

served with process by serving its registered agent, Cogency Global Inc., at 1601 Elm St., Suite 4360, Dallas, Texas 75201. Citation is requested at this time.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction as this action arises under Texas Commission on Human Rights Act, Texas Labor Code § 21.001, et al.

5. Venue is proper in Harris County, Texas under Texas Civil Practice and Remedies Code §15.002 as all or a substantial part of the events or omissions giving rise to the claim occurred in this county.

IV. NATURE OF THE ACTION

6. This is an action brought pursuant to Chapter 21 of the Texas Labor Code and the Texas Commission on Human Rights Act (“TCHRA”) to correct and recover for Defendant’s unlawful TCHRA retaliation, disability discrimination, and to deter Defendant from continuing its pattern of unlawful employment practices.

V. FACTUAL BACKGROUND

7. Plaintiff Danielle Dunbar has been employed by OneSource Employee Management LLC, d/b/a Zion Healthcare Inc., (“ZHI”) as Director of Dietary since January 22, 2020.

8. OneSource Employee Management LLC., d/b/a Zion Healthcare Inc.,(ZHI) is a Foreign Limited Liability Company (LLC) that regularly conducts business in Harris, Texas.

9. Ms. Dunbar had an impeccable track work ethic, she followed guidelines and had absolutely no reprimands or disparaging remarks on her record profile. With the embark of COVID; the global pandemic brought many changes to Zion Healthcare Inc.

10. As we know, COVID is an extremely contagious virus that can be transmitted airborne or by direct saliva transfer. Ms. Dunbar always worked with extreme caution, she always utilized the

PPP equipment that was provided to her by ZHI, and continuously washed her hands to prevent the spread of contagion.

11. Despite all her careful techniques, she subsequently started to suffer from Anxiety, which started to take a toll on her mental health.

12. With the height of COVID, managing the department became very difficult for her and caused much mental anguish. Ms. Dunbar needed time off from work to recalibrate her mental health, she found herself mentally exhausted at the end of the workdays and felt she was not able to perform her best.

13. Ms. Dunbar requested 1 (one) week of time off which was approved by Ms. Tasha Hubbard (hereinafter “Ms. Hubbard”) the in-house HR Director. Ms. Dunbar worked hard to gain the respect of her colleagues. Although she got along well with most of her co-workers, she became increasingly concerned about the hostile charged environment that she encountered shortly after her return.

14. On November 14, 2020, Ms. Dunbar overheard Ms. Cheryl, the Director of Nursing mock her by saying, “I cannot withstand my workload, maybe I need medication to help me too.” Ms. Dunbar immediately knew that Ms. Cheryl was aware of her medical condition. Ms. Dunbar made her request and the reason for time off in confidentiality to Ms. Hubbard.

15. Ms. Hubbard instead of protecting Ms. Dunbar’s HIPAA rights, openly discussed her medical condition with staff members making her a mockery by fellow colleagues. Ms. Dunbar was perceived as a weak individual for requesting time off to tend to her mental health issues.

16. On or around February 2021, ZHI hired a new Administrative Director, Mr. Jaime Garcia (hereinafter “Mr. Garcia”). Mr. Garcia immediately upon his hire started making sexual remarks towards Ms. Dunbar, stating she was beautiful, he would periodically ask if she was in a

relationship or if she had any friends that he could become intimate with.

17. Ms. Dunbar continuously declined his sexual advances. This became an everyday ordeal with Mr. Garcia, he became very focused on Ms. Dunbar, this soon created an even more hostile work environment for Ms. Dunbar. The more she declined his advances, the more aggressive he became.

18. Ms. Dunbar discovered that Ms. Hubbard and Mr. Garcia were in a relationship, and the entire staff knows about their relationship. Both Mr. Garcia and Ms. Hubbard are married yet initiated an affair. Ms. Hubbard became extremely jealous and started to retaliate against Ms. Dunbar despite the fact that she had rebuffed Mr. Garcia's sexual advances. Actions caused by Mr. Garcia added more hostility to her work environment, he has sexually propositioned her, once Ms. Hubbard learned of this, she became vindictive toward Ms. Dunbar.

