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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

KELLY KELSEY, CHRISTINE KOTROUS,
LINDA NOONAN, CHRISTINE OTTENS,
RITA ROBERTSON, KARYN SUGGS, and
SHERRY WICKLER,

No. 3:13-cv-00354-HU

**OPINION AND
ORDER**

Plaintiffs,

v.

GOLDSTAR ESTATE BUYERS CORPORATION,
a Minnesota corporation, and
WILLIAM ULRICH, an individual,

Defendants.

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1 HUBEL, Magistrate Judge:

2 This matter comes before the Court on Defendants Goldstar
3 Estate Buyers Corporation ("Goldstar") and William Ulrich's
4 ("Ulrich") (collectively "Defendants") motion to dismiss Plaintiffs
5 Kelly Kelsey ("Kelsey"), Christine Kotrous ("Kotrous"), Linda
6 Noonan ("Noonan"), Christine Ottens ("Ottens"), Rita Robertson
7 ("Robertson"), Karyn Suggs ("Suggs"), and Sherry Wickler's
8 ("Wickler") (collectively "Plaintiffs") amended complaint, pursuant
9 to Federal Rule of Civil Procedure ("Rule") 12(b)(6), for failure
10 to state a claim upon which relief can be granted. For the reasons
11 that follow, Defendants' motion (Docket No. 25) to dismiss is
12 GRANTED.

13 **I. FACTS AND PROCEDURAL HISTORY**

14 The facts are drawn from the amended complaint. Plaintiffs
15 are all former employees of Goldstar who worked under the direction
16 of Ulrich, an owner, agent and employee of Goldstar.¹ Acting on
17 behalf of Goldstar, Ulrich would travel to various cities
18 throughout the United States to buy and sell jewelry and other
19 valuable items. Ulrich operated Goldstar's business out of hotel
20 rooms, and employees working alongside Ulrich at a given location
21 were provided with overnight lodging, food and transportation.

22 Plaintiffs are residents of different states and were employed
23 by Goldstar for varying durations, ranging from six days to nearly
24 eight years, between September 2004 and November 2012. Wickler is
25

26 ¹ Plaintiffs' claims against Defendants appear to be based
27 solely on actions taken by Ulrich within the scope of his
28 employment or agency. For convenience, the Court at times refers
only to Ulrich when describing acts allegedly performed by both
defendants.

1 a Pennsylvania resident who worked for Goldstar from September 2004
2 to June 2012. Ottens is an Oklahoma resident who worked for
3 Goldstar from January 2008 to March 2008, and April 2011 to June
4 2012. Robertson is an Arizona resident who worked for Goldstar
5 from September 2009 to June 2012. Kelsey is a California resident
6 who worked for Goldstar from January 2011 to November 2011. Suggs
7 is a California resident who worked for Goldstar from February 2011
8 to June 2012. Kotrous is an Oregon resident who worked for
9 Goldstar from March 2011 to November 2012. Noonan is an Oregon
10 resident who worked for Goldstar from May 16, 2011, through May 22,
11 2011.

12 On a continuing basis throughout their periods of employment,
13 it is alleged that Ulrich forced or attempted to force each of the
14 seven female plaintiffs to engage in sexual intercourse, sometimes
15 in exchange for an additional monetary incentive; group sex; anal
16 sex; oral sex, sometimes in exchange for an additional monetary
17 incentive; sexual acts while others observed; the procurement of
18 sexual devices; the procurement of prostitution services; travel-
19 related arrangements involving out-of-state prostitutes; and/or the
20 procurement of sex partners. The amended complaint does not allege
21 any specific incidents with reference to dates, times, the exact
22 parties involved or locations where the incidents occurred.
23 Plaintiffs allege Ulrich compelled compliance by instilling a fear
24 that he would withhold from Plaintiffs the necessities of life,
25 such as food, shelter, money, and/or continued employment.

