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CIRCUIT COURT
FOR MULTNOMAH COUNTY
04787
1204-04787

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

COMPLAINT & JURY TRIAL DEMAND

JAMES MACNEAL,
Plaintiff,

v.

GRAJA, INC., KATIE ROBERTS and
FREDERICK JACKSON,
Defendants.

1. Health & Safety Whistleblowing ORS 654.062
2. Whistleblowing ORS 659A.199
3. Common-Law Wrongful Discharge
4. Aiding, Abetting or Inciting ORS 659A.030(1)(g)
5. Intentional Interference with Economic Relations

[Prayer Amount \$500,000]

[NOT SUBJECT TO MANDATORY
ARBITRATION]

Plaintiff, James McNeal, was employed by Defendant Graja, Inc., from April 29, 2009, through May 9, 2011 when he was unlawfully terminated from his position as General Manager in retaliation for refusing his supervisor's demand that he serve rotten meat at Defendants' KFC franchise restaurants and for threatening to call the Oregon Health Department.

JURISDICTION, VENUE AND PARTIES

1.

Defendant Graja, Inc. ("GRAJA") is a foreign corporation created under the laws of the State of Washington that is licensed and registered to conduct business in the State of Oregon. At all material times, GRAJA was Plaintiff's employer and conducted regular, sustained and substantial business activities in a number of Oregon counties.

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2.

Defendant Katie Roberts (“ROBERTS”) was at all material times an authorized agent of and/or employed by GRAJA and was in substantial part acting within the course and scope of such agency/employment (except where otherwise noted herein). At all material times, ROBERTS was employed as GRAJA’s Regional Manager with supervisory authority over Plaintiff.

3.

Defendant Frederick Jackson (“JACKSON”) was at all material times an authorized agent of and/or employed by GRAJA and was in substantial part acting within the course and scope of such agency/employment. At all material times, JACKSON was GRAJA’s President and Owner and held supervisory authority over Plaintiff.

4.

At all material times, GRAJA was vicariously liable for the acts of its agents and employees who were acting within the course and scope of their employment.

STATEMENT OF FACTS

5.

GRAJA is a restaurant franchisee that owns and operates several KFC and Taco Bell fast food restaurants in Oregon, including a combination Taco Bell/KFC restaurant in Seaside, Oregon.

6.

GRAJA hired Plaintiff to work as the General Manager of its Seaside, Oregon, KFC/Taco Bell on or around April 29, 2009.

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7 7.

8 Plaintiff excelled at his job and earned repeated praise from JACKSON and ROBERTS
9 regarding his work ethic, attitude and management style. In recognition of his excellent
10 performance, Plaintiff earned a number of discretionary pay raises and bonuses during his
11 employment. With these raises and bonuses, Plaintiff was on track to earn over \$60,000 in 2011.

12 8.

13 The chicken that GRAJA serves at its Seaside, Oregon, KFC is delivered to the restaurant in
14 fifty-six pound boxes. Usually the chicken is fresh, not frozen.

15 9.

16 The boxes of fresh chicken are marked on this side with a “kill date,” that indicates when the
17 chicken inside was slaughtered and processed. KFC and GRAJA policy mandates that fresh
18 chicken must be served within twelve days of this “kill date.” Otherwise, the chicken rapidly
19 begins to spoil.

20 10.

21 In Plaintiff’s experience, chicken not served within 12-days of its kill date developed a
22 noticeably foul, rotten smell. In addition, expired chicken changed color from white to light-
23 green and the blood on the chicken began to noticeably thicken and coagulate.

24 11.

25 In or around March 2010, ROBERTS—who is JACKSON’s daughter—directed Store Manager
26 Jennifer Cunningham to serve rotten, expired chicken to guests at the Seaside KFC.

12.

Specifically, in or around March 2010, Cunningham found 10 boxes of rotting, expired chicken

1 in the cooler of the Seaside KFC.

2
3 13.

