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IN AND FOR THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

SUSAN E. SNELLING, PR, ESTATE OF)	Case No. 0804232CV
DONALD ROSS)	Associated Case: 0803782CV
)	
Plaintiff,)	
)	DEFENDANTS
vs.)	MOTION FOR SUMMARY
)	JUDGEMENT RULE 47 A
AMY ATKINS AND ALL OCCUPANTS,)	
KINI COSMA)	Hearing Date: October 30, 2008
)	Time: 8:30 a.m.
Defendant(s))	Room: To be announced

TO: SUSAN E. SNELLING, PR, ESTATE OF DONALD ROSS, and attorneys on record.

PLEASE TAKE NOTICE that on **October 30, 2008 at 8:30 a.m.** or as soon thereafter as counsel may be heard, in the courtroom of Duty Judge of the above-entitled court, plaintiff will move for summary judgment against defendants pursuant to ORCP 47 of the complaint filed on or about September 29, 2008 in Plaintiff's favor upon all or any part thereof.

This motion will be based on this Notice of Motion, on the attached declaration and Memorandum of Points and Authorities served and filed herewith, on all papers and records on file in this action, on points and authorities as may hereafter be filed with the court, on all the papers and records on file in this action, associated files, with or without supporting affidavits or declarations, and on such oral and documentary evidence as may be presented at the hearing of the motion.

Dated: _____ .Kini Cosma, Defendant.

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FOR THE COUNTY OF KLAMATH

SUSAN E. SNELLING, PR, ESTATE OF)	
DONALD ROSS)	Case No.: 0804232CV
)	Associated Case: 0803782CV
Plaintiff,)	
)	MEMORANDUM OF
vs.)	POINTS AND AUTHORITIES
)	IN SUPPORT OF MOTION FOR
AMY ATKINS AND ALL OCCUPANTS,)	SUMMARY JUDGEMENT
KINI COSMA)	RULE 47 A
)	
_____ Defendant(s))	

I.

THE MATERIAL FACTS ARE NOT DISPUTED:

- 1) This case arises out of a termination of a lease agreement. Plaintiff alleges Defendant never entered possession of the premises pursuant to the terms of a lease agreement with the deceased.
- 2) Defendant provided a true and correct copy signed by Descendent proving Defendant was entitled to withhold the premises.
- 3) On September 25, 2007, Defendant agreed to move into a guesthouse provided by the Deceased for an extended time relying on the terms of the lease agreement.
- 4) On or about September 1, 2008, Defendant filed suit alleging that her **immediate neighbors** were engaging in harassment and other unsavory practices.
- 5) Coincidentally, **Plaintiff terminated the lease agreement** within the same month

citing no-cause and attests a 30-day notice was sent to Defendant.

6) Defendants contends, *inter alia*, that:

a) The 30-day notice was deliberately back dated June 9, 2008;

b) It was made with a negligent and reckless disregard to identify quickly enough occupants who entered upon the premises and lawfully held the premises in good faith.

c) It was mailed to unknown occupants to deliberately deprive Defendant due process in an FED claim and other disputed and adverse claims in order to deprive her of her fourth Amendment of the U.S. Constitution.

7) This action is based on contractual and other asserted obligations arising in one way or another out of the facts of this termination pursuant to the amount of severance pay owed to Defendant has been contractually affected by the cause of Plaintiff's termination.

8) Although Courts have warned that it is error to "simply characteriz[e] the case as one in negligence, contract, or some other area of law"; instead, "should focus on the precise issues that are likely to be actually tried."

9) However, Defendant proclaims, conversely, a Court cannot focus on the precise issues to be tried if it oversimplifies the case as a "wrongful termination" case without taking into account the comparative convenience of analytically distinct claims, and as in this instant case, meaning claims not only related to wrongful termination. Iragorri v. United Techs. Corp., 274 F.3d 65, 74 (2d Cir. 2001) (en banc) (emphasis added).

II. **GUILT BY ASSOCIATION**

10) We begin with Guilt By Association. Guilt by association comprehends the idea that one is simply guilty because they have, in some manner, attached themselves to an individual or with a group of persons who are charged with a violation of a legally established line of conduct.