26 The amended complaint alleges causes of action for (1)
27 involuntary servitude in violation of ORS 30.867; (2) trafficking
28 in persons in violation of ORS 30.867; (3) sex trafficking in

1 violation of the Trafficking Victims Protection Reauthorization Act
2 ("TVPRA"), 18 U.S.C. § 1595 (hereinafter "§ 1595 or "civil remedy
3 provision"); (4) forced labor in violation of § 1595; (5) sex
4 discrimination in violation of ORS 659A.030; (6) sex discrimination
5 in violation of Title VII of the Civil Rights Act of 1964 ("Title
6 VII"), 42 U.S.C. § 2000e to 2000e-17 (Kotrous, Ottens and Robertson
7 only); (7) wrongful discharge under Oregon law (Kotrous and Noonan
8 only); (8) negligence under Oregon law; and (9) breach of the
9 implied covenant of good faith and fair dealing under Minnesota
10 law.²

11 On January 21, 2014, Defendants filed a motion to dismiss
12 Plaintiffs' amended complaint in its entirety, pursuant to
13 12(b)(6). The parties have consented to have their case heard by
14 a United States Magistrate Judge. See 28 U.S.C. § 636(c)(1).
15 Defendants' motion to dismiss was fully briefed as of February 24,
16 2014, and the Court heard argument on the pending motion on March
17 17, 2014.

18 II. LEGAL STANDARD

19 A court may dismiss a complaint for failure to state a claim
20 upon which relief can be granted pursuant to Rule 12(b)(6). In
21 considering a Rule 12(b)(6) motion to dismiss, the court must
22 accept all of the claimant's material factual allegations as true
23 and view all facts in the light most favorable to the claimant.
24 *Reynolds v. Giusto*, No. 08-CV-6261, 2009 WL 2523727, at *1 (D. Or.

26
27 ² Noonan filed the original complaint against Goldstar on
28 March 1, 2013, alleging claims for breach of the implied covenant
of good faith and fair dealing, wrongful discharge, intentional
infliction of emotional distress, and negligence.

1 Aug. 18, 2009). The Supreme Court addressed the proper pleading
2 standard under Rule 12(b)(6) in *Bell Atlantic Corp. v. Twombly*, 550
3 U.S. 544 (2007). *Twombly* established the need to include facts
4 sufficient in the pleadings to give proper notice of the claim and
5 its basis: "While a complaint attacked [under] Rule 12(b)(6) . . .
6 does not need detailed factual allegations, a plaintiff's
7 obligation to provide the grounds of his entitlement to relief
8 requires more than labels and conclusions, and a formulaic
9 recitation of the elements of a cause of action will not do." *Id.*
10 at 555 (brackets omitted).

11 Since *Twombly*, the Supreme Court has clarified that the
12 pleading standard announced therein is generally applicable to all
13 cases governed by the Rules, not only to antitrust cases. *Ashcroft*
14 *v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). The *Iqbal*
15 court explained that *Twombly* was guided by two specific principles.
16 First, although the court must accept as true all facts asserted in
17 a pleading, it need not accept as true any legal conclusion set
18 forth in a pleading. *Id.* Second, the complaint must set forth
19 facts supporting a plausible claim for relief and not merely a
20 possible claim for relief. *Id.* The court instructed that
21 "[d]etermining whether a complaint states a plausible claim for
22 relief will . . . be a context-specific task that requires the
23 reviewing court to draw on its judicial experience and common
24 sense." *Iqbal*, 129 S. Ct. at 1949-50 (citing *Iqbal v. Hasty*, 490
25 F.3d 143, 157-58 (2d Cir. 2007)). The court concluded: "While
26 legal conclusions can provide the framework of a complaint, they
27 must be supported by factual allegations. When there are well-
28 pleaded factual allegations, a court should assume their veracity

1 and then determine whether they plausibly give rise to an
2 entitlement to relief." *Id.* at 1950.

3 The Ninth Circuit further explained the *Twombly-Iqbal* standard
4 in *Moss v. U.S. Secret Service*, 572 F.3d 962 (9th Cir. 2009). The
5 *Moss* court reaffirmed the *Iqbal* holding that a "claim has facial
6 plausibility when the plaintiff pleads factual content that allows
7 the court to draw the reasonable inference that the defendant is
8 liable for the misconduct alleged." *Moss*, 572 F.3d at 969 (quoting
9 *Iqbal*, 129 S. Ct. at 1949). The court in *Moss* concluded by
10 stating: "In sum, for a complaint to survive a motion to dismiss,
11 the non-conclusory factual content, and reasonable inference from
12 that content must be plausibly suggestive of a claim entitling the
13 plaintiff to relief." *Moss*, 572 F.3d at 969.