4 According to Cunningham, "The chicken was turning green and was several days beyond the
5 expiration date, so I told the owner, Fred Jackson, about the need to throw away the rotting
6 chicken. [JACKSON] looked at it and told me to cook it and serve it immediately. I argued with
7 [JACKSON] about how it could make people sick and that the chicken was expired, but he
8 directed me to serve it anyways. A few weeks later I was called into a meeting with [ROBERTS]
9 to explain why my production numbers were low. I explained that against [JACKSON's]
10 recommendation to serve the 10 boxes of rotting chicken, I threw them in the trash. [ROBERTS]
11 was furious with me and criticized my decision. Shortly after this meeting I was fired."

12
13 14.

14 A few months later, in August 2010, ROBERTS sent Plaintiff a text message demanding that he
15 serve expired produce to customers at the Seaside KFC.

16
17 15.

18 ROBERTS directed Plaintiff to serve rotten, expired chicken to KFC customers in or around
19 early February, 2011. At that time, ROBERTS took expired, fresh chicken, and changed the
20 labels on the boxes to make it appear as though the boxes contained frozen chicken that was
21 thawed and was ready to be served.

22
23 16.

24 Plaintiff told ROBERTS he could not in good faith serve the spoiled chicken, which was 15-18
25 days past its kill date and smelled foul. Plaintiff repeatedly told ROBERTS he was not going to
26 serve the expired chicken because doing so violated health codes and could make people sick.

1 ROBERTS persisted in her demands and the expired chicken was ultimately served.

2 17.

3 Assistant Store Manager William Meisburger recalls, "I witnessed my General Manager, James
4 MacNeal also argue with the owner's daughter, Katie Roberts, about how serving rotten, expired
5 chicken violated health codes and could cause health issues. Roberts did not care and insisted
6 the expired chicken be cooked and served."
7

8 18.

9 On or around February 12, 2011, JACKSON told Plaintiff that ROBERTS had reported he had
10 recently been insubordinate, and was not doing a good job managing the restaurant. This was the
11 first time Plaintiff had been counseled for his actions during his nearly two-years of employment.
12

13 19.

14 ROBERTS was critical of Plaintiff for the next several weeks and micro-managed Plaintiff in a
15 way she had never done before.

16 20.

17 In late April, Meisburger resigned his employment with GRAJA. After he resigned, Meisburger
18 and Plaintiff spoke, and Meisburger explained that he could not stand serving rotten chicken to
19 families anymore, as ROBERTS and JACKSON had demanded.
20

21 21.

22 Plaintiff briefly considered resigning, but decided he could not, since he had relocated to the
23 Oregon coast to take the job and needed the income from the position to make ends meet.
24

25 22.

26 A few days following Meisburger's resignation, on or around May 3, 2011, ROBERTS asked

1 Plaintiff if he knew why Meisburger had suddenly resigned.

2
3 23.

4 Plaintiff told ROBERTS that Meisburger had resigned because he could not tolerate ROBERTS'
5 demands to serve rotten chicken. Plaintiff told ROBERTS that he would not allow rotten
6 chicken to be served to the customers, and that she needed to respect his commitment to running
7 and safe restaurant. Plaintiff told ROBERTS he was not serving expired chicken again, and that
8 if he was asked to do so, he would call the Oregon Health Department.

9
10 24.

11 Just days later, on or around May 9, 2011, JACKSON arrived at the store and told Plaintiff that
12 he had received a new complaint from ROBERTS about his work. The allegations JACKSON
13 recited—which included alleged bad scheduling—were all false.

14
15 25.

16 In response, Plaintiff told JACKSON that he believed ROBERTS was retaliating against him for
17 refusing to serve expired chicken and for threatening to notify the health department if she
18 continued to make such demands. JACKSON downplayed Plaintiff's concerns, and told him
19 that serving expired food was not a big deal. Plaintiff pleaded for his job, and told JACKSON he
20 wanted to continue working and try to resolve his differences with ROBERTS.

21
22 26.

23 JACKSON told Plaintiff he would discuss the issue with ROBERTS. JACKSON walked away
24 and returned a short while later. At that point, he told Plaintiff that ROBERTS insisted she could
25 not work with him and, as a result, he was terminating Plaintiff's employment effective
26 immediately. JACKSON then handed Plaintiff a termination notice. The notice listed grounds

1 for termination that included, "Arguing with leadership," and "Not creating an environment of
2 team work with leadership and owner."

3
4 27.

