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Attorney for Plaintiff

UNITED STATES DISTRICT COURT

THE DISTRICT OF OREGON

Portland Division

DAWN WILSON,

Plaintiff,

v.

COUNTY OF UMATILLA, DEAN GUSHWA
(Individual and Official Capacity),
STATE OF OREGON, and GOVERNOR
THEODORE KULONGOSKI (Individual and
Official Capacity),

Defendants.

Case No. **CV '11 1061 PK**

COMPLAINT

42 U.S.C. § 1983 (Gender
Discrimination); Title VII; ORS
659A.030; Negligent Retention;
Assault and Battery; Intentional
Infliction of Emotional Distress

JURY TRIAL DEMANDED
PRAYER AMOUNT: \$5,000,000

JURISDICTION AND VENUE

1.

Jurisdiction lies with the District of Oregon based upon 28 U.S.C. §§ 1331, 1343 (3-4); 42 U.S.C. § 2000 e-5 and 42 U.S.C. § 1983. This action is brought under the Constitution of the United States, 42 U.S.C. § 1983, and Title VII of the Civil Rights Act of 1964. Plaintiff seeks

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redress for violations of the Constitution of the United States, 42 U.S.C. § 1983, Title VII, and pendant state claims.

2.

The claims set forth herein are based upon acts and transactions which have occurred in this District. Defendant is a public entity sited within the District. Plaintiff is a legal resident of this District. This matter involves federal questions including the United States Constitution and provisions of the United States Code, as well as the federal common law interpreting them.

PARTIES

3.

Plaintiff is a citizen of the United States and is a resident and citizen of the State of Oregon.

4.

The State of Oregon is located in the State of Oregon and was a joint employer of Defendant Gushwa and Plaintiff.

5.

Defendant Gushwa was at all material times District Attorney for Umatilla County. In addition, Defendant Gushwa was a joint employer of Plaintiff and served as Plaintiff's direct supervisor at all times relevant to this Complaint. At all times he was acting under color of State law in the course and scope of his position as District Attorney.

6.

Defendant Umatilla County was a joint employer of Defendant Gushwa and Plaintiff.

7.

Defendant Kulongoski was the Governor of the State of Oregon at all material times and

had direct supervisory authority over Defendant Gushwa, and at all times was acting under color of State law.

FACTS COMMON TO ALL CLAIMS

8.

Plaintiff at all material times was employed as an Office Specialist III for Defendants Umatilla County, Gushwa, and State of Oregon.

9.

Plaintiff is a female.

10.

Plaintiff was hired in 2001.

11.

In 2008, DA Gushwa asked Plaintiff to engage in a sexual relationship. During work hours, as well as off duty, Defendant Gushwa engaged in inappropriate sexual banter and contact with Plaintiff.

12.

On or about December 31, 2009, DA Gushwa sexually assaulted Plaintiff and forced Plaintiff to engage in sexual acts against her will.

13.

On January 1, 2010, DA Gushwa forced Plaintiff to engage in sexual acts against her will under threat of physical force and retribution in the workplace.

14.

During Plaintiff's employment from January to August 2010, District Attorney Gushwa

made sexual advances towards Plaintiff.

15.

During the course of employment, and during work hours, DA Gushwa propositioned Plaintiff for sexual contact and altered the terms and conditions of her employment.

16.

Plaintiff suffered physical abuse, sexual abuse, and emotional abuse at the hands of DA Gushwa which altered the terms and conditions of her employment.

17.

The State of Oregon concluded through the use of a polygraph that the sexual contact between Gushwa and Plaintiff was without Plaintiff's consent on at least two occasions.

18.

Plaintiff filed a complaint with law enforcement in 2009 and thereby informed Umatilla County of Defendant Gushwa's actions.

19.

On November 9, 2010, the State of Oregon through its Attorney General admitted that Defendant Gushwa engaged in sexual touching of Plaintiff during work hours through an unlawful exercise of his official duties. Defendant State of Oregon also admitted that Defendant Gushwa threatened Plaintiff with job consequences if she did not remain silent about the sexual relationship.

20.

In response to her complaint, Plaintiff was singled out by coworkers for differing treatment and additional work.

21.