11) Profiling is gratuitous and circular in construction; it is based on data that those who profile, whether the police, the banks, or department store security, have generated for themselves.

12) Here, in Defendant's situation, it is the preponderance of excessive judicial proceedings made of automatic data-filled rationalization for future profiled proceedings.

13) When a person is deemed to fit the profile of an undesirable or overly risky business prospect, it is the profile that defines them as undesirable or risky.

14) Because it functions through visual perceptions in the moment of a difference in appearance, it can only rely on a difference from what is not profiled, not noticed; that is, the profile exists only because the police have decided for themselves that others will not be profiled. In short, it is self-defining and self-referential.

15) Though profiling clearly constitutes a form of discrimination, it does not constitute law enforcement. In fact, it is the very inverse of law enforcement. Profiling means that a "suspect" is discovered, and the police then look for a crime that the person might have possibly committed.

16) In the first case, a criminal act is committed and the police try to apprehend the criminal. In the second, the police commit an act of suspicion, and a person finds

him/herself apprehended. That is, a person commits a crime in the first, while in the second, the police commit an act of criminalization.

17) Thus, is the situation for the criminalization of Defendant for her sex orientation and her role as a "sex offender." ¹

18) Profiling violates the tenets of law enforcement by making the police the active agent in the criminalization of a person. (This process would be impossible without the vast structure of "victimless crimes" that has been incorporated into the legal structure.)

19) Law enforcement addresses people's acts in their particularity, and attempts to maintain order on a case by case basis, while profiling focuses on people themselves through a process of visual generalization, and disrupts social order and peace by introducing an atmosphere of aggressive harassment into it.

20) And like racialization, it produces a social division between those who are profiled and thereby criminalized, and those who are not -- a system of social categorizations invented and imposed by those who make the generalizations.

PROBABLE CAUSE

21) A legal concept that rationalizes police profiling and legitimates is "probable cause." "Probable cause" is a rhetorical device that allows warrantless searches and arrests by a police officer. It signifies that a cop has decided there is "cause to suspect a crime" is taking place, or has taken place, that Defendant "fits" the profile of a suspect being sought gives "probably cause" to search her residence.

22) The conjunction of profiling and probable cause as routine procedures imply that

¹ Defendant has had no other choice but to publicly contest this severe form of defamation. See evidence uploaded at <http://www.kinispolarbear.bravehost.com>

the harassment and detaining of persons have become primary for the police over the maintenance of peace and security of social space.

23) The peace and security of "social space" becomes stratified hierarchically between those sectors whose peace is disturbed and those outside the profile who are left in peace. In effect, the actions of "peace officers" becomes, through the invocation of "probable cause," a disturbance of the peace of those they profile. In rhetorically addressing an alleged crime problem, the police become a crime problem.

24) Ultimately, the ever-present potential for the disruption of social space becomes a low-intensity mode of social aggression by the State. The social stratification this aggression produces then signifies the varying degrees of personal liberty people are to be allowed.

25) Individual liberty then becomes a political "commodity," a "public good" that can be transferred, taken from some and given to others, through shifts in the profiles. Some are allowed their freedom of behavior, and others are not because they as persons are criminalized before the fact. Ultimately, under an ethos of profiling, the criminalization of behavior becomes a social norm.

26) It is not what a person does, nor even who they are, but who or what they are associated with by others (the police) that comes under judicial control.

27) Guilt by association criminalizes social connections, that is, it attributes criminality to an individual through his/her relations to others or to certain concepts. In effect, it extends profiling, which already constitutes a form of guilt by association in the sense that the police associate a particular appearance with a prior concept of what that appearance will mean before having been observed.

28) Like profiling, guilt by association is self-referential. This circularity has been written into the law insofar as it gives the police the responsibility to compile the data and generate the list of behaviors that will be considered criminal.

29) Guilt by association is the transformation of an extra-legal standard of comportment into a legal standard (without legislation) by the police. In effect, an individual is profiled because he/she is (behaviorally) deemed guilty by association with respect to the prior extra-legal standard that is brought to bear by an administrative (or police) agent, and guilty in advance because he/she is guilty by association with the profile. And this ethos extends socially (as culturally "familiar") to the mainstream paradigm that deems an individual placed under arrest as guilty in advance because placed under arrest, that is, guilty by association with judicial processing.