14 III. DISCUSSION

15 A. Claims Under ORS 30.867

16 Plaintiffs' first two causes of action, which are predicated
17 on allegations of involuntary servitude and trafficking in persons,
18 are brought pursuant to ORS 30.867. That statute provides, in
19 relevant part:

20 Irrespective of any criminal prosecution or the result of
21 a criminal prosecution, a person injured by a violation
22 of ORS 163.263 (Subjecting another person to involuntary
23 servitude in the second degree) . . . or [ORS] 163.266
(Trafficking in persons) may bring a civil action for
damages against a person whose actions are unlawful under
[those statutes].

24 OR. REV. STAT. § 30.867(1). Under ORS 163.263, "[a] person commits
25 the crime of subjecting another person to involuntary
26 servitude . . . if the person knowingly and without lawful
27 authority forces or attempts to force the other person to engage in
28 services by," among other things, "[i]nstill[ing] in the other person

1 a fear that the actor will withhold from the other person the
2 necessities of life, including but not limited to lodging, food and
3 clothing." OR. REV. STAT. § 163.263(1). ORS 163.266 similarly
4 provides that:

5 A person commits the crime of trafficking in persons if
6 the person knowingly:

7 (a) Recruits, entices, harbors, transports, provides or
8 obtains by any means, or attempts to recruit, entice,
9 harbor, transport, provide or obtain by any means,
10 another person knowing that the other person will be
11 subjected to involuntary servitude as described in ORS
12 163.263 . . . or

13 (b) Benefits financially or receives something of value
14 from participation in a venture that involves an act
15 prohibited by this section or ORS 163.263[.]

16 OR. REV. STAT. § 163.266(1).

17 In their first cause of action, Plaintiffs allege that
18 Defendants "knowingly, and without lawful authority, forced and/or
19 attempted to force [them] to engage in services including, but not
20 limited to" one or more of the sex-related incidents previously
21 described above. (Am. Compl. ¶ 8.) Mirroring ORS 163.263(1),
22 Plaintiffs allege Defendants compelled compliance by instilling a
23 fear that they "would withhold from Plaintiffs the necessities of
24 life, including but not limited to, food, shelter, money, and/or
25 continued employment." (Am. Compl. ¶ 8.) In their second cause of
26 action, Plaintiffs allege that "Defendants recruited, hired,
27 transported and/or harbored [them] with knowledge that [they] would
28 be subject to" the aforementioned sex-related incidents, and that
"Defendants benefitted financially and/or received something of
value by virtue of their participation" in those incidents. (Am.
Compl. ¶¶ 14-15.)

1 The Court agrees with Defendants that Plaintiffs' allegations
2 fall short under the facial plausibility standard. The allegations
3 pled in support of the first and second causes of action appear to
4 be conclusions (which the Court is not required to accept as true)
5 and are formulaic recitations of the language of the relevant
6 statutes. While legal conclusions can provide the framework of
7 Plaintiffs' amended complaint, they must be supported by factual
8 allegations. The Court grants Defendants' motion to dismiss
9 Plaintiffs' causes of action under ORS 30.867, with leave to
10 replead consistent with the discussion at oral argument.

11 **B. Claims Under the TVPRA**

12 Plaintiffs' third and fourth causes of action, which are
13 predicated on allegations of forced labor and sex trafficking, are
14 brought pursuant to the TVPRA's civil remedy provision. The civil
15 remedy provision provides:

16 An individual who is a victim of a violation may bring a
17 civil action against the perpetrator (or whoever
18 knowingly benefits, financially or by receiving anything
19 of value from participation in a venture which that
20 person knew or should have known has engaged in an act in
violation of this chapter) in an appropriate district
court of the United States and may recover damages and
reasonable attorneys fees.

21 18 U.S.C. § 1595(a); see also *Velez v. Sanchez*, 693 F.3d 308, 324
22 (2d Cir. 2012) ("amending the civil cause of action to remove
23 references to specific crimes and therefore expanding its scope to
24 include forced labor" (citing Pub. L. No. 110-457, § 221, 122 Stat.
25 5044, 5067 (2008))).

26 The federal forced labor statute provides:

27 Whoever knowingly provides or obtains the labor or
28 services of a person by any one of, or by any combination
of, the following means—(1) by means of force, threats

1 of force, physical restraint, or threats of physical
2 restraint to that person or another person; (2) by means
3 of serious harm or threats of serious harm to that person
4 or another person; (3) by means of the abuse or
5 threatened abuse of law or legal process; or (4) by means
6 of any scheme, plan, or pattern intended to cause the
7 person to believe that, if that person did not perform
8 such labor or services, that person or another person
9 would suffer serious harm or physical restraint, shall be
10 punished as provided under subsection (d).

