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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TRACY J. HEBERT,)	
)	
Plaintiff,	)	Docket No. 05-1521-HO
)	
v.	)	INTERVENING COMPLAINT--STATE
	)	STATUTORY DISCRIMINATION;
QWEST CORPORATION,	)	VIOLATION OF TITLE VII;
	)	VIOLATION OF 42 USC § 1981
Defendant.	)	INTENTIONAL INFLICTION OF
	)	EMOTIONAL DISTRESS; RECKLESS
	)	INFLICTION OF EMOTIONAL
	)	DISTRESS and WRONGFUL
	)	DISCHARGE
	)	(Jury Trial Requested)

Plaintiff alleges:

JURISDICTION AND VENUE

1.

Jurisdiction is appropriate for this Court after Plaintiff co-filed a complaint with the Oregon Bureau of Labor and Industries (“BOLI”) and the Equal Employment Opportunity Commission (“EEOC”) and the EEOC filed a civil suit regarding the complaint on September

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30, 2005. Plaintiff requests a jury trial in this matter. All conditions precedent to the institution of this lawsuit have been fulfilled.

2.

Venue is appropriate in this Court because events giving rise to this complaint occurred in Oregon.

3.

Jurisdiction is conferred upon this Court by 28 USC § 1331 and brought pursuant to claims under 42 USC § 1981 and 2000e from which Plaintiff is entitled to relief.

FACTUAL ALLEGATIONS

4.

At all relevant times Defendant Qwest Corporation (“Qwest”) has been a corporation continuously doing business in the state of Oregon and has continuously had at least 500 employees.

5.

At all relevant times, Qwest has continuously been an employer engaged in an industry affecting commerce within the meaning of Title VII.

6.

Plaintiff is a Caucasian male. At all relevant times, Gabriel Parra, Tony Rodriguez Jr., and Tony Rodriguez Sr. were employees of Qwest at its Eugene facility. They are all Hispanic and of Mexican national origin. At all relevant times, Plaintiff was employed by Qwest at its Eugene, Oregon facility. From at least March 2004, Qwest subjected Plaintiff to discriminatory discipline and termination on July 14, 2004 based on his association with Mexican employees

Gabriel Parra, Tony Rodriguez Jr., and Tony Rodriguez Sr. in violation of state and federal law.

7.

Qwest subjected Plaintiff to a hostile work environment based on his association with Gabriel Parra, Tony Rodriguez Jr., and Tony Rodriguez Sr..

8.

Qwest retaliated against Plaintiff because he opposed its discriminatory practices.

FIRST CLAIM–VIOLATION OF TITLE VII

(Count I–Association Disparate Treatment)

9.

Plaintiff realleges paragraphs 1-8. 42 U.S.C. § 2000e-2(a) provides: “it shall be an unlawful employment practice for an employer” to discharge an individual, “or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individuals race, color, religion, sex, or national origin . . .”. This provision encompasses discrimination based on association with individuals of a certain race or national origin.

10.

Qwest employed Plaintiff during the time in question. During the course of Plaintiff’s employment with Qwest, Plaintiff suffered from discrimination based on his association with Hispanic employees of Mexican national origin. Incidents of race discrimination committed by Qwest resulted in Plaintiff being denied compensation, and adversely affected Plaintiff’s terms, conditions, and privileges of his employment in violation of 42 U.S.C. § 2000e-2(a).

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11.

Qwest discriminated against Plaintiff in the terms, conditions, and privileges of his employment on the basis of his association with Hispanic employees of Mexican national origin. This culminated in Plaintiff's employment being terminated.

12.

Plaintiff has suffered non-economic damages in the amount of \$300,000 as a result of Qwest's race and national origin discrimination. Plaintiff requests economic damages in the form of back pay and front pay in an amount to be determined at the time of trial. Plaintiff seeks equitable relief including reinstatement to his former position. Plaintiff seeks recovery of all compensatory and punitive damages provided by law, in addition to his reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

(Count II—Retaliation Race and National Origin Discrimination)

13.