19. On the morning of April 2, 2021, Mr. Garcia sexually assaulted Ms. Dunbar by placing his hands around her waist and brushing his hands across her buttocks. Ms. Dunbar was in complete shock and stunned by his assault. Ms. Dunbar immediately backed away and told him his sexual advances were not welcomed. Mr. Garcia ignored her commands and continued propositioning her. Mr. Garcia told her that he wanted to have a sexual relationship with her. Ms. Dunbar did not file a report with HR, she knew if she brought it to Ms. Hubbard's attention, she would not file a formal complaint due to their personal relationship. Ms. Dunbar also feared retaliation.

20. On April 12, 2021, Mr. Garcia sexually assaulted Ms. Dunbar once again, by running his hands across her shoulders and arms, all the way down to her wrist, she immediately pulled away. Mr. Garcia knows he intimidates Ms. Dunbar, and this allowed him to take advantage of her vulnerability. Mr. Garcia continuously abused his authority and position at ZHI.

21. Ms. Dunbar demanded he respect her, she threatened if he did it again, she would report

him to HR and file a report of sexual harassment.

22. After Ms. Dunbar continuously rejected his advances, he became increasingly agitated when addressing her. Ms. Dunbar soon noticed the change of behavior in him, he started to abuse his authority more and retaliate aggressively against her.

23. On the morning of May 20, 2021, during a routine staff meeting, Mr. Garcia ended the Department Head meeting and demanded Ms. Dunbar report immediately to his office following the meeting. Ms. Dunbar was terrified and knew from his tone that he was extremely agitated. Ms. Dunbar tried to settle her composure and complied with his request; he forcefully pushed a rolling chair towards her. Mr. Garcia pushed the chair so hard, that Ms. Dunbar had to jump out of the way to avoid being hit. Mr. Garcia is a 350-pound heavyset man whom is very strong, and can easily overpower her. Ms. Dunbar is a fragile 5' 3", 135- pound woman. She was scared that Mr. Garcia was going to physically attack her. Ms. Hubbard witnessed this incident.

24. Mr. Garcia notified her that he had a write-up for her. This frivolous write-up was a result of her late arrival on May 19, 2021. Ms. Dunbar reminded him that she gave him notice prior to her late arrival, and the reason was out of her control. The rain from the night prior had flooded the entire city and roads were not safe. Mr. Garcia began to accuse Ms. Dunbar of arriving to work late, leaving early, and taking too long lunch breaks. This was his form of retaliation due to Ms. Dunbar's constant refusal of his sexual advances. Ms. Dunbar felt physically threatened, she could not defend herself from these allegations and instead succumbed and signed the write-up.

25. Mr. Garcia's retaliation caused Ms. Dunbar to start skipping lunch breaks, she was terrified that if she did not skip them, it would trigger Mr. Garcia and he would attack her again.

26. Ms. Dunbar worked in fear for an entire week, she tried her best not to speak to him or to approach him during any of her shifts. Ms. Dunbar was suffering from constant anxiety, this

became too severe for her, hindering for her to perform daily job duties due to the constant fear of him.

27. On May 24th, 2021, HR reached out to Ms. Dunbar to conduct an internal investigation. She was advised that during this investigation they would request a list of witnesses and statements. Ms. Dunbar complied and produced a statement. Ms. Dunbar requested to take personal time off, she notified Ms. Mirielle Marcucci (hereinafter “Ms. Marcucci”) the HR Director, that she could no longer work under these circumstances. Ms. Dunbar requested FMLA leave; she anticipated returning to work on September 1, 2021. Upon her return-to-work, Ms. Dunbar was dismissed due to a certificate request from management.

28. Ms. Dunbar advised management that she is registered to renew her certificate in November 2021. Prior to this, Ms. Dunbar had not received any notice advising her to obtain said certification prior to her protected FMLA leave.