11 18 U.S.C. § 1589(a). Section 1589(c) includes the following
12 definitions:

13 (1) The term 'abuse or threatened abuse of law or legal
14 process' means the use or threatened use of a law or
15 legal process, whether administrative, civil, or
16 criminal, in any manner or for any purpose for which the
17 law was not designed, in order to exert pressure on
18 another person to cause that person to take some action
19 or refrain from taking some action.

20 (2) The term 'serious harm' means any harm, whether
21 physical or nonphysical, including psychological,
22 financial, or reputational harm, that is sufficiently
23 serious, under all the surrounding circumstances, to
24 compel a reasonable person of the same background and in
25 the same circumstances to perform or to continue
26 performing labor or services in order to avoid incurring
27 that harm.

28 18 U.S.C. § 1589(c).

The federal sex trafficking statute provides:

Whoever knowingly (1) in or affecting interstate
commerce . . . recruits, entices, harbors, transports,
provides, obtains, or maintains by any means a person; or
(2) benefits, financially or by receiving anything of
value, from participation in a venture which has engaged
in an act described in violation of paragraph (1),
knowing, or in reckless disregard of the fact, that means
of force, threats of force, fraud, coercion . . . or any
combination of such means will be used to cause the
person to engage in a commercial sex act, or that the
person has not attained the age of 18 years and will be
caused to engage in a commercial sex act, shall be
punished as provided in subsection (b).

18 U.S.C. § 1591(a); see also *United States v. Todd*, 627 F.3d 329,
335 (9th Cir. 2010) (Smith, J., concurring) ("Where a defendant

1 engages in sex trafficking without the use of force, fraud, or
2 coercion, or where children are not involved, his conduct is
3 criminalized by a different set of statutes.").

4 Section 1591(e) includes the following definitions:

5 (1) The term 'abuse or threatened abuse of law or legal
6 process' means the use or threatened use of a law or
7 legal process, whether administrative, civil, or
8 criminal, in any manner or for any purpose for which the
law was not designed, in order to exert pressure on
another person to cause that person to take some action
or refrain from taking some action.

9 (2) The term 'coercion' means: (A) threats of serious
10 harm to or physical restraint against any person; (B) any
11 scheme, plan, or pattern intended to cause a person to
12 believe that failure to perform an act would result in
serious harm to or physical restraint against any person;
or (C) the abuse or threatened abuse of law or the legal
process.

13 (3) The term 'commercial sex act' means any sex act, on
14 account of which anything of value is given to or
received by any person.

15 (4) The term 'serious harm' means any harm, whether
16 physical or nonphysical, including psychological,
17 financial, or reputational harm, that is sufficiently
18 serious, under all the surrounding circumstances, to
19 compel a reasonable person of the same background and in
the same circumstances to perform or to continue
performing commercial sexual activity in order to avoid
incurring that harm.

20 (5) The term 'venture' means any group of two or more
21 individuals associated in fact, whether or not a legal
entity.

22 18 U.S.C. § 1591(e).

23 In their third cause of action, Plaintiffs allege that
24 "Defendants recruited, hired, transported and/or harbored [them]
25 with knowledge and/or in reckless disregard that force, threat of
26 force and/or coercion would be used to cause [them] to engage in
27 sex acts in exchange for employment and/or maintenance of job
28 status" (Am. Compl. ¶ 17), and that "Defendants benefitted

1 financially and/or received something of value by virtue of their
2 participation and/or knowledge and/or constructive knowledge in the
3 conduct alleged in paragraph [seventeen] herein" (Am. Compl. ¶ 18).
4 In their fourth cause of action, Plaintiffs allege that "Defendant
5 knowingly obtained labor and/or services of Plaintiffs, [such as
6 the sex-related incidents], by means of serious harm, threats of
7 harm, and/or a scheme, plan, or pattern intended to cause
8 Plaintiffs to believe that if they did not perform such labor or
9 services, they would suffer serious harm." (Am. Compl. ¶ 22.)

10 These allegations are deficient. They do not allege facts.
11 They are simply a regurgitation of the statutes' wording woven
12 together with conclusory statements and a generous use of "and/or."
13 Accordingly, the Court grants Defendants' motion to dismiss
14 Plaintiffs' third and fourth causes of action under the civil
15 remedy provision, with leave to replead. Whether it is ultimately
16 sufficient to state a claim, it will only be so if sufficient
17 factual allegations are made of the actual exercise of force, the
18 threats made of the potential use of force, the physical restraints
19 used or threatened, and what serious harm actually befell
20 Plaintiffs or was threatened in sufficient detail to demonstrate a
21 violation of the statutes relied upon.