Plaintiff realleges paragraphs 1-12. 42 U.S.C. § 2000e-3 provides in relevant part: "it shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter."

14.

Plaintiff complained regarding him being treated differently based on his association with Hispanics of Mexican national origin. After this complaint, Qwest retaliated against Plaintiff.

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15.

Qwest's retaliation toward Plaintiff, because he complained about the race and national origin discrimination, constitutes a violation of 42 U.S.C. § 2000e-3(a) for which Plaintiff is entitled to relief.

16.

Plaintiff has suffered non-economic damages in the amount of \$300,000 as a result of Qwest's retaliation directed against Plaintiff because he complained about the race and national origin discrimination. Plaintiff requests economic damages in the form of front pay and back pay in an amount to be determined at the time of trial. Plaintiff seeks equitable relief including reinstatement to his former position. Plaintiff seeks recovery of all compensatory and punitive damages provided by law, in addition to reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

(Count III: Hostile Work Environment National Origin and Race Discrimination)

17.

Plaintiff realleges paragraphs 1-16. 42 U.S.C. § 2000e-2(a) provides: "it shall be an unlawful employment practice for an employer" to discharge an individual, "or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individuals race, color, religion, sex, or national origin ..."

18.

Plaintiff associates with Hispanic individuals of Mexican national origin. Qwest created and maintained a hostile work environment toward Hispanics, people of Mexican national origin,

and Caucasian individuals that associated with them. Qwest's hostile work environment, due to the actions of its employees, as provided in the paragraphs above, affected Plaintiff's ability to perform his job, caused Plaintiff to suffer emotional distress in the performance of his job, and made him subject himself to harassing commentary in order to maintain his employment. All of this adversely affected Plaintiff's terms, conditions, and privileges of his employment in violation of 42 U.S.C. § 2000e-2(a).

19.

Qwest discriminated against Plaintiff in the compensation, terms, conditions and privileges of his employment on the basis of Plaintiff's race and national origin.

20.

Plaintiff has suffered non-economic damages in the amount of \$300,000 as a result of Qwest's hostile work environment directed against Plaintiff because he associates with Hispanics and people of Mexican national origin. Plaintiff requests economic damages in the form of front pay and back pay in an amount to be determined at the time of trial. Plaintiff seeks equitable relief including reinstatement to his former position. Plaintiff seeks recovery of all compensatory and punitive damages provided by law, in addition to reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

SECOND CLAIM-VIOLATION OF 42 USC § 1981

21.

Plaintiff realleges paragraphs 1-20. Qwest discriminated against Plaintiff, on the basis of the race, national origin, and color of the individuals that Plaintiff associated with, in the

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performance of his employment contract, and in the enjoyment of all benefits, privileges, and terms, and conditions of the contractual relationship all in violation of 42 USC § 1981.

22.

Qwest discriminated against Plaintiff in the performance of his employment contract and in the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship by creating, encouraging, and condoning a hostile work environment towards employees that associated with Hispanic individuals and individuals of Mexican national origin, all in violation of 42 USC § 1981.

23.

Qwest discriminated and retaliated against Plaintiff in the performance of his employment contract and in the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship because he opposed and reported unlawful discrimination based on race, national origin and color, all in violation of 42 USC § 1981.

24.

As a result of Qwest's unlawful conduct, Plaintiff has lost wages in an amount to be determined at trial.

25.

As a result of Qwest's unlawful conduct, Plaintiff has suffered noneconomic damages in an amount to be determined at trial.

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26.

The actions of Qwest were taken in bad faith, maliciously or with reckless indifference to the rights of Plaintiff and Plaintiff is entitled to punitive damages in an amount to be determined at trial.

27.

Plaintiff is entitled to recover his reasonable attorney fees and costs pursuant to 42 USC §1988.

28.

Plaintiff is entitled to such other relief as the Court deems equitable.

THIRD CLAIM-STATE STATUTORY DISCRIMINATION

(Count I: Race and National Origin Discrimination)

29.

