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

PHILIP WALTER RILATOS, III,

Plaintiff,

vs.

NORTH LINCOLN FIRE & RESCUE
DISTRICT #1, and/or its/ their unknown
business entity and/or subsidiary, a domestic
local fire district; DOUG KERR, an
individual; ROB DAHLMAN, an individual;
DENNIS MILES, an individual; ERIC
MAESTAS, an individual; and DAVID
BICKERDYKE, an individual,

Defendant.

Case No. 19CV19834

ANSWER AND AFFIRMATIVE
DEFENSES

In response to plaintiff’s complaint, defendants North Lincoln Fire & Rescue District #1 (“NLFR”), Doug Kerr, Rob Dahlman, Dennis Miles, Eric Maestas, and David Bickerdyke (collectively, “defendants”) admit, deny, and allege as follows:

1.

Defendants admit that NLFR is a rural fire protection district organized under ORS chapter 478. Defendants further admit that NLFR has had 21 or fewer employees at all times relevant to this matter. Defendants further admit that defendants Dahlman, Maestas, Miles, and

1 Bickerdyke are currently employed by defendant NLFR. Defendants further admit that
2 defendant Kerr is the former fire chief of NLFR, now retired.
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5 2.

6 Defendants further admit that on or about May 27, 2018, a prank was played on a
7 firefighter other than plaintiff. Defendants further admit that plaintiff witnessed the aftermath of
8 the prank.
9

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11 3.

12 Defendants further admit that in August of 2018, an investigation was performed, which
13 found the prank constituted a violation of NLFR's policies. Defendants further admit that
14 discipline was imposed on NLFR employees as a result of the findings of the investigation.
15

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17 4.

18 Defendants further admit that plaintiff last worked for NLFR on September 7, 2018.
19 Defendants further admit that following an off-work injury and a series of medical and personal
20 leaves, plaintiff abandoned his job on or about April 23, 2019.
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23 5.

24 Except as specifically admitted herein, defendants deny each and every other allegation,
25 matter and thing set forth in plaintiff's Complaint, and the whole thereof.
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FIRST AFFIRMATIVE DEFENSE

(Public Body)

6.

Plaintiff’s claim under ORS 659A.199 is subject to dismissal, because that statute does not apply to NLFR due to its status as a public body.

SECOND AFFIRMATIVE DEFENSE

(Abandonment)

7.

By failing to appear for work, plaintiff abandoned his job.

THIRD AFFIRMATIVE DEFENSE

(Tort Claim Notice)

8.

Plaintiff’s claims are subject to the limitations and immunities contained in the Oregon Tort Claims Act, ORS 30.265 *et seq.* By failing to give tort claim notice, one or more of plaintiff’s claims are barred by that statute.

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FOURTH AFFIRMATIVE DEFENSE

(Mitigation)

9.

Plaintiff has failed to mitigate his damages.

DATED: August 21, 2019.

s/ Brett Mersereau
Brett Mersereau, OSB No. 023922
brett@brettmersereau.com
503-673-3022
Of Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I have made service of the foregoing **ANSWER AND**
3 **AFFIRMATIVE DEFENSES** by sending a true and correct copy of same in the following
4 manner:

- 5 U.S. regular mail, first class postage prepaid;
6 Hand delivery;
7 Electronic mailing;
8 Oregon state court's Odyssey File & Serve System;
9 Express and/or overnight service;

10 to the person listed below and addressed as follows:

11 Joshua D. Zantello
12 Andrews Ersoff & Zantello
13 2941 NW Highway 101
14 Lincoln City, OR 97367

15 *Counsel for plaintiff*

16 DATED: August 21, 2019.

17 s/ Brett Mersereau
18 Brett Mersereau, OSB No. 023922
19 brett@brettmersereau.com
503-673-3022
20 Of Attorneys for Defendants