Despite further reports to County Human Resources, Plaintiff continued to suffer this same retaliatory treatment.

22.

Defendants Umatilla County, State of Oregon and Kulongoski knew or should have known of prior sexual relationships between Defendant Gushwa and office staff.

23.

Plaintiff has provided a Tort Claim notice pursuant to ORS 30.275 and subsequently filed a complaint with the Oregon Bureau of Labor and Industries and the EEOC alleging retaliation and disability discrimination.

24.

On June 6, 2011, Plaintiff received a Notice of Right to Sue from the BOLI and on August 19, 2011 from EEOC.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 Gender Discrimination - All Defendants)

25.

Plaintiff re-alleges paragraphs 1 through 24 above.

26.

By subjecting Plaintiff to unlawful sexual discrimination Defendant Gushwa violated the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

27.

Defendant Gushwa served as District Attorney and had final policy making authority.

28.

Defendant Gushwa's employment related decisions were not subject to review.

29.

The actions of Defendant Gushwa arose to the level of a longstanding practice and custom of the County, the State, and the office of District Attorney.

30.

Defendants acted intentionally, or with deliberate indifference to the likelihood of Defendant Gushwa's acts towards Plaintiff.

31.

As a result of Defendants' actions, Plaintiff has suffered severe emotional and physical injury in an amount to be determined at trial, but in an amount no less than \$5,000,000.

SECOND CLAIM FOR RELIEF

(Title VII)

32.

Plaintiff re-alleges paragraphs 1 through 31 above.

33.

By subjecting Plaintiff to differential treatment based upon her gender, including subjecting Plaintiff to a hostile work environment, failing to take appropriate remedial action in response to allegations of sexual harassment, and retaliating against Plaintiff for reporting these discriminatory actions, Defendants have unlawfully discriminated against Plaintiff in violation of Title VII of the Civil Rights Act of 1964.

THIRD CLAIM FOR RELIEF

(ORS 659A.030)

34.

Plaintiff re-alleges paragraphs 1 through 33 above.

35.

By subjecting Plaintiff to differential treatment based upon her gender, including subjecting Plaintiff to a hostile work environment, and failing to take appropriate remedial action in response to allegations of sexual harassment, and retaliating against Plaintiff for reporting these discriminatory actions, Defendants County and State have unlawfully discriminated against Plaintiff in violation of ORS 659A.030. Moreover, Defendants Gushwa and Kulongoski aided and abetted said unlawful discrimination and retaliation.

36.

As a result of Defendants' actions, Plaintiff has suffered severe emotional and physical injury in an amount to be determined at trial, but in an amount no less than \$5,000,000.

FOURTH CLAIM FOR RELIEF

**(Negligent Retention Against Defendants
State of Oregon, Kulongoski, and Umatilla County)**

37.

Plaintiff re-alleges paragraphs 1 through 36 in this complaint as if fully set forth herein.

38.

At all times herein pertinent, Defendants State of Oregon, Kulongoski, and Umatilla County acted recklessly and/or with gross negligence in retaining Defendant Gushwa as an employee by the following acts:

a) knew or had reason to know that Defendant Gushwa had a history of inappropriate behavior toward Plaintiff and other female employees;

b) knew or had reason to know that Defendant Gushwa was treating Plaintiff in a hostile and retaliatory manner and making it difficult for her to perform her job.

39.

As a direct and proximate result of Defendants' actions, Plaintiff has been and will continue to experience extreme stress and emotional distress, necessitating medical care at substantial out-of-pocket expense, and further aggravating her ability to retain gainful employment. As compensation, Plaintiff seeks special damages for those expenses. Plaintiff does not know at this time the exact amount of those special damages, but estimates her lost out-of-pocket medical expenses to date to exceed \$1,000. Plaintiff prays for leave of court to amend this complaint when those special damages are fully known, up to the time of trial.

40.

As a direct and proximate result of the actions outlined above, Plaintiff has been annoyed, harassed, embarrassed, humiliated, offended, subjected to a hostile work environment and has suffered and continues to suffer severe emotional distress, and has been generally damaged in the amount of \$5,000,000.

41.

By retaining Defendant Gushwa in violation of Oregon common law, Defendants acted with malice or with reckless indifference to Plaintiff's rights. Plaintiff intends to move to amend the complaint to include a claim for punitive damages at an appropriate time.