A LAW UNTO THEMSELVES

30) "Probable cause" signifies that, in any police situation, all the authority of the law can be brought to bear on a targeted individual through the person of the cop and the cop's self-involvement in that situation.

31) Refusal or resistance to a directive subjects a person to possible arrest, punishment (such as beating), or both. Thus, the police have the ability to create legal standards for street encounters through probable cause that then have the weight of actual law. That is, the police directive constitutes a cop's ability to make law in the moment.

32) Having been profiled (criminalized), thus noticed (generalized), and stopped (absorbed into the judicial system), a person is confronted by another (the police), all of whose directives translate directly into law. The person detained is thus subjected to two systems of law, the legislated law and the law the police can make arbitrarily in the form

of directives.

33) The cop has but to find a directive that an individual will resist simply out of self-respect, a sense of dignity or justice, or a feeling that the directive is extreme and unwarranted. Such a stance will be construed as disobedience, and be cause for arrest, the use of painful restraints, torture with pepper spray, and charges of resisting arrest.

34) If the officer chooses to beat the person, the person can then be charged with assaulting the officer since the judicial presumption is that an officer will use violence to make an arrest only in self-defense. The cop's use of violence becomes presumed evidence that the cop was threatened or assaulted.

35) Thus an individual not only becomes captive to the legal system through the cop's noticing and profiling but, in being constrained to absolute obedience, can be criminalized and subjected to arrest in fact for defense of his/her dignity, self-respect, or sense of justice.

36) Defense of one's humanity or self-respect can also be construed as an actual assault on the law if the officer decides to assault that self-respect violently. This goes beyond the mere criminalization of behavior that it relies on; it constitutes the ability to criminalize a person's personhood and sense of justice itself.

37) Thus, profiling and its attendant aggressiveness imply that the police have arrogated to themselves the power to determine who will be human, whose self-respect will be respected, whose autonomy and independence will go unpunished, and whose not.

38) "Impunity" is not simply a result of police departments offering internal solidarity to those officers who act with brutality or criminalize people. It names the hyper-political context in which the police not only stands above both police regulations and legal

prohibitions against torture or murder, but become a law unto themselves, to which they can demand obedience. It names the power given the police, authorized through the concept of "probable cause," to brutalize or dehumanize a person at will, without accountability. This means that the person subjected to that power has no recourse, neither in the moment nor through judicial procedure.

39) A demand for recourse in the moment (for instance, an explanation or discussion of the situation) will be construed as criminal resistance and punished; an insistence on due process after the fact will crash against the presumptions of the profile and probable cause.

40) Profiling; and "upholding the law" is their sworn function. Because criminalization occurs in advance, both police accountability and judicial recourse by its victim are foreclosed by this sense of "duty." Not only can each officer make law in the moment to suit himself, but the police as a whole become a law unto themselves.

41) Once impunity becomes routine, as it has, the law itself ceases. Insofar as the law is, by definition, that to which all people are responsible, the ability of the police to make law in the moment without accountability means that the police are no longer held under the law, are no longer responsible to the law. Their responsibility to civil society is actually abrogated by the ability to make law in the moment, and by their ability to substitute violence for responsibility.

42) To become the law means to dispense with the law. Because police directives are given the weight of law, the law becomes null. And this again articulates the final inversion of policing implicit in profiling and impunity: once the police can criminalize a section of society, the police themselves become a crime problem.

43) Instead of being addressed as a crime problem, police impunity becomes a socio-political function that deploys crime to re-stratify and reracialize society (because the means of criminalizing are visual). As in all racialization, it reflects a cultural ethos that presumes to determine who will be human and who will not, based on who is noticeable and who is left unnoticed, who will be criminalized in advance, and whose actual crime will be decriminalized.

44) Violence is inherent in this process since the identity of the dominant group is dependent upon the inferiorization of the subjugated group, requiring that inferiorization to be continually renewed in order for self-identification of the dominant group to retain its value. And inferiorization always requires violence.