29. Subsequently ZHI’s negligence to protect Ms. Dunbar caused her to be constructively discharged.

30. On or around December 2021, Ms. Dunbar discovered that ZHI conducted fraudulent inducement and filed misrepresentation of fraudulent claims with the Certifying Board for Dietary Managers, accusing her of submitting a fraudulent medical state certification.

31. Ms. Dunbar did not produce a certification prior to her resignation.

32. ZHI, through their agents, was negligent by allowing falsified claims to be filed against Ms. Dunbar. ZHI maliciously published false, defamatory statements of fact about Ms. Dunbar and was negligent and malicious in determining whether the statements were true prior to doing so.

33. Without legal excuse, ZHI provided false statements, these statements injured and caused

harm to Ms. Dunbar’s profession and occupation. ZHI’s statements were per se defamatory, which entitles Ms. Dunbar to a presumption of general damages. Ultimately, ZHI’s negligence, through its agents, will undoubtedly have a lasting impact on Ms. Dunbar’s reputation and ability to apply for any medical position as a Dietary Manager in the future.

VI. CONDITIONS PRECEDENT

34. All conditions precedent to jurisdiction have occurred or been complied with: a Charge of Discrimination (Charge No. 460-2021-03333) was jointly filed with the Equal Employment Opportunity Commission (“EEOC”) and the Texas Workforce Commission Civil Rights Division (“TWC-CRD”) and the Plaintiff’s lawsuit has been filed within sixty days of receipt of the TWC’s issuance of a right to sue letter.

35. A TCHRA complainant must first bring an administrative complaint within 180 days of the date the alleged unlawful practice occurred. Tex. Lab. Code § 21.202(a). The two- year period for bringing a court action under the TCHRA runs from the date the administrative complaint is filed. Id. § 21.256.

VII. CAUSES OF ACTION

RETALIATION UNDER CHAPTER 21 OF THE TEXAS LABOR CODE

36. Chapter 21 of the Texas Labor Code prohibits retaliation against a person who has opposed discrimination by filing a charge or complaint or testified, assisted, or participated in an investigation, proceeding, or hearing under the TCHRA. *See* TEX. LAB. CODE § 21.055.

37. Pursuant to section 21.055 of the Texas Labor Code Plaintiff pleads a cause of action against the Defendant for retaliation.

38. The allegations contained in all paragraphs of the complaint are hereby incorporated by reference with the same force and effect as if set forth verbatim.

39. Plaintiff engaged in a protected activity by filing an internal complaint of discrimination and harassment with OneSource Employee Management LLC., d/b/a Zion Healthcare Inc., she engaged in further protected activity by filing a Charge of Discrimination with the EEOC/TWC-CRD. After engaging in protected activity, Plaintiff has experienced additional discrimination and harassment has been placed on leave, and has been threatened with termination if she did not produce a state certification. The effect of these practices has been to deprive her of equal employment opportunities and otherwise adversely affect her status as an employee.

40. Plaintiff alleges that the Defendant retaliated against her by singling her out for excessive discipline, placing her on probation and threatening her with termination based on her protected activity in violation of Chapter 21 of the Texas Labor Code.

**DISABILITY DISCRIMINATION, FAILURE TO ACCOMMODATE,
AND INTERFERENCE UNDER THE TCHRA**

41. The allegations contained in all paragraphs of this complaint are hereby incorporated by reference with the same force and effect as if set forth verbatim.

42. Defendant, by and through Defendant's agents, intentionally engaged in unlawful employment practices involving Plaintiff because of her disability. Accordingly, Plaintiff alleges that:

- a. Plaintiff has an actual disability (as stated in detail above),
- b. Plaintiff was qualified for her position,
- c. Defendant treated Plaintiff differently than others similarly situated because of Plaintiff's Disability in violation of the TCHRA.

43. Plaintiff, a qualified individual with a disability, also alleges that Defendant was aware of her disability and its consequential limitations and failed to make reasonable accommodations for such known limitations in violation of the TCHRA. Plaintiff notified Defendant of her disability

personally, which means Defendant had knowledge of Plaintiff's disability.

44. Defendant additionally did not engage in the interactive process with Plaintiff and failed to reasonably accommodate her.