42.

Plaintiff has incurred expenses in bringing this action and should be awarded such costs to the full extent permitted under the law.

FIFTH CLAIM FOR RELIEF

(Assault and Battery Against Defendant Gushwa)

43.

Plaintiff re-alleges paragraphs 1 through 42, in this complaint, as if fully set forth herein.

44.

Defendant Gushwa's actions constituted an unlawful assault and battery upon Plaintiff's person by causing offensive physical touching of Plaintiff.

45.

Defendant's actions were taken with the knowledge and/or intent that such conduct would inflict mental pain and distress.

46.

As a direct and proximate result of Defendant's actions, Plaintiff has been and will continue to experience extreme stress and emotional distress, necessitating medical care at substantial out-of-pocket expense, and further aggravating her ability to retain gainful employment. As compensation, Plaintiff seeks special damages for those expenses. Plaintiff does not know at this time the exact amount of those special damages, but estimates her lost out-of-pocket medical expenses to date to exceed \$1,000. Plaintiff prays for leave of court to amend this complaint when those special damages are fully known up to the time of trial.

47.

As a direct and proximate result of Defendant's actions, Plaintiff has suffered physical pain, emotional distress, mental anguish, embarrassment, and loss of self-esteem and dignity. As compensation, plaintiff should be awarded general damages against defendant in the amount of \$5,000,000.

48.

Defendant's actions were malicious and were taken with the primary objective of inflicting injury upon Plaintiff or with the knowledge that such injury was highly predictable based on the acts committed. Plaintiff intends to amend the complaint to include a claim for punitive damages at the earliest appropriate opportunity.

49.

Plaintiff has incurred expenses in bringing this action and should be awarded such costs to the full extent permitted under the law.

SIXTH CLAIM FOR RELIEF

(Intentional Infliction of Severe Emotional Distress) (Against Defendant Gushwa)

50.

Plaintiff re-alleges paragraphs 1 through 49, in this complaint, as if fully set forth herein.

51.

The actions of Defendant Gushwa, as set forth in this cause of action constitute intentional infliction of severe emotional distress in violation of Oregon common law.

52.

Defendant intended to inflict severe mental and emotional distress by his extreme and

outrageous conduct. During her employment, Defendant subjected Plaintiff to a sexually discriminatory and retaliatory workplace. Plaintiff found such conduct offensive.

53.

Defendant committed those actions with the knowledge that they were highly likely to cause Plaintiff severe emotional distress. They constituted an extraordinary transgression of the bounds of socially tolerable conduct within the employment context.

54.

As a direct and proximate result of Defendants' actions, Plaintiff has been and will continue to experience extreme stress and emotional distress, necessitating medical care at substantial out-of-pocket expense, and further aggravating her ability to retain gainful employment. As compensation, Plaintiff seeks special damages for those expenses. Plaintiff does not know at this time the exact amount of those special damages, but estimates her lost out-of-pocket medical expenses to date to exceed \$1,000. Plaintiff prays for leave of court to amend this complaint when those special damages are fully known up to the time of trial.

55.

As a direct and proximate result of Defendants' actions, Plaintiff has suffered physical pain, emotional distress, mental anguish, embarrassment, injury to her reputation, and loss of self-esteem and dignity. As compensation, Plaintiff should be awarded general damages against Defendants in the amount of \$5,000,000.

56.

Defendants' actions were malicious, committed with an improper motive, and constituted a gross violation of societal norms. Those actions were done with the primary objective of

inflicting injury upon Plaintiff or with the knowledge that such injury was highly predictable based on the acts committed. Plaintiff intends to amend the complaint to include a claim for punitive damages at the earliest appropriate opportunity.

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. Award Plaintiff lost wages, fringe benefits and prejudgment interest in an amount to be determined at trial;
2. Award Plaintiff compensatory damages for mental and emotional distress in an amount to be determined at trial, but in an amount no less than \$5,000,000;
3. Award Plaintiff punitive damages against the individual defendants in an amount to be determined at trial;
4. Award Plaintiff reasonable attorney's fees and costs and any other relief which is fit and proper.

DATED this 31st of day of August, 2011.



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