45) Among the central strategies or rhetorical modes of promoting impunity are "zero tolerance" and "Quality of Life" (QOL). QOL is used as a rationale to harass and arrest gay people, to clear them out. It is thus a class based ideology since, while harassing the gay population, it valorizes the landlords who renders people homeless by increasing rent beyond affordability.

46) In attacking those already subjected to society's abrogations, the destitute and the discriminated, it is politically repressive. "Quality of life" enforcement becomes another way a government abandons responsibility for its citizens, and disguises it has law enforcement. It also involves assaults on the social or political activists who may attempt to win some justice or offer an alternative to this derogation.

47) The theory behind zero-tolerance and "quality of life" strategies is that if the police crack down hard on minor crimes and offenses, then major violent crime will be eliminated at the same time. Brutality becomes routine.

48) In effect, the major crime the police focus on is the crime of being noticed by the police; those noticed become the enemy to be engaged as such because the police have noticed them.

49) The specificity of civilian law is surpassed and left behind in the absolutized relation of the police to the person on the street or in his/her home.

50) Similarly, under the operation of police impunity, the constitutionally guaranteed rights against unreasonable searches and seizure of person or property now functions under the aegis of impunity, which likewise demands "submission as an ordering principle of the social."

51) Due process and civil rights for profiled arrests, asset forfeiture, or house searches are derogated if real criminality (resistance) can be shown. This only becomes a motivation for police violence, since police violence is presumed to signify self-defense against a threat, and prima facia evidence of real criminality on the part of the suspect.

52) Thus, the criminality imposed by the police through charges of resisting arrest, disobeying an officer, etc. obviate the guarantee of due process.

53) This structure is not new, nor is it only a distant echo of the plantation slave system, whose form of directly imprisoned labor was itself impunity as such.

54) Today, the police have been substituted in urban areas for the "private" domain of the plantation "masters," or of the rural banks to insure the submission of labor as a whole. In that sense, plantation, debt servitude, land tenancy, ghetto, police precinct, paramilitary armored corps, and the prison-industrial complex all flow into each other, as the many heads of the hydra by which supremacy have maintained themselves as the central social structures of the US.

55) Should the debtors fall too far behind, or flee to escape the deathly condition of their impoverishment, they were subject to arrest, to be funneled through a court system that traveled them quickly to prison workhouses and chain gangs used to maintain the material infrastructure of the south.

56) Further, beyond the purview of the law, sexual conduct toward slaves, the inflicting of pain, the invention of forms of obedience, are "private" matters of ownership for a landowner or in FED claims. Masters reveling in a willfulness of punishment, an enjoyment in whipping, beating, or mutilating slaves guilty of minor infractions, as an element of "enjoying" their "property right."

57) The aegis of absolute submission, the "master" feels entitled to enjoy not only obedience from the slave, but an enactment by the slave of a performance of pleasure or contentment at service, even in the face of whatever violation of the slave's personhood or torture the "master" thought appropriate.

58) The landowner's "enjoyment" of his/her property has been literally staged, so that it referred not only to having property, but to being entertained by it. Behavior evincing disgruntlement, discontent, recalcitrance, or resistance was non-submission, and thus punishable.

59) Labor, sexual service, and friendly performance were all dimensions of the same relation. The slave that showed any autonomy was considered one who had taken over control of someone else's property, and thus was guilty of a form of theft, or expropriation, and punished as such.

60) Similarly, for those profiled to claim Constitutional rights in the face of police impunity are thus guilty of pretending to a superseding law which impunity has itself

already superseded. Not to show the required obedience means one's existence has become a transgression, no longer available to civil rights.

61) Profiling continues this duality. When the police stop a suspect through profiling, they are stopping a non-person because they have generalized the person in advance; but they must bestow on that suspect the character of a person in order to discover something criminal for him/her to have committed as an individual. At the same time, to invent a charge against the person, the police must reduce the other to the status of object from which absolute obedience is to be exacted.

62) In reflecting the earlier "tradition," police impunity's demand for submission and obedience also reconstructs the separation of social authority into two realms, the public and the private. The police constitute the "private" domain insofar as they can make law for themselves in the moment, and criminalize deviance from absolute submission.