Plaintiff realleges paragraphs 1-28. According to ORS 659A.030(a), (b) it is an unlawful employment practice, “for an employer, because of an individual’s race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older, . . . to refuse to hire or employ or to bar or discharge from employment such individual [or] . . . to discriminate against such an individual in compensation or in terms, conditions, or privileges of employment.” Discrimination, because of Plaintiff’s race and national origin, committed by Qwest, as alleged above, affected Plaintiff’s employment opportunities, compensation, and terms and conditions of employment and culminated in his discharge and is a direct violation of this statute.

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30.

Plaintiff suffered from discrimination based on his association with Hispanic individuals and individuals of Mexican national origin as described in the paragraphs above. Qwest's discrimination negatively affected Plaintiff's employment in violation of ORS 659A.030(b). As a result of Qwest's race and national origin discrimination, Plaintiff requests equitable relief including reinstatement to his former position and economic damages in an amount to be determined at trial.

31.

Pursuant to ORS 659A.885, Plaintiff is entitled to his reasonable attorney fees and costs in this action.

(Count II: Retaliation Race Discrimination)

32.

Plaintiff realleges paragraphs 1-31. According to ORS 659A.030(f) it is an unlawful employment practice, "for any person to discharge, expel or otherwise discriminate against any other person because that other person has opposed any unlawful practice, or because that other person has filed a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so." Discrimination committed by Qwest, as alleged above, affected Plaintiff's employment opportunities, compensation, and terms and conditions of employment and is a direct violation of this statute.

33.

Plaintiff suffered from retaliation based on his complaints of discrimination for associating with Hispanic employees and employees of Mexican national origin. Qwest's

employees' retaliation toward Plaintiff negatively affected his compensation, terms, conditions, and privileges of employment in violation of ORS 659A.030(f). Plaintiff requests equitable relief including reinstatement to his former position and economic damages in an amount to be determined at trial.

34.

Pursuant to ORS 659A.885, Plaintiff is entitled to his reasonable attorney fees and costs in this action.

(Count III: Race and National Origin Hostile Work Environment Discrimination)

35.

Plaintiff realleges paragraphs 1-34. According to ORS 659A.030(b), it is an unlawful employment practice, "for an employer, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older, . . . to discriminate against such an individual in compensation or in terms, conditions or privileges of employment." Discrimination committed by Qwest affected Plaintiff's employment opportunities and terms and conditions of employment and is a direct violation of the statute.

36.

Plaintiff suffered from discrimination based on his association with Hispanic employees and employees of Mexican national origin. Qwest's actions created a hostile work environment towards employees that associated with Hispanics and individuals of Mexican National Origin that Plaintiff was subjected to. Qwest's hostile work environment and the actions of its employees, as provided in the paragraphs above, affected Plaintiff's ability to perform his job and caused Plaintiff to suffer emotional distress in the performance of her job. Qwest's

discrimination negatively affected Plaintiff's employment in violation of ORS 659A.030(b). Plaintiff requests equitable relief including reinstatement to his former position and economic damages in an amount to be determined at trial.

37.

Pursuant to ORS 659A.885, Plaintiff is entitled to his reasonable attorney fees and costs in this action.

FOURTH CLAIM—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

38.

Plaintiff realleges paragraphs 1-37. Plaintiff had an employer-employee relationship with Qwest. Qwest knew that the aforementioned conduct would cause severe mental or emotional distress or acted despite a high degree of probability that the mental or emotional distress would result.

39.

Qwest's conduct caused Plaintiff severe mental or emotional distress from the foreseeable highly unpleasant emotional reactions including fright, grief, shame, humiliation, embarrassment, anger, disappointment, and worry. Plaintiff has also suffered from depression as a result of being subjected to Qwest's discriminatory employment practices.

40.

The aforementioned continuing actions of Qwest consisted of an extraordinary transgression of contemporary standards of civilized conduct toward an employee.

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41.

As a result of Qwest's intentional actions, Plaintiff has suffered economic damages in an amount to be determined at trial and non-economic damages in the form of severe emotional distress in an amount not less than \$1,000,000.

FIFTH CLAIM-RECKLESS INFLICTION OF EMOTIONAL DISTRESS

42.