22 **C. Sex Discrimination Under Title VII**

23 Kotrous, Ottens and Robertson are the only named plaintiffs
24 who bring a cause of action against Defendants for sex
25 discrimination under Title VII. Title VII makes it an unlawful
26 employment practice "to discharge any individual, or otherwise to
27 discriminate against any individual with respect to his
28 compensation, terms, conditions, or privileges of employment,

1 because of such individual's . . . sex." 42 U.S.C. §
2 2000e-2(a)(1). "[A]n unlawful employment practice is established
3 when the complaining party demonstrates that . . . sex . . . was a
4 motivating factor for any employment practice, even though other
5 factors also motivated the practice." 42 U.S.C. § 2000e-2(m).

6 "In order to state a claim for sex discrimination, [a]
7 [p]laintiff must establish that [he or] she was subject to adverse
8 employment action because of [his or] her sex." *Zamudio v. County*
9 *of Los Angeles*, No. CV 13-895, 2013 WL 3119178, at *5 (C.D. Cal.
10 May 16, 2013); see also *Jespersen v. Harrah's Operating Co., Inc.*,
11 392 F.3d 1076, 1079 (9th Cir. 2004) ("In order to prevail on a
12 Title VII disparate treatment sex discrimination claim, an employee
13 need only establish that, but for his or her sex, he or she would
14 have been treated differently.").

15 Defendants generally argue that the allegations pled in
16 support of Kotrous, Ottens and Robertson's Title VII sex
17 discrimination claim fail under Rule 8 and the facial plausibility
18 standard. The Court agrees. There is nothing in the amended
19 complaint describing any events that specifically occurred between
20 these three women and Ulrich. There are only general, conclusory
21 allegations pertaining to all seven women—all of whom claim that
22 one or more sex-related incidents took place during their
23 employment at unspecified dates, locations, etc. Accordingly, the
24 Court grants Defendants' motion to dismiss Kotrous, Ottens and
25 Robertson's sex discrimination claims under Title VII.

26 It should also be noted that Kostrous, Ottens and Robertson
27 fail to specify when they received their ninety-day right to sue
28 letters from the Equal Employment Opportunity Commission ("EEOC").

1 They may either allege the date of that letter or attach it if they
2 choose to amend this claim. See generally *Phi Cam Luong v. U.S.*
3 *Bank Nat'l Ass'n*, No. 3:12-CV-01220-HU, 2013 WL 4431293, at *4 (D.
4 Or. Aug. 14, 2013) (explaining that a plaintiff cannot evade
5 dismissal by omitting the date of a right-to-sue letter from her
6 complaint); see also *Boon v. Union Pac. R. Co.*, No.
7 3:10-cv-1044-HU, 2011 WL 7452732, at *5 (D. Or. Sept. 30, 2011).

8 **D. Sex Discrimination Under ORS 659A.030**

9 All seven plaintiffs bring a cause of action against
10 Defendants for sex discrimination under ORS 659A.030. Under the
11 sex-based discrimination provision, it is an unlawful employment
12 practice for an employer to discriminate against an individual in
13 compensation or in terms, conditions or privileges of employment
14 because of the individual's sex. OR. REV. STAT. § 659A.030(1)(b).

15 Plaintiffs' state law sex discrimination claim fails to give
16 notice of each of the named plaintiff's claim and its basis.³ The
17 amended complaint is replete with general, conclusory allegations
18 pertaining to all seven of the named plaintiffs, often times tied
19 to together with the conjunction "and/or." In the Court's view,
20 Plaintiffs' amended complaint alleges a possible claim for sex
21 discrimination under ORS 659A.030, not a plausible claim. That is
22

23 ³ At minimum, Kotrous, Ottens and Robertson's state law sex
24 discrimination claim fails for the reasons previously stated. See
25 *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1437 n.2 (9th Cir. 1993)
26 (stating that a plaintiff's claim under ORS 659.030 "succeeds or
27 fails with his Title VII claim" because courts construe Oregon's
28 statutory counterpart as identical to Title VII); *Pullom v. U.S.*
Bakery, 477 F. Supp. 2d 1093, 1100 (D. Or. 2007) ("Because ORS
659A.030 is modeled after Title VII, plaintiff's state law
discrimination claim can be analyzed together with her federal
discrimination claim.").