63) Their hold over the person stopped is as absolute as that of the slave master, and the demand for obedience as unconditional. Thus, the private realm of the slave relation gets mapped onto police violence and the public realm gets mapped onto white society, onto that sector of society that remains unprofiled and unaffected by it. Impunity is authorized not by being public, but by being that "private" domain of law which reconstitutes the public realm itself.

64) Because profiling itself is visual (and hence racializing), it remains invisible to most of straight America, who escape notice. One doesn't notice that one is not noticed by the police; one simply thinks they are doing the job of resolving a crime problem.

65) The police as a private domain, is an implicit structural impossibility of a functional civilian review board for the exigent production of the prison industrial

complex. The quiet and arbitrary sweep of hundreds of thousands of minor offenders of victimless crimes landing those into prison would have no cultural effect. Something visible, a spectacle, must be added in order to complete its social function.

66) "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

67) The psychiatric industry is based on the same hyper-constitutional principle; if one's behavior strays sufficiently from an unlegislated "norm," then one can be deprived of one's freedom without due process, by means of an ostensible medical decision.

68) The most contorted form of guilt by association, in which guilt is assumed and innocence must be proven, is in asset forfeiture. Asset forfeiture attributes behavior to things themselves, in order to circumvent Constitutionality. Though the 5th amendment establishes that property can not be seized without due process, assets can be seized arbitrarily if the police decide that such assets can be used in the commission of a crime, thus establishing that the person associated with the assets might be a criminal.

69) Asset forfeiture is not seen as a seizure of someone's property, but a preventive detention (of assets) to obviate facilitating a crime. The forfeiture treats the assets as themselves suspect, and apprehensible (detainable) as such, while the person associated with the assets then becomes guilty by association with them. The assets are guilty by association with the suspect, and the person is suspect by association with the assets.

III.

DEFAMATION OF CHARACTER AND UNJUST VEXATION

70) In a consortium of defamation character lawsuits, Defendant has declared continually that she has been exposed to and subjected to hatred, contempt, ridicule, and disgrace, that has caused her to be shunned and avoided, and injured in her occupation through the sex offender conviction.

71) Defendants' businesses have also been victimized by defamation, by her competitors who seek to obtain unfair advantages by spreading false rumors or accusations about the victimized business.

72) Regardless of her futile efforts to protect her hard-earned reputation against such defamation, Plaintiff has associated with competitors in an effort to sabotage Defendant while under severe disadvantages and heavy labors before the lease agreement was suddenly terminated.

73) Defendant alleges that the series of blacklisting has generally suggested that Defendant lacks integrity, honesty, incompetence, or that she possesses other reprehensible personal characteristics. All a series of attacks on her reputation and character to create intentional and negligent infliction of emotional distress and interference with prospective advantages.

74) These misrepresentations have included acts, suggestions or inferences that leads listeners to believe something untruthful or misleading about Defendant.

75) Some of these inferences are not direct statements but have included gestures, tones of voice, and raises an eyebrow; statements without a good faith belief in the truth of the statement; without reasonable grounds for believing the truth; with a motive or

willingness to vex, harass, annoy, and injure; and not fully or fairly stated; the result being a reckless investigation; and motivated by hatred or ill will towards Defendant.

76) The term “unjust vexation” is broad enough to encompass many types of acts or conduct. Conduct that annoys some people does not annoy others. But while these acts of types of conduct are within the State’s police power to prohibit and punish, it cannot however constitutionally do so when its violation may entirely depend upon whether or not another is vexed or annoyed by said act or conduct and whether or not said act or conduct is unjust is the estimation of the court.

77) Defendant seeks to make a finding of “vexation” and “oppression,” especially where the U.S. has had connection to this Defendant and that the somewhat attenuated witnesses who reside next to Defendant are unwilling, as it has been alleged and shown that any witness would be unwilling to testify for being muted, fear of reprisal, or the extensive of defamation of Defendant’s character . Koster, 330 U.S. at 524 “establish[es] such oppressiveness and vexation to a defendant as to be out of all proportion to plaintiff’s convenience, which may be shown to be slight or nonexistent.”; Also in Piper, 454 U.S. at 255-56 n.23; DiRienzo v. Philip Servs. Corp., 294 F.3d 21, 30 (2d Cir. 2002) (stating in a suit brought by U.S. plaintiffs that “plaintiffs should not have been deprived of their choice of forum except upon defendants’ clear showing that a trial in the United States would be so oppressive and vexatious to them as to be out of all proportion to plaintiffs’ convenience”).

