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

LINDA BOLY, an individual,

Plaintiff,

v.

LEGACY GOOD SAMARITAN
HOSPITAL AND MEDICAL CENTER, an
Oregon domestic nonprofit corporation; and
LEGACY HEALTH, an Oregon domestic
nonprofit corporation,

Defendants.

Case No. 1403-03902

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
STATEMENT OF ATTORNEY FEES
AND COSTS**

PROCEDURAL BACKGROUND

These special Findings of Fact and Conclusions of Law are entered by the Court pursuant to ORCP 68C(4)(g).

Trial in the matter concluded on September 18, 2015. The jury returned a verdict finding in favor of plaintiff Linda Boly on her First Claim for Relief (retaliation under ORS 441.176), Third Claim for Relief (age discrimination under ORS 659A.130), and Fifth Claim for Relief (breach of contract). The Court denied Defendants' Motions for Judgment Notwithstanding the Verdict and for New Trial on November 12, 2015. Judgment was entered on the jury's verdict on November 24, 2015, in the principal sum of \$3,041,835. Defendants filed a Notice of Appeal from that principal judgment on November 30, 2015.

1 On November 19, 2015, Plaintiff filed her Statement for Attorney Fees, Costs, and
2 Disbursements under ORCP 68 and UTCR 5.080. Plaintiff supported her Statement with
3 Declarations of Michael R. Seidl (with exhibits), Robert Bonaparte (with exhibits), Stephen
4 Brischetto, Christopher Kent, and Serena Morones.

5 On December 10, 2015, Defendants filed a Response to Plaintiff's Statement for Attorney
6 Fees, Costs, and Disbursements. Defendants did not submit an expert declaration. On
7 December 23, 2015, Plaintiff filed a Response to Defendants' Response to Plaintiff's Statement
8 for Attorney Fees, Costs, and Disbursements, and pursuant to ORCP 68C(4)(g), she requested
9 the Court enter special findings of fact and conclusions of law.

10 Pursuant to ORCP 68C(4)(e), neither party requested a hearing. The Court hereby makes
11 these findings of fact and conclusions of law.

12 **ATTORNEY FEES**

13 **A. CONCLUSIONS OF LAW**

14 1. Plaintiff is entitled to recover reasonable attorney fees under ORS 659A.885,
15 ORS 441.176, and ORS 20.107. Defendants do not object to Plaintiff's entitlement to recover
16 reasonable attorney fees.

17 2. Both parties agree that use of the lodestar methodology (rates x hours) is
18 appropriate under Oregon law. The Court so concludes, and utilizes the lodestar calculation.

19 3. The appropriate factors to consider in arriving at Plaintiff's reasonable attorney
20 fees are those factors listed under ORS 20.075(2).

21 4. Based on the findings of fact listed below, the Court concludes that a lodestar
22 calculation of \$522,474.49 is reasonable.

23 5. Under Oregon law, circuit courts are permitted to award a multiplier in contingent
24 fee cases pursuant to ORS 20.075(2) as applied under Oregon trial court and appellate court
25 decisions awarding multipliers.

1 6. The Court agrees with Plaintiff's request for a multiplier and awards a 1.5
2 multiplier of the lodestar calculation. The Court finds that a 1.5 multiplier is reasonable.
3 Therefore, the Court awards reasonable attorney fees in the amount of \$783,711.74.

4 **B. FINDINGS OF FACT**

5 1. **Attorney and Paralegal Hours**

6 Defendants do not object to the number of attorney hours and paralegal hours
7 submitted by Plaintiff's attorney, as reflected in the 63-page Time Summary attached as
8 Exhibit 3 to the Declaration of Michael R. Seidl. The Court finds that the time spent on the case
9 was reasonable, and that the hours spent were related to the fee shifting claims.

10 2. **Rates**

11 a. ORS 20.075(2)(e) ("the fee customarily charged in the locality for similar
12 legal services") and ORS 20.075(2)(g) ("the experience, reputation and ability of the attorney
13 performing the services") are the most important factors in determining the reasonable rates for
14 the attorneys and paralegals.

15 b. Plaintiff requests a rate of \$485 per hour for Mr. Seidl. Defendants object
16 and request a rate of \$400 per hour for Mr. Seidl.

17 c. The Court has considered evidence regarding the hourly rates charged in
18 the Portland area, including data provided by the Oregon State Bar Economic Survey (2012) and
19 the Morones Survey, together with information contained in the expert declarations and other
20 trial court decisions. From all of this information, the Court finds that a rate of \$485 per hour for
21 Mr. Seidl is reasonable and commensurate with the rates charged for similar work in the Portland
22 area.

23 d. The Court also considered the experience, reputation, and ability of
24 Mr. Seidl in performing the legal services in this case. The Court accepts the expert opinions in
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1 this regard which were not challenged by the Defendants. The Court finds that Mr. Seidl has a
2 very good reputation and extensive experience and skill as a civil trial lawyer.