Plaintiff realleges paragraphs 1-40. Plaintiff had an employer-employee relationship with Qwest.

43.

Qwest recklessly engaged in the aforementioned actions causing severe mental or emotional distress in the form of fright, grief, shame, humiliation, embarrassment, anger, disappointment, worry, and physical illness.

44.

The aforementioned continuing actions of Qwest consisted of an extraordinary transgression of contemporary standards of civilized conduct toward an employee.

45.

As a result of Qwest's reckless actions, Plaintiff has suffered economic damages in an amount to be determined at trial and non-economic damages in the form of severe emotional distress in an amount not less than \$1,000,000.

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SIXTH CLAIM–WRONGFUL DISCHARGE

46.

Plaintiff realleges paragraphs 1-45. Plaintiff was wrongfully discharged from his employment with Qwest.

47.

Plaintiff was wrongfully discharged because Plaintiff exercised a legal right that is related to Plaintiff's status or role as an employee that is of important public interest.

48.

Plaintiff opposed discriminatory employment practices made illegal by state and federal laws. Opposing these discriminatory employment practices are legal rights that are related to Plaintiff's status or role as an employee. Opposing these discriminatory employment practices is of important public interest to protect the rights of Plaintiff and other employees. Plaintiff had a societal obligation to oppose these practices.

49.

Plaintiff was terminated because he opposed discriminatory employment practices. This constitutes wrongful discharge.

50.

As a result of Plaintiff's wrongful discharge, Plaintiff suffered economic damages in an amount to be determined at trial and non-economic damages in the form of mental distress in an amount not less than \$1,000,000. Plaintiff requests reinstatement to his former position.

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WHEREFORE, Plaintiff requests the following:

For Plaintiff's First Claim For Relief:

Count I–Non-economic damages in the amount of \$300,000 and economic damages in the form of back pay and front pay in an amount to be determined at the time of trial along with equitable relief including reinstatement to his former position. Plaintiff seeks recovery of all compensatory and punitive damages provided by law, in addition to his reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

Count II–Non-economic damages in the amount of \$300,000 and economic damages in the form of back pay and front pay in an amount to be determined at the time of trial along with equitable relief including reinstatement to his former position. Plaintiff seeks recovery of all compensatory and punitive damages provided by law, in addition to his reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

Count III–Non-economic damages in the amount of \$300,000 and economic damages in the form of back pay and front pay in an amount to be determined at the time of trial along with equitable relief including reinstatement to his former position. Plaintiff seeks recovery of all compensatory and punitive damages provided by law, in addition to his reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

For Plaintiff's Second Claim For Relief: Lost wages and non-economic damages in an amount to be determined at the time of trial along with equitable relief including reinstatement to his former position. Plaintiff seeks recovery of all compensatory and punitive damages provided by law in addition to his reasonable attorney fees and costs pursuant to 42 USC §1988.

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For Plaintiff's Third Claim For Relief:

Count I: Plaintiff requests equitable relief including reinstatement to his former position and economic damages in an amount to be determined at trial in addition to his reasonable attorney fees and costs pursuant to ORS 659A.885.

Count II: Plaintiff requests equitable relief including reinstatement to his former position and economic damages in an amount to be determined at trial in addition to his reasonable attorney fees and costs pursuant to ORS 659A.885.

Count III: Plaintiff requests equitable relief including reinstatement to his former position and economic damages in an amount to be determined at trial in addition to his reasonable attorney fees and costs pursuant to ORS 659A.885.

For Plaintiff's Fourth Claim For Relief: Economic damages in an amount to be determined at trial and non-economic damages in the form of severe emotional distress in an amount not less than \$1,000,000.

For Plaintiff's Fifth Claim For Relief: Economic damages in an amount to be determined at trial and non-economic damages in the form of severe emotional distress in an amount not less than \$1,000,000.

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For Plaintiff's Sixth Claim For Relief: Reinstatement to his former position, economic damages in an amount to be determined at trial and non-economic damages in the form of severe emotional distress in an amount not less than \$1,000,000.

DATED this 2nd day of December, 2005.



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