendants Gurske and Downey aided and abetted the unlawful conduct as alleged
23 herein in violation of ORS 659A.030(1)(g).
24

SIXTH CLAIM FOR RELIEF
(Retaliation)
(All Plaintiffs Against All Defendants)
Count One ORS 659A.030(1)(f)

267.

Plaintiffs incorporate and reallege paragraphs 1 through 239 by reference as though set forth fully herein.

268.

It is an unlawful employment practice for any person to discharge, expel or otherwise discriminate against any other person because that person has opposed any unlawful practice under ORS Chapter 659A or has attempted to do so.

269.

Defendants discriminated against plaintiffs in the terms and conditions of their employment as alleged herein in retaliation for plaintiffs’ opposition to and complaints and reports of discrimination due to sex, race, and/or age, which constitute violations of law, regulation, and rule.

Count Two: ORS 659A.199

270.

Plaintiffs incorporate paragraphs 1 through 33, and 40 through 42, as though fully set forth herein.

271.

It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the

1 employee has in good faith reported information that the employee believes is evidence of a
2 violation of a state or federal law, rule or regulation.

3 272.

4 Plaintiffs in good faith made reports and complaints relating to violations as alleged
5 herein which constituted protected conduct under ORS 659A.199.

6 273.

7 Defendants discriminated against Plaintiffs in the terms and conditions of their
8 employment because of such protected conduct in violation of ORS 659A.199.

9 **Count Three: ORS 659A.203**

10 274.

11 Plaintiffs incorporate paragraphs 1 through 33, 40 through 42, and 44 through 46, as
12 though fully set forth herein.

13 275.

14 It is an unlawful employment practice for any public employer to take or threaten to take
15 disciplinary action against an employee for the disclosure of any information that the employee
16 reasonably believes is evidence of a violation of any federal, state or local law, rule or
17 regulation or mismanagement, gross waste of funds or abuse of authority or substantial and
18 specific danger to public health and safety resulting from the public employer's actions.
19

20 276.

21 Plaintiffs' good faith reports and complaints of violations of federal, state or local law,
22 rule or regulation or mismanagement, gross waste of funds or abuse of authority or substantial
23

1 and specific danger to public health and safety resulting from the public employer's actions as
2 alleged herein constituted protected conduct under ORS 659A.203.

3 277.

4 Defendants discriminated against Plaintiffs in the terms and conditions of their
5 employment as alleged herein because of such protected conduct in violation of ORS 659A.203

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment as follows:

- 9 1. Economic damages against the defendant as alleged herein,
10 2. Non-economic damages against the defendant as alleged herein,
11 3. Attorney fees and costs as allowed by law, as well as prejudgment and post-
12 judgment interest,
13 4. Injunctive and/or declaratory relief in favor of plaintiffs as may be appropriate on
14 each of plaintiffs' claims for relief, and
15 5. Any other relief the Court deems just and equitable.
16

17
18 Dated this 2nd day of April, 2021.

19
20 /s/ Rebecca Cambreleng
21 Rebecca Cambreleng, OSB No. 133209
22 Rebecca@employmentlaw-nw.com
23 Ashley Marton, OSB No. 171584
24 Ashley@employmentlaw-nw.com
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