IV
DEFENDANTS
CONTRACTUAL OBLIGATIONS

78) Plaintiff contends that the breaches, *inter alia*, were substantial in nature and that Defendant entered upon the premises and is unlawfully and willfully holding the premises with force and in bad faith.

79) Defendant contends that all actions or statements incited by Plaintiff were statements or records intended to conceal, avoid, or decrease an obligation to pay Defendant for her labor and provide by the terms of the extended lease agreement;

80) That the amount of severance pay owed to Defendant has been contractually affected by the cause of Plaintiff's termination;

81) Further, that Plaintiff acted in deliberate ignorance and reckless disregard of the truth and knowingly made, and used, and caused to be made and used, a record or statement to conceal, avoid, or decrease an obligation to pay Defendant for her labor and intent of the extended lease agreement;

82) That upon a showing by this Defendant, Plaintiff had an unrestricted participation during the course of the litigation by initiating this action for the purposes of harassment or would cause the Defendant undue burdens and unnecessary expenses for the act to discriminate against and compel this Defendant to do something against the terms and conditions of the agreement.

83) Defendant had a friendship with Descendant for which they both shared certain interests and views in each of their own sex orientated relationships.

84) During July and August 2007, Descendant allowed Defendant to move onto the

premises on Defendant's promise that she invest sweat equity and materials into the guesthouse. (**Exhibit A**-statements and receipts)

85) This included a \$200/mo rent for the guesthouse and yard for her horses and only the use of the bathroom and kitchen in the main house. Defendant was allowed to remove excess rubbish harbored in storage areas, maintain the grounds, mow the lawn, thin and clear brush and debris, trim and saw branches off the trees, sweep and rake leaves off the roof and in the front yard, clean out the roof gutters, take out the garbage, go to the store on errands, perform miscellaneous handyman chores and shovel snow. Defendant's horses reduced the growth debris in the backyard. Defendant has since continued to substantially perform these and other excessive duties that surmount what has been expected of her in the lease agreement.

86) On or about January 23, 2008, the time Descendent passed away, Plaintiff visited Defendant at the premises at issue. Plaintiff returned approximately a few days later to clean and clear the bodily fluids left on the floor exhausted by Descendent and the fumes that permeated the premises for several months. Defendant removed Descendants possessions, and picked up the excess storage of mail. It was at this time Defendant gave Plaintiff the lease agreement at issue, her business card, and the Post Office Box for which she receives her mail. A lengthy conversation ensued about the details of Defendant's case in California.

87) During this time, Plaintiff made an agreement in lieu of rent with the Defendant to continue to stay in the guesthouse; that she would pay the bills until further notice. Those bills are in writing, amount to approximately \$200 and, Defendant contends, prove the intent of the modification provision of the lease agreement, **page 5, Exhibit B.**

88) Approximately, one month after that, Defendant claims Plaintiff called and informed her, something to the effect, that someone from a state agency in Oregon was going to intervene because the Descendant had accrued medical costs which included his rehab fees. Defendant also claims Plaintiff sounded disgruntled and informed her that she should be paying more than \$200/month. Defendant never heard from Plaintiff again until the "30-day Notice" earlier October 2008.

89) At the Klamath Falls Circuit Court hearing on October 7, 2008, Plaintiff uttered to Defendant in a threatening tone the following words: "Don was incompetent. He was an alcoholic and 'gay!'" "You do this where ever you go!" etc. These utterings caused this Defendant annoyance, irritation, vexation, torment, distress and disturbance to the mind to whom it was directed so that she would suffer unjust vexation without cause.

90) Seemingly, in the manner these proceedings were commenced, the utterances, and manner instituted to remove Defendant from his premises, Defendant now speculates that Plaintiff was associated with other proceedings in the land use of Plaintiff's property.