1 insufficient under *Twombly* and *Iqbal*. Accordingly, the Court
2 grants Defendants' motion to dismiss Plaintiffs' sex discrimination
3 claim under ORS 659A.030, with leave to replead. Any amendment
4 must allege what happened to each plaintiff factually, a factual
5 basis to conclude it was motivated by her gender, and resulted in
6 an identified adverse action.

7 **E. Wrongful Discharge**

8 Kotrous and Noonan are the only named plaintiffs who bring a
9 cause of action against Defendants for wrongful discharge. To
10 prevail on a claim of wrongful discharge under Oregon law, a
11 plaintiff "must establish a 'causal connection' between a protected
12 activity and the discharge." *Estes v. Lewis & Clark Coll.*, 152 Or.
13 App. 372, 381 (1998) (quoting *Shockey v. City of Portland*, 313 Or.
14 414, 442 (1992)). A "causal connection" requires a showing that
15 "the employee's protected activity [was] a 'substantial factor' in
16 the motivation to discharge the employee." *Id.* (citation omitted).
17 "[T]o be a substantial factor, the employer's wrongful purpose must
18 have been a factor that made a difference in the discharge
19 decision." *Id.* (internal quotation marks omitted).

20 Defendants move to dismiss Kotrous and Noonan's wrongful
21 discharge claims on the ground that Title VII and ORS 659A.030
22 provide Kotrous and Noonan with adequate statutory remedies.
23 Kotrous and Noonan respond by arguing that their wrongful discharge
24 claims arise from conduct that is not actionable under Title VII
25 and ORS 659A.030—namely, a claim for retaliation for refusing to
26 engage in unlawful activity.

27 During oral argument, Defendants challenged Kotrous and
28 Noonan's assertion that their wrongful discharge claims arise from

1 conduct not actionable under Oregon law, citing ORS 659A.030(1)(f).
2 Cases from this district appear to support Defendants' position.
3 One example is *Gladfelder v. Pacific Courier Services, LLC*, No.
4 3:12-cv-02161-SI, 2013 WL 2318840 (D. Or. May 28, 2013), where
5 Judge Simon dismissed a plaintiff's wrongful discharge on similar
6 grounds, stating:

7 [ORS] 659A.885(3) applies to claims brought under [ORS]
8 659A.030. . . . [I]t appears to the Court, and was
9 confirmed by Plaintiff's counsel during oral argument,
10 that: (1) Plaintiff's fourth claim (alleging sex
11 discrimination) is brought under [ORS] 659A.030(1)(b)
12 (discrimination in conditions of employment); (2)
13 *Plaintiff's fifth claim (alleging retaliation) is brought*
14 *under [ORS] 659A.030(1)(f) (discrimination based on*
15 *opposition to an unlawful practice); and (3) Plaintiff's*
16 *sixth claim (alleging hostile work environment) is*
17 *brought under [ORS] 659A.030(1)(b) (discrimination in*
18 *conditions of employment because maintaining a hostile*
19 *work environment is a subset of discrimination). In*
20 *addition, although Plaintiff does not expressly invoke*
21 *[ORS] 659A.030(1)(g) (aiding and abetting liability) but*
22 *refers only to [ORS] 659A generally, it appears to the*
23 *Court that Plaintiff relies upon [ORS] 659A.030(1)(g) as*
24 *the basis for [the sole owner and chairman of the*
25 *board]'s personal liability, in addition to [the*
26 *company]'s alleged liability as Plaintiff's employer. In*
27 *light of [ORS] 659A.885(3) inclusion of [ORS] 659A.030*
28 *among the provisions giving rise to a personal claim for*
compensatory and punitive damages as well as a right to
trial by jury, [the sole owner co-defendant] is correct
when he argues that Oregon statutory law provides an
adequate remedy for Plaintiff's claimed injury and
damages.

21

22 Because Plaintiff has the right to a jury trial and
23 the right to seek compensatory and punitive damages for
24 her fourth, fifth, and sixth claims, Oregon law provides
an adequate remedy, and her ninth claim, alleging
wrongful constructive termination, is dismissed.

25 *Id.* at *3-4 (internal citations omitted) (emphasis added).

26 Consistent with Judge Simon's decision in *Gladfelder*, the
27 Court grants Defendants' motion to dismiss Kotrous and Noonan's
28 wrongful discharge claim.