5 As a direct and proximate cause of Defendants' actions, Plaintiff has suffered and continues to
6 suffer loss of earnings. As a direct and proximate cause of Defendants' actions, Plaintiff has also
7 suffered emotional distress, anguish, humiliation, fear, worry, grief and anxiety.

8 **DAMAGES**

9 28.

10 Plaintiff has suffered emotional distress and requests an award of compensatory damages in an
11 amount to be determined by a jury at the time of trial to exceed \$300,000.

12 29.

13 Plaintiff has suffered and continues to suffer loss of earnings, loss of benefits, loss of job
14 opportunities and other employment benefits which continue to accrue in an amount to be
15 determined at the time of trial and no less than \$200,000, together with interest and the amount
16 necessary to offset the income tax consequences of the award pursuant to ORS 659A.885(1)
17 and/or as special damages under common law.

18 30.

19 Plaintiff also seeks equitable relief including reinstatement to Plaintiff's former position, and a
20 permanent injunction enjoining Defendants from engaging in any employment practice which
21 discriminates on the basis as alleged in this Complaint.
22

23 31.

24 Plaintiff places Defendants on notice of Plaintiff's intent to move the Court to amend this
25 Complaint to seek punitive damages and to seek discovery of all relevant financial documents
26 from Defendants.

1
2 32.

3 Plaintiff also seeks reasonable attorney's fees and costs in an amount to be proven at trial
4 pursuant to ORS 659A.885(1) and/or ORS 20.107.

5 **FIRST CLAIM FOR RELIEF**

6 Health & Safety Whistleblowing (ORS 654.062)
7 (Against Defendant GRAJA)

8 33.

9 Plaintiff restates and incorporate by reference paragraphs 1-27, inclusive, as though fully set
10 forth herein.

11 34.

12 Defendants' actions, discussed in detail above, created an unsafe and/or unhealthy workplace and
13 violated one or more of the following Oregon laws: ORS 654.010 (mandating that Oregon
14 employers provide a safe and healthful work environment) and ORS 654.022 (mandating the
15 Oregon employers obey and comply with Oregon health and safety regulations).

16 35.

17 In perpetrating the actions described in the above paragraphs, Defendant, acting through its
18 agents and/or employees, subjected Plaintiff to termination for opposing and reporting
19 information Plaintiff believed was evidence of unsafe and/or unhealthy working conditions,
20 and/or because it believed Plaintiff was about to report unsafe and unhealthy working conditions.

21 36.

22 By retaliating against Plaintiff in this manner, Defendant violated ORS 654.062 and OAR 839-
23 004-0001 *et seq.*, causing Plaintiff to suffer damages.

24 37.

25 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as alleged in
26 paragraphs 28-32 inclusive, *supra*.

1 **SECOND CLAIM FOR RELIEF**

2 Whistleblowing – ORS 659A.199
3 (Against Defendant GRAJA)

4 38.

5 Plaintiff restates and incorporates by reference paragraphs 1-27, inclusive, as though fully set
6 forth herein.

7 39.

8 In perpetrating the actions described in the above paragraphs, Defendant, acting its agents and/or
9 employees, subjected Plaintiff to retaliation for opposing and reporting in good faith information
10 Plaintiff believed to be evidence of violations of state laws, rules, and regulations.

11 40.

12 Defendant retaliated against Plaintiff for opposing and/or reporting and/or because Plaintiff was
13 about to report this unlawful activity by terminating Plaintiff in violation of ORS 659A.199,
14 causing Plaintiff to suffer damages.

15 41.

16 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as alleged in
17 paragraphs 28-32 inclusive, supra.

18 **THIRD CLAIM FOR RELIEF**

19 Common-Law Wrongful Discharge
20 (Against Defendant GRAJA)

21 42.

22 Plaintiff restates and incorporate by reference paragraphs 1-27, inclusive, as though fully set
23 forth herein.

24 43.

25 At all materials times, the public policy of Oregon prohibited an employer from retaliating
26 against an employee for making workplace health or safety complaints and for reporting

1 information the employee believed to be evidence of any violation of any state law, rule, or
2 regulation.

3
4 44.