Please take judicial notice in Klamath Circuit Court case: 0803782CV. Also see United States v. Falcone, 109 F.2d 579, 581 (2d Cir. 1940) (holding that individual cannot be held criminally liable for acts of others unless he has "in some sense promot[ed] their [illegal] venture himself, ma[d]e it his own"), aff'd, 311 U.S. 205 (1940); St. Ann v. Palisi, 495 F.2d. 423 (5th Cir. 1974); Tyson v. New York City Housing Auth., 369 F.Supp. 513 (S.D.N.Y. 1974); United States v. One 1971 Ford Truck, F.Supp. 613 (C.D.Cal. 1972) *Also see*; Mitchell v. Prunty, 107 F.3d 1337, 1342 (9th Cir. 1997) (holding that gang member could not be held criminally liable for gang's criminal activity without "proof of intent, or of the facilitation, advice, aid, promotion,

encouragement or instigation needed to establish aiding and abetting"). See, e.g., McCoy v. Stewart, 282 F.3d 626, 631 (9th Cir. 2002) (holding that defendant could not be held criminally liable under anti-gang law absent evidence of intent to incite illegal activity)

V NULL AND VOID FOR VAGUENESS

92) Plaintiff claims to Defendant, and Defendant hereto relies on such statements, that the Deceased owes inflated costs in the sum of \$30,000-\$50,000 in health care costs.

93) According to the health care plans, applicants are agreeing to turn over "rights" and to "assign rights" for support and payment for recovery by placing claims on estates regardless of the amount of medical care actually provided.

94) Observe the section in **Exhibit C, 2. J and L** forbids no specific or definite act. It confines the subject matter of the investigation which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against.

95) Defendant contends that this provision is NULL AND VOID AND PATENTLY UNCONSTITUTIONAL on its face because of the FOLLOWING reasons:

- a) Said provision condemns no specific or definite act or omission thus failing to define any;
- b) Such vagueness and overbreadth result to violation of the due process clause and the right to be informed of the nature of "what is recoverable"; "I 'assign' any rights..."; "[r]egardless of the amount of medical care actually provided."

96) It is a well-established in the doctrines of criminal or penal legislation that it must be clearly defined or specify the particular acts or omissions punished. No one may be required at peril of life, liberty or property to speculate as to the meaning of policy, statutes or ordinances. All are entitled to be informed as to what the State commands or forbids.

97) Defendant contends there is reason to doubt the soundness of the observation in its opinion to the effect that, to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms penalize and punish all acts.

98) These ordinances or policies are broad enough to encompass many types of conduct clearly within the state's constitutional power to control. The provisions are vague, not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all. As a result, "men of common intelligence must necessarily guess at its meaning." Connally v. General Construction Co., 269 U.S. 385, 391

99) Also see the case of Ermita-Malate Hotel and Motel Operators Assn., Inc. v. City Mayor of Manila, G.R. No. L-24693, July 31, 1967), the United States Supreme Court ruled:

"[t]erms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." (emphasis and underscoring ours)

100) The landmark case of U.S. v. L. COHEN GROCERY CO., 255 U.S. 81, where the United States Supreme Court in striking down Section 4 of the Federal Food Control Act of August 10, 1917, as amended, as unconstitutional, stated that:

"The sole remaining inquiry, therefore, is the certainty or uncertainty of the text in question, that is, whether the words 'that it is hereby made unlawful for any person willfully ... to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessities,' constituted a fixing by Congress of an ascertainable standard of guilt and are adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. That they are not, we are of opinion, so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary. Observe that the section forbids no specific or definite act. It confines the subject matter of the investigation which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against. In fact, we see no reason to doubt the soundness of the observation of the court below in its opinion to the effect that, to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court x x x" (emphasis and underscoring ours)

100) Being facially unconstitutional, cannot be a basis for depriving Defendant of her due process and fourth Amendment of the U.S. Constitution because these policies becomes a "roving commission," a wide and sweeping authority that is not "canalized within banks that keep it from overflowing," in short a clearly profligate and therefore invalid delegation of legislative powers.

