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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

MING LIN,

Plaintiff,

v.

PEACEHEALTH, a Washington
corporation; NORTHWEST
EMERGENCY PHYSICIANS, LLC
d/b/a/ TEAMHEALTH, a Washington
limited liability company; RICHARD
DECARLO, individually and on behalf of
the marital community of RICHARD
DECARLO and "JANE DOE"
DECARLO,

Defendants.

No.

COMPLAINT FOR DAMAGES

JURY DEMAND

I. PARTIES

1.1. Plaintiff Ming Lin, MD, resides in Whatcom County, Washington.

1.2. Defendant PeaceHealth is a Washington corporation doing business in Washington. PeaceHealth owns and operates PeaceHealth St. Joseph Medical Center ("St. Joseph Medical Center") in Bellingham, Washington.

1.3. Defendant Northwest Emergency Physicians, LLC is a Washington limited liability company doing business in Washington. Northwest Emergency Physicians operates under the tradename "TeamHealth."

1 3.5. Dr. Lin’s contract designated St. Joseph as the sole “hospital/facility/clinic”
2 where TeamHealth would place Dr. Lin to provide emergency services. The contract provided
3 that Dr. Lin “shall be afforded due process” before he may be removed from St. Joseph, and
4 that should an appeal be successful under the terms of the agreement, TeamHealth would
5 reinstate Dr. Lin at St. Joseph.

6 3.6. Dr. Lin’s contract referred to him as an “Independent Contractor,” but
7 TeamHealth later revealed to Dr. Lin and his colleagues that TeamHealth had misclassified
8 them, stating in an email that “the State of Washington Department of Labor and Industries
9 require [sic] we classify workers in Washington as employees, not independent contractors....”

10 3.7. For all or a substantial portion of his career at St. Joseph, TeamHealth
11 misclassified Dr. Lin as an independent contractor.

12 3.8. PeaceHealth was Dr. Lin’s joint employer for all or a substantial portion of his
13 career at St. Joseph.

14 3.9. At all relevant times, PeaceHealth provided the facilities and equipment used
15 for Dr. Lin’s work.

16 3.10. PeaceHealth also exercised a substantial degree of control and supervision over
17 Dr. Lin. This was mandated by contract, as Dr. Lin’s contract stated that in “all cases,”
18 PeaceHealth was to direct and supervise his work at St. Joseph.

19 3.11. Given that he had worked there for nearly two decades, Dr. Lin was a permanent
20 fixture at St. Joseph.

21 3.12. His work, and that of his TeamHealth colleagues, was an integral part of
22 PeaceHealth’s business because it employed no emergency department physicians other than
23 those supplied by TeamHealth.

1 3.13. On January 21, 2020, the first coronavirus (COVID-19) case in the United
2 States was confirmed in Washington state.

3 3.14. The Centers for Disease Control and Prevention (CDC) described the
4 coronavirus as an illness that can spread from person to person, causing symptoms that range
5 from mild to severe illness including death.

6 3.15. On February 29, Governor Inslee declared a state of emergency in response to
7 new coronavirus cases, directing state agencies and others to use all resources necessary to
8 prepare for and respond to the outbreak.

9 3.16. That same day, health officials announced what was believed at the time to be
10 the first coronavirus-related death in Washington, which also marked the first death in the
11 United States. In the coming days and weeks, the number of coronavirus cases and deaths
12 soared in Washington, and the state became the epicenter of a fast-moving health crisis in the
13 United States.

14 3.17. On March 10, health officials announced the first confirmed coronavirus case
15 in Whatcom County, and within days, Whatcom County and the City of Bellingham had
16 declared a state of emergency because of the growing threat.

17 3.18. On March 11, the World Health Organization (WHO) declared the coronavirus
18 a pandemic, and Governor Inslee placed restrictions on social gatherings to slow the virus's
19 spread in Washington. At the time, health officials estimated that if left unchecked, King and
20 Snohomish counties alone would face up to 25,000 coronavirus infections and 400 deaths in
21 less than a month's time.¹

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23 ¹ Dan Klein, *et al.*, [Working paper – model-based estimates of COVID-19 burden in King and](#)
24 [Snohomish counties through April 7, 2020](#), Institute for Disease Modeling; Bill & Melinda
Gates Foundation; Fred Hutchinson Cancer Research Institute (Mar. 10, 2020).

1 3.19. Two days later, President Trump declared COVID-19 a national emergency.

2 3.20. Healthcare workers like Dr. Lin and his colleagues in St. Joseph’s Emergency
3 Department were on the front lines of the coronavirus outbreak response in Whatcom County,
4 and their work put them at an increased risk of infection.