**SEX (GENDER) DISCRIMINATION
UNDER CH. 21 OF THE TEXAS LABOR CODE**

45. Plaintiff incorporates by reference all of the foregoing allegations in each of the paragraphs above as if fully set forth herein.

46. Plaintiff is a female, which, in the situation described above and for the purposes of Texas Labor Code, makes Plaintiff a member of a protected class.

47. Plaintiff was clearly qualified for the position as Dietary Director which in the absence of any disciplinary or similar record will show.

48. Plaintiff was treated differently from other employees for the Texas A&M Engineering Extension Services, because of Plaintiff's sex/gender.

49. Defendant discriminated against Plaintiff on the basis of her sex/gender which caused an adverse employment action against Plaintiff, which action was never taken against similarly situated non-members of Plaintiff's protected class.

SEXUAL HARASSMENT UNDER TCHRA

50. Plaintiff incorporates by reference all of the foregoing allegations in each of the paragraphs above as if fully set forth herein.

51. Plaintiff was subject to unwelcome sexual harassment by Mr. Garcia, including but not limited to, inappropriate comments and pervasive context. Additionally, Mr. Garcia sought out Plaintiff on various occasions through different sources. These advances were unwelcomed and made Plaintiff severely uncomfortable. Mr. Garcia is employed by Defendant.

52. Defendant knew of the harassment, as Plaintiff had reported Mr. Garcia's behavior.

53. Plaintiff was also subjected to sexual harassment and gender-based harassment. The harassment to which Plaintiff was subjected was sufficiently severe and/or pervasive to have affected a term or condition of her employment.

54. Defendant failed to take prompt corrective action.

55. Plaintiff suffered damages as a result.

56. Plaintiff was subject to sexual harassment in violation of TCHRA.

NO FEDERAL CLAIMS

57. Plaintiff does not assert any federal claims in this proceeding. Additionally, Plaintiff is in no way seeking damages or remedies that may stem from a federal cause of action.

VIII. DAMAGES

58. As a result of Defendant's actions and or omissions described above, Plaintiff sustained the following damages:

- a. Actual damages, including (but not limited to) economic damages (such as past pecuniary losses and future pecuniary losses) and mental anguish damages (pursuant to Texas Labor Code § 451.002(a));
- b. Exemplary damages (pursuant to Texas Labor Code § 451.002(a));
- c. Reinstatement to Plaintiff's former employment position with Defendant (pursuant to Texas Labor Code § 451.002(b));
- d. Injunctive relief to restrain violations of the Texas Labor Code § 451.001 (pursuant to Texas Labor Code § 451.003);
- e. Attorneys' fees;
- f. Costs incurred as a result of this lawsuit;
- g. Pre-judgment interest;
- h. Post-judgment interest; and

i. All other relief to which Plaintiff is entitled.

59. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiff hereby seeks monetary relief over \$200,000.00, but not more than \$5,000,000.00, as well as non-monetary relief. Among the relief Plaintiff is seeking includes (but is not limited to) attorneys' fees, costs, pre-judgment interest, and post-judgment. Plaintiff also seeks a demand for judgment for all the other relief to which Plaintiff deems herself entitled. The damages being sought by Plaintiff are within the jurisdictional limits of the court. Plaintiff further requests that the non-expedited rules apply in this case.

IX. EXEMPLARY DAMAGES

60. Plaintiff would further show that the acts and omissions of Defendant complained of herein were committed with malice or reckless indifference to the protected rights of the Plaintiff. In order to punish said Defendant for engaging in unlawful discrimination and to deter such actions and/or omissions in the future, Plaintiff also seeks recovery from Defendant for exemplary damages.

X. JURY DEMAND


61. Plaintiff demands a jury on all issues to be tried in this matter and has submitted the jury fee.

XI. PRAYER

For the reasons set forth above, Plaintiff, Danielle Dunbar, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court, including monetary relief over \$200,000.00 but not more than \$5,000,000; exemplary damages, together with interest as allowed by law; costs of court and such

other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully Submitted,

 kennard law pc.

/s/ Alfonso Kennard

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