98) This Defendant contends that the inescapable conclusion that said provision

suffers from is the fatal constitutional infirmity of vagueness and must be stricken down because it is detrimental, unjust, and unreasonable in the estimation of the public and its interest, as in this instant case, and those who are influenced fall prey to its snare unaware.

VI. **MISREPRESENTATION**

101) Defendant alleges that its many guises is a scourge of ambiguities where OHP obtained an action and forbearance from the Descendant, who relied upon the misrepresentation, and/made it recklessly, intending the Descendant to rely on the resulting penalties. Consequently, Descendant's estate now suffers injury as a result of the reliance because the Descendant had no knowledge of the extent of repayment he was consenting to.

102) The application described in **Exhibit C** resembles or creates a impression. According to the provisions in **paragraph 2. J and L** of the health plan application, the "rights" turned over to the State are unconstitutionally vague because it does not disclose the fact(s). Subsequently, because the OHP "Personal Representative" failed to disclose two or more material facts *i.e.*, it is of itself a conflict of interest and is a misrepresentation to the estate.

Conclusion

103) These events by themselves may not appear significant, but taken together they can demonstrate a *pattern of behavior* revealing the existence of the I-D-E-A-L conditions in this landlord-tenant relationship.

104) The question may be to ask is, does the statement of opinion suggest that it is

based on fact or is provable as a fact?

105) Financial abuse can be particularly difficult to investigate. In many financial exploitation cases, all of the victim's assets are endangered. Any emotion may be manipulated, but the most common emotion to be manipulated is fear.

106) Plaintiff neglected to assert a right or claim by avoiding Defendant all together. A signal of possible guilt or involvement. That, together with the lapse of time and other circumstances, prejudiced Defendant causing disadvantage to her. As a result of the unreasonable and unjustified time, Defendant is in a worse position now than at the time the claim should have been brought.

107) Plaintiff seeks to wrongfully terminate a lease agreement that Defendant and Descendant made through annoyance and alarm, and recklessly creating a risk thereof, to Defendant's stability.

108) How can we have decision-making abilities when Oregon health plans are ambiguous. They are manifested as promises, threats, or a combination of both, regarding issues of health. We need to have a high degree of mental acuity to understand the form of manipulation or deception used to gain assets without the true consent of the victim. We have to depend on government assistance with our cognitive acquiescence.

109) WHEREFORE, Defendant hereby requests that this Court find:

a) Negligent and reckless instruction and supervision by the Plaintiff(s) who gave the actual, implied, or apparent authority for such services by Defendant who was engaged in Constitutionally protected activity.

b) Plaintiff failed to adequately or quickly enough identify the Defendant who was in possession of the premises at issue.

- c) Plaintiff failed to provide proper 30-day notice according to due process in an FED claim.
- d) Descendent signed a health care application that must be rescinded due to unconstitutionally vague terms in the provisions by “assigning” ANY RIGHTS,
- e) Plaintiff was misrepresented by Oregon State counsel and reps through a conflict of interest whose only concerns are with their own pecuniary rights.
- f) Defendant was lawfully in possession of the premises at issue.
- g) Defendant complied substantially with excess vigor by means of the provisions of the lease agreement..
- h) The five year lease agreement contract to be breached by express covenant of good faith and fair dealing, promissory estoppel, wrongful termination, intentional infliction of emotional distress, breach of employment agreement for benefits earned and expenses incurred, unjust enrichment, misrepresentation, intentional interference with prospective business advantage, by Plaintiffs and their associates.
- i) Order Plaintiff(s) to pay Defendant, Kini Cosma, general damages, compensatory damages, special damages, attorney’s fees, costs of suit, exemplary damages, future damages, implied damages, punitive damages, reliance damages, nominal damages, incidental damages, consequential damages, foreseeability of damages, liquidated damages, mitigation of damages, lost profits from businesses and investments, lost earnings, damages for emotional distress and mental anguish, injunctive relief for the first and second cause of action in the amount of \$50,000.00.
- j) Such other relief as the Court deems equitable.

I, Kini Cosma, hereby declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Date: _____
_____ Kini Cosma,