5 This public policy is embodied in the common law, statutes, and regulations of the State of
6 Oregon and the United States protecting employees and the public from retaliation against an
7 employee because that employee complained of or opposed in good faith unlawful and/or illegal
8 conduct including, but not limited to ORS 654.010, ORS 654.022, ORS 654.062, ORS
9 659A.199, OAR 839-004-0001 *et seq.*, and *Howard v. Waremart, Inc.*, 147 Or. App. 135 (1997).

10 45.

11 Defendant, through its agents and/or employees, violated the above public policies by retaliating
12 against Plaintiff for opposing and/or making good faith complaints about workplace health and
13 safety violations and unlawful conduct and/or because Plaintiff was about to report unlawful
14 conduct or health and safety violations, as described in detail above.

15
16 46.

17 Defendant's discharge of Plaintiff was taken in retaliation for Plaintiff's pursuit and exercise of
18 Plaintiff's rights related to Plaintiff's employment rights, which are of important public interest.

19 47.

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21 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as alleged in
22 paragraphs 28-32 inclusive, *supra*.

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2 **FOURTH CLAIM FOR RELIEF**

3 Aiding, Abetting or Inciting Retaliation (ORS 659A.030(1)(g))
4 (Against Defendants ROBERTS & JACKSON)

5 48.

6 Plaintiff restates and incorporates by reference paragraphs 1-27, inclusive, as though fully set
7 forth herein.

8 49.

9 As set forth in detail above, Defendants ROBERTS & JACKSON aided, abetted and/or incited
10 unlawful retaliation against Plaintiff by Defendants GRAJA.

11 50.

12 Specifically, Defendants ROBERTS & JACKSON incited Plaintiff's unlawful termination on
13 false and pretextual grounds. Defendants ROBERTS & JACKSON did so while knowing that
14 their conduct was unlawful, intending to cause Plaintiff's termination.

15 51.

16 Defendants ROBERTS & JACKSON also aided and/or abetted Plaintiff's unlawful termination
17 by GRAJA on false and pretextual grounds. They did so while knowing that their conduct was
18 unlawful, intending to cause Plaintiff's termination.

19 52.

20 ROBERTS & JACKSON violated Oregon Revised Statute 659A.030(1)(g) by aiding, abetting
21 and/or inciting unlawful retaliation, causing Plaintiff damages.

22 53.

23 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as alleged in
24 paragraphs 28-32 inclusive, supra.
25
26

1 **FIFTH CLAIM FOR RELIEF**

2 Intentional Interference with Economic Relations
3 (Against Defendant ROBERTS)

4 54.

5 Plaintiff restates and incorporate by reference paragraphs 1-27, inclusive, as though fully set
6 forth herein.

7 55.

8 In the alternative, if established at the time of trial, ROBERTS intentionally interfered with
9 Plaintiff's employment pursuits with GRAJA while in some instances acting outside the
10 course/scope of her employment or agency.

11 56.

12 ROBERTS interfered with Plaintiff's employment relationships by making false accusations
13 against Plaintiff and by orchestrating his termination on pre-textual grounds. If established at
14 the time of trial, ROBERTS' actions were not taken to serve GRAJA, but were taken based on
15 her own selfish interests as part of a personal vendetta against Plaintiff. ROBERTS'
16 interferences were accomplished through improper means and with improper purposes and in
17 bad faith.

18 57.

19 ROBERTS' actions caused interference and damage to Plaintiff's employment with GRAJA.

20 58.

21 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as alleged in
22 paragraphs 28-32 inclusive, supra.

23 **JURY TRIAL DEMAND**

24 Plaintiff demands a jury trial on all claims and issues to the extent allowed under the law.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following judgments and relief according to proof:

1. Economic damages;
2. Non-economic damages;
3. Reasonable costs and attorney's fees per statute;
4. Reinstatement and a permanent injunction enjoining Defendants from engaging in any employment practice which discriminates on the basis as alleged in this Complaint;
5. For prejudgment and post-judgment interest as appropriate and allowed by law;
6. On all claims, amounts necessary to offset the income tax consequences of receiving a lump sum payment, rather than receiving payment of wages over the time;
7. Upon motion, punitive damages, as alleged; and
8. All such other relief as this Court may deem proper.

Dated: April 7, 2012.

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