1 **F. Negligence**

2 "To state a claim for negligence under Oregon law, a plaintiff
3 must allege a duty of care owed by the defendant, a breach of that
4 duty, causation, and damages." *Nattell v. Curry County*, No.
5 1:11-cv-3161-CL, 2013 WL 5372539, at *8 (D. Or. Sept. 23, 2013).
6 "If a plaintiff invokes a special status, relationship, or standard
7 of conduct, that relationship may create, define, or limit the
8 defendant's duty to the plaintiff." *Id.* Absent such circumstances,
9 a defendant's liability for harm that his conduct causes is
10 analyzed in terms of the concept of "reasonable foreseeability" or
11 "general foreseeability." *Id.*

12 In their amended complaint, Plaintiffs allege that Defendants
13 had a duty to their employees, including Plaintiffs, to: (1)
14 "provide a safe workplace and to train, supervise and/or control
15 its employees to prevent unlawful discrimination, harassment and/or
16 retaliation in the workplace" (Am. Compl. ¶ 34), and (2) "promptly
17 and effectively . . . discipline and/or terminate agents or
18 employees they knew or should have known subjected employees,
19 including Plaintiffs, to unlawful discrimination, harassment and/or
20 retaliation in the workplace" (Am. Compl. ¶ 35).

21 Plaintiffs go on to allege that Defendants were negligent in
22 one or more of the following particulars: (1) by failing to train
23 employees, agents and/or managers not to unlawfully discriminate,
24 harass and/or retaliate in the workplace; (2) failing to supervise
25 their employees, agents and/or managers; (3) failing to properly
26 discipline their employees, agents and/or managers; (4) failing to
27 terminate the employment of any employees, agents and/or managers
28 who Defendants knew or should have known engaged in unlawful

1 conduct or failed to take the necessary preventative measures; and
2 (5) failing to prevent and/or remedy the aforementioned
3 discrimination, harassment and/or retaliation.

4 Defendants argue that the allegations pled in support of
5 Plaintiffs' negligence claim fail under Rule 8 and the facial
6 plausibility standard. The Court agrees. As with the other
7 claims, specific factual allegations for each plaintiff must be
8 made regarding what happened to them and how this conduct had come
9 to the corporate defendant and its managers' attention, but had not
10 resulted in any meaningful response. That is to say, it's not
11 sufficient to allege whether directly, or by incorporation, that
12 generally all plaintiffs suffered a general list of harassing
13 situations. While the employment relationship and the
14 discrimination statutes may be relied on to establish the duty to
15 Plaintiffs, general allegations the duty was breached is not
16 enough. Nor is it sufficient to allege Defendants knew of the
17 problems without alleging a factual basis for the knowledge.
18 Accordingly, the Court grants Defendants' motion to dismiss
19 Plaintiffs' negligence claim, with leave to replead.

20 **G. Breach of Good Faith and Fair Dealing**

21 Plaintiffs bring a cause of action against Defendant for
22 breach of the implied covenant of good faith and fair dealing under
23 Minnesota law. Defendants move to dismiss the claim on the ground
24 that Minnesota law does not recognize an implied covenant of good
25 faith and fair dealing in employment contracts. See *Brozo v.*
26 *Oracle Corp.*, 324 F.3d 661, 668 (8th Cir. 2003); see also *Bratton*
27 *v. Menard, Inc.*, 438 N.W. 2d 116, 118 (Minn. App. 1989). Rather,
28

1 absent a contrary contractual arrangement, employees serve at the
2 will of their employer. *Id.*

3 Plaintiffs respond by relying on Minnesota cases where
4 employee handbooks had modified the parties' employment contract to
5 require good faith in discharge. Nothing in the amended complaint
6 suggests the existence of an employment handbook, let alone a
7 handbook that modified the at-will nature of their employment.
8 Defendants' motion to dismiss Plaintiffs' claim for breach of the
9 implied covenant of good faith and fair dealing is granted, with
10 leave to replead in a manner consistent with Rule 11.

11 **IV. CONCLUSION**

12 For the reasons stated, Defendants' motion (Docket No. 25) to
13 dismiss is GRANTED. Plaintiffs are granted thirty days to replead.

14 Dated this 21st day of March, 2014.

15 /s/ Dennis J. Hubel

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17 DENNIS J. HUBEL
18 United States Magistrate Judge
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