5 3.21. To keep healthcare workers safe, and by extension the public, healthcare
6 organizations like the WHO identified duties owed by St. Joseph’s and other hospitals to their
7 doctors, nurses, and other medical staff, including to provide “adequate IPC [infection
8 prevention and control] and PPE [personal protective equipment] supplies (masks, gloves,
9 goggles, gowns, hand sanitizer, soap and water, cleaning supplies)” and “appropriate tools to
10 assess, triage, test, and treat patients, and to share IPC information with patients and the
11 public.”²

12 3.22. Against this backdrop, Dr. Lin grew increasingly concerned that St. Joseph had
13 taken inadequate measures to protect the occupational health and safety of its healthcare
14 workers. Dr. Lin reported his concerns to his manager, but his concerns were not taken
15 seriously.

16 3.23. In 2018, Dr. Lin reported concerns about a lack of racial and gender diversity
17 at St. Joseph, and raised specific concerns that a female physician assistant at the hospital had
18 been discriminated because of her race, age, and gender. His calls for change went ignored. He
19 feared that his concerns about St. Joseph’s coronavirus preparedness would also be brushed
20 aside.

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23 ² World Health Organization, Interim Guidance, [Coronavirus disease \(COVID-19\) outbreak:
24 rights, roles and responsibilities of health workers, including key considerations for
occupational safety and health](#) (Mar. 19, 2020).

1 3.24. On March 15, Dr. Lin wrote an email to St. Joseph’s managers stating
2 “PeaceHealth is so far behind when it comes to protecting patients and the community but even
3 worse when it comes to protecting the staff,” and outlining his specific concerns. That same
4 day, he posted the text of his email to his public Facebook account.

5 3.25. Importantly, neither PeaceHealth nor TeamHealth have social media or media
6 policies prohibiting Dr. Lin’s use of Facebook.

7 3.26. Rather than sparking a meaningful dialog about how medical staff and
8 administration could work together to promote health and safety, as he intended, Dr. Lin
9 received an email response stating that PeaceHealth’s PR department was upset.

10 3.27. On March 17, he received a voicemail from St. Joseph’s Emergency Room
11 Director stating that Dr. Lin had “hit a massive beehive” and that “the PeaceHealth
12 administration is super pissed and when you start maligning and disparaging the place of
13 employment your employer may not be too happy.”

14 3.28. On March 19, Dr. Lin spoke with Bellingham Firefighters and learned that
15 PeaceHealth, as operator of Whatcom County’s only hospital, had not attended local
16 emergency meetings to discuss a coordinated local response to the coronavirus despite the
17 declared state of emergency in Whatcom County and the City of Bellingham.

18 3.29. Over the next week, Dr. Lin continued to make public Facebook posts about
19 COVID-19, PeaceHealth’s response, and appealing to the public for much needed supplies and
20 equipment for St. Joseph.

21 3.30. Dr. Lin used the information he gleaned from responses to his posts to apprise
22 PeaceHealth of potential vendors. For example, when Dr. Lin learned that PeaceHealth had
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1 only a week's supply of N95 masks, he connected PeaceHealth's purchasing department with
2 a potential supplier.

3 3.31. While Dr. Lin was scrounging for protective equipment and ventilators,
4 PeaceHealth focused on empty gestures to staff like ordering pizza and doughnuts before
5 ordering additional PPE and establishing a triage and testing plan for patients suspected or
6 confirmed to have the coronavirus.

7 3.32. Meanwhile, St. Joseph patients and staff contacted Dr. Lin about the hospital's
8 inadequate response to COVID-19.

9 3.33. On March 25, TeamHealth's Chief Medical Officer (CMO) emailed Dr. Lin "to
10 see if there is anything [he] can do to help," and stating among other things that, "I have read
11 your FB posts and can empathize with what you are going through." Dr. Lin responded that he
12 looked forward to communicating with him, but that he preferred written communication
13 because of his previous experience reporting his concerns about discrimination at St. Joseph.
14 TeamHealth's CMO did not respond to Dr. Lin's last email.

15 3.34. Instead, on March 27, Dr. Lin received a text message from TeamHealth's Vice
16 President, informing him that his shift at St. Joseph had been covered.

17 3.35. At no point did Dr. Lin request to be removed from the St. Joseph schedule.

18 3.36. On March 30 and 31, TeamHealth's West Group President, Robert Frantz, MD,
19 emailed Dr. Lin to discuss his recruiting options for his next clinical assignment. He informed
20 Dr. Lin that there was the possibility of a full-time position in Oregon, but that TeamHealth
21 had no "full-time EM Physician openings in the area." Dr. Frantz proposed that Dr. Lin provide
22 part-time "float coverage" at facilities ranging between 30 to 50 miles from his home, but
23 explained that the float coverage would be at lower pay.

1 3.37. Dr. Lin requested to be reinstated at St. Joseph, but Dr. Frantz responded that,
2 “While we believe your actions and comments both inside and outside of work were intended
3 to be constructive and a catalyst for change, unfortunately it is not possible for you to return to
4 PeaceHealth.”