3 e. With regard to paralegal rates, the Court finds that the requested rate of
4 \$175 per hour for Tanya Mox and \$125 per hour for Emily Baum are reasonable and
5 commensurate with paralegal rates charged in the Portland area. The Court finds that these rates
6 are also consistent with paralegal rates found in the Morones survey. These rates were supported
7 by the expert declarations submitted by the Plaintiff, and those opinions were not refuted by
8 expert opinions submitted by the Defendants.

9 f. Therefore, the Court finds that the rates submitted by Plaintiff are
10 reasonable, and the hours submitted by Plaintiff are reasonable. Accordingly, the Court finds that
11 Plaintiff's requested lodestar of \$522,474 is reasonable as summarized:

<u>Name</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Number of Hours</u>	<u>Fees</u>
Michael Seidl	Attorney	\$485.00	856.91	\$415,596.49
Kelly Fisher	Attorney	\$250.00	212.60	\$ 53,150.00
Tanya Mox	Paralegal	\$175.00	157.95	\$ 27,641.25
Emily Baum	Paralegal	\$125.00	179.75	\$ 22,468.75
Kim Richard	Paralegal	\$ 90.00	<u>40.20</u>	<u>\$ 3,618.00</u>
	TOTAL		1,447.41	\$522,474.49

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17 **3. Multiplier**

18 a. As noted above, the Court has authority to award a multiplier under state
19 law. The Court has considered all of the expert declarations and other evidence submitted by the
20 Plaintiff. This evidence was not refuted by any evidence offered by Defendants.

21 b. Under ORS 20.075(2)(h), the Court is required to consider whether the fee
22 is "fixed or contingent." In this case, Plaintiff's attorney worked under a contingent fee
23 agreement.

24 c. This case presented a high degree of risk that Plaintiff would not prevail,
25 and Plaintiff's attorney would not be compensated. The case was very difficult on many different

1 levels. In this regard, the Court accepts the declaration testimony of Stephen Brischetto, a
2 respected employment attorney in Oregon. Mr. Brischetto indicates that this case was extremely
3 difficult, and because of that he would not have taken this case if presented to him.

4 d. The Third Claim for Relief, age discrimination (the second claim on the
5 verdict form), and the Fifth Claim for Relief, breach of contract (the third claim on the verdict
6 form) are not novel theories. The First Claim, retaliation pursuant to the Nurse Staffing Law, has
7 the tenor of a whistleblowing claim. Whistleblowing is also not a novel claim under Oregon law
8 and this typically would not support a multiplier, however, the case involved, to some extent,
9 novel or at least unusual legal issues based on Plaintiff's claim under the nurse staffing law for
10 retaliation under ORS 441.176. This has not been interpreted by an appellate court in Oregon.
11 The challenges of discovery and trial in asserting a claim based on a hospital's budget-driven
12 staffing limitations was unique.

13 e. Under ORS 20.075(2)(d), the Court is required to consider the "amount
14 involved and the results obtained." In this case, Plaintiff obtained a judgment of \$3,041,835. The
15 Court finds that this was an exceptional result in a case such as this. In this regard, the Court
16 accepts Mr. Brischetto's statement that this verdict is among the highest verdicts for wrongful
17 termination in the Portland area.

18 f. The Court also finds that there are only a small number of attorneys with
19 the required skill to obtain a result such as this, and who also would be willing to accept the high
20 degree of risk involved in a contingent fee arrangement.

21 g. Under ORS 20.075(2)(b), the Court is required to consider whether the
22 time spent on this case deprived Mr. Seidl of earning fees from other clients. The Court accepts
23 Mr. Seidl's explanation for the reasons that this case prevented his firm from spending time on
24 other clients and other fee-generating work while the firm handled this case.

1 h. When all of these factors are properly considered, and all of the evidence
2 is properly weighed, the Court finds that a multiplier of 1.5 is fully justified and reasonable.

3 **COSTS AND DISBURSEMENTS**

4 Plaintiff has submitted a cost bill in the amount of \$55,753. These costs are broken down
5 by the source of entitlement in a chart that is attached hereto as Exhibit A.

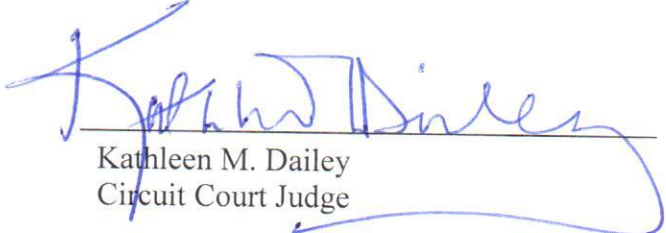
6 Defendants do not object to the cost bill. The Court otherwise finds that the Plaintiff is
7 entitled to recover these costs under the statutes listed by Plaintiff in the attachment hereto.

8 The Court finds that Plaintiff is entitled to recover costs in the amount of \$55,753.

9 **ORDER**

10 Pursuant to ORCP 68C(5)(b), supplemental judgment shall be entered in favor of plaintiff
11 Linda Boly in the amount of \$783,711.74 for reasonable attorney fees and \$55,753 for costs and
12 disbursements, for a total of \$839,464.74.

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14 DATED: January 14, 2016

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19 Kathleen M. Dailey
20 Circuit Court Judge
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