5 3.38. Because TeamHealth and PeaceHealth refused to reinstate Dr. Lin at
6 St. Joseph, he was effectively terminated from his job.

7 3.39. Dr. Lin was entitled to due process before his removal from St. Joseph,
8 including “collegial efforts and progressive steps” to address questions about his clinical
9 practice or professional conduct, but he was deprived of all process.

10 3.40. On April 4, ZdoggMD published a 40-minute long interview with Defendant
11 DeCarlo, PeaceHealth’s Chief Operating Officer, and he confirmed that PeaceHealth asked
12 that Dr. Lin be removed from the schedule because Dr. Lin “created a toxic environment.”
13 Defendant DeCarlo also accused Dr. Lin of being “scared and afraid,” posting misinformation
14 on Facebook, posting untrue information on Facebook, and cutting off communication with
15 PeaceHealth.³

16 3.41. Defendant DeCarlo’s statements about Dr. Lin were untrue and defamatory.

17 3.42. On April 8, the U.S. Department of Labor Occupational Safety and Health
18 Administration issued a press release “reminding employers that it is illegal to retaliate against
19 workers because they report unsafe and unhealthful working conditions during the coronavirus
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23 ³ [“The Truth About Our COVID Preparedness \(W/ PeaceHealth’s Richard Decarlo\),”](#)
24 ZDogMD.com (Apr. 4, 2020).

1 pandemic. Acts of retaliation can include terminations, demotions, denials of overtime or
2 promotion, or reductions in pay or hours.”⁴

3 3.43. Dr. Lin has suffered economic and non-economic damages as a direct result of
4 Defendants’ unlawful actions.

5 3.44. As of May 26, there have been 378 confirmed cases of COVID-19 in Whatcom
6 County and 36 deaths,⁵ including over a dozen positive tests by St. Joseph staff members.
7 Despite being only the ninth most populous county in Washington, Whatcom County ranks
8 sixth in the number of COVID-19 deaths.

9 3.45. In response to precautions taken by residents, however, the spread of COVID-
10 19 has slowed in Washington state. Even so, health officials worry about a widespread
11 recurrence of the outbreak and have warned the public to remain vigilant.

12 IV. LEGAL CLAIMS

13 A. First Cause of Action: Wrongful Termination in Violation of 14 Public Policy.

15 4.1 Plaintiff realleges the above statement of facts as though fully stated here.

16 4.2 Plaintiff was constructively discharged in violation of public policies against
17 retaliation for voicing concerns about health and safety.

18 4.3 As a direct and proximate result of the foregoing, Plaintiff has suffered and
19 continues to suffer loss of compensation and benefits, emotional distress, anxiety, humiliation
20 and embarrassment, each in amounts to be proved at trial.

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22 ⁴ [“U.S. Department of Labor Reminds Employers That They Cannot Retaliate Against
Workers Reporting Unsafe Conditions During Coronavirus Pandemic,”](#) U.S. Department of
Labor Occupational Safety and Health Administration Press Release (Apr. 8, 2020).

23 ⁵ [“Novel Coronavirus Outbreak 2020: Washington State Department of Health”](#) (May 27,
24 2020).

1 **B. Second Cause of Action: Tortious Interference with a**
2 **Contractual Relation.**

3 4.4 Plaintiff realleges the above statement of facts as though fully stated here.

4 4.5 Defendant PeaceHealth knew of Plaintiff's contract with TeamHealth to
5 provide emergency room services at St. Joseph and intentionally interfered with Plaintiff's
6 contractual relationship.

7 4.6 As a direct and proximate result of the foregoing, Plaintiff has suffered and
8 continues to suffer loss of compensation and benefits, emotional distress, anxiety, humiliation
9 and embarrassment, each in amounts to be proved at trial.

10 **C. Third Cause of Action: Breach of Contract and the Duty of**
11 **Good Faith and Fair Dealing.**

12 4.7 Plaintiff realleges the above statement of facts as though fully stated here.

13 4.8 Defendants breached their contract with Plaintiff and the duty of good faith and
14 fair dealing implied in his employment contract.

15 4.9 As a direct and proximate result of the foregoing, Plaintiff has suffered and
16 continues to suffer loss of compensation and benefits, each in amounts to be proved at trial.

17 **D. Fourth Cause of Action: Defamation.**

18 4.10 Plaintiff realleges the above statement of facts as though fully stated here.

19 4.11 Defendants made false statements about Plaintiff in public.


20 4.12 As a result of Defendants' false statements, they are liable to Plaintiff for
21 damages.

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- 5.6. Increased payment to offset any additional income taxes triggered by judgment in his favor;
- 5.7. Such other and further relief as this Court deems just and proper.

DATED this 28th day of May, 2020.


SCHROETER GOLDMARK &
BENDER



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